



Students for Fair Admissions, Inc. v. Harvard College: Eight Takeaways



The U.S. Supreme Court's June ruling in *Students for Fair Admissions, Inc. v. Harvard College* declared the admissions policies of the University of North Carolina (UNC) and Harvard College discriminatory. In doing so, they effectively ended race-based affirmative action in college admissions. In a [recent Q&A](#) in the *Kappan*, NEPC fellow [Bob Kim](#) of the Education Law Center and NEPC director [Kevin Welner](#) of the University of Colorado Boulder discuss the implications of this far-reaching decision, which overturned nearly half a century of legal precedent allowing colleges to consider race in a holistic manner when deciding which students to admit. Here are eight takeaways from their conversation:

1. **“Color blindness” played a major role in the decision:** Although scholars (and Justice Brown Jackson's [dissent](#)) have documented that ‘color blind’ U.S. law has a long history of [discriminating against minoritized groups](#), Chief Justice John Roberts, who wrote the majority opinion, has long held that government policies should be race-blind. In the *Students for Fair Admissions* case, he wrote that the admissions policies of Harvard and UNC “unavoidably employ race in a negative manner, involve racial stereotyping.”
2. **A legal decision made more than 40 years ago by the University of California system could be partially to blame for the decision:** In the 1978 *Regents of the University of California v. Bakke* case (under which a narrow set of race-based admissions considerations were permitted), the university did not argue that contem-

porary race-based admissions considerations could help remediate ongoing harms of prior discrimination. Welner notes that this “would have required the university to acknowledge its own role in harmful discrimination.” The resulting *Bakke* decision permitted race-based considerations in order to contribute to the diversity of the student body but not to address the continued impacts of societal discrimination.

- 3. Colleges can still consider race during the admissions process. Kind of:** The *SFFA* decision states that colleges can still consider racial elements of applicants’ broader stories of accomplishments, overcoming obstacles, leadership, and the like. However, the Chief Justice’s opinion warns against using essays as a back door for unconstitutional considerations of race. The focus must be on demonstrated leadership or courage or other traits, experiences and the lessons learned that might help the applicants contribute to the university. The university is not permitted to give the student special consideration because these character-shaping experiences involved race rather than, say, playing in the school band, or breaking a leg in a skiing accident. “[The] message is clear that they will need to sift out some non-racial attribute from the race-based experience,” Kim explains.
- 4. The percentage of students of color will almost certainly decline at universities with competitive admissions processes:** Welner notes that “anti-affirmative-action advocates have made very clear that they are itching to litigate further.” As a result, colleges may hesitate to take advantage of the narrowed opportunity that remains to consider race in its central role in many people’s experiences in this country. Kim notes that some colleges have addressed this issue by “scaling back on supposedly ‘race-neutral’ practices that disproportionately benefit white students—such as ‘tips’ for athletes or children of alumni, donors, and faculty.” However, the [experiences](#) of states that prohibited race-conscious admissions policies suggests that this will likely be insufficient and that the representation of minoritized students will decline.
- 5. Ironically, the Supreme Court has been willing to consider race when it has a negative impact on people of color:** In her dissent in [Students for Fair Admissions, Inc. v. Harvard College](#), Justice Sotomayor wrote:

Tellingly, in sharp contrast with today’s decision, the Court has allowed the use of race when that use burdens minority populations. In [United States v. Brignoni-Ponce](#), for example, the Court held that it is unconstitutional for border patrol agents to rely on a person’s skin color as ‘a single factor’ to justify a traffic stop based on reasonable suspicion, but it remarked that ‘Mexican appearance’ could be ‘a relevant factor’ out of many to justify such a stop ‘at the border and its functional equivalents.’ . . . The Court thus facilitated racial profiling of Latinos as a law enforcement tool and did not adopt a race-blind rule. The Court later extended this reasoning to border patrol agents selectively referring motorists for secondary inspection at a checkpoint, concluding that ‘even if it be assumed that such referrals are made largely on the basis of apparent Mexican ancestry, [there is] no constitutional violation.’
- 6. The case has no direct or immediate impact on K-12 schooling:** K-12 efforts

at desegregation were already dealt a major blow in the form of the 2007 *Parents Involved v. Seattle Public Schools*, which applied the Equal Protection Clause to stop two districts from considering an individual's race as part of a (non-court-ordered) effort to mitigate the segregative impacts of their choice-based student assignment policies.

7. Race-conscious college admissions policies were never transformative: The unequal educational and societal opportunities that made affirmative-action policies necessary in the first place impact students long before they reach college, effectively excluding millions of minoritized students from the “eligibility pool” of highly competitive colleges—affirmative action or not—long before they are old enough to apply. “The lack of diversity at many selective colleges and universities is more attributable to these opportunity gaps than to any issues around the availability of affirmative action,” Welner explains. “Affirmative action policies at selective colleges are just a Band-Aid placed on a much larger problem.”

8. The negative impacts of *Students for Fair Admissions, Inc. v. Harvard College* will nevertheless resonate for years to come: As Welner points out:

Affirmative action and graduation from elite institutions have played an indispensable role in providing educational opportunities for so many future doctors, lawyers, bankers, and other leaders. As just one example, having fewer Black doctors will likely harm health care for underserved populations and impair the diversity of the nation's future research workforce.

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