



Supreme Court Takes Up Affirmative Action Debate

Catherine Green | October 10, 2012 | 8:49 a.m. PDT

The U.S. Supreme Court revisits affirmative action Wednesday, during an hour of arguments in the case of Fisher v. University of Texas at Austin.

CBS News reported Abigail Fisher, a white 22-year-old woman, filed a suit against the school that rejected her in 2008, a decision she claims was based solely on her race.

Affirmative action as a policy allows schools and places of business to take into consideration a candidate's race, color, religion, gender, sexual orientation or national origin during the hiring or admission processes to benefit an underrepresented group.

The Supreme Court affirmed the use of affirmative action for universities in the 2003 case Grutter v. Bollinger when justices ruled schools could consider race in a "holistic" review of an application.

Taking up the issue again has the potential to affect the admissions process and treatment of race in schools across the country.

From CBS News:

The response to Fisher's case proves that while affirmative action has been a matter of debate for decades, it remains a potent one. Dozens of individuals and organizations have given their input to the Supreme Court through amicus briefs -- 17 briefs filed to support Fisher and 73 in support of the university.

Republican Rep. Allen West, Ronald Reagan's attorney general Ed Meese and the libertarian Cato Institute all signed onto briefs backing Fisher. On the other side, the court is hearing from the likes of Democratic Senate leaders Harry Reid and Chuck Schumer, Teach for America and the American Psychological Association. Dozens of organizations in favor of the school's system plan on holding a rally outside of the Supreme Court today.

The New York Times pointed out this is a different court now hearing debate over the issue.

In 2003, Justice Sandra Day O'Connor was the swing vote in favor of affirmative action, and wrote the majority opinion in the court's 5-4 ruling.

Now, the Times said, the weight falls on Justice Anthony M. Kennedy as the current swing member. Justice Kennedy dissented in the 2003 decision, making it appear the court might overrule it today.

From the Times:

The parties in the new case, Fisher v. University of Texas, No. 11-345, certainly seem to believe they must have Justice Kennedy's vote to win. They each cited him by name about 20 times in their main briefs.

...In their brief, Ms. Fisher's lawyers reminded Justice Kennedy of his discomfort with the very ideas of racial preferences. "Preferment by race, when resorted to by the state," they wrote, quoting Justice Kennedy's dissent in Grutter, "can be the most divisive of all policies, containing within it the potential to destroy confidence in the Constitution and in the idea of equality."

In its own brief, the university said that Justice Kennedy had left himself plenty of room to rule in its favor.

"U.T.'s policy lacks the features that Justice Kennedy found disqualifying in Grutter," the university's lawyers wrote. "It is undisputed that U.T. has not established any race-based target; race is not assigned any automatic value; and the racial or ethnic composition of admits is not monitored during the admissions cycle."

Justices have four options here, according to the Times. They could vote to uphold the school's policies as constitutional, decline to decide the issue at all if they find Fisher did not suffer sufficient injury, say that "race-conscious" admissions cannot be used where "race-neutral ones... have produced substantial diversity," or it could overrule the 2003 decision altogether.

Affirmative action, at the core of this case, is a contentious issue to say the least. Twitter users had plenty to say about it.