U.S. Supreme Court Undermines Pursuit of Equality

By Don Sutherland

It has seemingly become a seasonal passage where the U.S. Supreme Court knocks down the foundations of a free and liberal society as June concludes. This year, the U.S. Supreme Court set aside the realities that non-White Americans still face considerable barriers that adversely impact their lives. In doing so, it struck down the ability of colleges and universities to consider race in their admissions process.

Thus, disadvantaged students were stripped of a mechanism that allowed them to circumvent barriers to higher education that deprived them of equal access. Colleges and universities that benefit from diversity—visible (demographic composition of the student body) and invisible (differences in thoughts, cultural values, beliefs, and experiences)—were put in a position that undermined the value of the overall learning and student life experience. In an increasingly diverse nation premised on the principle of equal opportunity, the Supreme Court diverged from the historical pursuit aimed at creating a "more perfect union."

In the majority opinion, Chief Justice Roberts wrote:

Twenty years later, no end is in sight. "Harvard's view about when [race-based admissions will end] doesn't have a date on it." Neither does UNC's.

Yet both insist that the use of race in their admissions programs must continue. But we have permitted race-based admissions only within the confines of narrow restrictions. University programs must comply with strict scrutiny, they may never use race as a stereotype or negative, and—at some point—they must end. Respondents' admissions systems—however well-intentioned and implemented in good faith—fail each of these criteria. They must therefore be invalidated under the Equal Protection Clause of the Fourteenth Amendment.

Roberts' majority opinion is defective. "No end is in sight" for affirmative action, because the underlying societal barriers to equality persist. Arbitrary deadlines and impatience for deep societal problems that only change slowly cannot facilitate justice. They can only undermine it in the way terminating cancer treatment before the tumor has been fully eradicated is ineffective.

Justice Sonia Sotomayor, who grew up in the Bronx and knew first-hand the harsh realities of a world that remains anything but "colorblind" wrote a powerful dissent. She covered the historical context where education drove the desire for freedom among enslaved people and the value that racially diverse schools provide to their students and larger society. Excerpts from her dissenting opinion follows:

…the Court cements a superficial rule of colorblindness as a constitutional principle in an endemically segregated society where race has always mattered and continues to matter. The Court subverts the constitutional guarantee of equal protection by further entrenching racial inequality in education, the very foundation of our democratic government and pluralistic society…

Equal educational opportunity is a prerequisite to achieving racial equality in our Nation. From its founding, the United States was a new experiment in a republican form of government where democratic participation and the capacity to engage in self-rule were vital…

Thus, from this Nation's birth, the freedom to learn was neither colorblind nor equal. With time, and at the tremendous cost of the Civil War, abolition came. More than two centuries after the first African enslaved persons were forcibly brought to our shores, Congress adopted the Thirteenth Amendment to the Constitution, which abolished "slavery" and "involuntary servitude, except as a punishment for crime." "Like all great historical transformations," emancipation was a movement, "not a single event" owed to any single individual, institution, or political party… The fight for equal educational opportunity, however, was a key driver. Literacy was an "instrument of resistance and liberation." Self-Taught. Education "provided the means to write a pass to freedom" and "to learn of abolitionist activities." It allowed enslaved Black people "to disturb the power relations between master and slave," which "fused their desire for literacy with their desire for freedom." Put simply, "[t]he very feeling of inferiority which slavery forced upon [Black people] fathered an intense desire to rise out of their condition by means of education."

…Racially integrated schools improve cross-racial understanding, "break down racial stereotypes," and ensure that students obtain "the skills needed in today's increasingly global marketplace . . . through exposure to widely diverse people, cultures, ideas, and viewpoints." More broadly, inclusive institutions that are "visibly open to talented and qualified individuals of every race and ethnicity" instill public confidence in the "legitimacy" and "integrity" of those institutions and the diverse set of graduates that they cultivate. That is particularly true in the context of higher education, where colleges and universities play a critical role in "maintaining the fabric of society" and serve as "the training ground for a large number of our Nation's leaders." It is thus an objective of the highest order, a "compelling interest" indeed, that universities pursue the benefits of racial diversity and ensure that "the diffusion of knowledge and opportunity" is available to students of all races.

If unchecked, the reactionary decision will likely stir similar cases in the employment arena. Should those cases come before a Court that has demonstrated that it is increasingly disconnected from the founding vision set forth in the Preamble to the Constitution and constitutional principle alike, women and minority groups could find themselves disadvantaged in the workplace. American democracy and societal wellbeing would suffer further damage.

The words of Justice John Harlan's dissent in the notorious Plessy v. Ferguson decision ring across the ages to provide insight into the outcome of the Supreme Court's *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College* decision. Harlan warned, "In my opinion, the judgment this day rendered will, in time, prove to be quite as pernicious as the decision made by this tribunal in the *Dred Scott Case.*"