

United States Supreme Court Approves Race-Conscious Admissions Policy

June 23, 2016

In its second trip to the United States Supreme Court, the High Court ruled today in *Fisher v. University of Texas at Austin, et al.* No. 14-981 (June 23, 2016) that the University of Texas' ("UT") race-conscious admissions policy is constitutional. In the famed case, Abigail Fisher, a Caucasian female, alleged that the UT rejected her application in 2008 because she is white in violation of her rights under the 14th Amendment of the Constitution and federal civil rights statutes.

The UT argued that its admissions process supplemented a 1997 state law guaranteeing automatic admission for high school graduates in the top 10 percent of their classes to public universities in Texas. More specifically, the UT asserted that because the 1997 state law, on its own, failed to allow the University to meet its articulated diversity goals there was a need for an additional race-conscious admissions policy. The top 10 percent rule filled approximately 75 percent of available seats at UT. The remaining 25 percent of the incoming UT freshman class was filled by combining an "academic index" (GPA + SAT score) with a personal achievement index (one of the factors being race). Fisher argued, however, that UT's use of race as a criteria to fill any remaining spots was a violation of her rights.

In a prior trip to the Supreme Court in June 2013, the High Court held that the Court of Appeals had to apply "exacting scrutiny" to determine whether UT's policies are "narrowly tailored" to achieve diversity goals. The Fifth Circuit Court of Appeals later ruled that the practice was constitutional under a strict scrutiny analysis.

Taking the case for the second time, the High Court ruled that Fisher could not show that the race consideration actually played a large role in her denial to UT. Rather, the Supreme Court noted that the singular race factor that was included in the personal achievement index was a nominal reason she was not admitted. The primary reason she was not offered admission was because she was not in the top 10 percent of her high school class. Specifically, the Court ruled that "the race-conscious admissions program in use at the time of petitioner's application is lawful under the Equal Protection Clause" and that Fisher had "not shown by a preponderance of the evidence that she was denied equal treatment at the time her application was rejected." Further, the Court ruled that UT properly "articulated concrete and precise goals" in its admissions policies that mirrored the compelling interests required by the Court, including destruction of stereotypes and preparing students for a diverse workforce and society.

Justice Alito wrote a 50-page dissenting opinion, referring to the majority's analysis as "wrong."

In light of this opinion, institutions of higher education should continually be reviewing their admissions policies to ensure that they are articulating concrete and precise goals that line up to compelling interests that have previously been approved by the United States Supreme Court.