



Today's Landmark SCOTUS Decision and What it Means for the Future of Affirmative Action in Higher Learning

For those of us who went through the grueling college admissions process at one point, or for those who may be embarking down that path as we speak (or have kids or other family members that will be applying to schools in the future), today's decisions in two United States Supreme Court cases titled *Students for Fair Admissions Inc. v. President and Fellows of Harvard College* and *Students for Fair Admissions Inc. v. University of North Carolina* are of particular import. Broadly speaking, the decisions hold that affirmative action and race-based admissions policies applied by both private and public educational institutions are unconstitutional.

The cases themselves were commenced by groups seeking to challenge the admissions policies instituted at Harvard and the University of North Carolina on the grounds that the schools discriminated against Asian students (and both Asian and White students in the Harvard case) by using race as a factor in making admissions determinations. In the case of Harvard, Asian students were alleged to have been given "negative" treatment, under the guise of subjective standard adopted by the school that focused on "likeability" "courage" and "kindness" in order to dilute the student body from otherwise qualifying Asian students. With the North Carolina case, the policy under scrutiny allegedly gave preferential treatment to certain racial classes (Black, Hispanic, Native American) ahead of Asians and Whites. In the end, SCOTUS ruled in favor of the plaintiffs in both cases. In doing so, the Court has seemingly upended the admissions policies of colleges, universities and other educational institutions nationwide. To add, these decisions are likely to have an impact on other industries outside the educational realm where race-based affirmative action initiatives have also been implemented.

The opinions authored by the Justices writing for the majority and the dissent (the cases were decided 6-3 (UNC), 6-2 (Harvard)) reflect how polarizing a topic this was, is, and will continue to be. Chief Justice Roberts writing for the majority, stated that the programs at issue "lack sufficiently focused and measurable objectives warranting the use of race, unavoidably employ race in a negative manner, involve racial stereotyping, and lack meaningful end points." In contrast, Justice Sonia Sotomayor, writing for the dissent, warned that the decisions "stand in the way and roll back decades of precedent and momentous progress."

No matter where one stands on the issue, admissions departments across the nation are now left scrambling to adjust their admission policies to comport with today's rulings. Since many of the nation's historically top ranked and most heavily funded institutions have strived, over the course of the last few decades, to promote a "diverse" student body (for various political, economic and social reasons) it will be fascinating to watch how these learning centers work to reinvent the wheel in an effort to maintain diversity. Any new tests or admissions policies they try to impose will inevitably be subjected to heightened scrutiny and may be the subject of lawsuits derived from claims that illegal race-based initiatives are still in play. Again, even if race is not used as a specific criteria, today's decisions make it clear that any test that can be construed as favoring one race ahead of another may be deemed unconstitutional. In other words, schools will now look to button-up their admissions policies as best they can if they want to maintain a student body of a certain racial makeup or breakdown. However, that may prove impossible – but only time will tell. Either way, the floodgates are now open and it is likely that other groups will latch onto today's holdings and pursue challenges of other admissions policies of their own.

While today's decisions provide some answers, many questions still remain. What does this mean for "legacy" applicants and policies (which the public has grown increasingly put-off by over the years) that favor applicants with alums in the family - especially where most "legacy" applicants are disproportionately White? What does this mean, if anything, for the preferential treatment many schools give to those who contribute money? What does it mean for schools looking to implement a policy that gives positive treatment to those that come from impoverished or economically disadvantaged areas? Again, time will tell and there is much more to come.

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