Ruling on affirmative action awaited

High-court stand on use of race in college admissions could come as early as today.

By MARLA JO FISHER
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The Supreme Court could issue its most sweeping decision on affirmative action in decades as early as today — one that will affect race-based admissions policies at many of the nation's best universities but might have less effect in California.

The main issue is whether ethnic diversity on campus is a "compelling state interest" that warrants using race as an admissions criteria to a public university.

"This was the last major area in which the court has not ruled," said Neil Gotanda, a professor at Fullerton's Western State University College of Law and author of a book on racial issues. "If the court completely closes down consideration of race as a factor in college admissions, that is very significant."

The court's ruling will be its first on college admission since 1978, sparked by a pair of lawsuits filed by unsuccessful white applicants to the University of Michigan, which considers the race of applicants in admissions in order to promote more diversity on its campus.

"If this can't withstand the court's scrutiny, then affirmative action is in real trouble," said Philip Cohen, assistant professor at UC Irvine and an affirmative action advocate.

California's public universities are already banned from using race to judge college candidates, but the ruling could affect the state's private universities if they receive federal funds and potentially could revamp some admissions policies at public institutions as well.

Chapman University constitutional law professor John Eastman, who opposes affirmative action and filed two amicus briefs in the case, predicted the court will narrowly vote to strike down the Michigan policies — a move that he said will affect every college, public or private, that accepts federal funding.

Affirmative-action policies were widely adopted in the 1970s to correct the nation's history of racial discrimination. California's public universities dropped race in admissions or hiring as a result of Proposition 209, passed in 1997. However, private universities have been free to continue to use race as a factor to diversify their student bodies.
racial preferences, it experienced a sharp drop in the percentage of black and Hispanic students at its most competitive campuses. In recent years, UC regents have tried to increase diversity systemwide by guaranteeing admission to the top 4 percent of graduates from every high school in the state – ensuring admission to students from largely minority high schools – and giving preferred consideration to students who have overcome poverty or other adversity to make it into college.

Some critics, including Eastman, have complained that this is race-based admissions in disguise. UC officials say it has benefited rural and working-class white students the most.

"The vast majority of students in California go to community colleges, state colleges or nonimpacted programs at University of California, so for them, it will not have much actual, concrete effect," Gotanda said. "It will have an effect on high-profile impacted law schools and professional schools."

Small private universities in Orange County are not likely to be affected much, according to Eric Hauber, dean of enrollment services at Aliso Viejo's Soka University.

Hauber said Soka does not ask applicants to give their race when they apply, but officials weighing two equally qualified applications will sometimes try to diversify the class by choosing a student who appears to be involved in minority clubs or issues.

"Sometimes, a student will list organizations they belong to or talk about hobbies or interests," Hauber said. "We do not ask about race until they put down their tuition deposit."

Philip Cohen, assistant professor of sociology at UC Irvine and an affirmative-action advocate, said he's sorry that earlier court decisions have ruled out issues of social justice or discrimination as valid reasons for race-based admissions.

"Michigan is making the case that diversity is good for all students and the educational environment," Cohen said. "I think that is completely true.

"If this can't withstand the court's scrutiny, then affirmative action is in real trouble," Cohen said. "This will have a trickle-down effect on our society because then they will have the opportunity to say no one can consider race at all and opponents will (seek to invalidate) educational scholarships, tutoring and all programs that have some programs with racial identification."

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