Preparing for Supreme Court Decisions Involving Race-Conscious Admission

Presented by ACCEPT, ACCIS, FairTest, & NACAC

With Angel Perez

Introductions & Goals

Goals

Educate

Bust Myths

Planning for the Unknown

Actions You Can Take

Sponsors/Speakers

Additional Experts

With David Hawkins

Educate

Clarity of language

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:

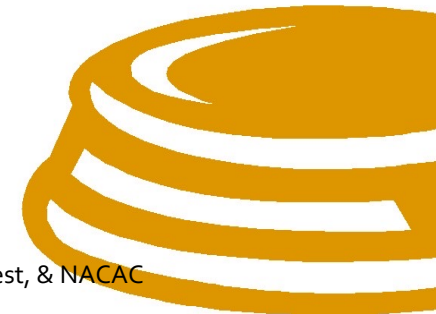
- was "grievously wrong"
- "rests on a lie"
- "endorsed…amorphous and unmeasurable" racial objectives
- Reflects "affirmative action gone wild" (Alito quote)

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

SFFA's Argument

"Our Constitution is colorblind."

In UT Litigation: Institutions of higher education can't be trusted; they'll take advantage of any leeway.



AMICUS BRIEFS
KEY THEMES

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.

With

Alyson Tom

&

Emmi Harward

Busting Myths

FACT

70% of Asian/Asian Americans support affirmative action

Source: AAPI Data, APIA Vote, and Asian Americans Advancing Justice |AAJC

FACT

Jonathan Feingold @JPYGold · Oct 13
i hope reporters help the public understand that these are the plaintiffs suing Harvard & UNC.

FACT

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
http://care.gseis.ucla.edu/wp-content/uploads/2015/08/CARE-asian_am_diversity_D4.pdf

With Marie Bigham

Preparing for the Unknown

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

The glass is half-empty

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

The glass is smashed

"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

With

Bob Schaeffer
Emmi Harward
Alyson Tom &
OiYan Poon

Actions You Can Take Now

Testing post-SCOTUS

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.

Testing post-SCOTUS

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

Email for resources: AffirmOpportunity@gmail.com

Join the rallies in DC Oct. 30 & 31

Actions we can take

Speak

- Speak with your family, friends, and coworkers about the case. Tell them you support race-conscious admission.

Post

- Post on social media showing your support. #AffirmOpportunity #DefendDiversity

Blog

- Blog on the topic.

Prepare

- College admission officers: prepare your tour guides to field questions. They represent your institution; they should show support for your admission practices, if applicable.

Thank you & Questions