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SCOTUS Affirmative Action Cases

Students for Fair Admissions, Inc. v. University of North Carolina

Students for Fair Admissions, Inc. v. President & Fellows of Harvard College

Summary: Both UNC and Harvard consider race as one of several factors in their undergraduate admissions processes. Race is only used as a "plus" factor and is not used to "unduly harm" students. Students for Fair Admissions (SFFA) challenged both UNC's and Harvard's use of these race-conscious admissions processes, asserting that any use of race in admissions violates the 14th Amendment and Title VI of the Civil Rights Act of 1964 and is therefore unlawful. This assertion conflicts with Supreme Court precedent *Grutter v. Bollinger*, which states that race may be used as one of several factors in a holistic admissions process in pursuit of the compelling interest to achieve a diverse learning environment. Specifically, *Grutter* held that using race in a narrowly tailored fashion to fulfill the compelling interest of providing the educational benefits of a diverse student body does not violate the Equal Protection Clause of the 14th Amendment, Title VI of the Civil Rights Act, or Section 1981.

The Court Held: Harvard and UNC's admissions programs violate the Equal Protection Clause of the 14th Amendment. "Such admissions programs must comply with strict scrutiny. They may 1) never use race as a stereotype or 2) a negative, and 3) must—at some point—end."

Respondents' admissions systems fail each of these criteria and must therefore be invalidated under the Equal Protection Clause of the Fourteenth Amendment.

Decision Summary:

- **According to the Court, the universities' stated goals (training future leaders in the public and private sectors; preparing graduates to adapt to an increasingly pluralistic society; better educating its students through diversity; etc.) for their affirmative action programs – although commendable – are not sufficiently coherent to meet the courts "strict scrutiny" standard.**
    - Respondents' admissions programs fail to articulate a meaningful connection between the means they employ (accounting for race in admissions) and the goals they pursue.
    - How is a court to know whether leaders have been adequately "trained;" whether the exchange of ideas is "robust;" or whether "new knowledge" is being developed?
- **The Court found that admissions policies use race as a stereotype and disadvantages one group – the Asian American community – over another:** The guarantee of equal protection cannot mean one thing when applied to one individual and something else when applied to a person of another color.
    - *However: nothing in this opinion should be construed as prohibiting universities from considering an applicant's discussion of how race affected his or her life*
- **The universities' programs did not have an end date as the Court determined was required under *Grutter***: *Grutter employed* a 25-year expiration date for affirmative action programs with the goal for schools to move towards a "race neutral" process.

Key Messaging About the Decision

- This decision guts years of progress towards racial justice via the 14th Amendment and Equal Protection Clause
- The Court misinterpreted the Equal Protection Clause & *Brown v. Board of Education*
    - We need to invest in multi-racial democracy and the freedom to learn
    - This decision reflects policymaking from courts, not sound legal judgement
- Decision denies continued effects of slavery's effects on our nation and our students
- Decision does not:
    - Affect minority business opportunity programs

    - Affect corporate diversity programs
    - Limited to admission in higher ed at selective admissions universities in the US
- This is a narrow decision focused on one aspect of higher education process
    - Affirmative action has been one of the most successful ways to get full inclusion and equality
    - We need to ensure that communities of color have a shot at a college education and the opportunity it provides for economic security and power

Facts about Affirmative Action:

- 58% of respondents in a Reuters survey said they support programs aimed at increasing the racial diversity of students on college campuses
- Only 8% of colleges said race was a "considerable influence" and 17% said it was a "moderate influence" in admissions decisions
- So-called race-neutral admissions policies favor wealthy white kids, who've had more economic and educational advantages
- Colleges that are allowed to consider an applicant's race or ethnicity in admissions are more representative of their state's demographics than are colleges in states with affirmative action bans
- Affirmative action is not the only tool to increase diversity and inclusion on campus, but it is an important one

More Resources:

- https://www.whitehouse.gov/briefing-room/statements-releases/2023/06/29/fact-sheet-president-biden-announces-actions-to-promote-educational-opportunity-and-diversity-in-colleges-and-universities/
- https://www.scotusblog.com/2023/06/supreme-court-strikes-down-affirmative-action-programs-in-college-admissions/
- https://twitter.com/POTUS/status/1674461363488411648?cxt=HHwWgMC-jaHv8LwuAAAA
- https://twitter.com/POTUS/status/1674460493803577344?cxt=HHwWgICzudG88LwuAAAA
- https://www.defenddiversity.org/
- https://www.lawyerscommittee.org/affirmative-action/
- https://nul.org/news/urgent-action-supreme-court-affirmative-action-decision
- https://edtrust.org/the-equity-line/infographic-5-facts-about-affirmative-action
- https://www.nytimes.com/live/2023/06/29/us/affirmative-action-supreme-court
- https://www.reuters.com/legal/legalindustry/dei-esg-preparing-supreme-court-ruling-race-based-decision-making-2023-05-03/