

## ***FISHER V. UNIVERSITY OF TEXAS AT AUSTIN***

### **Overview**

This fall, the U.S. Supreme Court will yet again review the constitutionality of UT Austin's undergraduate admissions policy, which considers race among many other factors in order to admit a student body that is both exceptionally academically qualified and broadly diverse.

The NAACP Legal Defense & Educational Fund, Inc. (LDF) has been involved in *Fisher* from the outset. On behalf of the UT Black Student Alliance, LDF presented oral argument in the court of appeals in support of the University's admissions policy. In August 2012, LDF filed a friend-of-the-court brief in the Supreme Court on BSA and Black-Ex Students of Texas's (BEST) behalf and will do so again in November 2015.

### **UT Austin's Compelling Interest in Diversity**

- Diversity in higher education provides students with the skills necessary to participate meaningfully in our nation's civic life and to flourish in our globalizing workplaces. It facilitates opportunities to interact, collaborate, and problem-solve with people from different backgrounds. **That is good for our young people, our communities, and our nation.**
- As Texas's flagship university, UT Austin provides a vital training ground for future political, civic, and business leaders of the state.
  - The Supreme Court has recognized that such pathways to leadership and opportunity must be visibly open to all communities in our increasingly diverse society.
  - Opening UT Austin's pathways to leadership is particularly critical for Black students who were officially excluded from the University for much of its history, and continue to be severely under-represented at UT Austin and in occupations that require a college degree, both in Texas and throughout the nation.
- In *Fisher II*, the Supreme Court will re-visit whether it is constitutional for UT officials to use their educational judgment in tailoring admissions policies to ensure that the university's student body is both exceptionally academically qualified and broadly diverse.
  - Abigail Fisher, the sole remaining plaintiff, challenges only her denial of admission to UT Austin in 2008.
  - But the goal of this lawsuit is much broader. Fisher seeks to eviscerate the Supreme Court's bedrock constitutional holding that the educational benefits of a diverse student body are a compelling interest that colleges and universities may pursue through narrowly-tailored, equal opportunity policies. This principle is well-settled, as reflected most notably in *Grutter v. Bollinger* (2003), *Regents of the University of California v. Bakke* (1978), *Parents Involved in Community Schools v. Seattle School District No. 1* (2007), and even most recently in *Fisher I* (2013).
  - The Supreme Court reiterated in *Fisher I* diversity is a compelling interest, but questioned whether UT's program was sufficiently narrowly-tailored to its diversity needs. The Court in *Fisher II* will now determine whether UT's program meets that standard.

### **UT Austin's Admissions Policy**

- Most UT Austin students of all races are admitted through the Top Ten Percent Plan.
  - Created by state law, the Top Ten Percent Plan requires UT Austin to admit all Texas residents who rank in the top ten percent of their high school class.

- In 2008, 81% of UT Austin’s incoming class was admitted through this plan. A subsequent provision capped Top Ten Percent Plan admissions to 75% of the class.
- For the remainder of the class, UT Austin undertakes a holistic, individualized review of applications, modeled after the University of Michigan Law School policy upheld in *Grutter*.
  - In addition to academic achievement, UT Austin’s policy considers many different criteria, such as essays, leadership qualities, extracurricular activities, awards, work experience, community service, family responsibilities, family and school socio-economic status, whether the applicant lives in a single-parent home, whether languages other than English are spoken at home, and, as of 2005, race.
  - No fixed points are automatically awarded to racial minorities; and UT Austin’s policy is sufficiently flexible to take into consideration the racial background of any applicant, including a white student, based on his or her unique background and experience.
- A Texas district court upheld UT Austin’s admissions policy, and a panel of the U.S. Court of Appeals for the Fifth Circuit upheld UT Austin’s admissions policy *twice*, concluding that it was fully consistent with *Grutter*.

### **UT Austin’s Admissions Policy Promotes the Educational Benefits of Diversity**

- Although the Top Ten Percent Plan achieves some measure of racial diversity — due to the high degree of racial segregation in high schools across Texas — it fails to produce sufficient diversity for UT-Austin to achieve the educational benefits that were endorsed in *Grutter*.
- The individualized admissions component meaningfully increases minority enrollment: 28% of Black students enrolled at UT-Austin from 2005-2008 were admitted at that stage of review.
- The individualized admissions component provides flexibility to consider applicants’ unique experiences and backgrounds and to admit students of all races who bring an array of talents and leadership skills that are essential to realizing the benefits of a student body that is not only racially diverse, but also diverse along all the qualities valued by UT Austin.
- Singling out race as the only aspect of a student’s background that may *not* be considered in UT Austin’s individualized admissions component would devalue an element of a student’s identity that may be critical to his or her life experiences.
  - As the Court recognized in *Grutter*, “Just as growing up in a particular region or having a particular professional experience is likely to affect an individual’s views, so too is one’s own, unique experience of being a racial minority in a society, like our own, in which race unfortunately still matters.”

### **Potential Impact of Fisher**

- A ban on race-conscious admissions could lead to the resegregation of Texas’s flagship university by blocking opportunity for many highly-qualified Black students.
  - Between 1997 and 2004, when UT-Austin did not consider race at the individualized admissions stage, African-American students never exceeded 4.5% of the entering class — far below the 13% of Texas high school graduates who are African Americans.
- While this case could be resolved narrowly based on the unique context of UT Austin, opponents of the University’s admissions policy are urging a broader ruling that could adversely affect *all* colleges and universities, including their graduate schools.
- More fundamentally, an adverse ruling could frustrate efforts across the nation to embrace creative solutions that provide a fair shot at educational opportunity for students of all backgrounds.