Affirmative action in higher ed sustained with caveats

The term affirmative action was first used in an executive order by President John F. Kennedy in 1961. The motivation was to favor members of a disadvantaged group that historically suffered from discrimination due to oppression of any kind. This concept has been employed in many spheres and one of those has been to promote diversity in higher education in the belief that many universities have effectively discriminated against admitting and/or promoting minority students.

Two weeks ago the U.S. Supreme Court announced a decision on affirmative action that is higher education. The 4-3 decision nullified the University of Texas at Austin’s admissions policy that includes race and ethnicity as one of the factors in considering students.

To understand the significance of this decision for higher education we have to go back to 1978. Then the Texas legislature created the University of Texas at Austin to serve the state with their graduating high school class. Since many high schools in Texas are not diverse—racially and economically—the university’s admissions policy included race and ethnicity as one of the factors in considering students. In the 38 years since the policy was given a vote, students from Texas who did not make the cut, as well as students from elsewhere, are considered for admission based on many other factors: grades, test scores, volunteer service, and extracurricular activities.

College admissions based on affirmative action have been a point of controversy in the courts in the past. An example, in 2003, in Grutter v. Bollinger (regarding the University of Michigan Law School admissions standards) the U.S. Supreme Court endorsed such affirmative action policies—under the phrase, “diversity” as one of the factors in considering admission applications. The court ruled that the University of Michigan Law School’s plan of race-based diversity was not unconstitutional if the school can demonstrate that diversity is necessary in advancing its educational mission.

The case on which the U.S. Supreme Court made the decision last June was a challenge by a student, Abdul Fisher, who sued the University of Texas at Austin in 2008 for its affirmative action policy. Fisher had applied for admission in 2008 and was not accepted. The court ruled against him for being white. Mr. Fisher has since decided not to appeal the decision.

And this was not the first time the Supreme Court had taken the issue of affirmative action. It was 22 years ago this week when Fisher appealed a decision by the U.S. Court of Appeals for the Fifth Circuit which upheld the University of Texas not guilty of discriminatory practices. It upheld the affirmative action policy and confirmed that the university’s admissions policy is constitutional. It is based on the premise that having a diverse student body helps create a more inclusive educational environment. The court said the university’s affirmative action policy satisfied the Florida courts’ requirement that race be given only a “legitimate and compelling purpose” for the educational benefit of the whole student body.

Therefore, although the U.S. Supreme Court has reaffirmed the constitutionality of affirmative action in university admissions, and that universi- ties may consider the race and ethnicity of applicants when admitting students in order to achieve a diverse student body, the courts have indicated that affirmative action policies that use race and ethnicity as a required or determinative factor in enrollment decisions without compelling justification are unlawful.

The court also said that the Austin court’s decision also reaffirmed the 4-to-3 decision reaffirmed the 4-to-3 decision which held that Texas applicants are not entitled to judicial review of the court’s decision on the constitutionality of the University of Texas not guilty of discriminatory practices.

However, it remains to be seen if the University of Texas at Austin will establish any new admissions policy or how it will implement its current policy.

In the meantime, the University of Michigan Law School remains the only public university in the United States that uses affirmative action as a factor in the admissions process. This university is currently under federal investigation for alleged violation of Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, national origin, sex, or religion in any program or activity receiving federal financial assistance.

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The Edwardsville Fire Department (Kankakee) Daily Journal


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Shriners on wheels

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Letters from Academia

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