

# Preference cases before high court will hurt opportunity

By Hazel Trice Edney  
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WASHINGTON (NNPA) — At stake in the decision by the U. S. Supreme Court to hear two affirmative action cases challenging undergraduate and law school admissions policies at the University of Michigan is not only the amount of access people of color will have to higher education but the kind of job opportunities they will have upon graduation, according to civil rights experts.

"This is particularly dangerous because affirmative action in education is the key to every other opportunity in this society," says Congresswoman Eleanor Holmes Norton (D-D.C.), who was chair of the Equal Employment Opportunity Commission during the Carter administration. "If you want to cut the legs out from under the minority community, you take back their right to become qualified for jobs by making it difficult to attend colleges and universities."

And what factors are permissible for admission officers to use is central to the cases now before the Supreme Court.

"The stakes in this case are very high because the stakes are whether or not any college or university, public or private, can take race into account in selecting its students from among the qualified group of applicants," says John Payton of Wilmer Cutler and Pickering, a Washington, D.C.-based law firm. "There's no surprise to anyone. The Michigan cases were put together with the clear understanding that this issue could make its way back to the Supreme Court. We're quite optimistic."

The cases, to be heard by the court during the first half of 1993, marks the first time the Supreme Court has considered the use of race in college admissions policies since 1978. That year, the court ruled in "University of California v. Bakke" that race can be a "plus" factor a college uses to admit students. That ruling also outlawed the use of fixed quotas.

Generally, the court will rule on whether "Bakke" is still good law by deciding two specific issues. First, the court will decide whether diversity is a compelling state interest. Second, it will decide whether the programs are narrowly tailored to accomplish diversity without violating other interests, such as equal protection under the law, explains Norton.

Payton will defend the university's undergraduate



Shanta Driver, a Wayne State University law school student, says the cases before the Supreme Court are "a clarion call, particularly to Black America, to wake up, stand up."

admissions policy, which was pending in the 6th U.S. Circuit Court of Appeals in Cincinnati. Maureen Mahoney of Latham & Watkins, another Washington law firm, will defend the law school policy, which the 6th Circuit upheld in May.

Symbolic of the divisiveness of affirmative action, two federal judges issued opposite rulings in the two cases now before the Supreme Court. U.S. Judge Patrick J. Duggan upheld the undergraduate program, saying it was constitutional as long as it does not isolate other applicants from fair review. But, Judge Bernard A. Friedman ruled that the law school program violated the equal protection clause of the Fourteenth Amendment and Title VI of the Civil Rights Act of 1964.

Lawyers for the plaintiffs at the conservative Center for Individual Rights announced last May that they would appeal the 5-4 decision appeals court ruling upholding the law school program in "Grutter v. Bollinger." The Supreme Court took the undergraduate case, "Gratz v. Bollinger," without an appeals decision because of their related arguments.

"If the court decides that Michigan's admission program is unconstitutional, we will see a dramatic drop in the number of Blacks admitted to the country's most prestigious colleges and law schools," says Mahoney. "We have excellent arguments and I think that the

court will agree with us."

Center for Individual Rights spokesman Curt Levey says his organization is convinced that the Supreme Court will side with the White students the organization represents.

"What [affirmative action] shouldn't mean and what it can't mean legally is giving preferences purely based on skin color," says Levey.

University of Michigan officials note that race is one of many factors considered when evaluating qualified applicants.

The university's lawyers hope to satisfy the court by demonstrating a compelling state need for racial diversity and a need to remedy past racial discrimination.

Ted Shaw, deputy director of the NAACP Legal Defense and Educational Fund, who expects to argue the case on behalf of Black and Latino students, fears what would happen if the court rules against affirmative action.

"I think it would be tragic if African-Americans sleep on the significance of this issue," he says.

"I'm worried any time there's an attempt to shut down opportunities for Black and Latino students. The most important issue for us is that we don't go back to a time when the doors of opportunity to higher education were virtually closed to African-Americans and Latinos."

If the court strikes down the programs, Shaw and others predict that college enrollment rates for Blacks,

Hispanics, Asian-Americans and American Indians will drop dramatically.

"Only during the past 10 years has steady progress been made among all four ethnic minority groups. Yet, there is evidence that these gains are evaporating in states where affirmative action has been rolled back," states the American Council on Education in its 19th annual status report, "Minorities in Higher Education 2001-2002."

The number of students attending colleges and universities since President John F. Kennedy's 1961 executive order that first used the

term "affirmative action" has increased more than 10 times. According to the U. S. Census Bureau, 151,000 Black and Latino students attended college in 1961. Currently, there are 2 million enrolled.

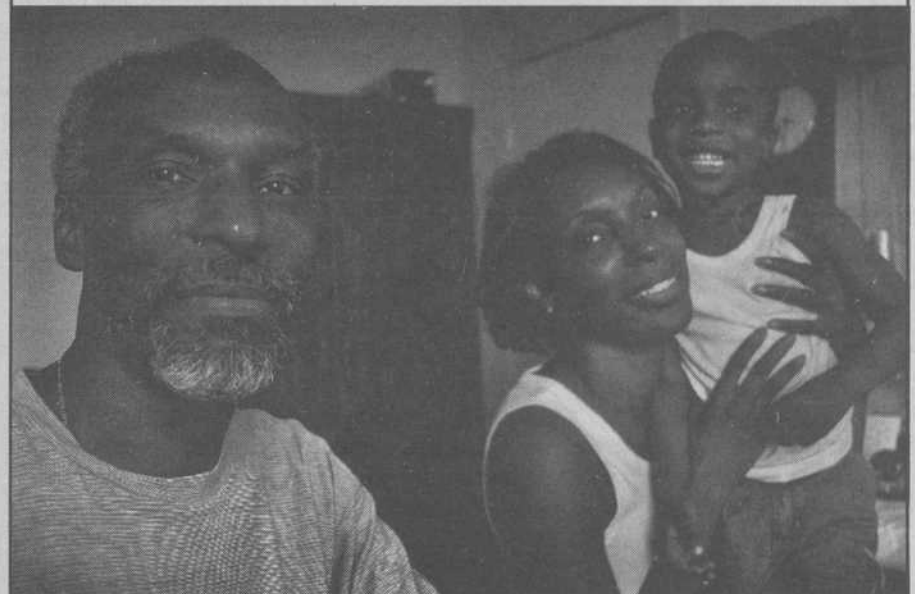
Black students around the country are planning to show their support for affirmative action. BAMN (the Coalition to Defend Affirmative Action & Integration, and Fight for Equality By Any Means Necessary) is trying to mobilize a million supporters to march outside the court as the cases are being heard. BAMN is a plaintiff in the law school case. In preparation for the march, the group,

with membership that includes students from around the country, is holding a national civil rights summit at the University of Michigan beginning Jan. 20, the Dr. Martin Luther King Jr. holiday, through Jan. 26.

"We think that we'll be able to communicate a sense of urgency and determination to the court if we're able to do that," says Shanta Driver, a law student at Detroit's Wayne State University, who is a national organizer of BAMN. "I think this really is a clarion call, particularly to Black America, to wake up, stand up and turnout."

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