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College and University Diversity Policies Have Come Under Attack

SUMMARY

In recent months, challenges to schools' programs and policies designed to foster diversity have become increasingly common. Anti-affirmative action advocates have stepped up their attacks on race- and gender-conscious programs as violating the Equal Protection Clause of the Constitution and/or Title VI and Title IX of the Civil Rights Act.

The past year has seen lawsuits challenging race-conscious admissions policies as unlawful, with one such case now on the eve of trial. School-sponsored organizations that consider race or gender in selecting their members have been subject to recent lawsuits, funded in many instances by political activists. A growing number of administrative complaints have also been filed with the Department of Education's Office for Civil Rights alleging programs unlawfully exclude males in violation of federal anti-discrimination laws. Common programs named in the (in many cases nearly identical) complaints include scholarships targeted at women, women's health centers, women's networking groups, women's studies departments, and women's science and engineering chapters. The complaints generally contend that because women are no longer underrepresented in colleges and university enrollment, programs that offer them opportunities are unnecessary and disadvantage men.

In light of these developments, we recommend that offices of general counsel carefully review their institutions' criteria related to admissions, scholarships, clubs, financial aid, and other programs vulnerable to attacks based on racial and gender preferences. For more information or for questions or assistance relating to this alert, please feel free to reach out to the authors or your regular Saul Ewing Arnstein & Lehr point of contact.

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