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U.S. Supreme Court Directs 5th Circuit Court Of Appeals To Re-Examine University Of Texas' Race-Conscious Admissions Policies

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Gavel

On Monday, June 24, 2013, the U.S Supreme Court issued a much-anticipated ruling in the first affirmative-action case since the 2003 landmark decisions of *Gratz v. Bollinger* and *Grutter v. Bollinger*. However, Monday's ruling in *Fisher v. University of Texas at Austin* did not reach the merits of the school's policy, holding that the 5th Circuit Court of Appeals applied the incorrect standard of review.

For academic institutions that have race-conscious admissions policies, this case does not alter the current legal requirement that such polices be "narrowly tailored" to further the compelling governmental interest of having a diverse student body. Because the appellate court did not properly apply this "strict scrutiny" standard, the Supreme Court sent the case back to the lower court for further consideration.

In *Fisher*, a Caucasian applicant, Abigail Fisher, applied to the University of Texas in 2008. After being rejected for admission, Fisher sued the University, claiming that the school's race-conscious policy violated the Equal Protection Clause of the U.S. Constitution's 14th Amendment which requires that racial classifications be subjected to strict scrutiny.

The District Court granted summary judgment to the University. On appeal, the Fifth Circuit Court of Appeals affirmed the dismissal, deferring to what it called "a constitutionally protected zone of discretion," and holding that Fisher could challenge only whether the University's decision was made in good faith.

In a 7-1 decision, the U.S. Supreme Court rejected the cursory analysis of both lower courts and held that the proper standard of review must be applied. Specifically, the Court held that the District Court and appellate court each confined their strict scrutiny analysis too narrowly. A "meaningful" judicial review, the Court wrote, would have assessed whether the University's admissions policy was narrowly tailored to achieve student body diversity that "encompasses a broad array of qualifications and characteristics of which racial or ethnic origin is but a single though important element."

Fisher presents the most recent challenge to academic affirmative action in the Fifth Circuit, which, in 1996, effectively banned such practices in Texas. See: *Hopwood v. State of Texas*, 84 F. 3d 720 (5th Cir. 1996). In 2003, the *Grutter* case overruled that ban and the University of Texas re-implemented a race-conscious admissions policy.

Now that the *Fisher* case has been remanded to the appellate level, the constitutionality of race-conscious admissions policies in state-funded academic institutions remains unchanged. Advocates and opponents of

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affirmative action in public education will have to continue to wait until the Fifth Circuit completes its review and undertakes the level of strict scrutiny review required by the Equal Protection Clause.

Additional Resources:

Supreme Court Decision: *Fisher v. University of Texas at Austin*