# *Students for Fair Admissions v. President and Fellows of Harvard College:* What the Federal District Court Said and What It Can Mean for Postsecondary Institutions that Consider Race in Admissions

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**An Analysis Prepared by Art Coleman and Jamie Lewis Keith on Behalf of The College Board Access & Diversity Collaborative**[1]

## Overview

This guidance supplements ***Takeaways from the District Court Decision in Students for Fair Admissions v. Harvard: A Preliminary Analysis*** (Oct. 4, 2019), with additional detail and analysis regarding the district court's decision.

- *Section I* provides a brief summary of the decision.
- *Section II* provides a brief summary of the relevant legal precedent that informed the district court's ruling.
- *Section III* provides a detailed analysis of the court's decision on all key substantive issues. It includes a segment that distills and analyzes the approximate 40 pages of analysis regarding the competing statistical models and conclusions pressed by the parties.
- *Section IV* offers major takeaways from the district court's decision, along with implications for action—issue-specific practical tips that correspond with court conclusions to highlight key areas of prospective institutional attention.

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Segments of this analysis are derived from "Takeaways from the District Court Decision in *Students for Fair Admissions v. Harvard*: A Preliminary Analysis" published on October 4, 2019 by the College Board Access and Diversity Collaborative; and "*Students for Fair Admissions v. President and Fellows of Harvard College:* Major Takeaways from a Federal District Court Opinion Regarding the Consideration of Race in Admissions" published in NACUA Notes on October 28, 2019 by NACUA, all with permission.

## Section I: Introduction

On September 30, 2019, the U.S. District Court for Massachusetts rendered a decision in *Students for Fair Admissions v. President and Fellows of Harvard College*[2] in favor of Harvard. Students for Fair Admissions (SFFA) challenged Harvard's admissions policies and practices as unlawfully discriminatory under Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race and national origin in education.[3] Reaffirming its earlier decision that SFFA had the necessary standing to litigate its claims (despite the absence of an individually identified harmed applicant), the court addressed and rejected claims that Harvard unlawfully:

- Pursued racial balancing;
- Considered the race of applicants in a mechanical way;
- Failed to pursue viable race-neutral alternatives in lieu of its consideration of race; and
- Engaged in intentional discrimination against Asian Americans.[4]

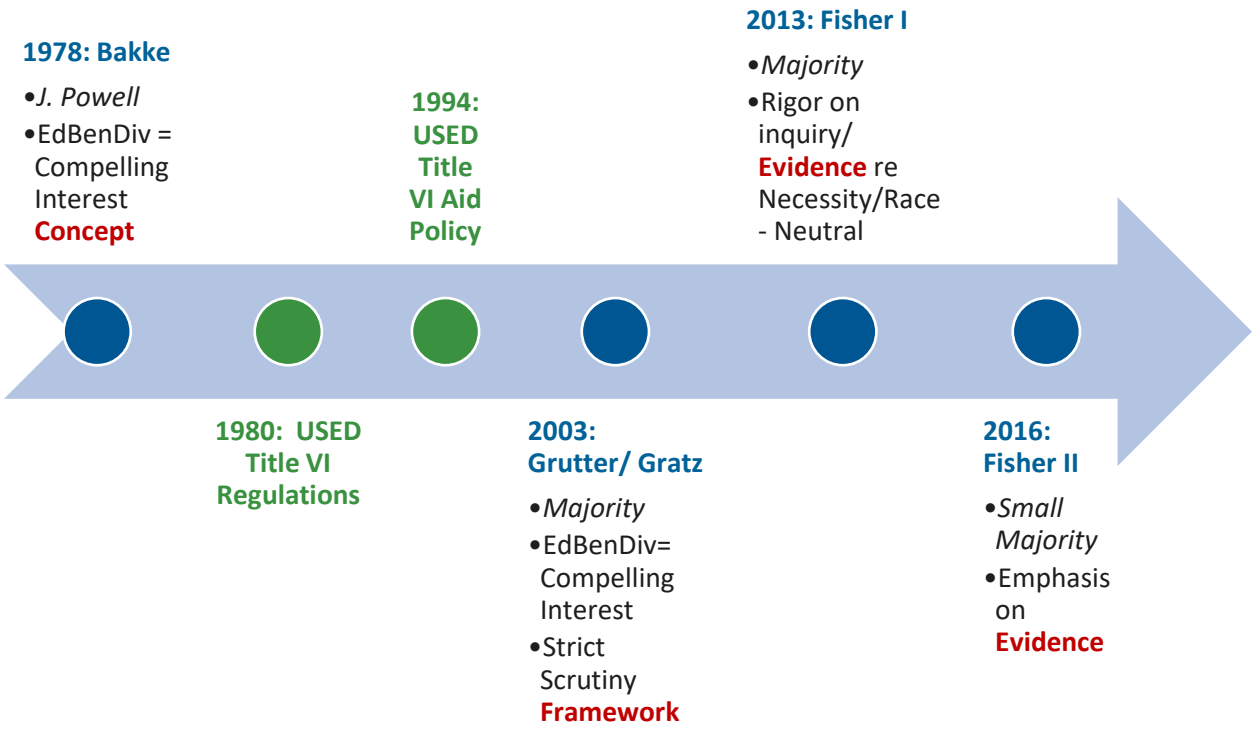
The 130-page decision is extensive and fact-based with meticulous attention to a mix of quantitative and qualitative evidence. In its detailed scrutiny of Harvard's admissions policies and practices, the court gave weight to "credible" testimony of Harvard's fact witnesses. SFFA did not proffer the testimony of any student claiming to have been discriminated against, relying instead on its experts' testimony and reports, and other documents in the record. About 40 pages of the decision are devoted to review and evaluation of competing experts' statistical analyses.

Within a week of the decision, SFFA filed a notice of appeal with the U.S. Court of Appeals for the First Circuit. Although this decision will not be the last word on the policy and practices challenged, it can provide useful insights and generate important questions to consider regardless of the ultimate outcome on appeal.

[2] Civil Action No. 14-cv-14176

[3] The court applied legal principles that the U.S. Supreme Court had previously applied to public institutions under the Equal Protection Clause of the Constitution's Fourteenth Amendment. Those principles extend through Title VI to federally-funded public and private institutions alike, in line with federal precedent.

[4] The court earlier dismissed two of SFFA's original six claims—that Harvard did not use race "only to fill the last few places" and regarding Harvard's allegedly unlawful "use of race as a factor in admissions." p.5.




Five U.S. Supreme Court decisions spanning nearly four decades set the stage for the decision in this case. In 1978, Justice Powell issued a singular "compromise" opinion in *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978), recognizing conceptually that the educational benefits of diversity could justify the limited consideration of race in admissions. A quarter century later, in companion cases *Grutter v. Bollinger*, 539 U.S. 306 (2003) and *Gratz v. Bollinger,* 539 U.S. 244 (2003), the Court expanded on that concept by establishing a governing analytical framework to guide federal court reviews of discrimination claims in admissions, and distinguishing between (favored) individualized holistic review that involved considerations of race among many factors and (disfavored) mechanical consideration of race in admissions. Building on those foundations, the Court in *Fisher v. University of Texas at Austin,* 570 U.S. – (2013) and *Fisher v. University of Texas at Austin,* 579 U.S. – (2016) expanded on Court precedent with a focus on the requirement of evidence to establish the necessity of any consideration of race in admissions (*Fisher I*), and the kind and quality of evidence sufficient to comply with federal non-discrimination law (*Fisher II*).

In *Grutter*, the Court affirmed a process at University of Michigan's law school, similar to Harvard's in the present case, where racial composition of the class was tracked throughout and decision-makers were aware of the race of individuals, but where application reviewers assessed applicants holistically at every step and, in that context, considered race only as one of many factors. In *Fisher I* and *II,* the Court applied relevant precedents to a somewhat different admission process, where the consideration of race applied only to about 25 percent of those offered admission. (75 percent of those offered admission to the University of Texas at Austin (UT) were admitted under an ostensibly neutral (and

unchallenged) Texas Top Ten Percent Law.) When conducting holistic review for a quarter of its admittees, UT considered race as one of a number of factors in personal ratings, but only as "a factor, of a factor, of a factor." UT did not track the racial composition of the class; and its ultimate decision-makers were unaware of the race of individuals.

## Section III: The District Court's Decision

### A. Facts

Approximately 35,000 applicants sought admission to Harvard for fall 2019; about 2000 were admitted and 1600 enrolled. While academic excellence was required, Harvard sought students who would contribute to a "transformative…liberal arts education" [5] and were "exceptional across multiple dimensions"—well beyond "just standardized test scores or high school grades."[6]

Harvard's admission process involved "an overall rating" based on "first reader" academic, extracurricular, and personal ratings of applicants, as well as high school support ratings. (Additional readers also could assign ratings as well.) Subcommittees then made recommendations and a 40-member committee ultimately made final admissions decisions.

In addition, non-academic factors "especially beneficial to the Harvard community" that could result in "large tips" in admission included: recruited athletes, legacies, applicants on the dean's list, and children of faculty and staff ("ALDCs").[7] Tips also were assigned to applicants who "offer a diverse perspective or are exceptional in ways that do not lend themselves to quantifiable metrics," i.e., "distinguishing excellences" that could include race and ethnicity, as well as creativity, leadership, geography, and economics.[8] Only in the context of a whole file "overall rating" could race or ethnicity be "a tip or plus factor." (The personal rating associated with interviews included many qualities, but the court found that it did not include race.[9]) Race was "only ever one factor among many used to evaluate an applicant,"[10] and it was never viewed as a "negative attribute."[11]

Harvard's admissions staff tracked the racial and other composition of the applicant pool through "one-pagers" that provided a "snapshot of the projected class and compared it to the prior year," including

[5] P. 7
[6] P. 9. The court recognized that Harvard "cannot admit every applicant with exceptional academic credentials," where among its applicant pool, 8000 applicants had perfect GPAs, 2700 applicants had perfect verbal SAT scores, and 3400 applicants had perfect math SAT scores.
[7] P. 15 at n. 15. ALDCs were admitted at substantially higher rates than all other applicants.
[8] Pp. 21-22
[9] Most applicants received alumni interviews in which personal ratings were assigned, but unlike admissions staff, alumni did not have access to applicants' complete files. Pp. 13-14. The court accepted testimony that Harvard did not use race in assigning personal ratings. While Harvard reflected that policy in writing only during the trial in 2018, the court found that "procedures for [prior] classes…d[id] not differ in material respects," based on the "uniform" testimony of admissions officers about this practice "in more recent years." Pp. 20-21, 21 at n. 20; 29-30.
[10] P. 29
[11] P. 30

statistics on applications and application rates by racial or ethnic group (among other factors).[12] The aim of this tracking was to provide "some perspective on whether [Harvard] was admitting a diverse class" and to help "better forecast its overall yield rate."[13]

## B. The Court's Ruling

The District Court ruled on four of SFFA's claims with the following conclusions:

- **Harvard did not engage in racial balancing.**

The court found that Harvard treated applicants as individuals with "every applicant compet[ing] for every seat" through a process of individualized holistic review. Such review of each candidate continued at every step of the process, regardless of the data on race. The court upheld Harvard's consideration of "one pagers" that tracked race and ethnicity (among other information) stating: "[a]lthough a university could run afoul of Title VI's prohibition on quotas even where it stopped short of defining a specific percentage and instead allowed some fluctuation around a particular number…Harvard's admission policy ha[d] no such target number or specified level of permissible fluctuation." Also, there was "considerable variation" in the percentage of Asian American students admitted from year-to-year. For these reasons, the court concluded that Harvard's awareness of numbers (with no target numbers "firmly in mind") was, in fact, necessary "to remain compliant" with strict scrutiny standards "including monitoring…the availability of race-neutral alternatives."

- **Harvard considered race as a non-mechanical plus factor.**

While Harvard's consideration of race was an important factor in the admission of many black and Hispanic students, the court concluded that race was part of an "individualized consideration" and was "never… the 'defining feature' of applications."[14] With respect to expert estimates of the "average magnitude of Harvard's race-related tips,"[15] the court concluded: (a) the magnitude of a tip for any applicant could not be "precisely determined" because the consideration of race was "contextual" as part of the "holistic evaluation of each applicant,"[16] *and* (b) the estimated magnitude was "comparable" in "size and effect" to the tips upheld by the Supreme Court in *Grutter* (less % effect) and in *Fisher II* (about the same % effect).[17] The court also recognized that the magnitude of the race tips was "modest," particularly compared to tips for ALDCs.[18] The court also found that: "Every student Harvard admits is academically prepared for the educational challenges offered at Harvard….[M]ost Harvard students from every racial group have a roughly similar level of academic potential, although the average SAT scores and high school grades of admitted applicants from each racial group differ significantly."[19]

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[12] P. 27
[13] P. 29
[14] P. 117
[15] P. 118
[16] P. 117; *see also Fisher II.*
[17] Pp. 117-118
[18] Tips for ALDCs were greater than for racial identity. Pp. 118-119. The court also recognized that tips for ALDCs, "like so many facets of…American life, disproportionately benefit individuals in the majority and more affluent group." P. 84 at n.52. That comparison was not determinative but informed the court's conclusion that race was not unduly weighed.
[19] P. 119. The court concluded separately that standardized tests were "imperfect measures" that could be a "useful metric" when considered with other background factors associated with an applicant.

- **There were no adequate race-neutral alternatives.**

Assessing the necessity of Harvard's consideration of race in admission in a highly fact-based analysis, the court examined the viability of various neutral alternatives proposed by SFFA, considering their benefits and costs, as well as Harvard's standards and diversity-related goals. In light of evidence regarding Harvard's existing race-neutral efforts (outreach, recruitment, and more), the court rejected the following alternatives based on its assessment of evidence that they would have no meaningful impact on diversity except to result in a significant decline in the admission of black and Hispanic students if consideration of race in admissions were to cease, and/or would diminish Harvard's excellence and student experience:[20]

- Eliminating early action decisions in admissions (which was tried for three years, with adverse racial diversity outcomes in a competitive recruitment context);[21]
- Eliminating tips in favor of recruited athletes, legacies, applicants on the dean's or director's interest list, and children of faculty and staff (which would diminish athletic and faculty competitiveness, alumni and donor relations, and associated student experience);[22]
- Augmenting recruitment and financial aid (but existing robust programs already "very nearly, reached maximum returns in increased socioeconomic and racial diversity");[23]
- Admitting more transfer students (a group reflected as "on average, less diverse and less qualified," with sufficient housing for the critical residential program lacking);[24]
- Eliminating consideration of standardized test scores (which would reduce "academic qualifications…at least as measured by the criteria Harvard presently uses");[25]
- Pursuing place-based quotas ("Harvard is far too selective and high schools are far too numerous [for this] to be "even close to viable," and quota systems are of "questionable legality");[26]and
- Providing a "more significant tip for economically disadvantaged students (which would "sacrifice the academic strength of its class").[27]

Carrying forward a point from *Grutter,* the court observed that Harvard was not obligated to sacrifice its character of academic excellence in assessing the viability of race-neutral alternatives.[28]

[20] Pp. 120-21. See also *The Playbook: Understanding the Role of Race Neutral Strategies in Advancing Higher Education Diversity Goals* (College Board and EducationCounsel, 2d Ed., 2019); *A Cross-Walk of Neutral Strategies and Criteria: Mapping Plays from* The Playbook *to Major Federal Nondiscrimination Cases* (College Board and EducationCounsel, November 2019).
[21] Pp. 85
[22] Pp. 86
[23] Pp. 87
[24] Pp. 88
[25] Pp. 88
[26] Pp. 89, 121-22
[27] Pp. 122
[28] Pp. 101, 122

## In Depth:
## Legacies, Athletes, and More

The district court assessed the effect of Harvard's policies regarding applicants with a special relationship to the university. Among the groups that received "large tips" for non-academic reasons were "recruited athletes, legacies, applicants on the dean's or directors interest lists and children of faculty and staff"—collectively referred to as ALDCs. ALDCs were admitted at a rate of 43.6% or "nearly eight times the 5.5% admissions rate for non-ALDC applicants."

In response to an argument pressed by SFFA, the district court concluded that the elimination of ALDCs would not be a viable neutral alternative, reasoning that such a move would have a "limited probable impact on racial diversity" and that it would come at "considerable costs" affecting Harvard's ability to attract top quality faculty and staff, and undermining relationships with those who had made "significant contributions" to Harvard. The Court opined that addressing such a topic "on which reasonable minds can differ" was "best left to [Harvard] to figure out" for itself.

Underlying data established that ALDCs were disproportionately white: 8% of all white applicants to Harvard, 2.7% of all African American applicants, 2.2% of all Hispanic applicants, and 2% of all Asian applicants were ALDCs.

In addition, Harvard's preferences for ALDC applicants "disproportionately benefit[ed] socioeconomically advantaged applicants."

Students who had staff interviews "tend[ed] to be …admitted at a comparatively high rate." Evidence showed that:

- More than 20% of ALDCs received staff interviews (compared to fewer than 3% of all applicants).
- 79% of ALDC applicants who received interviews were admitted (compared to 52% of applicants receiving interviews).

- **Harvard didn't intentionally discriminate**

Addressing SFFA's claim that Harvard should admit Asian Americans at a "higher rate than" white applicants,[29] the court found that there was "no evidence of any racial animus whatsoever;" no "…evidence that any particular admissions decision was negatively affected by Asian American identity;" and no evidence of prohibited intentional discrimination under court precedent. The court found no pattern of stereotyping of any kind.[30] It found the testimony of admissions officers to be "consistent, unambiguous, and convincing" that there was no discrimination against Asian Americans in the admissions process, including with respect to personal ratings.[31] Moreover, SFFA failed to produce a

[29] According to the court, SFFA did not claim that Harvard was excluding Asian Americans.
[30] P. 47
[31] Pp. 125-26. Given that Asian Americans account for 6% of the population in America but comprised nearly a quarter of Harvard's class, the court found it "reasonable for Harvard to determine that students from other

"single Asian American applicant who was overtly discriminated against or who was better qualified than an admitted white applicant…."[32]

The court found competing statistical models and expert opinions "inconclusive," also recognizing that statistics alone address the "what" but not the "why," and did not, therefore, tell the whole story. The court observed that any bias in personal ratings, which contributed to "slight" statistical differences in personal ratings of white and Asian applicants, could have come, in part, from high school recommendations—which neither the court nor Harvard could determine.

minority backgrounds are more likely to offer perspectives that are less abundant in its classes and to therefore primarily offer race-based tips to those students."

[32] P. 126.

## In Depth:
## An Overview of the Claims and Court Analysis Involving Statistical Evidence

**Overview**

SFFA's central claim was that Harvard discriminated against Asian American students, and that claim was almost entirely grounded on statistical evidence. (SFFA called no fact witnesses.) As a consequence, the district court concluded that the statistical evidence presented was "perhaps the most important evidence in reaching a resolution" of the case. That said, the statistical analysis was not dispositive of the case resolution in light of the competing expert arguments and because even if such analysis could answer the question of "what," it could not resolve the question of "why" of any admission decision—a "critically important question."[33] This overview does not address all points of the court's analysis of expert testimony, but highlights many underlying facts and important takeaways from the court's analysis of the statistical evidence presented.

**Admission rates and ratings by race**

- As of 2019, Asian American applicants were accepted by Harvard at the same rate as other racial groups, and made up more than 20% of the admitted class, up from 3.4% in 1980. (Asian Americans make up 6% of the U.S. population.)
- Overall, Asian Americans were admitted to Harvard at slightly lower rates than white applicants in the classes of 2014-2017 (5-6% for Asian Americans; 7-8% for white applicants).
- Among ALDCs, Asian American admission rates were similar to or higher than those of white ALDCs.
- Asian American applicants received personal ratings that were on average "slightly weaker" than those assigned to applicants from other racial groups, which could be based in part on teacher and counselor recommendations.

Both parties engaged experts to conduct independent econometric analyses of admissions outcomes of students by race and other factors for more than 150,000 domestic applicants to Harvard's classes of 2014 through 2019. Professor Arcidiacono was retained by SFFA; Professor Card was retained by Harvard. Each developed different, albeit "broadly similar" statistical models to inform conclusions about the impact of race on ratings of applicants and ultimate admissions decisions. Much of the court's analysis of their testimony centered on their regression analyses, where each used models with different control variables.

In the end, the district court examined input- and outcome-related models proffered by each expert, ultimately finding that the results of Card's model regarding the impact of race on final admission decisions was most comprehensive in its consideration of control factors and most credible.

[33] The court also observed that "although logistic regression models are seemingly the best available econometric tool, they cannot capture all of the [admission] factors that Harvard considers and therefore account for only part of the variation in admissions decisions, or other modeled outcomes." Correspondingly, the court determined that "a statistically significant variable in an econometric model is not proof of a causal relationship. A statistically significant coefficient may be the result of random variation, omitted variables, or other flaws in the model."

**Principal differences between the experts**

- ***Arcidiacono excluded the personal rating from his model, but Card included it:*** The court considered both to be defensible because there was a possibility that personal ratings were affected by race, but determined that inclusion of this data would result in a more comprehensive analysis.
- ***Arcidiacono excluded ALDC applicants from his analysis, but Card included them:*** The court strongly preferred Card's design; ALDCs accounted for 30% of Harvard's admitted students.
- ***Arcidiacono pooled the 2014-2019 applicant data into a single model, whereas Card conducted separate analysis for each year:*** The court strongly preferred Card's design because significant variation could exist between years. For example, Arcidiacono's model would not sufficiently capture the difference in having a class that was 30% African American in one year but 0% the next, and classes that were consistently 15% African American over several years.
- ***Arcidiacono excluded parental occupation, intended career, and an indicator for whether applicants interviewed with a Harvard staff member, but Card included all of these variables:*** The court preferred Card's design because these omissions in Arcidiacono's model could exaggerate the effect of race on admissions outcomes.

**Court conclusions**

The court determined that there was a slightly negative relationship between Asian American identity and admissions outcomes, but this relationship was only statistically significant when the personal rating was excluded. In other words, if the personal rating was included in the analysis, there was no provable relationship between being Asian American and being admitted. Even when the personal rating was excluded, the negative relationship was so small that it may not actually have been meaningful and may have been affected by unobserved factors.

Underlying court findings included the following:

- ***With respect to the relationship between race and high school support ratings***, Asian American applicants had lower average high school support ratings than white applicants, but the Court attributed that fact primarily to factors beyond Harvard's control (e.g., how applicants from different racial groups were presented by their recommenders).
- ***With respect to the relationship between race and personal ratings***, Asian American identity was associated with lower personal rating assigned by Harvard admissions officers, but the court found that that relationship may have been overstated by Arcidiacono's failure to include variables for factors that influence personal ratings and could correlate with race (e.g., components of personal statements, biases of recommenders, etc.).
- ***With respect to the relationship between race and academic, extracurricular, and overall ratings,*** identification as Asian American was generally associated with higher academic and extracurricular ratings, but slightly lower overall ratings.
- ***With respect to the relationship between race and admissions outcomes*** – Card and Arcidiacono reached different conclusions, primarily because of differences in the design of their regression models.

## IV. Major Takeaways—with Policy and Practice Implications

### A. DO YOUR HOMEWORK

1. **The court's decision illustrates the fact-intensive, institution-specific investments needed to satisfy strict scrutiny standards over time that apply to policy design and implementation**. In other words, institutions should focus on specific educational outcomes sought and whether, why, and how race and ethnicity of individuals are considered in achieving them, if at all. This is particularly true regarding longstanding operational and evidentiary elements (e.g., establishment of and action by committees addressing key issues like race-neutral alternatives) that are critical regarding any postsecondary institution's race-conscious policy development and implementation.

   The court also "emphatically repeat[ed] what the Supreme Court said in *Fisher II*,"—that Harvard must "continue to use [its valuable] data to scrutinize the fairness of its admissions program" and to make "refinement[s]" in light of changing conditions.[34] That obligation is incumbent on all postsecondary institutions that consider race in enrollment decisions.

> ***Action:*** When considering race and ethnicity in enrollment decisions, assure that a team of individuals is responsible for leading a periodic review of all policies and related practices to help ensure that strategies are advancing core aims and that they are doing so within clearly prescribed legal parameters.
>
> ***Resource:*** *Building an Evidence Base: Important Foundations for Institutions of Higher Education Advancing Education Goals Associated with Student Diversity* (College Board, 2018).

### B. ESTABLISH CLEAR AND AUTHENTIC GOALS

2. **The court's decision follows four decades of admissions precedent** affirming that the educational benefits of diversity to all students are "compelling" enough to support limited consideration of race and ethnicity in admissions upon a showing of "narrowly tailored" policy design and implementation. Amplifying long-recognized educational benefits associated with student diversity, the court recognized Harvard's authentic institution-specific interests: student diversity's impact on faculty perspectives, curriculum, and research; and "immersion in a diverse community" as a method of teaching students to "engage across differences."

> ***Action:*** Research- and experience-informed policies should articulate and affirm mission-related diversity goals (and rationales) related to any consideration of race and ethnicity in enrollment decision making.
>
> ***Resource:*** *Bridging the Research to Practice Gap: Achieving Mission-Driven Diversity and Inclusion Goals* (College Board and EducationCounsel, 2016).

[34] P. 128.

## C. ASSURE FULL CONSIDERATION OF ALL AVENUES TOWARDS ACHIEVEMENT OF DIVERSITY GOALS

3. **The court's extensive analysis of the plaintiff's proposed race-neutral alternatives corresponds to the Supreme Court's analysis of *Fisher II* that involved an assessment of all relevant *enrollment policies* with notable expansion on the analytical details.** The court's review of the parties' evidence about the viability of race-neutral alternatives to Harvard's consideration of race in admissions reflects the most extensive treatment of the issue by any federal court on record. That analysis follows the Supreme Court's consideration of neutral efforts undertaken by the University of Texas in *Fisher II*, where UT's extensive investments in and expansion of neutral outreach, recruitment, and aid efforts helped shape the Court's decision about the challenged admissions policy in favor of the University of Texas. With similar baselines established in this case, the district court fully analyzed each of the proffered approaches pressed by SFFA, ultimately rejecting SFFA's proposals because of their adverse effect on other Harvard-specific, mission-related interests and/or the lack of their feasibility, including cost. Coupled with similar claims in the pending *SFFA v. University of North Carolina* litigation, this area of focus can be expected to generate more attention in cases to come.

> ***Action:*** Institutions should annually inventory all enrollment policies and practices as they assess present neutral efforts that may help achieve diversity goals, along with others that should be considered, as the research and practice landscape evolves.
>
> ***Resource:*** *The Playbook: Understanding the Role of Race Neutral Strategies in Advancing Higher Education Diversity Goals* (College Board and EducationCounsel, 2d ed., 2019)

## D. ASSURE INDIVIDUALIZED, HOLISITIC REVIEW OF APPLICANTS THAT INVOLVES A MIX OF FACTORS

4. **The court's decision depended substantially on the careful design and authenticity of Harvard's individualized holistic review policy—and fidelity to policy aims in practice.** While recognizing that Harvard's admissions process was not perfect, the court pointed to key features of the policy and its effects to conclude that the policy satisfied strict scrutiny standards. The court observed that applicants of *all* races received individualized, whole file review, and race was flexibly considered in that context. The court also observed: "[i]t is vital that…racial minorities be able to discuss their racial identities in their applications[, recognizing that] race can profoundly influence applicants' sense of self and outward perspective [and applicants have] the right to advocate the value of their unique background, heritage, and perspective…." The court further recognized that a new written policy in 2018 asserting that race was to be considered only in assigning the "overall rating" of candidates (and specifically not in personal ratings) was followed in practice "in more recent years"—a conclusion based on the "uniform" testimony by admissions officials that they adhered to that policy prior to its issuance.

5. **Merit.** An important foundation for Harvard's success rested upon the court's finding that "every student Harvard admits" was "academically prepared for the educational challenges offered at Harvard." Evidence reflected that "most Harvard students from every racial group [had] a roughly similar level of academic potential."

At the same time, the court concluded that the "academic potential" of low-income and minority applicants "might not be fully reflected in their [test] scores." ("[T]he average SAT scores and high school grades of admitted applicants from each [racial] group differ[ed] significantly.") Indeed, while Harvard considered standardized tests like the SAT and ACT "to be reflective of academic or intellectual strength" and used test scores in "assigning academic ratings" as part of the holistic review process, Harvard found that standardized tests were "imperfect measures" despite their utility when examined in light of applicants' backgrounds.[35]

***Action:*** Many intersecting factors should be considered as part of any holistic review process; the consideration of race in that process should be nuanced, and reflective of student strengths, perspectives, and ambitions associated with their lived experiences.

***Resource:*** *Understanding Holistic Review in Higher Education Admissions: Guiding Principles and Model Illustrations* (College Board and EducationCounsel, 2018).

## V. Conclusion

If Harvard's success before the federal district court tells us anything, it is that careful attention to details regarding institution-specific facts and evidence is essential for success under a federal strict scrutiny review. The scope of that required evidence is necessarily multi-faceted tied to:

- mission-related goals and objectives associated with the benefits of student diversity;
- the necessity of any consideration of race in admissions (as a matter of process and substantive decision-making over time);
- the careful policy design and integration of race as an element of individualized holistic review that involves the intersection of many admissions factors of importance to an institution; and
- periodic review and data-informed evaluation of policies and practices over time that documents judgments that address issues presented under prevailing non-discrimination standards.

Institutions are well advised to systematically collect, document, and evaluate evidence on an ongoing basis as a basis for any race-conscious enrollment program design and practice.

[35] In response to SFFA's claim that the elimination of the consideration of test scores would be a viable race-neutral alternative to Harvard's race-conscious admissions, Harvard argued—and the court agreed—that the elimination of test scores as part of the admissions process "would lead to a reduction in the academic qualifications" of its admitted class—"at least as measured by the criteria that Harvard presently uses." While recognizing that such a step "might improve diversity slightly," the court refused to impose that requirement because of such action's likely impact on the academic strength of Harvard's admitted class.