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THE CURRENT: How will the Supreme Court's affirmative action ruling affect college admissions?

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Host: Adriana Pita, Office of Communications, Brookings

Guest: Katharine Meyer, Fellow, Brown Center on Education Policy, Brookings

PITA: You're listening to The Current, part of the Brookings Podcast Network. I'm your host, Adrianna Pita. On Thursday, the Supreme Court struck down affirmative action policies at the University of North Carolina and Harvard University, effectively ending the consideration of race as a factor admitting students to higher education. Here with us today to discuss the cases and the effect of this decision on higher education is Katharine Meyer, a fellow with the Brown Center on Education Policy here at Brookings. Katharine, thanks for talking to us today.

MEYER: Thanks for having me.

PITA: So, prior to today, previous Supreme Court cases have generally upheld the consideration of race as one of many factors in college enrollment. How did the current court justify their reversal? How did we get here?

MEYER: That's right. The Supreme Court has been considering questions about the consideration of race in college admissions for decades. The most seminal case was the Bakke decision in 1978 in the University of California system. And that's where we got this longstanding precedent that the court has upheld colleges can consider race in college admissions when they are advancing what has been referred to as a compelling interest in diversity. And that's a really important precedent because that ended up playing a huge role in today's decision. And so historically it has been that colleges can argue it's important for them to build a racially diverse class to achieve their institutional mission. And there's this term of sort of institutional deference that the court has given to colleges and universities to set those goals and as long as their consideration of race is in advancement of those goals, then the court has decreed it's a permissible consideration of race.

PITA: So, what did today's decision then cite as why schools shouldn't be considering race?

MEYER: Right, so today's decision did find, the majority opinion said that colleges were in violation of the Equal Protection Clause of the 14th Amendment because their advancement in consideration of race did not meet the strict scrutiny around compelling interest. And so in the majority opinion, we saw Chief Justice Roberts say that while historically there has been deference to institutions to set diversity goals, the Harvard and the UNC cases did not present very clear goals. To him, in that majority opinion, it was saying there were no way to measure whether or not colleges had attained their goals. And so, for example, when Harvard and UNC were talking about what their goals were, they were talking about the need to educate future leaders or to inspire diverse dialogue. And the chief justice argued that because it was nigh-on impossible to measure that, that it was an insufficient goal to then base the

consideration of race on. I think what's notable about that is that he didn't say that a compelling interest in diversity could never be justification for considering race, but that to this point, the arguments colleges have put forward haven't met the measurable standard.

PITA: Alright. We've seen a handful of other states previously ban affirmative action at their state level, California being one of the largest. What does their example show about what happens to racial diversity when systematic, race-conscious admissions aren't permitted?

MEYER: That's right. California is certainly the largest state to have banned the consideration of race in college admissions, but up to nine states at various points have had affirmative action bans regarding race to this point. So we have a good body of empirical evidence about what happens to underrepresented student enrollment. And in specific cases like California, but also pooling across all of these states, we see that the enrollment of Black, Hispanic, and Native students drops significantly, immediately. In California it was around a 30 to a 40 percent drop in Black and Hispanic enrollment after the selective institutions were no longer able to consider race.

I think something that's important to know from this literature is that the effects are a little bit different depending on if you're looking at colleges as a whole versus highly selective colleges. But it's important that the policy of considering race and admissions is really only implemented at the most selective institutions and so it's really the impacts there that we should care about. And so that's where we tend to see these large 30-40% drops. One analysis sort of extrapolated from that, putting aside the fact that many states have already banned affirmative action, if when this gets applied to the rest of the states, we would expect a nationwide, about a 10% drop in Black and Hispanic enrollment in the coming years.

PITA: The president and all of the chancellors of the University of California system filed an amicus brief in support of affirmative action to the Supreme Court. They were describing how the University of California system has spent the last 30 years experimenting with all sorts of alternate race-neutral measures to still try and either maintain or continue increasing their racial diversity in their campuses. What were some of the tools that they tried to use and how did they or didn't they work in achieving those goals?

MEYER: There are a lot of policies, both in California and in other states, that these sort of laboratories of experimentation have been able to look at, to think about how they can still achieve these institutional goals of diversity, even when they can't consider race. In California, they really engaged in expanded outreach. That included sort of expanding the set of high schools that they were visiting, the types of students that they were reaching out to, just trying to build up a bigger application pool of students. In California and then in Texas when there was a ban there, and in Florida there have also been efforts to establish these top X-percent plans, where they say we're going to admit the most qualified percent of students from all of the public high schools, with the idea there being that will achieve racial diversity because you're pulling from the racial diversity of multiple high schools. And we're already seeing that crop up as a solution. Just this week the Wisconsin legislature introduced a bill that would require the UW system to admit the top 5% of students from Wisconsin high schools. So, legislatures are already sort of learning from that approach. And we did see some positive effects of that; when states implemented those programs that did increase the racial diversity of the incoming class, just nowhere near the magnitude that race-conscious admissions did.

PITA: One of the statistics that's been being cited today in a lot of stories around this is from a 2019 study of Harvard students that found that 43% of the white student body there were either legacy admissions, recruited specifically for athletics, or that they were the relatives of staff or donors. And I was struck, Michelle Obama put out a very powerful statement today. And in it she said, "so often we just accept that money, power, and privilege are perfectly justifiable forms of affirmative action." What are we seeing in terms of any of these more selective schools thinking about rolling back some of these preferential policies like legacies and how effective would that be at helping to more balance the levels there?

MEYER: I think it's such an important point that Michelle Obama made, that affirmative action is an umbrella term that can be used to describe any number of admissions policies. That today the Supreme Court didn't ban affirmative action, they banned race-based affirmative action and race-conscious admissions. And things like legacy preference or targeted athletic recruitment or engaging in early admissions policies are forms of affirmative action, they're just forms of affirmative action that disproportionately benefit white students. And so I think we can expect to see a number of highly selective colleges in the coming weeks announce that they are going to eliminate legacy preferences. It has always been a dubious argument for why some students should get a tip in the admissions decision, but I imagine there's been such a groundswell of advocacy around this, particularly from student groups at highly selective institutions pushing the institutions to eliminate this practice. I can't imagine it being very common come this fall.

PITA: Looking forward, what kind of response have we seen yet so far from the Biden administration, the Department of Education? Basically, what comes next after this?

MEYER: The Biden administration has already put out a fact sheet and President Biden had a press conference today where he talked about obviously how personally disappointed he was in the decision of the Supreme Court and reaffirming the Department of Education's commitment to support colleges in achieving their goals of racial diversity. One thing that's really notable in the fact sheet that they put out is that they're encouraging colleges to make sure that they are not over-restricting their admissions policies in light of the decision. It's important to note that the decision did not say that race could never be part of the conversation in admissions decisions. And in fact, the chief justice said nothing in the opinion should be construed as saying that students shouldn't feel free to talk about their race, talk about their experiences of racial discrimination, or how race has been an advantage to them. They could write an admissions essay and colleges could take that into consideration as long as it is factoring into the individual circumstance of the student.

So I think we're in this place where colleges need to make sure that they are complying with the decision but not beyond the limits of the decision. There's still a lot of gray area that I think gives colleges a chance to think about how they can achieve diversity on campus even if they're not thinking about specific racial goals. Then again, that gray area does open up a lot of room for legal challenges, so I don't think today is the last we're going to hear on the consideration of race at the Supreme Court.

PITA: All right, Katharine, thank you very much for being with us today and talking about this.

MEYER: Thank you for having me.