Affirmative action is receiving yet another challenge in court by the Students for Fair Admissions, a case that could affect universities across the country.

Several Asian-American students are leading the charge claiming that Harvard University turned them down in favor of admitting less qualified students of other races.

The Students for Fair Admissions website describes this type of discrimination as unconstitutional, citing a 2013 US Supreme Court opinion on affirmative action in public universities. This was in response to an affirmative action case in Texas where the US Supreme Court ruled in favor of the University of Texas-Austin, upholding the existing ruling on affirmative action by a 5-4 margin.

In stating the majority in the case, Justice Anthony Kennedy said that “It remains an enduring challenge to our nation’s education system to reconcile the pursuit of diversity with the constitutional promise of equal treatment and dignity.”

The court elaborated, saying that university admissions policies must be upheld to “strict scrutiny.” To use race in the admissions process, a university must prove to a court that their diversity oriented goals could not be achieved using race-blind policies instead and that any use of race in the application process is but one of several factors in the decision.

While Radford would not be directly affected by its legality, as it does not have affirmative action policies, the admissions office has taken note of the development. Every university would have to keep these legal developments in mind should they want to change their policies.

This Supreme Court case is coming off the heels of the Department of Justice rolling back Obama-imposed guidelines that encouraged public universities to include race in admissions policies. The current administration reasons that discrimination, in any form, is against the
law.

The legality of affirmative action is currently tentative. Throw in two new Supreme Court appointments and active opposition from the justice department, and there is a high likelihood that any further challenges, such as this one by the Students for Fair Admissions, could sway the court’s opinion.

Devin O’Malley, a spokesman for the Justice Department, was quoted in the New York Times as saying, “The executive branch cannot circumvent Congress or the courts by creating guidance that goes beyond the law and — in some instances — stays on the books for decades.”

So it would appear that the primary argument against affirmative action is one of constitutionality.

The “law” in this case is referring to the anti-discrimination laws instituted during and after the Civil Rights Movement. They prohibit all forms of racial discrimination no matter the color, so that, as the Rev. Dr. Martin Luther King Jr. explained it, the United States would finally live up to its founding words of “all men are created equal.”

Tyler Perkins, the Chairman of Radford’s College Republicans, believes that any inclusion of race in a college application is wrong.

“We should do away with putting race on college admission applications,” he said. “I think that no one should put their race or ethnicity on a college application. If we take that off, we would move to a more merit-based system which would be the best for universities.”

He went on to say that this merit-based system would represent “true equality.”

However, anti-discrimination laws were passed with the understanding that it was one particular group or set of groups that faced the front of racial disadvantages. This has been the continued argument in the decades after the institution of these policies in the face of opposition.

The mostly Democratic supporters of affirmative action believe that this racial injustice is
still present and that public institutions, including universities, must play a role in balancing the scales.

The question addressing the current laws of affirmative action may be of legality, but the underlying question, in this case, is one asking if it is permissible to violate the nation’s principles against racial discrimination in pursuit of social justice.

“Affirmative action is one of the policies from [the civil rights] era,” said Geoffrey Preudhomme, Vice President of the Young Democrats at Radford. “These policies have only been on the books for 50 years.”

Preudhomme cited this country’s history of racial segregation as a reason for the continuation of these policies. He brought up that many low-income communities are primarily populated by people of color.

“Segregation is still an issue. Not in the same sense as Jim Crow, but you still see majority white areas and majority black areas,” he explained. “If you live in a poor area, you’re going to go to a poor school. If you go to a poor school, your opportunities will be limited. Affirmative action is meant to make sure that those folks don’t fall through the cracks.”

However, there is a disconnect between those who advocate for affirmative action and those who argue against it on principle. People will assume that those arguing against affirmative action don’t consider diversity to be a goal and that race-blind policies would not provide any diversity at all. There has been research to show that the latter is not the case.

In 2014, a SCOTUS decision upheld that states could decide the legality of affirmative action for themselves. Before then, however, several states had already banned the practice, and a few universities had chosen to abandon them. These states are California, New Hampshire, Washington, Michigan, Florida, Nebraska, Arizona, and Oklahoma.

Texas had a ban for a period of seven years from 1996 to 2003, and the University of Georgia voluntarily removed race from its admissions policies.

A study was conducted by the Century Foundation in 2014 to analyze student populations of state universities in these states to see if their race-blind policies still achieved similar levels
of diversity as race-conscious ones. The study looked at the data of new African American and Latino students in the first year of the new race-blind policies and compared it to the year before.

The gist of the results was a definitive yes.

Out of eleven universities inspected, eight admitted a similar amount of ethnic students, and one admitted enough Latino students, but not African American students. This may not be the most scientific study, but the results shine a bit of light on the prospective future of admissions policies should affirmative action receive a national ban.

It would seem the Students for Fair Admissions have a fair point then. If it is possible to achieve satisfactory levels of diversity on college campuses without the need for racial discrimination, then according to the 2013 SCOTUS decision, race-conscious admissions would be unconstitutional.

These universities achieved their diversity goals through policies that focused much more on socioeconomic status and family history. They focused on recruiting first-generation students, those whose families had not ever graduated from a university. All of these, of course, is overshadowed by academic performance, but these relevant, yet race-neutral factors help bring different types of people to universities.

This is precisely what Radford University does. President Brian Hemphill said at an open forum with students and faculty that 40 percent of Radford students are first-generation college students.

“We’re proud of that,” he said. “They come from every walk of life.”

Indeed, by focusing on helping lower-income students, universities have brought in those same minority students that would have been helped by an affirmative action policy. As Preudhomme said, the majority of lower-income students are people of color.

People are right to think affirmative action is at risk, it could be rendered unconstitutional, but that might not end up creating as much of a difference in the makeup of student bodies as some worry.

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