

NLWJC - Kagan

DPC - Box 040 - Folder 009

Race-NCAA case

Race - NCAA case

Edward W. Correia

03/09/99 11:34:38 AM

Record Type: Record

To: Charles F. Ruff/WHO/EOP @ EOP, Maria Echaveste/WHO/EOP @ EOP, Elena Kagan/OPD/EOP @ EOP, Irene Bueno/OPD/EOP @ EOP

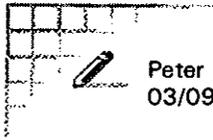
cc: Elizabeth R. Newman/WHO/EOP @ EOP, Laura Emmett/WHO/EOP @ EOP, Peter Rundlet/WHO/EOP @ EOP, Clara J. Shin/WHO/EOP @ EOP

Subject: Re: proposition 16 

As you may have read, a district court struck down the NCAA's academic standards (at least the way they relied on the SAT) on the basis of the Title VI regulation, which prohibits policies that have a discriminatory impact unless there is an adequate justification and there is no equally effective less restrictive alternative. The United States is not a party but we could in theory file an amicus when it goes to the court of appeals. This is a difficult case, which will require some review. It raises the difficult question of when the civil rights laws should be used to overturn academic standards. At the moment, I believe our comment should only be that the Department of Justice is reviewing the opinion. Any thoughts?

Message Copied To:

charles f. ruff/who/eop
maria echaveste/who/eop
elena kagan/opd/eop
irene bueno/opd/eop
elizabeth r. newman/who/eop
laura emmett/who/eop
clara j. shin/who/eop



Peter Rundlet
03/09/99 05:39:06 PM

Record Type: Record

To: Edward W. Correia/WHO/EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: proposition 16

Copied below is a slightly more detailed article from today's Chronicle of Higher Education about the newest NCAA/Title VI case. The lengthy opinion should be available tomorrow. I agree with Eddie that we should withhold comment until further review. Once the opinion is available, I will share it and we can get together, if necessary, to discuss how to proceed.

Judge, Citing Bias, Orders NCAA to Stop Using Test Scores to Establish Eligibility

By KARLA HAWORTH

A federal judge dealt a blow to the National Collegiate Athletic Association on Monday, when he barred it from using a rule under which freshman eligibility was determined in part by scores on standardized tests. The judge found the rule to be racially discriminatory. The court's decision also answered two questions posed by a U.S. Supreme Court ruling last month: whether the N.C.A.A. is subject to a federal anti-discrimination law because its members grant it authority to govern their sports programs, and whether the law applies to the association because a non-profit group affiliated with it clearly does receive federal funds. The answer to both, said Judge Ronald L. Buckwalter, is yes. That means the N.C.A.A. can be sued under federal statutes that prohibit race and sex discrimination at institutions that receive federal funds, said Adele P. Kimmel, a lawyer for the group that brought the suit that was decided Monday. Judge Buckwalter's opinion also leaves colleges without any rules to determine whether freshmen athletes may play. The N.C.A.A. plans to ask the court to stay the decision. "This is an enormous victory," said Ms. Kimmel of the Trial Lawyers for Public Justice, which filed a class-action lawsuit against the N.C.A.A. in 1997. The suit charged that the association's requirements for freshman eligibility discriminate against black athletes. The lawsuit, filed in U.S. District Court in Philadelphia, asserted that the test-score cutoff provision of Proposition 16 -- an N.C.A.A. rule that

raised eligibility for freshmen to participate in intercollegiate athletics -- violated Title VI of the Civil Rights Act of 1964, which prohibits race discrimination at institutions that receive federal funds.

The lawsuit was filed on behalf of two college students, Tai Kwan Cureton and Leatrice Shaw, black athletes who were freshmen at the time. Both had received good grades in high school, but neither had achieved an SAT score of at least 820, the minimum required under Proposition 16.

As a result, both were barred from competing as freshmen at Division I colleges, making them less-desirable recruits at the colleges to which they had applied.

In a 54-page decision, Judge Buckwalter ordered the association to immediately stop using minimum standardized-test scores as a requirement for freshman eligibility, saying that that provision is illegal.

The initial-eligibility rule "has an unjustified disparate impact against African Americans," Judge Buckwalter wrote. He concluded: "The N.C.A.A. has not produced any evidence demonstrating that the cutoff score used in Proposition 16 serves, in any significant way, the goal of raising student-athlete graduation rates."

The "racially adverse impact caused by the SAT cutoff score is not justified by any legitimate educational necessity," he added.

The judge answered lingering questions from last month's Supreme Court ruling in a gender-discrimination case against the N.C.A.A. In that case, *National Collegiate Athletic Association v. R.M. Smith*, the high court found that the N.C.A.A. should not be subject to Title IX of the Education Amendments of 1972, a federal law barring sex discrimination, simply because it collects dues from colleges that are covered by the law.

Judge Buckwalter reasoned that the Smith case was applicable because Title IX was modeled after Title VI, replacing the words "race, color, or national origin" with "sex."

Elsa Cole, general counsel for the N.C.A.A., said that she was "very pleased" with parts of the decision. Although the court rejected the N.C.A.A.'s cutoff score, she said that it did realize that "raising athlete-graduation rates is a legitimate goal."

"The court has enjoined us from using Proposition 16 because we didn't provide a sufficient record of research to correlate that specific SAT score with success in college," Ms. Cole said. "But the court left it open for us to pass a new rule. That allows us the opportunity to review initial eligibility further with our membership."

Edward W. Correia