

QUICK TAKE

THE MINORITY AIDS INITIATIVE (MAI) AFTER AFFIRMATIVE ACTION

THE MINORITY AIDS INITIATIVE (MAI) WAS ESTABLISHED BY CONGRESS IN 1998 in response to the highly disproportionate impact of HIV in communities of color and the inadequate investment in Black and Latino communities over many years. It was created to: (1) increase funding for direct services, financial management, administration, program development, and evaluation; (2) expand the pool of HIV prevention, care, and treatment providers and HIV researchers; and (3) enhance minority providers' ability to compete for broader HIV/AIDS funding. Since its enactment, the HIV epidemic

has become even more highly concentrated in communities of color. Some have questioned the ongoing viability of this program following the Supreme Court's recent decision in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, which addressed affirmative action in the context of college admissions. Notwithstanding this decision, the MAI remains consistent with Supreme Court precedents and can still be supported.

THE MAI'S USE OF RACE DIFFERS FROM ITS USE IN COLLEGE ADMISSIONS.

Students for Fair Admissions has no direct bearing on the MAI, yet some observers worry that its holding, as well as

future rulings, could undermine support for the program. Policymakers and HIV stakeholders, however, must continue offering defenses for the MAI. The Court considers three factors when assessing the constitutionality of race-based policies, all of which the MAI can satisfy:

Must satisfy strict scrutiny: Strict scrutiny requires a program to further a compelling government interest and be narrowly tailored. Given the large and growing disparities in HIV acquisition and HIV outcomes experienced by Black, Latino, and other people of color, MAI offers a focused response to expand access to quality services for these communities. Additionally, it is intended to build services capacity in communities where unmet needs are the greatest. Thus, the program is narrowly tailored because it

THE SUPREME COURT'S DECISION STRIKING DOWN AFFIRMATIVE ACTION

In June 2023, the Supreme Court ruled that using race as one component of a college's overall admissions criteria violated the U.S. Constitution. This was the latest chapter in the contentious debate over whether and how to remedy inequities stemming from slavery and generations of racism experienced by African Americans and other people of color.

Because the MAI is explicitly focused on minorities, casual observers may believe that this case applies to it. The way in which race was used in college admissions, however, is fundamentally different from the way that the MAI functions.

WHAT WAS THE ISSUE IN STUDENTS FOR FAIR ADMISSIONS?

The current case related to whether the Supreme Court should overrule its precedent in the case of *Grutter v. Bollinger* (2003). That case held that an admissions policy can be upheld when no acceptance or rejection is based automatically on a variable such as race and where all factors that may contribute to diversity are meaningfully considered.

HOW DID THE COURT RULE?

The Court ruled that race-based admissions policies at Harvard and UNC are invalid under the Equal Protection Clause of the 14th Amendment because they failed to

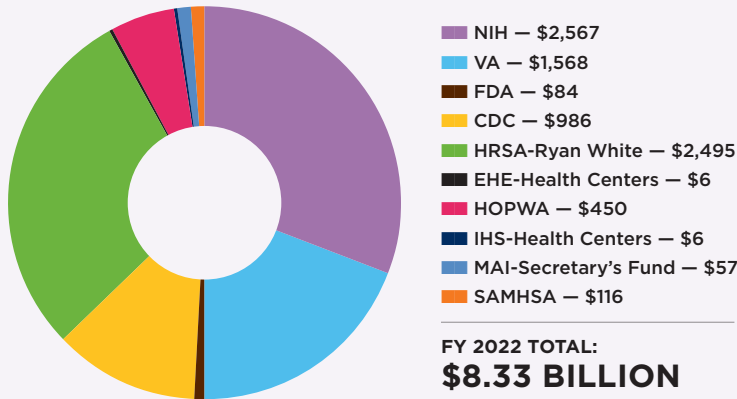
meet the three limiting requirements set forth in *Grutter v. Bollinger*. It said both policies: (1) were not in compliance with the strict scrutiny level of review (i.e., the racial classification was not being used to further a "compelling governmental interest" and the use of race in this context was not "narrowly tailored"); (2) used race as a "negative" and operated as a stereotype; and (3) lacked a "logical end point."

WHY WAS THE COURT'S RULING A CATCH-22?

Colleges' previously compliant (with Supreme Court precedents) admissions policies made it effectively impossible for them to also survive the Court's new constitutional review standard regarding this matter. The majority stated that the two schools' policies "lack sufficiently focused and measurable objectives warranting the use of race." The schools could not meet this bar, however, precisely because prior precedents preclude the focused and measurable objectives that this decision now demands. The Court previously deemed it illegal to operate a quota system as part of admissions processes (*Regents of the Univ. of Cali. v. Bakke*) and to award points for purely being an "underrepresented minority" (*Gratz v. Bollinger*). Taken together, many colleges must now pivot to exploring ways to overcome this challenging ruling and find new ways to still be able to use race and diversity in their admissions policies.

MAI IS A SMALL PART OF FEDERAL DOMESTIC DISCRETIONARY FUNDING FOR HIV

FY 2022 ENACTED FUNDING LEVELS (IN \$MILLIONS)



MAI funds consist of the MAI Secretary's Fund and MAI formula funds drawn from HHS agency appropriations.

In FY 2022, MAI funding totaled \$172.9 million: \$56.9 million for the the Secretary's Fund and \$116 million in formula funding from SAMHSA. Neither CDC nor HRSA-Ryan White indicate that any of their funds are dedicated to MAI. MAI's share of the domestic discretionary HIV budget would be slightly higher if MAI formula funding for these agencies were included. Using these available data, however, **MAI accounted for only 2% of domestic discretionary HIV funding in FY 2022.**

Source: KFF analysis of federal budget accounts (2023) and *MINORITY AIDS INITIATIVE: Consolidation of Fragmented HIV/AIDS Funding Could Reduce Administrative Challenges*, U.S. Gov'T ACCOUNTABILITY OFFICE 1, 9 tbl. 1 (Nov. 2013). **Notes:** Reliable data on the size of MAI formula funding is not publicly available. Additionally, only primary accounts are included above; there are a small number of domestic discretionary accounts that are not included here. EHE: Ending the HIV Epidemic. HOPWA: HUD Housing Opportunities for People with AIDS Program. IHS: Indian Health Service.

is a small part of a larger, multi-faceted effort to meet the HIV prevention, care, and social services needs of all people living with and at risk for HIV.

Must avoid race-based stereotyping and avoid using race as a “negative” to some and a “plus” to others: The Court describes the race-based policy admissions in *Students for Fair Admissions* as a “zero-sum game,” where the admission of one student eliminates the opportunity for another student to be admitted. By contrast, the MAI does not confer any benefit or entitlement on any individual. Rather, along with other funding that ensures services capacities exist to meet the needs of specific populations (such as Parts C and D of the Ryan White HIV/AIDS Program), MAI allows funds to be focused on building capacity to provide services in racial and ethnic minority communities. Further, in no way does the MAI contravene the Civil Rights Act of 1964 and other federal laws that prohibit clinics and agencies that receive MAI funding from denying services to any individual on the basis of race.

Must have a logical end-point: The Court was dismissive of assertions that race-based admissions programs will end once meaningful representation and diversity are achieved by comparing the composition of an incoming class to some other metric. By contrast, there are epidemiologically sound metrics that can be used to determine when the MAI is no longer needed. Fighting an epidemic is a numbers game: investments are made where the largest number of transmissions are occurring, the lowest rates of viral suppression are present, and in the populations with the least access to health care. This is done to lower the risk of HIV for all people in the U.S. Thus, MAI can end when race is no longer a relevant consideration for focusing federal

efforts because parity in HIV outcomes has been achieved across all races and all people in the U.S.

LOOKING AHEAD

We cannot end HIV in the U.S. until we end it in Black, Latino, and other disparately impacted communities. To protect the program into the future, the Court's decision highlights that policymakers must more clearly articulate the need for the MAI and show how it complies with the Court's three factors of consideration. This may possibly include using alternative metrics that do not explicitly rely on race yet accomplish the same goals, or establishing specific metrics for assessing when the program could logically end. By responding to this decision with more clarity over how the MAI can be legally supported, this decision may also offer a new opportunity to bolster attention and financial support for the program and influence how it can better support efforts to end the HIV epidemic.

TO LEARN MORE

See *Students for Fair Admissions v. President and Fellows of Harvard College*, 600 U.S. ___ (2023), https://www.supremecourt.gov/opinions/22pdf/20-1199_hgdj.pdf.

Additionally, see the link below for *Big Ideas Brief: A Renewed Commitment Is Needed To Strengthen and Expand the Minority Aids Initiative (MAI)*, March 2023 and *Quick Take: The Minority AIDS Initiative (MAI) is an Essential Tool for Fighting HIV*, January 2023.