Is Race-based Affirmative Action for College Admissions Constitutional?

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Abstract

Race-conscious admissions, also known as race-based affirmative action, is being challenged by the nonprofit Students for Fair Admissions, Inc. (SFFA) in an upcoming case to be heard by the United States Supreme Court. Gaining prevalence in the 1960s along with several non-discrimination laws, race-conscious admission practices were motivated by student protests and the civil rights movement to address systemic racism and historical exclusionary policies at colleges and universities across the U.S. (Baker, 2019). The U.S. Supreme Court's upcoming decision will greatly impact institutions across nation, so the central question remains: should the Supreme Court uphold race-based affirmative action?

Keywords

Affirmative action, race-based admissions, Supreme Court

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Race-conscious admissions, also known as race-based affirmative action, is being challenged by the nonprofit Students for Fair Admissions, Inc. (SFFA) in a previous oral argument last October and a looming case to be heard by the United States Supreme Court. Gaining prevalence in the 1960s along with several non-discrimination laws, race-conscious admission practices were motivated by student protests and the civil rights movement to address systemic racism and historical exclusionary policies at colleges and universities across the U.S. (Baker, 2019). The U.S. Supreme Court's upcoming decision will greatly impact institutions across the nation, so the central question remains: should the Supreme Court uphold race-based affirmative action?

Supporters of colleges that employ race-conscious admissions argue racial segregation in schools persists and that such policies are not only constitutional but also needed to help colleges admit diverse classes. Recent enrollment trends show a continued need for intentional outreach with a decline in Black student enrollment in the last decade along with other racial minority groups (Adedoyin, 2022). Furthermore, studies present strong evidence that state bans on affirmative action decrease the access of underrepresented minorities to selective public institutions and that race-neutral policies like percent plans do not produce the same results as affirmative action (Baker, 2019). The continued need for race-conscious admissions also stands upon a foundation set by historical cases which consistently backed the practice. Legal precedent supports upholding affirmative action following five separate U.S. Supreme Court decisions dating back to 1978 (Garces & Poon, 2018). Each decision maintains race-conscious admissions as a constitutional practice in support of increasing diversity on campuses (Garces & Poon, 2018). Finally, the third main argument from supporters of affirmative action rests with achieving justice. Supporters highlight a large majority of higher education institutions benefitted from slavery and need channels to reconcile with that history (Holley et al., 2022). Historical context coupled with data-driven need presents a strong case for upholding affirmative action.

In opposition, SFFA argues affirmative action is unconstitutional and such policies are no longer needed to diversify students admitted to colleges and universities in the U.S. This argument rests on the assumption that affirmative action promotes unfair practices that go against the U.S. Constitution's fourteenth amendment, which guarantees equality under the law, by favoring minority students (Cruz et al., 2022). Opponents expand this argument one step further, claiming institutions are not only favoring minority students, but they are also overstepping the given parameters of affirmative action. By applying affirmative action policies too broadly and using them for "racial balancing," (assuring that schools have student bodies that resemble the racial composition of the community as a whole), institutions are negatively impacting students who do not identify in racial minority groups (Gluckman, 2022). Affirmative action's legal, specified use should only be for promoting overall diversity, in general (Gluckman, 2022). Thus, unequal treatment and overreach encapsulate the primary arguments against race-conscious admissions for the plaintiffs.

Statistically speaking, opponents of affirmative action who claim the practice is no longer needed to help diversify student bodies need to take a closer look at enrollment trends across the country. In general, colleges and universities continue to struggle with racial minority admissions, especially as it relates to Hispanic and Black student enrollment. Those groups enroll in college (particularly four-year colleges) at a lower rate than their white and Asian counterparts (Office of Planning, Evaluation and Policy Development, 2016). Some opponents of affirmative action also try to employ a counterargument linked to these numbers, taking advantage of the discrepancies between Black and Asian student enrollment, to split interracial coalitions that support the policy (Garces & Poon, 2018). Specifically, it is worth noting that the students referenced in the Students for Fair Admissions Inc. v. President & Fellows of Harvard College are Asian American students, complicating the race-conscious admissions diversity argument (Cruz et al., 2022). However, outside of the Asian students involved in the case, studies suggest the racial group, in general, supports affirmative action (Garces &

Poon, 2018). Multilingual opinion polls conducted nationwide since 2012 show an overwhelming majority (68%) of Asian Americans support race-conscious admissions (Garces & Poon, 2018). Despite white affirmative action opponents asserting their agenda under the guise of "support" for the rights of the Asian American community, the majority of Asian Americans across ethnicities support affirmative action (Garces & Poon, 2018).

Additionally, the unfairness claimed by opponents of the policy likely comes from a place of fear and privilege rather than sound proof, demonstrating an over-extension of race-conscious admissions (Bollinger & Stone, 2022). Their slippery slope argument fails to acknowledge the simple truth that it is possible to both comply with the language and essential purpose of the Fourteenth Amendment and to allow the state to create truly equal opportunity for all Americans (Bollinger & Stone, 2022). Both can be true. Behind all the legal arguments, one social fact also remains. People of color, specifically Black Americans today continue to experience discrimination and disadvantage in nearly every facet of life. Americans, then, must view race-conscious admissions as a very long-term commitment, especially when we consider that a relatively recent effort to secure justice for Black Americans and minoritized groups was preceded by three and a half centuries of grave injustice, which will not be magically reversed by one policy change (Bollinger & Stone, 2022). Race-conscious admissions practices are one of many tactics that colleges can and should implement to work toward justice for minoritized students, like building diverse pipelines, automatically accepting a percentage of top students from each public high school in the state, or considering admissions criteria like resilience in favor of standardized test scores (Zamudio-Suarez, 2023). But any step toward justice, no matter how seemingly small on its own, is a valuable advancement.

Ultimately, the United States Supreme Court should uphold affirmative action to ensure students of color have unquestioned support and fair access to higher education. Legal precedent supports race-conscious admissions practices and data suggests that even with these policies, enrollment of underrepresented student populations is still struggling. Institutions should be supported in their efforts to offer better pathways to higher education for historically oppressed groups.

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