

Affirmative Reaction: Mission-centered advancement is now central to education & workforce diversity as ruling reshapes DEI.

With Michael Turnage Young, Senior Counsel, LDF, & Dr. Tamara Huff.

Michael Turnage Young, Senior Counsel at Legal Defense and Educational Fund (LDF), joins orthopedic surgeon Tamara Huff, MD, MBA, to discuss the recent SCOTUS ruling on the Fourteenth Amendment which has impacted affirmative action.

According to the Legal Defense Fund, "the Supreme Court has bowed to pressure from anti-civil rights activists, finding that Harvard and the University of North Carolina's affirmative action programs violate the Equal Protection Clause of the Fourteenth Amendment. This radical decision comes at a time when efforts to advance opportunity in education have been under attack across the country, and the need for such programs remains acute."

Although the ruling is widely considered as a barrier to DEI efforts, Michael Turnage Young shares an optimistic analysis of the ruling with Dr Huff. She outlines the many areas of DEI activity that the ruling does not affect, and discusses strategies which admissions officers can adopt. Central to this approach is supporting the mission of the many institutions aiming to address health disparities in underserved communities, where lived experience is a key qualification.

For further information on LDF please visit:
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Excerpts:

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Producer: Rolf Taylor

Full Transcript

Excerpts

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“If you are charged with looking for talent, you want to do so in an objective way that serves your mission. And it might be that the mission of your school has something to do with serving communities that have long gone underserved. If you are an admissions officer looking for talent and looking for talent that will come forward with a commitment to serve underserved communities and looking for talent that has a demonstrated interest both in serving underserved communities and has the perspective that will enable them to be best suited to serve underserved communities, there's a way to look for that that doesn't necessarily have to do with the explicit use of race.”

“It's really important to understand what this decision does and does not cover. It's not about recruitment, affinity groups, employment contracting, race neutral policies governing K through 12, selective admissions, diversity, equity, inclusion and accessibility programs. It's not about ESG or environment, social and governance goals. It's not about critical race theory. It is also not about the use of race conscious admissions in higher education to remedy specific instances of intentional racial discrimination. So, the bottom line is it's not even about all uses of race in the higher education context. It's really important to understand what this decision does and does not cover.”

“There are these kind of fringe groups that are dedicated to the cause of countering any effort to advance equal opportunity. It's unfortunate that there are people out there who do not want equality for all. It seems to be a coordinated effort to cause a chilling effect to lead people to retreat from efforts to further equal opportunity. These efforts have not been successful thus far.”

“I think a lot of the anxiety that is coming from a lot of different corners of diversity, equity, and inclusion programs is what's next? What will be attacked next? What can we watch out for?”

Interview

Dr. Huff: Thank you for listening to this episode of the Health Disparities podcast. I am Dr. Tamara Huff, an orthopedic surgeon and CEO of Visio Orthopedics in Columbus, Georgia. I am also known as the Lady Bone Doc in case you

want to find me on Twitter or Instagram, and I am passionate about increasing access to musculoskeletal care in underserved communities. Joining me today at the National Medical Association Annual Convention here in New Orleans and on the Health Disparities Podcast is Michelle Turnage Young, senior counsel of NAACP at the NAACP Legal Defense and Educational Fund. Welcome, Michelle. It's such a pleasure to have this chance to chat with you today.

Ms. Turnage Young: Thanks so much for having me. I've been having such a great time at the National Medical Association Conference and also just the Cobb Lecture and Symposium.

Dr. Huff: We loved having you at the Cobb lecture and sharing your unique insight and firsthand knowledge of everything that's happening right now because you really are on the forefront. So, we are going to share with our listeners some insights from the symposium, but first I want to tell our audience who we have here and tell them a bit about you and the amazing equity focused work that has been the hallmark of your career. So, after earning your undergraduate degree at UCLA, you attended Harvard Law School and then served as a trial attorney with the educational opportunities section of the Civil Rights Division of the US Department of Justice. There you prosecuted 13 school desegregation cases in seven federal court jurisdictions across the country where your efforts led school districts to desegregate their students and faculties equalize access to course offerings and transform their discipline practices. This dramatically reduced institutional time students lost to exclusionary discipline, and you received the Attorney General's special achievement award in recognition of your work advancing health equity. Now in your current role with the Legal Defense and Educational Fund, you continue to litigate education cases as counsel in *Arnold v Barber Hill Independent School District* where the enforcement of a dress code provision would have confined students who wore uncut locks to in-school suspension and excluded them from school activities. But the court's decision to remove enforcement of the dress code has led multiple school districts to revise their dress codes to remove discriminatory language. You also represent 25 Harvard student and alumni organizations to argue that the court should uphold settled law, allowing universities to consider race as one of many factors in admission so that the universities can assemble diverse student bodies and students can enjoy the educational benefits of diversity. You are pretty doggone amazing.

Ms. Turnage Young: Thank you.

Dr. Huff: Our title for the symposium was, "*From Hopwood to Harvard: Anti-Affirmative Action in Higher Education Admissions Amidst Systemic Racism and Historical Racial Inequities*". So, you have such a unique

perspective and basically firsthand knowledge of these new rulings. Can you share with our audience the top three take home messages that we should know about this new ruling?

Ms. Turnage Young: Absolutely. So, number one, despite how alarming this decision is, it is important to know exactly what the Supreme Court did and did not decide, in this case. The court's decision is limited to the consideration of race as a tip in college admissions as conducted by Harvard and UNC in pursuit of the educational benefits of diversity. Moreover, in a footnote, the court said that the question of race conscious admissions in military schools was not before the court and noted that service academies may have distinct interests. It is also not an opinion that is about outreach. It's not about recruitment, affinity groups, employment contracting, race neutral policies governing K through 12, selective admissions, diversity, equity, inclusion and accessibility programs. It's not about ESG or environment social and governance goals. It's not about critical race theory. It is also not about the use of race conscious admissions in higher education to remedy specific instances of intentional racial discrimination. So, the bottom line is it's not even about all uses of race in the higher education context. It's really important to understand what this decision does and does not cover. The second thing that I think everyone should know about this decision is that the court explicitly declared that nothing in its opinion should be construed as prohibiting universities from considering an applicant's discussion of how race affected his or her life, be it through discrimination, inspiration or otherwise. Indeed, the court recognizes that what applicants share about their experiences with race could indicate courage and determination or that student's unique ability to contribute to the university. The third thing that everybody should know about this decision is that we all have an important role to play in remedying the systemic racial discrimination that denies many black, Latinx, Native American, Asian American and Pacific Islander students an equal opportunity to quality K through 12 education and to compete for admission to our nation's selective colleges and universities. As of the 2020 to 2021 school year, black students were 13% of US high school graduates, but they were only 6% of students enrolled in large selective public colleges. While white students were 50% of US high school graduates and 56% of students enrolled in large selective public colleges. Of course, our large selective public colleges are more funded schools. Unfortunately, other schools don't receive as many resources. So, we should remind our alma maters and other institutions of higher education that they continue to have a responsibility to provide an equal opportunity to all applicants to compete, which of course means that they must ensure that they remove any admissions criteria that unfairly deny some students an equal chance to compete for admission. They're bound to do so pursuant to existing federal and state anti-discrimination laws. So, for example, we know that many colleges and universities give

preference to applicants who have taken calculus, but only 50% of our public high schools offer calculus. What's more, only 38% of high schools with predominantly black or Latinx enrollment offer calculus. What's more, the research shows us that those schools that do offer calculus, unfortunately black and Latinx students tend to be tracked out of college preparatory courses like calculus. So, it's perhaps unsurprising that only 9% of black high school students have taken calculus while 22% of their white peers have done so and 50% of their Asian American peers have done. So, if our college and universities are going to be considering calculus, they're going to be missing entire swaths of the population who through no fault of their own, did not take calculus. Likewise, a 2021 study showed that 21%, sorry, 29% of high schools in the country don't offer the courses required for admission to STEM disciplines at their state public flagship universities, which of course is problematic because those students as parents, their taxpayer dollars are going to funding those state public flagship universities, yet their children are attending schools that do not offer the courses that those students would need to be eligible to apply for the STEM majors at those schools. Those are inequities that all of us have a responsibility to work towards solving, whether it's voting and trying to make sure that the local school boards have people who are invested in equal opportunity on them, whether it's reaching out to our alma maters and our state public flagship universities and making sure that their admissions criteria are not missing entire swaths of the population. Of course, talent is everywhere, but opportunity is not, and we need to fix the opportunity part.

Dr. Huff: I absolutely love that example, especially the one about calculus and about the fact that there are whole swaths, whole segments of communities, of students who may be worthy, who may have the desire to pursue STEM education that don't even have the opportunity to take the course that they need to take. I mean, that is a huge discrepancy and in Movement Is Life, we talk a lot about the social determinants of health, which can sometimes be zip code or opportunities, but this is a social determinant of your future. From your perspective, what are some of the ways that institutions can potentially remedy this? So, we know that they may not be able to consider race as a specific narrow point in admission, but again, can you give us another example of things that they could potentially use instead of race?

Ms. Turnage Young: I don't think that this is necessarily finding an end run around the Supreme Court's decision. This is a matter of objectively identifying talent. Our institutions of higher education are in the business of identifying talent. If you are to objectively identify talent, you must take into account that our K through 12 educational system in this country is full of inequalities. You cannot use criteria to identify talent knowing that that criteria is going to rule out half of the population through no fault of their

own. You are bound by federal and state anti-discrimination laws to provide all applicants an equal opportunity to compete for admission. And so, it really is a matter of going back to those admissions criteria and thinking really hard and being thoughtful about, well, what criteria are we asking applicants to have? What criteria do we privilege? What criteria do we prefer? Do we actually need those criteria to identify people who have the potential to thrive at our university in a particular major? Right? We've heard from professors in STEM disciplines that they're generally able to identify students who have the ability to thrive in those disciplines, and calculus is not necessarily the thing that will tell them whether somebody can thrive. There are other indicia of merit in that case, and likewise, there are some disciplines. They're looking for AP physics. Physics is not something that is equally available to everyone. And so, I think it goes back to going to those professors that are teaching in those disciplines and kind of talking to them about, well, what are the true indicia of merit? And if you think it's something that only a third of the population has access to, well, you're saying that this is an entry level requirement, entry level for who? Right? And if you're going to be identifying talent in a way that misses two thirds of the population automatically right off the bat, are you really identifying the most talented people? And then how do we back up and say, okay, we can't use that as the barometer of talent because it's clearly not objective. So, what do we do to objectively identify talent? It requires being thoughtful and maybe taking a broader view of what makes somebody qualified and how do you identify latent talent where it's not going to show up in the traditional indicia of merit that people have relied on for so long when that traditional indicia of merit really has not objectively identified all of the talented people who can thrive. So, this isn't really about the use of race per se. This is really about let's make sure that the indicia of merit and talent that we are using are actually valid measures of what we're trying to measure for. Likewise, I will say it's significant that the Supreme Court explicitly said that colleges can consider what applicants share about race. That continues to be particularly important because it can demonstrate an applicant's courage and determination. It can demonstrate the traits that make them a very attractive candidate for a university. It continues to be of the utmost importance the applicants be able to share their entire truth, whatever that is, even if their experiences happen to be inextricably intertwined with race, so that colleges can make an honest assessment of all of the applicants. And so, it remains so important for recommenders and applicants to feel comfortable talking about race to the extent that that is the truth of that particular applicant's experience.

Dr. Huff: I love the way you paint a more holistic picture of the student of the class that we're trying to build there, especially the concept of what is talent and what is worth. Dr. Simmons, when she shared in her lecture, one thing that she continued to bring back and she thinks about a lot is how do we

identify who's worthy? Who is worthy to attend a certain institution? Who is worthy for an opportunity to do a certain field? How do we see who is worthy? So, thinking about the most recent ruling and the steps forward, I think a lot of the anxiety that it's coming from a lot of different corners of diversity, equity and inclusion programs is what's next? What will be attacked next? What can we watch out for? So, with your knowledge, do you feel that the next front is more state based? Is it more nationally based? What are your thoughts on where do we look for next? Will it be another Supreme Court ruling? I know you don't have a crystal ball, but what do you think from your perspective?

Ms. Turnage Young: That is hard to say because I don't have a crystal ball, so we'll have to wait and see what's next. As your listeners, I'm sure know, people file lawsuits all the time. The fact that somebody files a lawsuit does not mean it has merit. So, we're fully aware that there are a number of fringe extremist legal organizations that are filing all sorts of lawsuits, challenging diversity, equity, inclusion and accessibility policies. They're challenging race neutral policy changes to the admissions programs for selective admission schools in the pre-K through 12 context. They're challenging fellowship programs, all sorts of things. It seems to be a coordinated effort to cause a chilling effect to lead people to retreat from efforts to further equal opportunity. These efforts have not been successful thus far. And so, that is an important thing to know. I think for anybody who is in a decision-making capacity for any of these programs, it's really important to have an accurate evaluation of the legal exposure that these fringe legal organizations are presenting, because again, they haven't been successful thus far. It is clearly not illegal to remove barriers to equal opportunity, and that remains true. It would be turning the equal protection clause on its head to say it's illegal to remove barriers to equal opportunity that are disadvantaging some parts of the population. And so, we are seeing various challenges, but as I said before, just because somebody has the funds and the wherewithal to file a lawsuit does not mean that that lawsuit has merit. And thus far we have not seen those challenges generally be successful.

Dr. Huff: That's great to hear because there has been a lot of angst, especially from leaders in HBCUs, is our federal funding coming for next or people who specifically work with pipeline programs for minority students to go into STEM programs with funding be affected by that? So, there doesn't seem, from what you were saying, that really HBCUs or programs that are pipeline programs for STEM should be concerned that their funding may be attacked by equal coverage under the law type lawsuits. So, what I would say is I think this is a time to be particularly vigilant and to recommit to the goal of furthering equal opportunity to do it in a thoughtful way. To do it in a smart way. Yes, there are these kind of fringe groups that are dedicated to the cause of countering any effort to advance equal

opportunity. It's unfortunate that there are people out there who do not want equality for all. It's unfortunate, but that is the fact that has always been an element of what's happening in our society. Unfortunately, I think that the majority of us know that we're all in this together. Our futures are intertwined, and it behooves us all to make sure that opportunity is afforded to everyone. We cannot afford for anyone's talent to not be realized in this country, and that is true of everyone. We are on our way to becoming a majority/minority society, and so the children of color who are now in pre-K through 12 and are coming up, these children are our future just as much as anyone else, and we need them to be in a situation where they're able to fully realize their talent and be in a position to benefit our society. So, it's important for people who are running pipeline programs, people who are running diversity, equity, inclusion and accessibility efforts, people who are running scholarships to understand that these questions were not directly before the court in the cases involving Harvard and UNC's admissions policies. So that decision does not have direct presidential legal value for the legality of those programs. They're going to want to consult with whatever legal advisor they have to kind of understand how, if at all, the landscape may shift in the future. But because that case does not have direct presidential value for those different areas, it's going to take additional lawsuits to lead to changes in those areas. There are different lines of precedent, for example, that are governing diversity, equity, inclusion, and accessibility. There are different laws, right? You have Title VII issue in this case was Title VI and the equal protection clause. So, I think the bottom line is there were certain questions that were just not before the court in this case. And so, the legality of, for example, diversity, equity, inclusion and accessibility programs has not changed. It remains true that diversity, equity, inclusion, and accessibility programs are legal because they do not use race as a motivating factor when it comes to decisions about hiring, recruitment, that sort of thing, except for narrow exceptions for remedial purposes. And those programs are legal because they expand opportunity for everyone. They are building an inclusive space in which everyone is welcome. They're expanding application pools. They're helping with retention. And to the extent that you have pipeline programs out there doing the same thing, it's kind of the same analysis. The law has not changed with regard to those things and those things absolutely become so much more important in light of the adverse effect that the decision could have on pipeline programs depending on what all of us do in the wake of the decision.

Ms. Turnage Young: Okay. Thank you for unpacking that. That just helps so much because that's a question that constantly I hear. Also, too here at the Health Disparities Podcast and with Movement Is Life, we think a lot about health disparities, and one of the things that we consistently see that can affect health disparities and improve them in the community is cultural concordance and having physicians who look like the people that they

serve. A recent study showed that African Americans who received primary care from another African American physician had better health outcomes. In Florida, infants that were cared for by a black physician had half the mortality rate. So really, it's important to have physicians that mirror the communities around us. So, directly the NMA and Movement Is Life, we're very concerned about how do we continue to keep that pipeline moving forward? And you really hit on the importance of continuing to support those programs, but to know that we need to be vigilant because there are people that are coming for those particular opportunities and don't see the value of it. Question for you also too, is how do you, for those of us who don't have the legal background that you do, that don't have really that knowledge, when we want to share with our colleagues to share with our friends, family about how systemic racism and how the challenges that whole communities have faced, how we can still overcome that without Affirmative Action, do you have any suggestions, any talking points that can kind of help us as we share those things with our family to share those things with laypeople about how and why it is important to still pursue diversity in medical education, to still pursue those greater goods even in the face of this small attack?

Ms. Turnage Young: So, when you were talking about cultural concordance, recall how the Supreme Court said in a footnote that the question of the legality of race-conscious admissions for military academies was not before it. And the Supreme Court suggested that military academies may have distinct interests. In the same way, we don't know whether the court may have said that medical schools, medical colleges may have distinct interests for various reasons. A medical college has a lot to distinguish it from an undergraduate institution that serves multiple majors that's going to be producing graduates that go into various professions. So that is something to give some thought to. Also, we heard a lot during the Cobb lecture in symposium today about the outsized contribution that historically black colleges and universities have made to STEM professions and to the medical profession in particular, and not just when it comes to producing black professionals, but when it comes to producing a multiracial cohort of professionals who have the cultural competence to go and serve underserved communities and do it well.

So, the ability to relate to people of different racial and ethnic backgrounds is an indispensable skill for jogged candidates. Students of all racial backgrounds benefit from racially diverse learning environments and are better equipped to succeed. In today's workplaces answer, today's clientele. We know that research shows that diverse learning environments help all students build skills associated with academic success, including critical thinking, problem solving ability, student satisfaction and motivation, general knowledge and intellectual self-confidence. In addition, cross-racial interactions can reduce prejudice and

stereotypes, enhance empathy and open minds. So, this really is an issue that's important for everyone, making sure that there's equal opportunity in college access. And so, I think there is something to thinking about if you are an admissions officer looking for talent and looking for talent that will come forward with a commitment to serve underserved communities and looking for talent that has a demonstrated interest both in serving underserved communities and has the perspective that will enable them to be best suited to serve underserved communities, there's a way to look for that, that doesn't necessarily have to do with the explicit use of race. It's do you have a demonstrated interest in serving communities who have been long underserved? Do you have experiences that lend themselves to that task? I mean, that is absolutely something that is a race neutral way of looking for talent. And again, if you are charged with looking for talent, you want to do so in an objective way that serves your mission. And it might be that the mission of your school has something to do with serving communities that have long gone underserved.

Dr. Huff: I love that perspective. I really, really like that perspective because central to the mission of almost every one of the four HBCU medical schools is community service. It's core to their mission. It's actually in their mission statements, their value statements that we are here to serve. So, I really think that's a spot-on way to continue to support diversity efforts in those institutions. So, it has just really been a pleasure talking with you today and also just having a chance to see you interact with our panel from the Cobb lectureship. Is there anything that you would like to leave our audience with, in closing?

Ms. Turnage Young: It really is up to all of us, what will happen next. We understand that there is a lot of research that suggests that when race conscious admissions has been banned in various states, that the representation of black, Latinx, Native American Pacific Islander, and some other underrepresented students plummeted by 50%. That does not necessarily need to be the outcome here. We need to do what we can to intervene and make sure that universities are taking seriously their obligation under federal and state anti-discrimination laws to remove barriers to equal opportunity. If they remove barriers to equal opportunity. If they, for example, think about whether a legacy admissions program is essentially serving as a grandfather clause, if they think about whether they're using admissions tests that may under predict the potential of black and Latinx applicants, if they're thinking about whether the application fee is discouraging, applications from low income students, if they think about are we requiring courses that many students don't have access to through no fault of their own? If they're thinking about all of these things and recalibrating their admissions processes to try to provide equal opportunity for all applicants, we may see a different outcome than what many people have predicted. So, we will have to see what happens next.

Dr. Huff: If you'd like to learn more, feel free to visit www.naacpldf.org or www.defenddiversity.org

Ms. Turnage Young: Thank you so much. That just summed up everything so beautifully.

(End of recording)

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