

Re-Imagining EDI Work in Light of the SCOTUS Affirmative Action Ruling

Maya Kobersy, *University of Michigan*

Leah Cox, *University of North Carolina*

Dominic Cooper, *University of California San Diego*

John Allen, *University of Florida*

Regina McClinton, *University of Michigan (moderator)*

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The *Students for Fair Admissions* Decision

SFFA – BACKGROUND

- SFFA challenged undergraduate admissions policies at two institutions:
 - Harvard, oldest *private* higher ed institution in America
 - UNC, oldest *public* higher ed institution in America
- Challengers argued admissions policies discriminated on the basis of race in violation of Equal Protection Clause (UNC) and Title VI (both)
- Lower court findings:
 - Harvard – policy upheld by district court AND First Circuit
 - UNC – policy upheld by district court
- Supreme Court decided to take both cases (without waiting for appellate review of UNC decision)

MAJORITY OPINION

- Found both universities' policies unlawful
 1. Did not pass strict scrutiny
 - Interest asserted as “compelling” was “of an elusive nature” and “not sufficiently coherent” for meaningful judicial review
 - Institution can set mission, but courts can defer only within constitutional limits
 2. Used race as stereotype/negative
 - Admissions is zero-sum, so benefit to one is harm to another
 - Favored race qua race
 3. Did not have a logical endpoint
 - Periodic review insufficient to remedy unconstitutional approach

MAJORITY OPINION (cont'd)

- However, Court also stated:
 - Nothing in opinion prevented “universities from considering an applicant’s discussion of how race affected his or her life, be it through discrimination, inspiration, or otherwise”
 - Must be tied to that specific applicant alone
 - Cannot use to do indirectly what Court found unlawful if done directly – so don’t look to dissent for advice on how to achieve, Court said!
 - Opinion did not address race-conscious admissions in military institutions, since they might have “distinct interests”

- **MICHIGAN'S EXPERIENCE WITH PROP 2**

Key Points to remember

- Differences between Supreme Court opinion and Prop 2
- Differences in state law contexts
- Differences in institutional approaches and risk tolerances

Bottom Line: Check with your institutional counsel early and often!

Proposal 2

- Adopted by Michigan voters in 2006
- Applies to UM, MSU, and Wayne State, as well as to other public institutions in Michigan
- Prohibits discrimination against, or preferential treatment for, any person or group based on race, ethnicity, sex, color, or national origin in public education, public employment, and public contracting
- Upheld as constitutional by U.S. Supreme Court in 2014

University of Michigan's Approach

Key Messages

- Prop 2 affected the tools we can use, *not* our commitment or values
- Diversity in all its forms is integral to our institutional excellence
- **Therefore, we can and should continue to seek diversity, in *all* its forms, but must use legally compliant means**

UM's Approach (continued)

- Initial Program Review
 - Joint effort by Provost's Office and Office of General Counsel
 - Goal was to further our institutional mission/core values while assuring compliance
- DEI Strategic Planning Process
 - Recognized "context matters," so plans made at unit level
 - Defined "diversity" broadly, across myriad aspects, including with respect to race/ethnicity
 - Now entering second phase (DEI 2.0)

Selected examples

- Admissions
- Financial Aid
- Faculty and Staff Hiring
- Outreach/Pathway Programs

Case Study #1

Your institution worked to diversify the faculty in your pharmaceutical sciences department by utilizing target of opportunity, TOO, hires (TOO represents an opportunity to recruit a candidate of outstanding quality that has not emerged through a conventional national search). In the absence of affirmative action, this option is no longer available.

Case Study #1

- What tools and/or approaches exist to support your work in diversifying the faculty without violating the law.
- And how will you communicate to potential applicants from minoritized groups that you welcome their application?
- Should you require applicants to submit a diversity statement?
- If yes, what directions for such a statement would you give?

Case Study #2

In recruiting students from minoritized backgrounds, your institution was able to offer a scholarship based on race, which was funded by a private donor, who wanted funding to go to women of color in STEM.

- Going forward, what changes will you make in financially supporting students from minoritized groups?
- Can scholarships based on identity still be used?
- And how can you honor the wishes of the donor, or does the donor have to change the parameters of the scholarship?

Case Study #3

One hallmark of your pharmacy school is the presence of several student organizations formed around identity (such as your Hispanic Pharmacy Student Organization, and Women in STEM student group), which not only provided support for members of these groups, but also served to communicate to future students that your school has a welcoming and inclusive environment.

Case Study #3

- In light of the banning of affirmative action, is it legal/allowed for such organizations to exist in your school?
- If yes, will there be any changes in structure or rules for these organizations to exist?
- If not, what strategies can you use to continue to convey to current and future students that your school is welcoming and supportive?

Case Study #4

To monitor your progress in DEI efforts in your school and university, you have maintained demographic information on all of your cohorts: faculty, staff and students. You regularly review your demographics over the past 10 years to determine if you are making progress in diversity.

- In light of the SCOTUS decision on Affirmative Action, can such data still be collected?
- And if yes, can you publicly discuss it?
- If yes, how can you do so?

Case Study #5

Until now, your graduate programs admissions team has considered race and gender in admissions decisions.

- First, discuss how you used, or believe that you used, race and gender in admissions.
- Second, in the absence of affirmative action, what are ways that race and gender, and other markers of identity, can be included in one's application materials?
- What changes would you make to your existing application materials to allow applicants to share their identity markers in their application materials?
- How will your admissions committee utilize this information?

Home Team Time #1



Reconvene at 3:15 PM ET. There will be a 5 minute warning and a 60 second countdown as breakout rooms are closing.