Session 3. Pursuing DEI Beyond the Supreme Court Decisions in SFFA v. Harvard/UNC

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Session Objectives

To identify prospective DEI strategies in light of potential disruptive Court rulings in the SFFA cases.
SFFA’s Position

“The Constitution is color blind”

Grutter was “wrong on the day it was decided”

The consideration of race in admission should be categorically eliminated
The U.S. Supreme Court
2022-23 Term

Clarence Thomas
John Roberts
Elena Kagan
Samuel Alito
Sonia Sotomayor

Neil Gorsuch
Brett Kavanaugh
Amy Coney Barrett
Ketanji Brown Jackson
# The SFFA Cases: Possible Outcomes

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Outcome</th>
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<tr>
<td>Harvard &amp; UNC Win</td>
<td>• Harvard/UNC prevail on all substantive issues</td>
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<td>A Split Decision</td>
<td>• Echoes of <em>Grutter/Gratz</em>, SFFA wins one, loses one</td>
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<td>SFFA Wins</td>
<td>• Court decides cases on narrow or procedural grounds—e.g. specific neutral strategy, process issue</td>
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<tr>
<td>SFFA Wins</td>
<td>• Court significantly limits precedent but permits consideration of race tied to individual identity/lived experience (vs. assumptions based on racial status)</td>
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<tr>
<td>SFFA Wins</td>
<td>• Court fully sides with SFFA and any consideration of race is prohibited</td>
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From the Oral Arguments:

The Potential Material Distinction Between Holistic Review/Consideration of Actual Racial Identity and “Check the Box” Racial Status Assumptions
Range of Possible Outcomes

- Status Quo
- Shift in Evidentiary Requirements
- No Racial “Status” Consideration
- No Factor Associated with Race

Admission

Aid & Scholarships

Outreach & Recruitment Programs

Other DEI Policies & Programs
Equity Implications in the Wake of the SFFA Decisions

Includes: Holistic review, shaping the class, monitoring class composition, fulfilling institutional mission

Includes: Financial aid/scholarships; DEI programs, targeted student support services, pre- & post-admission actions

Includes: Defining the future of higher education equity efforts, including need for narrative development and program design that maintains progress; a new focus on institutions already serving SoC being resourced for success; and risk to MSIs and HBCUs.

Race-conscious admissions/enrollment

Other higher education race-conscious policies and practices

Other higher education equity implications
New digital resource contains information on and links to:

- ADC Key Action Guide
- Webinars and Events
- Key Resources for Higher Education
- Court Cases and Analyses

https://collegeboard.org/race-in-admissions
Other Key Resources and Sources of Information

College Board Access & Diversity Collaborative Website
https://professionals.collegeboard.org/higher-ed/access-and-diversity-collaborative

NACAC, NASFAA: Toward a More Equitable Future
https://www.nacacnet.org/about/toward-a-more-equitable-future-for-postsecondary-access/

AAAS Diversity and the Law Website
https://www.aaas.org/programs/diversity-and-law
Questions & Discussion
Questions?
Please make your way to an available microphone.