U.S. Supreme Court Update

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Topics for today

- Quick SCOTUS Refresher
- Race conscious admissions (*Students for Fair Admissions* cases)
- Student loan debt relief (*Biden v. Nebraska*)
- Free exercise of religion (*Groff v. DeJoy*)
- Free speech (*303 Creative LLC v. Elenis*)
- Q&A

Quick SCOTUS Refresher

- Jurisdiction
- Writ of Certiorari
- Picky, picky
- Final authority in all cases
- Stare decisis
- Membership
- Terms/Sittings

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Race Conscious Admissions – 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.”

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Race Conscious Admissions – Legal Landscape

- Since 1978, the U.S. Supreme Court had generally upheld race conscious college admissions processes
- 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

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Race Conscious Admissions – Legal Landscape

- *Gratz* (2003) – Undergraduate admissions process at the Univ. of Michigan was struck down, because it used a point system that automatically gave underrepresented minorities 1/5 of the points needed for admission

- *Grutter* (2003) – Law school admissions process at the Univ. of Michigan was upheld, because it used objective factors like LSAT scores and GPA plus “soft” variables like letters of recommendation and essays to garner a “critical mass” of minority students
  - Mentioned an expected 25-year sunset

Students for Fair Admissions cases

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Key takeaways from *SFFA* cases

- Race cannot be used as a factor in admissions decisions
- 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)

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Biden v. Nebraska

Key takeaway: Administrative agencies, like the Dept. of Education, do not have the authority to make significant decisions unless specifically stated by Congress (and debt-relief program was not authorized by HEROES Act)

- Biden administration has announced that it is pursuing other “legally sound” options for debt relief; Congress could also take action

Groff v. DeJoy

Key takeaway: To deny a religious accommodation an employer must show that granting a religious accommodation would result in "substantial increased costs."

- Must consider "all relevant factors," including the particular accommodations at issue and their practical impact in light of the nature, size, and operating cost of an employer.

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303 Creative LLC v. Elenis

Key takeaway: The First Amendment prohibits Colorado from forcing a website designer to create expressive designs that convey messages with which the designer disagrees.

- Still many unanswered and untested questions as to the limits of what is considered “expressive” activity.

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Questions?