Welcome
Session 2: Building, protecting and defending racial and ethnic diversity in enrollments

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CERPP CONFERENCE 2021: Making Equity Real
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‘Everything Is Not Sunshine’: What the Harvard Decision Means for Race-Conscious Admissions

U.N.C. Admissions Lawsuit Brings Another Attack on Affirmative Action

Supreme Court to Weigh Race in College Admissions

UT-Austin faces a third lawsuit claiming that white students were unfairly denied admission under affirmative action

Justice Department increasing attacks on affirmative action in college admissions

DOJ lawsuit against Yale reveals claims of how race plays role in admissions
Core Foundations for Court Decisions

Consideration of race, ethnicity disfavored under federal law

High burden to justify

A focus on ends (some deference) and means (rigor of review)

Ends: Educational benefits of diversity for all

Means: Policy design must precisely serve institutional aims
The Cases: Court Precedent

**Bakke (1978)**
- Admissions quota struck down; societal discrimination not a sufficient justification for considering race.
- Powell, single Justice “compromise” opinion
- Concept of the educational benefits of diversity recognized
- Harvard Plan cited with approval

**Grutter/Gratz (2003)**
- Affirms EBD as compelling (6-3)
- Upholds law school policy—individualized review
- Strikes down undergraduate policy—mechanical point system

**Fisher I & II (2013, 2016)**
- Builds on G/G, but with additional depth:
- Rigor on race-neutral alternatives
- Notably limited consideration of race—10% Plan and “factor of a factor of a factor”
The Cases: The New Wave

SFFA v. Harvard
- Trial and Appeal in Favor of Harvard
- On to the Supreme Court?

SFFA v. UNC
- Trial in November
- Post-trial briefing
- Awaiting Court ruling

SFFA v. UT
- State Court litigation dismissed/withdrawn
- New Federal Court complaint

U.S. v. Yale
- DoJ action
- SFFA intervention denied
- DoJ action dismissed/withdrawn
Federal Policy and Enforcement


- Title VI Regulations—permissible “affirmative action” based on certain conditions
- Title VI Scholarship Policy (1994) [Notice and Comment]

Trump Administration Actions

- Withdrawal of numerous Dear Colleague letters and informal guidance
- Withdrawal of Title VI Scholarship Policy [Dear Colleague]

Biden Administration Actions

- TBD
- DoJ change in position on Yale case is first action of consequence
Today’s Roadmap

THE CASES

THE ISSUES

THE COURTS

• Q/A

THE IMPLICATIONS

BEYOND THE LAW

• Q/A
What Plaintiffs Claim

You’re not interested in educational diversity! All you care about is racial balancing.

Best Practice Reality

Mission-driven

IHE-Specific/External Policy and Research Foundations

Authenticity
What Plaintiffs Claim

There are equally effective or better race neutral alternatives. You don’t NEED to consider race to achieve your goals!

Best Practice Reality

Evaluation of necessity of considering race—are there comparably effective, workable alternatives?

- Consideration and Pursuit of Race-Neutral Avenues
- Process Documenting Evaluation and Action on Alternatives
  - Rigor
  - Impact
  - Implications for policy change
Policy Design—The Consideration of Race

What Plaintiffs Claim

Race is a “determinative factor” in admissions—not a “plus factor.”

Best Practice Reality

Race as a factor
- Race-associated factors in holistic review—not status
- Consideration of stages of transparency re race

Merit
- Mission alignment
- Holistic review—intersectionality of multiple factors
- Care on use of test scores and grades

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What Underlies Plaintiffs Claims

Institutions of higher ed cannot be trusted; this is all a ruse to achieve racial balancing

Best Practice Reality

A process of periodic review, evaluation, and change as warranted

Multidisciplinary decision-making, grounded in academic judgments

Multiples sources and kinds of evidence

Rigorous deliberation when considering all evidence with implications re policy design

Documentation of decision-making
Today’s Roadmap

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Federal Circuit Courts of Appeal
2021 Supreme Court

John Roberts
Chief Justice

Clarence Thomas

Stephen Breyer

Samuel Alito

Sonia Sotomayor

Elena Kagan

Neil Gorsuch

Brett Kavanaugh

Amy Coney Barrett
• Overrule 40 years of precedent?
  – Not a “conservative” position
  – Court factors counsel support of precedent: Longstanding, evidence of reliance in the field and success, change would be disruptive

• More likely focus on evidentiary hurdles—and narrowing of precedent?

• Harvard strengths
  – Complexity; heavily data-driven, evidence-based decision; well-reasoned
  – Bench trial, credibility of witnesses a factor
  – No named student plaintiff alleging specific harm
Please submit your question in the Q & A section of the Zoom webinar.

OR

Add your questions on the Whova platform on the right side of your screen.
Defining Success

- Numbers focus only in the context of educational aims
- Feelings of welcome, inclusive climate, culture
- Broadened perspectives, new ideas, creativity
- Student success educationally and professionally
  - Enriched learning for civic engagement and life

Compositional Diversity

Student Experience

Outcomes
The Policy Action Blueprint

ENDS

Goals and Objectives

- Mission alignment
- Articulation & Authenticity
- Benchmarks of Evaluation

MEANS

Necessity of Considering Race

- Consideration/pursuit of neutral strategies
- Evidence of necessity and impact

Policy Design

- Coherent enrollment spectrum
- Meaning of “the consideration of race”
- Holistic review in admissions (and elsewhere?)

PROCESS

Process Management

- Interdisciplinary team
- Clear, regular process of review, evaluation, action
- Research informed
Communicating Success

Compositional Diversity
- Enrollment data
  - Actual and modeling
  - Classroom data
  - Academic discipline/department data

Student Experience
- Student surveys
  - 1st year, 4th year, grad students, alumni
  - Student, post-docs, faculty focus groups
  - Course evaluations

Outcomes
- Disaggregated--
  - Graduation rates
  - Attainment within disciplines
  - Transfer rates
  - Employer/alumni surveys
The Communications Blueprint

Policy Clarity

- Clear terminology and definitions
  - NOT “affirmative action”
  - The educational benefits of diversity
  - Diversity
  - Critical mass
  - Race-aware, conscious, exclusive

Consistency

- Alignment with goals
- Use across EM spectrum & in student/academic affairs
- Common terms, even if adapted differently

Actionability

- Ability to translate concepts into action
State Bans on the Consideration of Race and Ethnicity in Public IHEs
Today’s Roadmap

THE CASES

THE ISSUES

THE COURTS

• Q/A

THE IMPLICATIONS

BEYOND THE LAW

• Q/A
...and beyond

New Paradigms?

The Broader Equity Agenda

Legal Flexibility Beyond Enrollment
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Transition to Small Group Discussion

Thank you for an engaging Q&A session!

At this time, we will transition to Group Discussions and Takeaways

Attendees, please return to the Whova Agenda
And select the next session.

(Note: Please wait in the Zoom waiting room until the host starts the session at the scheduled time.)