

Subject: Supreme Court Upholds Diversity-Based High School Admissions Policy

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Supreme Court Allows High School Admissions Policy Designed to Promote Diversity

On February 20, 2024, the Supreme Court [denied](#) an appeal for it to consider whether a Virginia high school's admissions policy revised in 2020 to help promote student diversity constituted discrimination based on race. The decision, highly favorable to educational institutions looking to diversify its schools and programs, suggests that the Court is not immediately looking to define the confines of when admissions policies (or by extension, employment practices) do and do not constitute discrimination based on race since its sea-change decision in 2023 invalidating affirmative action.

The Admissions Policy

The case the Supreme Court declined to hear centers on the Thomas Jefferson High School for Science and Technology ("TJ"). Widely recognized as one of the most elite public schools in the country, TJ admissions rates recently varied between 14 and 20 percent. In 2020, Asian Americans constituted 73% of the entering class and prior to then consistently comprised an overwhelming majority of the student population. In response to calls from the District and one vocal Board member to address the underrepresentation of Black and Hispanic students at TJ the Board adopted a revised admissions policy consisting of the following components:

1. 450 of the 550 seats in the incoming class are to come from each public middle school in the surrounding region.
2. Applicants are evaluated based on:
 - Grades;
 - A "portrait sheet" describing the applicant's "soft" skills (such as ability to work with others);
 - A problem-solving essay;
 - "Experience Factors", including (1) eligibility for free or reduced-price meals; (2) status as an English language learner; (3) eligibility for special education services, and (4) attendance at a public middle school that previously sent few students to TJ.
3. Standardized tests are no longer to be relied on by admissions officers; and
4. Students would no longer have to pay an application fee.

Impact of the Admissions Policy

Following implementation of the revised policy, the percentage of white, Hispanic, and

Black students immediately increased. White students received 22.26% of admission offers, up from 17.7%. Hispanic students received 11.27% of offers, up from 3.35%. Black students received 7.9% of offers, up from less than 3%. While the percentage of Asian-American students overall decreased, the group nonetheless constituted a majority, or 54.36%, of offers extended to applicants.

Legal Arguments

The group bringing the lawsuit against TJ, which included parents of children who have applied or will apply to TJ, alleged that the revised admissions policy was based on intentional race discrimination against Asian-Americans and therefore violated the Equal Protection Clause of the U.S. Constitution. TJ's attorneys argued that the revised admissions policy was both race neutral and race blind. The lower courts disagreed on whether there was an Equal Protection violation. The District Court found both direct and circumstantial evidence that the changes in the admission process were motivated by racial discrimination, and that Asian-Americans were disproportionately harmed following implementation of the revised policy. This decision was appealed to the Court of Appeals. They disagreed with the District Court finding that there was no harm to Asian-American students as they still received a majority of the admissions offers. The Court of Appeals also found that the revised admissions policy did not intentionally discriminate based on race to achieve racial balancing or to disadvantage Asian-Americans.

While most of the Supreme Court justices voted to not speak on this when rejecting the appeal, Justice Alito filed a dissent, which was joined by Justice Thomas, arguing that the revised admissions policy in fact resulted in race-based discrimination, agreeing with the District Court.

Takeaway for Educational Institutions and Employers

While this decision and related ones directly discuss DEI efforts in schools, we have discussed in previous law alerts how DEI efforts in this space have been directly leveraged to challenge similar efforts in the workplace. The Supreme Court's denial to review this case, while not affirming that the policy in question is in fact legally permissible, should nonetheless be viewed as encouraging for those educational institutions and employers looking to revise their existing policies and procedures by using race neutral measures focused on removal of socioeconomic and geographical barriers. Challenges to such programs will likely continue. The extent to which they are successful, however, as evidenced by this case, remains to be seen. In the meantime, educational institutions and employers should continue to consult legal counsel regarding efforts to increase diversity in their student populations and the workplace.

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