THE DAILY CALLER

Affirmative action and diversiphilia return to the Supreme Court

Published: 4:50 PM 02/22/2012 | Updated: 6:49 PM 02/22/2012

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On Tuesday, the Supreme Court agreed to hear the case of *Fisher v. University of Texas*, a new challenge to the use of affirmative action in university admission policies. The case, which will be argued in October, may finally end the racially based admission policies that universities have used for decades to achieve "diversity" in their student bodies. Diversity, as used by university officials, is neither conceptually coherent enough nor constitutionally compelling enough to justify explicit racial classification.

The court last heard a case challenging a university's admission criteria in 2003, when two cases challenging admissions at the University of Michigan — one for undergraduates and one for the law school — were decided differently. The undergraduate case, *Gratz v. Bollinger*, ruled as unconstitutional a point-based system of admissions preference, which added 20 points to the applications of underrepresented minorities (100 points were needed for guaranteed admission). The law school case, *Grutter v. Bollinger*, upheld as constitutional the policy of considering race as a holistic "plus" in admissions. Both cases were decided at the same time by the same court. Apparently, not putting a definite point-value on race was the key difference.

Both *Gratz* and *Grutter* rightly treated the affirmative action policies as explicit racial classifications that had to pass exacting scrutiny in order to ensure that government officials were not perniciously classifying based on race. This use of "strict scrutiny" guards against racial classifications that are not necessary to achieve a compelling governmental goal. Thus, the holistic racial "plus" in *Grutter* was approved by the court because it was needed to further "the educational benefits that flow from a diverse student body."

Fisher will likely revisit the "diversity" rationale used in *Grutter*. The case is further complicated by Texas's "top ten percent law," which requires the University of Texas to accept any student who finished in the top ten percent of a Texas high school. This racially neutral law has increased the enrollment of all races, backgrounds, and opinions to unprecedented levels. Yet despite the effectiveness of this law at promoting true diversity, the University of Texas still uses a system of racial preference to promote "diversity" as it defines the term.

The concept of diversity has been given too much air over the years and too little substance. It has been a mantra for the left, and an object of scorn for the right. But before we adopt diversity either as a worthwhile goal, as the Supreme Court did, or as an illegitimate imposition of elitist left-wing ideals, perhaps we should define the term.

This is surprisingly difficult. Diversity, as used by university officials and the Supreme Court in *Grutter*, is an ideal that treats people as members of a group first and as individuals second. It is explicitly and offensively racial, insofar as it regards any member of a group as a sufficient placeholder for any other.

This would be bad enough if the groups that concern diversiphiles even made sense. But they don't. The category of "Asian," for example, may include Indians, Pakistanis, Japanese-Americans, Cambodians, Chinese, and Koreans, just to name a few. These groups come from wildly different religions, languages, and cultural traditions. Some even hate each other. Nevertheless, American universities will group them into a nice little package. Similarly, the category of "Hispanic" is equally un-illuminating, describing anything from a Puerto Rican, to an Italian-Argentinian, to a Mexican of European descent.

There is not only something distinctly un-American about such groups; there is something profoundly demeaning to those very cultures that diversiphiles are trying to respect. Nineteenth-century anthropologists are rightly chided for their classifications of the peoples of the world into inadequate, if not offensive, groups. University admission boards are hardly doing any better.

But since *Grutter*, as well as a 1978 case called *Bakke*, university officials have been permitted to bottle up and package the races into a healthy serving of "diversity" for their students to consume. They have been free to use racial characteristics as a proxy for "unique worldviews" and "authentic perspectives" despite the fact that the concept of race is both too broad and vague to capture these traits adequately. Moreover, by focusing on race as a proxy for experience, they have ignored a more important type of diversity to an educational setting: diversity of opinions and ideologies.

In 1896, in the infamous case of *Plessy v. Ferguson*, the Supreme Court upheld racial classifications by the government. As the lone dissenter, Justice John Marshall Harlan penned some of the most prescient words in American legal history: "Our Constitution is color-blind, and neither knows nor tolerates classes among citizens. … In my opinion, the judgment this day rendered will, in time, prove to be quite as pernicious as the decision made by this tribunal in the *Dred Scott Case*." The Supreme Court would fully endorse Harlan's opinion when it overturned *Plessy* with *Brown v. Board of Education*. Hopefully, our modern use of inadequate and offensive racial classifications for college admissions will one day be seen as equally backward as *Plessy*, and perhaps *Fisher* will be the case that will start that change.

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