

Education Law

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AALRR Alert



U.S. Supreme Court Holds Race-Conscious Admissions Program at the University of Texas Constitutional Under the Equal Protection Clause

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Can colleges and universities consider race in their admissions process without violating the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution? On June 23, 2016, the U.S. Supreme Court issued its long-awaited decision in *Fisher v. University of Texas at Austin, et al.*, 579 U.S. ____ (2016) in which it considered this very question regarding the admissions program of the University of Texas at Austin (“UT”). With Justice Anthony Kennedy writing for the majority in a 4-3 decision, the Court upheld UT’s race-conscious admissions program. The Court’s analysis in this case proves instructive for other postsecondary institutions navigating the use of race in admissions programs.

In *Fisher*, the Court held that UT’s race-conscious admissions program did not violate the Equal Protection Clause. UT uses a hybrid academic and holistic assessment process that considers academic performance and a number of other factors when admitting students. As required by Texas law, students who graduate in the top ten percent of their class

are guaranteed admission. This Top Ten Percent Plan accounts for seventy-five percent of the entering class of freshmen. The remaining twenty five percent are assessed based on a combination of two scores: 1) the Academic Index, which is number based on the combination of a student’s SAT score and academic performance and 2) the Personal Achievement Index, which is a score made up of several factors, including the student’s essay response, supplemental information submitted with the application (such as letters of recommendation), and “special circumstances,” including socioeconomic status and race. Thus, race is considered a “factor of a factor” in UT’s “holistic-review calculus.” *Id.*, at ____ (slip op., 5).

The constitutionality of UT’s admissions program came before the Court after the Petitioner, an unsuccessful applicant who did not gain admittance under the Top Ten Percent Plan, filed a lawsuit claiming that the program’s use of race as part of its holistic-review process violated the Equal Protection Clause. The Court relied upon three

controlling principles in assessing the constitutionality of UT’s admissions program.

First, the Court examined whether UT’s admissions process could withstand “strict scrutiny.” To meet this requirement, the Court made clear that UT needed to “demonstrate with clarity that its purpose or interest [wa]s both constitutionally permissible and substantial, and that its use of the classification [wa]s necessary . . . to the accomplishment of its purpose.” 579 U.S. ____ (2016)(slip op, at 7). The Petitioner, in part, claimed UT did not establish “its compelling interest with sufficient clarity” because the university failed to identify “more precisely the number of minority students that would constitute ‘critical mass.’” 579 U.S. ____ (2016)(slip op, at 7). The Court found Petitioner’s

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argument unpersuasive and, ultimately, concluded that UT established a compelling interest by demonstrating “the educational benefits that flow from student body diversity” as a result of its race-conscious admissions program. For the Court, UT satisfied this requirement by “articulat[ing] concrete and precise goals,” including, but not limited to, the destruction of stereotypes, the promotion of cross-cultural understanding, and the creation of an academic environment that exposes students to different cultures. *Id.*, at ___ (slip op., at 12-13). The Court underscored, however, that educational institutions cannot simply rely on the general goals of promoting diversity to meet this requirement. Instead, the goals “must be sufficiently measurable to permit judicial scrutiny of the policies adopted to reach them.” *Id.*, at ___ (slip op., at 12).

Second, the Court required UT to provide a “reasoned, principled explanation” for its decision to consider race as part of its pursuit of the educational benefits of diversity. Once UT provided a “reasoned, principled explanation for its decision,” deference was to be given to its “conclusion based on its experience and expertise, that a diverse student body would serve its educational goals.” *Id.*, at ___ (slip op., 7)(citation and internal quotations omitted). For the Court, “[c]onsiderable deference is owed to a university in defining those intangible characteristics, like student body diversity, that are central to its identity and educational mission.” *Id.*,

at ___ (slip op., 19). The Court concluded that UT satisfied this requirement citing a year-long study conducted by the university, which was subsequently summarized in a thirty-nine page proposal. The proposal “concluded that the use of race-neutral policies programs ha[d] not been successful in provid[ing] an educational setting that fosters cross-racial understanding, provid[ing] enlightened discussion and learning, [or] prepar[ing] students to function in an increasingly diverse workforce and society.” *Id.*, at ___ (slip op., at 13) (internal quotations omitted). The Court found further support in the depositions and affidavits of UT admissions officers who “articulat[ed] the same, consistent reasoned, principled explanation.” *Id.* (internal quotations omitted).

Finally, the Court concluded that UT’s race-conscious admissions program was narrowly tailored to achieve UT’s diversity goals, and, in so doing, rejected all of Petitioner’s suggested alternatives as being unavailable and unworkable for UT to reach “its educational goals.” *Id.*, at ___ (slip op. 18). In making this determination, the Court considered several factors, including, but not limited to, quantitative data and studies conducted by UT demonstrating that its prior race-neutral policies did not promote diversity. Specifically, UT submitted statistical evidence that its minority enrollment consistently stagnated under the prior race-neutral admissions program. The Court further considered evidence that minority students admitted during the

period when the race-neutral program was in effect felt isolated and lonely. *Id.*, at ___ (slip op., 14-15). The Court also highlighted that UT had “spent seven years attempting to achieve its compelling interest using race-neutral holistic review,” without success. *Id.*, at ___ (slip op., 16). Although UT’s admissions program was upheld under an equal protection analysis, the Court reminded UT of its “ongoing obligation to engage in constant deliberation and continued reflection regarding its admission policies.” *Id.*, at ___ (slip op., 19). The Court declared, “[UT] must continue to use [] data to scrutinize the fairness of its admissions program; to assess whether changing demographics have undermined the need for a race-conscious policy; and to identify the effects, both positive and negative, of the affirmative-action measures it deems necessary.” *Id.*, at ___ (slip op., 19).

To be sure, the *Fisher* decision provides much-needed guidance to those educational institutions seeking to increase diversity through race-conscious admissions programs. The Court, moreover, makes clear that the use of race in admissions programs can pass constitutional muster if such programs are consistent with the three controlling principles described above. However, educational institutions must remain mindful that they continue to bear the burden of establishing that available and workable race-neutral alternatives are insufficient to promote their interests in the educational benefits of diversity.