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Protecting Race-Explicit Programming

Navigating the Current Legal Landscape

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Affirmative Action Case Law

Background

- 1960s: Executive Orders to “take affirmative action” in employment and contracting
- 1970s: affirmative action programs helped to dismantle racial segregation and boost enrollment of students of color in higher education
- Chipping away at affirmative action: *Bakke* (1978), *Gratz* (2003), *Grutter* (2003)
- Ed Blum and *Fisher v. UT Austin* (2013 and 2016)
 - SCOTUS narrowly upheld UT’s admissions program
 - After *Fisher*, Blum stated: “I need Asian plaintiffs”

Students for Fair Admissions v. Harvard and UNC (2023)

- SFFA v. Harvard (6-2 decision) and SFFA v. UNC (6-3 decision)
- Admissions programs violated
 - Equal Protection Clause of the 14th Amendment (applies to government actors, including state schools)
 - Title VI of the Civil Rights Act of 1964 (applies to any recipient of federal funds, including private universities)
- Strict scrutiny
 - Compelling state interest
 - Educational benefits of diversity not sufficiently measurable to permit judicial review
 - Narrowly tailored
 - Race-conscious admissions not tailored to achieve educational benefits of diversity

Students for Fair Admissions v. Harvard and UNC (cont.)

- Race must not be used as a “negative” or “stereotype”
- SCOTUS emphasized the need for a logical endpoint for the use of race
- Student applicants may discuss how race affected their life experiences
- Some race-conscious policies are still permissible
 - Remediating specific, identified instances of past discrimination
 - Military academies
- Race-neutral efforts to increase diversity remain constitutional
- *SFFA* addressed affirmative action in higher education admissions

Post-*SFFA* Litigation

- Who is suing?
 - American Alliance for Equal Rights
 - America First Legal Foundation
 - National Center for Public Policy Research
 - Pacific Legal Foundation
 - Foundation for Individual Rights and Expression
 - Harmeet Dhillon's law firm
- Who is being sued?
 - Corporations (Meta, Starbucks, Southwest Airlines, Amazon, etc.)
 - Law firms (MoFo, Perkins, Winston & Strawn)
 - Public institutions (Smithsonian, University of California, K-12 schools/school boards)

Post-*SFFA* Litigation

- What programs are being challenged?
 - Grant program for Black women business owners (*Fearless Fund*)
 - Scholarship programs (law firm and Smithsonian litigation)
 - DEI initiatives (corporate litigation)
- What is the legal basis for the lawsuits?
 - Equal Protection Clause of the 14th Amendment (state actors)
 - Title VI of the Civil Rights Act of 1964 (recipients of federal funding)
 - Title VII of the Civil Rights Act of 1964 (employment)
 - Section 1981 of the Civil Rights Act of 1886 (no racial discrimination in contracts)
 - Section 1985 of the Civil Rights Act of 1886 (“KKK law” prohibiting conspiracy to deprive people of civil rights)

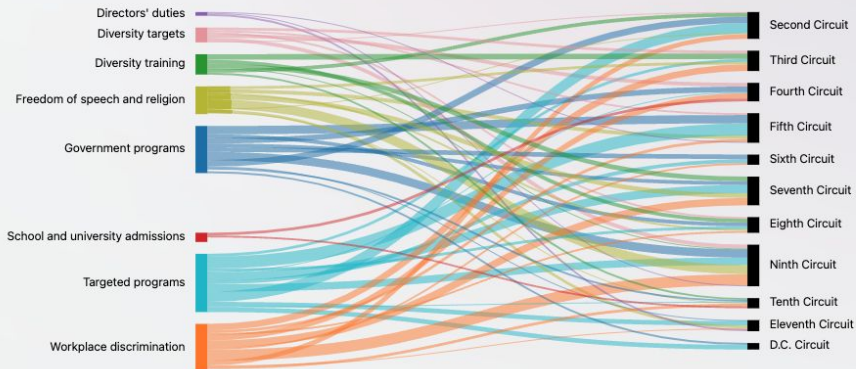


The Advancing DEI Initiative is a project of the Meltzer Center for Diversity, Inclusion, and Belonging, committed to making information on the intersection of law and DEI accessible to supporters of DEI.

This website offers resources, including a DEI litigation tracker, to orient

What types of cases are occurring?

This diagram shows the distribution of anti-DEI cases across the United States, organized by federal circuit (a geographic area of the country defined by the federal court system). Each case is categorized according to the DEI program being challenged or the specific issues raised. Since some cases involve multiple issues, those cases may be categorized under several topics.



Post-*SFFA* Litigation

- What is the status of the litigation?
 - Decided
 - Appealed
 - Ongoing
 - Settled (including Smithsonian, law firms)
- Example: Fearless Fund
 - American Alliance for Equal Rights alleged the Fearless Strivers grant violates Section 1981
 - Strivers Grant awarded up to \$20k to Black women-owned small businesses
 - 11th Circuit ruled AAER has standing and upheld the injunction
 - Parties settled
 - Fearless Fund permanently closed Strivers Grant
 - Narrow settlement (did not restrict other Fearless Fund investments or ongoing work)
 - Only binding in the 11th Circuit

Anti-Race Conscious Policies

CRT Forward

[About](#) [Interactive Map](#) [Blog](#) [FAQ](#) [Methodology](#) [Resources](#) [Donate](#)

Filters This map displays 861 anti-CRT efforts introduced at the local, state, and federal levels.

Map Table Info

Data Filters

MEASURE TYPE

- Executive directive
- Legislation
- Attorney general letter
- Regulation
- Resolution
- Statement
- Policy

DATE INTRODUCED

mm/dd/yyyy to mm/dd/yyyy

PROGRESS STATUS

- Introduced
- Adopted
- Withdrawn/expired
- Failed

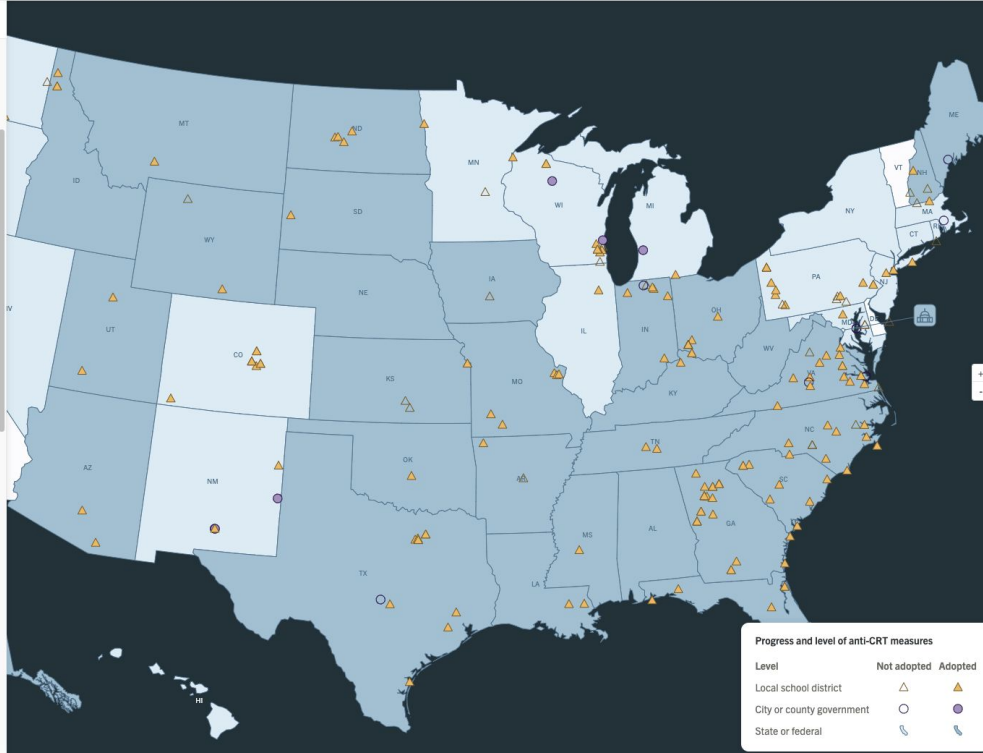
TARGET INSTITUTION

- K-12
- Higher education
- Private business/non-profit
- State or federal agencies
- Contractors

CONDUCT PROHIBITED

- Classroom teaching
- Curricular content
- Antiracism, Equity, Diversity and Inclusion Policy
- Trainings
- Not specified

CONDUCT REQUIRED



Public Counsel

華人權益
促進會
CAA

Trump 2.0 - Executive Orders & Agency Actions

- In week 1, three Executive Orders targeting diversity, equity, inclusion, and accessibility
 - Ending DEIA at all federal agencies and for recipients of federal funding
 - Rescinded EO 11246 (1965), which provided affirmative action in federal contracting
 - Rescinded Biden-era EOs and White House initiatives
- Litigation brought by National Association of Diversity Officers in Higher Education, American Association of University Professors, Restaurant Opportunities Centers United and City of Baltimore
 - Represented by Democracy Forward and AAJC
 - Alleging ant-DEIA EOs exceed presidential authority and violate First and Fifth Amendments
 - Preliminary injunction granted 2/21/25

Trump 2.0 - Executive Orders & Agency Actions

- OMB's 1/27/25 memo pausing all federal grants and loans
 - Blocked by a federal judge
- ED's 2/14/25 Dear Colleague Letter expanding SFFA
 - “Federal law thus prohibits covered entities from using race in decisions pertaining to admissions, hiring, promotion, compensation, financial aid, scholarships, prizes, administrative support, discipline, housing, graduation ceremonies, and all other aspects of student, academic, and campus life.”

Congressional Actions

“Dismantle DEI Act”

- Introduced by Sen. Eric Schmitt (R-MO) and Rep. Michael Cloud (R-Texas)
- Amends Civil Rights Act of 1964 to prohibit DEI, including “that an employee undergo training, education, or coursework **that asserts a particular race, color, ethnicity, religion, biological sex, or national origin is...oppressive or oppressed, or privileged or underprivileged**”
- Codifies Trump’s EOs

““Nonprofit Killer Bill” (HR 9495)

- “Stop Terror-Financing and Tax Penalties on American Hostages Act” passed the House in November 2024
- Non profit organizations may be stripped of tax-exempt status if they are deemed **“terrorist supporting organizations”**
- No due process for organizations
- No specific language defining support for terrorism
- Can be weaponized to target political opposition