

HOW FOUNDATIONS ARE RESPONDING TO THE U.S. SUPREME COURT AFFIRMATIVE ACTION RULINGS



CEP Research Snapshots are brief, data-informed research publications designed to answer timely, specific questions that are relevant to funders. This is the first in the series.

KEY FINDINGS

- 1 More than half of foundations surveyed have had, or are planning to have, internal discussions about the implications of the U.S. Supreme Court rulings on their work.
- 2 More than one-third of foundations have had, or are planning to have, discussions with their grantees about the implications of the Supreme Court rulings on the foundation's work.
- 3 Approximately three out of 10 foundations have consulted legal counsel about the implications of the Supreme Court rulings on their work.
- 4 Discussions about the implications of the Supreme Court rulings are less likely to take place at foundations that are not led by a person of color, even accounting for whether the foundation is funding social justice work.
- 5 The majority of foundations are not making changes to their ongoing work as a result of internal discussions.

TOPIC OF INTEREST

In June 2023, the Supreme Court of the United States ruled against university policies that take race directly into account for admissions.¹ In the wake of the rulings, there was concern that the Supreme Court decisions could have a “chilling effect” on philanthropic efforts that support racial equity.² This CEP Research Snapshot sets out to determine whether foundations are walking away from — or continuing to support — these efforts. We find that most foundations are having discussions about

¹ Students for Fair Admissions v. Harvard and Students for Fair Admissions v. University of North Carolina.

² Abrams, Stacey and Julián Castro. “[It’s Open Season on Civil Rights. Philanthropy Must Not Retreat](#)” The Chronicle of Philanthropy, 2023.
Daniels, Alex. “[Grant Making Groups Stand Firm in Defense of Race-Based Philanthropy](#)” The Chronicle of Philanthropy, 2023.
Daniels, Cora. “[A Post-Affirmative Action World Demands More — Not Less — Funding for Black Leaders](#)” The Chronicle of Philanthropy, 2023.
Watkins, Akilah. “[Becoming Advocates for Equity](#)” Stanford Social Innovation Review, 2023.
Williams, Marlon. “[The Courage to Upload Affirmative Action: A Call for Philanthropy to Stay the Course](#)” Philanthropy New York, 2023.

the rulings, but few are making changes as a result of the discussions regarding the rulings. Our data were collected on 280 foundations between September and November 2023, and therefore represent a snapshot in time. They nonetheless suggest that the repercussions of the Court's decisions had not, at least at the time of the survey, significantly changed foundations' work.

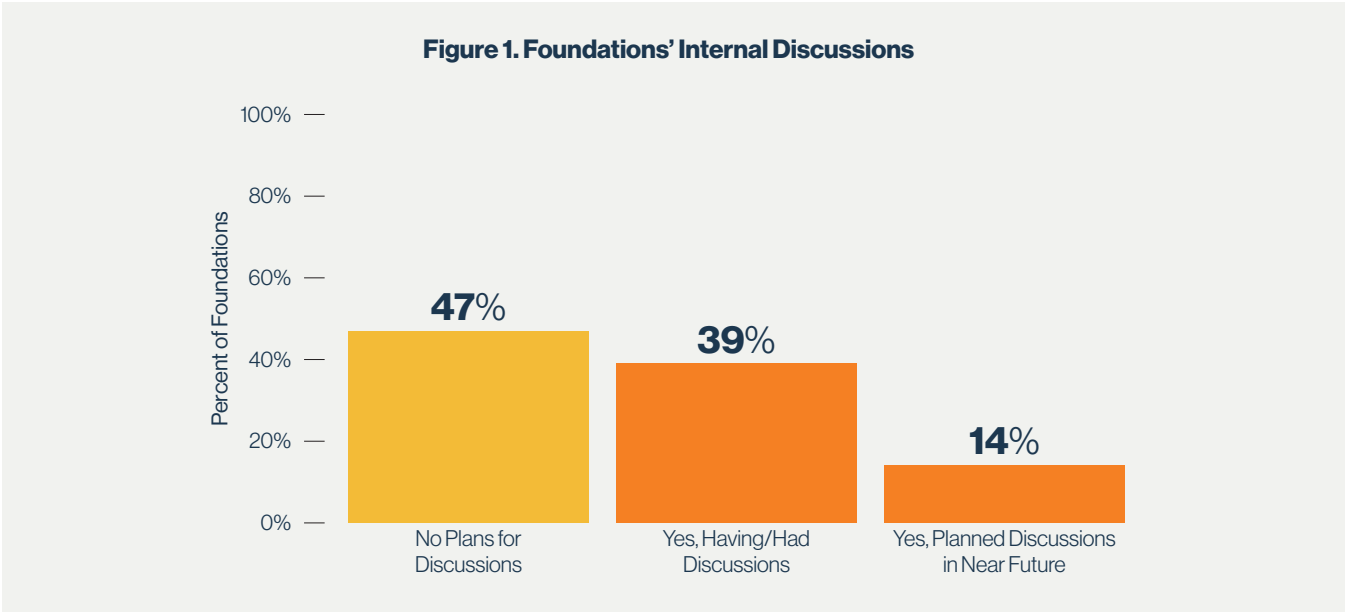
Our findings should be read with two important caveats in mind. The first is that the repercussions of the Supreme Court's decision are still playing out, and foundations' responses may change over time. The long-term effects of the decision on philanthropy will of course only be fully visible in grantmaking and strategy decisions that will play out over time. The second is that there may be some non-responder bias at play in our survey: it is possible that those that have shifted their grantmaking in response to the decision were less likely to respond.

RESULTS

KEY FINDING 1

More than half of foundations surveyed have had, or are planning to have, internal discussions about the implications of the U.S. Supreme Court rulings on their work.

More than half of all foundations surveyed — 53 percent — had or are planning to have internal discussions regarding the Supreme Court's affirmative action rulings, with about 39 percent already having had internal discussions and another 14 percent with internal discussions planned. (See Figure 1.)



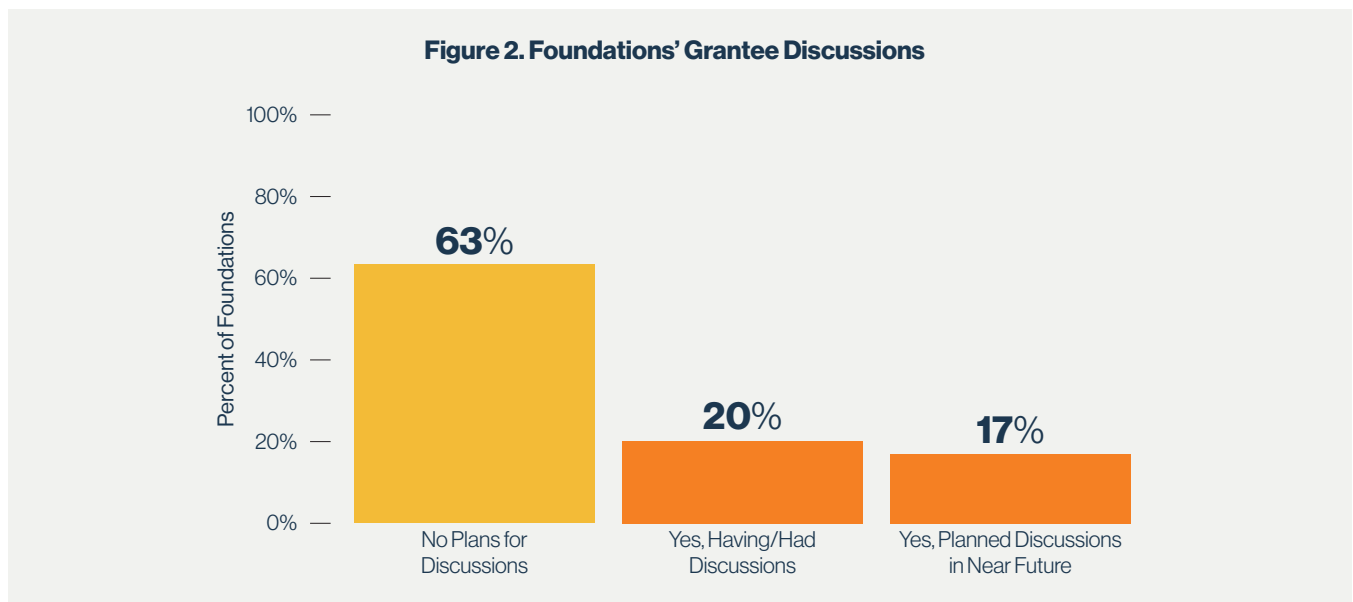
The quotations below illustrate how foundations are thinking about having these types of internal discussions with board members:

- ▶ “Our board has affirmed the importance of staying the course in our grantmaking strategy that sees racial equity as key to achieving health equity/justice.”
- ▶ “We definitely plan to discuss with our board of directors to learn their perspectives. We don’t believe this will impact our work. But we do want to understand if our nonprofit partners are struggling with this issue and how we can help.”

KEY FINDING 2

More than one-third of foundations have had, or are planning to have, discussions with their grantees about the implications of the Supreme Court rulings on the foundation’s work.

More than one-third of foundations had or are planning to have discussions with their grantees regarding the Supreme Court’s affirmative action rulings. In contrast to the number of internal discussions, only about 20 percent of foundations have already engaged in conversations with grantees about the implications of the rulings. Seventeen percent have plans to have such conversations in the near future. (See Figure 2.)



The quotations below illustrate how foundations are thinking about having these types of discussions with grantees:

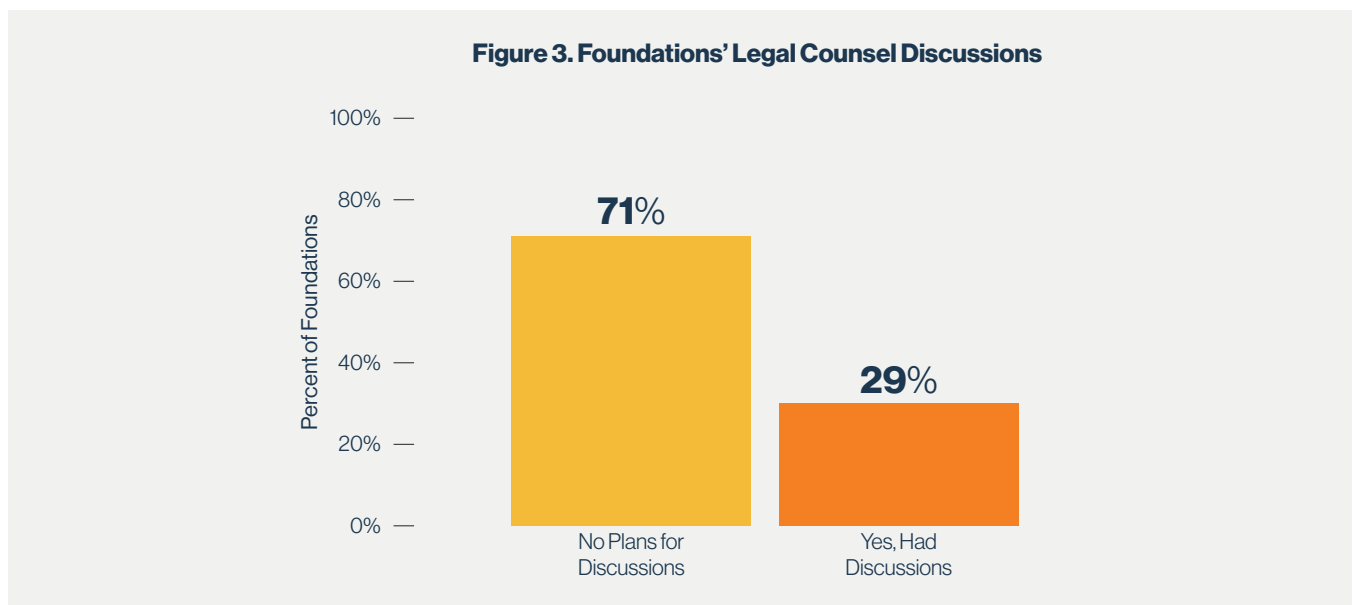
- ▶ “We will be working with our applicants and grantees to see how they are affected as an organization, understanding how they are addressing it to the extent affected; we will be discussing with organizations in general and other funders about their experience; we will be involved at some level in public policy work.”

- ▶ “No anticipated changes for us, but plan to inquire with grantees whether they are being impacted.”
- ▶ “The foundation has been speaking with grantees and general counsel to ensure that we are in compliance with the decision and also support programs that promote equity in the sciences.”

KEY FINDING 3

Approximately three out of 10 foundations have consulted legal counsel about the implications of the Supreme Court rulings on their work.

The majority of foundations have not discussed the Supreme Court’s recent affirmative action rulings with legal counsel to assess whether those rulings affect the foundation and its work. Only 29 percent of foundations have consulted legal counsel regarding the rulings. (See Figure 3.)



Examples of the types of conversations those foundations are having are illustrated in the quotations below:

- ▶ “Foundation legal counsel engaged external legal counsel to determine if we needed to change our practices. We will be sharing guidance with our staff and helping them to communicate our plans to our grantees.”
- ▶ “We have not consulted our legal counsel about our specific foundation actions, but we are following discussions by legal experts and lawsuits carefully. All of the work of the foundation centers around improving racial equity, in services, in policies, and the operational work of the foundation (vendors, investment managers,

“We are mindful of the risks the ruling poses related to some of our activities. We have not changed anything but will consult with counsel as needed going forward as we continue to implement our EDI action plan.”

– *Foundation Leader*

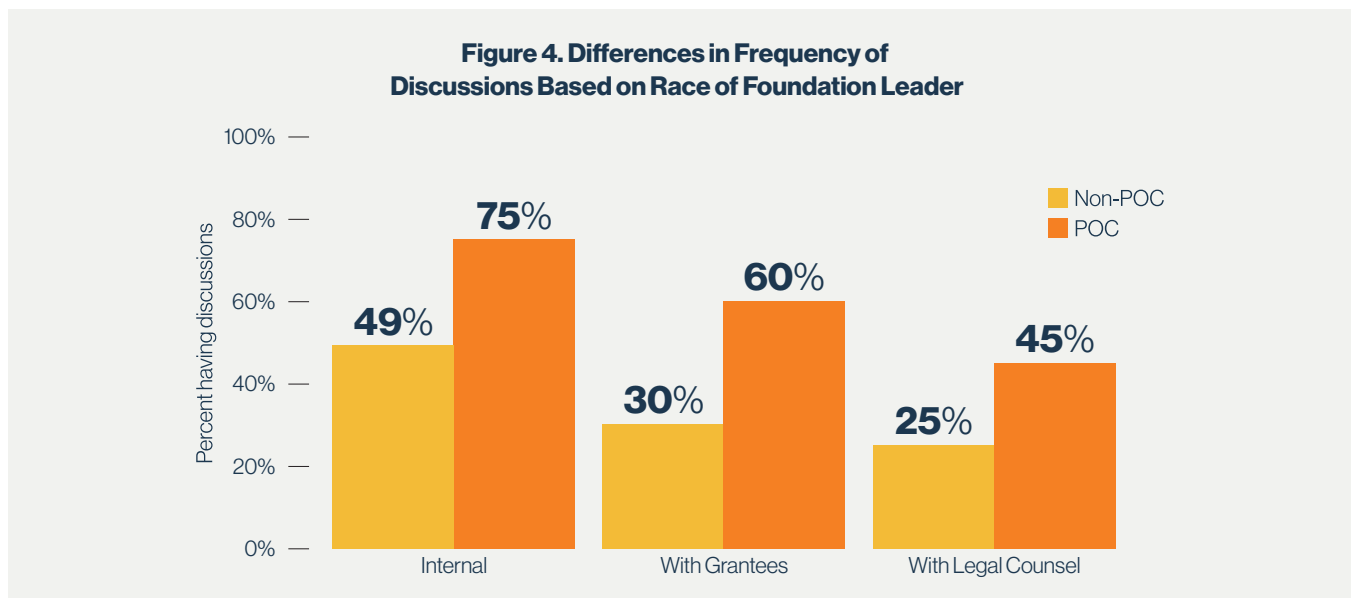
staff). We will not change the focus or nature of our goals or our work. We may need to make changes to the way that the work is described, but so far that has not been necessary. We will not succumb to the threats and harassment of the small minority that are seeking to dismantle the goals of affirmative action.”

- ▶ “We are mindful of the risks the ruling poses related to some of our activities. We have not changed anything but will consult with counsel as needed going forward as we continue to implement our EDI action plan.”
- ▶ “We have been told by legal counsel that this should not impact our funding of nonprofits.”

KEY FINDING 4

Discussions about the implications of the Supreme Court rulings are less likely to take place at foundations that are not led by a person of color, even accounting for whether the foundation is funding social justice work.

Foundations led by people of color (POC)³ are more likely to have had internal discussions, as well as discussions with grantees and discussions with legal counsel, about the implications of these rulings for their foundation’s work. Across all discussion types, non-POC foundation leaders report substantially lower rates of discussing the Court’s affirmative action rulings than their POC counterparts. (See Figure 4.)



These numbers reflect leaders of *all* foundations in the study, regardless of the focus of the foundation. The affirmative action rulings would clearly be especially relevant for foundations that fund social justice, and thus these foundations might feel a greater need to engage in discussions

³ We similarly looked exclusively at leaders identifying as Black (10.9 percent), and results are substantively the same as those reported for POC; we focus on POC identification, as there are approximately double the number of people, thus offering a more stable estimate.

about the rulings than foundations that do not fund social justice efforts. Importantly, across foundations that fund social justice *and* those that do not, the same pattern holds. Foundations led by a person of color are more likely to have had discussions about the implications of these rulings.⁴ (See Figures 5, 6, and 7.) Remarkably, discussions with grantees (see Figure 6) are *less prevalent* among foundations that explicitly fund social justice efforts but are led by non-POC leaders (38 percent) than among foundations that do not fund social justice but are led by a person of color (46 percent).⁵

Figure 5. Foundation Discussions With Internal Stakeholders by Race and Social Justice Funding Status

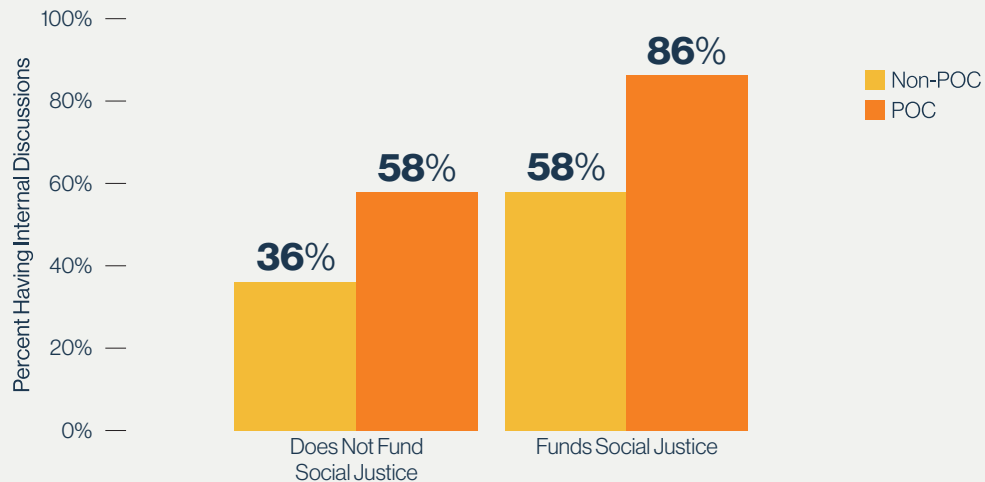
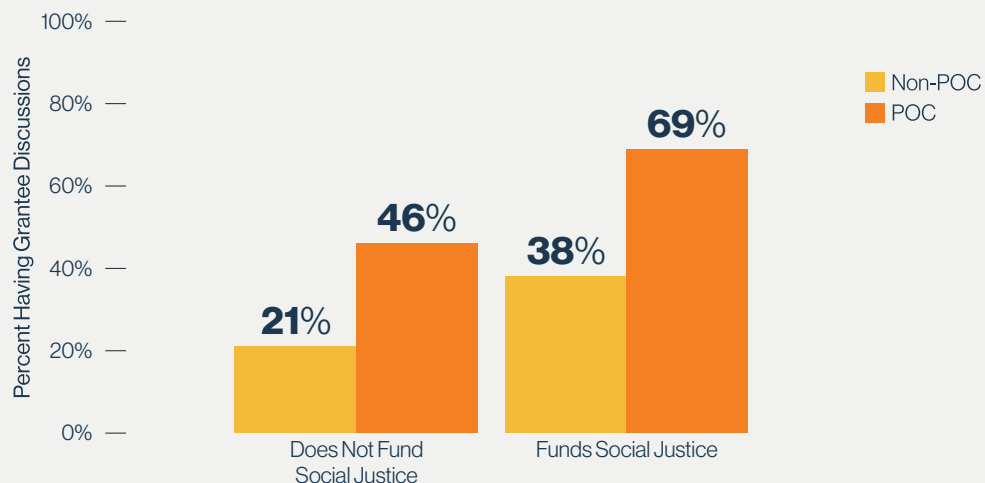


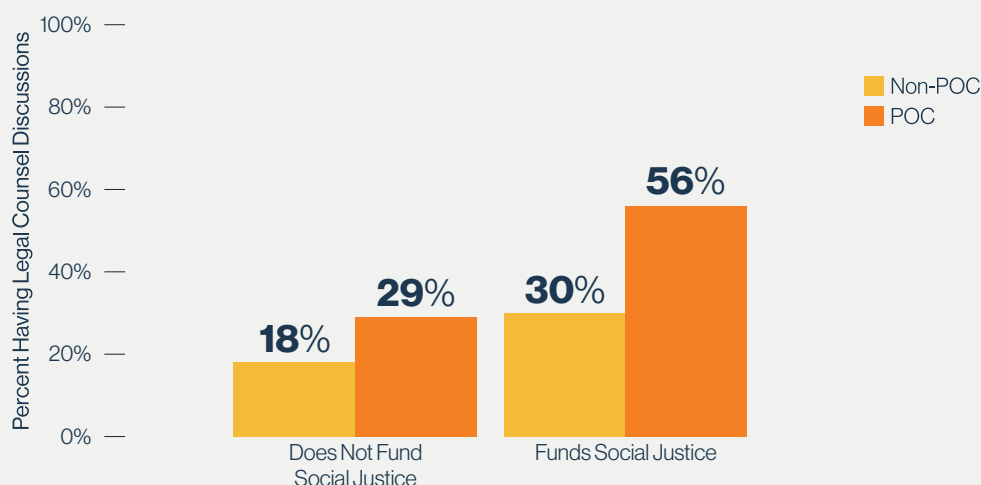
Figure 6. Foundation Discussions With Grantees by Race and Social Justice Funding Status



⁴ Logistic regression analysis with POC and having/planning to have internal discussions ($p < 0.001$), POC and having/planning to have grantee discussions ($p < 0.001$), and POC and having sought legal counsel ($p = 0.0032$), all controlling for whether the foundation funds social justice.

⁵ For the other two discussion types, the numbers are effectively equal between non-POC leaders of foundations funding social justice and leaders of color of foundations that do not fund social justice.

Figure 7. Foundation Discussions With Legal Counsel by Race and Social Justice Funding Status



One foundation leader who identifies as a person of color explained how the rulings spurred discussion and learning within the foundation:

- ▶ “Race remains one of the most defining issues in this country that we’ve yet to get right, and turning away from it at this moment would be a wrong decision. We want to lean into the discomfort, we want to lean into understanding the histories and structures of racism, and for us as a foundation, and for me as CEO, I feel it’s my charge to continue on that path and not stop, and definitely not go backwards.”

KEY FINDING 5

The majority of foundations are not making changes to their ongoing work as a result of internal discussions.

Of the foundations most engaged with the issue — those 150 foundations having internal discussions about the rulings — more than three-quarters are staying the course and not changing their actions as a result of those conversations. Among foundations that either had or planned to have internal discussions, only about a quarter indicated that they would make any changes to their ongoing work.

Many respondents indicated that their decision not to make changes came after reviewing the legal rulings and moving forward with the understanding that the rulings affect the higher education admissions process and not directly the work of the foundation:

- ▶ “Thus far, the Supreme Court’s ruling appears (per legal counsel) to largely affect federally supported organizations. We are not federally supported and therefore are not currently changing practices.”

- ▶ “We have a large pool of scholarships we manage. We investigated what impact, if any, the ruling might have on those scholarships. At this time, we anticipate no changes necessary.”
- ▶ “We have discussed the ruling, and we’ve reviewed legal expertise on the topic as it may relate to an organization like ours (though we have not procured our own opinion, because we don’t think we have significant exposure at this time). We are keeping abreast of the jurisprudence as it develops, but we don’t think that it presents imminent need for change in our work.”

Among the foundations that had a conversation about the rulings, the foundations that did make changes mentioned two types of changes: removing language that could be construed as race specific⁶ and increasing support for programs that target specific racial communities.⁷ Examples from qualitative survey responses of foundations removing race-based language include:

- ▶ “We are still committed to our program vision in support of racial equity but may have to change how we discuss it, the language in our grant criteria, etc.”
- ▶ “We are researching resources for this topic now (from membership orgs we belong to) and believe it will affect our scholarship and tuition support programs the most. To date, we’ve had one instance where we had to change the language of the tuition assistance application due to the ruling.”

In contrast, others spoke to the race specific changes their foundations were making:

- ▶ “We are increasing our support of organizations lead by and serving people with lived experience in our foundation’s interest areas who are also BIPOC.”
- ▶ “Explicitly furthering our support of organizations engaging in racial justice work; committing more funds to this work; working with regional funders to develop a legal defense fund.”

Overall, our data show that foundations are generally staying the course in the wake of the Supreme Court decision on affirmative action, with a few exceptions, at least for now.

⁶ Three percent of foundations indicated making a change this way. It is worth noting that changes to “language” of grantmaking programs may result in different grantmaking decisions, applicants, and ultimately different recipients. However, the responding foundations only discussed the language choices and not other potential effects.

⁷ Six percent of foundations indicated making a change this way.

FOR MORE INFORMATION, CONTACT

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METHODOLOGY

For this CEP Research Snapshot report, the Center for Effective Philanthropy conducted a survey and a series of interviews. (See Table 1.)

Table 1. Survey and Interview Data Collection

Data Source	Timeframe	Number of Foundations
Survey of foundations	September – November 2023	280
Interviews with foundations	October 2023	17

Two hundred and eighty foundations responded to our survey fielded September through November 2023. The response rate was 34 percent.⁸ For demographic information about these foundations and the responding leaders, see Table 2.

Table 2. Survey Respondent Demographics

Race [multiple select] (n=280)	
White	74%
Black or African American	11%
Asian or Asian American	5%
Hispanic or Latina, Latino, or Latinx	5%
Prefer not to say [mutually exclusive]	4%
Multiracial or Multi-ethnic	3%
Native American, Native Alaskan, or Indigenous	1%
Person of Color (n=267)	
Yes	22%
No	78%
Gender (n=276)	
Woman	64%
Man	36%
LGBTQ+ Community Member (n=268)	
Yes	6%
No	94%

⁸ Survey was sent to 832 individuals, with a final sample of 829 (base) and a full/complete sample of 280.

Table 2. Survey Respondent Demographics (continued)

<i>Program Area of Funding [multiple select] (n=276)</i>	
Education	74%
Health	67%
Human services	67%
Arts, culture, and humanities	62%
Social justice	56%
Environment and animals	54%
Public, societal benefit	53%
Religion	22%
Other	21%
International/foreign affairs	9%
Mutual/membership benefit	8%

The unweighted quantitative survey data from foundation leaders were examined using descriptive statistics, chi-square analyses, and logistic regressions. An alpha level of 0.05 was used to determine statistical significance for all testing conducted for this research. Effect sizes were examined for all analyses. Small effects are reported only if, during statistical analyses, a trend of small effect sizes was found across several of the variables tested, or such effects result from analyses of demographic characteristics.

Out of 33 foundation leaders randomly selected to be interviewed, 17 foundation leaders agreed to be interviewed. For demographic information about the interviewed leaders, see Table 3.

Table 3. Interview Respondent Demographics

<i>Race [multiple-select] (n=17)</i>	
White	65%
Black or African American	18%
Asian or Asian American	12%
Hispanic or Latina, Latino, or Latinx	12%
<i>Person of Color (n=17)</i>	
Yes	35%
No	65%
<i>Gender (n=17)</i>	
Woman	59%
Man	41%

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