

Is the ruling on affirmative action and the attacks on diversity the end to diversity in corporate America?

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After the Supreme Court's recent ruling in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, many are asking, is this the end to diversity in corporate America? We think, no!!! This is not the end! The struggle for racial justice has been ongoing for centuries and we are still very much in the middle of it. Unfortunately, change neither moves in a straight line, nor does it always conform to our hoped-for path and expectations of progress.

This decision is not the end of actions to create racially diverse organizations or a more diverse society. This is not the end of actions that are affirmative to drive change and to live up to the promise of diversity of this great nation. As much as some would like to erase our differences, the reality is that humans are diverse and race, gender identity, age, sexual orientation, nationality, ability, and other dimensions of our differences count. Our human differences not only exist, but they have meaning in our interactions and our experiences in the world. They let us see and experience more. Sameness is not a winning formula in a world of change where there are many unknowns and unknowables. To engage differences, you need to include them, value them, and encourage people to exercise their personal and agency within organizations.

The Supreme Court recently ruled that race can no longer be a consideration for applicants in college admissions.¹ The irony is that few colleges or universities ever used racial preference as a sole criterion. Expanding to the workplace, none of our clients have ever used racial identity as the sole criterion either. Instead, it is just one of many factors of competency, skill set, experience, and the ability to meet the needs of the organization today and in the future.

¹ According to President Ames of Russell Sage College, only 200 of the 4000+ colleges in the U.S. are so highly selective that admitting one student necessarily means denying another, and only those colleges have policies that consider race in admission decisions. The rest of colleges are not in a "zero sum" admissions game and accept all students who meet their academic standards.

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Organizations need diversity of thought, which is often enhanced by people having diversity in background. Organizations need differences to enable people to think out of the box or take on what is currently unknown.

The Supreme Court has spoken and its voice is loud and has meaning; however, even its voice cannot stop humankind from moving forward in capitalizing on the diversity of our species. And, while the Supreme Court may want to hope for a colorblind society, we know in fact that this is far from the reality in which we live. We, as humankind, are diverse and in part that diversity is what makes humans capable of the unimaginable. Our success as a species, and as a nation, and within organizations, is dependent upon growing, appreciating, honoring, and creating paths for that diversity to shine. Our human diversity is a critical factor in the success and future of our species.

While the Supreme Court ruled that racial diversity could no longer be a consideration as part of college and university admissions, it is interesting that they exempted the U.S. military, at least for now, commenting that racial diversity is, in fact, critical to the military's mission and readiness. As pointed out in a *Forbes* article:

*"Diversity is also linked to enhanced team and mission effectiveness. Research has consistently shown that diverse groups typically display more creative problem-solving methods and improved decision-making skills and are more innovative. In short, diversity creates a more efficient, agile, innovative, and effective fighting force. Diversity therefore gives the United States a distinct advantage over our adversaries – a military necessity."*²

This is not only true for our military; the success of our corporations is important to national security. Our corporations, as well as our colleges and universities, need the "distinct advantage" greater diversity provides. It is a national necessity. Many have seen, and we assume the Supreme Court would also agree, that diversity has a significant role in the success of our nation.

So, the question is *how* do we get to maximize that national asset? We hope the Supreme Court did not buy into the myth that affirmative action means unqualified individuals are "let" into our institutions and organizations. That has never been the reality of affirmative action, not in its original intent and not in its practice. But it is often the fear and construct that is used against it by its opponents.

² *Supreme Court Misunderstands Service Academies' 'Distinct' Diversity Interests.*

<https://www.forbes.com/sites/jillgoldenziel/2023/06/30/supreme-court-misunderstands-service-academies-distinct-diversity-interests/?sh=7c7f02636425>

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For our corporate clients the question always is, how will greater diversity enhance the organization's ability to accomplish its mission, vision, and/or strategic objectives? If an action, whether it be launching a project or hiring a person, does not enhance that, the organization should not take the action. The action must be organization-justified. Diversity for the sake of diversity should not be the goal—it should be a factor in addressing strategic needs for solving problems and pursuing opportunities.

When adding to their organization, the criterion for selecting a new hire should not revolve around whether the person is a "corporate fit"—a fit with *who we are* and *how we are*. Today's reality requires consideration of whether the person is an *add* to the corporation. *How will they bring a different/needed skill set and experience to our organization? Will they enhance the success of the institution?* We think that is a good criterion for our colleges and universities, as well as all organizations. It appears that the Court, by exempting the military academies, has decided, for now, that the academies, our military, and the defense of our nation is enhanced by diverse candidates. We feel that should be a criterion for all entities in a multicultural democracy that want to continue to be a world leader.

And the Supreme Court has left the door open...

The opinion, by Chief Justice Roberts, left the door open for how we address racial diversity. Colleges, universities, and corporations need to pay attention to the Court's criteria that the impact of one's lived experience can be considered as part of a person's ability to contribute and be successful, i.e., focus on the uniqueness the individual brings. In our work with organizations, we at KJCG, and our clients have framed leveraging diversity as the inclusion of skills, experiences, backgrounds, perspectives needed for greater organization success.

In this time of change, we must continue to find the pathway forward to achieving the promise of diversity that some in this great nation have espoused since its beginning.

Some additional quotes related to the decision that we found inspiring:

From Justice Sotomayor's dissent:

In a society where opportunity is dispensed along racial lines, racial equality cannot be achieved without making room for underrepresented groups that for far too long were denied admission through the force of law, including at Harvard and UNC. Quite the opposite: A racially integrated vision of society, in which institutions reflect all sectors of the American public and where “the sons of former slaves and the sons of former slave owners [are] able to sit down together at the table of brotherhood,” is precisely what the Equal Protection Clause commands.

From Brief for Major American Business Enterprises as Amici Curiae 5–27:

Examples of other industries and professions that benefit from race-conscious college admissions abound. American businesses emphasize that a diverse workforce improves business performance, better serves a diverse consumer marketplace, and strengthens the overall American economy.

From Justice Jackson's dissent:

Our country has never been colorblind. Given the lengthy history of state-sponsored race-based preferences in America, to say that anyone is now victimized if a college considers whether that legacy of discrimination has unequally advantaged its applicants fails to acknowledge the well documented “intergenerational transmission of inequality” that still plagues our citizenry.

Also from Justice Jackson's dissent:

*Do not miss the point that ensuring a diverse student body in higher education helps everyone, not just those who, due to their race, have directly inherited distinct disadvantages with respect to their health, wealth, and wellbeing. Amici explain that students of every race will come to have a greater appreciation and understanding of civic virtue, democratic values, and our country’s commitment to equality. The larger economy benefits, too: When it comes down to the brass tacks of dollars and cents, ensuring diversity will, if permitted to work, help save hundreds of billions of dollars annually (by conservative estimates). LaVeist et al., *The Economic Burden of Racial, Ethnic, and Educational Health Inequities in the U. S.*, 329 *JAMA* 1682, 1683–1684, 1689, 1691 (May 16, 2023).*