



# Supreme Court Upholds University of Texas Race-Conscious Admissions Program

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In a long-awaited decision, the Supreme Court recently furnished a victory for affirmative action admissions programs. The 4-3 decision in *Fisher v. University of Texas at Austin*, written by Justice Kennedy, declared that the University of Texas at Austin's race-conscious admission program passes strict scrutiny.

By way of background, affirmative action programs are governed by the Supreme Court's precedent set forth in *Grutter v. Bollinger* and *Gratz v. Bollinger*. Together, these cases allow race-conscious admissions so long as the program is narrowly tailored to further a compelling interest in obtaining "the educational benefits that flow from a diverse student body." Moreover, the programs must not institute a quota for admitting non-Caucasian students, but they may consider race as just one factor of many in a student's application.

The recent decision marks one of several challenges to the University of Texas at Austin's (the "University") admissions practices. Abigail Fisher, the petitioner, originally brought a lawsuit against the University after she was denied admission in 2008. The Supreme Court first reviewed the University's "holistic" admissions program, described below, in *Fisher v. University of Texas at Austin* ("*Fisher I*") in 2013. The Court there held that affirmative action programs must withstand strict scrutiny, that the compelling interest must be "the educational benefits that flow from the student body diversity," and that no deference is afforded to universities in determining whether the program was narrowly tailored to meet the compelling interest. The Court in *Fisher I* did not strike down the University's program but instead stated that the Fifth Circuit analyzed the program under the inappropriate standard and remanded the case for further consideration in accordance with the Court's holding.

The University's current admissions program has two components. First, the "Top Ten Percent Plan" automatically grants admission to any high school student in Texas who graduated in the top ten percent of the class. No more than seventy-five percent of the incoming class, however, may be admitted through this plan, meaning that, in practice, it admits only those who graduated in the top seven or eight percent of their class.

The remaining twenty-five percent of the class is admitted based on the student's "Academic Index" ("AI"), her "Personal Achievement Index" ("PAI"), and her "Personal Achievement Score" ("PAS"). The AI represents a student's SAT score combined with her academic record in high school. The PAI is comprised of a "holistic review" of a student's application. This number, on a scale of one to six, includes the student's essays, leadership and work experience, extracurricular activities, community service, and the student's race. Finally, the PAS is determined after a "full-file review," where the reviewer analyzes the applicant's essays, reviews supplemental information, and "evaluates the applicant's potential contributions to the university's student body based on . . .

other ‘special circumstances,’” which includes, among other things, the student’s race.

In coming to its decision, the Court noted that because of this complex admissions process, the race is “but a ‘factor of a factor of a factor’ in the holistic-review calculus;” this consideration is “contextual and does not operate as a mechanical plus factor for underrepresented minorities.” Moreover, the Court rejected Ms. Fisher’s argument that the goals of maintaining a diverse student body could be accomplished by considering solely the student’s socioeconomic background. It noted that the University tried, and failed, to implement diversity through those means alone.

Finally, the Court also relied on a study in which the University analyzed whether a race-neutral system reached the goal of “providing the educational benefits of diversity.” Because of this study and a subsequent thirty-nine-page proposal stating that their program satisfied this goal, the Court held that “the University has provided . . . a ‘reasoned, principled explanation,’ for its decision to pursue these goals.”

Justices Alito, joined by Justice Thomas and Chief Justice Roberts, dissented vociferously, stating that the University’s program was “affirmative action gone berserk.” In his dissent, Justice Alito argued that the University had not met its burden set forth in *Fisher I*, and the program did not pass strict scrutiny because it “has still not identified with any degree of specificity the interests that its use of race and ethnicity is supposed to serve.”

The decision has engendered disparate public and political opinions. President Obama praised the Court’s decision, applauding the Court’s recognition that diversity is crucial in an educational environment. Conversely, opponents have condemned the decision and have pledged that their fight against affirmative action programs has not ended.

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