***Students For Fair Admissions, Inc.* v. *President And Fellows of Harvard College*, No. 20-1199; *Students For Fair Admissions, Inc.* v. *University of North Carolina*, No. 21-707**

Today, the Supreme Court issued a 6-3 decision striking down affirmative action admissions policies in higher education as a violation of the Equal Protection Clause. Although the Court's decision does not apply to private employers, it could have ripple effects for businesses as they work to achieve diversity goals.

Background: Harvard College and the University of North Carolina (UNC) have admissions processes that allow the consideration of an applicant's race. Both processes depend on admissions office readers who consider race when reviewing applications. The readers' recommendations are considered by admissions committees that also consider race as a factor in their review.

A nonprofit organization filed lawsuits challenging those admissions processes, arguing that they violate the Equal Protection Clause of the Fourteenth Amendment, which provides that no State shall "deny to any person . . . the equal protection of the laws." The organization also asserted violations of Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal funding from discriminating on account of race. After separate bench trials, courts found both admissions processes permissible. The First Circuit affirmed the decision in the Harvard case, and the Supreme Court granted certiorari before judgment in the UNC case.

Issue: Whether the admissions programs at Harvard College and UNC violate the Equal Protection Clause of the 14th Amendment and Title VI of the Civil Rights Act of 1964.

Court's Holding: In an opinion written by Chief Justice Roberts and joined by Justices Thomas, Alito, Gorsuch, Kavanaugh, and Barrett, the Supreme Court held that the affirmative action admissions programs do not survive strict scrutiny, which is the standard that courts apply in analyzing whether race-based classifications violate the Equal Protection Clause. The Court explained that the schools' stated interests in affirmative action admissions policies—including training future leaders, acquiring new knowledge based on diverse outlooks, promoting a robust marketplace of ideas, and preparing engaged and productive citizens—are not "sufficiently coherent" to be subjected to meaningful judicial review. The Court also explained that the schools failed to articulate a meaningful connection between those goals and their admissions policies, which consider an individual applicant's race, and the racial composition of classes, in making admission decisions.

The Court further held that the admissions policies violate the Equal Protection Clause for two additional reasons. First, the Court reasoned that the policies use race as a negative factor by benefiting some applicants at the expense of others, and further stereotypes that treat individuals as the products of their race. In addition, the Court reasoned that the policies lack a "logical end point," which is required of all governmental use of race under *Grutter* v. *Bollinger*, 539 U. S. 306 (2003).

The admission policies invalidated in today's decisions provided for consideration of individual applicants' race in making admission decisions. Further analysis, and further litigation, will be required to determine whether it is permissible for schools to promote racial diversity through admission standards that do not turn on the applicant's race, such as policies that would favor applicants who would be the first in their family to attend college, or applicants from lower-income families. Some cases raising these issues are already working their way through the courts.

It also is not clear how far the Court's decision will reach. Title VI is not limited to education, but bars discrimination in "any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d. Today's ruling holds that Title VI incorporates the same standard as the Fourteenth Amendment, and therefore would apply to all programs subject to Title VI.

Private employers with 15 or more employees generally are subject to Title VII of the 1964 Civil Rights Act, which bars discrimination in employment based on race, color, religion, sex, or national origin. It is not certain whether, or how, today's ruling will affect companies' diversity, equity, and inclusion initiatives, and affirmative action efforts. In *United Steelworkers of America* v. *Weber*, 443 U.S. 193 (1979), the Court held that Title VII does not prohibit voluntary affirmative action programs. The *Weber* Court explained that the program at issue in that case was permissible as a "temporary measure" that was "not intended to maintain racial balance, but simply to eliminate a manifest racial imbalance." But Justices Gorsuch and Thomas authored concurrences suggesting that today's ruling should apply to Title VII. The other Justices did not address that issue.

Justices Sotomayor, Kagan, and Jackson dissented, with each joining dissenting opinions written by Justices Sotomayor and Kagan.

Read the opinion here.