



Trump Administration to Investigate Affirmative Action in University Admission

August 21, 2017

On August 1, the [New York Times](#) reported that the Trump administration will be redirecting Justice Department resources to investigate universities' affirmative action admission policies.

The report was made after the New York Times received a document stating the Department of Justice would be investigating "intentional race-based discrimination in college and university admissions." The Times' further alleged that the investigation would be conducted by the administration's political appointees. This is significant because the Educational Opportunities Section, run by career civil servants, normally handles university investigations.

The Department of Justice has responded to these claims by calling the report inaccurate. "This Department of Justice has not received or issued any directive, memorandum, initiative, or policy related to university admissions in general," said Department of Justice spokeswoman Sarah Isgur Flores. "The Department of Justice is committed to protecting all Americans from all forms of illegal race-based discrimination." Further, the Department of Justice stated that they are currently seeking volunteers to investigate a complaint filed by 64 associations alleging racial discrimination against Asian Americans in an unnamed university's admissions policy and practices.

The plan as reported "does, at first blush, seem difficult to square with the Supreme Court's re-endorsement of at least some race-based affirmative action policies," according to Steve Vladeck, a CNN contributor and professor at the University of Texas School of Law. By way of background, in June 2016, the Supreme Court of the United States upheld the decision that race-conscious admissions programs are constitutional. In 2008, plaintiff Abigail Fisher, a white woman from Texas, was denied admission to the University of Texas. The University considers many factors in their application process, including race. Fisher's lawsuit claimed the University denied her admission based on her race and therefore, violated the equal protection clause.

The Supreme Court found that when an applicant's race is one of many factors considered, it creates a holistic evaluation of the applicant and is therefore constitutional. Further, the Court has found there to be educational benefits that flow from having a diverse student body, that justify using race as a factor. However, the Court has also rejected blunt racial quotas and the use of race as a sole factor for admissions. Justice Anthony Kennedy wrote the majority opinion: "The Court's affirmance of the University's admission policy today does not necessarily mean the University may rely on the same policy without refinement. It is the University's ongoing obligation to engage in constant deliberation and continued reflection regarding its admissions policies."

The new administration's reported position on affirmative action, in addition to the recent appointment of Neil Gorsuch to the Supreme Court, may provoke litigation and indeed may influence the outcome of future Supreme Court cases. However, whether or not the Justice Department moves forward with these investigations remains to be seen. Colleges and universities are encouraged to keep a close eye on this area of the law and if necessary, continue to review and revise their admissions policies and procedures.

If you have any questions or concerns regarding employment or education-related issues, please contact James G. Ryan at jryan@cullenanddykman.com or at 516-357-3750.

Thank you to Victoria Jaus, a law clerk at Cullen and Dykman, for her assistance with this blog post.