



BLACK MALE INITIATIVE CONVENING

on Fisher v. University of Texas

Hosted by The Kirwan Institute for the Study of Race and Ethnicity &
Todd Anthony Bell National Resource Center on the African American Male

At The Ohio State University
September 17, 2012

CHRONOLOGY OF KEY DATES RELEVANT TO Abigail Fisher v. University of Texas

1978 The *Bakke* decision

The United States Supreme Court decided *Bakke v. University of California*, with a splintered series of opinions that would cause confusion over the ensuing years about the actual holding in the case, but public university read the collection of opinions to authorize a *limited use of race* in college admissions.

There was no single majority opinion. Four of the justices contended that any racial quota system supported by government violated the Civil Rights Act of 1964. Justice Lewis F. Powell, Jr., agreed with that view, casting the deciding vote, and ordering the medical school to admit Bakke who had twice been rejected from UC's medical school.

However, Powell also wrote that it was the medical school's rigid use of *racial quotas*, rather than the consideration of applicants' race, that violated the equal protection clause of the Fourteenth Amendment. A separate group of four justices, whom Powell also joined, concluded that the use of race as one criterion in college admissions decisions was constitutionally permissible in pursuit of the compelling state interest in creating a diverse student body.



Kirwan Institute

Celebrating 10 years at The Ohio State University

kirwaninstitute.osu.edu



BLACK MALE INITIATIVE CONVENING

on Fisher v. University of Texas

Hosted by The Kirwan Institute for the Study of Race and Ethnicity &
Todd Anthony Bell National Resource Center on the African American Male

At The Ohio State University
September 17, 2012

1978-1996 The *Bakke* Era

Until 1996, under the authority of the Supreme Court's ruling in *Bakke v. University of California*, the University of Texas at Austin permitted its admissions officials to consider the race and ethnicity of applicants as one factor along with a host of others, including applicants' class rank, standardized test scores, and rigor of their high school curriculum. Quotas, or pre-set numerical averages were not allowed.

1996 The *Hopwood* decision.

In 1996, reacting to UT's plan to increase the numbers of underrepresented blacks and Latinos on its main flagship campus, a federal District Court in Texas struck down UT's race-conscious admissions criteria as unconstitutional, holding that, in fact, there was no controlling opinion in *Bakke*, and that student body diversity in education was *not* a compelling state interest. The Texas court banned use of race as a factor in admissions decisions of any undergraduate, graduate or professional school in the state.

After this decision, the numbers of minority students plummeted. In 1997 far fewer minorities *applied* to UT, and the enrollment of African American and Hispanic students decreased by one quarter. African American students dropped by almost 40% (309 to 190), Hispanic enrollment fell by 5% (935 to 892). White enrollment increased by 14% and Asian American jumped enrollment by 20%.



Kirwan Institute

Celebrating 10 years at The Ohio State University

kirwaninstitute.osu.edu



BLACK MALE INITIATIVE CONVENING

on *Fisher v. University of Texas*

Hosted by The Kirwan Institute for the Study of Race and Ethnicity &
Todd Anthony Bell National Resource Center on the African American Male

At The Ohio State University
September 17, 2012

1997 The Top Ten Percent Law is Passed

To stem these losses, the Texas state legislature acted in 1997 to create a new mechanism for its public universities to pursue student body diversity. The legislature passed the Top Ten Percent law. This law mandated that any Texas high school senior who graduated in the top ten percent of his or her class automatically be admitted to any Texas university to which they applied.

Minority student percentages at UT began to rise, *though they would never reach pre-Hopwood levels*, and the increases are partly explained by the fast growing minority student population in the state. During this period, African American students increased from 2.7% to 3.0%, and Hispanic students grew from 12.6% to 13.2%.

The Top Ten Percent law did not explicitly use racial terms to create this diversity, but all recognized that the law only worked to admit more underrepresented minorities *by capitalizing on the fact that the state's high schools remain highly segregated by race and ethnicity*.

2003 The *Grutter* and *Gratz* decisions.

Two suits brought against the University of Michigan (Bollinger was its President at the time), one against its undergraduate admissions program and the other against its law school admissions program, were decided by the U.S. Supreme Court in 2003.



Kirwan Institute

Celebrating 10 years at The Ohio State University

kirwaninstitute.osu.edu



BLACK MALE INITIATIVE CONVENING

on Fisher v. University of Texas

Hosted by The Kirwan Institute for the Study of Race and Ethnicity &
Todd Anthony Bell National Resource Center on the African American Male

At The Ohio State University
September 17, 2012

Justice Sandra O'Connor wrote for the Court, upholding student body diversity as a compelling state interest. But the Court stressed that any use of race had to be “narrow tailored” to achieve that compelling state interest and to seek to enroll a “critical mass” of minority students. In the view of a majority of the Justices, this meant that when admissions officers looked at an applicant’s race that had to be done in a “holistic review” of the applicant’s file, considering race as only one of a multiple of factors that might add to the diversity of the student body. No pre-set quotas or attempts to racially balance the inclusion of various racial or ethnic groups would be permitted. (For that reason, the undergraduate program was declared unconstitutional in the *Gratz* case, because minority applicants had been awarded a pre-set number of points for that status. By contrast, the law school admissions procedures were upheld because each applicant’s file was looked at holistically.)

Of significance was the dissenting opinion of Justice Kennedy, who agreed that student body diversity is a compelling state interest, but strongly disagreed that either the undergraduate or the law school admissions procedures were sufficiently narrowly tailored to pass constitutional review. Had Justice Kennedy been in the majority (the Court split 5 to 4) the law school’s procedures would have been struck down along with the undergraduate admission procedures.

After the decision in *Grutter*, UT commissioned 2 studies to see if it was enrolling a “critical mass” of underrepresented minorities. These studies



Kirwan Institute

Celebrating 10 years at The Ohio State University

kirwaninstitute.osu.edu



BLACK MALE INITIATIVE CONVENING

on Fisher v. University of Texas

Hosted by The Kirwan Institute for the Study of Race and Ethnicity &
Todd Anthony Bell National Resource Center on the African American Male

At The Ohio State University
September 17, 2012

found that 90% of smaller classes included only 1 or zero African American students and that 46% of smaller classes had either 1 or 0 Hispanics. UT also surveyed students concerning their impressions of the sufficiency of diversity on campus and in the classroom. Minority students reported feeling isolated and majority students reported feeling there was insufficient minority representation on campus for the full benefits of diversity to occur. In response, UT's Board of Regents approved the use of the race-conscious holistic review process sanctioned in *Grutter*, for applicants not admitted through Top Ten percent admissions. UT implemented this in 2004.

As a result, UT's current use of percent plan admissions procedures *supplemented by* holistic review has made it 6th in nation producing undergraduate degrees for minority groups. (Entering class in 2008 enrolled 335 African American students, double number in 1998 (165), enrolled 1,228 Hispanic student (1.5 times what was in 1998 (762), and 1,126 Asian American students (up 10% from 1998 numbers.) In 2004, without the *Grutter* process, UT under the percent plan enrolled only 275 African American students and 1,024 Hispanics.

2008

Abigail Fisher filed suit in Texas federal court after being denied admission to the undergraduate class.

2011

The Fifth Circuit Court of Appeals upheld UT's modified procedures.



Kirwan Institute

Celebrating 10 years at The Ohio State University

kirwaninstitute.osu.edu



BLACK MALE INITIATIVE CONVENING

on Fisher v. University of Texas

Hosted by The Kirwan Institute for the Study of Race and Ethnicity &
Todd Anthony Bell National Resource Center on the African American Male

At The Ohio State University
September 17, 2012

Fisher filed a petition with the U.S. Supreme Court.

2012

The U.S. Supreme Court agreed to hear the case. Oral arguments will be occur on October 10, 2012.



Kirwan Institute

Celebrating 10 years at The Ohio State University

kirwaninstitute.osu.edu