

Initial Overview of SCOTUS Harvard and UNC Decisions

June 30, 2023

The following summarizes the Court's majority in the Harvard and UNC cases as they relate to health professional education, and does not reflect concurring opinions or dissenting opinions which did not command a majority of the Court.

Note 1: This is an initial overview -- we encourage feedback in the form of questions or comments to inform a future iteration. Please send to holisticadmissions@aamc.org.

Note 2: Most of the material in this summary tracks the Court's decisions in the Harvard and UNC cases, and which may reflect judicial findings specific to those two schools. You should review the implications of the Court's decision for your institution's processes with your institutional leadership, including counsel.

1. What was the Court's holding in the Harvard and UNC cases?

In a 6-3 decision the Supreme Court [held](#) that both Harvard's and UNC's race-conscious admissions programs violated the [Equal Protection Clause of the 14th amendment](#). Chief Justice Roberts wrote for a majority of the Court that the manner in which Harvard and UNC considered race in admissions amounted to unlawful stereotyping, unfairly disadvantaged some applicants on the basis of race, and did not have a meaningful end point.

This outcome was deeply disappointing and offended our sense of the purpose and "guarantees of the Equal Protection Clause," particularly when we consider our role in the protection of our patients. Diversity in the health professions is necessary to address health inequities. As summarized in Justice Jackson's dissent: "It saves lives."

2. Was *Grutter v. Bollinger* explicitly overruled?

No, the majority opinion does not explicitly overrule *Grutter*, the 2003 precedent that permits the limited consideration of an applicant's race if necessary to advance the educational benefits of a diverse student body. However, the majority opinion rejects *Grutter*'s core tenet of deferring to a school's educational judgment regarding the educational benefits of diversity. The Court does not go so far as to say that no compelling interest exists to consider an applicant's race (specifically identifying diversity in the US military as having "potentially distinct interests"), but concludes that the goals articulated by Harvard and UNC were too imprecise and immeasurable.

3. Will medical schools be permitted to consider an applicant's race or ethnicity at any point in the admissions process?

An applicant may still discuss and a school may still consider "how race affected his or her life, be it through discrimination, inspiration, or otherwise" so long as any beneficial consideration is tied to a specific, individualized attribute other than race (e.g., courage or determination) or a desirable goal (e.g., practicing in an underserved community). The majority opinion cautions that "universities may not simply establish through application essays or other means the regime we hold unlawful today."

4. Did the Court articulate any constraint on collecting applicants' race/ethnicity data?

No, the majority opinion does not address the collection of applicants' race/ethnicity data, which most schools need in order to fulfill local or Federal [reporting requirements](#). Medical schools using the AMCAS® application will continue to receive applicant race/ethnicity data from the AAMC, and will, in consultation with their legal counsel, handle this information as appropriate for their processes.

5. What did the Court say about the universities' real-time aggregate tracking of race/ethnicity of applicants?

The majority opinion associated the universities' numerical tracking using racial classifications during the admissions cycle with unconstitutional "racial balancing." It also characterized the specific racial and ethnic categories themselves used by the universities as "imprecise" and "arbitrary." The majority opinion requires that each "student must be treated based on his or her experiences as an individual – not on the basis of race."

6. Will the AAMC make any changes to its AMCAS service based on the decision?

The AAMC is reviewing the AMCAS system and will make adjustments to functionalities as appropriate, working with the AMCAS Advisory Committee and the GSA Committee on Admissions as needed.

7. Are medical schools still permitted to prioritize diversity and its educational benefits as part of their academic mission?

Yes. The AAMC strongly supports schools in their continuing efforts to foster student body diversity, equity, and inclusion. While the majority opinion held that Harvard's and UNC's consideration of applicants' racial or ethnic classifications could not be justified by their stated goals related to the educational benefits of diversity, the majority opinion acknowledged that the goals themselves were "plainly worthy" and unambiguously stated: "Universities may define their missions as they see fit." In other words, continued pursuit of these goals appears to be supported by a majority of the Court, but not through the means of considering an applicant's race as a separate, categorical attribute.

8. Will the opinions impact medical schools differently than undergraduate programs?

The majority opinion found no constitutional issue with a school considering an "applicant's discussion of how race affected his or her life, be it through discrimination, inspiration, or otherwise." To the extent medical schools have smaller applicant pools and interview all admitted students, they will likely be in a better position to weigh such information on an individual basis. In addition, while the Court rejected the goals proffered by both Harvard and UNC, it did not foreclose other interests that might satisfy the strict scrutiny standard, and specifically referred to "the potentially distinct interests that military academies may present." Each school will need to carefully consider its goals in consultation with their legal counsel and adapt to the heightened standards in Harvard/UNC accordingly.

9. What did the Court say about holistic review?

The majority opinion is a strong endorsement for individualized review, clarifying that nothing in the opinion limited consideration of an individual's personal experiences related to race. Justice Sotomayor's dissenting opinion observed that "today's decision leaves intact holistic college admissions and recruitment efforts that seek to enroll diverse classes without using racial classifications."

10. Did the Court say anything about applying the decision beyond selection decisions (recruitment, interview pool, financial aid)?

The majority opinion addressed only the question of "whether a university may make admissions decisions that turn on an applicant's race." However, its discussion of the wide range of government actions in which the Equal Protection Clause requires racial equality could give rise to questions about other contexts. The U.S. Department of Education has indicated it would provide guidance regarding programs that support students from underserved communities by mid-August.

11. When does the decision go into effect?

The majority opinion does not delay its effective date. Justice Kavanaugh's concurring opinion suggests that it applies to classes that will matriculate in the fall of 2024. The Department of Education has [committed to provide additional guidance](#) on lawful admissions practices within the next 45 days. Schools should work with their leadership, including counsel, to consider the timing of any adjustments to their processes.