



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

Frequently Asked Questions *Fisher v. University of Texas at Austin*

What is being challenged in this case?

The University of Texas at Austin's (UT) admissions plan. Abigail Fisher, a white woman who applied and was denied admission to UT in 2008, is the plaintiff in this case. Fisher claims that UT's admissions policy, which considers the race of all applicants, violates her rights under the Equal Protection Clause of the Fourteenth Amendment.

What is the relevant historical background in Texas?

Texas has a long history of both de jure (in law) and de facto (in practice) segregation in education. UT was racially segregated from its founding in 1883 until the U.S. Supreme Court forced it to admit a black law student in 1950. Underrepresented minorities continue to compose a very small part of UT's student body, with African-American student enrollment at well under 5% of the freshman class throughout the '90s and early 2000s.

Despite this challenging history, UT has made diversity—racial and otherwise—a major institutional priority.

- Prior to 1996, the University employed an admissions policy that considered the applicant's race directly, and race was frequently a deciding factor.
- This practice ended in 1996 when a federal court declared UT's consideration of race unconstitutional in *Hopwood v. Texas*.
- UT responded by adopting a holistic admissions process that excluded race and considered instead such factors as socio-economic status, the language spoken at home, leadership qualities, and work experience. The University nonetheless experienced sharply declining enrollment among underrepresented minorities post-*Hopwood*.
- In response, the Texas legislature instituted a top 10% law, which admits all Texas high school seniors who rank in the top 10% of their class to UT. Thus, from 1998 to 2006, UT admitted roughly 80% of the incoming freshman class through the top 10% law, and the remaining 20% were admitted through the holistic procedures developed after *Hopwood*.
- In 2003, the U.S. Supreme Court decided *Grutter v. Bollinger*, which effectively overruled *Hopwood* and paved the way for UT once again to consider race in admissions. And, indeed, from 2006 to the present, UT has used applicants' race as part of a holistic



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admissions process designed to create a meaningfully diverse environment for all students at the University.

What is UT's current race-sensitive admissions plan?

UT employs a layered admissions system. The first part, known as the top 10% law, admits all Texas high school seniors who rank in the top 10% of their class to UT. In addition, UT calculates an "Academic Index (AI)" as well as a "Personal Achievement Index (PAI)." The AI is based on high school rank and standardized test scores, while the PAI is an amalgam of scored essays and other factors like socioeconomic status, non-English languages spoken at home, and race. The AI and PAI are used to evaluate students not admitted under the top 10% program.

To reiterate, there are two basic categories of undergraduate applicants at UT: Texas high school seniors in the top 10% of their graduating class, whom UT must admit by law, and everybody else. Those not admitted under the top 10% plan are evaluated exclusively by the AI and PAI.

What role does race play in UT's admissions process?

It is crucial not to overstate the importance of race in UT's admissions process. Race is only considered in the PAI, which is itself composed of two essays and a Personal Achievement Score (PAS). The essays are scored by trained, race-blind judges, and the PAS is composed of six factors (e.g., work experience, community service, etc.), each of which bears equal weight. One of the six factors is "special circumstances," which is further decomposed into seven attributes, one of which is race. Thus, as UT puts the matter in its Brief:

Race is one of seven components of a single factor in the PAS score, which comprises one third of the PAI, which is one of two numerical values (PAI and AI) that places a student on the admissions grid, from which students are admitted race-blind in groups. **In other words, race is "a factor of a factor of a factor of a factor" in UT's holistic review.**

Race does increase the likelihood that an underrepresented minority applicant will be admitted to the University. But, placing the use of race in its proper context, there are many, many factors that admissions officers consider when evaluating an applicant. For any given applicant, race may matter, or it may make no different whatsoever—even for minority applicants.



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How is the Court likely to rule?

The Court has at least three basic options:

- First, it may find that UT's admissions plan is constitutional under the precedent set in *Grutter*.
- Second, it may find that the plan is unconstitutional under *Grutter's* standard—and thus narrow the scope of permissible race-conscious admissions plans even further.
- Third, it may reverse course and overrule *Grutter*, effectively banning the use of race in higher education admissions.

Justice Elena Kagan has recused herself from the case, leaving only eight Justices to decide the merits. If the Court splits equally on the outcome (4-4), then the lower court ruling stands and Fisher's challenge to UT's admissions plan fails.

How would the ruling affect private colleges and universities?

Because nearly all private institutions of higher education accept federal funding, they are bound by Title VI and the Supreme Court's precedent on racial discrimination. In other words, whatever the Court decides in this case will apply with equal force to almost all private colleges and universities.

What options would remain if UT loses?

Race-neutral alternatives to affirmative action would still be available:

- Percentage plans, like UT's own top 10% system, would be permissible. These plans are workable (though far from ideal) for public flagships like UT, which draw the majority of their students from the state in which the flagship sits, but make little sense for institutions that draw their applicant base from many states.
- Admissions programs that focus on the non-race criteria UT already uses, such as leadership potential, work experience, extracurricular activities, and socio-economic status (which is highly correlated with race), would presumably be permissible.



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