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Big Changes in Higher Education as the U.S. Supreme Court Strikes Down Affirmative Action

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In a major decision released today, the U.S. Supreme Court struck down affirmative action in higher education, limiting the use of race as a factor in college admissions. The Court held that Harvard College and the University of North Carolina’s admissions policies are unlawful, rejecting arguments that their admissions programs are warranted to ensure campus diversity.

The Court held that admission programs allowing for racial considerations violate the Constitution’s guarantee of equal protection and Title VI of the Civil Rights Act of 1964. The Court stated that the Equal Protection Clause applies “without regard to any differences of race, of color, or of nationality—it is “universal in [its] application.” Moreover, “Title VI is coextensive with the Equal Protection Clause.” The Court declared that both “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 end points.” Where the Equal Protection Clause applies to public universities and organizations, private organizations and universities need to adhere to Title VI of the Civil Rights Act of 1964.

Although the Court rejected the current practices at Harvard and University of North Carolina, “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.”

Importantly, the impact of the Court’s decision is not necessarily limited to higher education—it has the potential to impact all educational admission programs and could lead to increased scrutiny of diversity, equity, and inclusion programs across the country and across industries. Organizations with programs (such as fellowship or scholarships) that have been used to increase diversity could also face potential challenges.

Notably, the Equal Employment Opportunity Commission (EEOC) Chair promptly issued a statement to express the agency’s view that the Court’s opinion “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.” One message from today’s opinion, however, is that the manner in which those programs are implemented and managed can be very important.

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