



Navigating the Wake of *Students for Fair Admissions (SFFA) v. Harvard*

How the 2023 Supreme Court Decision Has Transformed More Than Admissions

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Topics for today

- Brief overview of *SFFA* court case (2023)
- Agency guidance, enforcement actions, & data requests
- Scenarios
- Key takeaways

Legal Landscape

- **Equal Protection Clause** (U.S. Constitution)
 - Distinctions based on a protected class, like race, are judged under strict scrutiny test
 - Strict scrutiny = Rule/process must be *narrowly tailored* to achieve the *compelling state interest* (and use the least restrictive means to achieve the purpose)
- **Title VI of the Civil Rights Act:** “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

Prior Legal Landscape

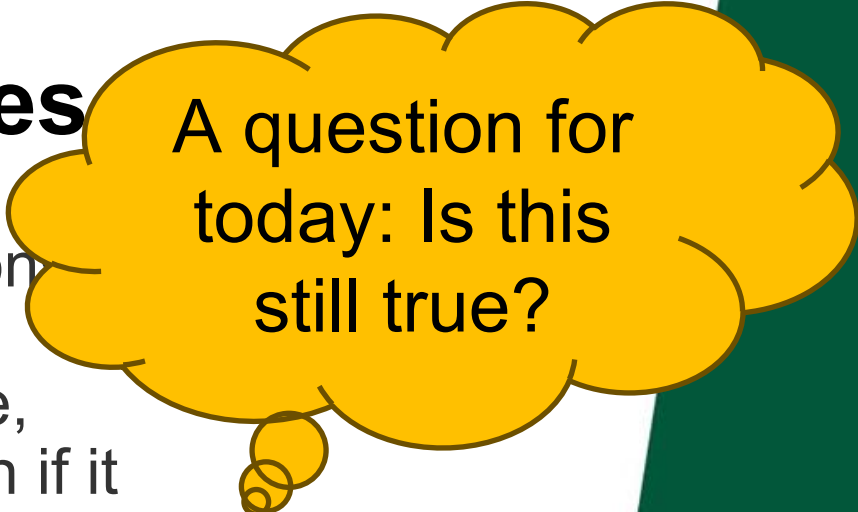
- Since 1978, the U.S. Supreme Court had generally upheld affirmative action in college admissions
- Institutions were not permitted to use a strict quota or points system
- The Court had agreed that student body diversity could be a compelling state interest
 - But universities had to show that race-neutral options had not been effective and that race was used only in narrow ways

Students for Fair Admissions cases



Key takeaways from *SFFA* cases

- Race cannot be used as a factor in admissions
- An applicant's statement of purpose, resume, recommendations, or other information, even if it happens to reveal the applicant's race/ethnicity, can still be considered
 - Consideration must be individualized based on **that particular student's** experience and resulting qualities/characteristics (no assumptions/stereotypes based on race)
- These same heightened rules apply to other protected statuses (like national origin) and to other university programs/benefits (like scholarships)



A question for today: Is this still true?

Quick reminder on “law”

- Statutes enacted by Congress are law (as of effective date)
- Court decisions are law (as of issuance date)
- Even though agency guidance and enforcement actions aren't technically “law,” they are important guideposts in assessing institutional risks at any given point in time

Agency Guidance

U.S. Dept. of Education letter (February 2025)

- “Although *SFFA* addressed admissions decisions, the Supreme Court’s holding applies more broadly. At its core, the test is simple: If an educational institution treats a person of one race differently than it treats another person because of that person’s race, the educational institution violates the law.”
- Court struck guidance down in April 2025
- Enduring principles:
 - Do not permit race-neutral criteria to be used as proxies
 - Discussion of DEI programs as “illegal discrimination”
 - Do not use third parties to get around requirements

Agency Guidance (cont'd)

U.S. Dept. of Justice Civil Rights Fraud Initiative (May 2025)

- Demonstrated administration's enforcement priority
- Specifically asked the public to submit complaints

U.S. Attorney General memo (July 2025)

- Relied on holding of *SFFA* and then provided lots of practical dos and don'ts



Do or Do Not?

Unlawful Practices

- Race-based scholarships
- Race-based programs
- Racially preferential hiring or promotion practices
- Access to facilities or resources based on race or ethnicity

Unlawful Proxies

- “Cultural competence” requirements
- Geographic or institutional targeting
- “Overcoming obstacles” narratives
- “Diversity statements”

* All examples from July 2025 AG memo



September 10, 2026

Trump Admin. Says UC Berkeley Law, Duke Med School Discriminated in Admissions

August 14, 2026

DOJ Declares 3 Race-Based STEM Programs Unconstitutional

The programs received about \$104 million in federal funds this past year.

EDUCATION

DOJ probes William & Mary over alleged race-based scholarship policies

The review of the Williamsburg institution marks the third Virginia public university targeted for federal investigation during Trump's second term.

BY NATHANIEL CLINE - AUGUST 18, 2026 9:06 AM



The University of North Carolina at Chapel Hill

STORIES

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News and Updates

UNIVERSITY NEWS

Carolina reaches agreement with federal government to resolve civil rights investigations

The agreement recognizes the University's compliance efforts, affirms protections for academic freedom and preserves eligibility for federal research funding.

UVA Today

UNIVERSITY NEWS

UVA reaches agreement with US Justice Department on outstanding compliance investigations

By Mike Mather, mike.mather@virginia.edu • October 22, 2025



Colleges cut ties with The PhD Project, a nonprofit targeted by Trump administration over DEI

Education Mar 21, 2025 4:45 PM EDT

Additional Federal Teeth

- Federal grants and contracts now include strong civil rights certifications that trigger the **False Claims Act**
 - No unlawful DEI programs, must comply with anti-discrimination law (as interpreted by this administration)
- **Data requests**
 - Requests for IPEDS data from selective 4-year colleges last winter
 - Data back to 2020-21 (pre-SFFA)
 - Burden to produce but is now usable to trigger investigations and/or support findings

Scenario 1

A nonprofit organization promotes diversity in business. A university's website includes a link to the nonprofit's website, and some minority students have received university funding to attend the nonprofit's conference in the past.

Has the university engaged in unlawful racial discrimination?

Scenario 2

A law school's admissions website expressly states that it values "students with a wide range of experiences, backgrounds, and interests that may not be directly related to their legal ambitions." Applicants are also encouraged to "highlight different elements" of themselves "so that we get a full picture of who you are."

Has the law school engaged in unlawful racial discrimination?

Scenario 3

A scholarship donor created a fund to support Black students pursuing science degrees. Because the racial preference is no longer lawful, the university asks a court to change the criterion from Black students to first generation students.

Has the university successfully remedied the problematic scholarship?

Key Takeaways

Beware of proxies

- It's less about the precise criterion and more about the intention, including notes and emails about any changes to program, scholarship, or recruiting criteria.

Published policies aren't enough

- Agencies are looking beyond the policies and protocols
- Agencies are using training materials, notes, etc. as well as memos or statements made by administrators, including some pre-*SFFA* statements.

Key Takeaways

Ensure compliance in policy and practice

- Agencies are soliciting complaints from the public, so reporting individual stories/experiences is easier
- Discreet recordings have been triggers for investigations or findings

Train well

- When hiring admissions counselors, student program organizers, recruiters, etc., ensure that they understand the current law and can implement it
- Provide refresher training to current employees

Share complaints with Legal Affairs

- Under FCA, unresolved internal complaints can create additional (and significant) liabilities

Questions?