



SCHELL BRAY PLLC
ATTORNEYS AND COUNSELORS AT LAW

Racial Equity Update: How Recent Judicial and Legislative Developments May Impact Your Nonprofit's Mission

Ed Chaney

What's Going On?

SCOTUS rules against affirmative action in college admissions

Colleges and universities can no longer consider race in their admissions processes after the US Supreme Court ruled against affirmative action, overturning decades of precedent that has benefitted Black and Latino students.

Majority

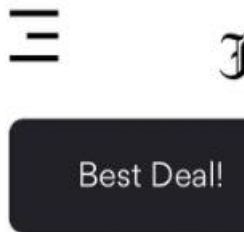


Roberts Thomas Alito Gorsuch Kavanaugh Barrett

Dissenting



Sotomayor Kagan Jackson



Dangerous Dw

Source: US Supreme Court, Students for Fair Admissions, Inc. v. President and
Graphic: Annette Choi, CNN

BREAKING | Appeals court pauses Atlanta VC fund grant for Black women

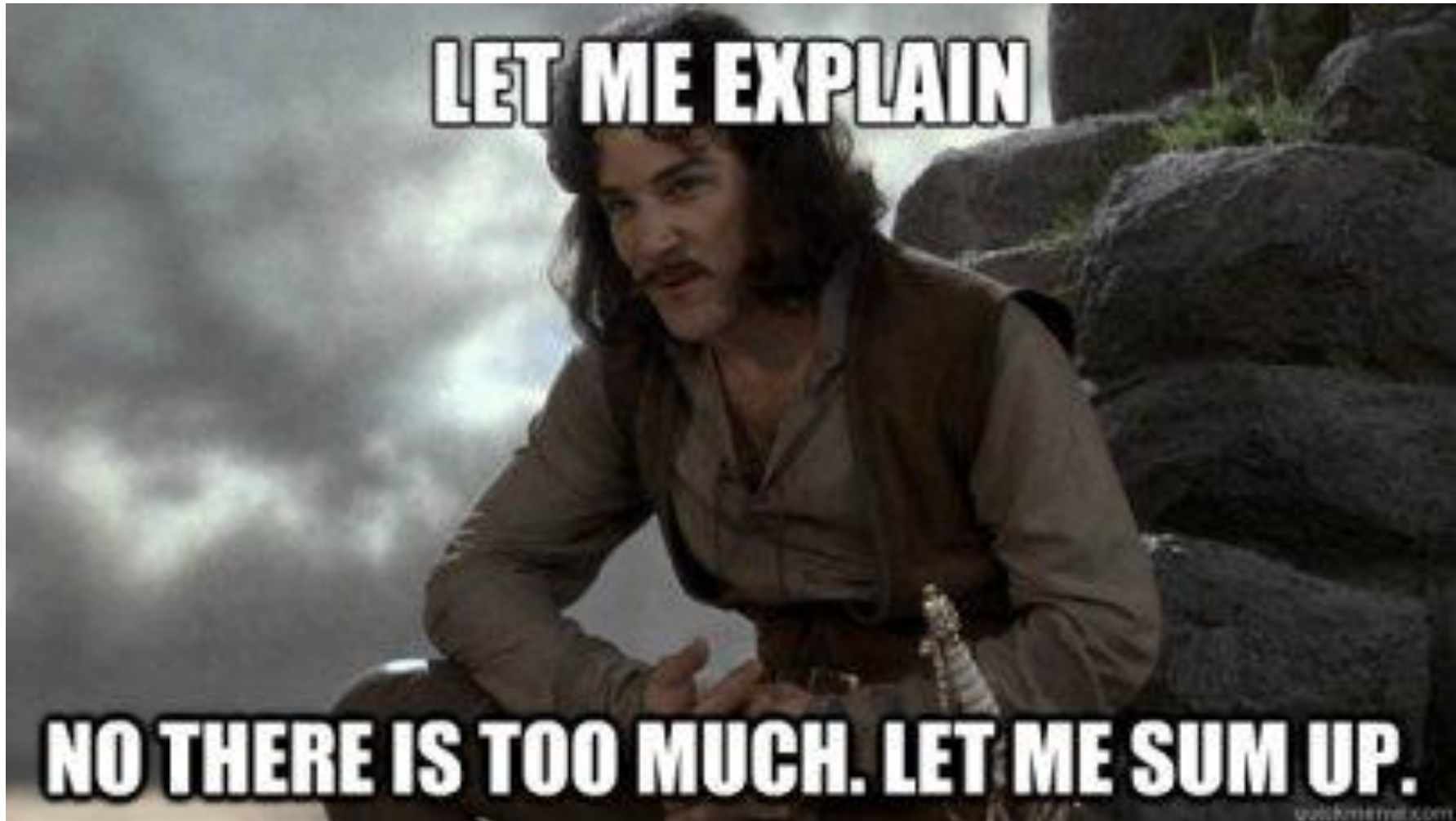
Conservative group sued the Fearless Fund, alleging racial discrimination for helping Black female founders

BUSINESS

Progressive insurance sued for 'patently unlawful' racism for offering \$25K grants only to black-owned businesses

Hello Alice named in lawsuit claiming grant program racially discriminates against non-Black business owners

What's Going On?



Anti-Discrimination General Framework

- I. US Constitution
- II. Title VI and Federal Funding
- III. Other Federal Laws
 - i. Employment
 - ii. Housing
 - iii. Public Accommodations
 - iv. Contracting
- IV. State Laws

SCOTUS

Students for Fair Admissions v Harvard & UNC

- What it held:
 - Diversity in the classroom is no longer a compelling interest
 - Race can no longer be a factor in admissions
- Who it applies to:
 - Public education institutions
 - Private education institutions that receive federal funds

SCOTUS

Students for Fair Admissions v Harvard & UNC

- It does not apply to private parties conducting activities using private funds
- Nor does it create any standards for such actors
- Nor does it address action designed to be a remedy for discrimination

Section 1981

Section 1981 generally prohibits discriminating in commercial contracting.

- Reconstruction era law
- Now being used by same actors who brought the UNC/Harvard case as a sword against racial equity programs
 - Fearless Fund
 - Law firm fellowship
 - Hello Alice

Section 1981 Test Cases



Nonprofit Concerns

To what extent can nonprofits consider race in:

- Grantmaking
- Scholarships
- Programs
- External DEI Advocacy
- Internal DEI Efforts

Unsettled Law

To what extent can Section 1981 be applied to nonprofits using private funds?

- Gift vs. Contract
- “But for” test
- Affirmative Action Plan
- Fundamental Freedom/First Amendment

Anti-DEI Laws

State laws limiting DEI

- Training/education by the state or state actors:
 - E.g. Senate Bill 364 / SL 2023-62
- Endorsing certain DEI positions
- Pension Plan defunding





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