

# PCAPLA - Post *Fisher*

## Discussing Contributions to Diversity in Law School Applications

Pacific Coast Association of Pre-Law Advisers Conference  
University of California Hastings College of the Law, Classroom B  
Thursday, June 11, 2015 1:00 PM - 2:00 PM

# Panelists



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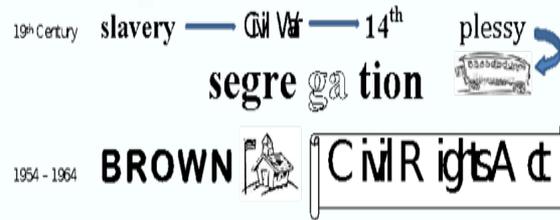
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# Affirmative Action in Admissions: Policy Impacts Post-Fisher

Jay Rosner, JD, Executive Director  
The Princeton Review Foundation  
PCAPLA Conference  
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## Quick Overview of the Legal History of Affirmative Action



Great Divide: Shift in plaintiffs

1978

BAKKE

STRICT SCRUTINY OF DIVERSITY

compelling interest AND narrowly tailored

2003

GRUTTER

Ballot initiatives

2013

FISHER

2014

Schuetz

Refer to Figure



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# The Ticking Clock of *Grutter*

“It has been 25 years since Justice Powell first approved the use of race to further an interest in student body diversity in the context of public higher education. Since that time, the number of minority applicants with high grades and test scores has indeed increased. We expect that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today.”

*Grutter v. Bollinger* [539 U.S. 306](#) (2003), June 23, 2003



# Beyond the Case Law Bubble

- Almost 12 years since *Grutter*, 6/23/03
- Are we almost 50% there yet?

“We should not turn a blind eye to something we cannot help but see.” (Sotomayor dissent in *Schuetz*)

## 2013: Fisher Supreme Court Victory for AA, (with Partisan Concerns)

- Great AA victory in Fisher, but it's undercut by:
- State AA bans (CA, WA, MI, NE, OK, AZ, FL, NH)
- Many factors eroding AA's impact – jobs, ed. funding, student debt, “merit” aid, stagnant college grad rates, pressure on admissions officers, etc.
- Are there positive U.S. higher education trends enhancing access & equity? vs. U.S. health care?



## 2014: Fisher: A 3-Judge Panel of the 5<sup>th</sup> Circuit Upholds UT's Use of AA

Another AA victory in Fisher, which may go back to SCOTUS:

- The panel held that UT met the “strict scrutiny” standard
- Fisher has appealed to SCOTUS.
- It may be a while before this is over.

# Comments on the Supreme Court's *Fisher* Decision

- Amicus briefs: over 70 briefs for UT, numerous universities, businesses, labor, religious & prof. orgs, feds & states, NABC
- Only 17 briefs for plaintiff, most are conservative think tanks
- Role of the corp & military briefs in Grutter, student organizing
- Increasing emphasis on the SAT/ACT necessitates AA (Alon and Tienda, Am. Soc. Rev., 2007) citing 10% Plan
- Voting booth vs. public positions of organizations



# Amici Supporting AA vs. Supporting Fisher

73 Briefs:

- 37 former military, DOD
- 57 large corporations
- U.S. & 15 States
- 121 elected officials
- 116 colleges/universities
- 19 religious organizations
- 500+ individual scholars
- No civil rights officials
- 150+ orgs. (policy, legal)

17 Briefs:

- 1 former military (A. West)
- No businesses
- No governments
- 1 elected official (A. West)
- No colleges/universities
- No religious organizations
- 4 individual scholars
- 25 civil rights officials
- 26 orgs. (policy, legal)

# The Future of Affirmative Action in Admissions?

- Recent emphasis on SES rather than race/ethnicity, which is its own separate, but significant, issue
- More test-optional colleges to weaken the impact of the racial skew inherent in (and built into) SAT/ACT scores
- AA opponents - *discrimination against whites*, genius use of “preferences,” “reverse discrimination,” “unqualified,” “Civil Rights Initiatives ,” “not color of skin, but content of character.”
- Absurdity of talking about “narrow tailoring” when we need to be expansive and inclusive (Cantor)
- Educators can support AA!!



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## ***SFFA vs. Harvard, vs. UNC***

- These are primarily SAT cases
- *Harvard* – Asian American student
- *UNC Chapel Hill* – white student
- Motion to Intervene filed in *Harvard* on behalf of Native American, African American and Latino high school students intending to apply to Harvard, and by current URM Harvard undergraduate students.
- Use “race conscious admissions?” “Many of our allies within the civil rights space avoid the use of “affirmative action” because many people have a lot of misperceptions of what affirmative action involves, all of them negative.”

# HOW DO WE DEFINE DIVERSITY?

## Different schools of thought:

- Traditional/Historically Driven vs. Contemporary/Modern
- Different perspectives based on place in the world and experience

# TRADITIONAL DEFINITIONS OF DIVERSITY

Traditional definitions and concepts of affirmative action/diversity addressed the need to level the playing field and focused primarily on race, ethnicity and gender.

Some traditional definitions of Diversity/Affirmative Action:

- “The inclusion of different types of people (i.e. culture, race, ethnicity).”  
- Merriam Webster
- “An active effort to improve...educational opportunities of members of minority groups and women; a similar effort to promote the rights or progress of other disadvantaged persons.” - Merriam Webster
- “Any measure, beyond simple termination of a discriminatory practice, adopted to correct or compensate for past, or present discrimination from recurring in the future.” - The Leadership Conference on Civil & Human Rights

# A SHIFT IN THE DEFINITION OF DIVERSITY

- The landscape of the world has changed. (For better or worse is debatable)
- The experiences of many students applying to law school are very far removed from the culture and historical framework of the civil rights movement.
- View of the world is different and interactions with each other are different.
- A shift in how we define diversity and consider the importance of inclusion.
- Up for debate:
  - This means our world has changed for the better?
  - This means we have diluted the conversation around diversity and may harm the groups traditionally helped by diversity initiatives.
- No matter your position on this today the definition has changed as has how many people now view the concept of diversity.

# CONTEMPORARY DEFINITIONS OF DIVERSITY

“The term describes differences in racial or ethnic classifications, age, gender, religion, philosophy, physical abilities, socioeconomic background, sexual orientation, gender, identity, intelligence, mental health, physical health, genetic attributes, attractiveness, or other identifying features.”

-Wikipedia

# CONTEMPORARY DEFINITIONS OF DIVERSITY

“Diversity means all the ways we differ. Some of these differences we are born with and cannot change. Anything that makes us unique is part of the definition of diversity.....creating an environment of involvement, respect, and connection - where the richness of ideas, backgrounds, and perspectives are harnessed.”

- Pitney Bowes

# CONTEMPORARY DEFINITIONS OF DIVERSITY

“Diversity means...your background based on your previous work experience, where you were born and raised, and any unique factors that contribute to your personality.”

-Taken from “The Weakening Definition of ‘Diversity’ ,”  
The Atlantic, May 13, 2015, Author: Gillian B. White

# CONTEMPORARY DEFINITIONS OF DIVERSITY

“The term ‘diversity’ is used broadly to refer to many demographic variables, including but not limited to, race, religion, color, gender, national origin, disability, sexual orientation, age, education, geographic origin, and skill characteristics. America’s diversity has given this country its unique strength, resilience and richness.”

-U.S. Department of the Interior, Office of Civil Rights

# WHAT ARE LAW SCHOOLS SAYING ABOUT DIVERSITY?

“...we have always understood that one of our greatest strengths is the diversity of our community. We value the perspective that each student brings to the law school and we embrace diversity in of its measures, whether by race, ethnicity, gender, geographic region, language, personal history, culture or country.”

-Private Law

School

# WHAT ARE LAW SCHOOLS SAYING ABOUT DIVERSITY?

“...Diversity Includes You.” Every individual in the Law College family contributes to the diversity of our institution. We seek to provide diverse and inclusive support and programs to all populations....”

-Public Law School

# WHAT ARE LAW SCHOOLS SAYING ABOUT DIVERSITY?

“Diversity is vital to our success, because our differences make us unique and our similarities make us stronger. We believe that diversity, in all of its forms, benefits the classroom, the college, and the legal profession. We seek to create a welcoming and respectful community where individuals can explore differences in a safe and positive environment, and where students not only learn from their professors but also from the diverse life experiences of their classmates.”

-Private Law

School

# WHAT ARE LAW SCHOOLS SAYING ABOUT DIVERSITY?

“Our student come from all over the country and from all backgrounds. We look for variety among our admitted students because we believe it makes for a robust and exciting learning environment. We look for students with different life experiences, socio-economic backgrounds, professional experiences, and professional goals. We want all kinds of students who can represent all kinds of people.”

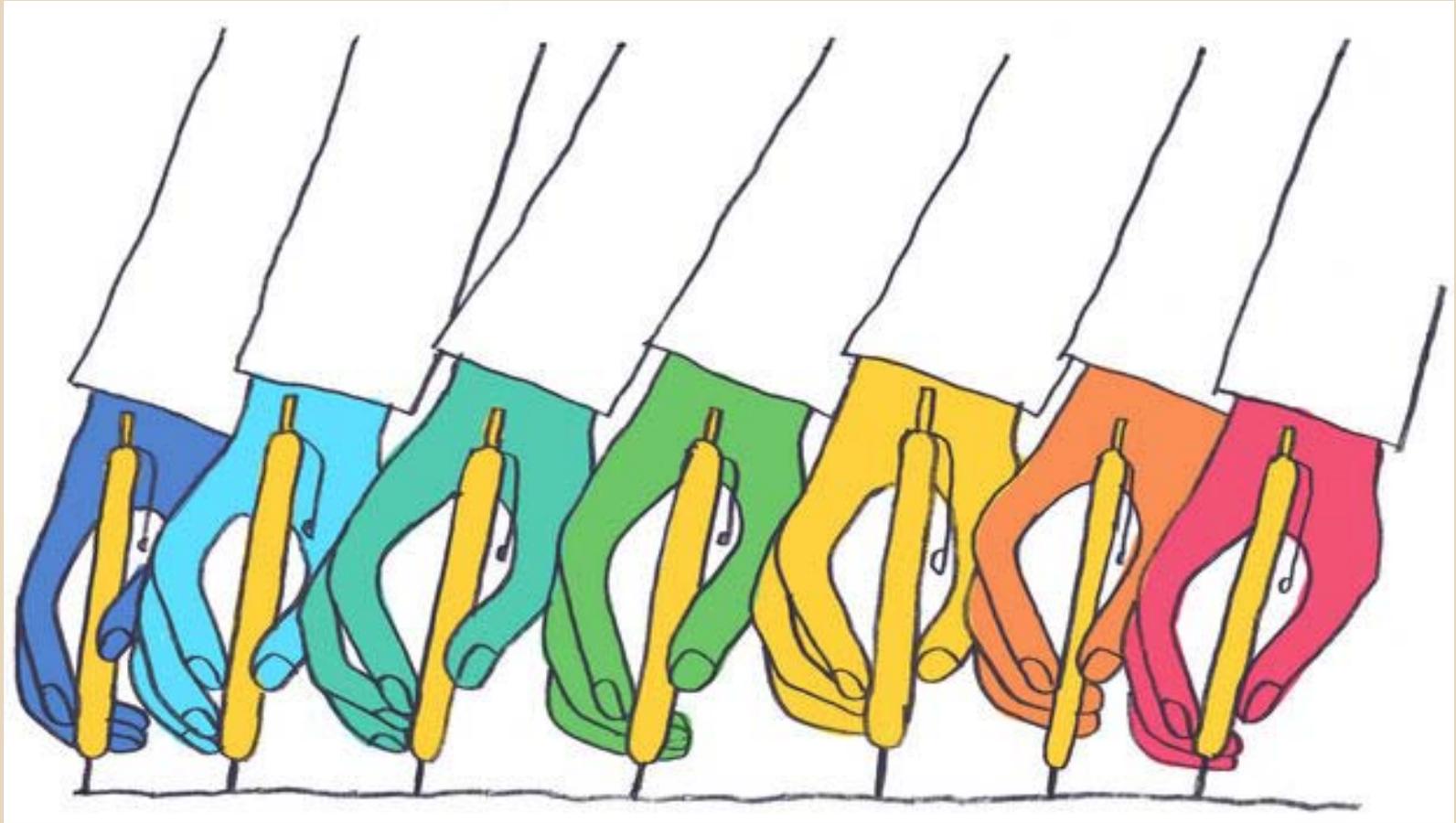
-Private Law

School

# AN ADDITIONAL OPPORTUNITY

- A broader definition of diversity has given applicants an additional opportunity to talk about the value they bring to the law school classroom experience.
- How can they best seize this opportunity?

What advice do you give about writing optional diversity statements?





# By a show of hands...

“Aside from the resume and the personal statement, I'm wondering if I should bother with a diversity statement....I was born in America but raised in Colombia as a kid. I transitioned to America fairly quickly. My English is great to boot. I can write a ton about how my parents have struggled in this country and I have had to help them, but not sure that's MY diversity experience.”

<http://www.top-law-schools.com/forums/viewtopic.php?f=2&t=200838&p=6229980&hilit=diversity#p6229980>



## By a show of hands...

“My diversity statement isn't very strong and I wrote it just for the sake of having one. I'm just sort of scared that optional really means you better have one.”



## By a show of hands...

“I am a white middle class male, not very diverse sounding I know. However, I am from Appalachia and I was not always middle-class.... We used to be broke eating on the same roast for a week when I was a child until around 10.... I know what it is like to struggle and I provide a diverse look into a world that is often shrouded by stereotype.”



## By a show of hands...

“At 19 when most of my friends were pledging fraternities, I found myself preparing to leave my friends and family for two years and go to Brazil where I would talk to others about my religious belief.”

[https://ppa.byu.edu/.../prelaw/...law\\_school/Diversity%20Statement.pdf](https://ppa.byu.edu/.../prelaw/...law_school/Diversity%20Statement.pdf)



# By a show of hands...

"1) I come from a long line of world-class musicians from poland, including my grandpa. I also have a very famous musician in my family that a lot of people have probably heard of because he was depicted in a movie. Much of this side of my family was killed in the Holocaust. I do not play any musical instruments though

2) My great grandfather was a head of the big labor movement in new york a century ago. He fought to earn more rights for blue-collared workers

Can I tie either of these topics into how I'd add diversity to a law school? How so?"



## By a show of hands...

“So I wrote my personal statement about being raised being part of a Muslim family and the challenges I have faced in America because of that.... [S]hould I write a diversity statement even though my personal statement is about my cultural/religious diversity?”

# Overheard...



Have you ever read a diversity statement that hurt an applicant's chances for admission?

# Overheard....



“When they say that their lack of diversity makes them diverse. I call them mindless.”

# Overheard...



“I've only read a handful of addenda that were relevant or truly an improvement to an application.”

# Overheard....



“Some applicants can weave their life story into their personal essay beautifully - some need to separate it. Whatever works for them works for us.”

# Overheard...



“I want a DS to tell me how an applicant's culture/race/ethnicity/experiences have shaped their life, shaped their desire to be an attorney, and why the is a positive or worthwhile influence in my classrooms. Most diversity statements demonstrate that, and more, with flying colors.”

# Should I write an optional diversity statement?

## *Elisabeth says...*

IF

- Critical to understanding who you are

AND

- Not covered in another part of your application



# Additional Resources

“We Are the World.” Should I include a diversity statement with my application?

Dean Asha Rangappa, Yale Law School

<http://blogs.law.yale.edu/blogs/admissions/archive/2010/01/22/we-are-the-world.aspx>

“How to Discuss Diversity in Your Law School Applications”

Shawn P. O’Conner, USNews.com

<http://www.usnews.com/education/blogs/law-admissions-lowdown/2013/06/10/how-to-discuss-diversity-in-your-law-school-applications>

“Law School Optional Essays - What to Say and When to Say it”

Law School Podcaster

<http://www.lawschoolpodcaster.com/2011/11/17/law-school-optional-essays-addenda/>