

# New Lawsuits Filed Over DEI Hiring Programs in the Wake of SCOTUS Harvard College Decision

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Authors: [Adam Primm](#)

As we speculated in our recent alert regarding the United States Supreme Court's decision in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College* ([link here](#)), American Alliance for Equal Rights filed two lawsuits in federal courts in Dallas and Miami alleging that law firm fellowships dedicated to minority applicants amount to unlawful race discrimination. The complaints, filed against Perkins Coie LLP and Morrison Foerster LLP, request the courts to declare the programs to be in violation of Section 1981 of Title 42 of the U.S. Code, which protects equal rights, and to bar the firms from considering race as a factor when selecting fellows.

These new cases follow many legal expert opinions that the *Harvard College* case, while only addressing college admissions, would lead to legal challenges regarding hiring. Just a few months later, those challenges have begun.

The fellowships at issue are similar and subject to similar claims. The case in Texas targets a fellowship program for law students that prohibits applicants that do not identify as students of color, members of the LGBTQ community, or people with disabilities. The Florida case targets a similar fellowship program that prohibits applicants that do not belong to a historically underrepresented group in the legal profession, including students of color, those who identify as LGBTQ, and those with disabilities.

In both cases, the plaintiffs argue that such selective criteria was always illegal under Section 1981 even before *Harvard College*, and that the June ruling simply reinforces the principle that such criteria to weed out applicants on the basis of race is illegal.

In the wake of *Harvard College*, the U.S. Equal Employment Opportunity Commission (EEOC) released a statement that the decision did not address employer efforts and such programs remained lawful. Regardless of the EEOC's assertion, these new complaints show that the legal analysis of *Harvard College's* impact was prophetic.

Employers should be aware that similar programs may be subject to additional scrutiny and potential ripe for challenges. While there are many hiring methods focused on enhancing diversity in the workplace that have been upheld by various federal courts, programs with such explicit prohibitions based on race will continue to garner attention in the wake of *Harvard College*.

**For more information, contact a member of Benesch's [Labor & Employment Practice Group](#).**

**[Adam Primm](#) at [aprimm@beneschlaw.com](mailto:aprimm@beneschlaw.com) or 216.363.4451.**