

Annie Zhao  
August 29, 2024

## **The Misguided Focus on Affirmative Action**

Primary reference: *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U. S. (2023) (Jackson, J., dissenting).

In her dissent against the case overturning Affirmative Action (AA), Justice Ketanji Brown Jackson condemns the legal prohibition of considering race as a factor in university admissions processes. To support her opinion, she explains the historical context behind enacting AA, references data on changes in outcomes after AA, and clarifies how and whom AA can affect.

The Supreme Court used the Constitution's Equal Protection Clause to overturn AA. I see three ways to interpret the word "equal": equal treatment, equal outcomes, or equal opportunities. Perhaps the fairest or most agreeable application of the Clause involves all three interpretations; however, the interpretations by the Justices seem limited in scope. In my opinion, Justice Jackson's argument overly prioritizes equal outcomes. For example, she spends two pages of her dissent discussing the disparities between the incomes of white and black people in America. Though she does not directly say she believes the government should intervene to equalize people's incomes, I think that is reasonable to infer because she fixates on the numbers defining different outcomes and condemns the ruling for not promoting change. While I agree it is unfair that people's financial trajectories are heavily influenced by their skin color, I believe it is beyond the current legal jurisdiction of the government to determine whose incomes should rise (and consequently whose should fall). The majority of the Supreme Court concurs that it is unfair for the government to pass legislation permitting unequal treatment of white and black students in the university admissions process, even though the enrollment outcomes are not proportional to the population of students in each racial group. Due to this, I believe it is ineffective to argue for fairness based on minimizing gaps in financial outcomes; the current ruling has made it clear that the Court does not prioritize equal outcomes.

Even if the Court prioritized equal outcomes and wanted to lessen the income gap between different groups, I believe AA in higher education is not a reasonable approach. According to the National Center for Education Statistics, over 400 four-year colleges in the US accept over 90% of students - if one applies to any three of these colleges simultaneously, the probability that one receives an offer of admission is 99.9%; if one applies to even more schools, admission is virtually guaranteed. Getting into college is not unreasonably competitive if one is willing to attend any school, as most schools do not have to reject one person to accept another. More importantly, graduating from the most selective schools in the US does not increase any racial group's average income in proportion to the increase in admission difficulty.

AA directly affects only the applicants to the most selective colleges, where one must already hold immense privileges to have any chance for admission. Considering that AA in higher education changes so few people's opportunities and outcomes, I find it silly that it has come to represent the fight for racial equality. If the Court wants to advocate for equal treatment, perhaps it should start with K-12 public schools instead.

## References

### Websites

<https://www.bestcolleges.com/news/analysis/2020/08/10/history-affirmative-action-college/>  
<https://www.pewresearch.org/short-reads/2019/04/09/a-majority-of-u-s-colleges-admit-most-students-who-apply/>  
[https://nces.ed.gov/programs/digest/d23/tables/dt23\\_305.40.asp](https://nces.ed.gov/programs/digest/d23/tables/dt23_305.40.asp)  
<https://www.nber.org/papers/w7322>  
<https://research.com/education/list-of-college-acceptance-rates#2>  
<https://nscresearchcenter.org/current-term-enrollment-estimates/>  
<https://www.usnews.com/best-colleges/rankings/national-universities>  
<https://admission.tulane.edu/why-tulane/at-a-glance>  
<https://www.pewresearch.org/social-trends/fact-sheet/facts-about-the-us-black-population/#household-income>  
<https://www.census.gov/popclock/>

### Documents

[Dissent to SFFA v. Harvard by Justice Ketanji Brown Jackson](#)  
[Current Term Enrollment Estimates by The National Student Clearinghouse Research Center](#)  
[Black U.S. Population Detailed Tables \(2022\) by The Pew Research Center](#)