LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

LEGAL RESOURCE

# Advancing Equal Employment Opportunity

## Putting the Affirmative Action College Admissions Cases in Context

The United States Supreme Court recently decided two important cases involving university admissions policies: *Students for Fair Admissions (SFFA) v. University of North Carolina (UNC)* and *SFFA v. Harvard College*. In these cases, the Court held that the UNC and Harvard College affirmative action programs, which consider race as one factor of many as part of a holistic admissions process, violated the Equal Protection Clause. In so holding, the Court undermined equal opportunity by significantly paring back the circumstances in which race can be used in higher education admissions.

These cases address college admissions—nothing else. The Supreme Court's decision does not change employment law. Although opponents of civil rights argue the contrary, employers continue to have a duty to create workplaces free from discrimination, including through efforts designed to achieve diversity, equity, inclusion, and accessibility (DEIA).

We urge employers to not retreat from these efforts and to pursue all that is possible under the law. Workforces that bring people together from different backgrounds allow us to learn from each other, foster problem-solving and innovation, and strengthen our economy and our nation. These imperatives are more important now than ever.

### Do these cases impact what is lawful under Title VII of the Civil Rights Act, the federal law that prohibits employment discrimination?

The Supreme Court's ruling does not change employers' affirmative duty to ensure workplaces are free from discrimination. Title VII of the Civil Rights Act of 1964 has long prohibited covered employers from discriminating on the basis of race and other protected categories. Decades-old Supreme Court rulings limited the use of race as a criterion for employment decisions except to address prior discrimination. The *UNC/Harvard* opinion does not change what is already unlawful under Title VII.

### What does the decision mean for employers' DEIA measures?

The Court's decision does not mean an end to DEIA programs that include measures such as expanded recruitment efforts, anti-harassment training, evaluation and modification of job qualifications to ensure job relatedness, and efforts to improve workplace climate and retention. Under Title VII, employers have a duty to root out systemic racial discrimination, including identifying policies and practices that create unnecessary barriers to employment opportunities for people of color. DEIA measures help employers fulfill this legal obligation by identifying and remedying systemic barriers to opportunity.

The employment context is different than college admissions, with its own body of statutes and case law. Moreover, because DEIA programs typically do not involve decision-making in hiring, promotion, pay, or other employment decisions, they are lawful in almost every case. Contrary to what opponents of DEIA want us to believe, permissible DEIA measures can advance the purposes and goals of Title VII. In enacting the Civil Rights Act, Congress strongly encouraged employers to make voluntary efforts to break down barriers, end occupational segregation, and increase access to opportunity—the very aims of DEIA efforts.

## Why is DEIA still necessary?

Although significant advancements have been made toward reducing explicit bias in the workplace, implicit or unconscious bias remains. Moreover, policies and practices that result in systemic discrimination contribute to ongoing occupational segregation, leaving Black workers overrepresented in lower-paying and higher-risk jobs. Often less obvious than blatant prejudice and unfair treatment, workplace policies and practices that have a negative effect on a particular category of workers can be more difficult to identify. As a result, many occupations remain racially segregated, resulting in fewer opportunities and lower pay for Black workers and other workers of color.[1] Black workers are almost twice as likely to be in service-worker or laborer jobs, and almost 25 percent less likely to be in managerial or professional jobs in the private sector.[2]

## DEIA is good for business, workers, and benefits our country as a whole.

DEIA programs help employers avoid leaving talent at the door and have wide-ranging positive effects for businesses. Pro-diversity efforts have been shown to promote more inclusive workplace cultures and enhance corporate innovation and efficiency.[3] Studies show that diverse teams engage in a more rigorous and thoughtful decision-making process by uplifting different perspectives to reduce biases and enhance group performance.[4]

Diverse teams are also better able to relate to customers from other backgrounds—a vital skill in our global economy. Companies with diverse workforces tend to experience higher sales revenue, attract more customers, gain a larger market share, and achieve greater profits compared to less diverse companies.

Beyond the benefits to workers and companies, DEIA efforts foster a thriving economy. Research suggests that closing the gaps in employment opportunities and wages caused by discrimination could result in an annual economic growth of trillions of dollars.[5]

## Conclusion

If we want to build the future we deserve and reach our fullest potential as a nation, employers must do their part to provide opportunities to all workers and eliminate unnecessary barriers, including through DEIA efforts. The Lawyers' Committee is committed to working with allied stakeholders, including employers, workers, and coalition partners to ensure equal opportunity in the workplace, regardless of the Supreme Court's ruling in the *UNC* and *Harvard* cases.

## Notes

This document contains general information only and reflects views that are solely the Lawyers' Committee's. Nothing in this document is intended as legal advice. If you would like legal advice about your specific situation, you should consult with an attorney.

Some states have enacted laws or taken other measures to ban or restrict affirmative action and/or DEIA programs by state employers. This document does not address the impact of state laws or other state actions for employers.

For more information and resources, visit our affirmative action landing page at https://www.lawyerscommittee.org/affirmative-action/

## Endnotes

1 Valerie Wilson, *Racism and the Economy*, Econ. Pol'y Inst.: Working Econ. Blog (Nov. 21, 2020, 8:25 AM), https://www.epi.org/blog/racism-and-the-economy-fed/.

2 Bryan Hancock et al., *Race in the Workplace: The Black Experience in the US Private Sector,* McKinsey & Co. (Feb. 21, 2021), https://www.mckinsey.com/featured-insights/diversity-and-inclusion/race-in-the-workplace-the-black-experience-in-the-us-private-sector#/. For example, in the food service industry, Black workers are overrepresented in lower-paid positions (such as bussers, dishwashers, and porters) and underrepresented in higher-paying positions (such as supervisors, bartenders, and executive chefs). Restaurant Opportunities Centers United, Ending Jim Crow in America's Restaurants: Racial and Gender Occupational Segregation in the Restaurant Industry 1-3, 11 (2015).

3 Roger C. Mayer et al., *Do Pro-Diversity Policies Improve Corporate Innovation?* 47 Fin. Mgmt. 617, 628-29 (2017).

4 Juliet Bourke, Australian Institute of Company Directors, Which Two Heads are Better Than One? How Diverse Teams Create Breakthrough Ideas and Make Smarter Decisions 15 (2016).

5 Shelby R. Buckman, Laura Y. Choi, Mary C. Daly & Lily M. Seitelman, *The Economic Gains from Equity* 17 (Fed. Reserve Bank of S.F., Working Paper No. 2021-11, 2021), https://www.frbsf.org/wp-content/uploads/sites/4/wp2021-11.pdf.