

Initial EducationCounsel Statement on U.S. Supreme Court Decisions in SFFA v. Harvard/UNC Cases
June 29, 2023

Earlier today, the U.S. Supreme Court issued its decision in the *Students for Fair Admissions vs. Harvard/UNC* cases regarding the universities' consideration of race as one factor among many in undergraduate admissions to advance their interests in promoting the educational benefits of diversity. In a 6-3 decision in the Harvard case, and a 6-2 decision in the UNC case, the Court ruled that Harvard's and UNC's admissions programs violated federal non-discrimination law.¹ The Court found that both programs lacked "sufficiently focused and measurable objectives warranting the use of race, unavoidably employ race in a negative manner, involve racial stereotyping, and lack meaningful end points."

While the Court did not expressly overrule past decisions that established a framework permitting the limited consideration of an applicant's race to advance diversity interests, it held for multiple reasons that those interests were "not sufficiently coherent for purposes of strict scrutiny," including that they were not sufficiently measurable and did not have a clear end point. The Court also strongly cautioned that applicants must be treated based on their "experiences as an individual—not on the basis of race." The Court expressly recognized that "nothing in this opinion should be construed as prohibiting universities from considering an applicant's discussion of how race affected his or her life, be it through discrimination, inspiration, or otherwise," tied, for example, to the student's "courage and determination" or "unique ability to contribute to the university." But the Court cautioned that "the touchstone of an individual's identity [must be with respect to] challenges bested, skills built, or lessons learned"—not the color of their skin.

We are closely reviewing the Court's opinion, and the concurring and dissenting opinions, and we will share deeper information and analysis in the coming days and weeks. Notwithstanding the Court's opinion and its complexities, one fundamental truth is clear: Nothing in the decisions should affect higher education's central role in society as an engine of social mobility and its core commitment to educational equity and excellence —particularly for students of color and students from other historically marginalized groups. This is a moment for higher education leaders and institutions to demonstrate leadership, not retrenchment, in pursuit of their educational missions in comprehensive, thoughtful ways that, of course, also satisfy the law. This includes, for example, fostering access and inclusion, establishing equitable learning environments, and preparing a diverse set of leaders to take on our nation's greatest current and future challenges. Working with our partners and clients, we will provide additional analysis and insights on the Court's decision and its implications, including how the higher education community could and must seize this moment to bring forth a new commitment and era for equity and excellence in higher education.

¹ The Court delivered a single decision covering both universities, analyzing their programs under Equal Protection Clause standards. Even though the Equal Protection Clause doesn't apply to private universities like Harvard, the Court recognized that Title VI of the Civil Rights Act of 1964 (which applies to public and private recipients of federal funds) and the Equal Protection Clause are coextensive. Thus, the Court "evaluate[d] Harvard's admissions program under the standards of the Equal Protection Clause, itself."