Preparing for Supreme Court Decisions Involving Race-Conscious Admission

Presented by ACCEPT, ACCIS, FairTest, & NACAC
Introductions & Goals
Goals

- Educate
- Bust Myths
- Planning for the Unknown
- Actions You Can Take
Additional Experts

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Educate

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Affirmative Action involves decisions that assess eligibility conditioned on racial status/identity, including policies that establish quotas or allocate points explicitly related to race for all applicants from a specific group. Prohibited since Bakke (1978).

Race-Conscious Admission involves race as a stand-alone factor in consideration with other factors typically considered in the admission process. (Gratz/Grutter, Fisher)

Individualized holistic review of individual students’ applications in the higher education admission process does not involve “racial categorization” or “stereotyping,” as SFFA maintains, but rather is reflective of a process in which all relevant factors, considered in combination, shape applicant-specific judgments about their ability to succeed, and their ability contribute to, and benefit from their learning environment, peers, and community.
**SFFA’S AIMS**
**REVERSAL OF DECADES OF PRECEDENT**

**Grutter:**
- was “grievously wrong”
- “rests on a lie”
- “endorsed...amorphous and unmeasurable” racial objectives
- Reflects “affirmative action gone wild” (Alito quote)

**Legal standards under Grutter and progeny are “unworkable in practice” and have not been relied upon by the field**

<table>
<thead>
<tr>
<th>SFFA’s Argument</th>
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<td>“Our Constitution is colorblind.”</td>
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**In UT Litigation: Institutions of higher education can’t be trusted; they’ll take advantage of any leeway.**

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The benefits of racial diversity are substantial and demonstrable harms result from its absence.

Holistic review involves consideration of the individual—not a judgment based on labels, assumptions, or stereotypes; or based solely on “objective data”.

Full examination of an applicant often requires examination of race-related experiences, perspectives and interests.

Achieving diversity’s benefits are a medical, economic and military imperative.

Race-neutral strategies, standing alone, won’t achieve the benefits of diversity.

The view that the Constitution is “color blind” reflects a misreading of the Constitution and its history.
Busting Myths

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70% of Asian/Asian Americans support affirmative action

Source: AAPI Data, APIA Vote, and Asian Americans Advancing Justice | AAJC
Jonathan Feingold @JPYGold · Oct 13
i hope reporters help the public understand that these are the plaintiffs suing Harvard & UNC.
Affirmative action does NOT mean that “less qualified” students are admitted over “more qualified” students.
FACT

“Affirmative action is an important tool that universities need to foster environments that are welcoming, rigorous, and democratic for all students of all races, including Asian Americans.”

Source: National Commission on Asian American and Pacific Islander Research in Education
Preparing for the Unknown

With Marie Bigham

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How might SCOTUS decide?
It depends on the language of decision...

“Can’t ask about race…”

“Can’t consider race…”

“Race must be eliminated”
The Glass Overflows!

We WIN!!!!

- 40+ years of precedent
- Strong, logical legal arguments
- Overwhelming support of diversity from leaders in all sectors
- Fear of losing legacy admissions
The glass is half-full

Limited/narrow decision that allows colleges to be race-aware but with further incremental limitations.

Where might the “safe havens” be found?

Potential structural response
More explicit restrictions on consideration of race

Vague restrictions that OGC or policy makers can apply onerous interpretation

Chilling effect on practices that are permissible/legal

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“We cannot understand how anyone can be confident that today’s opinion will be the last of its kind.”

-Justice Sotomayor
Resources for enrollment offices

• Access and Diversity Collaborative (EducationCounsel LLC & College Board)
• Office of General Counsel
• Affirmative Action Polling (The Leadership Conference Education Fund)
• Common Application recent studies
• AAPIData.com
Actions You Can Take Now
Testing post-SCOTUS
If the Court rules that ALL “race-conscious” factors must be removed from the admissions process

Higher Education Admissions Offices can

- Eliminate consideration of applicants’ ACT/SAT scores because they reflect a variety of biases related to race and ethnicity (~1,820 accredited, bachelor-degree granting institutions are test-optional or test-blind/score-free for fall 2023 applicants – see https://fairtest.org/test-optional-list/

- Stop considering Advanced Placement enrollment and AP exam scores in the admissions review process because opportunities to take these courses as well as test results are strongly correlated with race;

- End the practice of purchasing recruitment lists based on student test-score ranges because of race-conscious factors

- Etc.
If the Court rules that ALL “race-conscious” factors should be removed from the admissions process

High Schools and District Offices Can

- Ensure that test scores of any sort do not appear on student transcripts because of their correlation with race/ethnicity
- Make certain that contextual information about availability of AP, IB, Cambridge, etc. programs at the home high school is included in all information sent to colleges
- Help students understand which colleges and universities will evaluate applicants in a manner that truly eliminates all “race conscious” factors
- Etc.
Counseling professionals

• Community and individual education
• Don’t feed into the myths - say it loud:
  • This is not about “less qualified" or “more qualified.” This is about context.
  • It is unethical to counsel students to hide who they are.
• Declare and demonstrate value of diversity
• Value student identities
• Support students who want to mobilize
Defend Diversity & Affirm Opportunity

WEEK OF ACTION

OCT 24 | We the Students Day
OCT 25 | Affirmative Action: Myth vs. Fact
OCT 26 | Defend Diversity & Affirm Opportunity: Affirmative Action Teach-In
OCT 27 | National Campus Cultural Fest: Showcasing the Power of Campus Diversity
OCT 28 | “I support Affirmative Action because...”
OCT 31 | Rally for Affirmative Action, 8 AM-12 PM ET at SCOTUS

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Email for resources: AffirmOpportunity@gmail.com

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Join the rallies in DC Oct. 30 & 31

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### Actions we can take

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<th>Speak</th>
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<tr>
<td>• Speak with your family, friends, and coworkers about the case. Tell them you support race-conscious admission.</td>
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<td>• Post on social media showing your support. #AffirmOpportunity #DefendDiversity</td>
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<td>• College admission officers: prepare your tour guides to field questions. They represent your institution; they should show support for your admission practices, if applicable.</td>
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Thank you & Questions