SUPREME COURT OF THE UNITED STATES
STUDENTS FOR FAIR ADMISSIONS, INC.
v.
PRESIDENT AND FELLOWS OF HARVARD COLLEGE
June 29, 2023
[6 to 3]

NOTE: These are two consolidated cases: one against Harvard College (a private institution) and the other against the University of North Carolina (a public institution). Justice Jackson took no part in the Harvard College case because she had been on the board of Harvard during the period in question; therefore, the vote in the Harvard case is 6 to 2.

OPINION: ROBERTS/ Thomas/ Kavanaugh/ Alito/ Barret/ Gorsuch...In these cases we consider whether the admissions systems used by Harvard College and the University of North Carolina...are lawful under the Equal Protection Clause of the Fourteenth Amendment.

I

A

Founded in 1636, Harvard College has one of the most selective application processes in the country. Over 60,000 people applied to the school last year; fewer than 2,000 were admitted. Gaining admission to Harvard is thus no easy feat. It can depend on having excellent grades, glowing recommendation letters, or overcoming significant adversity. It can also depend on your race.

The admissions process at Harvard works as follows. Every application is initially screened by a "first reader," who assigns scores in six categories: academic, extracurricular, athletic, school support, personal, and overall. A rating of "1" is the best; a rating of "6" the worst. In the academic category, for example, a "1" signifies "near perfect standardized test scores and grades"; in the extracurricular category, it indicates "truly unusual achievement"; and in the personal category, it denotes "outstanding" attributes like maturity, integrity, leadership, kindness, and courage. A score of "1" on the overall rating-a composite of the five other ratings - "signifies an exceptional candidate with >90% chance of admission." In assigning the overall rating, the first readers "can and do take an applicant's race into account."

Once the first read process is complete, Harvard convenes admissions subcommittees. Each subcommittee meets for three to five days and evaluates all applicants from a particular geographic area. The subcommittees are responsible for making recommendations to the full admissions committee.

The subcommittees can and do take an applicant's race into account when making their recommendations.

The next step of the Harvard process is the full committee meeting. The committee has 40 members, and its discussion centers around the applicants who have been recommended by the regional subcommittees. At the beginning of the meeting, the committee discusses the relative breakdown of applicants by race. The "goal," according to Harvard's director of admissions, "is to make sure that Harvard does not have a dramatic drop-off" in minority admissions from the prior class. Each applicant considered by the full committee is discussed one by one, and every member of the committee must vote on admission. Only when an applicant secures a majority of the full committee's votes is he or she tentatively accepted for admission. At the end of the full committee meeting, the racial composition of the pool of tentatively admitted students is disclosed to the committee.

The final stage of Harvard's process is called the "lop," during which the list of tentatively admitted students is winnowed further to arrive at the final class. Any applicants that Harvard considers cutting at this stage are placed on a "lop list," which contains only four pieces of information: legacy status, recruited athlete status, financial aid eligibility, and race. The full committee decides as a group which students to lop. In doing so, the committee can and does take race into account. Once the lop process is complete, Harvard's admitted class is set. In the Harvard admissions process, "race is a determinative tip for" a significant percentage "of all admitted African American and Hispanic applicants."

B

Founded shortly after the Constitution was ratified, the University of North Carolina (UNC) prides itself on being the "nation's first public university." Like Harvard, UNC's "admissions process is highly selective": In a typical year, the school "receives approximately 43,500 applications for its freshman class of 4,200."

Every application the University receives is initially reviewed by one of approximately 40 admissions office readers, each of whom reviews roughly five applications per hour. Readers are required to consider "race and ethnicity . . . as one factor" in their review. Other factors include academic performance and rigor, standardized testing results, extracurricular involvement, essay quality, personal factors, and student background. Readers are responsible for providing numerical ratings for the academic, extracurricular, personal, and essay categories. During the years at issue in this litigation, underrepresented minority students were "more likely to score highly on their personal ratings than their white and Asian American peers,"

but were more likely to be "rated lower by UNC readers on their academic program, academic performance, . . . extracurricular activities," and essays.

After assessing an applicant's materials along these lines, the reader "formulates an opinion about whether the student should be offered admission" and then "writes a comment defending his or her recommended decision." In making that decision, readers may offer students a "plus" based on their race, which "may be significant in an individual case." The admissions decisions made by the first readers are, in most cases, "provisionally final."

Following the first read process, "applications then go to a process called 'school group review' . . . where a committee composed of experienced staff members reviews every initial decision." The review committee receives a report on each student which contains, among other things, their "class rank, GPA, and test scores; the ratings assigned to them by their initial readers; and their status as residents, legacies, or special recruits." The review committee either approves or rejects each admission recommendation made by the first reader, after which the admissions decisions are finalized. In making those decisions, the review committee may also consider the applicant's race.

C

Petitioner, Students for Fair Admissions (SFFA), is a nonprofit organization founded in 2014 whose purpose is "to defend human and civil rights secured by law, including the right of individuals to equal protection under the law." In November 2014, SFFA filed separate lawsuits against Harvard College and the University of North Carolina, arguing that their race-based admissions programs violated, respectively, Title VI of the Civil Rights Act of 1964 and the Equal Protection Clause of the Fourteenth Amendment. The District Courts in both cases held bench trials to evaluate SFFA's claims. Trial in the Harvard case lasted 15 days and included testimony from 30 witnesses, after which the Court concluded that Harvard's admissions program comported with our precedents on the use of race in college admissions. The First Circuit affirmed that determination. Similarly, in the UNC case, the District Court concluded after an eight-day trial that UNC's admissions program was permissible under the Equal Protection Clause.

We granted certiorari in the Harvard case and certiorari before judgment in the UNC case.

II

Before turning to the merits, we must assure ourselves of our jurisdiction. UNC argues that SFFA lacks standing to bring its claims because it is not a

"genuine" membership organization. Every court to have considered this argument has rejected it, and so do we...

III

A

In the wake of the Civil War, Congress proposed and the States ratified the Fourteenth Amendment, providing that no State shall "deny to any person... the equal protection of the laws." To its proponents, the Equal Protection Clause represented a "foundational principle"-"the absolute equality of all citizens of the United States politically and civilly before their own laws." The Constitution, they were determined, "should not permit any distinctions of law based on race or color" because any "law which operates upon one man should operate *equally* upon all." As soon-to-be President James Garfield observed, the Fourteenth Amendment would hold "over every American citizen, without regard to color, the protecting shield of law." And in doing so, said Senator Jacob Howard of Michigan, the Amendment would give "to the humblest, the poorest, the most despised of the race the same rights and the same protection before the law as it gives to the most powerful, the most wealthy, or the most haughty." For "without this principle of equal justice," Howard continued, "there is no republican government and none that is really worth maintaining."

At first, this Court embraced the transcendent aims of the Equal Protection Clause. "What is this," we said of the Clause in 1880, "but declaring that the law in the States shall be the same for the black as for the white; that all persons, whether colored or white, shall stand equal before the laws of the States?" "The broad and benign provisions of the Fourteenth Amendment" apply "to all persons," we unanimously declared six years later; it is "hostility to . . . race and nationality" "which in the eye of the law is not justified."

Despite our early recognition of the broad sweep of the Equal Protection Clause, this Court-alongside the country-quickly failed to live up to the Clause's core commitments. For almost a century after the Civil War, state-mandated segregation was in many parts of the Nation a regrettable norm. This Court played its own role in that ignoble history, allowing in *Plessy v. Ferguson* the separate but equal regime that would come to deface much of America. The aspirations of the framers of the Equal Protection Clause, "virtually strangled in their infancy," would remain for too long only that-aspirations.

After *Plessy*, "American courts . . . labored with the doctrine of separate but equal for over half a century." Some cases in this period attempted to curtail the perniciousness of the doctrine by emphasizing that it required States to

provide black students educational opportunities equal to - even if formally separate from - those enjoyed by white students. ("The admissibility of laws separating the races in the enjoyment of privileges afforded by the State rests wholly upon the equality of the privileges which the laws give to the separated groups "). **But the inherent folly of that approach - of trying to derive equality from inequality - soon became apparent.** As the Court subsequently recognized, even racial distinctions that were argued to have no palpable effect worked to subordinate the afflicted students. ("It is said that the separations imposed by the State in this case are in form merely nominal....But they signify that the State . . . sets petitioner apart from the other students."). **By 1950, the inevitable truth of the Fourteenth Amendment had thus begun to reemerge: Separate cannot be equal.**

The culmination of this approach came finally in *Brown v. Board of Education*. In that seminal decision, we overturned *Plessy* for good and set firmly on the path of invalidating all *de jure* racial discrimination by the States and Federal Government. *Brown* concerned the permissibility of racial segregation in public schools. The school district maintained that such segregation was lawful because the schools provided to black students and white students were of roughly the same quality. But we held such segregation impermissible "*even though* the physical facilities and other 'tangible' factors may be equal." The mere act of separating "children . . . because of their race," we explained, itself "generated a feeling of inferiority."

The conclusion reached by the *Brown* Court was thus unmistakably clear: the right to a public education "must be made available to all on equal terms." As the plaintiffs had argued, "no State has any authority under the equal-protection clause of the Fourteenth Amendment to use race as a factor in affording educational opportunities among its citizens." *Brown v. Board of Education* ("That the Constitution is color blind is our dedicated belief."). The Court reiterated that rule just one year later, holding that "full compliance" with *Brown* required schools to admit students "on a racially nondiscriminatory basis." The time for making distinctions based on race had passed. *Brown*, the Court observed, "declared the fundamental principle that racial discrimination in public education is unconstitutional."

So too in other areas of life. Immediately after *Brown*, we began routinely affirming lower court decisions that invalidated all manner of race-based state action. In *Gayle v. Browder*, for example, we summarily affirmed a decision invalidating state and local laws that required segregation in busing. As the lower court explained, "the equal protection clause requires equality of treatment before the law for all persons without regard to race or color." And in *Mayor and City Council of Baltimore v. Dawson*, we summarily affirmed a decision striking down racial segregation at public beaches and bathhouses

maintained by the State of Maryland and the city of Baltimore. "It is obvious that racial segregation in recreational activities can no longer be sustained," the lower court observed. "The ideal of equality before the law which characterizes our institutions" demanded as much.

In the decades that followed, this Court continued to vindicate the Constitution's pledge of racial equality. Laws dividing parks and golf courses; neighborhoods and businesses; buses and trains; schools and juries were undone, all by a transformative promise "stemming from our American ideal of fairness": "'the Constitution . . . forbids . . . discrimination by the General Government, or by the States, against any citizen because of his race.'" As we recounted in striking down the State of Virginia's ban on interracial marriage 13 years after *Brown*, the Fourteenth Amendment "proscribes . . . all invidious racial discriminations." *Loving v. Virginia.* Our cases had thus "consistently denied the constitutionality of measures which restrict the rights of citizens on account of race." *Yick Wo* (commercial property); *Shelley v. Kraemer* (housing covenants); *Hernandez v. Texas* (composition of juries); *Dawson* (beaches and bathhouses); *Holmes v. Atlanta* (golf courses); *Browder* (busing); *New Orleans City Park Improvement Assn. v. Detiege* (public parks); *Bailey v. Patterson* (transportation facilities); *Swann v. Charlotte-Mecklenburg Bd. of Ed.* (education); *Batson v. Kentucky* (peremptory jury strikes).

These decisions reflect the "core purpose" of the Equal Protection Clause: "doing away with all governmentally imposed discrimination based on race." We have recognized that repeatedly. "The clear and central purpose of the Fourteenth Amendment was to eliminate all official state sources of invidious racial discrimination in the States."

Eliminating racial discrimination means eliminating all of it. And the Equal Protection Clause, we have accordingly held, applies "without regard to any differences of race, of color, or of nationality"-it is "universal in its application." *Yick Wo.* For "the guarantee of equal protection cannot mean one thing when applied to one individual and something else when applied to a person of another color." *Regents of Univ. of Cal. v. Bakke.* "If both are not accorded the same protection, then it is not equal."

Any exception to the Constitution's demand for equal protection must survive a daunting two-step examination known in our cases as "strict scrutiny." Under that standard we ask, first, whether the racial classification is used to "further compelling governmental interests." Second, if so, we ask whether the government's use of race is "narrowly tailored" - meaning "necessary" - to achieve that interest.

Outside the circumstances of these cases, our precedents have identified only two compelling interests that permit resort to race-based government action. One is remediating specific, identified instances of past discrimination that violated the Constitution or a statute. The second is avoiding imminent and serious risks to human safety in prisons, such as a race riot.

Our acceptance of race-based state action has been rare for a reason. "Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality." That principle cannot be overridden except in the most extraordinary case.

B

These cases involve whether a university may make admissions decisions that turn on an applicant's race. Our Court first considered that issue in *Regents of University of California v. Bakke*, which involved a set-aside admissions program used by the University of California, Davis, medical school. Each year, the school held 16 of its 100 seats open for members of certain minority groups, who were reviewed on a special admissions track separate from those in the main admissions pool. The plaintiff, Allan Bakke, was denied admission two years in a row, despite the admission of minority applicants with lower grade point averages and MCAT scores. Bakke subsequently sued the school, arguing that its set-aside program violated the Equal Protection Clause.

In a deeply splintered decision that produced six different opinions-none of which commanded a majority of the Court-we ultimately ruled in part in favor of the school and in part in favor of Bakke. Justice Powell announced the Court's judgment, and his opinion-though written for himself alone-would eventually come to "serve as the touchstone for constitutional analysis of race-conscious admissions policies."

Justice Powell began by finding three of the school's four justifications for its policy not sufficiently compelling. The school's first justification of "reducing the historic deficit of traditionally disfavored minorities in medical schools," he wrote, was akin to "preferring members of any one group for no reason other than race or ethnic origin." Yet that was "discrimination for its own sake," which "the Constitution forbids." Justice Powell next observed that the goal of "remedying . . . the effects of 'societal discrimination'" was also insufficient because it was "an amorphous concept of injury that may be ageless in its reach into the past." Finally, Justice Powell found there was "virtually no evidence in the record indicating that the school's special

admissions program" would, as the school had argued, increase the number of doctors working in underserved areas.

Justice Powell then turned to the school's last interest asserted to be compelling - obtaining the educational benefits that flow from a racially diverse student body. That interest, in his view, was "a constitutionally permissible goal for an institution of higher education." And that was so, he opined, because a university was entitled as a matter of academic freedom "to make its own judgments as to . . . the selection of its student body."

But a university's freedom was not unlimited. "Racial and ethnic distinctions of any sort are inherently suspect," Justice Powell explained, and antipathy toward them was deeply "rooted in our Nation's constitutional and demographic history." A university could not employ a quota system, for example, reserving "a specified number of seats in each class for individuals from the preferred ethnic groups." Nor could it impose a "multitrack program with a prescribed number of seats set aside for each identifiable category of applicants." And neither still could it use race to foreclose an individual "from all consideration . . . simply because he was not the right color."

The role of race had to be cabined. It could operate only as "a 'plus' in a particular applicant's file." And even then, race was to be weighed in a manner "flexible enough to consider all pertinent elements of diversity in light of the particular qualifications of each applicant." Justice Powell derived this approach from what he called the "illuminating example" of the admissions system then used by Harvard College. Under that system, as described by Harvard in a brief it had filed with the Court, "the race of an applicant may tip the balance in his favor just as geographic origin or a life experience may tip the balance in other candidates' cases." Harvard continued: "A farm boy from Idaho can bring something to Harvard College that a Bostonian cannot offer. Similarly, a black student can usually bring something that a white person cannot offer." The result, Harvard proclaimed, was that "race has been" - and should be - "a factor in some admission decisions."

No other Member of the Court joined Justice Powell's opinion. Four Justices instead would have held that the government may use race for the purpose of "remedying the effects of past societal discrimination." Four other Justices, meanwhile, would have struck down the Davis program as violative of Title VI. In their view, it "seemed clear that the proponents of Title VI assumed that

the Constitution itself required a colorblind standard on the part of government." The Davis program therefore flatly contravened a core "principle imbedded in the constitutional *and* moral understanding of the times": the prohibition against "racial discrimination."

C

In the years that followed our "fractured decision in *Bakke*," lower courts "struggled to discern whether Justice Powell's" opinion constituted "binding precedent." We accordingly took up the matter again in 2003, in the case *Grutter v. Bollinger*, which concerned the admissions system used by the University of Michigan law school. There, in another sharply divided decision, the Court for the first time "endorsed Justice Powell's view that student body diversity is a compelling state interest that can justify the use of race in university admissions."

The Court's analysis tracked Justice Powell's in many respects. As for compelling interest, the Court held that "the Law School's educational judgment that such diversity is essential to its educational mission is one to which we defer." In achieving that goal, however, the Court made clear-just as Justice Powell had-that the law school was limited in the means that it could pursue. The school could not "establish quotas for members of certain racial groups or put members of those groups on separate admissions tracks." Neither could it "insulate applicants who belong to certain racial or ethnic groups from the competition for admission." Nor still could it desire "some specified percentage of a particular group merely because of its race or ethnic origin."

These limits, *Grutter* explained, were intended to guard against two dangers that all race-based government action portends. The first is the risk that the use of race will devolve into "illegitimate . . . stereotyping." Universities were thus not permitted to operate their admissions programs on the "belief that minority students always (or even consistently) express some characteristic minority viewpoint on any issue." The second risk is that race would be used not as a plus, but as a negative-to discriminate *against* those racial groups that were not the beneficiaries of the race-based preference. A university's use of race, accordingly, could not occur in a manner that "unduly harmed nonminority applicants."

But even with these constraints in place, *Grutter* expressed marked discomfort with the use of race in college admissions. The Court stressed the fundamental principle that "there are serious problems of justice connected with the idea of racial preference itself." It observed that all "racial classifications, however compelling their goals," were "dangerous." And it

cautioned that all "race-based governmental action" should "remain subject to continuing oversight to assure that it will work the least harm possible to other innocent persons competing for the benefit."

To manage these concerns, *Grutter* imposed one final limit on race-based admissions programs. At some point, the Court held, they must end. This requirement was critical, and *Grutter* emphasized it repeatedly. "All race-conscious admissions programs must have a termination point"; they "must have reasonable durational limits"; they "must be limited in time"; they must have "sunset provisions"; they "must have a logical end point"; their "deviation from the norm of equal treatment" must be "a temporary matter." The importance of an end point was not just a matter of repetition. It was the reason the Court was willing to dispense temporarily with the Constitution's unambiguous guarantee of equal protection. The Court recognized as much: "enshrining a permanent justification for racial preferences," the Court explained, "would offend this fundamental equal protection principle."... "it would be a sad day indeed, were America to become a quota-ridden society, with each identifiable minority assigned proportional representation in every desirable walk of life".

Grutter thus concluded with the following caution: "It has been 25 years since Justice Powell first approved the use of race to further an interest in student body diversity in the context of public higher education.... We expect that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today."

IV

Twenty years later, no end is in sight. "Harvard's view about when race-based admissions will end doesn't have a date on it." Neither does UNC's. Yet both insist that the use of race in their admissions programs must continue.

But we have permitted race-based admissions only within the confines of narrow restrictions. University programs must comply with strict scrutiny, they may never use race as a stereotype or negative, and-at some point-they must end. Respondents' admissions systems-however well intentioned and implemented in good faith-fail each of these criteria. They must therefore be invalidated under the Equal Protection Clause of the Fourteenth Amendment.

A

Because "racial discrimination is invidious in all contexts," we have required that universities operate their race-based admissions programs in a manner

that is "sufficiently measurable to permit judicial review" under the rubric of strict scrutiny. "Classifying and assigning" students based on their race "requires more than . . . an amorphous end to justify it."

Respondents have fallen short of satisfying that burden. **First, the interests they view as compelling cannot be subjected to meaningful judicial review.** Harvard identifies the following educational benefits that it is pursuing: (1) "training future leaders in the public and private sectors"; (2) preparing graduates to "adapt to an increasingly pluralistic society"; (3) "better educating its students through diversity"; and (4) "producing new knowledge stemming from diverse outlooks." UNC points to similar benefits, namely, "(1) promoting the robust exchange of ideas; (2) broadening and refining understanding; (3) fostering innovation and problem-solving; (4) preparing engaged and productive citizens and leaders; and (5) enhancing appreciation, respect, and empathy, cross-racial understanding, and breaking down stereotypes."

Although these are commendable goals, they are not sufficiently coherent for purposes of strict scrutiny. At the outset, it is unclear how courts are supposed to measure any of these goals. How is a court to know whether leaders have been adequately "trained"; whether the exchange of ideas is "robust"; or whether "new knowledge" is being developed? Even if these goals could somehow be measured, moreover, how is a court to know when they have been reached, and when the perilous remedy of racial preferences may cease? There is no particular point at which there exists sufficient "innovation and problem solving," or students who are appropriately "engaged and productive." Finally, the question in this context is not one of *no* diversity or of *some*: it is a question of degree. How many fewer leaders Harvard would create without racial preferences, or how much poorer the education at Harvard would be, are inquiries no court could resolve.

Comparing respondents' asserted goals to interests we have recognized as compelling further illustrates their elusive nature. In the context of racial violence in a prison, for example, courts can ask whether temporary racial segregation of inmates will prevent harm to those in the prison. When it comes to workplace discrimination, courts can ask whether a race-based benefit makes members of the discriminated class "whole for the injuries they suffered." *Franks v. Bowman Transp. Co.* And in school segregation cases, courts can determine whether any race-based remedial action produces a distribution of students "comparable to what it would have been in the absence of such constitutional violations." *Dayton Bd. of Ed. v. Brinkman.*

Nothing like that is possible when it comes to evaluating the interests respondents assert here. Unlike discerning whether a prisoner will be injured

or whether an employee should receive backpay, **the question whether a particular mix of minority students produces "engaged and productive citizens," sufficiently "enhances appreciation, respect, and empathy," or effectively "trains future leaders" is standardless.** The interests that respondents seek, though plainly worthy, are inescapably imponderable.

Second, respondents' admissions programs fail to articulate a meaningful connection between the means they employ and the goals they pursue. To achieve the educational benefits of diversity, UNC works to avoid the underrepresentation of minority groups, while Harvard likewise "guards against inadvertent drop-offs in representation" of certain minority groups from year to year. To accomplish both of those goals, in turn, the universities measure the racial composition of their classes using the following categories: (1) Asian; (2) Native Hawaiian or Pacific Islander; (3) Hispanic; (4) White; (5) African-American; and (6) Native American. It is far from evident, though, how assigning students to these racial categories and making admissions decisions based on them furthers the educational benefits that the universities claim to pursue.

For starters, the categories are themselves imprecise in many ways. Some of them are plainly overbroad: by grouping together all Asian students, for instance, respondents are apparently uninterested in whether *South* Asian or *East* Asian students are adequately represented, so long as there is enough of one to compensate for a lack of the other. Meanwhile other racial categories, such as "Hispanic," are arbitrary or undefined. And still other categories are underinclusive. When asked at oral argument "how are applicants from Middle Eastern countries classified, such as Jordan, Iraq, Iran, and Egypt," UNC's counsel responded, "I do not know the answer to that question."

Indeed, the use of these opaque racial categories undermines, instead of promotes, respondents' goals. By focusing on underrepresentation, respondents would apparently prefer a class with 15% of students from Mexico over a class with 10% of students from several Latin American countries, simply because the former contains more Hispanic students than the latter. Yet "it is hard to understand how a plan that could allow these results can be viewed as being concerned with achieving enrollment that is 'broadly diverse.'" And given the mismatch between the means respondents employ and the goals they seek, it is especially hard to understand how courts are supposed to scrutinize the admissions programs that respondents use.

The universities' main response to these criticisms is, essentially, "trust us." None of the questions recited above need answering, they say, because universities are "owed deference" when using race to benefit some applicants but not others. It is true that our cases have recognized a "tradition of giving

a degree of deference to a university's academic decisions." But we have been unmistakably clear that any deference must exist "within constitutionally prescribed limits," and that "deference does not imply abandonment or abdication of judicial review." Universities may define their missions as they see fit. The Constitution defines ours. Courts may not license separating students on the basis of race without an exceedingly persuasive justification that is measurable and concrete enough to permit judicial review. As this Court has repeatedly reaffirmed, "racial classifications are simply too pernicious to permit any but the most exact connection between justification and classification." The programs at issue here do not satisfy that standard.

B

The race-based admissions systems that respondents employ also fail to comply with the twin commands of the Equal Protection Clause that race may never be used as a "negative" and that it may not operate as a stereotype.

First, our cases have stressed that an individual's race may never be used against him in the admissions process. Here, however, the First Circuit found that Harvard's consideration of race has led to an 11.1% decrease in the number of Asian-Americans admitted to Harvard. And the District Court observed that Harvard's "policy of considering applicants' race . . . overall results in fewer Asian American and white students being admitted."

Respondents nonetheless contend that an individual's race is never a negative factor in their admissions programs, but that assertion cannot withstand scrutiny. Harvard, for example, draws an analogy between race and other factors it considers in admission. "While admissions officers may give a preference to applicants likely to excel in the Harvard-Radcliffe Orchestra," Harvard explains, "that does not mean it is a 'negative' not to excel at a musical instrument." But on Harvard's logic, while it gives preferences to applicants with high grades and test scores, "that does not mean it is a 'negative'" to be a student with lower grades and lower test scores. This understanding of the admissions process is hard to take seriously. College admissions are zero-sum. A benefit provided to some applicants but not to others necessarily advantages the former group at the expense of the latter.

Respondents also suggest that race is not a negative factor because it does not impact many admissions decisions. Yet, at the same time, respondents also maintain that the demographics of their admitted classes would meaningfully change if race-based admissions were abandoned. And they acknowledge that race is determinative for at least some-if not many-of the students they admit. How else but "negative" can race be described if, in its absence, members of some racial groups would be admitted in greater numbers than they otherwise

would have been? The "equal protection of the laws is not achieved through indiscriminate imposition of inequalities."

Respondents' admissions programs are infirm for a second reason as well. We have long held that universities may not operate their admissions programs on the "belief that minority students always (or even consistently) express some characteristic minority viewpoint on any issue." That requirement is found throughout our Equal Protection Clause jurisprudence more generally. ("In cautioning against 'impermissible racial stereotypes,' this Court has rejected the assumption that 'members of the same racial group-regardless of their age, education, economic status, or the community in which they live-think alike '" (quoting *Shaw v. Reno*).

Yet by accepting race-based admissions programs in which some students may obtain preferences on the basis of race alone, respondents' programs tolerate the very thing that *Grutter* foreswore: stereotyping. The point of respondents' admissions programs is that there is an inherent benefit in race *qua* race-in race for race's sake. Respondents admit as much. Harvard's admissions process rests on the pernicious stereotype that "a black student can usually bring something that a white person cannot offer." UNC is much the same. It argues that race in itself "says something about who you are." (analogizing being of a certain race to being from a rural area).

We have time and again forcefully rejected the notion that government actors may intentionally allocate preference to those "who may have little in common with one another but the color of their skin." The entire point of the Equal Protection Clause is that treating someone differently because of their skin color is *not* like treating them differently because they are from a city or from a suburb, or because they play the violin poorly or well.

"One of the principal reasons race is treated as a forbidden classification is that it demeans the dignity and worth of a person to be judged by ancestry instead of by his or her own merit and essential qualities." But when a university admits students "on the basis of race, it engages in the offensive and demeaning assumption that students of a particular race, because of their race, think alike," *Miller v. Johnson*) - at the very least alike in the sense of being different from nonminority students. In doing so, the university furthers "stereotypes that treat individuals as the product of their race, evaluating their thoughts and efforts-their very worth as citizens-according to a criterion barred to the Government by history and the Constitution." Such stereotyping can only "cause continued hurt and injury," contrary as it is to the "core purpose" of the Equal Protection Clause.

C

If all this were not enough, respondents' admissions programs also lack a "logical end point."...

V

The dissenting opinions resist these conclusions. They would instead uphold respondents' admissions programs based on their view that the Fourteenth Amendment permits state actors to remedy the effects of societal discrimination through explicitly race-based measures. Although both opinions are thorough and thoughtful in many respects, this Court has long rejected their core thesis...

VI

For the reasons provided above, the Harvard and UNC admissions programs cannot be reconciled with the guarantees of the Equal Protection Clause. Both programs lack sufficiently focused and measurable objectives warranting the use of race, unavoidably employ race in a negative manner, involve racial stereotyping, and lack meaningful end points. We have never permitted admissions programs to work in that way, and we will not do so today.

At the same time, as all parties agree, nothing in this opinion should be construed as prohibiting universities from considering an applicant's discussion of how race affected his or her life, be it through discrimination, inspiration, or otherwise. But, despite the dissent's assertion to the contrary, universities may not simply establish through application essays or other means the regime we hold unlawful today. (A dissenting opinion is generally not the best source of legal advice on how to comply with the majority opinion.) "What cannot be done directly cannot be done indirectly. The Constitution deals with substance, not shadows," and the prohibition against racial discrimination is "levelled at the thing, not the name." *Cummings v. Missouri* (1867). A benefit to a student who overcame racial discrimination, for example, must be tied to *that student's* courage and determination. Or a benefit to a student whose heritage or culture motivated him or her to assume a leadership role or attain a particular goal must be tied to *that student's* unique ability to contribute to the university. In other words, the student must be treated based on his or her experiences as an individual - not on the basis of race...

The judgments of the Court of Appeals for the First Circuit and of the District Court for the Middle District of North Carolina are reversed. *It is so ordered.*

CONCURRENCE: THOMAS...NOTE: This Concurring Opinion is over 35 pages long...only some of it is quoted here.

...JUSTICE JACKSON has a different view. Rather than focusing on individuals as individuals, her dissent focuses on the historical subjugation of black Americans, invoking statistical racial gaps to argue in favor of defining and categorizing individuals by their race. As she sees things, we are all inexorably trapped in a fundamentally racist society, with the original sin of slavery and the historical subjugation of black Americans still determining our lives today. The panacea, she counsels, is to unquestioningly accede to the view of elite experts and reallocate society's riches by racial means as necessary to "level the playing field," all as judged by racial metrics. I strongly disagree...

JUSTICE JACKSON would replace the second Founders' vision with an organizing principle based on race. In fact, on her view, almost all of life's outcomes may be unhesitatingly ascribed to race. This is so, she writes, because of statistical disparities among different racial groups. Even if some whites have a lower household net worth than some blacks, what matters to JUSTICE JACKSON is that the *average* white household has more wealth than the *average* black household.

This lore is not and has never been true. Even in the segregated South where I grew up, individuals were not the sum of their skin color. Then as now, not all disparities are based on race; not all people are racist; and not all differences between individuals are ascribable to race. Put simply, "the fate of abstract categories of wealth statistics is not the same as the fate of a given set of flesh-and-blood human beings." T. Sowell, Wealth, Poverty and Politics 333 (2016). Worse still, JUSTICE JACKSON uses her broad observations about statistical relationships between race and select measures of health, wealth, and well-being to **label all blacks as victims.** Her desire to do so is unfathomable to me. I cannot deny the great accomplishments of black Americans, including those who succeeded despite long odds.

... JUSTICE JACKSON...[claims the legacy of slavery and the nature of inherited wealth locks blacks into a seemingly perpetual inferior caste]. Such a view is irrational; it is an insult to individual achievement and cancerous to young minds seeking to push through barriers, rather than consign themselves to permanent victim hood. If an applicant has less financial means (because of generational inheritance or otherwise), then surely a university may take that into account. If an applicant has medical struggles or a family member with medical concerns, a university may consider that too. What it cannot do is use the applicant's skin color as a heuristic, assuming that because the applicant checks the box for "black" he therefore conforms to the

university's monolithic and reductionist view of an abstract, average black person.

...JUSTICE JACKSON's race-infused world view falls flat at each step. Individuals are the sum of their unique experiences, challenges, and accomplishments. What matters is not the barriers they face, but how they choose to confront them. And their race is not to blame for everything - good or bad - that happens in their lives. A contrary, myopic world view based on individuals' skin color to the total exclusion of their personal choices is nothing short of racial determinism.

JUSTICE JACKSON then builds from her faulty premise to call for action, arguing that courts should defer to "experts" and allow institutions to discriminate on the basis of race. Make no mistake: Her dissent is not a vanguard of the innocent and helpless. It is instead a call to empower privileged elites, who will "tell us what is required to level the playing field" among castes and classifications that they alone can divine. Then, after siloing us all into racial castes and pitting those castes against each other, the dissent somehow believes that we will be able - at some undefined point - to "march forward together" into some utopia vision. Social movements that invoke these sorts of rallying cries, historically, have ended disastrously.

Unsurprisingly, this tried-and-failed system defies both law and reason. Start with the obvious: If social reorganization in the name of equality may be justified by the mere fact of statistical disparities among racial groups, then that reorganization must continue until these disparities are fully eliminated, regardless of the reasons for the disparities and the cost of their elimination. If blacks fail a test at higher rates than their white counterparts (regardless of whether the reason for the disparity has anything at all to do with race), the only solution will be race-focused measures. If those measures were to result in blacks failing at yet higher rates, the only solution would be to double down. In fact, there would seem to be no logical limit to what the government may do to level the racial playing field-outright wealth transfers, quota systems, and racial preferences would all seem permissible. In such a system, it would not matter how many innocents suffer race-based injuries; all that would matter is reaching the race-based goal...

History has taught us to abhor theories that call for elites to pick racial winners and losers in the name of sociological experimentation...

Schools' successes, like students' grades, also provide objective proof of ability. Historically Black Colleges and Universities (HBCUs) do not have a large amount of racial diversity, but they demonstrate a marked ability to improve the lives of their students. To this day, they have proved "to be extremely effective in educating Black students, particularly in STEM," where

"HBCUs represent seven of the top eight institutions that graduate the highest number of Black undergraduate students who go on to earn science and engineering doctorates."..."HBCUs have produced 40% of all Black engineers." And, they "account for 80% of Black judges, 50% of Black doctors, and 50% of Black lawyers." ...

The great failure of this country was slavery and its progeny. And, the tragic failure of this Court was its misinterpretation of the Reconstruction Amendments, as Justice Harlan predicted in *Plessy*. We should not repeat this mistake merely because we think, as our predecessors thought, that the present arrangements are superior to the Constitution...

While I am painfully aware of the social and economic ravages which have befallen my race and all who suffer discrimination, I hold out enduring hope that this country will live up to its principles so clearly enunciated in the Declaration of Independence and the Constitution of the United States: that all men are created equal, are equal citizens, and must be treated equally before the law.

CONCURRENCE: GORSUCH/ THOMAS...For many students, an acceptance letter from Harvard or the University of North Carolina is a ticket to a brighter future. Tens of thousands of applicants compete for a small number of coveted spots. For some time, both universities have decided which applicants to admit or reject based in part on race. Today, the Court holds that the Equal Protection Clause of the Fourteenth Amendment does not tolerate this practice. I write to emphasize that Title VI of the Civil Rights Act of 1964 does not either...

CONCURRENCE: KAVANAUGH...I join the Court's opinion in full. I add this concurring opinion to further explain why the Court's decision today is consistent with and follows from the Court's equal protection precedents, including the Court's precedents on race-based affirmative action in higher education...

DISSENT: SOTOMAYOR/ KAGAN/ JACKSON...Notwithstanding this Court's actions, however, society's progress toward equality cannot be permanently halted. Diversity is now a fundamental American value, housed in our varied and multicultural American community that only continues to grow. The pursuit of racial diversity will go on. Although the Court has stripped out almost all uses of race in college admissions, universities can and should continue to use all available tools to meet society's needs for diversity in education. Despite the Court's unjustified exercise of power, the opinion today will serve only to highlight the Court's own impotence in the face of an America whose cries for equality resound. As has been the case before in the

history of American democracy, "the arc of the moral universe" will bend toward racial justice despite the Court's efforts today to impede its progress.

DISSENT: JACKSON/ SOTOMAYOR/ KAGAN...Gulf-sized race-based gaps exist with respect to the health, wealth, and well-being of American citizens. They were created in the distant past, but have indisputably been passed down to the present day through the generations. Every moment these gaps persist is a moment in which this great country falls short of actualizing one of its foundational principles-the "self-evident" truth that all of us are created equal. Yet, today, the Court determines that holistic admissions programs like the one that the University of North Carolina (UNC) has operated, consistent with *Grutter v. Bollinger* are a problem with respect to achievement of that aspiration, rather than a viable solution (as has long been evident to historians, sociologists, and policymakers alike).

...Our country has never been colorblind. Given the lengthy history of state-sponsored race-based preferences in America, to say that anyone is now victimized if a college considers whether that legacy of discrimination has unequally advantaged its applicants fails to acknowledge the well-documented "intergenerational transmission of inequality" that still plagues our citizenry.

It is *that* inequality that admissions programs such as UNC's help to address, to the benefit of us all. Because the majority's judgment stunts that progress without any basis in law, history, logic, or justice, I dissent...