MEMORANDUM

FROM: Legal Defense Fund
Asian Americans Advancing Justice | AAJC
Asian American Legal Defense and Education Fund
LatinoJustice PRLDEF
Lawyers' Committee for Civil Rights Under Law

RE: Anticipated Effect of Affirmative Action Cases Before Supreme Court

DATE: June 13, 2023

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Currently before the United States Supreme Court are two affirmative action cases brought by the same plaintiff, *Students for Fair Admissions v. President and Fellows of Harvard College* ("*SFFA v. Harvard*") and *Students for Fair Admissions v. University of North Carolina* ("*SFFA v. UNC*"), which have the potential of shaping admissions to higher education for years to come. While acknowledging the uncertainty of the Supreme Court's rulings until they are decided, this memorandum discusses the general scope of possible outcomes and their precedential effect on other issues pertaining to racial equity, diversity, and inclusion in higher education. Specifically, regardless of the outcome of these cases, it is our assessment[1] that it is highly unlikely they will directly produce any of the following effects: (1) the outlaw of race-neutral programs designed, in part, to achieve racial diversity; (2) a change in areas of the law outside of higher education; or (3) the prohibition of diversity, equity, inclusion, and accessibility programs in either the education or employment context.

It is important to first articulate the specific legal issues before the Supreme Court in these cases. *SFFA v. Harvard* and *SFFA v. UNC* raise two questions: (1) whether Harvard, a private educational institution, and UNC, a state public flagship university, faithfully followed the Supreme Court's guidelines set forth in *Grutter v. Bollinger*, 539 U.S. 306 (2003), when explicitly considering race as one factor among many on an individualized basis in their admissions processes; and (2) irrespective of compliance with *Grutter v. Bollinger*, whether that precedent should be overruled, thereby banning *any* explicit consideration of race in the college and university admissions process to achieve the educational benefits of diversity. SFFA's case against Harvard also includes a claim that Harvard's admissions program intentionally discriminated against Asian American applicants.

The federal district courts in *SFFA v. Harvard* and *SFFA v. UNC* held bench trials after extensive briefing and discovery, and the courts in both cases issued exhaustive opinions, finding that Harvard and UNC complied with Supreme Court

[1] This memorandum does not provide legal advice and should not be relied upon as a legal opinion or legal analysis.

precedent in the implementation of their race conscious admissions programs. The *Harvard* court found that the college had a substantial and compelling interest in student body diversity; that Harvard's race-conscious admissions policy was narrowly tailored to achieve this substantial and compelling interest; that Harvard did not engage in racial balancing nor did it use race as a mechanical plus factor; that Harvard adequately considered race-neutral alternatives; and that Harvard did not intentionally discriminate against Asian American applicants. *SFFA v. Harvard*, 397 F. Supp. 3d 126 (D. Mass. 2019). Similarly, the *UNC* court found that the university had a compelling interest to pursue the educational benefits of diversity; that UNC's race-conscious admissions policy was necessary to achieve that compelling interest; that UNC had appropriately conducted periodic reviews of its race-conscious admissions policy; that UNC's admissions policy was sufficiently narrowly tailored in its use of race as a "plus factor" within a holistic review process; and that there were no workable race-neutral alternatives to the race-conscious admissions policy. *SFFA v. UNC*, 567 F. Supp. 3d 580 (M.D.N.C. 2021). The U.S. Court of Appeals for the First Circuit affirmed the district court's decision in *SFFA v. Harvard*. 980 F.3d 157 (1st Cir. 2020). The U.S. Court of Appeals for the Fourth Circuit did not have the opportunity to assess the district court's decision in *SFFA v. UNC*, which SFFA appealed directly to the United States Supreme Court.

Thus, the possible outcomes stemming from both cases range from full affirmance of the lower courts (*i.e.*, holding that both educational institutions complied with *Grutter*, which remains the prevailing law) to an outright ban of any consideration of race as a factor in public and private college and university admissions (*i.e.*, overruling *Grutter* and prohibiting any college or university from considering race in their admissions process). Between these two bookends are a myriad of possible results: for example, the Supreme Court may leave *Grutter* intact, but rule that either Harvard or UNC did not satisfy *Grutter*'s standards for a variety of possible reasons; or the Supreme Court may further limit the consideration of race in college and university admissions beyond the limitations set forth in *Grutter*; or the Supreme Court may overrule 45 years of precedent by holding that any consideration of race for purposes of diversity is unlawful.

There has been much commentary about the changed composition of the Supreme Court in the seven years since it last issued a ruling upholding affirmative action in higher education in *Fisher v. University of Texas at Austin*, 579 U.S. 365 (2016), and the possible hostility of the current Court to race-conscious measures. But the precedent permitting race-conscious admissions in higher education when necessary to achieve racial diversity has been in place, and repeatedly reaffirmed by justices appointed by presidents from both the Republican and Democratic parties, for almost five decades. Principles of *stare decisis* would demand adherence to the Court's prior rulings in this area, including *Grutter* and *Fisher*. For the current Court to reach a different result in these cases, it would have to disregard those principles and overrule its own precedent that is directly on point. While it is impossible to predict what the Court will do, it is worth noting that similar concerns about the

Court overruling precedent before the Supreme Court's recent decision in *Allen v. Milligan*, 599 U.S. ___ (2023), were proven wrong, as the Court ultimately affirmed a lower court's finding that Alabama's redistricting plan for 2022 congressional elections violated Section 2 of the Voting Rights Act of 1965.[2]

It further bears repeating that, for supporters of affirmative action in higher education, the *worst case scenario* for the two cases before the Supreme Court would be a ban of any explicit consideration of race in college and university admissions to further the educational benefits of diversity. Such a ruling would have no immediate precedential effect on *race neutral* measures designed to promote racial diversity in the higher education, or on affirmative action *outside the context of higher education*, which is a separate and distinct body of law. Any suggestion of a broader ruling is, from our perspective, unlikely.

1. *Race Neutral Measures to Foster Diversity and Inclusion in Education Are Lawful.*

The questions before the Court are limited to whether the *race-conscious* aspects of Harvard and UNC's admissions policies are lawful under Title VI of the Civil Rights Act and the Fourteenth Amendment to the United States Constitution for purposes of attaining the educational benefits of diversity.[3] The validity and permissibility of *race-neutral* measures—which do not, on their face, classify people by race—to increase diversity and reduce isolation of historically marginalized and/or underrepresented groups is not at issue. Indeed, the questions presented to the Court by SFFA itself presume the existence and viability of race-neutral alternatives, which it argues obviates the need for any express consideration of race in Harvard and UNC's admissions programs. *See* Pet'r's Br., *SFFA v. Harvard*/*SFFA v. UNC*, Nos. 20-1199 & 21-707 (May 2, 2022) ("QUESTIONS PRESENTED[:] . . . . Is Harvard violating Title VI by . . . rejecting workable race-neutral alternatives? . . . . Can the University of North Carolina reject a race-neutral alternative because the composition of its student body would change, without proving that the alternative would cause a dramatic sacrifice in academic quality or the educational benefits of overall student-body diversity?"); *see also Fisher v. Univ. of Tex. at Austin*, 758 F.3d 633, 656 (5th Cir. 2014) ("Fisher offers socioeconomic disadvantage as a race-neutral alternative in holistic review."), *aff'd*, 579 U.S. 365 (2016).

Since the very first challenge to a race-conscious admissions policy in *Regents of the Univ. of Calif. v. Bakke*, 438 U.S. 265 (1978), the Court has never held or even

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[2] *See*, *e.g.*, Debra Cassens Weiss, "In 'Stunning Development,' Supreme Court Rules Alabama Election Map Violates Voting Rights Act," *ABA Journal* (June 8, 2023), https://www.abajournal.com/web/article/in-stunning-development-supreme-court-rules-alabama-voting-map-violates-voting-rights-act.

[3] Of course, colleges and universities may also use race-conscious measures to remedy their own prior acts of discrimination. *See Regents of the Univ. of Calif. v. Bakke*, 438 U.S. 265, 307-09 (1978).

suggested that race-neutral alternatives to affirmative action are unlawful. Rather, the Court has long endorsed race-neutral measures as a constitutional alternative to race-conscious, affirmative action programs to increase diversity and inclusion in educational spaces. *See*, *e.g.*, *Tex. Dep't of Hous. & Cmty. Affs. v. Inclusive Cmtys. Proj., Inc.*, 576 U.S. 519, 545 (2015) (citing *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 789 (2007) (Kennedy, J., concurring)) (even in cases without an active desegregation order, "[s]chool boards may pursue the goal of bringing together students of diverse backgrounds and races through other means, including strategic site selection of new schools, and drawing attendance zones with general recognition of the demographics of neighborhoods"). Far from rejecting race-neutral alternatives to affirmative action programs, the Court has instead consistently framed race-neutral measures as a preferred alternative to race-conscious programs wherever possible. *See Grutter*, 539 U.S. at 342 (urging that "[u]niversities in other States can and should draw on the most promising aspects of the[] race-neutral alternatives as they develop"); *Fisher v. Univ. of Texas at Austin*, 570 U.S. 297, 312, (2013) (holding that the "reviewing court must ultimately be satisfied that no workable race-neutral alternatives would produce the educational benefits of diversity. . ." when examining a race-conscious admissions policy).

Moreover, implementing a race neutral alternative does not require that colleges and universities ignore student applicants' experiences based on their race, as imbedded in the application itself or expressed through personal essays or recommendation letters. In bringing its legal challenges, SFFA took issue with admissions processes in which applicants "simply check the box" to indicate their race for consideration. Pet'rs' Br. at 14. More specifically, SFFA challenged processes where an applicant's race was accounted for "regardless of whether [applicants] write about that aspect of their backgrounds [in their applications] or otherwise indicate that [their race] is an important component of who they are." *Id.* (citing Harv. Pet. App. at 116). During oral argument, SFFA conceded that a college or university's consideration of a student applicant's experience with race was not the type of "race-conscious" measure at issue in their cases. Chief Justice Roberts asked SFFA's counsel if, instead of checking a box to indicate race, they would have any objection to applicants including an "essay about having to confront discrimination growing up" or a faculty recommender saying, "this applicant would bring [] how to deal with racial discrimination . . . in a school where he's part of a very small minority." 20-1199 Tr. at 7 (Roberts, J.). SFFA conceded, "Absolutely not." *Id.* Justice Kagan questioned whether, through essays, either guidance counselors or students "can express whatever views they choose to express about their own racial experiences and the relevance of that for admissions officers?" 20-1199 Tr. at 8 (Kagan, J.). SFFA again responded, "Yes." *Id.* When Justice Barrett inquired whether applicants could also discuss pride in their racial heritage and not just overcoming racial discrimination, SFFA affirmed that "culture, tradition, heritage are all not off limits for students to talk about and for universities to consider . . . ." 20-1199 Tr. at 10. (Norris). Justice Jackson questioned whether an "equal protection violation" may occur should an admissions officer be able to consider a white applicant's essay

highlighting their background of legacy admission to UNC, but not a Black applicant's essay explaining their family's legacy of enslavement. 21-707 Tr. at 64-66 (Jackson, J.). SFFA agreed that "nothing stops UNC from honoring those who have overcome slavery or recognizing its past contribution to racial segregation." 21-707 Tr. at 68 (Strawbridge).

To be sure, opponents to affirmative action may likely challenge race-neutral measures to foster the educational benefits of diversity in higher education in the future. In fact, those types of challenges already have occurred in the K-12 level. Importantly, however, these legal claims have failed in the courts thus far, and there is no reason to suggest that they would be any more successful in higher education. Most recently, the Fourth Circuit Court of Appeals held that race-neutral changes to the admissions process for Thomas Jefferson High School for Science and Technology ("TJ") in Fairfax, Virginia "fully comport[] with the Fourteenth Amendment's demand of equal protection under the law." *Coal. for TJ v. Fairfax Cnty. Sch. Bd.*, No. 22-1280, 2023 WL 3590055, at *7 (4th Cir. May 23, 2023). The Fourth Circuit noted that, "[t]o the extent the Board may have adopted the challenged admissions policy out of a desire to increase the rates of Black and Hispanic student enrollment at TJ—that is, to improve racial diversity and inclusion by way of race-neutral measures—it was utilizing a practice that the Supreme Court has consistently declined to find constitutionally suspect." *Id.* at *12; *see also id.* ("[M]ere 'awareness of consequences' is not sufficient for proving a discriminatory purpose." (quoting *Personnel Admin. of Mass. v. Feeney*, 442 U.S. 256, 279 (1979)). The First Circuit also recently held that school districts may permissibly "prefer to use facially [race-]neutral and otherwise valid admissions criteria that cause underrepresented races to be less underrepresented." *Boston Parent Coal. for Acad. Excellence Corp. v. Sch. Comm. of City of Bos.*, 996 F.3d 37, 49 (1st Cir. 2021).

Challenges to race-neutral, admissions policy changes for public school programs in New York City, Philadelphia, and Montgomery County, Maryland have been similarly unsuccessful. *See Christa McAuliffe Intermediate Sch. PTO, Inc. v. De Blasio*, No. 18 Civ. 11657 (ER), 2022 WL 4095906 (S.D.N.Y. Sept. 7, 2022); *Sargent v. Sch. Dist. of Phil.*, No. 22-cv-1509, 2022 WL 3155408 (E.D. Pa. Aug. 8, 2022); *Ass'n for Educ. Fairness v. Montgomery Cnty. Bd. of Educ.*, 617 F. Supp. 3d 358 (D. Md. 2022).[4] In the Philadelphia case, the district court denied plaintiff's preliminary injunction motion, finding no reasonable probability of success on the merits. As Judge Chad F. Kenney, a Trump appointee, explained in that decision, "[c]onsideration of whether prior practices allowed for racial bias to exist in the admissions process and a desire to safeguard against the potential for race-based-discrimination by moving to an objective [and race-neutral] system for selecting which students are admitted to the schools they are qualified to attend does not

[4] The lawsuits against New York City and Montgomery County, MD school districts were dismissed by district courts and are both on appeal in the Second and Fourth Circuits Courts of Appeals respectively.

constitute a racially *discriminatory* motive. It constitutes the opposite." *Sargent*, 2022 WL 3155408, at *8.

*2. Efforts to Advance Diversity, Equity, Inclusion, and Accessibility Outside of the Education Context Are Lawful.*

The decisions in *SFFA v. Harvard* and *SFFA v. UNC* should not change the law in employment, contracting, grantmaking, or other contexts. Civil rights in these areas are covered by different federal statutes and distinct bodies of law. *See*, *e.g. Adarand Constructors, Inc. v. Pena,* 515 U.S. 200 (1995); *United Steelworkers of Am. v. Weber*, 443 U.S. 193 (1979). For example, Title VII of the Civil Rights Act of 1964 governs the use of race in employment. *See* 42 U.S.C. § 2000e-2. Unlike college and university admissions under Title VI and the Fourteenth Amendment, Title VII prohibits employers from using race as a plus factor in hiring, retention, or other employment decisions except in limited circumstances to remedy past discrimination. *Johnson v. Transp. Agency,* 480 U.S. 616, 628–29 (1987) (stating that "taking race into account [is] consistent with Title VII's objective of breaking down old patterns of racial segregation and hierarchy") (internal quotations omitted). Thus, given the differing legal frameworks, the SFFA cases will have no direct precedential value in areas outside of higher education. Rather, opponents of civil rights will have to bring new cases to alter the law in those areas—a slow process that likely would take years to progress through the courts.

In addition, the SFFA cases will not alter the lawfulness of diversity, equity, inclusion, and accessibility (DEIA) measures or race-neutral measures with the goal of diversity in employment. As the Equal Employment Opportunity Commission ("EEOC") explained, "Title VII permits diversity efforts designed to open up opportunities to everyone."[5] Unlike affirmative action, DEIA programs are permissible because they do not use race as a motivating factor in an employment decision but instead allow employers to use recruiting, mentoring, training, and other measures to create and maintain an inclusive workplace, increase opportunity for people of various backgrounds, and reduce discrimination and bias for all workers. Such DEIA programs have been found to be lawful. For example, the Eighth Circuit Court of Appeals held that "[a]n employer's affirmative efforts to recruit minority and female applicants does not constitute discrimination. . . . An inclusive recruitment effort enables employers to generate the largest pool of qualified applicants and helps to ensure that minorities and women are not discriminatorily excluded from employment." *Duffy v. Wolle*, 123 F.3d 1026, 1038-39 (8th Cir. 1997), *abrogated on other grounds by Torgerson v. City of Rochester*, 643 F.3d 1031 (8th Cir. 2011). Recent legal challenges to DEIA programs have failed on multiple legal grounds. *See Young v. Colo. Dep't of Corr.*, No. 22-cv-00145-NYW-KLM, 2023 WL 1437894 (D. Colo. Feb. 1, 2023) (dismissing claim that DEI training violated the Equal Protection Clause);

[5] U.S. Equal Employment Opportunity Comm'n, Compliance Manual, Section 15: Race and Color Discrimination § VI(C) (2006).

*Henderson v. Sch. Dist. of Springfield*, No. 6:21-CV-03219-MDH, 2023 WL 170594 (W.D. Mo. Jan. 12, 2023) (dismissing claim that DEI training violated plaintiff's First Amendment rights); *Do No Harm v. Pfizer Inc.*, No. 1:22-CV-07908 (JLR), 2022 WL 17740157 (S.D.N.Y. Dec. 16, 2022) (dismissing claim that Pfizer's efforts to recruit, retain, and promote diverse talent, including aspirational executive hiring goals, and its fellowship program, violated 42 U.S.C. § 1981, Title VI of the Civil Rights Act of 1964, and other laws).

Notably, the EEOC, the federal agency tasked with enforcing Title VII against private-sector employers, strongly supports DEIA programs and has launched a workshop series to promote them.[6] In addition, at least one EEOC senior official expressed interest in "help[ing] employers maintain their DEI work to the maximum extent consistent with the law," noting that the agency may offer technical assistance or issue guidance to help employers navigate the outcome of Supreme Court decisions, including the affirmative action cases, if needed.[7]

*3. Continuing Obligations to Eradicate Barriers to Opportunity Are Mandated by Law.*

The affirmative action cases before the Supreme Court are juxtaposed with incontrovertible evidence that educational opportunities are grossly unequal along racial lines. Nearly 70 years have passed since the Supreme Court issued its decision in *Brown v. Board of Education*, 347 U.S. 483 (1954); yet, K-12 schools largely remain segregated and inequitable. In fact, schools are reportedly more segregated now than during the 1960s.[8] The U.S. Government Accountability Office found that during the 2020-2021 school year, more than one-third of K-12 students attended schools where 75 percent or more students were of a single race or ethnicity and 14 percent attended schools where 90 percent or more of the students were of a single race or ethnicity.[9]

Racial segregation results in unequal access to educational resources that are considered competitive for postsecondary education admissions. For instance, 20 percent of "black high school students attend a school that does not offer calculus,

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[6] Press Release, U.S. Equal Employment Opportunity Comm'n, *EEOC Launches Diversity, Equity, & Inclusion (DE&I) Workshop Series* (Aug. 4, 2021), https://www.eeoc.gov/newsroom/eeoc-launches-diversity-equity-inclusion-dei-workshop-series.

[7] Anne Cullen, *EEOC's Samuels Says High Court Cases on Agency's Radar*, Law 360 (Feb. 28, 2023), https://www.law360.com/employment-authority/articles/1580616/eeoc-s-samuels-says-high-court-cases-on-agency-s-radar.

[8] Gary Orfield and Danielle Jarvie, The Civil Rights Project, *Black Segregation Matters: School Reseregation and Black Educational Opportunity* (Dec. 2020), available at https://www.civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/black-segregation-matters-school-resegregation-and-black-educational-opportunity/BLACK-SEGREGATION-MATTERS-final-121820.pdf.

[9] U.S. Gov't Accountability Office, Report GAO-22-104737, K-12 Education: Student Population Has Significantly Diversified, But Many Schools Remain Divided Along Racial, Ethnic, and Economic Lines (2022), available at https://www.gao.gov/products/gao-22-104737.

compared with 13 percent of white and Hispanic students and 10 percent of Asian students."[10] While Black students comprise 15 percent of overall high school enrollment, they are only 9 percent of students enrolled in an Advanced Placement course—even though they are just as successful in those courses when given the opportunity.[11] Moreover, selective admissions processes often give weight to certain extracurricular activities and unpaid internships that are more readily available to students with greater wealth, thus disproportionately disadvantaging already underrepresented groups.[12] And studies have found that standardized tests like the SAT disadvantage Black and Latinx students due to cultural biases in the makeup of test questions and methods of test validation.[13]

Practices that deny students of color access to educational opportunities may expose colleges and universities to legal liability. Title VI of the Civil Rights Act of 1964 prohibits any person, "on the ground of race, color, or national origin," from being "excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d. Furthermore, regulations promulgated under Title VI prohibit the recipient of federal funds from "utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin," 28 C.F.R. § 42.104(b)(2). The Supreme Court has interpreted these regulations, which are enforceable by governmental entities, to "proscribe activities that have a disparate impact on racial groups." *Alexander v. Sandoval*, 532 U.S. 275, 281 (2001). Thus, colleges and universities face exposure to liability for any admissions policy that "exclude[s] from participation in" or "denie[s] the benefits of" a federally-funded program or activity "on the ground of race, color, or national origin" and/or "activities that have a disparate impact on racial groups." Colleges and universities must continue to carefully examine their policies and eliminate practices that exclude historically underrepresented students.

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[10] Victoria Lee & Constance A. Lindsay, *Unequal Access to Calculus Could Hinder Low-Income and Black Students*, Urban Wire (Mar. 6, 2018), available at https://www.urban.org/urban-wire/unequal-access-calculus-could-hinder-low-income-and-black-students#:~:text=Thirty%2Dnine%20percent%20of%20black,20%20percent%20of%20Asian%20students.

[11] Kayla Patrick et al., *Inequities in Advanced Coursework: What's Driving Them and What Leaders Can Do*, 7, 9 (The Education Trust, Jan. 2020), available at https://edtrust.org/wp-content/uploads/2014/09/Inequities-in-Advanced-Coursework-Whats-Driving-Them-and-What-Leaders-Can-Do-January-2019.pdf.

[12] Julie J. Park, et al., Inequality Beyond Standardized Tests: Trends in Extracurricular Activity Reporting in College Applications Across Race and Class, 4-6 (Annenberg Institute at Brown University, EdWorkingPaper No. 23-749, 2023), available at https://www.edworkingpapers.com/ai23-749 ; https://www.insidehighered.com/admissions/article/2020/10/26/will-conversation-turn-action-when-it-comes-issues-racial-equity.

[13] Roy O. Freedle, Correcting the SAT's Ethnic and Social-Class Bias: A Method for Reestimating SAT Scores, 73 Harv. Educ. Rev. 1, 28–29 (2003); William C. Kidder & Jay Rosner, How the SAT Creates "Built-In Headwinds": An Educational and Legal Analysis of Disparate Impact, 43 Santa Clara L. Rev. 131, 156–57 (2002).

Exposure to liability for racial inequalities is not limited to colleges and universities in higher education. The Fourteenth Amendment, Title VII of the Civil Rights Act, the Fair Housing Act, 42 U.S.C. § 1981, and other civil rights laws place legal obligations on public and private entities to prevent individuals from being subject to discrimination on the basis of race, color, ethnicity, or national origin, as well as other protected categories. Just three years ago, in the wake of George Floyd's killing, countless individuals, organizations, businesses, and public officials across the country and worldwide acknowledged and condemned systemic racism and inequality in our workplaces and communities, and pledged to take action to promote racial equity, diversity, and inclusion.[14] The circumstances that led to these pledges have not diminished and present the same urgency now as they did in 2020. As such, governments, employers, housing providers, and others must also recommit themselves to dismantling practices that discriminate against people of color and deny them access to opportunity.

*4. Conclusion*

While the *Harvard* and *UNC* affirmative action cases provide a reconstituted Supreme Court the opportunity to reconsider its own legal precedent that has upheld race-conscious admissions in five predecessor cases, the scope of these affirmative action decisions will be limited to the higher education context. Any reaction to the decisions, especially any that reaches beyond higher education, must comply with existing laws of non-discrimination. Finally, the obligation to account for past and current inequities due to race is one that will remain for all decision-makers in our multi-racial, multi-ethnic democracy.

[14] *See*, *e.g.*, Gayle Markovitz & Samantha Sault, World Economic Forum, *What Companies Are Doing to Fight Systemic Racism* (June 24, 2020), at https://www.weforum.org/agenda/2020/06/companies-fighting-systemic-racism-business-community-black-lives-matter/; Gillian Friedman, *Here's What Companies Are Promising to Do to Fight Racism*, *N.Y. Times* (Aug. 23, 2020), at https://www.nytimes.com/article/companies-racism-george-floyd-protests.html.