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MECHANISMS FOR ADVANCING HEALTH EQUITY, RACISM AS A PUBLIC HEALTH CRISIS

Fact Sheet

A Snapshot of Four 2023 Supreme Court Cases and their Impacts on Racial Health Equity

Law and policy play a critical role in shaping health outcomes especially when it comes to racial health equity. While legislative actions and trends matter, it is also important to understand the role of the courts in altering legal landscapes in ways that can positively or negatively impact racial health disparities. The full scope of these public health impacts may not always be clear, particularly when courts are deciding issues that do not directly address traditional public health issues like vaccine or mask mandates. Yet as public health practitioners and advocates, we know that the evidence shows that clinical care impacts a smaller portion of health outcomes than the social determinants of health.[1] The social determinants of health are the conditions under which people live their lives that impact their health and quality of life such as racism, access to education, and opportunities for civic participation. [2] The judiciary plays a key role in influencing these conditions by establishing the boundaries of what the law permits or forbids, which means judicial decisions inevitably impact health equity.

This fact sheet highlights four 2023 U.S. Supreme Court cases with examples of how each potentially impacts racial health equity. Critical social determinants of health were at issue in *Biden v. Nebraska* (student loan debt), *Students for Fair Admissions v. President and Fellows of Harvard* College (access to college), *Allen v. Milligan* (voting rights), and *Health and Hospital Corporation of Marion County v. Talevski* (the ability to bring civil rights claims). Although some of these cases seem race-neutral, their outcomes still matter to the health of communities of color. In *Biden v. Nebraska*, for example, at issue was federal authority to erase some student loan debt. Student loan debt is a burden, disproportionately carried by Black and Hispanic people, which has serious health impacts including increased suicidal ideation and poor mental health.[3] This is just one example of how the judiciary influences structural inequities that are intertwined with racial inequities.

Structural racism is the most significant driver of health disparities. This is evidenced by the fact that, across-the-board, Black, Hispanic, Native American and Alaska Native communities, and other communities of color routinely experience poorer health outcomes when compared to their White counterparts. If efforts to undo such harms are deemed unlawful by courts, health disparities will worsen.

This fact sheet examines two Supreme Court cases that can be classified as wins for racial health equity (*Allen* and *Talevski*) and two losses (*Biden* and *Students for Fair Admissions*). It provides a brief snapshot of the cases and briefly identifies some of their impacts on racial health equity to better help those working in public health understand the connection between case law and health outcomes for communities of color.

Overview

Selection of 2023 court cases

CASE	HOLDING	EXAMPLE OF RACIAL HEALTH EQUITY IMPACT
Biden v. Nebraska	The Supreme Court struck down a loan forgiveness program that would have reduced or eliminated up to $20,000 of certain federal loans. The Court held that the Secretary of Education does not have authority through the HEROES Act to establish the program that would have cancelled approximately $430 billion in student loan debt.	Though the harm of student loan debt has long preceded the COVID-19 pandemic, the loan forgiveness program was introduced to address increasing economic pressure mounting since the pandemic. These pressures, and student loan debt, have disproportionately harmed communities with low-incomes and communities of color. In 2021, while only nine percent of White borrowers reported being behind on student loan debt, 17 percent of Black borrowers and 18 percent of Hispanic borrowers reported being behind.[4] Student loans contribute to a range of negative health impacts, including poor mental health, suicidal ideation, and financial hardships that make it more difficult for individuals to meet their basic needs.
Students for Fair Admissions v. President and Fellows of Harvard College	The Supreme Court held that race-based affirmative action admissions programs at Harvard College and The University of North Carolina violate Title VI of the Civil Rights Act of 1964 and the 14th Amendment's Equal Protection Clause, respectively.[5]	Although not expressly overruling prior precedent, the Court adopted a new line of reasoning that essentially ends race-conscious affirmative action admissions programs in higher education. It creates new legal barriers to providing access to college, a social determinant of health, for underrepresented people of color, and further threatens to deepen racial inequities in student debt burdens. In doing so, it adds to recent legal trends making it unlawful for institutions to address structural racism, further entrenching racial health disparities.
Allen v. Milligan	The Supreme Court concluded that Alabama's redistricting plan for seats in the U.S. House of Representatives likely violates Section 2 of the Voting Rights Act, which prevents states from enacting racially discriminatory processes denying or abridging a citizens' right to vote. Notably, the Court refused to adopt a new "race-neutral" benchmark for § 2 VRA cases that would have disturbed nearly 40 years of existing jurisprudence.	Alabama's redistricting plan would have diluted the power of Black voters. Successful policy campaigns that aim to address health outcomes require civic participation and influence over the political environment.[6] Policy that impacts racial health equity is also decided by the delegation of power given to our elected representatives.[7] Achieving racial health equity requires inclusive civic engagement policies, particularly in areas with a history of racially exclusive voting laws and policies.
Health and Hospital Corporation of Marion County v. Talevski	The Supreme Court held provisions of the Federal Nursing Home Reform Act (FNHRA) unambiguously create rights enforceable under 42 U.S.C. § 1983 (civil action for deprivation of rights) and that nursing home residents can seek relief under § 1983. Of note, the Court rejected the argument that § 1983 does not apply to	The Supreme Court's holding has potentially broad implications because safety-net program enrollees rely on § 1983 to seek relief for civil rights violations. Medicaid is one of several safety-net programs enacted under the Spending Clause and is the largest healthcare payer providing access to care for people of color with low incomes. These individuals are

	federal Spending Clause legislation like the FNHRA.	often subject to discrimination in the healthcare delivery system resulting in poorer health outcomes and higher mortality rates. The Supreme Court's holding protects an important pathway for individuals enrolled in safety-net programs to seek redress for civil rights violations in federal court.

Discussion

Biden v. Nebraska

The case centers on the extent of the Secretary of Education's authority to "waive or modify" provisions applicable to student financial assistance programs under Title IV of the Higher Education Act of 1965[8] pursuant to the Higher Education Relief Opportunities for Students (HEROES) Act of 2003.[9] The relevant portion of the HEROES Act states that the Secretary "may waive or modify any statutory or regulatory provision applicable to the student financial assistance programs under title IV of the [Education Act] as the Secretary deems necessary in connection with a war or other military operation or national emergency."[10] In the wake of the COVID-19 pandemic, the Secretary exercised this authority to reduce or eliminate certain federal loans up to $20,000 that would result in approximately $430 billion in student loan cancellation.[11]

The Supreme Court held the Secretary did not have the power create the program under the HEROES Act.[12] It found that the Secretary overstepped its authority because Congress's use of the word "modify" only permits "modest adjustments and additions to existing provisions" but that the Secretary "may not transform them."[13] The Court held that the loan forgiveness program, however, went beyond mere modification to create a fundamentally new loan program. In so ruling, the Court eliminated a loan forgiveness program that would have positively impacted almost all student loan borrowers and completely erased the student loan debt of over 20 million borrowers.[14]

Shekinah A. Fashaw-Walters and Cydney M. McGuire argue that the loan forgiveness program was an example of what they termed "racism-conscious policy."[15] Racism-conscious policies may be facially race-neutral, but they still "allow policy makers to address racism by identifying, understanding, and responding to the structural barriers and inequities that give rise to and maintain the social, political, and economic limitations imposed on minoritized groups in the US."[16] They explain:

> A race-neutral loan forgiveness policy would forgive the same amount for everyone. A race-based policy would provide loan forgiveness only for Black people. In the [loan forgiveness program] that was struck down, the policy would have provided $10,000 to everyone below a specific income threshold and an additional $10,000 to those who received a Pell Grant. This is a racism-conscious policy because it recognizes that a disproportionate number of minoritized groups qualified for Pell Grants as a result of exceptional financial need driven by centuries of structural inequity. [17]

The loan forgiveness program struck down by the Supreme Court would have provided economic relief to lower-income and communities of color, who have long carried a disproportionate burden of student debt and are now faced with the rising costs of living in the aftermath of the COVID-19 pandemic.[18] As of 2016, only 66 percent of White students left college with student loan debt compared to over 90 percent of African American and 72 percent of Latino/a students.[19] Women also hold a majority of student loan debt reflecting the

intersectional nature of this inequity.[20] The federal government had anticipated the program would help reduce racial wealth gaps by erasing all federal student loan debt owed by as many as one in four Black borrowers.[21]

The Court's ruling has broad implications for racial health equity. The mental health impacts of student debt can be serious, with a recent survey finding that one in 14 respondents reported having experienced suicidal ideation due to student loan debt at some point.[22] A 2023 study also found that young adults carrying student loan debt were almost three times more likely to face difficulty paying medical bills and twice as likely to skip health care services due to the associated costs.[23] Whether impacting mental health, healthcare access, or economic stability, student loan debt is a looming factor inhibiting the progress towards health equity.

Students for Fair Admissions v. Harvard College

In *Students for Fair Admissions v. Harvard College* (*SFFA*), the Supreme Court invalidated race-conscious affirmative action admissions programs at Harvard College and the University of North Carolina (UNC). Since its decision in *Grutter v. Bollinger* (2003), the Supreme Court has held that under the Equal Protection Clause of the 14th Amendment colleges have a compelling interest in the educational benefits of a diverse student body and that a narrowly tailored admissions program seeking meaningful representation of underrepresented students of color is constitutional.[24] While not outright rejecting this holding, *SSFA* deviates from the Court's prior precedent, essentially foreclosing any real possibility of viable race-conscious affirmative action admissions program for many colleges.[25]

Race-based affirmative action programs must be supported by a compelling interest. *SFFA*, however, rejected the compelling interests that Harvard College and UNC relied on to support their programs. It found, in part, they were judicially unreviewable even though most of the interests at issue in *SSFA* mirrored interests the Court had previously deemed to be compelling and reviewable (*e.g.*, breaking down racial stereotypes).[26] *SFFA* also concluded the programs operated as unconstitutional negatives because college admissions are "zero-sum" with winners and losers.[27] Therefore, the Court reasoned that if underrepresented students of color are admitted in larger numbers under the affirmative action programs and enrollment of non-beneficiaries declines, then colleges are using race as an unconstitutional negative against the latter groups.[28]

This case will have broad impacts on racial health equity. The most immediate and clearest impacts are on access to higher education. Prior to *SFFA*, states that banned affirmative action in college admissions experienced decreases in enrollment of underrepresented people of color, especially at more prestigious colleges.[29] This provides evidence that *SFFA* will have similar impacts on enrollment going forward. Also, although not at issue in the case, access to scholarships has already been dealt a blow. Drawing on the Court's broad language, including its zero-sum model, some colleges stopped using membership in an underrepresented racial group as a criterion for providing scholarships.[30] Access to college requires overcoming two major hurdles: admissions and ability to pay. The dual foreclosure of admission opportunities and money for tuition and fees will further deepen existing racial inequities in accessing education, a social determinant of health.[31] This should raise the alarm for advocates of racial health equity.

The Court's reshaping of the legal landscape is taking root in a social system in which the very groups harmed by *SFFA's* ruling are overwhelmingly the same groups targeted by for-profit colleges for predatory student lending with fraudulent promises of educational benefits that saddle Black and Hispanic students with crippling debt and little to no educational value.[32] As discussed in *Biden v. Nebraska* above, these are also generally the same students who experience a greater educational debt burden than their White

counterparts, a burden that limits their ability to meet their basic needs like food security and access to healthcare.[33] These are just a few examples of how *SFFA* fuels structural racism and props up a social system already built to produce racial health inequities.

SSFA tells us that the purpose of the 14th Amendment is to end all governmentally imposed racial discrimination.[34] But public health advocates take note: *SFFA* is another step towards creating a legal structure that seeks to wholly erase the ability of governmental systems to address structural racism.

Allen v. Milligan

In a major voting rights decision, the Supreme Court ruled that Alabama's proposed redistricting plan likely violates Section 2 of the Voting Rights Act. [35] Alabama's districting plan created a single majority Black district while dividing further groups of Black voters across several other districts.[36] Three groups sued seeking to block Alabama from conducting congressional elections under the plan, arguing that Section 2 required two majority Black districts. The purpose of Section 2 is to prevent states from enacting racially discriminatory processes that deny or abridge a citizens' right to vote. As applied here, Section 2 claims are directed at processes: (1) that interact with "social and historical conditions to cause an inequality in the opportunities enjoyed by black and white voters," (2) dilute or even cancel Black voting power, (3) occur when there are vast differences in candidates preferences between the groups, (4) and candidates Black voters would elect are routinely defeated because their votes are diluted by majority White voting districts.[37] Applying the Court's longstanding Section 2 jurisprudence the Court concluded the district court had not erred in finding a likely Section 2 violation.

Importantly the Court also rejected "Alabama's attempt to remake [the Court's] Section 2 jurisprudence anew" with Alabama's alternative "race neutral benchmark" framework to assess Section 2 challenges.[38] Had the Court adopted Alabama's framework, it would have made it harder to successfully bring Section 2 challenges.

Public health, racial health equity, and civic participation can be strengthened by promoting inclusive voting policies.[39] States that have voting policies that are more inclusive and that have greater voter participation also have better health outcomes.[40] The Health & Democracy Index visually explores this relationship and underscores how weakening the voting power of people of color and other groups may lead to further disparities in health outcomes.[41] As demonstrated by the index, Alabama provides less voting access, due to several restrictive voting policies, and worse health outcomes.[42] These outcomes cannot be separated from structural racism. The Court's decision to honor precedence and to enjoin Alabama from conducting elections under a redistricting map that would have diluted the power of Black voters is promising news for racial health equity.[43]

Health and Hospital Corporation of Marion County v. Talevski

The Supreme Court held that the provisions of the Federal Nursing Home Reform Act (FNHRA) unambiguously create rights enforceable under 42 U.S.C. § 1983.[44] Section 1983 has historically permitted an individual to bring a civil action against those acting under color of state law for deprivation of their federal rights.[45] In reaching this conclusion the Court rejected the argument that Section 1983 does not apply to legislation, such as the FNHRA, created by Congress via its Spending Clause powers. Many safety-net program enrollees in programs created by Spending Clause legislation rely on Section 1983 to seek relief for civil rights violations.

The FNHRA requires nursing homes receiving Medicaid funding to "protect their residents' health, safety, and dignity." [46] It also identifies specific individual rights that residents have.[47] A resident in a nursing facility owned by Health and Hospital Corporation (HHC) of Marion County began suddenly deteriorating because he was being chemically restrained with six powerful psychotropic medications, inhibiting his ability to communicate and eat on his own. HHC subsequently began sending the resident away to a psychiatric hospital, eventually trying to force his permanent transfer to a dementia facility without first notifying the resident or his family. After his death, the resident's family sued HHC under Section 1983 for depriving him of his FNRHA-guaranteed federal rights, citing violations of FNHRA's unnecessary-restraint and predischarge-notice provisions.

States administer Medicaid within broad federal guidelines, enforced through oversight from the Centers from Medicare and Medicaid Services (CMS) and through federal court litigation. While the Medicaid statute itself does not provide any private right of action, Section 1983 has provided a mechanism for enrollees to enforce their civil rights, which Federal circuit courts have typically upheld. However, in 2020, Federal circuit courts began deviating from their long-standing position of upholding enforcement by issuing opinions refusing to allow private enforcement.[48]

Spending Clause legislation like the Medicaid Statute, Children's Health Insurance Program, and Supplemental Nutrition Assistance Program provide a safety net for people of color with low incomes. Although the Supreme Court's decision is limited to the FNHRA, the potential implications extend to all Spending Clause legislation and the populations who rely on programs established through the Spending Clause. According to 2020 CMS demographic data, Medicaid enrollees were more racially and ethnically diverse than the broader U.S. population, with Medicaid providing insurance coverage for roughly 55 million individuals who identify as American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander.[49] A further limitation on Medicaid enrollees' ability to seek private enforcement of civil rights violations under Spending Clause statutes would have been a dangerous deprivation of a legal mechanism critical to enforcing non-discrimination provisions and moving the needle on bridging the gap on disparate health outcomes.[50]

Conclusion

This fact sheet examined a selection of 2023 U.S. Supreme court cases that have major impacts on efforts to advance racial health equity. Working at the intersection of public health and racial justice requires understanding how the judiciary impacts public health and how even seemingly race-neutral legal issues can have far reaching impacts on the health of communities of color.

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[4] BOARD OF GOVERNORS OF THE FEDERAL RESERVE, *Economic Well-Being of U.S. Households in 2021* (May 2022), https://www.federalreserve.gov/publications/2022-economic-well-being-of-us-households-in-2021-student-loans.htm#:~:text=In%202021%2C%2017%20percent%20of%20Black%20borrowers%20and,persist%20based%20on%20the%20type%20of%20institution%20attended.

[5] The 14th Amendment's Equal Protection Clause applies to state entities like the University of North Carolina, but does not apply to Harvard College, a private entity. In this case, however, Harvard College is subject to Title VI of the Civil Rights Act of 1964. In reviewing a claim for race-discrimination under Title VI "discrimination that violates the Equal Protection Clause of the Fourteenth Amendment committed by an institution that accepts federal funds also constitutes a violation of Title VI." *Students for Fair Admissions v. President and Fellows of Harvard College*, 600 U.S. 181, 198 n.2 (2023) (internal citation omitted).

[6] AMERICAN PUBLIC HEALTH ASSOCIATION, *Advancing Health Equity through Protecting and Promoting Access to Voting* (Nov. 8, 2022), https://www.apha.org/Policies-and-Advocacy/Public-Health-Policy-Statements/Policy-Database/2023/01/18/Access-to-Voting.

[7] *Id*.

[8] 20 U.S.C. § 1070 et seq.

[9] 20 U.S.C. § 1098aa et seq.

[10] 20 U.S.C. §1098bb(a)(1).

[11] *Biden v. Nebraska*, 143 S. Ct. 2355, 2362 (2023). Also see *Department of Education v. Brown*, 600 U.S. 551 (2023), which presented a similar legal challenge to the loan forgiveness program but was brought by student loan borrowers who were found to lack standing to challenge whether the program was lawful.

[12] An initial question for the Court to decide was whether the states, who were not federal loan servicers, had standing to legally challenge the case. The Court held Missouri had standing to sue because it created the Missouri Higher Education Loan Authority (MOHELA), one of the largest servicers and holders of student loans, as an "instrumentality of Missouri" and the harm MOHELA stands to suffer "is necessarily a direct injury to Missouri itself." *Biden,* 143 U.S. 2355 at 2365.

[13] *Id.* at 2369.

[14] *Id.* at 2362.

[15] Shekinah A. Fashaw-Walters & Cydney M. McGuire, *Proposing a Racism-Conscious Approach to Policy Making and Health Care Practices,* HEALTH AFFAIRS (Oct. 2, 2023), https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2023.00482.

[16] *Id.*

[17] *Id.*

[18] Amy Howe, *Supreme Court strikes down Biden student-loan forgiveness program*, SCOTUSBLOG (June 30, 2023), https://www.scotusblog.com/2023/06/supreme-court-strikes-down-biden-student-loan-forgiveness-program/.

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[23] *Min* Zhan and Kang Sun, *Student Loan Debt and Financial Hardships in Health Care Utilization*, *SOCIAL* DEVELOPMENT ISSUES (Feb. 2023), https://journals.publishing.umich.edu/sdi/article/id/3908/.

[24] *Grutter v. Bollinger*, 539 U.S. 306, 327-34 (2003); *Gratz v. Bollinger*, 539 U.S. 244, 268 (2003); *Fisher v. University of Texas at Austin*, 570 U.S. 297, 308-309 (2013); *Fisher v. University of Texas at Austin*, 579 U.S. 365, 381 (2016).

[25] April Shaw, *Reflections on how The Supreme Court Affirmative Action in College Admissions Opinion Denies the Reality of Racism in the U.S. and its Impact on People of Color*, THE NETWORK FOR PUBLIC HEALTH LAW (Oct. 4, 2023), https://www.networkforphl.org/news-insights/reflections-on-how-the-supreme-court-affirmative-action-in-college-admissions-opinion-denies-the-reality-of-racism-in-the-u-s-and-its-impact-on-people-of-color/.

[26] *Compare Students for Fair Admissions*, 600 U.S. 181, 214-15 (concluding interests such as "'better educating [] students through diversity" and "breaking down stereotypes'" are not subject to "meaningful judicial review" as required by a strict scrutiny standard), *with Grutter*, 539 U.S. at 330 (applying strict scrutiny to review educational benefits that included promoting cross racial understanding and breaking down racial stereotypes and finding the benefits to be substantial).

[27] *Students for Fair Admissions*, 600 U.S. at 218-219.

[28] *Id.*

[29] Elise Colin & Bryan J. Cook, *The Future of College Admissions with Affirmative Action*, URBAN INSTITUTE (June 23, 2023), https://www.urban.org/urban-wire/future-college-admissions-without-affirmative-action.

[30] Liam Knox, *Reading Between the Lines of Affirmative Action*, INSIDER HIGHER EDUCATION (July 17, 2023) (assessing how students in Missouri and Kentucky have already been impacted and threats looming in Ohio and Wisconsin), https://www.insidehighered.com/news/admissions/traditional-age/2023/07/17/what-affirmative-action-decision-means-beyond-admissions.

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[34] *Students for Fair Admissions*, 600 U.S. at 206.

[35] *Allen v. Milligan*, 599 U.S. 1 (2023).

[36] *Id.*

[37] *Id.* at 17–18.

[38] *Id.* at 23.

[39] Jeanne Ayers, *Advancing Health Equity Through Voter Participation*, THE NETWORK FOR PUBLIC HEALTH LAW (Aug. 25, 2022) https://www.networkforphl.org/news-insights/advancing-health-equity-through-voter-participation/.

[40] *Id.*

[41] HEALTHY DEMOCRACY HEALTH PEOPLE, *Health & Democracy Index* (2021), https://democracyindex.hdhp.us.

[42] *Id.*

[43] Following this case, Alabama redrew its districting map with only one district that contained a majority of Black voters. The district court subsequently issued a new ruling preventing Alabama from using that map because it likely violated § 2 of the Voting Rights Act, and the Supreme Court denied Alabama's emergency request for the Court to intervene and block that ruling. Amy Howe, *Court denies Alabama's request to use voting map with only one majority-Black district*, SCOTUSBLOG (Sept. 26, 2023), https://www.scotusblog.com/2023/09/court-denies-alabamas-request-to-use-voting-map-with-only-one-majority-black-district/.

[44] *Health and Hospital Corporation of Marion County v. Talevski*, 599 U.S. 166, 184-186, 188 (2023) (the Court also held that private enforcement of those rights is compatible with the FNHRA's remedial scheme).

[45] *Id.* at 171.

[46]*Id.*

[47] *Id.*

[48] Jane Perkins, *Private Enforcement of the Medicaid Act Under 42 U.S.C. § 1983,* NATIONAL HEALTH LAW PROGRAM (Jun. 30, 2021), https://healthlaw.org/wp-content/uploads/2021/07/Fact-Sheet-1983-Enforcement.pdf.

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