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Fisher v. UT Austin - Contextualized Brief

Lauren H. Sobotka
Gettysburg College

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Fisher v. UT Austin - Contextualized Brief

Abstract

Contextualization of the 2013 Supreme Court case, *Fisher v. University of Texas at Austin*, in which Abigail Fisher was denied admission. This paper also analyzes past Court cases dealing with affirmative action in the admissions process.

Keywords

court case, affirmative action, Equal Protection Clause, 14th Amendment, Fourteenth Amendment

Disciplines

Fourteenth Amendment | Law | Law and Race | Race and Ethnicity

Comments

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***Fisher v. UT Austin* – Contextualized Brief**

By: Lauren Sobotka

Affirmative action has long been at the heart of a heated debate involving racial equality and the measures to which the country should go to achieve such status. Moreover, the Supreme Court has consequently been tasked with formulating landmark decisions in a number of noteworthy affirmative action suits. Specifically, in 2003 the Court ruled in a pair of Michigan cases, *Gratz v. Bollinger* and *Grutter v. Bollinger*, on the extent to which affirmative action could determine acceptance into undergraduate and law school institutions, respectively. Following these decisions, affirmative action was again tested in *Fisher v. University of Texas at Austin* in 2008. Like *Gratz* and *Grutter*, Ms. Fisher, an 18 year-old white petitioner, filed suit claiming that using race as a factor in the admissions process violated the Equal Protection Clause of the Fourteenth Amendment. The decisions in these cases have altered the legal world's interpretation of affirmative action and will undoubtedly shape future decisions on achieving race-based equality in undergraduate and graduate institutions.

In an attempt to promote ethnic diversity, the Texas State Legislature passed a 1997 law guaranteeing the admission of all Texas high school students within the top 10% of their graduating class to any public university within the state.ⁱ The University of Texas at Austin, a prestigious public university, later argued that such regulations made it difficult to accept students outside the percentage who were otherwise qualified.ⁱⁱ Eventually, in 2009, the rule was specially altered for UT-Austin to guarantee admission to the top 8% of high school seniors. Such a measure was undertaken because as of 2008, 81% of incoming freshman at UT-Austin were admitted under the top 10 percent rule.ⁱⁱⁱ Consequently, the legislature capped the number

of students allowed admittance at 75 percent of the incoming class for UT-Austin specifically.^{iv} Although numbers vary over the years, on average, UT-Austin receives 16,000 applications from students who do not qualify for automatic admission.^v While the overall acceptance rate for the university is about 40%, this figure is misleading because it includes applicants who fall into the top 10 percent category.^{vi} During the year Fisher applied, just over 5,000 students were given automatic admits, while 2,660 students outside this realm garnered admittance.^{vii} Evidently, students within the top ten percent rule should not be factored into the admittance rate. When closely examined, the University reserves less than 3,000 seats for other applicants in a pool of 16,000 applicants.^{viii}

Abigail Fisher, whose father and sister attended UT-Austin, had long dreamed about being a Longhorn.^{ix} While attending Stephen F. Austin High School in Sugarland, Texas, she received a 3.59 GPA on a 4.0 scale.^x Such a mark put her ranked 82nd in the graduating senior class of 674, which is the equivalent to the top 12% of her class.^{xi} While this figure is slightly outside the automatic admittance rule, Fisher believed her grades, accompanied with her strong extracurricular activities provided a holistic application superior enough to meet university standards. Because UT-Austin did not consider writing, her 1180 on the SAT was measured on a 1600 scale.^{xii} Furthermore, Fisher was involved in her school's orchestra, math competitions, and a frequent volunteer for Habitat for Humanity. It is important to bear in mind that only one African American and four Hispanic applicants gained admission with equal or lower scores than Fisher.^{xiii} Accordingly, Court documents show that 42 white applicants were granted acceptance despite lower test scores than Fisher.^{xiv} More noteworthy in regards to this case was the fact that 168 African American and Hispanic candidates with *higher* scores than Fisher were denied

admission into UT-Austin's Class of 2012.¹ Despite her denied application, Fisher was offered admission into another University of Texas system school with the ability to transfer to UT-Austin sophomore year if she maintained a 3.2 GPA.^{xv} Although a seemingly fair offer on the surface, Fisher rejected, opting instead to enroll at her safety school, Louisiana State University.² Fisher's claim might have been more warranted had her scores not been as average at a competitive university. According to UT Austin's archived entering class profiles, only 1% of applicants who scored below a 1200 on their SAT were offered admission.^{xvi} On average, the majority of accepted applicants appear to have scored somewhere between 1500 and 2100.³

With the enactment of the Top Ten Percent Rule, it is evident that Texas universities were attempting to promote diversity throughout college campuses for a number of reasons. Diversity further enhances an individual's educational experience and thus benefits students, faculty, and society as a whole. Proponents of this opinion cited such in response to Fisher's claim, in addition to a promotion of cross-racial understanding. Following the rulings in *Gratz* and *Grutter* in 2003, race became a factor considered in the admission process for all applicants outside the top ten percent. The ethnic makeup of the university's freshman class to which Fisher applied, although more racially diverse than a number of private institutions, evidently still lacks a varied student body. Although one must bear in mind that such statistics can be a bit convoluted due to the fact that an applicant can indicate more than one race, for the most part, these figures are accurate in this analysis. The ethnic breakdown of the class of 2012 is as

¹ UT Austin's Class of 2012 was comprised of 89% Texas residents, with the other marginal percentage making up out of state applicants and foreign students. The gender makeup was 55% female and 45% male.

² Louisiana State University has the lowest percentage of African American students of all the state's public universities. In May of 2012, Fisher graduated from LSU and accepted a job offer as a financial analyst in Austin.

³ The breakdown on UT Austin's website further divides scores into varying ranges, of which 1500-1790 and 1800-2090 make up for the most of the entering class. 27% and 37% respectively, of the students in Fisher's freshman class scored within these ranges.

follows: 46% White, 24% Hispanic, 18% Asian, and 4% African American.^{4xvii} State demographics reflect a similar pattern, with whites comprising about 50% of the population.^{xviii} However, there is a disconnect between the percentage of minority groups in Texas and the percentage of those accepted into UT-Austin. As of 2013, 35% of the state's residents were Hispanics, with African Americans accounting for 12% of the population.^{xix} As previously mentioned, Fisher's entering class was 46% white, which is in close proximity to the 50% margin of state residents. Unfortunately, there is a larger margin between Hispanic and African American state residential numbers in comparison to UT-Austin's admitted students.⁵

As briefly mentioned above, the Supreme Court handed down landmark affirmative action decisions in 2003 after ruling on *Gratz v. Bollinger* and *Grutter v. Bollinger*. Both cases took place in Michigan, one involving the University of Michigan's undergraduate institution and the other the law school. After nearly five years of legal battle, Jennifer Gratz and Barbara Grutter each found themselves with differing opinions from the Court. Following denied admission to University of Michigan's Ann Arbor campus, Gratz sued, claiming the university used racially discriminatory policies in the admissions process.^{xx} Similarly, Grutter was denied admission to University of Michigan Law School and the cases were eventually paired together.^{xxi} Gratz was the daughter of a policeman and secretary, who came from a middle class family in the heart of a Detroit suburb.^{xxii} She excelled in math and science and was involved in countless extracurricular activities, which included: cheerleader, National Honor Society, class Vice President, baseball team statistician, and organizer for a senior-citizen prom and blood drives.^{xxiii} In a recent interview, Gratz noted that she remembered hearing that the University of

⁴ Other ethnicities that fell under 3% of the enrolled class were: American Indian, Foreign, Native Hawaiian/Pacific Islander, Multiracial, or unreported.

⁵ Clearly, the demographic makeup of Texas as a whole includes people from a variety of age groups, especially outside of the 18-22 undergraduate category. But it is noteworthy to include the 24% vs. 38% and 4% vs. 12% of Hispanic and African American accepted students versus such Texas residents.

Michigan treated people differently based on race, but she thought, "...there's no way that the University of Michigan, which surely teaches on their campus to treat people without regard to race, actually does just the opposite."^{xxiv} Despite a reputable application, Gratz was denied, while other less qualified non-white candidates were accepted. At the time, the University of Michigan used a program in which any African American, Hispanic, and Native American applicant received an automatic 20 points towards their acceptance.^{6xxv} Gratz eventually became the spokesperson and lead plaintiff in the lawsuit filed by the Center for Individual Rights. While appearing on "60 Minutes," she had an unaired conversation with the late Ed Bradley, which was striking enough to include:

"He said: 'Yesterday, I was on the University of Michigan's campus, and I met with a student who's graduating next week...He would describe his situation as being less than poor. He grew up in Detroit. He had five brothers and sisters, each from a different father. His mother was an addict. He worked all through high school. He doesn't remember what his ACT score was. He thinks he maybe had a 3.0 GPA. And yet now he's graduating Phi Beta Kappa from the University of Michigan and going on to law school. What would you say to that student?'

"And I looked at him, and said, 'Well, you never mentioned his race, so what does that matter?'"^{xxvi}

Such an encounter speaks volumes to the underlying stereotypes of racial minorities that still exist in society today. Without disclosing the student's race, Bradley assumed Gratz would be able to come to her own conclusion based on the circumstances surrounding this student's life. Gratz eventually won her case when the Court ruled the automatic points distribution was not narrowly tailored under the strict scrutiny test.^{xxvii} Grutter did not fare as well, however. The Law School used race as a factor under the first prong of the strict scrutiny test and such a

⁶ This number reflects one-fifth the total points needed to be admitted.

measure was not a violation of the Fourteenth Amendment because race was simply used as one factor in a holistic review.^{7 xxviii}

Fisher's 2008 suit marked the fourth time in a ten-year period that the Supreme Court has formulated an opinion on the constitutionality of race-conscious admission policies at public institutions.^{xxix} Prior to the Court's decision, many legal experts felt the only reason the Court would agree to hear such a case would be to reverse its ruling in *Grutter*. While the Court, in a 7-1 decision, affirmed the importance of promoting diversity in higher education, but punted the case back to the Fifth Circuit Court of Appeals for a correct analysis of the strict scrutiny test, specifically the standards of necessity and narrow tailoring.^{8 xxx} The implications for this case are a bit hazy in terms of future affirmative action cases and how this will effect admission guidelines. Hence, admission policies using race as a factor must demonstrate that their policies directly enable the university to achieve their diversity goals. Essentially, admissions policies must only use race when "necessary" to achieve a level of racial diversity. Such a measure begs the question of whether the Court will eventually overturn *Grutter* and strike down the constitutionality of using race as a factor in admission decisions.⁹ While Abigail Fisher may be remembered as simply a spoiled white girl who would not accept being denied from her top choice, the legacy of the *Fisher* case is likely to persist for years to come. The Court's decision, or lack thereof, signifies a shift in affirmative action policy by tightening the scope for which it operates. For now, it is clear that universities must implement narrowly tailored means for achieving racial diversity on their campuses.

⁷ The Strict Scrutiny Test, applied in Fisher's suit, is a three-pronged test, which includes: 1. Compelling governmental interest, 2. Narrowly tailored to achieve this goal, and 3. Least restrictive means in achieving this goal.

⁸ Justice Ginsburg dissented.

⁹ In November 2006, retired Justice O'Connor said, "Abolishing racial preferences was entirely within the right and privilege of voters."

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- ⁱ 570 U.S. ____ (2013).
- ⁱⁱ “Top Ten Percent Rule,” *The Texas Tribune* 2014. <http://www.texastribune.org/tribpedia/top-ten-percent-rule/about/>
- ⁱⁱⁱ Ibid
- ^{iv} ibid
- ^v “Student Profile- Enrolled Freshman Class of 2012,” *Statistical Handbook* at the University of Texas at Austin Office of Admissions. 19 Oct 2012. <http://www.utexas.edu/student/admissions/research/EnrolledFreshmenProfile-2012.pdf>
- ^{vi} “University of Texas at Austin,” *College Board*, <https://www.collegeboard.org/>
- ^{vii} “Student Profile- Enrolled Freshman Class of 2012.”
- ^{viii} Ibid.
- ^{ix} “Abigail Fisher, Drop your Admissions lawsuit against UT,” *The Dallas Morning News*. 20 July 2014 <http://www.dallasnews.com/latest-columns/20140720-abigail-fisher-drop-your-admissions-lawsuit-against-ut.ece>
- ^x 570 U.S. ____ (2013).
- ^{xi} Ibid.
- ^{xii} ibid.
- ^{xiii} “Abigail Fisher, Drop your Admissions lawsuit against UT.”
- ^{xiv} Ibid.
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- ^{xvi} “Student Profile-Enrolled Freshman Class of 2012.”
- ^{xvii} Ibid.
- ^{xviii} “Texas,” United States Census Bureau (2013).
- ^{xix} Ibid.
- ^{xx} 539 U.S. 244 (2003) *Gratz v. Bollinger*
- ^{xxi} 539 U.S. 306 (2003) *Grutter v. Bollinger*
- ^{xxii} 539 U.S. 244
- ^{xxiii} James Taranto, “The Woman who Fought Racial Preference.” *The Wall Street Journal* (2013) <http://online.wsj.com/articles>
- ^{xxiv} ibid.
- ^{xxv} 539 U.S. 244
- ^{xxvi} “The Woman who Fought Racial Preference.”
- ^{xxvii} 539 U.S. 244
- ^{xxviii} 539 U.S. 306
- ^{xxix} “After Fisher v. University of Texas: Implications for Education Research, Theory, and Practice.” *Harvard Educational Review* (2013) <http://hepg.org/her-home/issues/harvard-educational-review-volume-83-number-3/herarticle/implications-for-education-research,-theory,-and-p>
- ^{xxx} 570 U.S. ____ (2013).