PUBLICATION

Supreme Court Strikes Down College Affirmative Action Programs

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On June 29, 2023, the United States Supreme Court issued a historic decision in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College and Students for Fair Admissions, Inc. v. University of North Carolina*, effectively ending the use of affirmative action in college admissions. In the 6-3 vote, the justices ruled that the admission programs at Harvard and the University of North Carolina (UNC) violate the Equal Protection Clause of the Fourteenth Amendment.

Background

Students for Fair Admissions (SFFA) filed separate lawsuits against Harvard and UNC, arguing the universities' race-based admissions programs violated Title VI of the Civil Rights Act of 1964 and the Equal Protection Clause of the Fourteenth Amendment. The district courts in both cases held bench trials to evaluate the SFFA's claims, and both courts concluded the admissions program comported with Supreme Court precedent on the use of race in college admissions. The First Circuit affirmed the Harvard decision. The Supreme Court then granted certiorari in the Harvard case and certiorari before judgment in the UNC case.

Decision & Impact

In *Students for Fair Admission*, the Supreme Court held that Harvard and UNC's admission programs violate the Equal Protection Clause of the Fourteenth Amendment. This decision effectively ended the use of affirmative action in college admissions. The Court reasoned that because Harvard's and UNC's admissions programs lack sufficiently focused and measurable objectives warranting the use of race, unavoidably employ race in a negative manner, involve racial stereotyping, and lack meaningful endpoints, those admissions programs cannot be reconciled with the guarantees of the Equal Protection Clause.

However, the Court did note that nothing prohibits universities from considering an applicant's discussion of how race affected the applicant's life, so long as that discussion is concretely tied to a quality of character or unique ability that the particular applicant can contribute to the university. Chief Justice John G. Roberts, Jr. wrote "[m]any universities have for too long … concluded, wrongly, that the touchstone of an individual's identity is not challenges bested, skills built, or lessons learned, but the color of their skin. Our constitutional history does not tolerate that choice."

The implications of this decision in employment and government contracting may be far-reaching. U.S. Equal Employment Opportunity Commission Chair Charlotte Burrows issued the following statement in response to this decision:

"Today's Supreme Court decision effectively turns away from decades of precedent and will undoubtedly hamper the efforts of some colleges and universities to ensure diverse student bodies. That's a problem for our economy because businesses often rely on colleges and universities to provide a diverse pipeline of talent for recruitment and hiring. Diversity helps companies attract top talent, sparks innovation, improves employee satisfaction, and enables companies to better serve their customers."

"However, the decision in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College* and *Students for Fair Admissions, Inc. v. University of North Carolina* does not address employer efforts to foster

diverse and inclusive workforces or to engage the talents of all qualified workers, regardless of their background. It remains lawful for employers to implement diversity, equity, inclusion, and accessibility programs that seek to ensure workers of all backgrounds are afforded equal opportunity in the workplace."

So what does this mean for Employers?

It remains to be seen how this decision will impact private employers' DEI initiatives that encourage racial or gender quotas and federal contractors subject to affirmative action programs per the Ofice of Federal Contract Compliance Programs. Stay tuned for further alerts and webinars on this Decision's impact on employers as they continue to select the most qualified applicant for hire, complying with Title VII's non-discrimination requirements. Should you have any questions about this alert, please reach out to Jennifer G. Hall or any member of Baker Donelson's Labor & Employment Practice Group.

Jennifer G. Hall appreciates the research and drafting assistance of summer associate, Tyler J. White. Tyler is a rising 3L at the University of Mississippi School of Law.