*Students for Fair Admissions, Inc. v.
University of North Carolina*

**Argument Date: October 31, 2022**

Background

Following the Supreme Court’s decision in Brown v. Board of Education (1954), public schools were required to stop discriminating on the basis of race. Although the decision in Brown did not specifically apply to universities and colleges, the rationale behind it—ensuring that all people regardless of race had access to a quality education—eventually did. Ten years later, Congress passed Title VI of the Civil Rights Act to extend Brown’s ruling to publicly funded institutions of higher education.

Public colleges and universities in the United States use a variety of factors to determine which students will be accepted. Universities often want a student body with diverse academic interests, talents, and backgrounds. They consider factors such as applicants’ grades, standardized test scores, community service, athletic or musical ability, and geographic location. Sometimes, universities also consider an applicant’s race or ethnicity as part of the applicant’s entire package.

The practice of making a conscious effort to enroll more applicants from racial and ethnic minorities is sometimes called “affirmative action.” Many universities have adopted some form of affirmative action program to counteract the negative effects of historical discrimination and structural biases and to provide students with the benefits of greater diversity.

In an early higher education affirmative action case (*Regents of the University of California v. Bakke*, 1978), the Court found that a public institution’s medical school admissions program that set aside seats for students of color was using quotas in violation of the 14th Amendment’s Equal Protection Clause. In that same case, however, the Court also recognized that achieving diversity in higher education was an important government interest. The decision thus allowed universities to consider race among many factors.

Today Americans disagree about the role, if any, that consideration of race should have in the higher education admissions process. Some people believe that the considering race to ensure a diverse study body is important to the admissions process. Others believe that race should play no role whatsoever and that admissions should be entirely “color-blind.”

When ruling on laws or programs that accept federal funds while treating people differently because of their race, courts require the government to justify the use of race using a test called **strict scrutiny**. To be acceptable, a law that classifies people by race must:

* serve a **compelling** government **interest**; and
* be “**narrowly tailored**” to achieve that interest.

A “compelling” interest is the toughest standard for a government action to meet. The interest must be greater than “important” or “rational.” Narrowly tailored means that the law or policy must be extremely well designed to achieve a specific goal, and it must minimize any interference with the rights of others (i.e., it must use the least restrictive means to achieve the government interest). Typically, it is difficult for the government to justify using a racial classification, and laws often fail the strict scrutiny test.

The Supreme Court has said that consideration of race in the admissions process is acceptable, but only because public universities gain very important educational benefits by creating a diverse student body, such as improved classroom discussion, better preparation for a diverse workforce, and combating stereotypes. Even then, universities may only consider race where use of race-neutral policies could not achieve the same diversity-related goals. Because the Supreme Court has allowed the use of race in admissions in specific ways, it has been left to the states to pass legislation banning the practice. As of 2022, nine states have expressly banned their public universities from considering race in the admissions process.

In this case,the Supreme Court is being asked to overrule a precedent. Before the Supreme Court decides a case, it looks to precedents—past Supreme Court decisions about the same topic—to help make the decision. It typically applies a doctrine called *stare decisis*, literally “let the decision stand.” *Stare decisis* means that if the case being decided raises the same legal question as an earlier case decided by the Court, then the legal rule used to decide the earlier case should be used to decide the current case. Only the Supreme Court can overrule one of its own precedents. Lower courts *must* follow Supreme Court precedent.

Because *stare decisis* promotes stability and predictability of the law, the Supreme Court requires a special justification before it will overrule a precedent. Because adhering to precedent is the norm, “to overrule a constitutional precedent, the Court requires something over and above the belief that the precedent was wrongly decided.”[[1]](#endnote-2) Historically, when deciding whether to overrule a precedent, the Supreme Court has considered various factors, including: the quality of the past decision’s reasoning, whether the decision is “unworkable” (meaning it has proven too difficult for lower courts to apply), changes in relevant facts and societal norms, and whether individuals and companies who have come to rely on the decision would be harmed by overruling it.

In *Brown v. Board of Education* (1954), the Court famously overturned *Plessy v. Ferguson* (1896), a case that allowed the “separate but equal doctrine” to continue for over 50 years. In his famous dissenting opinion in *Plessy*, Justice Harlan wrote, “Our constitution is color-blind, and neither knows nor tolerates classes among citizens.”[[2]](#endnote-3)

Facts

The University of North Carolina (UNC) is the oldest public university in the United States. UNC’s mission is “to serve as a center for research, scholarship, and creativity and to teach a diverse community of … students to become the next generation of leaders.”[[3]](#endnote-4) For more than 30 years, UNC has given preference in admissions to racial minorities, which it defines as African Americans, Hispanics, and Native Americans. Asian Americans do not receive preference because their representation at UNC (12%) is larger than their representation in North Carolina’s population (3%). The goal is to enroll “great students who will make each other better, both because of the excellence of their achievement and their potential and because of their differences [from one] another.”[[4]](#endnote-5)

Applicants to UNC complete the common application on which they may, but are not required to, indicate race as well as other demographic and background information such as socio-economic status, military service, and foreign language proficiency. Applications are reviewed by “readers” who are guided by a list of more than 40 criteria that may be considered as applications go through the process. These criteria include academic performance, athletic or artistic talents, and personal background. Readers rate some categories, but the scores are not added together, and no ratings are based on race. No formula determines whether a student is admitted. According to UNC, this holistic (whole-person) process considers all aspects of an applicant’s background with race only rarely playing a meaningful role—explaining a mere 1.2% of admissions decisions.

UNC is required to accept students predominantly from North Carolina, with out-of-state enrollment capped at 18% of each incoming class of about 4,200 students. During the time leading up to the case, the typical acceptance rate for in-state students was 47–50%. For out-of-state students, the acceptance rate was typically 12–14%.

Students for Fair Admissions (SFFA) is a non-profit organization created in 2014. SFFA’s stated mission is to “support and participate in litigation that will restore the original principles of our nation’s civil rights movement.” It believes that “a student’s race and ethnicity should not be factors that either harm or help that student to gain admission to a competitive university.”[[5]](#endnote-6)

In November 2014, SFFA sued UNC in District Court on behalf of its members who sought and were denied admission and those who expressed a desire to transfer to UNC. UNC disputed whether the newly formed SFFA had members when the suit was filed. SFFA claimed that a student’s race is often the factor that determines whether a student is admitted to UNC or denied. SFFA also alleged that UNC did not seriously consider race-neutral alternatives.

Almost seven years after SFFA first sued UNC, during which there were many court proceedings, the District Court conducted an eight-day trial. In November 2021, the court ruled in favor of UNC, explaining that the university’s use of race satisfied the strict scrutiny test and Supreme Court precedents including Grutter. The court based its decision on three findings. First, the court found that UNC demonstrated a compelling interest in pursuing the educational benefits of having a diverse student body. Second, the court found that UNC considers race flexibly and only as a “plus factor” among many factors in its holistic admissions process and does not unduly consider race. Third, the court found that UNC engages in serious consideration of race-neutral alternatives and that UNC had satisfied its burden to show that no alternative is workable at this time.

Two days after the District Court’s decision, SFFA appealed to the U.S. Court of Appeals for the Fourth Circuit. SFFA also quickly appealed directly to the U.S. Supreme Court, by petitioning the Court to hear the case before the lower court ruled, citing the importance of hearing the UNC case alongside a similar case before the Court: Students for Fair Admissions, Inc. v. Harvard. The Supreme Court agreed to hear both cases.

Issues

(1) Should the Supreme Court overrule *Grutter v. Bollinger* and hold that institutions of higher education cannot use race as a factor in admissions? (2) Does UNC’s admissions process violate the 14th Amendment?

Constitutional Provision, Statute, and Supreme Court Precedents

* **14th Amendment to the U.S. Constitution**

“No State shall…deny to any person within its jurisdiction the equal protection of the laws.”

* **Civil Rights Act of 1964, Section 601 of Title VI**

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

* *Brown v. Board of Education of Topeka, Kansas* (1954)

In Kansas, a Black student named Linda Brown had to walk through a dangerous railroad to get to her all-Black school. Her family believed that segregated schools were unconstitutional andsued the school system. The case went to the U.S. Supreme Court and asked: Does segregation of public schools based on race violate the Equal Protection Clause of the 14th Amendment? The Supreme Court found unanimously (9-0) for Brown that segregated public schools violated the Equal Protection Clause. Public schools across the United States were forced to desegregate.

* *Regents of the University of California v. Bakke* (1978)

Allan Bakke sought admission to medical school at the University of California Davis School of Medicine. After he was rejected, he sued, challenging the constitutionality of the school’s admissions program. When the medical school was founded, it had admitted no racial minority students. So, in a desire to create more diversity, the faculty created a special admissions program that set aside 16 out of 100 seats for racial minorities. The Supreme Court fractured over the case, with the nine justices issuing six different opinions, none of which garnered a majority of the Court. Justice Powell drafted the controlling plurality opinion. Half of his opinion, joined by four other justices, found that diversity in the classroom is a compelling state interest. The other half, joined by four different justices, held that quotas are not the least restrictive means to attain an interest in diversity. Accordingly, the Court ruled that race may be considered in the admissions process, but such consideration may not take the form of racial quotas.

* *Gratz v. Bollinger* (2003)

The University of Michigan undergraduate admissions policy used a 150-point ranking system that considered grades, high school reputation, difficulty of high school curriculum, alumni relationships, and “unusual circumstances” or factors such as race and socio-economic status. Being part of a racial minority group was worth 20 points. The Court decided that giving applicants a specific number of points due to their race alone was not narrowly tailored and, therefore, violated the Constitution.

* *Grutter v. Bollinger* (2003)

The University of Michigan Law School considered a student’s race as part of a holistic application process. The Supreme Court said the policy was constitutional because the law school had a compelling interest in attaining a diverse student body. In addition, the policy was specifically written to serve that interest by including race merely as a “potential ‘plus’ factor.” The opinion made clear that universities also must consider race-neutral alternatives in good faith and ensure that their race-based policies are limited in time.

* *Fisher v. University of Texas at Austin* I (2013) and *Fisher v. University of Texas at Austin* II (2016)

In these cases, Fisher, a White student, challenged the admissions policies at the University of Texas at Austin (UT-Austin). Texas’ Top 10 Percent rule automatically admitted all Texas high school students who finish at the top of their high school class. Of those admitted in this program, 25% were African American or Hispanic. The rest of the spots went to general applicants who were given scores based on academic and personal achievement. The score for personal achievement was based on two essays and additional factors including a “special circumstance” factor that broke down into seven attributes, including race. None of the factors were given any numerical value and were all viewed together to see the totality of the applicant.

Fisher argued that this admissions program discriminated against White students. In the first case, the Court found 7-1 for Fisher, determining that the lower court had not faithfully applied strict scrutiny to UT-Austin’s admissions policy. The case was sent back to the lower courts to be reviewed again.

The lower courts found that UT-Austin’s admissions process satisfied strict scrutiny because it was sufficiently narrowly tailored to the legitimate interest of promoting educational diversity. Fisher again asked the Supreme Court to decide whether the UT-Austin’s use of race as a consideration in the admissions process violated the Equal Protection Clause of the 14th Amendment.

When the Court decided the case, it had only seven members because Justice Scalia’s vacated seat had not been filled and Justice Kagan was recused due to prior involvement in the case. In a 4-3 decision, the Supreme Court ruled that UT-Austin’s admissions program was constitutional and allowed the admissions policy to remain in place. It cited the following facts in its decision: **(1)** UT had very important reasons for wanting diversity on campus such as ending stereotypes, promoting cross-racial understanding, and preparing students for a diverse workforce; **(2)** UT had designed an admissions program that was directly targeted at achieving that goal; and **(3)** UT proved that its previous race-neutral policy did not work to meet these goals. However, the Court also stated that UT had a continuing obligation to review its admissions policies as circumstances change. If race-neutral policies could someday achieve the diversity the university was seeking, then the admissions program may become unconstitutional in the future.

Arguments for Students for Fair Admissions (petitioner)[[6]](#endnote-7)

* *Grutter v. Bollinger* should be overruled. It abandoned the race-neutral principles that the decision in *Brown v. Board of Education* and Title VI set out. In *Brown*, the Court held that the Constitution denies “any authority … to use race as a factor in affording educational opportunities.” Yet because of *Grutter*, universities exercise that authority every day.
* *Grutter* was wrongly decided because the 14th Amendment’s Equal Protection Clause contains no exceptions that allow for the use of race in government decision making.
* *Grutter* wrongly held that a school’s interest in increasing diversity is compelling. Although *Grutter* praised the educational benefits of diversity, its assumption that a university can predict an applicant’s views or experiences based solely on race is racial stereotyping.
* The way “to stop discrimination on the basis of race is to stop discriminating on the basis of race.”[[7]](#endnote-8)
* *Grutter* has generated no legitimate reliance interests. No admitted or current student would have their admittance revoked. Universities will be required to alter their admission policies solely going forward, and past use of an unconstitutional policy is not a valid reason to keep it.
* Precedents should sometimes be overruled. Like in *Brown,* many landmark cases have overruled precedent. The Supreme Court hears cases that might overrule a precedent virtually every Term, and almost every current justice on today’s Court has voted to overrule multiple precedents.
* *Stare decisis* is not a binding rule. When a decision undermines the fundamental principle of equal protection, it is the principle, not the decision, that must win out.

Arguments for University of North Carolina (respondent)[[8]](#endnote-9)

* UNC has a compelling interest in having a diverse student body. Diversity promotes a robust exchange of ideas, fosters innovation, and nurtures empathy and mutual respect. The Supreme Court has recognized in its own precedents that public universities have a compelling interest in achieving diversity.
* UNC considers race flexibly as one factor among many in its admissions process. This holistic admissions policy allows for individualized consideration to all aspects of an applicant’s background. An applicant’s race is only one of many factors that brings together a class that is diverse in numerous ways including geography, military status, and socioeconomic background.
* Some states have chosen to end consideration of race in university admissions. Under the United States’ federalist system, that is their choice. However, in many states, the people and their representatives continue to allow consideration of race in the admissions process. The Supreme Court should not intrude on this ongoing process of democratic decision making.
* *Brown* held that the separation of students based on race violates the Equal Protection Clause. UNC is seeking to bring students of diverse backgrounds together. Programs like UNCs are the rightful solution to *Brown*’s legacy of desegregation.
* Universities have long relied on this Court’s rulings to structure their admissions policies. Overruling *Grutter* would be very disruptive, abruptly forcing UNC—and many universities like it—to fundamentally alter their admissions practices.
* *Stare decisis* is a core principle of the U.S. legal system. To overrule precedent, a decision must be “grievously or egregiously wrong.”[[9]](#endnote-10) This requires something over and above the belief that the precedent was wrongly decided.
* The Reconstruction Congress, which also ratified the 14th Amendment, provided considerable support to African Americans through the Freedmen’s Bureau, which supplied formerly enslaved people with services and necessities. Congress also made special provisions for the education of African American soldiers and appropriated funds specifically for poor African Americans. In providing these targeted benefits to African Americans, Congress demonstrated that the Equal Protection Clause was understood by its Framers to allow certain race-conscious measures. The “original public meaning” of the Clause was that race-conscious measures were permissible.

Notes

1. *Ramos v. Louisiana,* 590 U.S. \_\_\_ (2020), quoted in *Students for Fair Admissions Inc. v. University of North Carolina,* No. 21-707,Brief by University Respondents, July 25, 2022, <https://www.supremecourt.gov/DocketPDF/21/21-707/230779/20220725144111091_21-707_Response%20brief.pdf>. [↑](#endnote-ref-2)
2. “Plessy v. Ferguson (1896),” Legal Information Institute, [https://www.law.cornell.edu/wex/plessy\_v\_ferguson\_(1896)](https://www.law.cornell.edu/wex/plessy_v_ferguson_%281896%29). [↑](#endnote-ref-3)
3. *Students for Fair Admissions Inc. v. University of North Carolina,* No. 21-707,Brief by University Respondents, July 25, 2022, <https://www.supremecourt.gov/DocketPDF/21/21-707/230779/20220725144111091_21-707_Response%20brief.pdf>. [↑](#endnote-ref-4)
4. See note 3. [↑](#endnote-ref-5)
5. “About,” Students for Fair Admissions, <https://studentsforfairadmissions.org/about/>. [↑](#endnote-ref-6)
6. *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College* and *Students for Fair Admissions, Inc. v. University of North Carolina, et al.,* Nos. 20-119 & 21-707, Brief for Petitioner, <https://www.supremecourt.gov/DocketPDF/20/20-1199/222325/20220502145522418_20-1199%2021-707%20SFFA%20Brief%20to%20file%20final.pdf>. [↑](#endnote-ref-7)
7. *Parents Involved in Community Schools v. Seattle School Dist. No. 1,* 551 U.S. 701 (2007), <https://supreme.justia.com/cases/federal/us/551/701/>. [↑](#endnote-ref-8)
8. See note 3. [↑](#endnote-ref-9)
9. *Ramos v. Louisiana,* 590 U.S. \_\_\_ (2020), <https://supreme.justia.com/cases/federal/us/590/18-5924/>. [↑](#endnote-ref-10)