Affirmative action has been repeatedly challenged and redefined by the courts.

The first Supreme Court ruling upholding affirmative action in 1978 resulted in a continuing controversy. Although the Court in its landmark decision affirmed the right of public institutions to consider race as part of a holistic assessment of applicants, it left open the possibility that a new conservative majority could add new limits or overturn old precedents. Under President Donald Trump, the Department of Education rescinded Obama-era guidance promoting best-practices for race-conscious admissions, and the Justice Department’s civil rights division is planning to open new investigations into race-based university admissions policies.

Key constitutional concepts for affirmative action policies at public universities

**COMPELLING STATE INTEREST**
The policy must be constitutional if it is the primary goal of substantially achievable, while also remaining open to others who do not benefit. Policymakers should avoid rigid quotas.

**NARROWLY TAILORED**
The policy must be constitutional if the court holds that classroom diversity is a valid interest for the admissions process. The policy must be narrowly tailored to accomplish that goal, and one required for the least restrictive means possible. The court holds that classroom diversity is a valid interest for the admissions process. The policy must be narrowly tailored to accomplish that goal, and one required for the least restrictive means possible. In the table to the right, these terms are further defined.

**TIMEFRAME**
The policy must be constitutional if the court holds that classroom diversity is a valid interest for the admissions process. The policy must be narrowly tailored to accomplish that goal, and one required for the least restrictive means possible. In the table to the right, these terms are further defined.

**HISTORICAL TIMELINE**

**Race-conscious” affirmative action policies — favoring members of disadvantaged racial minority groups in the admissions process — have spent decades navigating a legal minefield of constitutional law. Since the University of California's strict racial quota system was found unconstitutional on the same level in 1978, the Supreme Court declines to set a firm precedent on the issue of affirmative action generally. The court holds that classroom diversity is a valid interest for the admissions process. The policy must be narrowly tailored to accomplish that goal, and one required for the least restrictive means possible. In the table to the right, these terms are further defined.

**COMPETITIVE SELECTIVITY**
The first Supreme Court ruling upholding affirmative action in 1978 resulted in a continuing controversy. Although the Court in its landmark decision affirmed the right of public institutions to consider race as part of a holistic assessment of applicants, it left open the possibility that a new conservative majority could add new limits or overturn old precedents. Under President Donald Trump, the Department of Education rescinded Obama-era guidance promoting best-practices for race-conscious admissions, and the Justice Department’s civil rights division is planning to open new investigations into race-based university admissions policies.

After legal challenges in the 1990s, many schools stopped considering race in admissions processes.

Race-based affirmative action has long been a phenomenon among the most elite universities. Approximately 16 percent of top-tier public institutions that accept 85 percent or more of their applicants, leaving little room for race-conscious selectivity. A growing conservative political backlash against affirmative action, beginning with the reappraised case in 1994, prompted many schools to end their race-conscious admissions policies. Public universities were among the last to drop these policies, even in states that did not pass laws striking the practice.

*Sources: Ballotpedia; National Conference of State Legislatures; Daniel Hirschman and Ellen Berrey, "The partial deinstitutionalization of affirmative action in U.S. higher education, 1988-2014"; Tucker Doherty, POLITICO Pro DataPoint*