Supreme Court to arguments in Texas affirmative action challenge

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The US high court in 1978 affirmed the limited use of race as a factor in admissions, and in 2003 it reaffirmed that finding, but stipulated that affirmative action is legal only if racial quotas are not used.

But after eight months of mulling it over they ended up with a compromise ruling in 2013 that kicked the case back to a lower court for a tougher review of whether the university could justify looking at race among its admissions criteria.

Beyond that, the court may ultimately hear Texas cases on congressional redistricting and voter identification now pending in lower courts.

The number of minorities at the school quickly plummeted by 40 percent, sending the Texas political and educational worlds scrambling.

One other key point that emerges from the argument is that the conservative justices seem to assume that the Texas Ten Percent Plan – which grants automatic admission to any high school graduate who was in the top ten percent of his or her class – is an acceptable "race neutral" way to promote diversity. "Because as I'm reading your answer, to narrowly tailor, schools have to use nonracial means of doing it. And if the 10 percent plan is the only thing that achieves a greater number in minorities, won't every school have to use a 10 percent plan?" Justice Sandra Day O'Connor wrote the leading opinion in Grutter v. Bollinger allowing the continuation of race-based affirmative action on campus.

July 1, 2011 – An appeals court overturns Michigan's 2006 ban on the use of race and/or gender as a factor in admissions or hiring practices.

That's partly because those flagships compete with private universities that can consider race, said Kahlenberg.

This morning, the Supreme Court heard oral argument in Fisher v. University of Texas II, an important case addressing the constitutionality of racial preferences in public university admissions.

You may remember that the Supreme Court has heard this case before. “You could have been the student body president”. Hopefully, the Court will strike down Texas program in a way that avoids such an outcome.

“It’s created to ensure that the pipeline for leadership and opportunity remains open for minority students but it’s also created to ensure that the environment, the educational environment where the future leaders of the state are being developed and shaped and educated include a variety of voices from across the range of experiences in the state”.

Fisher, now 25, argued that a University of Texas affirmative action policy violated the U.S. Constitution’s guarantee of equal treatment under the law by favoring black and Hispanic applicants.

The NAACP agrees. It says eliminating affirmative action “would set in concrete a caste system in which black and Latino UT students likely would be the products of underfunded and underperforming Texas high schools, while white UT students would likely be derived from better funded and better performing high schools”.

Ilya Shapiro of the conservative Cato Institute, who filed a brief supporting Fisher, is unpersuaded.

“Significantly, African-American and Hispanic students jump ship at much higher rates than whites”, the brief reads. “And precisely that feeling of “not being good enough” produces disaffection that produces feelings of loneliness and not fitting in”.

Sixty years ago, the University of Texas (UT) was at the center of another Supreme Court decision, Sweatt v Painter, a lawsuit involving UT Law School’s refusal to admit Heman Marion Sweatt, a black applicant.

He contends, moreover, that the record at UT disproves the theory Shapiro espouses. “Doubling the enrollment of African-American students, which happened from 2002 to 2008”, Garre replied, “is going to increase diversity in the class room”.

The change will be especially dramatic in areas where large populations of illegal immigrants reside, such as California, Texas and Florida. In its second encounter with the case, a divided three-judge panel of the U.S. Court of Appeals for the Fifth Circuit, in New Orleans, ruled that the Texas admissions plan passed constitutional muster. “Like most Americans, I don’t believe students should be treated differently due to their race”, she said.

“There is no way that class-based affirmative action could maintain the level of racial and ethnic diversity at selective institutions”, she said.