



A DCI Deliberation Guide

College Admissions Policies:

*How Should Applicants' Backgrounds Be Taken into Account,
If at All?*

Format for Deliberation

Before the Deliberation

- I. Read this Deliberation Guide (REQUIRED)
- II. Read the following optional readings:
 - A. ["It's Time to End Race-Based Affirmative Action"](#) from *The New York Times*
 - B. ["5 Reasons to Support Affirmative Action in College Admissions"](#) from the Center for American Progress
 - C. ["Panel Divided on Merits of Affirmative Action in Admissions"](#) from UNC-Chapel Hill
 - D. ["The Athlete Advantage"](#) from *The Harvard Crimson*
 - E. ["Legacy Admissions: How Important Are Legacy College Admissions"](#) from *Ivy Wise*
 - F. ["Room for Debate: Why Do Top Schools Still Take Legacy Applicants"](#) from *The New York Times*

During the Deliberation

- I. Setting Expectations - 5 min.
- II. Getting to Know Each Other - 10 min.
- III. Understanding Tensions between Racial Diversity and Equal Treatment - 20 min.
- IV. Examining the Harvard University and UNC Cases - 20 min.
- V. Break - 5 min.
- VI. Understanding Tensions Between Athlete & Legacy Admissions and Equal Treatment - 25 min
- VII. Identifying, Evaluating, and Prioritizing Policies - 25 min.
- VIII. Reflections - 10 min.

Background

The college admissions process is a hotly contested topic. Who should be admitted to our most elite public and private college and universities? Who should receive scholarships and other forms of support to attend college? What fundamental values should guide admissions policies? To what extent should gender, race, ethnicity, class, athletic ability, or family connection to the institution be considered? How should one understand merit when balancing academic and extracurricular achievement, family circumstances, and individual stories?

These questions are at the heart of debates about the college admissions process, and they are also the focus of this deliberation guide. We will engage these challenging questions and explore both our areas of agreement and disagreement. Our session will focus on the purpose of college admission policies and the recently decided U.S. Supreme Court case, *SFFA v. Harvard and UNC Chapel Hill*, which declared race-based admissions policies unconstitutional. This guide will summarize the arguments for and against taking a number of considerations about an applicant into account in admissions criteria, including the applicant's race, as well as the broader historical and legal context of these arguments.

Affirmative Action, the Supreme Court, and Higher Education

What is affirmative action? **Affirmative action** can be defined as “a set of procedures designed to eliminate unlawful discrimination among applicants, remedy the results of such prior discrimination, and prevent such discrimination in the future.” Such affirmative action may be used in the context of educational programs or job opportunities, and it may be deployed to combat discrimination on the basis of race, creed, national origin, gender, age, disability, or other factors.¹

Affirmative action policies have been controversial since their inception in the 1960s, when President John F. Kennedy issued an executive order instructing federal contractors to take “affirmative action to ensure that applicants are treated equally.”² Following the Supreme Court's unanimous 1954 *Brown v. Board of Education* ruling and the Civil Rights Act of 1964, affirmative action policies expanded in subsequent administrations and on many college campuses to include both efforts to eliminate discriminatory practices and to proactively create opportunities for minority groups.³

¹ Cornell University's Legal Information Institute, “[Affirmative Action](#).”

² Ibid.

³ Ibid.

Some of these latter policies, which are sometimes framed as “quotas,” sparked claims of “**reverse discrimination**” and related legal challenges that ultimately reached the Supreme Court. In *Regents of the University of California v. Bakke* (1978), the Court declared in a 5-4 ruling that racial quotas that reserve places for minority applicants violate the Constitution’s equal protection clause and are not permissible.⁴ The court ruled that while quotas are unconstitutional, taking race into account as a factor in admissions decisions is not.⁵

The Supreme Court continued to issue opinions on affirmative action in the ensuing years. Three significant cases that have shaped affirmative action in higher education are *Gratz v. Bollinger* (2003), *Grutter v. Bollinger* (2003), and *Fisher v. University of Texas* (2013). In *Gratz*, the court decided that the **University of Michigan’s Office of Undergraduate Admissions** (OUA) was violating the equal protection clause of the Fourteenth Amendment and Title VI of the Civil Rights Act of 1964. The court ruled that Michigan’s admission policies were not narrowly tailored enough to meet the strict scrutiny of the Supreme Court. Under strict scrutiny, affirmative action must be “precisely tailored to serve a compelling governmental interest.”⁶ Having a points-based system that results in essentially every qualified minority applicant being accepted was deemed as not narrowly tailored enough.⁷

In *Grutter v. Bollinger*, the Court simultaneously ruled that the University of Michigan Law School’s admission policy did meet its standard of strict scrutiny and ruled that race may be used “to further a compelling interest in obtaining the educational benefits that flow from a diverse student body” insofar as it was considered amidst a plethora of pertinent factors and under individualized review.⁸

In *Fisher v. University of Texas* (2013), the court once again upheld the standard of strict scrutiny, but this time ruled that the **University of Texas at Austin’s admissions policy** met this standard. This policy automatically granted admission to anyone who graduated in the top 10% of their high school class. For all other students, the University would create an Academic Index (AI) based on SAT scores and grades, and a Personal Achievement Index (PAI) based on

⁴ In the case, Allan Bakke, a white individual who was denied acceptance to the Medical School of the University of California, Davis, provided evidence that his grades and test scores surpassed those of some minority students who had been accepted. As part of affirmative action policy, the medical school reserved 16% of its admission slots for minority applicants.

⁵ Cornell University’s Legal Information Institute, “[Regents of the University of California v. Allan Bakke.](#)”

⁶ Cornell University’s Legal Information Institute, “[Gratz v. Bollinger.](#)”

⁷ Michigan’s OUA was giving minority applicants an additional 20 points in their ranking system solely for being a minority applicant. Even though this was still part of a holistic approach for admissions, the court found that the system amounted to “holding seats” for certain minority groups because of how easy it was for a minority applicant to be accepted over a non-minority applicant based solely on his race ([Gratz v. Bollinger](#)).

⁸ U.S. Supreme Court. 2003. [Grutter v. Bollinger](#).

leadership and work experience, extracurricular activities, community service, and other “special characteristics.” Race, together with socio-economic status, language used in the home, and other factors, was included as one of these characteristics, and the Court ruled that this use of race constitutes a “factor of a factor of a factor,” which “as one factor in the University’s holistic review process, is narrow enough to meet strict scrutiny.”⁹

The End of Race-Based Affirmative Action

On June 29th, 2023, the Supreme Court ruled race-based affirmative action policies in higher education unconstitutional. This ruling was a result of the highly anticipated ***SFFA (Students for Fair Admissions) v. Harvard*** and ***SFFA v. UNC Chapel Hill***.¹⁰

In the ***case against Harvard***, a prestigious private college that receives federal funding, SFFA argued that its race-conscious admissions policies violated Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race in programs that receive federal funds. SFFA claimed that Harvard discriminated against Asian American applicants by imposing higher standards of admission on them.¹¹ The Supreme Court ruled Harvard’s admissions policies unconstitutional because the identified compelling state interest (i.e., diversity of class) could not be measured in any substantive way, racial stereotypes were perpetuated, and Harvard did not provide a reasonable estimate of when its affirmative action policies would end (referring to Justice O’Connor’s estimate of 25 years in *Grutter v. Bollinger*).¹²

In the ***case against UNC***, the oldest public university in the U.S., SFFA argued that its race-conscious admissions policies violated the equal protection clause of the 14th Amendment.¹³ They specifically asserted that UNC used race to provide a significant advantage to underrepresented minority applicants while harming the prospect of white and Asian students.¹⁴ UNC argued that they have other programs to increase diversity that do not consider race (such as recruiting low-income and first-generation students), but that an alternative program doesn’t exist that would achieve a student population “as diverse and academically qualified as its holistic, race-conscious admissions process.”¹⁵ The Supreme Court ruled in favor of SFFA for similar reasons given in the Harvard case.

⁹ Cornell University’s Legal Information Institute, “[Fisher v. University of Texas](#).”

¹⁰ Howe, Amy. “[Supreme Court Strikes Down Affirmative Action Programs in College Admissions](#).” SCOTUS Blog. 2023.

¹¹ U.S. Supreme Court. 2003. [Students for Fair Admissions, Inc. v. President and Fellows of Harvard College](#).

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

While *SFFA v. Harvard* and *SFFA v. UNC Chapel Hill* effectively ended race-based affirmative action in higher education, it may not be clear to what extent these decisions will affect college admissions as a whole. The Supreme Court’s decision does not directly affect the college’s race-conscious “outreach; recruitment; affinity groups; employment; contracting; race-neutral policies governing K-12 selective admissions programs; diversity, equity, inclusion, and accessibility (DEIA) programs; environmental, social, and governance (ESG) goals.”¹⁶ Further, the Court makes clear that the decision does not prohibit “universities from considering an applicant’s discussion of how race affected his or her life, be it through discrimination, inspiration, or otherwise.”¹⁷ Nor does it impact race-conscious admissions policies at military academies, which serve “potentially distinct interests.”¹⁸

Arguments for Using Race as a Factor in College Admissions

Proponents have argued that the use of race-based affirmative action in college admissions is necessary to achieving the American ideal of equality. ***Access to higher education is important because it contributes to social and economic mobility***, as college graduates earn nearly twice as much as high school graduates over their lifetimes.¹⁹ They point out how much of a vital tool it has been and continues to be for empowering millions of Americans who have experienced racial barriers.²⁰

Between 2000 and 2019, college enrollment rates among 18-24-year-olds increased from 16% to 24% for American Indians and Alaskan Natives, 31% to 37% for Black Americans, 22% to 36% for Hispanic Americans, 39% to 42% for White Americans, and 56% to 59% for Asian Americans.²¹ Supporters of affirmative action argue that such an increase in diversity can “reduce students’ racial bias, improve satisfaction and intellectual self-confidence, ... enhance leadership skills ... [and] ***prepare students to work in a diverse global economy.***”²²

Proponents argue that despite these increases in enrollment, ***some minority groups continue to be underrepresented on college campuses***, and in many cases more so than 40 years ago. For example, a 2017 analysis by *The New York Times* found that 6% of first year students at 100 elite public and private colleges in 2015 were Black while 15% of college-age Americans were

¹⁶ Legal Defense Fund. 2023. [The Supreme Court's Affirmative Action Decision, Explained.](#)

¹⁷ U.S. Supreme Court. 2003. [Students for Fair Admissions, Inc. v. President and Fellows of Harvard College.](#)

¹⁸ Ibid.

¹⁹ Broady, Kristen and Brad Hershbein. 2020. [“Major Decisions: What Graduates Earn Over Their Lifetimes.”](#) Brookings Institution.

²⁰ National Center for Education Statistics. 2019. [“Indicator 30: Earnings and Employment.”](#)

²¹ National Center for Education Statistics. 2020. [“College Enrollment Rates”](#) in *The Condition of Education 2020*.

²² Maxwell, Connor and Sara Garcia. 2019. [“5 Reasons to Support Affirmative Action in College Admissions.”](#) Center for American Progress.

Black; a similar 9% disparity existed for Hispanic Americans.²³ These disparities for both groups increased between 1980 and 2015.²⁴ Demos reports that in 2015 a similar disparity for black students also existed at 45 of the 50 public flagship state universities.²⁵ As one example, “black students constituted 50 percent of 2015–2016 high school graduates in Mississippi, but were just 12.9 percent of University of Mississippi undergraduates.”²⁶ For affirmative action supporters, these data suggest that more aggressive affirmative action policies are necessary to eliminate these disparities.

Conversely, proponents assert that ***banning affirmative action has been shown to hurt minority students***. In November 1998, California voted to pass Proposition 209, which eliminated affirmative action in the admission processes of its universities. This new law resulted in a decrease in the number of minorities who were admitted to the state’s competitive universities. For example, the black student population of the California State University system (CSU) was reduced by half from 8% in 1997 to only 4% in 2018.²⁷

Proponents also suggest that if we continue using race as one aspect in a holistic admissions approach, then one day we may be able to ***reach the impressive results that gender-based affirmative action has had in the last half-century***.²⁸ After centuries of women being excluded from many institutions of higher education, the percentage of women 25 and older with a bachelor’s degree increased from 8% in 1970 to 39% in 2021, compared to 14% of men in 1970 to 37% in 2021.²⁹ In 2018-2019 academic year, more women earned bachelor’s, associate’s, master’s and doctoral degrees than men.³⁰

More generally, supporters assert that affirmation action creates “a fairer society by allowing universities and other organizations to maintain diversity, which helps break down racial barriers and provides students with a more rounded education. Affirmative action levels the playing field for members of minority groups that suffered centuries of discrimination.”³¹

²³ Ashkenas, Jeremy, Haeyoun Park and Adam Pearce. 2017. [“Even with Affirmative Action, Blacks and Hispanics Are More Underrepresented at Top Colleges Than 35 Years Ago.”](#) *The New York Times*.

²⁴ Ibid.

²⁵ Huelsman, Mark. 2018. [“Social Exclusion: The State of State U for Black Students.”](#) Demos.

²⁶ Ibid.

²⁷ Peele, Thomas and Daniel Willis. 2020. [“Dropping Affirmative Action had Huge Impact on California’s Public Universities.”](#) EdSource.

²⁸ Maxwell, Connor and Sara Garcia. 2019. [“5 Reasons to Support Affirmative Action in College Admissions.”](#) Center for American Progress.

²⁹ Parker, Kim. 2021. [“What’s behind the growing gap between men and women in college completion?”](#) Pew Research Center.

³⁰ Reeves, Richard. 2021. [“The Male College Crisis is not just in Enrollment, but Completion.”](#) Brookings Institution.

³¹ [“Affirmative Action.”](#) *Issues & Controversies*.

Arguments Against Using Race as a Factor in College Admissions

Opponents of affirmative action also have multiple reasons for resisting this approach to college admissions. First, they assert that it **violates the 1964 Civil Rights Act and the Fourteenth Amendment to the U.S. Constitution**. As Supreme Court justice Clarence Thomas wrote in a dissent to *Grutter v. Bollinger*, “The Constitution abhors classifications based on race.”³² In his dissent, he cites Justice Harlan’s dissent in *Plessy v. Ferguson* that “our Constitution is color-blind, and neither knows nor tolerates classes among citizens” and the court’s ruling in *Adarand Constructors, Inc. v. Peña* that “the equal protection principle reflects our Nation’s understanding that such classifications ultimately have a destructive impact on the individual and our society.”³³

Furthermore, opponents argue that **race-based affirmative action undermines racial equality**. Chief Justice Roberts summarized this perspective in the *Parents Involved* case – “the way to stop discrimination on the basis of race is to stop discriminating on the basis of race.”³⁴ Their concern is that the use of race in admissions contributes to the bias they are designed to mitigate. Following this logic, Eric Dreiband, assistant attorney general in the Civil Rights Division of the U.S. Department of Justice, wrote in August 2020 that “dividing Americans into racial and ethnic blocs fosters stereotypes, bitterness and division.”³⁵

Another argument against affirmative action is that **these policies place minority students in academic contexts that they are not prepared to succeed in** and actually undermine their future success. An amicus brief submitted by members of the U.S. Commission on Civil Rights in *Fischer*, for example, concludes from numerous studies that race-preferential admissions policies discourage beneficiaries from pursuing science and engineering careers, becoming college professors, and graduating from law school and passing the bar.³⁶

Opponents also suggest that **affirmative action creates a stigma for minorities** by suggesting that their achievements are due to receiving special and unfair treatment. As Justice Thomas wrote in *Grutter*, “The question itself is the stigma—because either racial discrimination did play a role, in which case the person may be deemed ‘otherwise unqualified,’ or it did not, in

³² U.S. Supreme Court. 2003. [Grutter v. Bollinger](#).

³³ Ibid.

³⁴ Cornell University’s Legal Information Institute. “[Parents Involved in Community Schools v. Seattle School District No. 1.](#)”

³⁵ “[Affirmative Action.](#)” *Issues & Controversies*.

³⁶ Heriot, Gail, Peter Kirsanow and Todd Gaziano. 2014. [Brief Amicus Curiae in Support of the Petitioner in Fisher v. University of Texas at Austin.](#)

which case asking the question itself unfairly marks those blacks who would succeed without discrimination.”³⁷

The ***success of African Americans*** in politics, entertainment, sports, academia, and other sectors of society is another argument made by some opponents of affirmative action. In 2009, *The Washington Post* columnist Richard Cohen suggested that with the election of a Black President, “[T]he justification for affirmative action gets weaker and weaker.”³⁸ The rise and popularity of prominent Black intellectuals such as Cornel West, Neil deGrasse Tyson, Toni Morrison, Henry Louis Gates, Jr., and Danielle Allen may also suggest to these critics that the barriers for advancement are lower than in decades past and the need for affirmative action is consequentially reduced as well.

Other arguments center around the unintentional consequences of affirmative action policies. Princeton University sociology professor Thomas Espenshade, for example, is concerned that these policies hamper efforts to implement more effective and far-reaching policies to deal with racial inequalities. Citing Harvard’s admissions policies, *The New York Times* columnist Bret Stephens is also concerned that affirmative action policies are contributing to divides among minority groups and fostering derogatory stereotypes about Asian Americans in particular.³⁹

Finally, some argue that the stakes are not as high as we think they are because higher institutions are not the engines of social mobility they once were. At elite private colleges and universities, only about one in ten manages to rise even two rungs (quintiles) on the income ladder, according to a New York Times study in 2017.⁴⁰

Positions on the End of Race-Based Affirmative Action

Below are four possible positions to consider in light of the decision to end race-based affirmative action in *SFFA v. Harvard* and *SFFA v. UNC-Chapel Hill*.

Position 1: Race-based affirmative action is an act of reverse discrimination. It unfairly discriminates applicants solely based on their race and violates the equal protection clause. Following the narrative presented in *Bakke*, Justice Roberts, in *SFFA v. Harvard*, argues that “eliminating racial discrimination means eliminating all of it.”⁴¹ Racial discrimination in all its

³⁷ U.S. Supreme Court. 2003. [Grutter v. Bollinger](#).

³⁸ Cohen, Richard. 2009. “[President needs to move court into a post-racial era.](#)” *The Washington Post*.

³⁹ “[Affirmative Action.](#)” *Issues & Controversies*.

⁴⁰ “[Some Colleges Have More Students From the Top 1 Percent Than the Bottom 60.](#)” 2017. *The New York Times*.

⁴¹ U.S. Supreme Court. 2023. [SFFA v. Harvard](#).

forms (including affirmative action, which gives arbitrary advantages to certain individuals on the basis of race) undermines equal protection under the law. It also undergirds the toxic assumption that we should have lower standards of performance for some groups of people based on the color of their skin.⁴² The Supreme Court's decision was therefore the right one.

Position 2: Race-based affirmative action in college was well-intended but was not narrowly tailored enough to be an effective remedy to address historical injustices or existing inequalities between racial groups in the United States. To ameliorate racial inequities in education, resolving institutional issues in primary and secondary education should be prioritized.⁴³ The root of racial injustice does not lie at the employment and admissions stages of life but in the disparities present in the K-12 system.⁴⁴ Unlike the selective nature of higher education, the education of those 18 and under concern the good of all and is essential to the development of this country's citizenry. As *Brown v. Board of Education* articulates, "[No] child may be reasonably expected to succeed in life if he is denied the opportunity of an education ... [which] is a right [that] must be made available to all on equal terms."⁴⁵

Position 3: Affirmative action programs can address both socioeconomic and racial injustices and inequalities by focusing not on race but on socio-economic status. While race-based affirmative action policies were effective in admitting more Black and Hispanic students, the admitted students were overwhelmingly from middle- and upper-income brackets. In an affirmative action model developed by the New York Times, only 6 percent of admitted students hailed from the bottom quartile of the income distribution.⁴⁶ As this study shows, admissions strategies, such as expanding the applicant pool, targeting predominantly minority high schools, and considering income, school poverty, and academic outliers lead to a significant increase in students from both socioeconomically and racially disadvantaged backgrounds.⁴⁷

Position 4: Race-based affirmative action in college admissions were a necessary policy and remain necessary, despite the Supreme Court's decision. Affirmative action brought more racial diversity into not only higher education but also corporate America, and taking it away will most likely reduce the number of Black and Latino students in colleges and universities across the country.⁴⁸ As Justice Sonya Sotomajor argues in her dissent, "The Court subverts the

⁴² McWorter, John. 2023. [On Race and Academia](#). *The New York Times*.

⁴³ Modan, Naaz and Jeremy Bauer-Wolf. 2023. [Race-conscious admissions ruling puts pressure on K-12](#). K-12 Dive.

⁴⁴ U.S. Government Accountability Office. 2020. [Racial Disparities in Education and the Role of Government](#).

⁴⁵ U.S. Supreme Court. 1954. [Brown v. Board of Education](#).

⁴⁶ "Affirmative Action Alternatives." [New York Times](#).

⁴⁷ "Ibid."

⁴⁸ LA Times Editorial Board. 2023. [Court's affirmative action ban is a catastrophic blow to the American dream](#).

constitutional guarantee of equal protection by further entrenching racial inequality in education, the very foundation of our democratic government and pluralistic society.”⁴⁹ The majority decision was wrong and should be overturned by a future Court.

Admission of Athletes

Athletes receive advantages in college admissions at many colleges and universities, and past research suggests that these advantages are significant.⁵⁰⁵¹ In 2002, Writer James L. Shulman and former Princeton University President William Bowen published pioneering research showing that the admission rates for athletes were 48 percent higher than non-athletes at 30 selective colleges.⁵² More recent data also suggests that athletes have a distinct advantage over nonathletes in the Harvard admissions process.⁵³

Those who support athlete preferences in college admissions argue that sports bring much needed **money and prestige** to colleges and universities. When college athletic programs perform well, they see an increase in the number of applicants and are therefore able to be more academically selective.⁵⁴ Across all NCAA divisions, college sports brought in an estimated \$18.9 billion in revenue in 2019. The NCAA has reported that 90% of its revenue goes to support student-athletes through scholarship funds, student assistance funds, and assistance for academic programs.⁵⁵ The prestige associated with college sports can also counterbalance the political polarization surrounding higher education, as nearly 60% of Republicans believe it is having a negative effect on the country.⁵⁶ Given that many conservatives view intercollegiate athletics, and college football in particular, as embodying values like “tradition and toughness” that are important to them, strong athletic programs provide them with a reason to continue to support colleges and universities.⁵⁷

Supporters might also point to research showing that **athlete preferences help increase the proportion of students of color and historically underrepresented groups attending college**. For example, at Duke University, “16 percent of the Black men have athletic scholarships

⁴⁹ Totenburg, Nina. 2023. [Supreme Court guts affirmative action, effectively ending race-conscious admissions](#). NPR.

⁵⁰ [“College Sports Are Affirmative Action for Rich White Students”](#) *The Atlantic*

⁵¹ [Who Gets the Largest College Admissions Advantage? Let’s Look at the Athletes”](#) *The Washington Post*

⁵² [“College Sports Are Affirmative Action for Rich White Students”](#) *The Atlantic*

⁵³ [“College Sports Are Affirmative Action for Rich White Students”](#) *The Atlantic*

⁵⁴ [“The Flutie Effect: How Athletic Success Boosts College Applications”](#) *Forbes*

⁵⁵ [“Where Does the Money Go?”](#) *NCAA*

⁵⁶ [“The Growing Partisan Divide in Views of Higher Education.”](#) *Pew Research Center*

⁵⁷ [“College football gives conservatives their own safe space on campus.”](#) *The Washington Post*

compared to 1.8 percent of White men.”⁵⁸ In Division I NCAA schools overall, Black males are 13 times more likely than White males to be on a college football or basketball scholarship.⁵⁹

Another argument for giving priority to athletes is that **colleges should not only be focused on academic excellence but athletic excellence as well**. As Bates College’s Michael Rocque has argued, “Athletics are absolutely a part – a core part, even – of the student education experience.”⁶⁰ Higher education should cultivate all forms of human achievement, not only book learning and the work of the mind. Including athletic performance in college admissions also reinforces both ancient and contemporary goals of educating the “whole person” – mind, body, and spirit.⁶¹ Supporters might agree that this approach suggests that applicants with special artistic, musical, engineering, entrepreneurial or other talents that demonstrate the full range of human achievement should also be prioritized in the admissions process. Doing so, however, does not negate the value of continuing to prioritize athletic excellence.

Those who oppose athlete preference in college admissions argue that athletes should not be given special treatment and that **athletes take spots that should be given to students who are better qualified academically**.⁶² At Harvard University, for example, 20% of the student body plays on 42 varsity teams, and across all Division III schools student-athletes make up on average 25% of their students.⁶³ As Bowen and James’ research showed, these students on average do not perform as well academically in college as non-athletes, and as recent data from Harvard has shown, are on average also not as academically prepared as non-athletes.⁶⁴

Another argument against athlete preferences is that **they reinforce racial and economic inequities**. While more Black men may receive basketball and football scholarships, the vast majority of students who play hockey, lacrosse, and other sports are White. Overall, 61% of NCAA college athletes are White, 16% are Black, and 6% are Hispanic, and ostensibly scholarship amounts track those percentages. They also likely track differences in economic background, which can be significant. At Harvard, for example, 46.3% of recruited athletes in the class of 2022 came from families with household incomes of \$250,000 or higher, compared

⁵⁸ [“Study Shows that Athletes Make up Huge Percentages of Black Students at Many Universities”](#) *The Journal of Blacks in Higher Education*

⁵⁹ Ibid.

⁶⁰ [“Athletics Are Not Expendable, if Education is Our Goal,”](#) *Diverse: Issues in College Education*

⁶¹ [“A Holistic Approach to Education — the Mind, Body, Spirit”](#) *St. Mary’s College*

⁶² [“Ending Athletic Preference”](#) *Harvard Crimson*

⁶³ [“Athletics Are Not Expendable, if Education is Our Goal,”](#) *Diverse: Issues in College Education*; [“Varsity Athletes Bubble Up from Concentrated Pockets Across U.S., Internationally,”](#) *Harvard Crimson*;

[“Ethical College Admissions: Is it Time to End Admissions Preferences for Athletes?”](#) *Inside Higher Ed*

⁶⁴ [“College Sports Are Affirmative Action for Rich White Students”](#) *The Atlantic*

with one-third of the class as a whole. Only 3.7% of recruited athletes came from families making less than \$40,000.⁶⁵

Opponents of preferences for athletes also **contest the reputational and financial benefits** of attempting to create a top-tier athletic program. While a few universities do turn a profit from their athletic program, according to data from the NCAA, “only 25 of the approximately 1,100 schools across 102 conferences in the NCAA made money on college sports last year,” and “not one college in the NCAA's Division II or III saw their revenues exceed expenses that year.”⁶⁶ A study by the Chronicle of Higher Education also found “less than \$1 of every \$100 in revenue generated by major college athletic departments at public colleges is directed to academic programs.”⁶⁷ And as Nicholas Josefowitz has argued using the case of MIT, schools do not need strong athletic programs to have strong reputations.⁶⁸

Following the **whole person logic** mentioned above, Josefowitz also agrees that the “admissions process should not ignore athletics when making its acceptance decision” and “activities outside the classroom are rightly valued by the admissions office.” But, he asserts, “athletics should be treated like any other extra-curricular activity and not given a special coach’s tag” that privileges it above other valuable activities.⁶⁹

Admissions of Legacies

Bowen and James’ research study also found that in 1999 legacies – children of alumni – are given a 25% boost in college admissions.⁷⁰ While this research is over 20 years old and many schools no longer have a preference for legacies,⁷¹ many schools still do. For example, legacy applicants were five times more likely to be admitted to Harvard than non-legacies between 2010 and 2015, four times more likely to Princeton in 2018, and three times more likely to Stanford in 2017.⁷² A 2011 study found that legacies at 30 selective colleges were also three times more likely to be admitted than non-legacies. Nationwide, about 48% colleges and

⁶⁵ [Meet the Class of 2022](#) Harvard Crimson; [“College Sports Are Affirmative Action for Rich White Students”](#) *The Atlantic*

⁶⁶ [“Do Colleges Make Money From Athletics?”](#) *Best Colleges*

⁶⁷ [“As Sports Programs Get Richer, Few Give Much for Academics”](#) *Chronicle of Higher Education*

⁶⁸ [“Ending Athletic Preference”](#) Harvard Crimson

⁶⁹ *Ibid.*

⁷⁰ [“College Sports Are Affirmative Action for Rich White Students”](#) *The Atlantic*

⁷¹ [“Legacy Preference Gets Fresh Look Following College Admissions Scandal”](#) *The Wall Street Journal*

⁷² [“Is It Time to End Legacy Admissions?”](#) *Best Colleges*

universities gave legacies preferential treatment in 2019, down ten percent from 2004; such legacy preference is more widespread at elite schools than at less selective ones.⁷³

Those who support legacy admissions argue that they are needed to “**encourage donations from alumni.**”⁷⁴ A 2017 Harvard University report found that eliminating legacy preferences at the institution could jeopardize financial aid funds and the “generous financial support” that “is essential to Harvard’s position as a leading institution of higher learning.”⁷⁵ Eliminating legacy admissions may alienate some alumni, who are a critical source of support for colleges and universities.⁷⁶ In 2019, “colleges and universities raised more than \$11 billion from alumni, almost a quarter of their total fundraising, according to the Council for Advancement and Support of Education.”⁷⁷ Proponents argue that the practice of legacy admissions is necessary to raising these funds.

As Stephen Trachtenberg, president emeritus of George Washington University, has argued, **legacy admissions are a way of showing respect for tradition, honoring past contributions, and enhancing a sense of a college as an intergenerational community.** “Careful accommodation of a limited number of youngsters,” he writes, “whose parents, grandparents and great-grandparents have helped to lay the foundation on which the institution stands shows a respect for tradition and honors those without whom the contemporary university might not even exist.”⁷⁸

In the view of Matt Feeney, **legacies also contribute to a college’s local distinctiveness and character**, as “the consideration given to legacy families is a lineal gesture, and represents one of the final emblems of qualitative distinction among schools—the regional, religious, pedagogical, and historical differences that once gave America’s many colleges their many different personalities.”⁷⁹ Another argument in favor of showing a preference for legacy applicants is that they are more likely to enroll, **boosting a college’s yield rate**, which has numerous benefits to the institution.⁸⁰

⁷³ [“Legacy Preference Gets Fresh Look Following College Admissions Scandal”](#) *The Wall Street Journal*

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ [“Legacy Preferences Show a Respect for Tradition”](#) *The New York Times*

⁷⁹ [“The Pointless End of Legacy Admissions”](#) *The New Yorker*

⁸⁰ [“Is It Time to End Legacy Admissions?”](#) Best Colleges; [“What Is “Yield” in the College Admissions Process?”](#) ThoughtCo.

Some schools, such as Princeton University, where roughly half the student population is now non-White, also point to data showing that **legacy admissions increase demographic diversity**, given that “among legacies admitted last year, 27% were students of color.”⁸¹

Those who oppose legacy admissions argue that legacy preferences run counter to colleges’ “stated goal of attracting a more diverse student body.”⁸² They claim that legacy admissions allow people who have money and connections to manipulate the system and “**disproportionately benefits wealthy, white families.**”⁸³ As Michael Dannenberg has written, “More white students are admitted to top 10 universities under an alumni preference bonus than the total number of Black and [Latino/a] students admitted under affirmative action policies.”⁸⁴ Data from Harvard further shows how legacies are more likely to be wealthy; over 46% of legacies in Harvard’s Class of 2022 come from families making more than \$500,000; less than 1% come from families making less than \$40,000.⁸⁵

Connected to these concerns about racial and economic equity, opponents also argue the **advantage provided to legacy applicants is unfair to any student** – rich or poor, White or non-White – whose application is stronger than those of legacies. As Senator Jeff Merkley (D-OR) has stated in introducing his bill that would effectively ban legacy admissions, “Selecting applicants to universities based off of family names, connections, or the size of their bank accounts creates an unlevel playing field for students without those built-in advantages, especially impacting minority and first-generation students.”

Opponents of legacy admissions also contend that **research doesn’t support the notion that legacy admissions are necessary for fundraising.** A study of the top 100 universities using data from 1998 to 2008 found that no statistically significant causal relationship exists between legacy admissions and alumni giving.⁸⁶

Other Factors to Consider

Socioeconomic Background: As mentioned above in **Position 3**, some suggest that admissions officers should prioritize low-income students.⁸⁷ Only 3% of the student body at America’s most selective colleges are from the bottom socioeconomic quartile, while 72% come from the top

⁸¹ [“Legacy Preference Gets Fresh Look Following College Admissions Scandal”](#) *The Wall Street Journal*

⁸² Ibid.

⁸³ [“The Real Reasons Legacy Preferences Exist”](#) *The Atlantic*

⁸⁴ [“Is It Time to End Legacy Admissions?”](#) *Best Colleges*

⁸⁵ [Meet the Class of 2022.](#) *Harvard Crimson*

⁸⁶ [“An Empirical Analysis of the Impact of Legacy Preferences on Alumni Giving at Top Universities”](#) *The Century Foundation*

⁸⁷ [“Affirmative action should be based on class, not race.”](#) *The Economist*

quartile.⁸⁸ Multiple studies have shown that weighing admissions by both income and wealth factors can “achieve racial diversity on selective college campuses while maintaining high academic standards,”⁸⁹ and the University of Colorado Boulder’s class-based admissions system “increased admit rates for not only low-income students but also underrepresented minorities, as compared to race-only affirmative action.”⁹⁰ One study found that preferences based on socioeconomic status instead of race increased the share of first generation students from 7% to 25% and underrepresented minority students from 28% to 30%. A study published by ETS, however, concluded that affirmative action policies based on socioeconomic status are not likely to result in as much racial diversity race-based policies would.⁹¹

Gender: Higher education is increasingly facing a gender imbalance, with more women enrolling than men. According to data from the National Student Clearinghouse, “Men made up just 40% of college students during the 2020-21 school year, while women made up around 60%. Men also accounted for more than 70% of the decline in students at US colleges and universities over the last five years.” Some colleges and universities are admitting a larger percentage of male applicants in order to maintain a gender balance in their student bodies. Baylor University, for example, admitted 7% more men than women in 2020 to increase the proportion of men at the school, which at the time stood at 40%. Some have framed this as “affirmative action for men,” who may not be applying to or attending college for a variety of reasons.

Merit: A common argument made is that college admissions should be based on merit alone. How such academic merit should be determined, however, continues to be a contested question. Frequently used indicators include Grade Point Average (GPA), Class Rank, SAT or ACT scores, extracurricular activities, community service, essay quality, recommendations, and rankings by alumni or admission staff.⁹² What dimensions of “merit” are these indicators measuring, and should they all be weighted equally?

⁸⁸ [“Should Low-Income Students Get More Preference in College Admissions?”](#) *Money.com*

⁸⁹ [“Affirmative action should be based on class, not race.”](#) *The Economist*

⁹⁰ [“Class-Based Affirmative Action Works.”](#) *The New York Times*

⁹¹ [“Can Socioeconomic Status Substitute for Race in Affirmative Action College Admissions Policies? Evidence From a Simulation Model!”](#) *ETS*

⁹² [“Admission Decisions: What Counts.”](#) *College Board*

Setting Expectations (5 min)

In this section, we will review the “Expected Outcomes,” Deliberative Dispositions,” and “Conversation Agreements” below.

Expected Outcomes of the Conversation

The purpose of this deliberation is to deepen our understanding of college admissions policies in the United States. Over the course of the deliberation, we will have the opportunity to listen to the perspectives of our fellow deliberators as well as share our own experiences and beliefs related to college admissions policies. By the end of the conversation, we will have deliberated about the strongest and weakest arguments for affirmative action and discussed our highest and lowest priorities for reforming college admissions policies in the United States. We will also have talked about whether we believe the Supreme Court should uphold or strike down *Grutter v. Bollinger*. Finally, we will have reflected on our conversation, our areas of both agreement and disagreement, and what we have learned from our time together.

Deliberative Dispositions

The DCI has identified several “deliberative dispositions” as critical to the success of deliberative enterprises. When participants adopt these dispositions, they are much more likely to feel their deliberations are meaningful, respectful, and productive. Several of the Conversation Agreements recommended below directly reflect and reinforce these dispositions, which include a commitment to egalitarianism, open mindedness, empathy, charity, attentiveness, and anticipation, among others. A full list and description of these dispositions is available at <https://deliberativecitizenship.org/deliberative-dispositions/>.

Conversation Agreements

In entering into this discussion, to the best of our ability, we each agree to:

1. Be authentic and respectful
2. Be an attentive and active listener
3. Be a purposeful and concise speaker
4. Approach fellow deliberators’ stories, experiences, and arguments with curiosity, not hostility
5. Assume the best - and not the worst - about the intentions and values of others, and avoid snap judgements
6. Demonstrate intellectual humility, recognizing that no one has all the answers, by asking questions and making space for others to do the same
7. Critique the idea we disagree with, not the person expressing it, and remember to practice empathy

8. Note areas of both agreement and disagreement
9. Respect the confidentiality of the discussion
10. Avoid speaking in absolutes (e.g., “All people think this,” or “No educated people hold that view”)

Getting to Know Each Other (10 min)

In this section, we will take less than a minute to share our names and answer one of the questions below.

1. Other than your current profession/career path, what profession interests you the most and why?
2. What is one thing you would change about yourself if you could?
3. What brings you the most joy?

Understanding Tensions Between Achieving Diversity and Practicing Equal Treatment (20 min)

In this section, we will examine the arguments for and against affirmative action. We will each take 1-2 minutes to answer the question below, without interruption or crosstalk.

- What are the **strongest arguments for race-based affirmative action** in college admissions?

Once everyone has answered these questions, we will each take 1-2 minutes to answer the next question:

- What are the **strongest arguments against race-based affirmative action** in college admissions?

After everyone has answered these questions, the group is welcome to take a few minutes for clarifying or follow up questions and responses. Continue exploring the topic as time allows.

Examining the Harvard University and UNC Cases (20 min)

On June 29th, 2023, the Supreme Court ruled race-based affirmative action policies in higher education unconstitutional in *SFFA v. Harvard* and *SFFA v. UNC-Chapel Hill*. We will each address the central questions of these cases below, and then discuss them further as time allows.

- Should private and/or public higher education institutions consider applicants' race in their admissions policies?
- Do you agree with the Supreme Court's decision on race-based affirmative action policies?
- Of the positions outlined in the section above on **Positions on the End of Race-Based Affirmative Action**, which do you think presents the strongest argument?

If there is strong disagreement in the group, try to explore the underlying reasons for the disagreement – are they based on different factual interpretations, different value emphases, or different life experiences? Perhaps you can agree on where precisely you disagree, which can be helpful. Alternatively, if there is widespread agreement in the group, try to dig deeper and examine the nuances of these policies – are there particular contexts, for example, where your agreement breaks down? Or perhaps your reasons for supporting particular approaches are different? Exploring this complexity can be helpful as well.

Break (5 mins)

Understanding Tensions Between Athlete & Legacy Admissions and Equal Treatment (25 min)

In this section, we will examine the arguments for and against preferential consideration for athletes and children of alums. We will each take 1-2 minutes to answer the question below, without interruption or crosstalk.

- What are the strongest arguments for preferential consideration for athletes in college admissions?
- What are the strongest arguments against preferential consideration for athletes in college admissions?

Once everyone has answered these questions, we will each take 1-2 minutes to answer the next question:

- What are the strongest arguments for preferential consideration for children of alumni in college admissions?
- What are the strongest arguments against preferential consideration for children of alumni in college admissions?

After everyone has answered these questions, the group is welcome to take a few minutes for clarifying or follow up questions and responses. Continue exploring the topic as time allows.

Identifying, Evaluating, and Prioritizing Policies (25 min)

Stepping back from the specific questions related to race-based affirmative action, athlete and legacy preferences, we will now identify, evaluate, and prioritize specific goals related to college admissions policies. We will each address the question below, and then together we'll explore our areas of agreement and disagreement. We can also generate additional ideas that may transcend and elicit more support than existing proposals.

- **What do you think the goal of college admissions policies should be?**

In considering this question, we can consider the different possibilities below. Which of these goals is your highest priority? Which is the lowest? Why? Are there other goals that you believe are also important to consider? To what extent should the factors of socioeconomic status, gender, and merit discussed above inform our answers?

1. Admit a student body that is broadly representative of the broader population
2. Admit as many students from disadvantaged backgrounds as possible
3. Admit the most academically advanced applicants who offer the greatest potential to have a positive impact on the world as scientists, doctors, lawyers, leaders, and more
4. Admit the most gifted students across a wide range of areas of human achievement, including athletics, music and the arts, engineering, entrepreneurship, and more
5. Admit students who are the children and grandchildren of alumni and provide a sense of inter-generational continuity, commitment, and community
6. Admit "students of good character and high academic ability, irrespective of economic circumstances, who share its values and show promise for usefulness to society." From Davidson College's *Statement of Purpose*

Reflections (10 min)

While today's conversation is an important step in the journey, effectively balancing concerns about college admission policies will take time and commitment. Please reflect on the insights from your discussion with your fellow participants today, and then answer one of the questions below without interruption or crosstalk. After everyone has answered, we can continue exploring additional questions as time allows.

- In one sentence, share what was most meaningful or valuable to you during this deliberation.
- Where are the areas of both agreement and disagreement in your group?
- Have any new ways to think about this issue occurred to you as we have talked today? Any new ideas that might transcend our current way of conceiving of the problem and its potential solutions?
- Was there anything that was said or not said that you think should be addressed with the group? Are there any perspectives missing from this conversation that you feel would be important to hear?
- What did you hear that gives you hope for the future of conversations on issues related to college admission policies?
- Is there a next step you would like to take based upon the deliberation you just had?

About This Guide

Writers: Kevin Garcia-Galindo, Carla Cole, Daniel Lee, and Graham Bullock

Managing Editor: Carla Cole **Executive Editor:** Graham Bullock

This document drew from a deliberation guide developed by Nirmal Singletary '23, Ian Macel '24, Emily Henkel '23, and Martha Tripsa '24 for a Davidson College course on Ethics and Policymaking (POL 283). The DCI would like to acknowledge these students' contributions to this work.

© Copyright 2023 Deliberative Citizenship Initiative

The Deliberative Citizenship Initiative

The Deliberative Citizenship Initiative (DCI) is dedicated to the creation of opportunities for Davidson students, faculty, staff, alumni, and members of the wider community to productively engage with one another on difficult and contentious issues facing our community and society. The DCI regularly hosts facilitated deliberations on a wide range of topics as well as organizes training workshops for deliberation facilitators. To learn more about these opportunities, visit www.deliberativecitizenship.org.

DCI Deliberation Guides

The DCI has launched this series of Deliberation Guides as a foundation for such conversations. They provide both important background information on the topics in question and a specific framework for engaging with these topics. The Guides are designed to be informative without being overwhelming and structured without being inflexible. They cover a range of topics and come in a variety of formats but share several common elements, including opportunities to commit to a shared set of Conversation Agreements, learn about diverse perspectives, and reflect together on the conversation and its yield. The DCI encourages conversations based on these guides to be moderated by a trained facilitator. After each conversation, the DCI also suggests that its associated Pathway Guide be distributed to the conversation's participants.

DCI Pathways Guides

For every Deliberation Guide, the DCI has also developed an associated Pathways Guide, which outlines opportunities for action that participants can consider that are related to the covered topic. These Pathways Guides reinforce the DCI's commitment to an action orientation, a key deliberative disposition. While dialogue and deliberation are themselves important contributors to a healthy democracy, they become even more valuable when they lead to individual or collective action on the key issues facing society. Such action can come in a range of forms and should be broadly understood. It might involve developing a better understanding of a topic, connecting with relevant local or national organizations, generating new approaches to an issue, or deciding to support a particular policy.

If you make use of this guide in a deliberation, please provide attribution to the Deliberative Citizenship Initiative and email dc@deliberativecitizenship.org to tell us about your event. To access more of our growing library of Deliberation Guides, Pathway Guides and other resources, visit www.deliberativecitizenship.org/readings-and-resources.