



U.S. SUPREME COURT DECISION SOUNDS DEATH KNELL FOR RACE-CONSCIOUS COLLEGE ADMISSIONS POLICIES: A Q&A WITH GARY ORFIELD



It's been under attack since its inception. But affirmative action in college admissions may be gone for good within the next two years as a result of the U.S. Supreme Court's [announcement last week](#) that it will decide cases related to race-conscious admissions policies at the University of North Carolina and Harvard.

The cases, *Students for Fair Admissions Inc. v. President & Fellows of Harvard College* and *Students for Fair Admissions, Inc. v. University of North Carolina*, both involve challenges against the admissions policies of highly competitive universities that consider race as one of multiple factors in their efforts to assemble a diverse student body. Both were filed by a conservative group, Students for Fair Admissions, founded by former stockbroker Edward Blum. The Harvard case alleges that the university's approach to admissions places Asian students at a disadvantage. The North Carolina case argues that the public university's consideration of race in undergraduate admissions violates Title VI and the Constitution.

In the Q&A below, [National Education Policy Center Fellow Gary Orfield](#) discusses the implications of a decision that will almost certainly have major implications for affirmative action, given the current conservative makeup of the court. Orfield is Distinguished Research Professor of Education, Law, Political Science, and Urban Planning at the University of California, Los Angeles, and co-director of the Civil Rights Project/Proyecto Derechos Civiles at UCLA, and the author of *The Walls around Opportunity: The Failure of*

Colorblind Policy for Higher Education, due out from Princeton University Press in April.

Q: Briefly, why do colleges consider race when deciding which students to admit? What does research have to say about the results of race-conscious college admissions policies?

A: Before colleges began to practice affirmative action, there was extremely little representation of Black, Latino, and Indian students in highly selective universities because of the extreme inequality of family and school opportunities before college. Most major colleges adopted race-conscious admissions to take these factors into account and to begin to seriously integrate their academic communities. I explain the traditional background of exclusion before affirmative policies in my forthcoming book, *The Walls around Opportunity: The Failure of Colorblind Policy for Higher Education*.

Q: Can you explain, perhaps using examples from past and existing policies, the distinction the Supreme Court has drawn between individual use of race and consideration of race in the admissions process that is not individualized?

A: In its decisions from *Regents of the University of California v. Bakke* (1978) to *Fisher v. University of Texas* (2013; 2016), the Supreme Court has approved considering race as one of multiple factors in making decisions about individual students, but has not approved policies that reassign or limit groups of students, as in some forms of school desegregation. The Court has outlawed racial quotas.

Q: Please explain how the two current cases, against the University of North Carolina and against Harvard, are different than past challenges to the use of race in affirmative action cases?

A: These cases are by the same conservative group that failed in the two Fisher cases and the issues are not fundamentally different. In both, the lower courts have held that the universities complied with the long-established precedents. What is different is the composition of the Court after three Trump appointments.

Q: When the Court hears *Students for Fair Admissions v. President & Fellows of Harvard College* and *Students for Fair Admissions v. University of North Carolina*, what are the most likely outcomes?

A: There are three members who were strong opponents in earlier cases and three Trump appointees who are extreme conservatives on race issues as shown in last year's voting rights case.

Q: How, if at all, might the decision impact the consideration of race in designing a race-neutral policy, such as the so-called Top 10 Percent Plan in Texas?

A: I think that the Court is likely to point to this as a better, more workable alternative, which it is not. I doubt that they will try to limit nonracial policies that, on average, may benefit a significant number of students of color but neither the [Top 10 Percent Plan \(which is now less than 10 percent\)](#) nor other "alternatives" work nearly as well as affirmative action,

which, at best, is a modest policy that does not come close to equalizing outcomes.

Q: Given that the cases are not expected to be decided until May or June of 2023, can we expect to see colleges and universities take steps to change their admissions policies before that time? If the cases are decided as expected, what steps, if any, can colleges and universities take, going forward, to advance diversity goals for BIPOC students? Are there steps that institutions other than colleges and universities might take?

A: I would strongly advise colleges and universities not to make major changes before the decision, which will probably take effect for the class entering in 2024 unless the Court acts really quickly. I do think that the very large national movement to end required admissions testing will be strongly reinforced by the threatened decision and the way in which the opponents of minority opportunity have misused testing data in these cases.

Q: Most colleges and universities do not have selective or highly admissions policies like Harvard and the University of North Carolina. What impact, if any, will the case have on this subset of schools?

A: It depends on how sweeping the decision is and how many explicitly race-conscious policies those institutions may have aside from admissions. Colleges should wait to see what the Court decides and not to expand limits beyond what the court commands.

Q: Assuming that the Court's decisions go as expected, what will we lose as a society? Why is the use of race in college admissions something that our society should value?

A: What will be badly damaged is the ability of colleges to provide a strong, diverse education preparing all students to function effectively in a multiracial society with deep and dangerous divisions. We will lose the ability of our institutions to develop the great talents and unique understandings of students who have not had a fair chance and have a great deal to offer. Colleges and universities, faculties and administrators, need to do everything they can to offset these losses with policies sensitive to the realities of race in our society. The expected decision will be a tragic mistake and must, eventually, be reversed. We need race-conscious policies to overcome the profound impact of racial inequalities.

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This newsletter is made possible in part by support provided by the Great Lakes Center for Education Research and Practice: <http://www.greatlakescenter.org>

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