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Many observers have been on pins and needles, wondering what ruling the United States Supreme Court would make concerning the issue of affirmative action here in the United States.

On Monday, everyone got their wish, and an answer; sort of. Sidestepping any major ruling on the hot button issue of affirmative action, and deciding whether or not a University of Texas admissions plan that allows the limited consideration of race is unconstitutional, the Supreme Court voted to send the case, Fisher v. University of Texas at Austin, back to the U.S. Court of Appeals for the Fifth Circuit, for further review.

Although Monday's ruling doesn't set any new precedents, it pretty much sets the issue up for the court to reconsider next year, when it will have to review another affirmative action case.

SUPREME COURT VOTE

By a 7-1 vote, the Supreme Court told the Fifth Circuit court that it used the wrong standards to evaluate UT-Austin's affirmative action policy and that it misinterpreted the precedent set by the Supreme Court when they reviewed the policy.

Justice Anthony Kennedy, writing for the majority, supported the prior decisions of the Supreme Court, which established affirmative action as constitutional to further states' compelling interest in fostering a diverse student body. But the majority maintained that the Fifth Circuit court did not give a hard enough look at UT-Austin's race-conscious admissions program.

"The University must prove that the means chosen by the University to attain diversity are narrowly tailored to that goal. On this point, the University receives no deference," Kennedy wrote. "Strict scrutiny must not be strict in theory but feeble in fact."

Justice Kennedy wrote that the Fifth Circuit court should have made sure that UT-Austin's approach to racial considerations met the standard set by the Supreme Court in 2003. That year, in the case Grutter v. Bollinger, the court rejected the use of racial quotas but said that schools could consider race as part of a "holistic" review of a student's application.

That precedent, Kennedy wrote, "does not permit a court to accept a school's assertion that its admissions process uses race in a permissible way without closely examining how the process works in practice."

Justice Ruth Bader Ginsburg was the lone dissenter, writing that she would affirm the lower court's decision that supported the University of Texas admissions program.

"The University's admissions policy flexibly considers race only as a 'factor of a factor of a factor of a factor' in the calculus," Ginsburg wrote. "The University has steered clear of a quota system like the one struck down in Bakke, which excluded all non-minority candidates from competition for a fixed number of seats."

She added, "And like so many educational institutions across the Nation, the University has taken care to follow the model approved by the Court in Grutter v. Bollinger."

Justice Clarence Thomas was the only justice who went on the record as saying he would have

voted to overturn the court's 2003 decision in Grutter v. Bollinger, which permitted the use of race in college admissions.

In his concurring opinion, Thomas said, "I write separately to explain that I would overrule Grutter v. Bollinger and hold that a State's use of race in higher education admissions decisions is categorically prohibited by the Equal Protection Clause."

Justice Elena Kagan, a former Solicitor General, recused herself from the case, presumably because she had worked on the case earlier.

"We're encouraged by the Supreme Court's ruling in this case," said University of Texas President Bill Powers in a statement provided Monday. "We will continue to defend the University's admission policy on remand in the lower court under the strict standards that the Court first articulated in the Bakke case, reaffirmed in the Grutter case, and laid out again today. We believe the University's policy fully satisfies those standards."

While the University of Texas defended its admissions policy based on race, most students who attend UT-Austin are accepted through the "Top 10 Percent" program, which is a program that doesn't even consider race.

"We remain committed to assembling a student body at The University of Texas at Austin that provides the educational benefits of diversity on campus while respecting the rights of all students and acting within the constitutional framework established by the Court," said Powers. "Today's ruling will have no impact on admissions decisions we have already made or any immediate impact on our holistic admissions policies."

The "Top 10 Percent" program grants automatic admission to the top students in every Texas high school.

FISHER V. UNIVERSITY OF TEXAS AT AUSTIN

This ruling on Fisher v. University of Texas at Austin came about as a result of a lawsuit filed by Abigail Fisher, a White woman and Texas resident, who filed suit against the University of Texas after she was turned down after she applied for admission to UT-Austin as a high school senior in 2008.

Fisher claimed that the university violated the Equal Protection Clause of the 14th Amendment and Title VI of the Civil Rights Act of 1964, because it allowed the consideration of race in evaluating applicants to the university and that their admissions policy didn't meet the standards previously set by the Supreme Court.

The Equal Protection Clause in the 14th Amendment was passed in 1868 to protect former slaves from Southern lawmakers. It states that "no state shall … deny to any person within its jurisdiction the equal protection of the laws."

Both the district and federal appeals courts had dismissed Fisher's claim before the Supreme Court agreed to take the case.

In its court filings, UT-Austin revealed that in 2008, when Fisher sought admission, 81 percent of all freshmen and 92 percent of all Texas residents admitted as freshmen, were "Top 10 Percent" applicants, leaving only 841 slots to be filled by "non-Top 10 Percent" students.

In 2008, just 216 accepted students accepted outside of the "Top 10 Percent" program were Black or Hispanic. Approximately 75 percent of the UT-Austin admissions are filled through the "Top 10 Percent" program.

Additionally, in its Supreme Court brief, UT-Austin said that Fisher would not have been accepted into the university even if it had never considered the race of any applicant.

REACTION TO THE RULING

Supporters and opponents of the affirmative action vote called Monday's decision a victory.

Abigail Fisher said in a statement, "I am grateful to the justices for moving the nation closer to the day when a student's race isn't used at all in college admissions."

Congresswoman Sheila Jackson Lee, a Senior Member of the House Judiciary, commented on the decision, saying, "I am heartened that the Supreme Court has reaffirmed the principle that colleges and universities may consider race as one of a number of factors in the admissions decision. I am hopeful that when the lower courts consider the case on remand, they will find that the University of Texas admission process is narrowly tailored to achieve the university's compelling and constitutionally permissible interest in achieving a diverse student body and an intellectual community comprised of individuals with diverse backgrounds, perspectives, and ideas."

State Senator Rodney Ellis released a statement saying, "This decision ensures that the well-established use of affirmative action to ensure diversity on campus can be maintained. I hope the extended review of this issue continues that policy. I hope the appeals court hears that message loud and clear."

The NAACP Houston Branch released a statement saying, "We are confident that the University of Texas will easily be able to stand the strict scrutiny imposed by the Supreme Court by meeting the burden of demonstrating a compelling need for the Affirmative Action program and showing overwhelming evidence that the program is warranted."

Edward Blum of the Project on Fair Representation, a not-for-profit legal defense foundation that provided counsel to Fisher, said in a statement that Monday's ruling issued a "clear directive" to the Fifth Circuit.

"The Supreme Court has established exceptionally high hurdles for the University of Texas and other universities and colleges to overcome if they intend to continue using race preferences in their admissions policies," said Blum. "It is unlikely that most institutions will be able to overcome these hurdles. This opinion will compel the Fifth Circuit to strike down UT's current use of race and ethnicity."

Sherrilyn Ifill of the NAACP Legal Defense and Education Fund stated in a discussion with reporters that the Supreme Court decision doesn't impose sharper standards on universities but rather on the courts obligated to review university plans.

While the decision on Fisher v. University of Texas at Austin does not change the law on affirmative action, sending the case back to the Fifth Circuit court based on the criteria set forth in their decision could potentially send the wrong message to universities that could indirectly impact affirmative action admission policies.

The Fisher v. University of Texas at Austin case was considered a major opportunity for the Supreme Court to rule on affirmative action, but with their decision Monday, they will now have to wait until the next term when they will consider whether the state of Michigan violated the Equal Protection Clause by amending its state Constitution to prohibit affirmative action.

The case, referred to as Schuette v. Coalition to Defend Affirmative Action, reviews a 2006 Michigan ballot initiative that bans the consideration of race or sex in public education, government contracting and public employment.

As always, the Houston Forward Times will be following these cases thoroughly for our readers.