

By Sheldon H. Jacobson

High school seniors are well into the process of determining where they will attend college in the fall. One thing that will affect many of their options is the 2023 Supreme Court ruling that ended affirmative action for race-based college admissions.

This much-discussed ruling was celebrated by some and met with concern by others. Yet what the ruling did is create alternative pathways for college admissions. It may also affect diversity, equity, and inclusion (DEI) efforts that are now pervasive across college campuses.

Affirmative action is designed to provide opportunities for underrepresented racial group members in areas in which they have not traditionally had an equal presence. The Supreme Court ruling on affirmative action has implications for DEI, depending on how college admission limitations based on race are interpreted and applied.

Yet such a volatile topic can easily draw people to polarized extremes.

For example, Republican lawmakers in several red states have enacted laws or introduced bills that ban DEI efforts at their states' public universities and colleges. They view any activities under the DEI umbrella as discriminatory, counterproductive and wasteful.

Conversely, public universities in blue states continue to support DEI efforts in public institutions, installing DEI officers across their campuses. Such placements are designed to fortify DEI efforts to ensure that underrepresented groups boost their place in university activities and positions.

Sadly, both sides of the issue are demonstrating the folly of extreme, polarized policies that build mistrust and fuel animosity.

Attempts to make DEI efforts illegal are as misguided and destructive as overwhelming systems with DEI officers to solidify their presence. Both positions wreak of discrimination.

Rather than allowing the pendulum to swing from one extreme to



Affirmative action supporters walk through a gate at Harvard University in Cambridge, Massachusetts, on July 1, 2023, the day after the U.S. Supreme Court made a precedent-setting ruling that race-conscious admissions programs at Harvard and the University of North Carolina were unconstitutional. **KAYANA SZYMCAK/THE NEW YORK TIMES**

## Will Supreme Court affirmative action ruling affect where high school seniors attend college?

another, does there exist a middle ground that uses the best of both positions to carve policies that serve the interest of all stakeholders, including the prospective students who will apply for admission? What are some guiding principles to shape such policies?

The long-term solution is not to lower the bar for success, but rather help those who have had life obstacles and lesser opportunities to reach the bar. This involves working diligently to fill the pipeline with the necessary talent so that when excellence is the bar for success, everyone is well prepared to meet and exceed such a standard.

The short-term solutions are more complex.

Simply elevating people into

roles based on race is what the Supreme Court ruling spoke against, effectively arguing for race-blind admissions.

Overcoming race-based discrimination demands not that the pie be reallocated, but that the pie be enlarged. In that way, excellence is preserved, while providing opportunities that may not have been previously available. Such a policy would certainly fall within the spirit of the Supreme Court ruling, if not the letter.

What does not work is when policies are crafted that discriminate against groups based on factors that are not associated with performance. Whether that discrimination occurs for or against any such group, at the end of the day it is still discrimination.

Indeed, no matter how it is rationalized or justified, some people get a raw deal. That is inevitable for small sample sizes. It becomes most egregious when such actions persist over larger samples, which is how the Students for Fair Admissions won their case before the Supreme Court.

Given that race can no longer serve as the basis for preferential treatments for college admissions, other factors exist that can boost diversity across multiple dimensions. For example, economic disadvantages can place people in weakened positions to succeed, even though they possess the inherent talents necessary for success. Providing opportunities for such people would be welcomed by many. Whether such

economic disadvantages have their genesis in race or the environment in which they grew up, qualified people facing such headwinds deserve the opportunity to succeed.

At the same time, qualified people without such disadvantages should continue to enjoy opportunities to advance.

Then there are legacy admissions, which are a form of affirmative action, used by institutions to stoke the pipeline of future giving, or reward past contributions. Some colleges are doing away with them when applicant qualifications diverge from the admissions doctrine; past giving should neither help nor hinder one's academic opportunities.

It's complicated, and there are no easy pathways that will appease all stakeholders. Yet supporting anchors to diametrically opposite extremes is destructive and creates ill will and friction that is counterproductive for all.

Complicated problems do not necessarily require complicated solutions. They do, however, require thoughtful and sensible action.

As Sandra Day O'Connor said, affirmative action was necessary in 2003 when she sided with the majority. She also noted that there would come a day that it would no longer be so. For good or for bad, the Supreme Court ruled that the time has now arrived, and its implications on admissions (including legacy) and DEI are certain to be felt across academia.

All such discussion is likely not on the top of the list of factors that determined where high school seniors applied to college. It may, however, affect where they will be admitted and enroll in the fall. The implications of the process will unfold in the coming months, providing additional fuel for discussion and debate.

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