

Sarah Conrad:

Hello everyone, and thank you for joining us today to discuss the Supreme Court's recent decision in the case of Fisher vs. University of Texas at Austin. I am Sarah Conrad, Director of the Advancing Holistic Review Initiative here at the Association of American Medical Colleges. And I'm very pleased to be joined today by Art Coleman and Terri Taylor. Before we begin, I want to briefly cover a few quick housekeeping items. You'll be listening to today's webinar through your computer speakers. If you are unable to hear the audio portion, please close the Webex application and attempt to log in again. If you are still unable to hear, contact the Webex user support line.

Sarah Conrad:

We will be using a variety of communication methods today: polling, Q&A, and chat. When prompted to respond to a poll, click the arrow to expand your panel, record your response, and then click the submit button. Please use the Q&A panel to submit questions during the webinar. When posing a question, select all panelists. You may submit questions at any time throughout the webinar. My colleague, Miss Liz White, Lead Learning Engagement Specialist with the Holistic Review Initiative, will moderate the Q&A once Mr. Coleman and Ms. Taylor have presented their material.

Sarah Conrad:

And finally, the chat feature allows you to share insights and takeaways with your colleagues and panelists. Select all participants when sharing with the group. If you are experiencing technical or audio issues, please send a message to AAMC Meeting. Shortly after this webinar, you will be receiving a brief evaluation via email. This survey should take no more than five minutes of your time and will enable us to continually expand and improve our effort. This webinar is being recorded and will be posted on our website. I will now turn things over to Dr. Geoffrey Young, Senior Director of Student Affairs and Programs here at the AAMC, who will introduce today's presentation.

Geoffrey Young:

Thank you, Sarah, and good afternoon. Last month, the US Supreme Court announced its second decision in Fisher vs. The University of Texas at Austin, which upheld the University of Texas race-conscious admissions program under federal law. The court's decision provided significant insight regarding policy development consideration and key evidence, which should inform the effects of the public and private institutions that consider race in enrollment practices moving forward. Today's presenters, Art Coleman and Terri Taylor, both of EducationCounsel, will discuss the elements of the decision and identify potential action steps for implementing effective, legally-bound enrollment practices. So on behalf of the AAMC, I want to thank both of you for joining us today.

Art Coleman:

Thank you, Geoff. It's a pleasure to be here. And as we kick off, let me say that this webinar is being provided for informational purposes only. It's not specific legal advice. Please consult your legal counsel if you've got specific questions related to the webinar. I also want to take a moment just to acknowledge, as we dive into this set of issues dealing with race and diversity, that we all sitting here recognize that we're in the middle of a national moment, and one that is rife with both challenge and opportunity. And we recognize that this is one very small part of that national conversation. But we hope it's going to be an important foundation to help you, as classes and faculty continue to come together on issues of race, access, and equity in the months and years to come. And it will be important foundationally, certainly as a matter of policy and practice, which are issues we'll turn to now.

Art Coleman:

Before we jump into substance, I wanted to flag just a number of key resources that may be of use to you. The first, second, and fifth documents on this slide are documents that have been published by the College Board's Access & Diversity Collaborative, of which the AAMC is a member. Those documents are available online at diversitycollaborative.collegeboard.org. And they cover everything from policy frameworks to the last document, which is a fairly recent publication on understanding the state of research around issues of diversity in higher education. The second and third documents, affectionately known as the purple and red books, are documents you may have seen in the past. The red book was updated recently in light of Fisher I. These documents provide practical guidance, attempting to take, before this most recent case, the Supreme Court's guidance and craft it into policy and practice-structured approaches to achieving diversity on campus around issues of holistic review in particular. So you may want to access those resources as we move forward.

Terri Taylor:

Fisher II reinforced many of the lessons in these guidebooks, and we'll touch on some issues here. But there's a lot of great additional information and guidance and examples in these resources and in resources to come from the AAMC. So with that, here's what we'll cover today. First, we'll talk about the Fisher decision and its implications for medical schools. Then we'll go into some action stuff to consider, and then wrap up with about 15 minutes of Q&A. But first, we'd like to know who's with us today. So the first question is just telling us a little about what role you play at your medical school. Admissions dean, faculty mentor, medical school leader, or other. And could you just give us your responses to that? That will help us know who we're talking to.

Terri Taylor:

And then the next question is just going to ask you about your current, I'm going to go ahead and click that. And next question is just, what do you think about Fisher already? Our sense is that a lot of people know that it was a great decision for UT, but maybe don't know quite what it means for them in their context yet. So it would be great for us to just take your temperature about how you're feeling about the decision right now. Are we ready to see the results? Bear with us as we're doing our technical, waiting for our technology to catch up with our discussion.

Terri Taylor:

All right. All right. I'm going to keep going. All right. So onto the decision itself. All right. The Court was dealing with two different pressures as it was making this decision. On the UT and pro-UT side, there were lots of arguments about the value of holistic review, the importance of academic judgment and academic freedom in American higher education, the research foundations for institutional race-conscious and other admissions strategies, and the real-world implications of the Court's decision. It was very clear for many of the universities in particular that the Court's decision was not academic. That it had real-world implications. The AAMC's own amicus brief talked about the important healthcare considerations that diversity among medical students promotes, such as addressing our nation's healthcare disparities and making sure that we had the physician workforce we need to serve a diverse patient population.

Terri Taylor:

On that Fisher and neutral amicus side, there were some other arguments that the Court had to wrestle with, as well. Including the importance of income and class in addition to racial and ethnic diversity,

complaints about the black box of admissions, or the fact that admissions processes were not clear to the public and concerns that that meant there were nefarious things going on. And finally, some questions about mismatch theory, about whether holistic review was really able to admit only those students who were academically qualified to succeed in the institution or not. So there were many different issues to unpack, and they were closely watching how many of these the Court would take on in decision.

Terri Taylor:

And what we got was a pretty robust decision that tackled many of these issues head-on. As Geoff mentioned, the decision was 4-3 in favor of the University of Texas. So Texas won, and the Grutter framework was preserved and reinforced. Justice Kennedy, along the center of this debate at the Court, was joined by Justices Breyer, Ginsburg, and Sotomayor to vote for this decision. On the other side, there was a pretty rigorous dissent, which we'll go into towards the end of the webinar, from Justice Alito, joined by Chief Justice Roberts and Justice Thomas, that picks up many of the Fisher and neutral arguments I mentioned before, to say they just didn't read the evidence base the same way.

Terri Taylor:

Justice Kagan did not participate in the decision because she was recused from her prior participation as Solicitor General. And of course, Justice Scalia passed away before the decision came out. So let's look into what decision itself said. All of these cases have been working in the strict scrutiny framework, which is the highest level of judicial review. I won't go into these in significant detail, but it's worth knowing that courts ask two big questions here. One, what is the compelling interest behind the race-conscious admission practice? So what's the mission-driven goal that supports the consideration of race? What is the university trying to achieve as a result of a diverse student body? And for about 40 years now, the Court has recognized that the educational benefits of diversity can serve as that compelling interest.

Terri Taylor:

But the university's work is not done in saying they have a reason for considering race. They also have to show that the way they consider race is narrowly tailored to meet that interest. And so to analyze that, the Court typically looks at four different things. Necessity, so whether it's necessary to use race to meet those goals. Whether it's flexible and that it doesn't automatically treat all students that are of the same racial group the same way, but treat students as individuals. That it has a minimal impact on those students who don't benefit from that, and that was less of an issue in this particular case. And finally that it's subject to periodic review and limited in time. So it's not something that's only thought about once and then is a policy for time infinitely.

Terri Taylor:

But it's something that people are returning to to assess is this working, and do we still need to have the policy that we have now to meet the goals we have for ourselves now and in the future. So let's turn to Fisher II itself. Art.

Art Coleman:

So if you asked, in a nutshell, what does Fisher stand for, I would tell you my two big takeaways are the way it addresses the question of deference for institutions of higher education, including medical schools, and the corresponding question of evidence. This quote is, I think, one of the more significant

ones from the opinion from Justice Kennedy, where he talks about threading the needle between the kind of deference that is due on the question of compelling interest or the ends you are trying to achieve. And the kind of deference that you don't get, frankly, when you're talking about the methods and the design of policies to ensure that in fact, all individuals as individuals are treated equally with the dignity they deserve.

Art Coleman:

And this graphic that follows is merely an illustration of that point. You will notice that the question of deference on the ends, or the goals, the compelling interest, is not completely in the blue arena. That deference in Justice Kennedy's term is some deference, but not complete deference in establishing goals and objectives. And the takeaway, I think, practically from the opinion is, Texas was able to succeed with respect to its establishment of its case around goals, which we'll talk about in a minute. Principally because it had educationally-grounded, evidence-based, a coherent articulation for the foundations for its policy. And I should say, the fact that no deference attaches to the means or the methods of design of policies to achieve those goals, doesn't mean that the role of education judgment is missing.

Art Coleman:

In fact, those of you on this webinar may remember out of Fisher I, even as the Court was taking a very fairly rigorous line on the question of race-neutral alternatives, it expressly acknowledged the fact that the Court can and should consider the expertise and the experience of educators when they are making judgements about the mechanics of their policies. And so, it is an interesting split and important foundation. But we want to translate that into something that's more actionable for you. So we will turn now, then, to an overview of what Texas was able to show with respect to its compelling interest.

Art Coleman:

One of the central claims in the Fisher case was not only that the interest Texas articulated was not compelling, it was not sufficiently clear to withstand the Court's review. And what you see illustrated in these boxes are the precise articulation of the educational benefits of diversity that the University of Texas said it was trying to achieve, in order to advance its mission-driven goals. I won't go into all these specifics, but suffice it to say that the Court found that this articulation, which by the way tracks very much the University of Michigan Law School's articulation in Grutter and is built on a solid body of social science research, was a sufficient foundation with other features of the policy, to allow it to withstand strict rule.

Terri Taylor:

And it's true that it linked with the University of Michigan Law School's policy, and that it drew from social science. But Texas had its own unique articulation of why these matter for the University of Texas at Austin and for its role in the state of Texas. You'll note here, also, that it's not only about what happens on campus, within the four walls of the institution, but also what happens with graduates. Creating the kind of leaders that can lead Texas in the future. And there were pieces of evidence to support each of these. So Texas was able to marry not only general and national lessons, but also put its own special Texas flavor on it, which we know Texans like to do.

Art Coleman:

And to Terri's point that this had a unique Texas imprint, Texas made its case around these interests that are broadly research-based, with very detailed evidence about its need and its desire in a mission-

oriented way. And it was a rich mix of evidence, including a policy proposal that showed deliberation and study and judgment. Included the work of multiple stakeholders and using a sort of academic perspective about what it would take for our success to achieve the very goals. And so what you saw at the end of the day was a robust process that was data and evidence-driven. Full of deliberation, yielding a judgment to which the Court provided some deference, because it saw both the process and the underlying foundations for the process that gave it confidence in the wisdom of the judgment.

Terri Taylor:

Our medical school friends and healthcare professional friends will be pleased to note that that 39-page proposal wasn't only about undergraduate admissions. It includes specific evidence and articulation of the interests of how this could fit in a nursing school context and a law school context. So it shows that even as you identify institution-wide benefits, it's important for different institutional units and schools to define it for themselves. Another thing is, these are things that higher education can do well. The committee's deliberative analysis of evidence and pieces of information and putting different stakeholder feedback, I think what's great about this decision is that it's reinforcing some of the very typical higher ed practices that can then lead to support for a policy in a court of law.

Art Coleman:

So building on this question of goals is the question of objectives. One of the thorniest questions that has frankly vexed many in the higher education community and litigants over time is the simple question, simple to pose, challenging to answer. What is success, and how do you know it when you've achieved it? By what measures are we going to gauge our progress? To inform them the design of policies and practices that go to some of the mechanical questions like one of necessity that we'll turn to in a minute. And so, frankly for the first time, in my view, the Court has actually expounded on this in a really robustly meaningful way. I think it is a challenging area. Justice O'Connor, in her wisdom, spent a grand total of three lines on the issue of critical mass in Grutter.

Art Coleman:

The issue was front and center in Fisher I. Consumed oral arguments, and the Court didn't breathe a word on it in its first round of opinion. But we finally have the Court now doing a couple of fundamental things. Seeming to place the question of institutional objectives and that element of critical mass that is part, but not the totality of, the question of objective within the framework of the deference that is due to institutions as they are defining their goals and objectives. And that's an important takeaway, because before this case, I think there was some real question about the level of deference institutions would get with respect to issues like critical mass.

Art Coleman:

The other point that the Court made in abundantly clear terms is that the issue of success, while it may be numbers-driven, and institutions may well look at numbers to inform their decision-making, it is not exclusively the question of numbers. It involves the multiple sources of both the data and information, sometimes anecdotal, that will tell you what you're achieving and how, in a classroom or in a student living circumstance. And so, to quote the Court, the anecdotal evidence that surfaced of student perceptions, including their feelings of loneliness and isolation, proved to be key baselines that informed Texas' ability to make the case about the need for, the power for, and their commitment to assessing whether and when they were achieving the educational benefits of diversity. So again, big takeaway. As important as numbers may be in the evaluation, this cannot be just a question of numbers.

Terri Taylor:

And Art mentioned that there is some deference to institutions' ability to define these objectives and questions about what success looks like on its own. There's some way that institutions have the ability to define those for themselves. However, once they have defined those, that then leads to this first narrow tailoring question about necessity. And on this, institutions receive no deference. So using those indicators, UT said it was necessary to consider race in a limited way in holistic admissions, because of the following factors. They had demographic data that showed that though they had a significant number of minority students on campus, about 20%, even when they were only using race-control only enrollment strategies, they were seeing significant drops in both Hispanic and African American students within those numbers.

Terri Taylor:

So the broad diversity alone showed that there were some subgroups that were having less representation during that time. They were also able to show that a host of race-neutral strategies that were used at the time to try and promote diversity weren't working. And what were those? They intensified their outreach efforts. They had three new race-neutral scholarships that were intended to promote diversity, and so weren't about race, but were about diversity more broadly. And they had some other recruitment initiatives. And so they were able to say, when Fisher said, "You don't need to use race because you have all these other neutral alternatives." They said, "Well we've been using a lot of neutral alternatives, and yet we're still seeing this drop in our demographic diversity data."

Terri Taylor:

So that was one piece. The other piece was, as Art mentioned, reports of minority students' loneliness and isolation. This is important because research tells us that when someone feels like a token, they have a hard time contributing to broader dialogue in diverse groups because they feel pressure both to represent their own views and perhaps the views of their entire demographic group. And when that happens, it often chills conversation. And they feel they shouldn't engage or cause difference. So these reports of loneliness and isolation were an important indicator, when paired with the race demographic data, that University of Texas wasn't where it wanted to be.

Terri Taylor:

And then the final piece of necessity of it was that when they reintroduced race in the admissions calculus, as a limited factor, they showed limited but notable gains. So this shows that not only do you have to show that race is necessary, but also that you're getting some change in your student body diversity as a result of it. And this is another new place that the Court hadn't specifically spoken to at a higher ed admissions context, but did speak to it in this case. Art, do you want to say anything?

Art Coleman:

The last point that Terri made is critically important, because there were many questions about how much is enough, if you will. And the Court answered this with pretty definitive language to suggest that you don't have to see a wholesale change in your student body demographic or the outcomes you're seeing educationally, as long as there's actually some meaningful shift. And so, the case that Fisher was making, frankly, that Texas was already at 20% and the bump they got from their race-conscious practice is really that much more, didn't carry the day here.

Art Coleman:

The other piece, though, that goes to how you think about the analysis of your various policies and practices. For the first time, we have the Supreme Court looking in the evaluation of the array of race-neutral practices that should be considered when making a judgment about necessity to the entire enrollment spectrum, from recruitment to outreach to scholarships and financial aid and admission. Before this case, every other Supreme Court case was cabined around the four corners of admission. And that was in part due to litigation strategies. In fact, in Fisher I, the University of Texas made a concerted effort not to extend the scope of review beyond the question of admissions.

Art Coleman:

They changed that strategy in Fisher II, I think with predictable, good results. This is in fact a basis for showing the robust nature of the engagement on an array of policies, not just those that may involve race-conscious admissions, designed to achieve your goals. And I think the results speak for themselves.

Terri Taylor:

All right. So let's talk about the AAMC Holistic Reviews Initiative. This is your bread and butter. What were the specific admission policies and processes that the Court found as evidence that UT's admission policy was constitutional under federal law? First, the holistic policy itself said that race was a factor of a factor. And that it was a contextual factor. And on itself, a student's race or ethnicity may not have told an admission officer anything. But in the context of everything else they know about the student, where they're from, what their academic indicators show, what their essay was about, race could help them understand that student better as an individual.

Terri Taylor:

And this also meant that race was not a mechanical plus factor. So it wasn't that you automatically were treated a certain way in the admission process because of your race, but that it was just something that might come into consideration as they're evaluating each student individually. So the policy reinforced some things that the Court had said in Grutter. But UT was also able to show that not only was the policy written in a way that met Supreme Court precedent, but they also had some guardrails in place to make sure that it was actually being carried out the way it was designed. So first, they were able to show when race actually factored in the admissions decision. And for UT, it was at a particular stage of the process.

Terri Taylor:

They did not answer, by the way, the question of, can you tell that this particular applicant got in because of the consideration of race? It didn't answer that. But they did say, "Here is where race comes into context, and we can't tell you if any one student got in because of race, because race is just one factor among many. And we make a holistic judgment about a student's merits that may include their race or may not." And race might be something that comes into play for any kind of race. So Asian, White, African American, Latino, Native American, all of those students' race might mean something for any kind of student. Also, there was extensive training for application readers and admissions staff to make sure they understood holistic review policy and how race fit into it.

Terri Taylor:

And this was not a one-time thing, but something that happened annually and was ongoing. And they had, on the back end, reliability analyses to make sure that none of their readers were outliers when it came to assigning scores and admissions judgments. So these kinds of things showed the Court that they

had reason to trust in the academic and personal judgments of professional admissions staff and their readers and other partners, because they had these guardrails in place. These, again, don't have to be exactly replicated by medical schools or others. But being able to show this kind of evidence, both your policy and the processes you have to support it, was really important for the Court in assessing this case.

Art Coleman:

Let me step back from the details of the Texas case on this context, given the centrality of this set of issues to medical colleges. And just say, one, that while every admission process, in every institution but certainly Terri and I have been exposed to, will be different. Because it's going to reflect your unique history, context, practices, resources, staffing, and the like. But broadly speaking, this aligns with the principles of individualized holistic review that have been the cornerstone of much of the AAMC's work for years. That's an important point not to lose sight of. Secondly, to that end, when Terri talks about race being a contextual factor and part of the entire analysis of the individual in this case.

Art Coleman:

To put it in a slightly broader policy or political context, what I want to suggest, and this important for language as we think about how we talk about these issues with our colleagues and with our stakeholders and with the public. That we are not talking about the consideration of race or the use of race as a preference. We are not talking about the use of race as the thumb on the scale. The case that was made effectively by Texas, and I would assert the case that was effectively made by every institution of higher education brief I read, including the brief that AAMC so compellingly submitted around holistic review in medical admissions, is that it is part and parcel of the evaluation of an individual to look at the entire individual. And to not include a consideration of race or ethnicity in that context goes back to the issue of dignity and denying that individual the full treatment they are entitled to and deserve.

Terri Taylor:

All right. So let's talk about the last straw, which is about periodic review. And I would argue that this is the place we got the most pointed commentary from the Court, for UT and other institutions moving forward. All right. First, the Court acknowledged that UT engages in periodic reassessment of the constitutionality and efficacy of its admission program. So the Court said, "Yes. You check the periodic review box in this case." However, they went out of their way to say, "UT's work is not done in this area." And by the way, that implicates every other institution and medical school and other higher education office that has race-conscious admissions.

Terri Taylor:

There is a continuing obligation to consider, to reassess diversity policies, goals, how you're measuring success, and whether your policies are helping you get there. There's attention needed to broad diversity. When you're talking on the educational benefits of diversity, that's for all students. And you need broad diversity by race, income, geography, political inclination, academic interests, to make those educational benefits flow. And the Court wants to make sure that institutions are not just thinking about their racial diversity, but their diversity in all of these other elements, as well. But there should be a special focus on the necessity question for race-conscious policies.

Terri Taylor:

And making sure that the institution still needs to consider race, which, as we know, has had a complicated history in our country. So they still need to consider race in admissions, financial aid, scholarships, or other enrollment decisions, in order to meet their goals. So this is the most important thing for folks to take away, we think, is that the work is not done even though we've won a victory in this particular case. All right. So first a little cold water before we get to the takeaways. Justice Alito, his dissent was twice as long as the majority opinion. And he took the somewhat rare step of reading it from the bench when the decision was announced.

Terri Taylor:

During that, he said, "This is affirmative action gone berserk." And he has few major concerns. One was a lack of transparency in the process, including both what was said during the meetings that you see talked about, and the alleged black box of holistic review. He was concerned that the evidence base they presented still didn't answer the question fully about what's the connection between the university's educational goals, the students it admits, and whether the students that are admitted are actually helping it achieve those goals. So basically, tracking students after they leave the admission process to see what they're doing. Are they enrolling? Are they being leaders in diverse dialogues? Are they engaging in different diverse environments?

Terri Taylor:

And he felt like the evidence base there, UT hadn't quite done its homework there. And finally, he was concerned that holistic review only valued a certain type of diversity, that they were only focused on full-pay students who also happened to be minority students. And also some concerns about the children of donors, which was not about race, but was maybe a concern that the rules might apply differently for different kinds of applicants.

Art Coleman:

I would just say, the one point I would take away, there is an interesting statement he makes a couple of times in his lengthy dissent. That the purpose of the, as he terms it, affirmative action policy was remedial and to serve underprivileged students. Which tells me he fundamentally misapprehends the nature of the policy that is forward-looking, mission-driven, and for the benefit of all students. Not just minority students, not just underrepresented students. And that thesis of his informs every step of his analysis.

Terri Taylor:

You know what else has gone berserk? Is our slide deck here. As we're waiting for this to see six, yeah. It's also worth noting that this advantage point in the UT context was perhaps less of a concern of holistic review, because UT was already getting significant socioeconomic diversity through the Top 10 Percent Plan. So let's talk about some takeaways from the decision. First, goals and objectives should be sufficiently precise for someone who's not inside the cone of the university to understand. And that institution-specific evidence should support the necessity of using race-conscious methods.

Terri Taylor:

This includes thinking about the entire spectrum of enrollment strategies and making sure that you can show meaningful, if limited, impact of using race in a particular decision towards achieving better racial, ethnic diversity among your students. Holistic review remains a cornerstone of all of this, largely because it values the individual, which is something that we know Justice Kennedy in particular finds

compelling. It was another part of his marriage decision, for example, was the validity and respect the constitution has for individual choices and individual reflection of who they are. Again, the fourth point is that institutions have an ongoing obligation to continue to engage with these issues.

Terri Taylor:

And the last point, which we'll get into in just a moment, is that there's a broader context for a lot of this. And that no Supreme Court decision alone should drive an institution's judgment, and that there are many other things happening in our country right now and on medical school campuses, that counsel renewed commitment to issues related to diversity, equity, and inclusion. And as we're planning to move on, also there are some other cases pending against UNC and Harvard. Roger Clegg, who's been involved in some of those, said, "The struggle goes on." And it's also worth noting the importance of the Court's public opinion in some of this. Particularly to this last contextual point.

Terri Taylor:

In a Gallup and Inside Higher Ed poll that happened after the Fisher II decision, they asked, what should be considered in the admissions process? And this is for undergraduate admissions, but the point likely still holds for medical schools. What's notable here is that though the headline was The Public Opposes Affirmative Action, if you look at what people actually answered, first, they're concerned about all kinds of factors other than grades and test scores. Including athletic ability, alumni status, gender, and economic circumstances, as well as race, ethnicity. So there's significant concerns from folks about why those should be included in the admissions process.

Terri Taylor:

And there were significant questions from all racial group surveys, about whether race and issues should be considered at all in the process. So the takeaway to me here is that the public has considerable questions, but that we need to make as good a case to the public as we made to the Supreme Court about why diversity, inclusion matter in higher education and why the admission process is structured in a way to help us create that. And there's some good news in this. And that's that there was a huge amicus or friend of the court brief effort in Fisher II. There were 65 briefs supporting the University of Texas from a wide range of supporters, including scholars and researchers, institutions, the AAMC and many of its healthcare partners, military leaders, Fortune 500 companies, states, and religious organizations.

Terri Taylor:

And these same partners to be considered, as you're explaining why your diversity goals matter. And for medical schools in particular, engaging with your communities that you serve and the patients that you serve. They may be important partners in your efforts moving forward.

Art Coleman:

Let me just say, too. On the AAMC brief in particular, as a resource for reflecting on where you are and where you are going, as I read that brief, I read the value not just being to help convince Justice Kennedy and other members of the Court about the intrinsic value and nature of diversity and the importance of nuanced, holistic review. But it is, in its own way, a kind of road map. And I would suggest that, don't just assume because it's a brief filed in court, it's only for lawyers. It's actually a useful read to think through the design and the implementation of your policies and practices, as well.

Terri Taylor:

And luckily, the AAMC also has video and other more graphically interesting things than just reading an amicus brief, for those non-lawyers among us. We're going to talk quickly about a few action steps to consider. I believe the deck is going to be available. Folks may want to engage more, and we're happy to continue the conversation, because we want to get to Q&A. So first, we think it's important both to assess what policies are important to you, to reflect on what the decision means for those policies, and to be prepared to take some actions in response to the decision and the broader context setting in. Art, do you want to talk about how to identify the policies that may be implicated?

Art Coleman:

Sure. So just one very quick takeaway and one very quick point on this. I'm not going to go into a lot of detail, other than to say that one underpinning here that I think you will have seen in prior guidance that the AAMC has published and that I think Terri will refer to in a minute, is the importance of a good inventory. And knowing what your policies and practices are, as a foundation for engaging in the evaluation that we're talking about. And the simple takeaway from part of the Court's opinion here is, you cannot judge a book by its cover. And we have sort of known this for years. We have sort of thought this for years. And Justice Kennedy, in clear terms, finally made the case. In essence, a kind of footnote in the case on the question of the Top 10 Percent Plan in Texas.

Art Coleman:

He basically said, "It's not a panacea, legally or educationally." And the legal point is the relevant one, because plaintiff was pointing to the percent plan, just saying, "More of this, and we wouldn't need the consideration of race. Because it's a good race-neutral alternative." And he rejected that categorization out of hand, pairing up with Justice Ginsburg, citing some of her dissents in earlier cases to say it's actually quite race-conscious. It was motivated by a desire to achieve racial diversity at the University of Texas. And the fact that race is not on the face of the policy doesn't mean it is race-neutral in legal terms. There's a lot behind that, but it's important just to not be too cavalier when you're looking at your policies, and that you give it more thoughtful engagement on these issues.

Art Coleman:

On that side of the equation, number one, and on the flip side of the equation, to recognize that the Court has, in some cases, said, "Even if there's an element of race-consciousness, if it's a more inclusive policy like some recruitment and outreach policies, they are going to be considered race-neutral for the purposes of strict scrutiny now."

Terri Taylor:

And for medical schools, the other point that holds about percent plans that Justice Kennedy made is that he said, "An institution doesn't have to sacrifice its standards about excellence in an effort to be more race-neutral." And by that, he means he recognizes that percent plans are not appropriate in a lot of other contexts. So med schools may want to breathe a sigh of relief about that one.

Art Coleman:

And I think the only real takeaway here, given limitations of time, would be that the terminology you see here is just to flag up how often we maybe use terms without thinking through precisely what they mean. And so, this is a call to make sure that we've actually got this coherence and consistency in our

terminology in terms of policy use. And they were reflective of what we intend them to reflect, as a matter of policy design.

Terri Taylor:

And some specific guidance on race-neutral strategies is coming out from the AAMC later this summer. It's also important to balance press coverage with internal analysis. As everyone knows, headlines don't always capture the nuance of an issue. And it's right to celebrate the decision, but also not overstate the work that needs to be done. And this is just to show you a few examples of some headlines that show that Fisher II doesn't apply to us. When in fact, it does apply, even if your policy doesn't practically change. There are questions about evidence. There are questions about process that should inform how you approach your different enrollment policies moving forward.

Terri Taylor:

In terms of some communication guidelines, we think it's really important to communicate not just reactively, when something in the world happens, but proactively. So avoiding under-reaction to the decision, letting mission be your guide, and confirming your intention to act within the law. And as we'll talk about in just a moment, there are other reasons to be proactive about this and to use Fisher as the gas in the tank to recommit yourself to the importance of diversity inclusion. Feel a little less pressure from the legal concerns that are pending, but also use up a moment to say why it matters and do more to make your goals happen.

Terri Taylor:

It's also worth noting. Many of you probably are aware of student protests that have reflected a broader national conversation about race, that's really heated up in the past couple of weeks. Thedemands.org, which is the header here, is a group that's collected all student demands over the last year. And there are some common themes here. And the bottom line is, this is not just a challenge, but also an opportunity and an invitation to engage with students, to use them as UT did, as one indicator of how you're doing on your goals. And to work with them to find new strategies and know what's working and not. Students are not an enemy in this, but an ally. And they're the heart about this whole theory of action about the education benefits of diversity. And so, engaging them in these issues can be really important.

Terri Taylor:

And this means thinking both about diversity and inclusion. There may be different goals or different strategies to go to both of these. But together, they can make it more possible that the university is able to achieve its mission-driven educational goals. Okay. There's a couple of examples here I'm going to skip over. But please feel free to take a look, about how two universities engaged their communities in the wake of protests, to try and make more meaningful change when it came to diversity and inclusion. And Art mentioned finally an inventory process. To our doctors in the room, this is a little like an annual check-up. One, know what all the policies are. And so your left hand, right hand know what's going on.

Terri Taylor:

But also make sure you take a regular look to see if they're working, if they're not, and why. Because that will not only help you with your legal compliance burdens, but more importantly help you be more able to meet your policy-related goals and to build awareness and support of these policies across the medical school community. And there's a couple of examples here from Rice and from Princeton that

show what their array of race-neutral strategies, as well as their holistic review policy, was to meet their goals. So just know, you don't have to start from scratch or invent a new wheel. That you've got some models here. And again, the AAMC has some great guidance on these items.

Art Coleman:

And these were OCR resolutions in which they found each of these institutions to be in compliance with Title VI.

Terri Taylor:

So there's another poll that can check again to see what your thoughts are about Fisher. But in the meantime, we hope that folks have offered some Q&A so that we can start to engage with what your burning questions might be about the decision and implications. So you can see the poll's going. But while we're waiting on the poll, is there a question?

Sarah Conrad:

Sure. The first one actually came very early. And could you talk just a little bit about why Fisher has an impact on all institutions?

Art Coleman:

Sure. So Fisher is coming from a public undergraduate institution. It's where the challenge is placed. And I think the first point is to say, the reach of the decision is to public and private institutions, because the Court for decades has found that the principles applicable to the constitutional protections under the 14th Amendment, applicable to public institutions, expand and are identical to those obligations that in your under Title VI of the Civil Rights Act, which apply to all public and private institutions that receive federal funds.

Art Coleman:

And so, the reach of the opinion covers all types of institutions. In a more vertical way, I think what we'd take from this case is the broad principle that should guide and inform any institution, be it a medical school, a dental school, a PhD program in sociology. If it's got a particular enrollment strategy and design that includes anything that can be considered race-conscious, then the Court is saying there are some fundamental questions that you need to address. To Terri's earlier point, no institution and no school needs to perfectly replicate the University of Texas.

Art Coleman:

The University of Texas did not perfectly replicate the University of Michigan Law School in 2003 with its success in Grutter. But it adhered to the basic standards, principles, and framework, which the Court reinforced here. And so it is understanding these principles and then making evidence-based educational judgments about how they apply and work in your institution. And that's the takeaway from the case.

Sarah Conrad:

Thank you, Art. Art and Terri, many of our medical schools must sift through thousands of qualified applicants and are therefore likely to pass over someone who is perfectly well student for that institution. Are there ways to mitigate this potential legal risk?

Terri Taylor:

So we always like to talk about the fact that you're never going to be able to convince every applicant of whether they should or should not have gotten into the medical school. And we know that medical schools, unlike our law school friends, have many more applicants than they can serve. But the Court here clearly is recognizing that institutions are better equipped to make those decisions about what merit means for their institution, what student body is going to allow them to meet their mission. The decision-maker there should not be a judge, but should be the institution's own decision-makers.

Terri Taylor:

It's worth noting that Art mentioned the impact that UT was able to show through its data, that it did have a measurable impact when considering race. But the Court went with the institution's interpretation of data, not the plan's interpretation of data. So here, I think there's some trust of the institution if they can show the policy, the processes, and the evidence behind what they're doing. So I think what that means practically for holistic review is being very clear about what the institution values in the holistic review admission process, both in internal processes and what it tells its readers, but also what it publishes to students about what it values.

Terri Taylor:

It's a human process, and we respect human judgment in holistic review, because a mechanical admission process won't get us where we want to be. And so, although recognizing you might miss a great student, that danger alone doesn't mean that you should dramatically change your policy. Because we know that you're human, and the Court recognizes that, as well.

Art Coleman:

I'm going to add to that with a very brief articulation of a model that a number of institutions follow. And I think it actually tracks the Harvard plan that was attached to Justice Powell's Bakke opinion back in 1978 with approval and then recognized by both sides of the Court, frankly, in Grutter and Gratz as being a model. One of the practices that many institutions follow is actually to make a judgment about who is likely to succeed or who is qualified to be in the incoming class, and to take that limited pool of the totality of the applicant pool. And then to engage in a discussion about the mix of students they want to achieve their institutional diversity goal.

Art Coleman:

The question of achieving admissions standards is multifaceted, and you are driving toward multiple interests. And it's not just the rank order of students on a matrix chart. It's what mix of students do you want to have in your class to actually galvanize and accentuate the benefits of diversity you're trying to achieve? And so I think one avenue for really cutting out the legs of some of the arguments that we've seen in cases in the past, where plaintiffs have made the case that they are admitting unqualified or under-qualified minority students. Ensure that all of your students, through this sort of second pool review, if that's a model you choose, are in fact, by your standards and by your evidence, qualified. And it completely takes that argument away.

Sarah Conrad:

So we have another question. What implications, if any, does Fisher have on bridge programs to medical school? Who would like to take that?

Terri Taylor:

I will say a couple of things. And I say this without knowing anything about the program and knowing that every program is unique and that context matters. So there was my lawyer answer. So the important thing here. Back a few slides ago, we said the strict scrutiny framework can apply when a tangible benefit is provided to a student with some consideration of his or her race or ethnicity. That means if the bridge program allows for a separate way to be admitted or offer some kind of special benefits to the student, it means that you need to be as rigorous about thinking through it and the way that race plays into those eligibility and award decisions, for the bridge programs, as you do for your holistic review policies.

Terri Taylor:

It likely isn't the same kind of decision, and maybe it's not the same level of number of people that need to be involved. But it is important not to just assume that because a policy is serving positive ends and has good intentions behind it, that doesn't necessarily mean that that will be enough to survive the strict scrutiny if those bridge programs rely in some way on a student's race or ethnicity to decide either who's eligible for it, or who's able to participate. So again, not to quash them at all, but just take care to see how does race and ethnicity fit into this decision? And if so, making sure you can answer some of the questions that we've reviewed in the admissions context today.

Sarah Conrad:

So another question we have is, what implications does Fisher II have on recruitment efforts? For example, second looks, visits for underrepresented minority residency applicants, et cetera.

Art Coleman:

Let me build on Terri's answer to that last question, because this is a slightly different angle in the same sphere. I think what the Court has said overall, and to be clear, the US Supreme Court has not spoken definitively about this in an education context. But we have a fairly rich body of federal case law broadly on the topic. And I think it's consistent with the US Department of Education Civil Rights Title VI standards. That if you are engaged in a kind of outreach or a recruitment activity that is, in legal terms, inclusive, so that others are not precluded from having that opportunity, but that you may be targeting to ensure that you've got a better or bigger pipeline from one area than another.

Art Coleman:

The Court is, in most cases, more like than not, likely to find that to be inclusive. And because you're not denying anyone a benefit or an opportunity, in Terri's language, then that's unlikely to trigger strict scrutiny. So that's one area where the race-consciousness behind a policy that's deemed inclusive will not convert it into a policy that is deemed race-conscious for legal purposes. But again, to Terri's lawyer-y point, every program is different. Facts are different. And that's the importance of the individual counsel consultation on these issues.

Sarah Conrad:

One of the core principles of holistic review is that an admissions process or selection process needs to be evidence-based and data-driven. And certainly, the Court's recent decision supports that. Does that ring true for both quantitative and qualitative data? Or is the emphasis largely on the numbers?

Terri Taylor:

So I think that the starting point was student diversity numbers at UT. But UT then introduced additional pieces of evidence that showed the numbers weren't telling the whole story. So the way that UT used different data points doesn't mean that every institution has to use those to meet strict scrutiny. But I think if an institution wants to be able to tell a story behind the numbers, being able to have qualitative data, case studies. I think one thing we often talk about in holistic review is sometimes your numbers in holistic review might tell one story, but if you're able to support your admissions results with some anecdotes. Look at these amazing, widely diverse students that were able to be valued through our process.

Terri Taylor:

That can help somebody who's not an insider in the admissions area understand what you're trying to do and the kind of students and merit that you value. So I think that from our perspective, the way to tell a great story is to have both qualitative and quantitative evidence, and lots of different kinds, as well. And the key will be not only to show that you have the evidence, but that you're using that evidence to undergird your decision-making process.

Art Coleman:

I'll just completely echo that. I think we got abundant clarity that it is a mix of both that is important. And an area that I think is very ripe for engagement in work that isn't overly resource-intensive is the consideration of well-designed student surveys. Student surveys and professor surveys and focus groups and that kind of exercise can be really meaningful feedback as you engage and pursue a process of continuous improvement over time.

Terri Taylor:

Med schools are sitting on top of a trove of data in this, thanks to the medical community's efforts to survey medical students at different points in their career. And so in many ways, just as UT Austin, as the Court said, has a special opportunity to teach and lead in this area. So I think medical schools can really show other institutions, here's how we understand what our student experiences are, and here's how that helps us do our work. I think that there are many places where med schools are ahead of the curve in this area, and this use of data and different kinds of data, including student surveys, is one place that, just so you guys know, we tell the rest of the higher community about how well medical schools are doing. So please keep it up.

Art Coleman:

Let me just close out by reminding folks that our plan is to publish more comprehensive guidance on the Fisher case, and our goal is to have it out by the end of the month. It will be under the Offices of the Access & Diversity Collaborative, and AAMC, as a core member and partner and participant in the development of that guidance, will be providing that information to you when it comes out. So you should be looking for that further. It will both be a top-line analysis of the case, but more fundamentally, partly, like I said, implications for institutions as they move forward.

Sarah Conrad:

Thank you very much, Art and Terri, for this informative webinar. If anyone who is listening today has additional questions, please send an email to holisticreview@aamc.org. Again, this webinar has been

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recorded. It will be available on our website within two weeks. And we will also be sending an evaluation, so if you could complete that, it would really help us inform and improve our efforts. Thank you very much for your participation today.