

Racial Inequalities in Health Care: Affirmative Action Programs in Medical Education and Residency Training Programs

Jason F. Arnold

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Abstract: This article argues that because racial inequalities are embedded in American society, as well as in medicine, more evidence-based investigation of the effects and implications of affirmative action is needed. Residency training programs should also seek ways to recruit medical students from underrepresented groups and to create effective mentorship programs.

Introduction

In a year full of turbulence and uncertainty, one of the most important developments of 2020 was the rise of the social justice movement. The murder of George Floyd by Minneapolis police sparked a global outcry against racism and inequality in the United States. In response, protests erupted across the country — Americans of all ages and races took to the streets to demand change. Perhaps in no other area of American life was the issue of inequality more prevalent in 2020 than in health care, in which racial and ethnic minorities were disproportionately affected by COVID-19.¹ This commentary discusses the use of race-conscious policies in medical school admissions, as described by Nancy Zisk² and Richard Sander³ in this issue of *JLME*. It also discusses the reasoning and limitations behind Supreme Court cases, responds to critics of affirmative action, and makes several policy recommendations.

Supreme Court Cases on Affirmative Action

Since the 1970s, the Supreme Court has ruled many times on the use of race in college admissions.⁴ Zisk chronicles the Court's major decisions on affirmative action and adds to existing literature by including a discussion about the two most recent legal challenges making their way through the lower district courts. She argues that the courts should continue to allow consideration of race in the admissions process as a way to protect the diversity of students represented in this country's undergraduate and graduate programs,

Jason F. Arnold, J.D., M.P.H., is a fellow at the New York Academy of Medicine and serves as a member of the Clinical Research Ethics Consultation Collaborative, a national network of bioethicists who provide advice on ethical challenges encountered while conducting research. Mr. Arnold received his bachelor's degree from the University of Florida and holds a Juris Doctorate from Brooklyn Law School and a Master of Public Health degree from Columbia University.

including medical schools.⁵ She also argues that racial diversity in health care is important for the quality of health care physicians ultimately provide.⁶ Three aspects of Zisk's paper merit comment: the complexity of Americans' attitudes about racial inequality and affirmative action programs, why arguments in favor of student body diversity ultimately helped the Supreme Court to support the use of affirmative action in higher education, and why the Supreme Court may overturn decades of precedent.

Public Attitudes About Racial Inequality and Affirmative Action

The events of early 2020 — the onset of the COVID-19 pandemic in January and the protests after the Floyd murder in May — have led to a renewed societal

affirmative action because of the future benefits that could result from admissions policies that use race as a way to create a diverse student body.¹³ In reaching this decision, the Court relied heavily on a brief submitted by twenty-nine leaders of the military.¹⁴ Writing for the Court, Justice Sandra Day O'Connor adopted its words as part of the Court's opinion: "To fulfill its mission, the military 'must be selective in admissions for training and education for the officer corps, and it must train and educate a highly qualified, racially diverse officer corps in a racially diverse setting.'"¹⁵ Understanding this aspect of the *Grutter* opinion is important because it argues that affirmative action programs can provide future societal benefits rather than arguing for the use of race as a remedy for past transgressions. This approach may prove instructive

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emphasis on finding ways to remedy discrimination and racial inequities, especially in health care. Affirmative action programs continue to play an important role in public policy, and Americans are solidly behind the broad concept of equal opportunity and improving the position of racial minorities in society.⁷ Majority support for the general concept of affirmative action drops significantly, however, when surveys ask about specific policies that take race into account.⁸ These conflicting attitudes about affirmative action and how best to specifically address racial inequality are reflected in many of the Supreme Court's decisions.⁹ These complexities can also be observed in election results on affirmative action amendments.¹⁰ The problem of seemingly divergent views — general support for affirmative action in the abstract, but weaker support of specific policies — is often overlooked in discussions of affirmative action and can result in conflicting statements.¹¹

Diversity as a Compelling Governmental Interest

Central to the Supreme Court's reasoning on affirmative action is the principle that student body diversity is a compelling governmental interest. Early Supreme Court decisions had suggested that remedying past discrimination was the only permissible justification for race-based action,¹² but this changed in *Grutter v. Bollinger* (1974) when the Court supported the use of

to future cases as legal scholars try to reconcile public attitudes about racial inequality and affirmative action policies. If affirmative action policies are to survive current legal challenges, proponents will need to identify a consistent set of metrics and develop a philosophical foundation that justify its continued use.

The Court's Unpredictability

During fifty years of hearing arguments on the constitutionality of race-conscious admissions practices, the Supreme Court has issued many opinions, often with confusing language. To satisfy the Constitution and survive judicial review (i.e., strict scrutiny), affirmative action programs must be narrowly tailored and serve a compelling state interest.¹⁶ Despite this requirement, there is no well-established precedent when it comes to affirmative action in higher education.¹⁷ An important point missing from Zisk's analysis is that many of the Court's opinions are 5-4 decisions and some justices have suggested that, insofar as affirmative action constitutes an exception to the equal protection clause of the Fourteenth Amendment, it will eventually time out.¹⁸ In *Grutter*, for example, the Supreme Court upheld the use of affirmative action and agreed that the school had permissibly used race as a factor contributing to diversity. However, the Court then confused the issue by pointing out that a core purpose of the Fourteenth Amendment is to do away with all discrimination based on race, and there-

fore “race-conscious admissions policies must be limited in time.”¹⁹ Justice O’Connor said: “The hope being that 25 years after the decision in *Grutter*, the use of racial preferences will no longer be necessary.”²⁰ This language is unfortunate because it sets an arbitrary date without offering guidance on what specific factors may limit the duration of racial preferences. It also makes the Supreme Court’s handling of future cases unpredictable, thus creating confusion in the courts and uncertainty in the marketplace.²¹ By using this contradictory language, the Court is effectively inviting future litigation.²² The Court’s confusing and contradictory reasoning also mirrors Americans’ attitudes on affirmative action.

Zisk correctly states that the Supreme Court may soon overturn decades of precedent on affirmative action.²³ This might happen not just because of the current composition of the Court but also because of the Court’s inability to construct a workable solution.²⁴ The Supreme Court recently decided that part of the Voting Rights Act has “timed out,” giving proponents of affirmative action good reason to be concerned about the continued use of race-conscious admissions practices.²⁵ Several legal scholars have argued that the Court’s decision in the Voting Rights Act case was disastrous because removing enforcement mechanisms and remedial oversight leads to regression back to the original state.²⁶ This retrogression can be seen in the number of recent state bills restricting access to voting since the polarizing 2020 presidential election. As of March 2021, legislators have introduced 361 bills with restrictive provisions in 47 states.²⁷ Legal scholars argue that the Supreme Court is responsible for these types of new restrictive voting laws because states no longer have to obtain federal approval for new election practices to ensure they did not harm Blacks and other minority voters.²⁸ These restrictive measures on voter access since the Court’s decision in *Shelby* (2013) should serve as a warning that affirmative action policies at colleges and universities should remain in place to protect the limited progress that has been made on racial inequality and remind us that more progress is needed on the issue of promoting diversity in higher education.

Affirmative Action Critics

Discussions of affirmative action often evoke strong emotions and its implementation generates a large number of vocal critics. Sander is such a skeptic; he argues in this issue of *JLME* that affirmative action policies often backfire and end up causing far more harm than good, especially for those they are intended to help.²⁹ He suggests that medical schools should consider using socioeconomic preferences rather than race

when reviewing applications for admissions.³⁰ The use of socioeconomic metrics could be useful when aiming to achieve a more diverse student body, but socioeconomic preferences should not be used as a proxy for race because there is no reasonable substitute for the experience of being discriminated against on the sole basis of skin color. Medical school admissions committees are likely to find useful all socioeconomic data, including race, in identifying students who have overcome personal hardships and economic obstacles.

Policy Recommendations

Medical schools should invest in programs that promote health equity for Black communities. To achieve this goal, colleges and universities should continue to recruit a talented and diverse incoming class through the use of race-conscious affirmative action programs. The persistent use of race as a factor in the admissions review will continue to generate controversy, in part because the available research on the effectiveness of these programs is sparse.³¹ Therefore, more rigorous, innovative, evidence-based research is needed. Missing data hinders analysis of racial inequality and makes it more difficult to develop effective solutions. The American Association of Medical Schools (AAMC) has enormous influence on American medical education, so should play a leadership role on this issue and support the collection of all relevant data that promotes racial diversity in medical education and training.

Despite an increase in minority representation among medical school applicants, a less diverse applicant pool applies to highly competitive residency programs compared with other disciplines.³² To assist with the goal of establishing sound evidence-based solutions in addressing these racial inequalities, medical schools and the various professional specialties should collect more data across the entire lifecycle of the training of medical professionals. Residency training programs should also seek ways to recruit medical students from underrepresented groups and to create effective mentorship programs. Dermatology, for example, is one of the most competitive medical fields, and it regularly attracts “the brightest and the best.”³³ People of color are greatly underrepresented among students pursuing careers in dermatology — the number of trainees entering dermatology from underrepresented backgrounds is very small (2%).³⁴ These numbers exemplify the racial inequities in medicine and the ongoing lack of diversity in medical education. As a result of this lack of diversity students are often undereducated about race and have scant inter-racial interactions with colleagues. Dermatology is competitive as a specialty because of its financial rewards and the quality of life it provides for the physician; con-

siderations of justice suggest that the proportions of physicians in these competitive and lucrative fields of medicine should reflect the demographics of the general U.S. population. Some specialties have successfully increased diversity by recruiting students from underrepresented groups.³⁵ This experience can serve as a template for programs interested in improving diversity in postgraduate medical education programs; future research should measure the impact of clinical care when race-conscious policies are used.³⁶

Going forward, scholars will need to generate fresh thinking and innovative research on this topic if policy makers are to enact effective solutions. Research involving race presents several ethical challenges for investigators and numerous scholars have written on the subject. Nicolle Strand, for example, argues for abolishing all race-based research in this edition of *JLME* and provides a model for how Institutional Review Boards (IRBs) should evaluate race in research protocols.³⁷

A robust debate about the implementation of affirmative action and its philosophical defense is needed. Public policy researchers should approach the issue of affirmative action not only from the usual legal approach but also from a philosophical foundation.³⁸ More people will be swayed by the argument that affirmative action is an appropriate remedy to racial inequity if the discussions are not solely political but also moral. This task will prove to be challenging because the subject is emotionally highly charged.

Another approach to dealing with the complexity and controversy surrounding affirmative action is through medical narrative writing, reflections of both physicians and patients about their experiences in medicine and clinical care.³⁹ Medical narratives are important because they offer different perspectives from physicians and patients who may not ordinarily publish in the medical literature. Medical schools should also consider integrating the use of medical narratives into their undergraduate curriculums as a way to raise awareness about racial inequality in health care and to help develop students' critical thinking and writing skills, which are often overlooked when it comes to the topic of race.

Conclusion

Racial disparities in health care are a consequence of systemic racism. Affirmative action programs in higher education are intended to remedy these inequities by giving historically disadvantaged groups the opportunity to engage a broader section of society and to provide them a better future. Given the ongoing controversy and complexity of this issue, policy-makers face substantial challenges. More funding and

academic resources are needed if policies addressing racial inequality are to be effective and can result in meaningful change. If affirmative action policies are to survive current legal challenges, proponents will need to identify a consistent set of metrics and develop a philosophical foundation that justifies its continued use.

Note

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