

# Potential SCOTUS Overturning of Grutter Threatens Corporations, Higher Ed

## News

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*Jenner & Block Launches Taskforce as Race-Conscious Programs Raise Litigation Risk*

Jenner & Block is launching its Organizational Values and Strategy Task Force to support clients across industries as the US Supreme Court looks to rule on the constitutionality of diversity, equity, and inclusion (DEI) criteria in decision-making at universities.

The cases which will be heard on October 31, *Students for Fair Admissions v. Harvard* and *Students for Fair Admissions v. University of North Carolina*, challenge the constitutionality of race-conscious admissions programs and the 2003 precedent set in *Grutter v. Bollinger*. If the Court rules against the universities, organizations with policies designed to recruit and advance diverse individuals could face legal risk, including lawsuits by organizations eager to push the Court's ruling into other areas and state attorney general investigations.

“The threat to colleges, universities, corporations, and other organizations that use DEI criteria in decision-making cannot be overstated,” said Partner Lauren Hartz, Organizational Values and Strategy Task Force Co-Chair. “The Supreme Court's decision is expected by summer 2023, and organizations that do not take steps to prepare now could face investigations, significant legal challenges, and potentially catastrophic interruptions to business models.”

In addition to institutions of higher education, many business organizations have embraced DEI as a core value, and programs supporting the recruitment, hiring, professional development, and retention of diverse employees are prolific. With efforts already underway to push the Court's anticipated ruling into other industries, these programs are now at risk and could become a legal liability. Organizations need to understand the aspects of their DEI programs that are most vulnerable to litigation or enforcement actions and take steps to insulate those programs from challenges.

“If *Grutter* is overturned, it will light a fire to systematically remove DEI initiatives from all aspects of society,” said Ishan Bhabha, Organizational Values and Strategy Task Force Co-Chair. “Jenner & Block's cross-practice task force is already helping clients with investigating, identifying risks in existing efforts, the redesigning of programs and policies, and shaping strategies that will reduce risk while still promoting diverse, equitable, and inclusive educational and business organizations.”

Jenner & Block's lawyers are at the forefront of litigating high-impact social and equity issues in courts across the United States, ranging from *Lawrence v Texas* and *McGirt v. Oklahoma*, to *Moore v. Harper* and *Brackeen v. Haaland*, which will also be heard by the Supreme Court this year. Its deep experience representing leading public and private educational institutions provides the knowledge and experience to untangle the issues created by a potential overturning of *Grutter* and developing creative solutions and affirmative strategies with the urgency needed to continue DEI efforts.

Oral arguments in *Students for Fair Admissions v. Harvard* and *Students for Fair Admissions v. University of North Carolina* will be heard on October 31, 2022. Read the task force's analysis in advance of the arguments [here](#).

The cross-practice team includes lawyers from the firm's Education, Business Litigation, Appellate and Supreme Court, Government Controversies and Public Policy, and Labor and Employment teams. Organizational Values and Strategy Task Force members include Partners Ishan Bhabha, Lauren Hartz, Kathryn Wynbrandt, Jessie Amunson, Matt Hellman, Susan Kohlmann, Randy Mehrberg, Ann O'Leary, Tom Perrelli, Anne Perry, Shoba Pillay, Dawn Smalls, Emma Sullivan, and Joe Torres.

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**Related Capabilities**

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Education

Government Controversies and Public Policy Litigation

Labor and Employment

Organizational Values and Strategy Task Force

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