

Research paper on fisher v. the university of texas: affirmative action in higher...

[Law](#), [Criminal Justice](#)



The Fisher v. University of Texas case is based on the issue of higher learning institution's use of race as one of the criteria for student admission. In the mid 1990s, the University of Texas (UT) was banned from using race as an admission criterion by a court circuit. After that, the University of Texas initiated two methods; one based on a socio-economic affirmative action program, and a program whereby the top 10% of students from all high schools in Texas would be admitted into the University of Texas automatically regardless of their scores in the standardized test. In 2003, the US Supreme Court declared the support of the use of race as one of the decisive factors in the Grutter v. Bollinger case decision. The decision of the Grutter case made Texas to revert to the use of race as one of the considerations in student admission in addition to the top-10-percent program and the socio-economic-affirmative program.

Abigail Fisher and Rachel Michalewicz filed a lawsuit against the University of Texas after admission rejection into the University in 2008. UT used the top-10-percent admission criterion as required by state law, after which the university used other holistic measures, which include race consideration. Fisher and Michalewicz's argued that UT's failure to admit them infringed their right to equity as American citizens, as stipulated by state law in the 14th Amendment. They also added that the race-based criterion favored the Hispanic and African American populace, which in turn denied higher education opportunities to the Asian-American and White populace. Fisher and Michalewicz's sentiments were based on the argument that the decision would distort ethnic and racial diversity therefore they sought the reversal of the approval of the use of race-based criteria as was accepted by the

Supreme Court in 2003. Fisher and Michalewicz referred to the Grutter case decision whereby Fisher and Michalewicz claimed that the race-based criterion was only to be opted as a last resort, and they pointed out that non-race-based criteria were used in the past and they still maintained diversity at institutions of higher learning. Burt Rein, an advocate who represented Fisher argued that the process of achieving diversity was not simple; hence, the means of achieving diversity needed scrutiny since diversity was essential in a learning institution. The Project for Fair Representation founded by anti-affirmative action supporter Edward Blum sought to challenge the illegal use of race in the determination of public policy hence, the Project decided to meet the legal costs of representing Fisher and Michalewicz's case. Blum said that UT already attains racial diversity; through the approach of the top -10-percent approach, therefore race should not be a determinant in student admission.

According to UT, the Fisher case's intention to review racial consideration was not worthy of the Supreme courts consideration, because of the special situation of UT, and due to the fact that only three states exercised the percentage program, namely the states of California, Florida, and Texas. The university further argued that Texas was the only state out of the three that employed the race consideration. UT's legal affairs Vice president, Patti Ohlendorf commented that, the university's failure to achieve full diversity led to the institutions decision to opt for the race-based approach. The Texas Solicitor General, James Ho, who represented UT, claimed that Fisher and Michalewicz's motives were evident in their argument whereby they stated that, a university was not required in the determination of all possible race-

neutral approaches. James Ho further denied Fisher and Michalewicz's claim that in the Grutter v. Bollinger case, it was decided that the race-based approach be used as the last resort. UT also later added that Fisher had no right of being in court since regardless of the race-based criterion she would not get admission to UT since she had already graduated from the Louisiana University. Eastland reported that Justice Sarah O'Connor stated that a university could consider race as an additional consideration, but not use race as the main basis.

A research by Century Foundation in 2004 revealed that the use of the socio-economic-affirmative program produced similar results in comparison to the race-criterion when an assessment was done on 146 of the most selective institutions. The University of Colorado, did a study in 2010, that simulated socio-economic-affirmative program at Boulder, and found out that the program not only made socio-economic improvement, but it also ensured increased racial diversity compared to the use of the race-criterion method. Kahlenberg predicted that a court decision against UT would expose universities that had not weighed the options of the race-based affirmation, to vulnerability, and the decision would lead to the questioning of the Grutter v. Bollinger case decision. The use of race-based admission criterion was found to be unconstitutional in the Hopwood v. Texas case, whereby Hopwood pointed out that achieving school diversity, should not go against government interest. UT stopped the race-based admission approach and implemented the Top-10 Percent admission criteria, which later resulted in the drop in minority student's enrollment.

Justice Anthony Kennedy proposed the use of race-neutral alternatives in the

Grutter v. Bollinger case. The details of the Grutter v. Bollinger case are similar to Fisher v. Texas case, which is one of the reasons the case has generated a lot of anticipation. In a different 2007 case that involved race integration in K-12 schools, Kennedy stated that schools should consider the race-based method as a last resort. Smith reports that Fisher and Michalewicz's lost when they presented their case to a district court in 2009, since the court made decision that the University was within the limits of the constitution as was decided in the Grutter v. Bollinger case whereby race was considered as key to a comprehensive approach of selecting candidates. Smith also adds that the Fisher v. University of Texas case has drawn the attention of the legal community to an extent that the American government released an Amicus-brief, which supports the University of Texas' point of view. The Amicus-brief dated 03/12/2010 stated the importance of racial diversity in the educational system, which posed the need for higher learning institutions to use race-based admission methods if it was the institutions interest to diversify since it was also a compelling state interest.

The NAACP Legal Defense and Educational Fund is among several other groups that are in support of UT's stand, they are afraid that the High court, which they claim constitutes of a conservative majority, may limit or turn down affirmative action. Debo Adegbile, who is NAACP's acting president, commented that the court's decision over the Fisher case would affect minorities' access to not just public universities, but all higher learning institutions. On the other hand, several groups are against the use of the race-based selection method, an example is the Conservative Pacific Legal Foundation (CPLF). CPLF member Joshua Thompson argued that racial

diversity in learning institutions did not guarantee diversity in perspective or experience, and stressed that it was wrong to address people based on their races because it led to stereotyping. Gail Heriot, who is a member of the US Commission on Civil Rights, and a professor at the University of San Diego commented that the race-based criterion did the minorities a disservice because there were fewer African-American professionals, a situation that would have been different if race neutral methods were used. In a different perspective, Sander et al. recommended that the race-based criterion be maintained, but it should be reformed so that it accommodates a limiting capacity with reference to race and added learning the institutions that decided to use the race-based criterion should exercise transparency. I feel that the above-mentioned cases are the indication of the limited capacity in higher learning institutions, which has led to the denial of deserving citizens the opportunity to access education at America's higher learning institutions. The race-based criterion attempts to accommodate the minority populace, since they would have lower chance of getting admission, if a random approach is used in admission. On the other hand, if the court rules in favor of Fisher, this would possibly cause discomfort among the minority populace. Therefore, the government should come up with innovative ways of ensuring that no citizen lacks the opportunity of accessing quality education through the expansion of higher education facilities to meet the demands of the increasing population.

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