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Affirmative Action in Education Weighed Again

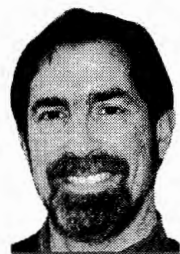
Alan E Garfield



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Affirmative action in education weighed again

Should a public university be allowed to consider race in making admissions decisions?



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For affirmative action opponents, the answer is a resounding "no." How can it be fair, they say, to favor one applicant over another based on skin color? Doesn't that make a mockery of any system based on merit, and isn't merit the only legitimate basis for choosing students?

Opponents also argue that affirmative action is counterproductive. They say that it makes whites feel resentful, which exacerbates rather than improves race relations. And that it diminishes the accomplishments of racial minorities because others always will assume their laurels were handed to them rather than earned.

Public universities defending affirmative action contend that racially diverse classrooms have richer and more enlightening discussions. They say the diversity breaks down racial stereotypes and promotes cross-racial understanding.

Universities also claim that a diverse racial environment better prepares students for an increasingly diverse global workforce. Their claim is supported by major American businesses and retired military leaders who stress the need for graduates with exposure to diverse people, cultures, ideas and viewpoints.

The Supreme Court has thus far blessed university affirmative-action programs. It first did so in the landmark Bakke decision in 1978, and it reaffirmed Bakke in a 2003 decision involving the University of Michigan Law School.

But these cases were decided by slim 5-4 margins, and the court qualified its support by saying affirmative action programs may not use rigid quotas (for example, 10 per-

cent African-American, 8 percent Hispanic). Instead, they may use race only as a "plus" factor in a holistic review of each individual candidate.

This Wednesday the court again hears an affirmative-action case. This one concerns the undergraduate admissions program at the University of Texas at Austin.

The university admits Texas residents under a two-tiered system. Under the first tier, all applicants who are in the top 10 percent of their high school class are automatically admitted. This fills up the vast bulk of the seats reserved for Texas residents. (In 2008, 88 percent of the seats were filled this way.)

The remaining seats are filled through a holistic evaluation of individual candidates that includes race as a plus factor.

The intriguing question is why the Supreme Court took this case, especially given that it had ruled on affirmative action only nine years earlier.

Perhaps the court wants to examine Texas' two-tiered

admissions process. While race is used explicitly only in the second tier, the first tier (the top-10 percent rule) also is intended to generate racial diversity. That's because many Texas high schools are predominantly African-American or Hispanic and minorities make up the top of their classes. So the court might want to consider whether using racial preferences is permissible when it follows on the heels of an already successful race-neutral program for increasing diversity.

But some are wondering whether the court took the case to reverse its prior decisions upholding affirmative action.

After all, affirmative action survived by only one vote in the Michigan law school case, and the author of that decision, Justice Sandra Day O'Connor, is no longer on the court. Her replacement, Justice Samuel Alito, is expected to vote the other way.

As you form your own judgment about affirmative action, try considering what our soci-

ety should want from its educational institutions. Is their job merely to train students in the arts and sciences or also to prepare students for life and a career in a diverse world?

And try considering what a merit-based admissions process really means. Why, for instance, is there not more uproar about other non-academic factors that schools use in admitting students? These would include factors such as legacy (that a parent attended the school), geographic diversity, economic diversity or prowess with pigskin.

Finally, consider the complexity of treating students equally even when evaluating academic achievements. How, for example, do you compare two students' SAT scores when one student could afford the Cadillac of SAT prep courses and the other couldn't afford any prep course?

Yes, everyone likes equal treatment. But what does it mean in college admissions?

Alan Garfield is a professor at Widener University School of Law.