

US Supreme Court poised to ban affirmative action in university admissions

Two hotly debated lawsuits argue that race-conscious admissions discriminate against white and Asian American applicants.

The US Supreme Court heard oral arguments on 31 October in two cases that could change the landscape of higher education in the country. The eventual outcomes will determine whether Harvard University in Cambridge, Massachusetts, and the University of North Carolina (UNC) at Chapel Hill are allowed to use race as a factor in deciding which students they admit. But beyond that, the court's decisions could mean that academic institutions across the United States will no longer be allowed to use such 'affirmative action' policies to shape their student bodies.

Research has shown that without affirmative action, some universities — particularly top-tier institutions that enrol only a small fraction of applicants — will struggle to admit students from a wide variety of backgrounds (M. C. Long and N. A. Bateman *Educ. Eval. Policy Anal.* **42**, 188–207; 2020). "This will have ripple effects regarding who's not able to have a seat at the table and enter certain professions," says Julie Park, a researcher at the University of Maryland in College Park whose work focuses on racial equality in higher education.

Both cases have been spearheaded by activist Edward Blum, who created Students for Fair Admissions (SFFA), an organization that represents "more than 20,000 students, parents, and others who believe that racial classifications and preferences in college admissions are unfair". As the plaintiff in both cases, SFFA argues that, by considering race in their admissions, Harvard and UNC-Chapel Hill are discriminating against certain applicants, such as Asian American people. Harvard and UNC-Chapel Hill, however, argue that affirmative action has helped them to even out the playing field for Black and Hispanic students who have not had the same educational opportunities as others because of systemic racism in the United States.

What is behind these lawsuits?

The lawsuits aim to overturn a decision that the Supreme Court made about a case in 2003. In *Grutter v. Bollinger*, a white



An organization called Students for Fair Admissions (SFFA) has brought court cases against two universities over admissions policies that it says are unfair.

woman named Barbara Grutter alleged that she had been rejected by the University of Michigan Law School in Ann Arbor because of the institution's use of race as a factor in its admissions decisions. In this instance, the court decided that the law school was allowed to consider the race of individual applicants, so long as it was done in a 'holistic' way — meaning that race is one factor among many that are considered. The justices also ruled that it is constitutional to consider race as part of a university's effort to achieve more diversity on campus.

Blum has previously tried, and failed, to block a university from using race-conscious admissions in the Supreme Court. But given the new make-up of the court — former US president Donald Trump appointed three justices, giving the bench a 6–3 conservative majority — he and SFFA are trying again, and looking to upend the entire *Grutter v. Bollinger* precedent.

Which US colleges and universities use affirmative action?

In many states, some percentage of public and private universities use affirmative action in admissions. But eight states — Arizona, California, Florida, Michigan, Nebraska, New Hampshire, Oklahoma and Washington — currently ban public universities from

considering the race of their applicants.

Most US colleges don't have to worry unduly about affirmative action, however, because they admit more than two-thirds of applicants, according to a 2019 study by the Pew Research Center, a think tank based in Washington DC (see [go.nature.com/3nvsbfe](https://www.pewresearch.org/3nvsbfe/)). The debates about affirmative action centre around a small number of 'elite' institutions with low acceptance rates, says Alvin Tillery Jr, director of the Center for the Study of Diversity and Democracy at Northwestern University in Evanston, Illinois.

Will affirmative action survive?

This is one of the biggest cases to come before the heavily conservative court since it overturned decades of precedent by reversing *Roe v. Wade*, which had protected the right to an abortion. Having seen the outcome in that situation, many experts think that affirmative action in university admissions will come to a swift end.

The right-leaning justices seem willing to overrule established precedent, says Kimberly West-Faulcon, a legal specialist at Loyola Law School in Los Angeles, California.

A decision on the cases is expected by next summer.

By Helen Santoro