

Affirmative Action: Ensuring Opportunity in Education

Affirmative action refers to certain education, contracting, and employment policies that aim to increase the representation of racial and ethnic groups that have been historically underrepresented.

The term comes from a 1961 executive order issued by President John F. Kennedy, which included a provision that government contractors "take affirmative action to ensure that applicants are employed, and employees are treated during employment, without regard to their race, creed, color, or national origin." The intent of this executive order was to affirm the government's commitment to equal opportunity, and to take positive, intentional action to further efforts to realize true equal opportunity for all.

For more than four decades, the U.S. Supreme Court has allowed colleges and universities seeking to achieve the educational benefits of diversity in their student body to consider an applicant's race, as one of many factors, in the context of a holistic admissions process. Due to persistent and systemic racial inequities in PK-12 education and college access and enrollment, many students of color confront barriers to educational opportunities, despite their talent and hard work. It's impossible for colleges and universities to have a fair admissions process that completely ignores race and how it impacts students' lives. Additionally, what some may consider to be neutral indicators of merit, like standardized test scores and extracurricular activities, aren't neutral at all — but are instead often influenced by unfair advantages and disadvantages that fall along racial lines. Colleges and universities expand educational opportunities for everyone when they take into account students' full life experiences — including how their race has played a role — to identify students with the potential to succeed. Regardless of their income, where they grew up, or their racial and ethnic background, all students deserve a fair shot at going to college, but this can only happen when each student is seen in the totality of who they are and in the context of the opportunities — or lack thereof — available to them.

Opponents of racial equality continue to seek to divide communities by attacking affirmative action.

Since the inception of affirmative action programs, those seeking to withhold educational opportunities from people of color have repeatedly challenged affirmative action policies in the courts, in state legislatures, and in ballot initiatives. In *Regents of the University of California v. Bakke* (1978), a White man challenged the legality of a University of California medical school's efforts to ensure racial diversity in each admitted class. The Supreme Court ruled that a state may constitutionally consider race as a factor in its admissions; Justice Powell wrote the controlling opinion that permits race-conscious admissions to promote educational diversity, if race is considered alongside other factors and on a case-by-case basis for each individual applicant. The Supreme Court also ruled definitively that the state "has a legitimate and substantial interest in...eliminating...the disabling effects of identified discrimination."

In the last 20 years, affirmative action policies have been validated by the Supreme Court four times.

Most recently, the Supreme Court validated affirmative action in higher education twice, in *Fisher I* (2013) and *Fisher II* (2016). In 2003, the Supreme Court found in *Grutter v. Bollinger* that the Constitution supported the "use of race in admissions decisions to further a compelling interest in obtaining the educational benefits that flow from a diverse student body." And yet, despite repeated losses at the Supreme Court, opponents of racial equality continue to challenge these legal policies — and the right of historically marginalized and underrepresented students of color to have the chance to pursue their educational dreams.

The Supreme Court agreed to hear challenges to Harvard College’s and the University of North Carolina’s uses of race in college admissions. Oral arguments were presented in both cases on October 31, 2022, and the Court is expected to rule in 2023. While the cases were heard on the same day, they were heard separately, and Associate Justice Ketanji Brown Jackson participated in the UNC case but recused herself from the Harvard case. The petitioner, Students for Fair Admissions (SFFA), asked the Supreme Court to review and reverse decisions by the lower courts, which, after a comprehensive review of the record, separately confirmed the legality of each school’s race-conscious admissions program. Those court decisions relied on more than 40 years of legal precedent from the Supreme Court, holding that race is an important and permissible consideration among many factors within a holistic admissions process for higher education in order to further the educational benefits that flow from a diverse student body.

The attacks on affirmative action in higher education are just one piece of a broader crusade against civil rights and multiracial democracy. Ed Blum, who is behind the current legal challenges to Harvard and the University of North Carolina’s affirmative action policies, began his mission to eradicate opportunities for people of color in the 1990s by fighting voting rights and representation for African Americans in Texas. Blum was the architect behind *Shelby County v. Holder* (2013), in which the Supreme Court gutted the Voting Rights Act. His next move was to recruit a White woman to sue the University of Texas twice over affirmative action, and the Supreme Court upheld the constitutionality of affirmative action in higher education both times — in *Fisher I* (2013) and *Fisher II* (2016). Blum is now exploiting and co-opting the marginalization of Asian American communities to create a false wedge with other communities of color for the purpose of dismantling civil rights. Affirmative action remains an important means of ensuring equal access to higher education and the professional opportunities that flow from that access.

Ed Blum and SFFA’s opposition to affirmative action do not reflect the views of the majority of Asian Americans. After failing in *Fisher I* and *Fisher II* to successfully advance his agenda, Blum has simply switched tactics. He is falsely attempting to portray himself as an advocate for the interests of Asian American students. But in reality, he is deploying a longstanding racially discriminatory strategy of dividing and conquering, by pitting Asian Americans against other communities of color when, in fact, they have similar interests in broadening racial equality. Asian Americans are not a monolith, and many Asian Americans continue to face systemic barriers to educational opportunities. And a majority of Asian Americans want that to change: 69 percent of Asian American registered voters favored affirmative action programs for people of color and women to get better access to higher education, according to the 2022 Asian American Voter Survey.