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WEBINAR

AFFIRMATIVE ACTION AND THE FUTURE OF COLLEGE ADMISSIONS

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PANEL DISCUSSION:

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KATHARINE MEYER: Hello and welcome to today's breakfast panel on affirmative action and the future of college admissions. I'm Katharine Meyer, my fellow in the Brown Center on Education Policy here at the Brookings Institution. And I'll be today's moderator, joined by three distinguished panelists. And together, we'll be discussing two cases around affirmative action that the Supreme Court heard this term, as well as how we should think about the implications of their decision for coming this June in light of other trends in college admissions. As a run of the show. We'll start with some broad questions and then move into an audience Q&A section. Toward the end, we have some questions that were submitted by you all during event registration. So thank you for that. If other questions come up as you're watching the panel, please email those in to events@brookings.edu. Or you can use the hashtag [future of Admissions](#) on Twitter and we'll be pulling those in as well. So set the stage for today's discussion. The Supreme Court heard oral arguments in two cases this October. Students prefer admissions. At first is the University of North Carolina, and students prefer admissions versus the president and fellows of Harvard College. At the core of both of these cases is whether institutions of higher education can use race as a factor in college admissions decisions which had previously been ruled permissible in the 2003 case. *Grutter v Bollinger* in the majority opinion of *Grutter*. Former Justice Sandra Day O'Connor noted that the court expected that racial preferences will no longer be necessary within 25 years of the decision and that race conscious admissions must be limited in time. Justice Clarence Thomas went further in his partial concurrence, arguing that his interpretation of the opinion was that racial discrimination in higher education admissions will be illegal in 25 years. However, defendants in the terrorism cases argued that the nation had not yet reached to the point where the level of diversity desired by institutions or by society at large on campuses would be attainable without direct consideration of race in the admissions process. We expect the Supreme Court to issue their decision any day now, probably once we get into June, And that decision will come at a time when a number of other admissions practices have come under close scrutiny as well. The ongoing operation Varsity Blues Cases has highlighted the lengths that certain advantaged families will go to to ensure admissions for their children's highly selective institutions. The COVID 19 pandemic and social distancing rapidly accelerated the trend of colleges going test blind or test optional. And the discussions around affirmative action have raised questions about other policies such as legacy preferences that really actively work against colleges, stated goals of equity. So today I will consider all of these factors together and hopefully end with some policy recommendations and passports for the practitioners in the audience today. Today, I'll introduce our three panelists who are all experts on affirmative action, college admissions and education law. Starting with Mitchell Chang, who is the associate vice chancellor in the Office of Equity, Diversity and Inclusion and Professor of Higher Education and Organizational Change at the University of California, Los Angeles. Mitchell, glad to have you here with us today. Next, we have Cara McClellan. She's the director of the Advocacy for Racial and Civil Justice Clinic, as well as practice associate professor of law at the University of Pennsylvania, Carey Law School. And then we have Kelly Slay, who's an assistant professor of higher education and public policy in the Department of Leadership Policy and Organizations at Vanderbilt University's Peabody College. Happy here. Let's start with just the broad setting question. What is affirmative action? How is the policy evolved over time? What does it mean for a college to engage in affirmative action in their admissions review processes?

KELLY E. SLAY: I think it's important to understand that affirmative action initially started in our hiring practices. So when work in the workforce in the late 1960s, colleges around the country began considering race as a factor. Their admissions practices and these practices were implemented in part to address a longstanding history of racial discrimination. Therefore, providing opportunities to higher education for black students who had historically been excluded from colleges and universities throughout the country, we began to see that affirmative action is challenged with the basket case in 1978, in which the use of racial quotas was ruled unconstitutional. And I'm skipping over some things. I'm sure Cara will probably jump in as the legal scholar on our panel. But what we've seen since then is that the courts have consistently ruled that race may be considered, along with many other factors in the admissions process, because it is a compelling interest. And that means that there are educational benefits associated with recruiting and enrolling a diverse student body on our college campuses. And so we have seen several race conscious admissions cases since *Balki*. The most recent, as you mentioned, involving Harvard University and the University of North Carolina at Chapel Hill. So I think what's at stake here is the future of being able to use race as one of many factors in the admissions decisions of students.

KATHARINE MEYER: I'm gonna. Go ahead, Cara.

CARA MCCLELLAN: Oh, no, I was going to say that was it. That was an excellent summary. The only thing I'll add is that we often get questions about why doesn't the Supreme Court consider things like history of segregation, ongoing inequality through in K-12 education, really the elephant in the room when we're talking about affirmative action. And as Kelly just pointed out, we are in a world in which the Supreme Court's precedent really forecloses the conditions under which affirmative action satisfies what's called strict scrutiny and compelling interest and affirmative action, which the court has recognized to be pursuing the educational benefits that flow from diversity and not the remedial justification that I think many people often assume would be the reason for continuing to have affirmative action.

KATHARINE MEYER: Your distinction.

MITCHELL J. CHANG: Yeah. And if I can, let me also add that race conscious admissions is actually applied in very limited ways due to three important factors. First, there are nine states, including my own California, that have banned such practices for public institutions. Second, there are about 4000 colleges and universities in the U.S. and only a very small fraction of them receive more qualified applicants than they can admit. In other words, only a small number of highly selective and I would actually call them hyper selective colleges consider race in admissions. And third, those that do use it and apply it to tip the scale in favor of highly qualified applicants from underrepresented groups in ways similar to favoring applicants with unique talents or skill sets and even legacies. And in fact, several studies have shown that being a legacy has an even stronger positive effect on your chances of being admitted than through the consideration of race. Yeah.

KATHARINE MEYER: I think that's a really important point to make. We had an audience question asking, you know, how many colleges really engage in using affirmative action, I think which to your point, it's it's a very small share of the overall higher education sector. We think about the total number of undergraduates in the country, for example. So we touched on this a little bit. Let's back up and look at the history of affirmative action. This obviously isn't the first time that the Supreme Court has heard a case on affirmative action. Maybe Cara you could take the lead. Helping us understand what are the key legal questions at play in these two cases and maybe how they're different from arguments that have been made in previous cases.

CARA MCCLELLAN: Sure. So just to start with what the president currently holds, we mentioned already Bochy later on there was a case that's known as Grutter, and that case really outlines what the state of the law is today in terms of how race can be considered in higher education admissions. So the Supreme Court has told us that you can consider race as one of many factors in admissions, but the use of race has to be narrowly tailored. And essentially what that means is that it is illegal to have quotas, but you can consider race as one of many factors. It can't be the determining factor. And you can't have it can't be the case that minority applicants are insulated from competition. And that's how the court has talked about it. So really, as Mitch said, what we're talking about is a very limited consideration of race as a plus factor. Once you're within the kind of subcategories of applicants who are highly qualified. And in both of the cases that are currently before this court, as well as previous cases, it's been clear in the record that all of the students who are admitted under affirmative action policies are qualified. They're already within the subset of some of the most highly competitive applicants, and that the consideration of race is limited to, again, to pursue the educational benefits of diversity, which has to do with universities mission of really ensuring that there is diversity in the classroom to bolster things like critical thinking class discussion, really exposing students to differences and preparing them for the work environment after they graduate from college. So that's where the law stands. But we have these two cases that are going before the Supreme Court now that have made two different sets of arguments. So to start with, the Harvard case. This case was brought by Students for Fair Admissions. And just to step back for a minute and make clear what is students per fair admissions. So it's an organization, it's the plaintiff in these two cases, and the founders of Students for Fair Admissions are essentially three people. One is Abigail Fisher. Folks may recognize that name from Fisher B, Texas, which was the last case to go before the Supreme Court challenging race conscious admissions. In that case, the court ultimately said that considering race again is one of many factors to pursue. The educational benefits of diversity is constitutionally permissible. It has to be narrowly tailored. The plaintiff in that case was Abigail Fisher, and after she lost in that case, she actually teamed up with a man named Ed Blum, who is at Blum,

had Blum as a former stockbroker, and he is an advocate who has worked behind the scenes as one of the architects in several cases challenging race conscious admissions, including Shelby County Holder, which is the case that guided the Voting Rights Act. So he. Abigail Fisher and then a third person who is Abigail Fisher, whose father teamed up and together found that students were very admissions students for admissions is an organization that claims that the consideration of race is discriminatory. And so they brought cases against Harvard, against USC that led to the two cases that are now before the Supreme Court. But they also challenged race conscious admissions at different universities across the country. And in the Harvard case, they allege that the consideration of race in Harvard's admissions process is discriminatory against Asian-American applicants. And they claim that they have members within Students for Fair Admissions who are Asian-American and who are applicants to Harvard and who claim that they didn't get in because they were discriminated against based on race. It's important to note that during trial, there were no Asian-American students or alumni who came forward to testify that they were actually discriminated against. And so we never heard from these members of students. Further admissions that Abigail Fisher and Ed Bloom, you know, claim the organization represents, in addition to the claim of intentional discrimination that's at play in the Harvard case. They also bring claim saying essentially that the way that Harvard considers race isn't narrowly tailored or doesn't comply with the existing precedent. And then lastly, they bring a claim challenging Grutter essentially, and saying that the Supreme Court should overturn over 40 years of. A sitting president, which would be a really remarkable and unusual step for the Supreme Court to take. The human case is slightly different in that there actually is no claim of intentional discrimination at play in the USC case. So it is a challenge of the existing precedent and also claims that USC does not use or consider race in ways that it complies with existing precedent. So those are essentially the differences between the two cases. The one other thing to point out is that Harvard is a private institution, and so the claim in that case is under Title six of the Civil Rights Act, whereas in the USC case, because it's a state university, it's an equal protection claim, the analysis under both is very similar, almost the same, although the court has never said that it has to be exactly the same. But the intentional discriminations are on different bases because of the private public distinction.

KELLY E. SLAY: It was incredibly helpful. I just want to add one thing to what Cara said in and discussing the legal arguments for the plaintiffs, the arguments in favor of colleges that want to continue to use race conscious affirmative action as that diversity is important. We have now amassed over 25 years of research from different fields, from education to business, to help to medicine that that shows the importance of diversity as important to our colleges and universities and even beyond our institutions. So when we prioritize diversity in college admissions, we improve the representation of students who are historically excluded on our campuses, but who could benefit individually, that could benefit organizations that they are part of that could benefit our society. And so colleges are are their argument in favor of a race conscious admissions is because of what the those policies are able to help those institutions do in terms of meeting their missions, in terms of preparing and educating a diversity that has benefits for all of us, recognizing that diversity is not the silver bullet here. Of course, that is one of the reasons why it has been upheld in these cases over the years, because colleges have been able to demonstrate that it is a compelling interest and that it can be achieved through these race actress admissions policies.

KATHARINE MEYER: I think that's a really important point to make. And you're right Kelly, we have so much evidence, both descriptive evidence, randomized controlled trials where you look at sort of small interactions in a diverse group as opposed to sort of more macro studies of what the overall composition of an organization looks like and sort of time and time again, the research really hammers home the benefits of diversity for all individuals.

MITCHELL J. CHANG: Yeah, and I'm glad you raised this because this time around with these two cases, diversity doesn't seem to be on trial here. I think even the other side, the plaintiffs agree that the evidence regarding the benefits, educational benefits, diversity, are pretty strong here. But to just to add what to what Kelly said here, institutions are also eager to defend race conscious admissions as an option for them because they want to remain legitimate to society. And they know that having a diverse student body signals that not only for incoming students because they want to have that experience, had very different from their home environments, usually coming from segregated neighborhoods, and but also to prepare students for what's next and in life. So so I think it helps them helps institutions signal to the public that they they are a legitimate preparation ground for future leaders.

KATHARINE MEYER: I had a question following up on some of the the differences between Harvard and USC and whether or not the research was intentional discrimination claim. I am not a legal scholar, but I know what has been discussed a lot. And the other kind of big higher ed cases, the student loan cases, is an issue of standing and somebody's having a sort of a cause for bringing the case. How does that play out in these two cases, if particularly in the Harvard case, it seems like they're making a claim of standing, but no actual individual is coming forward to state intentional harm.

CARA MCCLELLAN: It's a really great question, and I don't have a satisfactory answer, not because it didn't come up at trial, but because this is an area where we've seen over the years federal courts have really relaxed than typical standing requirement in ways that they don't do in other areas of law and in ways that have, in the reverse discrimination cases, really privileged white plaintiffs in a way that plaintiffs who are people of color often don't get the benefit of the doubt when it comes to standing and bringing discrimination cases. But essentially, although I think this is specifically an issue in the Harvard case where there is an intentional discrimination claim, Harvard challenged the standing of students for their admissions, saying who is the injured individual that that supports your standing in this case. And although an individual was identified by name or didn't testify during trial and in fact, there wasn't an even an individual application, despite thousands of applications being available on the record to both sides that students were fair, admissions pointed to as an example of discrimination. Despite that, there was students were fair. Admissions did offer redacted, essentially affidavit saying that they had members who had applied to Harvard who were Asian-American, and if they had the opportunity, would transfer to Harvard. And so that was that was the basis for standing, although, you know, typically establishing that an individual is injured for a standard for standing purposes is a more rigorous analysis.

KATHARINE MEYER: Right. Yeah, that's fascinating. All right. So nobody has a crystal ball. I'm not going to ask anybody to make a specific prediction of what you think the ruling is going to look like when it comes out in a couple of weeks. But I would say most colleges and universities and experts are expecting that the court is going to rule in favor of the plaintiffs and there will be at least a severe limitation, if not outright ban on the consideration of race in college admissions without sort of identifying what you think is the most likely option. What are the variations of a ruling that could come out in the next few weeks? And how what are sort of the meaningful differences in the way that the classic rule?

CARA MCCLELLAN: So I'll take off. Oh, Kelly, I'm sorry I didn't see this. You already.

KELLY E. SLAY: Know. Now you can go ahead. I was just going to say I would love for the for affirmative action to be upheld. I mean, I think that's the best case scenario as that we are all surprised in the next few weeks and it is maintained as the law. But as you said, I think that there are a lot of signals that suggest that that might not be the case. And I'm sure Cara can talk about what some of those things might look like.

CARA MCCLELLAN: So I just want to emphasize Kelly's point that although although predictions are that the record, based on the way this current composition of the Supreme Court has kind of disregarded precedent and starry decisis in other cases already showed a willingness to do this, the common prediction is that the Supreme Court will overturn 40 years of precedent and actually say that it is no longer constitutional to consider race as one of many factors, but that even though it is, you know, being predicted by many looking at the Supreme Court today, that is still an unusual step to take. Right. I just want to emphasize that for this Supreme Court to disregard precedent or even to grant cert on an issue that it has recently decided. Right. As recently as Fisher v Texas is a highly unusual step and is an extreme action for the court to take. But it's likely that the Supreme Court will rule affirmative action debris unconstitutional. It could be that we get a different decision under the equal Protection analysis and the UN case versus the Title six case. It could be, you know, that we get a more limited decision that provides us more guidance on what is required for narrowly tailored. But it's also quite possible that the court will tell us that diversity is no longer a compelling interest for considering race, because that's what the the plaintiffs have asked the court to do is literally to overturn the existing precedent that says that it is a compelling interest. One other thing I just wanted to emphasize, which, you know, Mitch is right, that diversity was not what the plaintiffs spent a lot of time saying is not a compelling interest. But it still is the case that that overturning precedent could lead to that outcome. And even more importantly, just from a practical standpoint, it's very much the case that

saying that Grutter is no longer controlling law in that race can be considered is going to lead to a severe reduction in the number of students of color on campus. That was very clear in the record of both cases. In the Harvard case, the the record that both sides acknowledged that was that without considering race, the number of black and Latino students on campus would reduce be reduced by around 50%. And so the stakes of this case are huge in terms of what our institutions of higher education look like and in terms of the pipelines that higher education creates, that there would be a severe number, a severe reduction in the number of students of color on campuses, particularly Black Latinxs, Native American and and some groups of Asian-American students as well.

KATHARINE MEYER: Yeah, I think that's a great transition. Mitch, obviously, you're in California, which has for years banned the consideration of race in admissions. But do we know from what happens in California and other states when affirmative action is and.

MITCHELL J. CHANG: Yeah, we know this all too well, So. So I can make some predictions here. If the court were to prohibit their consideration or raise that, my first prediction will be would be that we always expect a what the courts call a meaningful reduction in the proportion of underrepresented students at highly selective institutions. That is exactly what we saw in California, especially with UCLA and UC Berkeley. We both institutions saw the African-American undergraduate population drop by nearly half following the enactment of Proposition two. ANNI, which was the ballot initiative passed in 1996 and went into effect in the 1998 admissions year at UCLA. According to some court testimonies, Harvard expects to see a 32% reduction in African-American representation if they were to lose their case. Now, it took UCLA nearly two decades to return to the numbers of what we we had with African-American students prior to Proposition two or nine and four. The numbers of African-American male. We are now just barely above the numbers we were at in the mid-nineties. Now, this slow recovery, even though it took so long, was actually a very deliberate process. And we had to make some some. New policy and emissions adjustments do it. And and if we if you'd like, I can talk about that later, but I'll, I'll, I'll open it up to other folks at this time.

KELLY E. SLAY: Like to just. Say that the effects. Our that we see in instances where affirmative action is banned is not just immediate. So certainly, you know, the there is, you know, California, I think the the percentage of applicants dropped by 50% in the the couple of years or 2 to 3 years after the ban was implemented. But sometimes that can be long lasting. I think Mitch's point about the the slow recovery is reflected that. So in 2021, there was an article, I think it was New York Times, I believe, that reported there were 258 black students that entered UC Berkeley's freshman class out of 7020 21. And at the University of Michigan, which is my alma mater, in the context that I've mostly focused on in my research on affirmative action, black students made up about 4% of enrollment that same year. So at the University of Michigan and in the state of Michigan, affirmative action was banned in 2006 through a voter, a statewide voter referendum. So you see that many years after these bands have been implemented that there are still persistent inequities and the enrollment of students of color across, you know, many different groups, including black students, Native American students, Hispanic students, Pacific Islander, another and some other Southeast Asian groups. The other thing that I want to do is I want to complicate those numbers a bit by suggesting that when we see the low enrollment numbers in places where affirmative action has been banned in the selective institutions, that is not only about students perhaps not being successful in the admissions process in the absence of race conscious affirmative action, it's also about students making choices about the types of institutions where they want to attend. And so some of the research that I've conducted on some of the research that I've seen from scholars studying the California context suggests that students are deterred from applying, even though they might have the academic profiles that suggest they will be successful in the admissions process. They they decide to go to other institutions that they perceive to be a more racially diverse and inclusive. Sometimes they go to institutions that are within the state, as in California, that may not be as selective as UC Berkeley or UCLA great schools, but don't have as many resources. But those are schools where those students shift to. And so this idea of the changes that we see in the representation of students on campuses in these past affirmative action environments is a bit more complex than students perhaps not being successful because we're not thinking of race as one of many factors in admissions decisions. So I just want to kind of foreground the agency and the perceptions that students have about the kind of environments that they want to want to be a part of.

KATHARINE MEYER: Yeah. Okay.

CARA MCCLELLAN: I was just going to emphasize some point within that, which is that we've mentioned this in different ways, but it's not as if without the consideration of race admissions process would be somehow fair and neutral. Right. We've talked about legacy preferences, but they're all all different kinds of other ways that the way colleges and universities conduct admissions disproportionately benefit white students and wealthy students and disadvantage students of color and low income students. So when we think about even the use of standardized tests, which we have long known are most highly correlated with the background of students, parents and are both racially biased, but also that students who have highly educated parents or who come from wealthy backgrounds score higher on standardized tests. There's many ways that the existing admissions systems serve to disadvantage students of color and to privilege other students. But it's also the case that without in a world in which affirmative action or race conscious admissions is unconstitutional, it's still the case, right, that that universities consider other aspects of identity. So Students for Fair Admissions has not asked for an injunction preventing universities from considering religion, from considering sexual orientation, from considering gender, from considering many other aspects of identity. They are just focused on stopping universities from considering race. Right. And so who does that disproportionately impact in terms of not being able to talk about the ways that race and ethnicity have impacted you and should inform and be considered as part of understanding your application. That is only going to have a disproportionate impact on students of color. So I just wanted to complicate the idea that that somehow the existing status quo is is fair and neutral, because really the ways that privilege is based, baked into admissions policies currently is only going to be exacerbated, exacerbate it if we can't consider the impact that that race has on applicants, because we know that race continues to shape applicants K-through-12 experience and can't just be ignored at the moment that they apply to college.

KATHARINE MEYER: Yeah, I think two points that really stuck with me there is sort of the weaponization of the word fair. I think in in discussions around admissions, because it's to me has always. Felt like a very vague word that gets to be applied when certain advocates want it to be applied in a certain way. And this discussion around race neutral alternatives and I think any of us who do serious education research know that there is no such thing as a race neutral policy. There may be a policy that doesn't name race, but doesn't mean it's race neutral. Certainly, if you think about legacy admissions and the decades that white families have had to access higher education compared to black families that were barred from attending higher education admissions, and there are simply fewer generations from which to drive legacy admissions preferences.

MITCHELL J. CHANG: And some of those analyzes were conducted on record for the court decisions, prior court decisions, and USC four in particular. I was involved in some of that expert testimony, and I saw, you know, some of the analysis by the plaintiffs. And they they even acknowledged that there will be a reduction in the proportion of of underrepresented students, especially African-Americans. And and their prediction is that the reduction in their in their eyes is smaller than the analysis conducted by Caroline Hoxby and Bridget Long, who also submitted testimony. But they see this reduction as relatively small and meaningful. I mean, what they came up with in one analysis was a drop of 10% even under consideration of SARS or socioeconomic status of the applicants. But when I look at 10%, I think that I think that's a that's a significant reduction for a population of African-Americans. That's a read already relatively small. And you multiply that over four years, and I think it's as very significant and meaningful. So so while I think plane is also acknowledged that there will be a reduction, I think the difference is whether they consider it to be meaningful or not.

KATHARINE MEYER: Maybe this is a good time to transition, because I think we've started raising some other admissions practices to think about other trends going on, things like trends in test optional admissions or as we've mentioned, sort of. Gained momentum opposing the use of legacy preferences in sessions. Kelly I know he's done a lot of work understanding how admissions officers make meaning of different shifts in policies. What are what are important insights from that work and what are considerations that colleges should have top of mind to support admissions officers over the next summer, over the next few years, responding to changes in different admissions policies?

KELLY E. SLAY: Yeah, that's a great question. I think it's important to know that no admissions office anywhere will be caught off guard. Every conversation that I have been a part of, every group that is that I've

conference that I've attended. Admissions officers everywhere are thinking about the possible contingencies. What if affirmative action goes away? How do we prepare? And they are they are putting together strategies and thinking through practices, learning from states like Michigan and California, where affirmative action has been banned. So there's a lot of work that is already being done. A lot of conversations. The National Association of College Admissions Professionals are in fact, college admissions counselors have been involved in a lot of these trainings and conversations about what to expect and how admissions professionals can respond. That being said, I do think that this shift will be will not be an easy one for the small number of institutions that do use race conscious affirmative action because they have to rethink the application process, how to review applicants without considering race. I think the point that Cara was saying earlier about students have applicants having to discount their racial identity or their experiences that may be racialized in the application process is really hard. So how do you do that? And of course, we do have some insights from other institutions, but it's still, I think, something that could be challenging. I will say that I think one of the larger issues and some of the conversations that I've had is one of one is it is more personal and ethical, which is admissions professionals want to understand the whole of who applicants are. They want to hear their stories. They want to know what it is that they bring to the college environment should they be admitted. And so I think it kind of takes away from some of the work that they are excited about and motivated to do and the roles that they occupy. And I would say that the other thing that that they are considering and that should certainly be an important part of the conversation, is how to communicate these policy changes, potential policy changes to key stakeholders, so to prospective students, to counselors, parents, others, how do they communicate what this policy might mean? One of the things that I've been learning in my research on test absent admissions is that how we communicate to prospective students is really, really, really important. So their work is not just about rethinking the review process, perhaps rethinking recruitment, but also knowing how to communicate that to prospective applicants. The only other thing that I would add is that I think what we're having these conversations about the potential work and the impact of affirmative action and this ruling is that we should think about and take an expansive view of admissions to study enrollment management, of which admissions is one critical function. But the work of adapting to a potentially post affirmative action environment is not only about how we review applications, it's also about how we recruit students, how we award financial aid, the policies that we put in place to allow students to transfer to other institutions, our practices around credits and standard credits. So there's a lot that that is at stake here. And I think that this is an opportunity for admissions professionals and enrollment management professionals to think about reimagining what they do in a lot of ways.

KATHARINE MEYER: I think that's a great. Go ahead, Mitchell.

MITCHELL J. CHANG: Yeah, I just appreciate your comments there, Kelly. And that had a lot to do with how we were able to make this slow recovery in the U.S. And and, you know, you get you can't take shortcuts anymore. Using test scores to to cut off are making, you know, minimal cut offs are minimal achievement cut offs or something like that. I mean, institutions will have to begin to work a lot harder to earn the enrollment of a more diverse group of students. And at UCLA, we call that process of recruiting students intrusive recruitment because we we recognized after Prop two, denied that we had to work harder to gain, build lasting relationships and the trust of folks in communities that hadn't had a lot of access to UCLA. And so they we began with bringing in students from those communities to campus and going out to where they live to offer tutoring, college counseling and fundraising to support their college aspirations. So so those are just some of the things that we had to do. But the bottom line is, you know, taken shortcuts will no longer work and institutions will really need to work harder to to earn the enrollment of those highly qualified, underrepresented students.

KATHARINE MEYER: I think that's a great transition. We're starting to get a lot of questions coming in from the audience around these alternative practices that colleges can engage in. And I think we'd love to hear you all's thoughts on what are successful practices to sort of ameliorate the effects of an affirmative action ban, but also maybe particularly your perspective, which of those practices might be impacted by the ruling? You know, are there for example, are there going to be any impacts of the ruling on targeted scholarship programs, whether those are at universities or foundations? And thinking about that? Yes, specifically, we've had a couple of questions come in around, you know, what are alternative metrics to use in admissions. We've got a lot of questions come in about the use of class based or wealth or income driven affirmative

action practices. What do we know about sort of the potential of those policies to increase diversity on campus?

CARA MCCLELLAN: So first of all, just on the first question, make clear that what's at issue in the student for fair admissions cases that are before the Supreme Court is race conscious consciousness and not race neutrality. So there should not be a decision coming out of the court saying that some of the race neutral alternatives are unconstitutional. I think that would be going beyond what's currently before the Supreme Court. It doesn't mean that there won't be a future case challenging race neutral alternatives in arguing that they should be subject to strict scrutiny. In fact, plaintiffs are already making those arguments in the K-through-12 setting in and in other cases. But that's not that's not what's at issue in this case. And I think it would be an overreach for the court to or even from people for people to interpret a decision in these cases as saying that race neutral alternatives or creating diversity are are thrown into question by this case or are ruled unconstitutional by this case, which is explicitly about considering racial classifications. Right. In terms of how how we should think about some of the race neutral alternatives that have been in use in other settings already and their effectiveness, I should say, first of all, that folks who do admissions are going to be best positioned to answer that. But the one thing I'll I'll say is that from these two cases, I'm looking at the record in these cases because the universities had to establish that race neutral alternative alternatives weren't going to be effective. We already know from the expert reports and what's in the record that, for example, relying more on financial aid is not a substitute for considering race in the universities, wouldn't be able to achieve the same level of diversity by relying on a race neutral alternative like that, because if that were the case, they wouldn't have been able to satisfy strict scrutiny. And in the district court they did right. They put on evidence and showed that they had considered race neutral alternatives and that they wouldn't be as effective. So we know that many of these things are not a substitute for actually considering race when it comes to creating racial diversity. But that doesn't mean that there's not that there aren't promising practices that could foster racial diversity, even though they're not a complete substitute for considering race. And and I'll just say very briefly, you know, in some places, things like considering geography, which is closely often mapped on to race because of the reality of segregation in our country and socioeconomic status can in a targeted way, ensure that there is greater racial diversity, but it has to be very targeted. So, for example, we know that socioeconomic status is not a substitute, but that when you and that's in part because socioeconomic status is not experienced in the same way by all racial groups. So, for example, if you look at middle income black families and families of other backgrounds of the same income levels, those families have different experiences in terms of the neighborhoods that they have access to, the level of segregation in the schools serving their neighborhoods, the level of funding in the schools that their kids go to, even though they are families at the same income level. Right. And so this isn't a complete substitute for a race in any way, but thinking about things like wealth and that and the experiences of different racial groups and access to wealth and and the ways that disparities play out is a way to, in a more targeted fashion, try to create racial diversity.

KELLY E. SLAY: Just like to add that when we think about the number of kind of practices that institutions have experimented with or have implemented, there are a number of things that that we've seen, including the use of targeted recruitment and outreach efforts, such as those that Mitch talked about, getting into communities, partnering with organizations, building those relationships. We've also seen the use of tuition free programs and initiatives where in-state students who apply to engage admission to a university are offered free tuition. Again, that focuses more on socio socio economic status. But one of the arguments is that that can also help to restore some of the racial diversity. There's also top ten percentage plans and others where students who graduate at a certain level within their high school gain automatic admission to the institution. And then finally, we've seen an unprecedented expansion of test optional policies. Test optional policies have been around for a while, but they were adapted by liberal arts institutions and private colleges. When the pandemic happened, a number of universities and colleges, public Ivy League, all types, different locations, adapted test, optional admissions. And when I say test optional, I'm saying that is kind of an overarching turn to include institutions that are test blind tests, free tests, flexible the ideas that they're de-emphasizing, test standardized tests in the admissions process because of the barriers that those tests presented for students during the admission during the pandemic. So removing those tests incentivizes students to apply. And so far, we have seen small but positive effects on diversity, which is great. And I think something that I you know, if we have time I'll talk about later, as you know, that we need more research in this area, but certainly that could be a possibility. That being said, I do want to say that the research is very

clear. With simulation studies that have been done. REARDON In 2017, that simulation studies most recently, we've had some work done at the Georgetown Center on Education and the Workforce by Carnival and Lamy. And that work suggests that no policy, no socioeconomic status policy or class based affirmative action will be as effective at helping to restore or even exceed levels of racial diversity that we had with the use of race conscious affirmative action. So we should be thinking about all of these alternative practices. We should be using them together because there's no silver bullet. But we also need to recognize that so far, the research has suggested that race conscious affirmative action is still the best policy to help us to increase and restore levels of racial diversity.

KATHARINE MEYER: No. I feel like I keep harping on legacy admissions, but I feel like the the consensus is really that no college can, in good faith, engage in legacy preferences in a world in which affirmative action is banned. If their stated goal is to increase equity and diversity in our student body. Let's let's shift in our culture and kind of introduce some of the test optional trends. What are some other interesting trends going on in college admissions? Because maybe we can touch a little bit on if we think test optional is going to persist as a policy? And what are some other sort of shifts in the holistic review process.

KELLY E. SLAY: Apologize for the background noise. I remain excited about tests, optional emissions policies. That's something that I'm working on right now. But there are also other policies that are being explored right now, including direct admissions, and that is when students don't actually apply. They're directly admitted to a college or institution based on their profile. And so there are a few states that have piloted that or are piling piloting it, including Idaho, I believe, Illinois and maybe Minnesota. And so we need to know more about that. But that could also be a possibility for institutions who want to increase access to their colleges without making the application process a barrier or a deterrent for students.

KATHARINE MEYER: And this slide in one more audience question because I was fascinated and then we'll go to closing remarks. We had a question about the role of AI in college admissions to kind of completely shift, which I think could play out on both the student and the admissions office side. Anybody want to offer some thoughts on AI and chat and such technology and the admissions process? Go ahead Cara.

CARA MCCLELLAN: Oh, I am an expert in this area, but I just know from from reading and seeing different examples that our algorithms are only as effective as the data we put into them. And so biased data is going to produce biased algorithms. And I think that's important to keep in mind as we're expanding our use of AI into new settings.

KATHARINE MEYER: And that's a hugely important point. These are these are created by people. And so the design matters. All right. Well, this seems like a good time to wrap up with the final comment for everyone. I know we've talked about areas where we need more research, but as kind of a closing comments, we want to go around, I'd love to hear you speak to either what you think is an area where we desperately need more research when it comes to the future of college admissions, or if you wanted to highlight a policy or a practice that you think is going to be really crucial to have colleges and state support in the coming years to advance these goals diversity and equity and inclusion on college campuses. Let's go to alphabetical order. I'll start with you. Mitch.

MITCHELL J. CHANG: Oh, thank you. I was hoping it would be a reverse order, but. But since we've already touched upon this, let me start with my, my biggest concern. And that is that we will lean more into colorblind solutions or approaches. And as already noted by Cara and Kelly, that the central problem with these approaches is to address that these racial disparities in educational access and opportunity is that we are invariably we invariably end up seeing inequality through a perspective that continues to privilege whiteness. In other words, we end up upholding an understanding of racial inequality through a white gaze. That's like trying to address my my poverty by understanding economic disadvantage through the perspective of the wealthiest quartile of our nation's population. I mean, this approach simply will not capture the full spectrum of issues and that experiences and even with goodwill results and misguided solutions, we know already know this because we tried it and went down that road. And historically, those subsequent solutions end up blaming the victims and attributing their condition to deficits in their culture, character and upbringing. Colorblind solutions will always miss the mark, and history tells us that those solutions make the problem worse rather than better.

KATHARINE MEYER: So I think. I think I've got an alphabet, right.

CARA MCCLELLAN: So I want to echo Mitch's point, which I think is really important. And maybe relatedly, you know, I think the need for disaggregated and intersectional data is critical in the college admissions process. I think that holistic admissions, although I would be the first to say that the way many universities are doing admissions currently is not perfect. I do think one of the benefits of holistic admissions is the ability to be intersectional in our thinking and to create diversity within diversity on campus and that that is incredibly important, but that we need to have data and rigorous data and disaggregated data to really look at the impact of different policies on different intersections of identity. One of the things that was most compelling to me during the Harvard trial, and I should say that I represented students and alumni at Harvard in support of affirmative action during my time at the NAACP Legal Defense Fund, who represented 25 groups of students and alumni in that case. And students testified repeatedly about how diversity had benefited them educationally, but in particular about how diversity within diversity matters. And we heard testimony from students who talked about how having diversity within the Asian-American community was important to them as well, and could both combat stereotyping but also combat tokenism on campus. And this is true for African-American students, for Latina students. But I think it's it's really important that we have disaggregated data and then we're able to continue to consider all different aspects of a student's identity. And I think part of why this testimony was so impactful was because it showed in particular that the students who did testify during trial, who were Asian-American, talked about how important their identity was to them and in their application process and how race conscious admissions benefited them in the admissions process, but also as students on campus.

KATHARINE MEYER: Alright Kelly is going to have our last say.

KELLY E. SLAY: I also want to echo the importance of disaggregated data. Earlier this year, James Murphy and education reform now coordinated a campaign to raise awareness around the need for the Department of Education to expand its collection of admissions data and to desegregate by race and ethnicity for college applicants and admitted students. So right now, when we look at IPS data, we know who was enrolled, but we also need to know who applies and who was admitted. I think that goes a long way in helping us to address potential and inequities inequalities, blindspots in in the event that affirmative action is banned, even if it's not been, we still need that information for many the reasons that mentioned care have already mentioned. So that is really important. The other thing that I want to say is that a lot of the discourse around affirmative action and college admissions focuses on selective institutions. And that is in part because, you know, the history of holistic review, the connection between the 23 cases and holistic review processes at our more selective institutions. The reality, however, as we said earlier, is that the majority of students get into the majority of institutions that they they apply to. So as we start to think about how to reimagine the future of college admissions, I also want us to begin to think about higher education as a whole. How can we shift and invest more resources into our community colleges, into our regional institutions, and to other campuses that have a heavy lift? I mean, they educate the largest share of students and they often educate students who come having experienced inequities in the K-12 education system. And so I want to say began to think about those institutions that are so vital to the higher education landscape and to the future of of our, you know, education system and our country. So thinking about the implications of affirmative action and the implications of college admissions as more than the set of institutions that we typically choose to focus on. Well, I cannot think of a better way to end our discussion than with that call for all of us. Thank you all so much. Thank you to our viewers for joining. But thank you so much, Kelly. Cara, and Mitch for joining us today, as well as Catalina Navarro and our I.T. team and also with Gelman, our spring intern who helped make this event possible. If you'd like to attend more Brookings events, we have them almost every day. There's an event tab at the top of the page that you're feeling that's on that you can subscribe to for more information on this recording will be available immediately following the event. Thank you all again so much for joining us.