

Initial Ripple Effects of U.S. Supreme Court Affirmative Action in Student Admissions Decision

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In its decision [holding](#) the use of race in university and college admissions is unconstitutional in violation of the Equal Protection Clause of the Fourteenth Amendment, the U.S. Supreme Court noted that “[e]liminating racial discrimination means eliminating all of it.” *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, No. 20-1199, together with *Students for Fair Admissions, Inc. v. Univ. of North Carolina*, No. 21-707 (June 29, 2023).

Therefore, it should come as no surprise that, on July 3, 2023, the Chica Project, the African Community Economic Development of New England, and the Greater Boston Latino Network filed a [federal civil rights complaint](#) against Harvard College, alleging that its practice of giving preferential treatment in the admissions process to applicants with familial ties to wealthy donors and alumni results in systemic preferential treatment of White applicants in violation of Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d). Title VI prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance.

The Complaint was filed with the U.S. Department of Education’s (DOE) Office for Civil Rights (OCR) by the Lawyers for Civil Rights. As the Complaint outlines:

Each year, Harvard College grants special preference in its admissions process to hundreds of mostly white students – not because of anything they have accomplished, but rather solely because of who their relatives are. Applicants whose relatives are wealthy donors to Harvard, or whose parents are Harvard alumni, are flagged at the outset of Harvard’s admissions process and are granted special solicitude and extra “tips” throughout. The students who receive these special preferences (“Donor and Legacy Preferences”) are significantly more likely to be accepted than other applicants, and constitute up to 15% of Harvard’s admitted students.

The students who receive this preferential treatment – based solely on familial ties – are overwhelmingly white. Nearly 70% of donor-related applicants are white, and nearly 70% of legacy applicants are also white.

Complaint at p. 1 (internal citations omitted).

The Complaint further alleges that qualified applicants of color are harmed as a result, as admissions slots are given instead to the overwhelmingly White, wealthy applicants who benefit from Harvard’s legacy and donor preferences. Therefore, the donor and legacy preferences creates a significant, disparate impact on nonwhite applicants that is not justified by any educational necessity, in violation of Title VI, the Complaint alleges.

The Complaint relies on the facts, statistics, and legal analysis in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College* (which was decided based

on application of the Equal Protection Clause of the Fourteenth Amendment) to support the allegations that Harvard's practices violate Title VI.

Further, like in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, the plaintiffs here appear to proceed on the grounds of organizational standing. This allows standing if an organization can show that it suffered an injury even in the absence of identifying an actual member who suffered injury. To invoke organizational standing, "an organization must demonstrate that (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) *neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.*"

The plaintiffs request the DOE launch a federal investigation, under Title VI and its implementing regulations, into Harvard's practices surrounding legacy and donor preferences. They urge the DOE to declare these practices unlawful and for Harvard to cease legacy and donor preference practices if the university wishes to continue receiving federal funds.

Under the DOE's OCR procedures, the Complaint will be evaluated and a determination made as to whether to open or investigate the Complaint. Although OCR aims to resolve cases within 180 days, complaint processing frequently exceeds that mark, and cases involving systemic allegations can take years to resolve. In some instances, OCR will employ mediation as an option to resolve a complaint. Likewise, recipients may elect to enter into and OCR may accept a voluntary resolution agreement to resolve a complaint.

Further litigation stemming from the *Students for Fair Admissions, Inc.* decision is expected. Jackson Lewis attorneys will continue to monitor the decision's impact and will provide updates. If you have questions, please contact the Jackson Lewis attorney with whom you regularly work or a member of the Corporate Diversity Counseling; Environmental, Social, and Governance, or Higher Education practice group to discuss.

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