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POLS 363
Final Assignment

Students for Fair Admission v. President and Fellows of Harvard College

Interest of the Amicus

Latine Unity for Higher Education (LUHE) aims to support Latine students throughout their university experience by providing basic needs assistance and advocacy resources. Based in the Pacific NorthWest Region along the west coast, LUHE serves students attending two-and-four year colleges and universities that are from first-generation, low-income, and working class backgrounds. In collaboration with students across the PNW, we provide advocacy resources focused on helping Latine students earn their degree in a learning environment that is designed for them. As the Supreme Court considers the constitutionality of Affirmative Action policies in the admission process, our organization holds vital interest in the outcome of this case. In solidarity with other marginalized groups across the country, it is imperative that Affirmative Action stays in practice as a form of reparations to those who have been historically excluded from opportunities in education. In order to support students while they are in college, admissions policies must use indicators that level out the playing field for underrepresented students to enroll in higher education. Without these practices, universities could easily become purposefully exclusionary and lack the proper accommodations to support students of color. Additionally, the most marginalized groups will be deprived of the opportunity to continue their education and build generational wealth and knowledge. The significant impact that this ruling will have could lead to the deprivation of the right to education for many historically marginalized communities. It is our duty as the Latine Unity for Higher Education to protect education policies centered around racial justice and equity.

Summary of Argument

In a joint case, the Students for Fair Admission (SFFA) organization is suing the President and Fellows at Harvard College for the use of affirmative action in the admission process. Affirmative action is the practice of considering a student's race as a determinant factor in the admission process. While Harvard asserts that the admittance policies are consistent with precedent rulings, the SFFA argues that affirmative action discriminates against Asian American applicants and favors White applicants, thus violating the Title VI of the Civil Rights Act of 1964. Now the court examines whether institutions of higher education use race as a factor in the admissions process and if these race-conscious admission processes violate Title VI of the Civil Rights Act of 1964. Latine Unity for Higher Education urges the Supreme Court to rule in favor of Harvard college to protect affirmative action practices in higher education.

First, affirmative action is the most effective method in admitting students of color into universities. Studies have shown that no other program is designed to diversify student demographics to the same extent as affirmative action has. Further, additional studies have recognized that holistic admission approaches still have limitations that further put students of color at a disadvantage. Secondly, even without the use of affirmative action, no university admission program is simply “identity-neutral”. Various colleges have specific admission resources for underrepresented students that are usually based on race, gender, socioeconomic status and other indicators. The court must also consider the impact this decision will have on programs that use identity indicators to serve a specific population.

Argument

The purpose of this case is to understand whether race-conscious admission processes promote any form of discrimination on the basis of race. Latine Unity for Higher Education views affirmative action that does not discriminate but rather prioritizes those who have historically left behind from taking on these opportunities, a form of reparations. The foundation of the United States lies in the American Dream – that with freedom and hardwork, one can experience “life, liberty, and the pursuit of happiness.” However, this dream has only been available to those it was meant for: white land-owning men. As the nation has developed to become somewhat more legally equitable, there are still many long-lasting systemic barriers that hinder the success of marginalized communities. One of these exclusionary institutions is higher education. Access to higher education can lead to further opportunities for one’s career, access to basic necessities, ability to politically mobilize, and much more. “Today, the average white family has roughly [10 times](#) the amount of wealth as the average Black family. White college graduates have over [seven times](#) more wealth than Black college graduates,” (Ray & Perry, 2020). It is evident that access to higher education has long-lasting benefits but not everyone gets to take advantage of that freedom because of the inaccessibility of attending higher education.

Universities have historically only been available and reserved for the enrollment of white students. Race-neutral policies have never been in practice even before (and now after) the use of affirmative action. Admission policies that are designed to be “race-neutral” often fail to reach true equity and inclusivity despite claims of being neutral and unbiased. First, affirmative action has been the most effective practice in enrolling a diverse student population. No other admission practice has been able to achieve the same level of equity as affirmative action. Secondly, holistic admission approaches fall short in achieving equity as there are still

inadvertent disadvantages for particular groups of students. From these research studies, it is evident that without affirmative action, students from disadvantaged racial backgrounds will once again be unwittingly excluded.

Throughout the era of affirmative action policies in the 1960s, “the percent of minority high school graduates applying to college was highest under the affirmative action regime and declined during the merit and percent regimes,” (Dickson, 2006). Furthermore, the study finds that without affirmative actions in place there was a “3.2% decline in the percent of black high school graduates taking a college admissions test. The percent of Hispanic high school graduates taking a college admissions test also fell by 3.9%,” (Dickson, 2006). These percentages may be small, but 3 percent roughly translate that over 1000 students in each affiliation group no longer are applying to universities because the end of affirmative action “affects the application behavior of high school graduates,” (Dickson, 2006). Due to the role that affirmative action plays in expanding the probability that a Latine student will apply and be accepted into a university, it is vital that it is a protected practice or else underserved communities will once again face severe forms of isolation from these institutions. Demographics at universities could return to the homogenous levels of the pre-1960s as the probability of students of color receiving admission acceptances would “drop to half that of white students,” (Saul, 2023). No other admission policy can achieve the level of enrollment of students of color in higher education and no other admission process can curtail the effects of banning race-conscious practices.

“Alternative policies and administrative decisions have, so far, been unable to fully replace race-based affirmative action,” (Jaschik, 2020). Even in states where there are a high number of minority high school graduates, the university enrollments do not reflect that demographic. However, race-neutral policies have never been able to return the same levels of

diversity when affirmative action was used, (Torres, 2020). This is likely due to the adaptation of holistic which 95% of universities claim to use, (Liu, 2022). Holistic approaches use factors such as grades, involvement in extracurricular activities, personal statements, letters of recommendation and many other indicators to determine whether a student will be accepted in a higher education institution. This holistic approach is still not race-neutral as it inadvertently puts students of color in a disadvantaged position. Since there is an emphasis placed on involvement within community and academic success, it further limits those from marginalized backgrounds who do not have the privilege of participating. These “racially-neutral” practices fail to “take into account the student’s context for educational opportunity,” (Park, 2019). There is no admission process that has a neutral examination of applicants because they require the student to meet some sort of requirement. Similarly, disparities will continue to exist as education and other institutions are inherently unequal. Though race-conscious, and perhaps class-conscious, admission policies will not solve every inequality in higher education, it is a solution that must be taken into consideration to address these deep equity issues.

The court must understand the political and historical purpose of affirmative action: to tackle levels of structural racism by prioritizing the acceptance of students of color. It is with this understanding that the court ought to act in the interest of students of color who are heavily impacted by this ruling. As our organization aims to support Latine students throughout their higher education by advocating for an inclusive and culturally-relevant environment, LUHE will also push for admission policies that grant Latine students into those spaces.

In deciding the fate of affirmative action, the court must consider the implications that this decision will have for programs that are dedicated to underrepresented communities. States that have already banned the use of affirmative action, like Washington and California, have also

implemented programs and offices dedicated to assisting students from underrepresented racial minorities. While some of these services are independent organizations, a few of them are directly supervised under official university support programs. Latine Unity for Higher Education cannot afford to question the constitutionality of support services that are meant to assist those who come from underserved racial communities.

At the University of Washington, the Office of Minority Affairs' Multicultural Outreach and Recruitment (MOR) office provides aggressive outreach and recruiting to underrepresented minority students across Washington, (Engleson, 2023). As these programs use race and other factors as an indication to provide application resources, these could potentially face some critiques that they are "unfair" because they are only available for specific students. Our nation is now facing issues of equity versus equality. Simply put, affirmative action and variations of race-based programs are established with the intent of leveling out the playing field, thus are centered around equity so that these communities can get to a place where equality is a more appropriate remedy. While there are still limited reports on the full impact of banning affirmative action, organizations and programs that have a tailored student audience based on race should be wary of what this means for their advocacy. Communities and groups form these college assistance programs because of the consistent dedication toward racial justice and equity. If the court is willing to invalidate the core practice of race-based forms or reparations, like affirmative action, this could leave higher education institutions to no longer allow programs that are reserved to support marginalized communities, all in the name of "fairness and equality."

Our organization, Latine Unity for Higher Education holds significant interests in the outcome of the case because it disproportionately impacts Latine students' access to higher education. The Latine community will see a decline in university acceptances and enrollments

because no other race-neutral admission process has the same intention of enrolling students of color as affirmative action does. Inequality plagues the broader education system which is why there are college-affiliated programs and outside organizations that attempt to curtail the influence of these disadvantages. However, this decision could lead the court to consider the constitutionality of these programs because they are race-conscious and potentially “unfair” since they are meant to support specific racial students. This decision will have lasting ramifications for marginalized communities to have equal access to higher education, the learning environment of institutions, and programs designed to advise racial-minority students. Latine Unity for Higher Education urges that court to rule in favor of Harvard and affirmative action policies so that all students have true equitable access to higher education and contribute to our diverse nation.

Liberal Democracy and Institutional Legitimacy Analysis

Many organizations have filed amicus briefs and shown legal support for both sides of the affirmative action debate. However, those in the general public may not be taking a deep look at affirmative action if they are not involved within higher education or if their state already has banned this practice. The Associated Press-NORC Center for Public Affairs Research conducted a poll that showed roughly 63% show support for affirmative action, (Binkley & Swanson, 2023). However, over the last three years the political nature of the court has begun to lean more conservatively leaving only 39% of folks to lack confidence in the court and a small 12% that hold great confidence in the Supreme Court, (Binkley & Swanson, 2023). Due to this data, there has been a recent trend in questioning the legitimacy of the court and the interests that are served. Some may see the rule of law to be one that is simply to confirm and consolidate the power of

the ruling class, (Thompson, 1975). In this case of affirmative action, there are levels of this claim as it can be seen that by banning affirmative action, it weakens the socio-economic mobility of racial minorities and maintains economic power for white communities. In the case that the rule of law can be masked, there is a hesitation in naming the nation as a liberal democracy because of who right protections are guaranteed to. While the case is meant to promote acts of equality, the decision would only harm the right to education for marginalized groups. In this sense, the court is attempting to maintain a neutral stance while actively protecting the rights of those who have always had power. As communities who face the repercussions from decisions of the Supreme Court begin to contest the powers of the institution because of the court's reasoning within their decisions. The Supreme Court has used constitutional originalism, interpreting the constitution as it was written, as the basis for their decisions. Though if the constitution were to be read and interpreted during the time it was created, only one class would be protected. That would be the class that the Supreme Court continues to protect and possibly will with the outcome of affirmative action. Marginalized communities are entering an era where the court may no longer be a viable avenue to protect their rights. While it is still too premature to consider whether our institutions are backsliding from democratic norms and ideologies, it is clear that the judicial institutions are losing strong titles as liberal democracy as there is a lack of protection of civil liberties for minority groups, debates around equality and equity, and overall just a lack of faith in the courts. The outcome of this case on affirmative action can either reaffirm these growing perspectives or turn it around to rebuild judicial legitimacy.

Conclusion

The political nature of the court has turned the general public to lose faith and confidence in the Supreme Court. This is mainly due to the fact that the court is no longer actively protecting the rights of marginalized groups but instead acts in the interest of those already in power. The court ought to rebuild its legitimacy by ruling in favor of affirmative action. The nation is now confronted with varying ideas of how to impose equity and acts of reparations or if institutions should maintain neutrality and equality. In the case of higher education, the court must maintain practices that aim to address systemic barriers that influence access to generational wealth and success. By stripping away the use of affirmative action, students from racial ethnic backgrounds will see a decline in college application and admission which impacts opportunities to sustenance. Furthermore, current policies limit the efforts to implement lasting forms of reparations. Students are not the only communities affected by this decision. Organizations and resources aimed specifically for supporting students of color may no longer be able to receive assistance because it is deemed unfair. However, these organizations are vital to the success of underrepresented students in university as well as generating a diverse civil society. For all these reasons listed above, in the case of Students for Fair Admissions v. Harvard, the Supreme Court ought to rule in favor of protecting affirmative action in higher education.

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