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ALERTS

SCOTUS Holds Federal Law Bars Race-Based University Admissions

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Highlights

Universities may not adopt “race-based admissions programs in which some students may obtain preferences on the basis of race alone”

Universities may consider “an applicant’s discussion of how race affected his or her life, be it through discrimination, inspiration, or otherwise”

But, universities “may not simply establish through application essays or other means” a system of admissions that treats students “on the basis of race”

The U.S. Supreme Court issued its much-anticipated ruling in a pair of cases challenging Harvard College’s and the University of North Carolina’s (UNC’s) affirmative action admissions policies, holding that such policies violate the Equal Protection Clause of the Fourteenth Amendment and Title VI of the Civil Rights Act of 1964.

The court’s majority opinion – authored by Chief Justice John Roberts and joined by Justices Clarence Thomas, Samuel Alito, Neil Gorsuch, Brett Kavanaugh and Amy Coney Barrett – determined that university

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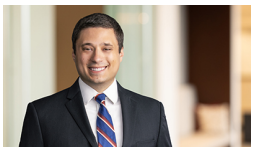

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admissions policies “that turn on an applicant’s race” cannot meet the “daunting” strict-scrutiny test the court imposes on “race-based government action.” The court noted that in its landmark 2003 decision in *Grutter v. Bollinger*, it had applied this strict-scrutiny test to uphold the University of Michigan’s affirmative action admissions policy, on the theory that “student body diversity is a compelling state interest that can justify the use of race in university admissions.”

At the same time, however, the court observed that even while reaching this result, *Grutter* had held that universities must not engage in racial stereotyping and, as the court put it in this term’s opinion, must not “discriminate against those racial groups that were not the beneficiaries of the race-based preference.” The court also pointed out “*Grutter* imposed one final limit on race-based admissions programs” – eventually “they must end.”

The court concluded that Harvard’s and UNC’s race-based admissions policies fail to satisfy these requirements. In particular, it determined that such policies “unavoidably employ race in a negative manner, involve racial stereotyping, and lack meaningful end points.” The court also determined that the diversity-based rationales on which the universities defended the policies are “[in]sufficiently measureable to permit judicial scrutiny,” and do not qualify as compelling interests under the strict-scrutiny framework. Therefore, the court held “race-based admissions programs” run afoul of the strictures of the equal protection clause.

The court’s analysis focused on the equal protection clause, which itself only applies to state actors such as public universities like UNC. Importantly, however, the court noted that Title VI imposes the same requirements on private institutions that accept federal funds (like Harvard).

Notably, the Chief Justice wrote that “nothing in [its] opinion should be construed as prohibiting universities from considering an applicant’s discussion of how race affected his or her life, be it through discrimination, inspiration, or otherwise.”

At the same time, the opinion cautions that what “cannot be done directly cannot be done indirectly” and warned universities against using “applications essays or others means” to adopt race-based admissions in disguise. Ultimately, the court explained, “the student must be treated based on his or her experiences as an individual—not on the basis of race.”

All-in-all, the court’s ruling exceeds 230 pages and also includes five separate additional opinions:

- Justice Sonia Sotomayor, joined by Justices Elena Kagan and Ketanji Brown Jackson, authored the principal dissent, arguing that the majority misapplied and effectively overturned the court’s precedents
- Justice Jackson authored a dissent highlighting the history of discrimination and the benefits of affirmative action
- Justice Thomas wrote a concurrence responding to the dissents
- Justice Gorsuch, joined by Justice Thomas, authored a

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concurrence focusing on the language of Title VI

- Justice Kavanaugh concurred to argue that the court's majority decision is consistent with its prior cases

Key Takeaways

The court's decision is likely to prompt a significant amount of litigation as advocacy groups challenge admissions programs and lower courts evaluate which admissions policies are and are not permissible. Moreover, the court's decision is likely to reach beyond higher education context to affect institutions and employers of all kinds. The court has answered a hotly contested question, but further questions remain.

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