

H A R V A R D L A W R E V I E W

Harvard Law Review Factsheet

About the *Harvard Law Review*

The *Harvard Law Review* is a student-managed legal periodical that serves lawyers, academics, and members of the broader public. It is the *Review*'s mission to fulfill several objectives: first, to provide a forum for the leading scholarship and commentary on the law and related issues; second, to function as an effective research tool for judges, lawyers, litigants, and students; and third, to offer its members a unique educational experience that involves extensive writing and editing.

The *Review* is published by the Harvard Law Review Association, a non-profit organization founded in 1887 that is legally and functionally separate from and independent of Harvard Law School and the rest of Harvard University. For each volume of the *Review*, a set of elected officers, who assume their officer positions in the spring of their 2L year, maintain operational control of the *Review*. These officers run the *Review* through most of their 3L year, until the next volume's officers are chosen the following spring.

The President of the *Review* oversees day-to-day operations and establishes its policies. The Vice President-Treasurer, subject to the supervision and control of the President, manages the budget. The President chairs all meetings of the Board of Trustees. The Board meets at least twice a year and as often as requested by the President to discuss and give advice upon matters of interest to the Association. Five of the seven board members are elected directly by student-editors. The other two members are the Dean of Harvard Law School *ex officio*, and a Graduate Treasurer appointed by the Board. The trustees have general supervisory powers but are not involved in selection of editors or of pieces for publication.

Likewise, Harvard University (which includes Harvard Law School) has no control over the *Review*'s editorial work. Harvard University does not fund the Harvard Law Review Association.

Article Selection

The *Review* publishes approximately ten to sixteen Articles and Essays each year, and those publications are selected through a deliberative process involving all 106 editors on the *Review*. The *Review* is unique in this respect: other student-run legal journals generally delegate article selection to a small committee of 3L editors, with the remainder of the editors having little or no input in the process.

Each Volume of the *Review* publishes its own version of *The Whitebook*, an internal *Review* document that outlines the life cycle of a potential publication and provides instructions for completing various assignments. There are six stages for selecting a piece by an outside author: (1) Screening, (2) Rotopool, (3) M-Read, (4) C-Read, (5) Literature Review, and (6) O-Read. Final selection is made by vote at the O-Read, which every editor on the *Review* is strongly encouraged to attend and where *every* editor has a vote.

The *Review* selects articles based on an assessment of their quality and contribution to legal scholarship. Recent news reports mischaracterize the *Review*'s processes for article selection, selectively relying on excerpts from five internal memos going back more than three years. The *Review* considers several thousand submissions annually, including over 1,500 this past spring alone.

The *Review* does not consider race, ethnicity, gender, or any other protected characteristic as a basis for recommending or selecting a piece for publication. Although accusations have been made about the Rotopool rubric, the author's identity and demographic information are not available to editors at that stage of article selection, and editors are instructed not to inquire into the author's identity. Recent news reports have mischaracterized the role that individual editor memos play in the article selection process, but the process involves all editors on the *Review*. The *Review* is assessing its guidance to editors to make it even more clear that the *Review* does not consider or select pieces for publication on the basis of any protected characteristic.

The *Review* also does not expedite the consideration of articles based on an author's race, ethnicity, gender, or other protected characteristic. Expedited reviews are how the journal responds to receiving notices from authors of exploding offers from our peer journals. The *Review* is more likely to expedite review for less-established professors because they are more likely to be pressured by exploding offers.

Editor Selection

Each summer, the *Review* selects new editors through a competition open to Harvard Law School students. The *Review* has written guidelines for editor selection that closely follow Supreme Court guidance. Those guidelines explain that members of the selection committee may not consider any protected characteristic for its own sake:

Students entering the competition may choose in their optional expository statements to refer to or discuss their own race (or other protected characteristic). If they do so, members of the selection committee may then “consider [the] applicant’s discussion of how race affected his or her life, be it through discrimination, inspiration, or otherwise.” *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181, 230 (2023). In other words, selection-committee members may consider the applicant’s discussion of race to the extent that the discussion demonstrates some other attribute—e.g., leadership experience, or experiences relevant to evaluating scholarship on particular topics—that is relevant to the individual applicant’s “ability to contribute to” the *Review*. *Id.* at 231. The selection committee may then consider that *Review*-relevant individual attribute in deciding whether to extend an offer to the applicant to join the *Review*. Members of the selection committee may not consider race or any other protected characteristic for its own sake. Members of the selection committee may not use the expository statements in a manner that results in

their functioning as a proxy for race, such as by conferring an advantage on a candidate based on race alone or assuming that an individual who discusses being of a particular race must have particular attributes.

In sum, when considering applicants for selection to the *Review*, race alone cannot be the basis for conferring any advantage or disadvantage on a candidate, and the same holds true as to other protected characteristics. Although it is not clear whether *Students for Fair Admissions* applies to this situation, the *Review*'s guidelines follow the guidance provided in that case.

Recent news reports mischaracterized the editor selection process, based on a “transition resolution” passed in 2021. “Transition” is a time for 2L editors to meet and talk about their objectives for the upcoming year. Transition resolutions are voted on by only the 2L editors – in other words, by only half of the *Review*'s editors. They may be followed, modified, or ignored, subject to the President's discretion, and have no effect if they conflict with federal law, state law, or the *Review*'s Constitution. Transition resolutions are not binding, even as to the editors who voted on them—and certainly not as to subsequent volumes of the *Review*. The 2021 transition resolution predated significant developments in the law in this area.

HLR Fellow Selection

The HLR Fellowship supports individuals working in a public interest-related role for one year at a government agency or nonprofit organization. Outside selectors, not active editors at the *Harvard Law Review*, choose Fellows through a multi-stage process. In the first round, a panel of public-interest-oriented *Review* alumni and former Fellows, none of whom are current students or faculty at Harvard Law School, considers the applications and selects finalists. In the second and final round, a panel of professors from various law schools, all of whom are *Review* alumni, interviews the finalists and selects the final slate of Fellows. None of the professors involved in the selection process are from Harvard Law School; all of them are faculty members at different universities.

Shift to Volume 139 of the *Review*

Each spring and summer, newly elected officers review and revise the *Review*'s internal policies. That process often includes consulting with counsel to ensure compliance with applicable laws. As part of that process this year, the *Review*'s newly elected officers have been discussing revisions to guidelines for various of its functions, some of which were under consideration prior to the announcement of the government investigations. The *Review* also has hired Munger, Tolles & Olson – a leading national law firm – to conduct a comprehensive review of its operations.