



# POTENTIAL IMPACT OF THE AFFIRMATIVE ACTION SUPREME COURT DECISION ON CANCER DISPARITIES & CANCER RESEARCH

## PANEL DISCUSSION

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# OVERVIEW

- What is Affirmative Action: Brief History
- SCOTUS AA History & June 2023 Decision
- State Law Issues
- Stakeholder Commitments to Diversity

# AFFIRMATIVE ACTION IN THE U.S.

## HISTORY IN BRIEF

- What is Affirmative Action?
  - A set of policies to ensure equal opportunity and prevent discrimination based on a range of identities (race, national origin, etc.)
- Policy origins - Reconstruction Era (1863)
- Modern policy – Federal framework established in the 1960s
  - “[P]romote the full realization of equal employment opportunity”
    - Federal contractors of a certain size required to implement affirmative action plans to increase participation of minorities and women

# U.S. SUPREME COURT – AA IN HIGHER ED

## AA REDEFINED – 1978-2023

- Bakke Decision – California (1978)
  - Race can be a factor in choosing among qualified applicants for admission
- Grutter / Gratz – Michigan (2003)
  - Use of race among other factors in law school is permissible and narrowly tailored – “holistic review”
  - Points based on race/ethnicity w/o holistic review is not permissible
- Fisher – Texas (2013)
  - Race confirmed as a compelling interest due to educational benefits flowing from a diverse student body – if race is a factor, strict scrutiny review required

# U.S. SUPREME COURT – AA IN HIGHER ED

## AA REDEFINED – 1978-2023

- Students for Fair Admissions Harvard / University of North Carolina
  - Admissions practices violated the 14th Amendment of the Constitution (Equal Protection Clause) and Title VI (in activities receiving federal assistance)
  - Struck down inclusion of race as a factor in admissions decision
  - Schools may still consider specific, individual experiences:
    - “...[n]othing in this opinion should be construed as prohibiting universities from considering an applicant’s discussion of how race affected his or her life, be it through discrimination, inspiration, or otherwise.”

# STATE LAW ISSUES

- States have been engaged in limiting AA in higher education since 1996
  - Today, 9 states prohibit consideration of race in admissions in public universities.
- Recent trend of anti-DEI laws
  - Nine states have passed at least one anti-DEI bill
  - Texas and Florida are notable examples:
    - Prohibit public institutions of higher education from establishing or maintaining DEI offices (or employees performing DEI duties)
    - Prohibit requiring DEI training.
      - Last week, one Florida institution closed LGBTQ+ and women's centers, in addition to DEI offices.

# WHAT STAKEHOLDERS ARE SAYING

## ACADEMIC MEDICINE'S TAKE

- **U.S. Department of Education**

- Schools may continue:
- “..[to] remain free to consider any quality or characteristic” even if tied to student’s lived experience with race
- Targeted outreach and recruitment
- Pathway programs
- Collection and use of data
- Retention programming related to race (open to all)

US DOE Guidance on Supporting Racial Diversity

# WHAT STAKEHOLDERS ARE SAYING

## ACADEMIC MEDICINE'S TAKE

- **Association of American Medical Colleges (AAMC)**
  - “[D]efines diversity broadly to include all aspects of human differences including but not limited to socioeconomic status, race, ethnicity, language, nationality, sex, gender identity, sexual orientation, religion, geography (including rural and highly rural areas), disability, and age.
  - Diverse perspectives and backgrounds in the health professions — spanning classrooms, labs, and clinical settings — enriches the educational experiences of all medical and health professions students and the teaching experiences of faculty. Diversity, including racial and ethnic diversity, is essential to improving the overall health of our nation. In fact, diversity cultivates an innovation mindset, catalyzes creativity and discovery, and enhances complex problem-solving, prediction, and forecasting.”

AAMC Diversity in Medical School Admissions, November 2, 2023



# WHAT STAKEHOLDERS ARE SAYING

## ACADEMIC MEDICINE'S TAKE

- **Liaison Committee on Medical Education (LCME)**
  - Element 3.3 requires that a medical school “has effective policies and practices in place, and engages in ongoing, systematic, and focused recruitment and retention activities, to achieve mission-appropriate diversity outcomes among its students, faculty, senior administrative staff, and other relevant members of its academic community.”

# WHAT STAKEHOLDERS ARE SAYING

## ACADEMIC MEDICINE'S TAKE

- **National Institutes of Health (NIH)**

- NIH has a broad take on diversity, comprised of several elements:
  - Individuals from racial and ethnic groups that have been shown by the National Science Foundation to be underrepresented in health-related sciences on a national basis.
  - Individuals with disabilities, who are defined as those with a physical or mental impairment that substantially limits one or more major life activities, as described in the Americans with Disabilities Act of 1990, as amended.
  - Individuals from disadvantaged backgrounds, meeting two or more categories: history of homelessness, foster care, history of eligibility for free/reduced lunch programs, WIC support, Pell grants, low socioeconomic status, first generation college students, or grew up in a U.S. rural area or CMS designated low income/health professional shortage area

# QUESTIONS & DISCUSSION

