

DEI Policies in the Crosshairs

“A discussion of *Students for Fair Admissions v. Harvard* and its impact on DEI initiatives in the private sector including law firms and legal departments.”

FDCC Summer Meeting – Toronto
July 30, 2024

Discussion Outline

1. SFFA v. Harvard
 - a. The SCOTUS Opinion
 - i. Three factor test
 - ii. Justice Gorsuch’s concurrence and Title VII
 - iii. Justice Jackson’s dissent
 - b. Warning letters to companies regarding workplace DEI efforts
2. Private Employer’s DEI Policies and Reverse Discrimination Claims
 - a. Title VII of the Civil Rights Act of 1964
 - i. *Bostock v. Clayton County*, 590 U.S. 140 (2020)
 - b. Exemplar reverse discrimination cases
 - c. Is there more to come after SFFA v. Harvard?
 - d. Is there an increased risk for legal challenges to private employers, law firms, legal departments’ DEI initiatives?
3. Practical Guidance for Law Firms and Legal Departments
 - a. Clearly define the goals of your DEI initiatives
 - b. Train managers on the goals of your DEI initiatives and how to discuss them with employees
 - c. How do you measure the outcome and benefits of a diverse workforce?
 - d. Review DEI initiatives for their efficacy and their relationship to the organizations goals and values.
 - e. Audit your hiring practices and initiatives
 - i. Review existing DEI policies and references to protected classifications
 - f. Modify the goal of DEI initiatives to seek diversity based on broader characteristics that do not involve protected classes (e.g. experiences, economic background or worldview)
 - g. The importance of diverse leadership
 - h. Re-evaluate your recruiting plan with a focus on diversifying the talent pool you are selecting from

Moderator – Mohamed N. Bakry, Shareholder, *Marshall Dennehey*

Mohamed is a Shareholder at Marshall Dennehey where he defends clients in cases related to product liability, premises liability and transportation. His clients include manufacturers; property owners; retailers and product suppliers faced with lawsuits alleging assault and battery; defects on the premises; acts of negligent third parties; improper maintenance of the premises; and design defects, to name a few. He also defends product manufacturers, suppliers and premises owners in asbestos litigation.

Additionally, Mohamed has experience handling automobile liability matters, representing businesses and individuals involved in auto accidents, negligent auto claims, and personal

injury cases. Mohamed has deep experience in criminal litigation having previously worked for the Defender Association of Philadelphia. Within his current criminal defense practice, Mohamed has represented criminal defendants facing charges in Federal and State court. He has represented individuals charged with possession of narcotics and DUI, to major felonies such as fraud, burglary, robbery, assault and homicide. He has also defended doctors and business owners against Attorney General grand jury investigations regarding Medicare fraud and insurance fraud.

Mohamed is passionate about and dedicated to the principles of diversity and inclusion, and he currently serves on Marshall Dennehey's Diversity, Equity, and Inclusion Committee, which helps establish a supportive and welcoming workplace environment in which employees of all backgrounds and demographic characteristics can work together. As an active member of the volunteer community, Mohamed serves as the Chair of the Board for an immigration legal services non-profit organization named Justice for Our Neighbors of the Delaware Valley. Mohamed is also the Second Vice President on the Board of Directors for the Lawyers' Club of Philadelphia, a social and educational organization working to promote camaraderie among members of the bench and the bar in the Philadelphia area.

Panelist – Atoyia Harris, Special Employment Counsel, *Proskauer Rose*

Atoyia Harris serves as special employment law counsel in the Labor and Employment Law Department, the administrative leader of Proskauer's Discrimination, Harassment, & Title VII Practice Group, co-chair of Proskauer's Black Lawyer Affinity Group, and member of the Women's Alliance Steering Committee.

As a litigator with more than a decade of experience, Atoyia approaches each matter strategically to provide the best result for her clients and helps companies respond to workplace crisis situations. She has successfully defended matters on a wide variety of high-stakes and complex issues in various jurisdictions and forums at the trial and appellate levels. Atoyia utilizes her litigation experience to advise clients on ways to mitigate risks prior to litigation. She also conducts investigations and trainings on issues related to discrimination, harassment, retaliation, and other employment-related matters. Her practice includes counseling clients on employment and separation agreements, reductions-in-force, the WARN Act, employment policies, internal investigations, and issues arising out of social movements such as the Black Lives Matter and #MeToo, and other sensitive employment issues.

Active in the legal community, Atoyia serves as an executive board member of the Young Lawyers Board for the Federal Bar Association's New Orleans Chapter and member of the Federation of Defense & Corporate Counsel. She previously served as the Chair of the National Defense Research Institute's 2023 Diversity for Success Seminar, executive board member of the Greater New Orleans Louis A. Martinet Society, President of the Vernon Crawford Bay Area Bar Association, and in other leadership capacities throughout her legal career.

Background & Reference List

[How College Affirmative Action Ruling Could Impact Employers \(natlawreview.com\)](#)

[The Impact of the SFFA Decision: Lessons for Employers | Foley Hoag LLP](#)

[How Does the Supreme Court's Affirmative Action Rulings Affect Employer DEI Initiatives? | Advisories | Arnold & Porter \(arnoldporter.com\)](#)

<https://www.americancivilrightsproject.org/blog/open-letter-on-behalf-of-shareholders-to-officers-and-directors-of-jpmorgan-chase-co/>

<https://corpgov.law.harvard.edu/2022/10/07/dei-initiatives-under-attack-by-activists/>