
The Supreme Court's Affirmative Action Decision:

WHAT YOU NEED TO KNOW

SFFA v. Harvard // SFFA v. UNC



THE SUPREME COURT HAS UPENDED ALMOST FIVE DECADES OF PRECEDENT.

- The Supreme Court’s decision to strike down Harvard and UNC’s affirmative action programs is an unconscionable blow to fairness in education at a time when efforts to advance educational opportunities for students of color remain acutely necessary but have been under attack across the country.
- We must not normalize the departure from 45 years of stable Supreme Court precedent that will now aggravate existing racial inequalities in educational opportunities.
- *Brown* advanced racial equity and expanded access to educational settings from which Black students had long been excluded under a racial caste system. That historic decision should not be weaponized to dismantle programs that expand educational opportunity for Black students and other students of color.
- *Brown* mandated the elimination of state-sponsored segregation in our educational system “root and branch,” necessitating race-conscious remedies. An honest engagement with race is the only way to dismantle the inequalities that persist in our society.
- As Justice Sotomayor wrote in her dissent, quoting [LDF’s brief](#), “If there was a Member of this Court who understood the *Brown* litigation, it was Justice Thurgood Marshall, who ‘led the litigation campaign’ to dismantle segregation as a civil rights lawyer and ‘rejected the hollow, race-ignorant conception of equal protection’ endorsed by the Court’s ruling today. . . . The Court’s recharacterization of *Brown* is nothing but revisionist history and an affront to the legendary life of Justice Marshall, a great jurist who was a champion of true equal opportunity, not rhetorical flourishes about colorblindness.”
- In rejecting Harvard and UNC’s race-conscious admissions programs, the Supreme Court chose to ignore well-established social science, pedagogy, and the lived experiences of many Americans who know that bringing together people of different backgrounds makes our classrooms better and our nation stronger.
- Despite how alarming this decision is, it is important to know exactly what the Supreme Court did and did not decide in these cases. The Court’s decision is limited to the consideration of race, as a tip, in college admissions as conducted by Harvard and UNC. It is not about outreach, recruitment, affinity groups, employment, contracting, race-neutral policies governing K-12 selective admissions, diversity, equity, and inclusion (DEI) programs, or Critical Race Theory. In fact, these efforts are even more important after the Court’s ruling.

CONSIDERATIONS OF STUDENTS' EXPERIENCES WITH THEIR RACE AND THEIR RESULTING CONTRIBUTIONS ARE LEGALLY PERMISSIBLE AND SHOULD BE ENCOURAGED.

- Even with the constraints of the Supreme Court's ruling, colleges and universities are still able to consider students' experiences with race and how those experiences affect their qualifications for admissions.
- Inclusion — not exclusion — advances our constitutional ideals.
- The Supreme Court's misguided decision demands an unequivocal response from all of us — to welcome race as worth

acknowledging, not dismissing, in our institutions and, more importantly, in our students.

- All students deserve the freedom and opportunity to have their full identities and lived experiences considered when seeking admission to institutions of higher learning.



IT IS IMPERATIVE TO BREAK DOWN BARRIERS TO EDUCATIONAL OPPORTUNITIES FOR STUDENTS OF COLOR DESPITE THE COURT'S DECISION.



- We need to open the college gates wider, not roll back policies that promote access and opportunity for Black students and others who have been historically marginalized.
- We know this damaging outcome arose from an extremist campaign to pit communities of color against each other, but that campaign will fail.
- The anti-American implications of this decision should not be missed.
 - For over half a century, our nation has adhered to the belief that every student, regardless of their race, deserves an equal opportunity to pursue a higher education.
 - This is not the first time that this extremely conservative Supreme Court has issued decisions that fail to reflect our society's values.
- It is even more imperative that colleges and universities identify and dismantle barriers to opportunity that may unfairly disadvantage hardworking students of color in their quest for college admission.
- It is critically important for the future of our multiracial democracy that students of all backgrounds have an equal opportunity to access selective colleges and universities.
- Despite this Supreme Court ruling, LDF remains resolute in our commitment to advancing and defending racial justice, diversity, and equity in higher education and leadership.

CALLS TO ACTION



- **Let us be clear:** this ruling does not diminish our responsibility and legal ability to ensure that college admissions remain fair, especially for underrepresented students of color.
- We must not let this decision stop us from doing what we know is right.
- It is now up to all of us to ensure that this decision does not prevent our Black, Latinx, Indigenous, Asian American, and Pacific Islander students from bringing their whole selves to the spaces where they learn from and grow with each other.
- Decision makers have a continuing obligation under federal and state anti-discrimination laws and the U.S. Constitution to provide equal opportunity to all student applicants.
- We have a moral imperative to ensure that the doors to institutions of higher education are not unfairly closed to underrepresented Black, Latinx, Indigenous, Asian American, and Pacific Islander applicants.

WANT TO KNOW MORE?

Diversity is the greatest strength of our multiracial democracy—and essential to the success of our economy.

- We live in an increasingly racially diverse society. As a nation, we cannot afford to forgo the benefits of the talents and gifts of Black, Latinx, Indigenous, Asian American, and Pacific Islander students.
- Our future leaders must have the opportunity to fulfill their potential through equal access to a higher education in a racially diverse learning environment that will equip them to thrive in a multiracial democracy and an increasingly global economy.
- Our national security, our ability to compete in a global economy and in scientific and technological innovation, and the health of our multiracial democracy depend on producing leaders and a well-trained workforce capable of navigating and thriving in a racially diverse society.
- According to leading American companies, employing a racially diverse workforce gives them a competitive advantage in our increasingly global economy. This is why 82 corporations and businesses submitted briefs to the Supreme Court in support of upholding affirmative action and equal access to higher education.
- As Intel explained to Congress in 2019, “Improving ethnic and gender diversity in the U.S. technology workforce represents an economic opportunity that could create \$470B to \$570B in new value for the technology industry and could add 1.2%-1.6% to the national GDP.”



WANT TO KNOW MORE?

Most Americans support racial diversity and equal access to educational opportunities.

- A broad cross-section of American society, including military leaders, major corporations, small business owners, educators, students, and individuals from all backgrounds support advancing equal opportunity in education through race-conscious admissions.
- A [May 2023 AP-NORC](#) poll found most respondents (63%) do not think the Supreme Court should prohibit the consideration of race and ethnicity in college admissions.
- According to the [2022 Asian American Voter Survey](#), 69% of Asian American voters support better access to higher education for women and all communities of color.
Race-conscious admissions help us build a better world for all.
- A [Sept. 2022 nationwide poll](#) found that 70% of respondents agree we need racial diversity, in addition to diversity of students' economic backgrounds, to achieve true equality.
- An [Oct. 2022 Washington Post-Schar School poll](#) found that 64% of adults say programs designed to increase the racial diversity of students are a good thing.

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WANT TO KNOW MORE?

A true multiracial democracy cannot tolerate a segregated higher education system that closes the doors of opportunity to many talented students of color.

- Due to pervasive racial inequality in primary and secondary education, as well as racial bias in standardized testing, traditional indicia of merit under-identify many talented students of color for college admission.
 - As of the 2020-2021 school year, Black students were 13% of U.S. high school graduates, but only 5.63% of students enrolled in large, selective public colleges, while white students were 50% of U.S. high school graduates and 56% of students enrolled in large, selective public colleges.
- All students deserve a fair shot at going to college, regardless of their families' income, where they grew up, or their racial and ethnic background.
- Standing together with the broad array of students, educators, and policymakers, as well as military, corporate, and religious leaders who support fair policies, we will keep fighting in courts and legislatures to advance programs that expand opportunity for all and promote the diverse and inclusive learning experiences that students need to succeed in the real world.
- The Supreme Court's decision should not be misinterpreted to communicate that applicants of color are not welcome in institutions of higher learning.
- We all have an important role to play in remedying the systemic racial discrimination that denies many Black, Latinx, Indigenous, Asian American, and Pacific Islander students an equal opportunity to a quality K-12 education and to compete for admission to our nation's selective colleges and universities.

**WE MUST NOT
LET THIS
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US FROM DOING
WHAT WE KNOW
IS RIGHT.**

WANT TO KNOW MORE?

Students of all races benefit from affirmative action in higher education.

- Race-conscious policies have played an important role in ensuring that all people of color, including Black, Latinx, Indigenous, Asian American, and Pacific Islander students, have an opportunity to go to selective colleges and assume leadership roles in the workplace and in all sectors of our society.
- The ability to relate to people of different racial and ethnic backgrounds is an indispensable skill for job candidates. Students of all racial backgrounds benefit from racially diverse learning environments and are better equipped to succeed in today's workplaces and serve today's clientele.
- [Research](#) shows that diverse learning environments help all students build skills associated with academic success, including critical thinking, problem-solving ability, student satisfaction and motivation, general knowledge, and intellectual self-confidence. In addition, cross-racial interactions can reduce prejudice and stereotypes, enhance empathy, and open minds.



WANT TO KNOW MORE?

The Supreme Court's decision does not diminish our collective responsibility to ensure equal opportunities in education.

- Colleges and universities must be able to consider applicants in the full breadth of their humanity and lived experiences, including experiences that pertain to their racial and ethnic background, and students must be able to express their full selves. That is permitted under the Supreme Court's decision.
- We know that students of color belong on all college campuses and are capable of excelling in the nation's premier academic institutions. While talent and potential can be found in students of all backgrounds, opportunities to fulfill that potential are not equally accessible. It is imperative that we support policies that help identify, cultivate, and support all students so they can thrive.
- **Representation matters.** It is important that students of all races see themselves in leadership roles throughout our multiracial society. Pipelines to leadership must be open to people from all backgrounds.
- Ensuring that underrepresented students can overcome obstacles to educational opportunities is the right thing to do for our society at large.
- Given the Court's ruling, it is even more imperative for colleges and universities to identify and dismantle barriers to opportunity in their admissions processes that may unfairly disadvantage hardworking students of color in their quest for college admission.

