SKIRTING SCOTUS:

HOW MEDICAL SCHOOLS WILL CONTINUE TO PRACTICE RACIALLY CONSCIOUS ADMISSIONS

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EXECUTIVE SUMMARY

The Supreme Court's decision in *Students for Fair Admissions v. Harvard* and *Students for Fair Admissions v. University of North Carolina* makes it illegal for colleges and universities—including medical schools—to use race as a factor in the admissions process. Statements from professional medical associations, government agencies, and medical schools signal that many in the healthcare establishment nevertheless remain ideologically committed to the principle of racial favoritism and reject the virtue of race blindness.

Efforts to game admissions with an eye toward bolstering racial diversity commonly occur under the moniker of "holistic admissions." In theory, holistic admissions should mean de-emphasizing the metrics that primarily determine admission to medical school (e.g., GPA and MCAT scores) and placing greater focus on other academic qualifications, personality traits, or professional accolades. In practice, "holistic" admissions often represent a rebranding or workaround of affirmative action.

Recent history shows that evading bans on race-based admissions through the "holistic admissions" moniker can succeed. Administrators at the UC Davis School of Medicine, for example, have been fully transparent about the fact that their model of holistic admissions represents an attempt to skirt California's ban on affirmative action and to increase the enrollment of students from groups they deem "underrepresented" in medicine. The same scheme used at UC Davis is now popularly floated as a model that medical schools across the nation could emulate.

Though *Students for Fair Admissions v. Harvard* prohibits the use of race as a factor in college admissions, many medical schools appear set to devise workarounds. In the meantime, positive change could be realized through ending the monopoly that the activist-minded Liaison Committee on Medical Education (sponsored by the American Medical Association and Association of American Medical Colleges) currently holds over medical education. Abolishing DEI from medical education also represents an important step, as recent history shows that DEI offices often exert pressure on admissions offices to engage in race-based admissions.

AFFIRMATIVE ACTION

In 1961 President John Kennedy signed an executive order that instructed government contractors to take "**affirmative action**" to employ individuals from groups that faced discrimination on the basis of "race, creed, color, or national origin." Gradually—and **especially after the assassination of Martin Luther King, Jr. in 1968**—affirmative action in the college admissions process became an instrument for addressing centuries of discrimination. Race became an **integral component** of the admissions process.

California v. Bakke (1978) clarified that racial quotas were unconstitutional but upheld the permissibility of race as a factor in the admissions process. In **Grutter v. Bollinger** (2003), the Supreme Court largely upheld Bakke in a 5-4 decision. In joining the majority, Justice Sandra Day O'Connor famously opined that "race-conscious admissions policies must be limited in time" and that "the Court expects that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today."

The decision to prohibit racial preference in college admissions took 20 years rather than 25. In **Students for Fair Admissions v. Harvard** and **Students for Fair Admissions v. University of North Carolina (UNC)**, the Supreme Court ruled that race-based admissions violate the Equal Protection Clause of the Fourteenth Amendment. With the exception of military academies, any school that receives public subsidy (i.e., **all but a very small number of religious schools**) is now prohibited from practicing race-based admissions.

RESPONSES TO SFFA

Several leading medical organizations released statements criticizing the Supreme Court's decision against affirmative action. Worryingly, several statements eschew a commitment to race blindness and faithful adherence to the Court's decision and instead hint that admissions systems should be overhauled in the pursuit of diversity objectives.

MEDICAL ASSOCIATIONS

Leading medical organizations expressed dissatisfaction with the Court's decision in Students for Fair Admissions (SFFA) and their intention to circumvent it. Statements from the Association of American Medical Colleges (AAMC) are particularly alarming. The AAMC has a track record of **forcing progressive political agendas into the accreditation process** and could attempt to compel even those medical schools with better intentions of changing admissions standards in the interest of diversity objectives. In a **press release**, the AAMC said:

> The AAMC believes that a diverse and inclusive biomedical research workforce with individuals from historically excluded and underrepresented groups in biomedical research is critical to gathering the range of perspectives needed to identify and solve the complex scientific problems of today and tomorrow. The AAMC and its member institutions are committed to providing the most effective medical

> education and patient care, as well as advancing scientific discovery to improve lives in our communities. **We will work together to adapt following today's court decision without compromising these goals.** The health of everyone depends on it.

The same sentiment is expressed in the "**about us**" section of the AAMC website, which clarifies:

> While the Harvard and UNC decision and recent local anti-DEI legislation have restricted prior means of diversifying the health care workforce, **many viable avenues remain to remove obstacles and increase opportunities for people historically underrepresented in medicine. The AAMC remains committed to strengthening the diversity of the medical student body** and the physician workforce as we navigate the changing legal landscape.

AAMC President David Skorton **doubled down** on racially conscious medical school admissions in a podcast, saying, "I'm feeling determined that we are going to continue to do the things we need to do to diversify the medical school classes and the health care workforce, not for any political or ideological reason, but because it's good for the public health."

The Council of Medical Specialty Societies was similarly **explicit** about finding ways to sidestep the Court. At the end of a lengthy statement, the coalition that represents more than 50 specialty societies avowed:

> CMSS is committed to strengthening the diversity of health professionals, including physicians. **If the court's decision requires changes to current law, the coalition and its members stand ready to work with the Association of American Medical Colleges (AAMC), the Accreditation Commission on Graduate Medical Education (ACGME), and other stakeholders to ensure a diverse health professions workforce.**

Omar Atiq, President of the American College of Physicians, offered **unequivocal support** for race-based medical school admissions and avowed to "continue to advocate for policies that can help to increase diversity and promote equity."

> The American College of Physicians (ACP) was disappointed to see the Supreme Court decision issued today that rules against the use of affirmative action as a part of a college or university's comprehensive admissions process… Considering race as one of the many determining factors used when considering an individual's admission to an education program can be an important way to combat the harm that systemic racism and discrimination has in the United States. Affirmative action is one means of helping to promote that diversity. **Medical schools and other institutions of higher education should consider a person's race and ethnicity, alongside other factors that are often considered like socioeconomic status and geographic location, as part of evaluating applicants to counter both past and current discrimination. ACP will continue to advocate for policies that can help to increase diversity and promote equity.**

Students for Fair Admissions v. Harvard prohibits colleges from using race as a factor in the admissions process. The assertion that medical schools "should consider a person's race and ethnicity … as part of evaluating applicants to counter both past and current discrimination" isn't a workaround of the Court's ruling but a flagrant violation of it.

American Medical Association President Jesse Ehrenfeld also **lamented** the Supreme Court decision, commenting that:

> Recently established AMA policy reinforces our stance that medical schools must continue to make progress toward enrolling talented and highly qualified medical students in racial and ethnic groups that have been traditionally underrepresented in medicine. Eliminating health inequity requires more commitment to, investment in and support for Black, Latinx and Native American and Indigenous communities, and LGBTQ+ people. Yet, today's ruling undermines policy that was producing positive results and improving the health of our patients, as well as making all physicians better practitioners. This ruling is bad for health care, bad for medicine, and undermines the health of our nation.

Unlike the AAMC, ACP, and CMSS, the American Medical Association did not explicitly advocate for workarounds to the Court's decision. Still, the AMA also has a recent history of leftist activism, which includes instructing doctors to use **woke jargon** like substituting the word "minority" with "marginalized," **lowering standards** in their academic journals to pursue politically convenient narratives, and **passing resolutions** in favor of race-conscious admissions. The AMA also has a **large war chest and an army of attorneys**. Their recent conduct and rhetoric demand vigilance.

A statement from the American College of Obstetricians and Gynecologists is **ambiguous** in whether it simply acknowledges the prospect for continued race-based admissions or whether it advocates for it. In an official statement, the organization said:

> Today's Supreme Court decision is a direct blow to people of color across the United States, who are already at risk of poor health outcomes. We know that racial diversity in health care literally saves lives: research and experience have shown time and time again that disparities in health outcomes decrease when patients are treated by health care professionals who have learned and worked alongside colleagues of different racial and ethnic backgrounds. **The best way to ensure diversity in the medical workforce is through holistic considerations of medical school candidates that take into account race, ethnicity, and the lived experiences that each candidate could bring to their career as a physician because of their background.** Comprehensive consideration of each medical student candidate as an individual can only benefit the communities for which they will ultimately provide care.

Notably, unlike other statements, this carefully worded response was attributed to the organization's chief legal officer rather than its president or the entire organization.

HEALTH AND HUMAN SERVICES

Professional associations were not the only important players in medicine to express disagreement with the Supreme Court's decision. Health and Human Services Secretary Xavier Becerra **released a statement** claiming:

> The Supreme Court ruling today weakens efforts to make higher education more accessible to members of historically underrepresented groups. People of color have been excluded from attending medical school and joining medical organizations for generations. While progress has been made, there is still a significant deficit in the number of Black and Latino doctors and medical students.
>
> We need more health workers, especially those who look like and share the experiences of the people they serve. This builds trust between provider and patient, and helps to improve the overall quality of care. This ruling will make it even more difficult for the nation's colleges and universities to help create future health experts and workers that reflect the diversity of our great nation. The health and wellbeing of Americans will suffer as a result.

Quotas **restricted Jewish medical school enrollment** for generations and Asians are **now penalized** in the admissions process by the very same race-conscious admissions system for which Becerra advocates. His comment is a blatant confession that efforts to continue race-based admissions are not tethered to any consistently applied principle but represent a commitment to an **anti-intellectual orthodoxy** which holds that lower levels of representation of specific minority groups must be an indication of discrimination.

MEDICAL SCHOOLS

Official statements and public comments from several medical school administrators reveal a commitment to racially conscious admissions. The John Burns School of Medicine at the University of Hawaii **released a statement** claiming:

> We embrace diversity and inclusion as part of our shared values which are responsive to our unique location and our responsibility to the peoples of Hawai'i and the Pacific. We uphold that an environment of inclusiveness, equal opportunity, and respect for similarities and differences in our communities advances our missions of education and teaching, research and innovation, clinical healing, and community engagement. The U.S. Supreme Court's decision related to affirmative action in higher education will not deter us from our vision, mission, and values.

A statement from Stanford Medicine **expresses similar defiance**:

> While we adjust to this new environment in a manner that conforms with the law, we want to emphasize that Stanford Medicine firmly believes in the transformative power of diversity, in all dimensions. It fosters perspectives and experiences that enrich our medical knowledge, it enhances the care we provide, and ensures that tomorrow's breakthroughs benefit all.
>
> **While the ruling changes the landscape of university admissions, it does not change our resolve or our values. We reaffirm that commitment to you today and in the days to come.**
>
> We are dedicated to ensuring that Stanford Medicine remains a place where diversity thrives, contributing to our excellence in research, education, and patient care. This includes a deep commitment to health equity in all aspects of our mission.

Carlos del Rio, then interim dean of the Emory University School of Medicine, was also clear about the school's **intent** to continue prioritizing race in the admission process:

> I assure you that our commitment to diversity is not diminished by this decision. As President Fenves noted, our current admissions process evaluates each applicant as an individual. We continue to evaluate the ruling and how it will affect our admissions process in the SOM, but **we will do everything within our legal authority to continue fostering a diverse community**—not only ensuring a rich learning experience but better and more equitable patient care and research.
>
> Diversity is critical for health equity and, as members of the Atlanta community, we recognize the persistent disparities in health and outcomes that exist in our community. Decades of research recognizes the undeniable benefits of diversity for improving the health of people everywhere.
>
> I want to reaffirm our values in light of this ruling, and reassure you that **we remain committed to advancing diversity in our community within the boundaries of the law.** Diversity, equity and inclusion are essential in pursuing excellence in innovation, education and patient care.

In anticipation of the Court's decision, Suzanne Rose, senior vice dean for medical education at the Perelman School of Medicine (University of Pennsylvania) **told an American Medical Association Panel,** "If we're unable to use race in consideration of admissions, then we're going to have to consider other ways to make sure that our goals related to diversity are achieved." After the Court's decision, Western Atlantic University School of Medicine President Joseph Flaherty **told Axios,** "There are other ways you might say are proxies for race and ethnicity you can use to the maximum."

HOLISTIC ADMISSIONS

When affirmative action was legal, universities could engage in explicit racial preference without legal consequence. Even though MCAT scores and GPA were integral to the admissions process, the penalties and bonuses assigned to members of racial groups became so extreme that black applicants with average MCAT scores and GPAs were **four times** as likely to be admitted to medical school as academically equivalent Asian applicants. Overall, black students accepted to medical school have academic qualifications that **mirror** Asian applicants rejected from medical school.

Thanks to the Supreme Court's ruling against affirmative action, medical schools can no longer engage in such explicit racial favoritism. The sensible path forward would be for medical schools to adopt a position of race blindness such that each applicant is judged by merit rather than race or ethnicity. Unfortunately, it appears that much of the medical establishment remains undeterred in the pursuit of racially conscious admissions. Those who want to continue prioritizing race in admissions must devise technical workarounds that generate legally plausible deniability that they reward members of some identity groups and penalize others.

Often, attempts to bypass restrictions on affirmative action occur under the pseudonym of "holistic admissions." At face value, holistic admissions refers to deprioritizing MCAT scores and grades and placing greater emphasis on, as the AAMC **describes** it, "experiences, attributes, and academic metrics … to consider the whole applicant, rather than disproportionately focusing on one factor."

In practice, holistic admissions often operate as a method for implementing racial preferences. Whereas affirmative action essentially assigned handicaps or bonuses to applicants based on racial category, holistic admissions—at least in settings where it occurs with racialized intent—devises new metrics that systematically privilege "underrepresented" groups and/or ascribes greater importance to non-cognitive elements of the admissions process, including interviews and personal essays.

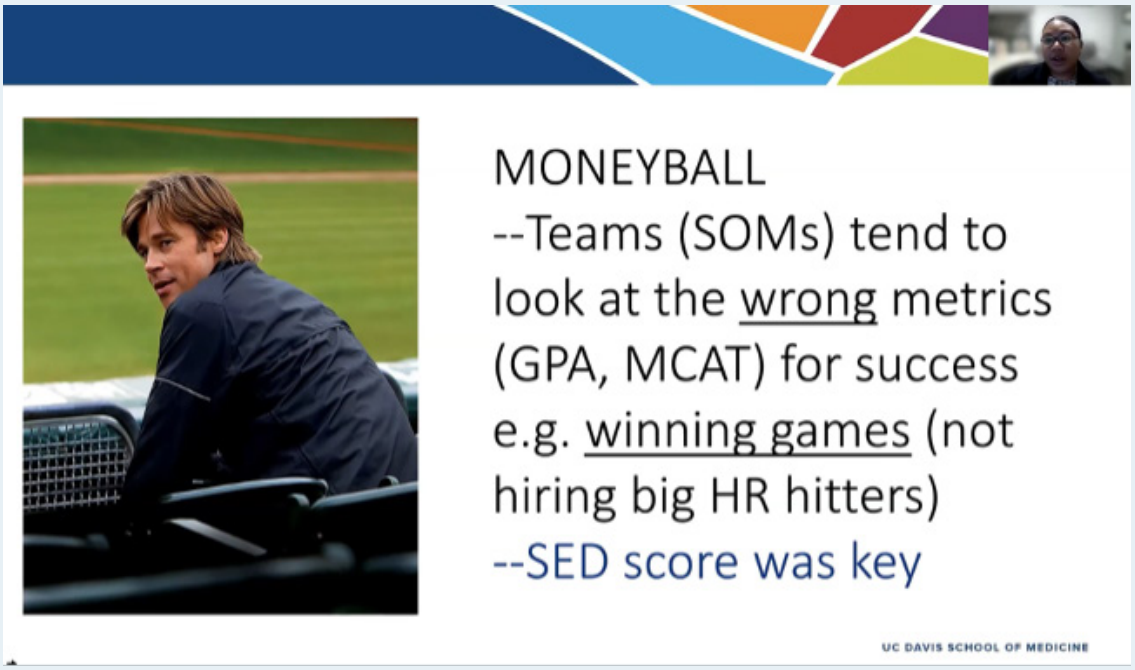
The strategy of gaming admissions to privilege or punish specific racial or ethnic groups dates back a century. As Students for Fair Admissions **notes**:

> **In the 1920s, Harvard began moving away from "test scores" and toward "plac[ing] greater emphasis on character, fitness, and other subjective criteria." Id., at 12–13 (internal quotation marks omitted). Harvard made this move, SFFA asserts, because President A. Lawrence Lowell and other university leaders had become "alarmed by the growing number of Jewish students who were testing in," and they sought some way to cap the number of Jewish students without "'stat[ing] frankly'" that they were "'directly excluding all [Jews] beyond a certain percentage.'"**

Similar schemes have occurred in the more recent past in California, where a ballot initiative (**Proposition 209**) banned affirmative action in 1996. As a UCLA law professor **observed**, some leading university administrators greeted the decision with sabotage rather than compliance.

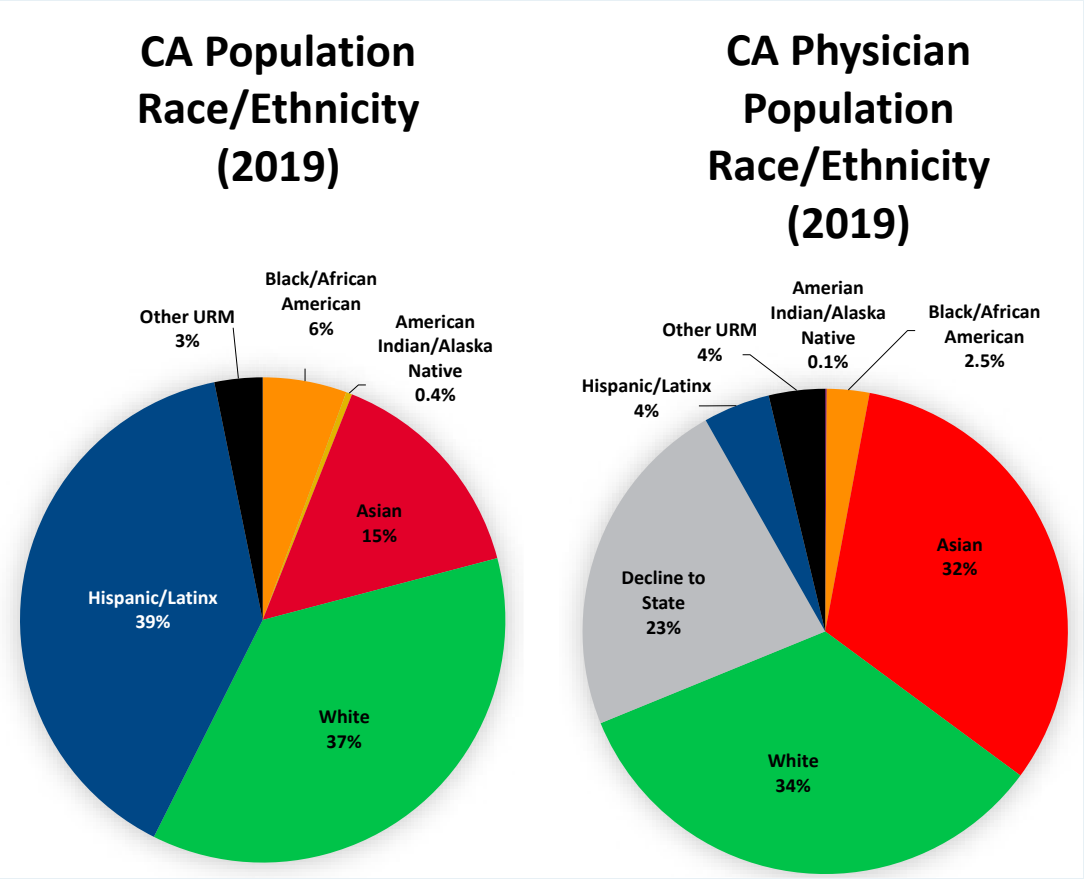
> **The tone among many of the faculty and administrators present was not 'how do we comply with the law in good faith?' but 'What is the likelihood of getting caught if we do not comply?' Some faculty observed that admissions decisions in many graduate departments rested on so many subjective criteria that it would be easy to make the continued consideration of race invisible to outsiders.**

Workaround schemes at the Berkeley and UCLA law schools included preference for low-income students (a ploy that resulted in a greater number of Asian and Eastern European students—the "wrong" kind of minorities), diluting academic requirements, and boosting students who claimed they wanted to focus on critical race studies.



A remarkably similar system was recently devised for the UC Davis School of Medicine. In a webinar about "**socially accountable admissions**" (a new and even more explicit pseudonym for "holistic admissions") hosted by the AAMC, school administrators describe how they prioritize **racial diversity** without using affirmative action.

In the webinar, Associate Dean for Admissions Mark Henderson says the purpose of "socially accountable admissions" is "how to consider applicants to medical school differently" to promote "transformation of the workforce." The "overrepresentation" of Asian physicians is addressed through an "institutional diversity and inclusion policy that explicitly and publicly states our priorities for recruitment based on the statistical gap between California's population and the physician workforce demographic of underrepresented groups."



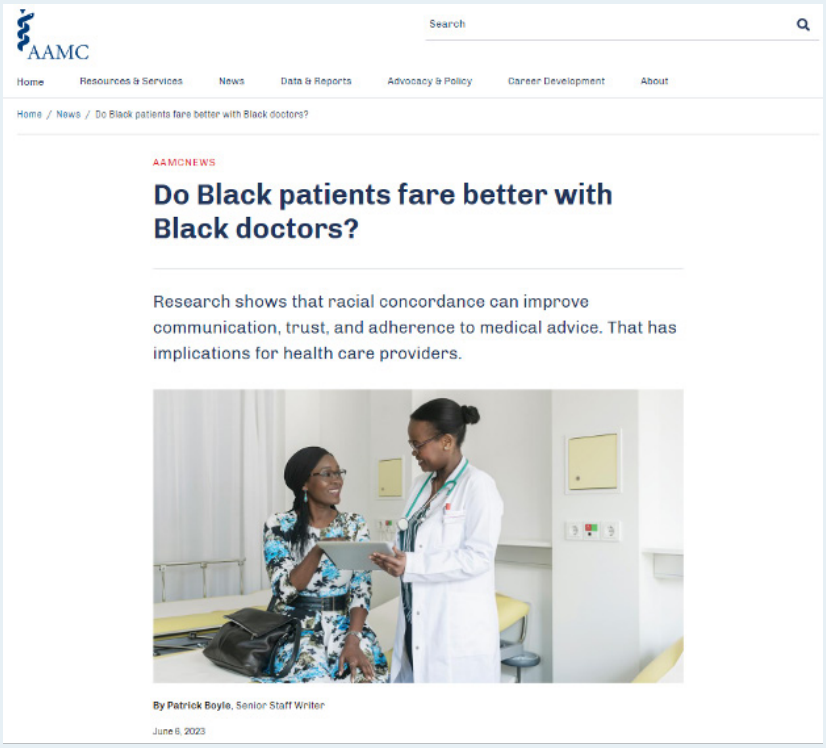
https://www.aamc.org/data-reports/students-residents/interactive-data/2021-facts-enrollment-graduates-and-md-phd-data

The process entails **deemphasizing** what UC Davis labels the "wrong metrics" (i.e., GPA and MCAT scores) and instead using a "socioeconomic disadvantage scale" (SED) which privileges **metrics** including parental education and need-based scholarships for postsecondary education. Henderson calls the scheme "**class-based affirmative action**," but the idea that it is in fact class-based affirmative action and not a cover for race-based affirmative action is dubious. A **report** from the center-left Brookings Institution reveals that class-based affirmative action within selective institutions would not meaningfully boost enrollment of "underrepresented" groups, as economic status **does not explain** most of the racial achievement gap. Instead, it is likely that the de-emphasis on merit in the school's "class-based affirmative action" scheme enables the school to engage in race-based admissions while obfuscating the evidence (i.e., **differences in academic preparedness** of matriculating students across racial groups). Indeed, it's telling that a webinar attendee explains that when it comes time to make admissions decisions, the committee is forced to revisit pseudoscientific **implicit bias** materials to make sure it's "**at the front of people's minds before they even start to have a discussion about an application or review an application**."

Worryingly, the UC Davis admissions model is **popularly floated** as one that could be emulated at other schools now searching for ways to bypass the Court.

JUST CAUSE?

Do patients receive better care from doctors who "look like them"? The idea has found great popularity across the healthcare establishment. A **June 2023 article** published by the AAMC, for example, explicitly endorses the idea that black patients receive better care from black doctors. "'Can we say that if you [a Black patient] have a Black doctor, you're going to have better health outcomes? Yes, we can, because the evidence shows Black doctors provide better care for Black patients,' says Karey Sutton, PhD, scientific director of health equity research at the MedStar Health Research Institute in Maryland."



If it's true that patients receive better care from racially concordant physicians (i.e., doctors of the same race), then factoring race into medical school admissions is potentially sensible in the interest of patient care. It turns out, however, that the insistence that racial concordance in medicine leads to better outcomes is a case of policy-based evidence-making. Activists want the public, judges, and lawmakers to imagine difficult tradeoffs between race and merit in medical school admissions not because they are real, but because they provide a pretext for the implementation of the racial preference admissions schemes that they covet.

When it comes to selling the supposed benefits of racial concordance, sleight of hand occurs through cherry-picked evidence. As Do No Harm documented in a report called **Racial Concordance in Medicine: The Return of Segregation**, there are a small number of studies that purport to demonstrate evidence that racially concordant care is beneficial. However, they are dwarfed by the number of studies that show null, negative or mixed results (i.e., a mix of positive, negative, and null outcomes).

The best method for making sense of large bodies of evidence is systematic review. Researchers attempt to identify all studies relevant to answering a research question (e.g., is racially concordant care beneficial?) and then make a judgment about the answer to that question based on the weight and quality of the research base.

When it comes to race concordance in medicine, five systematic reviews have been published in the last 20 years. Four of those five reviews reject the premise that racial concordance is associated with better care, while the fifth would have reached the same conclusion had it not inexplicably omitted studies that contradict its conclusion.

Ultimately, it turns out that the obvious hypothesis is correct: Admitting students to medical school based on merit (especially MCAT scores and GPA) remains the best hope for cultivating an excellent physician workforce.

TABLE ONE: SYSTEMATIC REVIEWS OF THE EFFECTS OF RACIAL CONCORDANCE IN MEDICINE

Systematic Review	Scope	Inclusion criteria	Number of studies featured in review	Conclusion
Miller et al., 2023	Whether there is an association between patient/provider racial concordance and quality of patient/provider communication	Studies published In English between 2006-2022	33	"Race/ethnicity concordance with their physician does not appear to influence the quality of communication for most patients from minoritized groups."
Shen et al., 2018	Whether there is an association between patient/provider racial concordance and quality of patient/provider communication for black patients	Quantitative peer-reviewed studies from the United States published between 1995-2016	40	"Collectively, the included studies suggest racial concordance is a consistent predictor of better patient-physician communication with the exception of communication quality."
Meghani et al., 2009	Whether there is an association between patient/provider racial concordance and minority patients' health outcomes	Studies published in the United States between 1980-2008	27	"Analysis suggested that having a provider of same race did not improve 'receipt of services' for minorities. No clear pattern of findings emerged in the domains of healthcare utilization, patient provider communication, preference, satisfaction, or perception of respect."
Otte, 2022	Whether "racial, gender, or multifactorial concordance (e.g., race, age, gender, education, language) are associated with patient experience and outcomes"	Studies published between 2016-2021	23 overall; 14 look at racial concordance	"Regardless of the methodology and patient setting, most reviewed studies resulted in no significant association between patient–provider racial concordance and improved patient outcomes. Racially concordant care did not affect factors such as quality of surgical care, hospitalist performance patient trust, and quality of care outcomes (i.e., trust, satisfaction, and decision-making propensity)."
Zhao et al., 2019	Whether patient/provider race, gender, and language concordance are associated with outcomes or satisfaction for surgical patients	Studies published in the United States between 1998 and 2018	16 overall but 6 that look at racial concordance specifically	"Three studies analyzed patient adherence to provider recommendations and found that in all 3 studies, race, gender, and language concordance had no effect on adherence. We saw no effect of race concordance on the quality of care."

LOOKING AHEAD

In *Students for Fair Admissions v. Harvard*, Supreme Court Chief Justice John Roberts **opines** that "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." It is clear that many American institutions of higher education pursuing diverse student bodies are walking a fine line between achieving their goals through truly race-neutral means and finding unlawful loopholes to continue the race-based admissions schemes the court rejected in SFFA. Ultimately, it appears likely these questions will be clarified through years of litigation against the UC Davis School of Medicine and other institutions similarly committed to race-based admissions.

Beyond litigation against offending schools, changing the monopoly status of the LCME (Liaison Committee on Medical Education) over medical school accreditation stands out as a potentially important lever for steering medical schools toward compliance with the spirit of the Supreme Court's decision. The LCME is sponsored by the American Medical Association and the Association of American Medical Colleges. Both organizations lodged displeasure with the court's ruling against affirmative action, and the AAMC explicitly avowed to "adapt" to the ruling. Worse, the LCME imposed diversity standards in 2009 which are supposedly "**flexible**" in how schools identify diversity, but FOIA records obtained by Do No Harm indicate that the University of Utah's 2021 accreditation report from the LCME criticized the school for "**unsatisfactory diversity**" in the race and gender of the school's faculty and staff. Creating meaningful diversity within the accreditation space and allowing medical schools to partner with organizations that don't impose radical political agendas could go a long way toward reorienting medical training toward core obligations.

Abolishing DEI at medical schools is also instrumental in redirecting admissions committees toward merit and aptitude rather than identity politics. DEI corrupts all facets of academic life and compels a fixation on group representation, including within the admissions process. At Texas A&M, for example, "diversity accountability" requirements were imposed on all departments. In admissions, that meant "**having a minimum of 25 percent 'Hispanic/Latinx' enrollment. To hit these goals, admissions offers use 'affirmative action' and 'holistic admissions processes' to favor 'historically underrepresented groups.**'" Public outrage around what transpired at Texas A&M galvanized efforts toward banning DEI from Texas' public colleges and universities. In states that haven't banned DEI, however, the offices remain a stubborn and persistent roadblock to merit-based admissions. DEI must be abolished to allow for medical education to reward excellence rather than group identity.

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