



ATTORNEY GENERAL OF MISSOURI

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To Whom It May Concern:

I write to inform you that the United States Supreme Court has finally provided clarity about the practice—common among universities and some employers—of disfavoring certain applicants because of race. In recent years, the Supreme Court has created confusion by acknowledging that racial classifications are presumptively unconstitutional while simultaneously upholding so-called “affirmative action” college admission programs that systemically disfavor applicants because of race. Today’s Supreme Court decisions against Harvard and the University of North Carolina resolve this previous contradiction.

These rulings make clear that disfavoring some applicants because of race is not only deeply unpopular;¹ it is unconstitutional. As the Court put it today, “Eliminating racial discrimination means eliminating all of it.” “Many universities,” the Court held, “have concluded, wrongly, that the touchstone of an individual’s identity is not challenges bested, skills built, or lessons learned but the color of their skin. Our constitutional history does not tolerate that choice.”

Today’s decision finally affirms the promise the Court made 70 years ago: The Constitution requires that “education ... be made available to *all* on equal terms.” *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954) (emphasis added). That means institutions subject to the U.S. Constitution or Title VI must immediately cease their practice of using race-based standards to make decisions about things like admissions, scholarships, programs, and employment. As Chief Justice Roberts put it years ago, “The way to stop discrimination on the basis of race is to stop discriminating on the basis of

¹ Far-left activists almost uniformly favor racial discrimination in college admissions, but their view is widely rejected by bipartisan majorities. Even in liberal states, their views have proven unpopular. The people of California, for example, have twice rejected race discrimination in college admissions—most recently in 2020 by 15 percentage points even though the Democrat Party establishment favored discrimination.

race.” *Parents Involved in Community Schools v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 748 (2007) (plurality op.).

These decisions also make clear that the Constitution prohibits more than just overt discrimination in application processes. Also unlawful is adopting a policy that is racially neutral on its face but has the purpose and effect of disfavoring applicants based on race. The students challenging Harvard’s unlawful admissions policy, for example, established that Harvard introduced “personality” scores to its admissions process and then systematically ranked Asian-American applicants as having poor personalities to make it harder for high-achieving Asian-American students to gain admission. The Court condemned that policy today, noting that the admissions policies at Harvard and UNC are founded on “offensive and demeaning assumption[s].”

Under the decisions handed down today, similar pretextual policies if implemented in Missouri are unlawful. For example, advocates of race discrimination in college admissions are currently urging schools to abandon reliance on standardized tests and GPAs. *See, e.g.*, James Naughton, *Testocracy: The Undemocratic System of Standardized Testing in the United States*, 31 Kan. J.L. & Pub. Pol’y 263, 292 (2022) (“[I]t is time to abolish the standardized testing regime that propagates and perpetuates racial, gender, economic, and other disparities in higher education and career trajectory choices.”); *see also* André J. Washington, *Race-Based Admissions are Meritocratic Admission*, 83 U. Pitt. L. Rev. Online, at 12 (2022) (suggesting that schools should abandon reliance on GPAs for racial reasons). They urge this to make it easier for schools to discriminate without detection. *See Coal. for TJ v. Fairfax Cnty. Sch. Bd.*, 68 F.4th 864 (4th Cir. 2023) (slip op., at 48) (Rushing, J., dissenting) (noting that schools “achieve discriminatory ends under cover of neutral means”). To the extent these policies are designed to evade the clear constitutional prohibition on disfavoring applicants because of race, these policies are unlawful. As the Supreme Court made clear today, “What cannot be done directly cannot be done indirectly. The Constitution deals with substance, not shadows.”


Institutions in Missouri must implement the Supreme Court’s decisions immediately. In today’s rulings, the Court held that there are no legitimate reliance interests created by past rulings that seemed to bless affirmative action. There is thus no justification for Missouri institutions to “grandfather” in existing programs that disfavor applicants based on race. All Missouri programs that make admitting decisions by disfavoring individuals based on race—not just college admissions, but also scholarships, employment, law reviews, etc.—must immediately adopt race-blind standards. All Missouri

programs must adhere to the promise of *Brown* that the Constitution guarantees that opportunities “be made available to all on equal terms.”

That is true not just for public institutions in Missouri, but also entities that are subject to Title VI of the Civil Rights Act because they accept federal funds. Harvard is not a public institution, but today the Supreme Court declared Harvard’s racial discrimination unlawful because Title VI incorporates the constitutional standard.

In light of today’s twin rulings by the Supreme Court, Missouri institutions must identify all policies that give preference to individuals on the basis of race and immediately halt the implementation of such policies. More than 300,000 individuals currently attend institutions of higher education in Missouri. In addition, countless Missourians are employed at or will seek employment at institutions that have adopted affirmative action employment policies. As the chief legal officer for the State of Missouri, I intend to ensure that the constitutional rights of all Missourians are protected, including those who would be harmed by race-based policies that are unlawful under the rulings issued today.

Respectfully,



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