

Closure Activity

How do you feel now... (please raise your hand if you agree with what is said)
 Do you think affirmative action should be banned?
 Do you think affirmative action should be restricted?
 Do you think affirmative action should be upheld?
 Do you think Justices Antonin Scalia, Clarence Thomas, Anthony Kennedy, John Roberts and Samuel Alito will make up the majority vote that causes affirmative action to be limited?

The New Normal: An Agenda for Responsible Living



Path to the Supreme Court



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Leading Up to Fisher v. University of Texas
In 2009, "Top Ten Future Plans" Texas had to reveal a list of differences between the state and other states.
- The top 100, with up to 10% of the total population, are required to be in education, health care, and economic sectors.
- More to come in the next few weeks and updates are available at TheCaseSolutions.com

Virginia's Equal Opportunity Act
The Case Solutions.com

What is Affirmative Action?
An active effort to improve the employment or educational opportunities of members of minority groups and women.
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Background Information

Federal Groups and Outside Opinions
- The Department of Justice, the American Civil Liberties Union, and the American Bar Association have filed briefs with the Supreme Court.
- The Department of Justice has argued that the University's plan is unconstitutional.
- The American Civil Liberties Union has argued that the University's plan is unconstitutional.
- The American Bar Association has argued that the University's plan is unconstitutional.

Affirmative Action
- Affirmative action is a policy that promotes the interests of groups that have been historically discriminated against, including women and people of color.
- It is a form of positive discrimination.

Adverse Change Will Occur
- The Supreme Court's decision in Fisher v. University of Texas will have a significant impact on affirmative action in higher education.
- It is expected that the Court will strike down the University's plan.

Claim
The University of Texas has a constitutional right to use race as a factor in its admissions process.

Issue
Whether the University of Texas's use of race in its admissions process is constitutional.

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Arguments for Affirmative Action

- Diversity
 - More adaptability in problem solving
 - Better able to serve a multi-cultural community
- Increased opportunity
 - Government Contracts for Business: The Executive Order put into place by President Lyndon B. Johnson specifies that businesses receiving government contracts must establish and maintain affirmative action policies.
 - Disadvantage: Affirmative actions assists students starting at a disadvantage

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Arguments Against Affirmative Action

- Reverse Discrimination penalize the historically dominant group, even when they possess the appropriate qualifications for the given position
 - Minorities and women obtain positions in a company based on gender, race or ethnicity not through achievement and qualifications.

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Leading Up to Fisher v. University of Texas

- 1997—“Top Ten Percent Plan”: Texas legislature passed a law requiring the University of Texas to admit the top ten percent.
- Differences were found between the racial and ethnic makeup of the University and that of the state’s population
- University then modified its race-neutral admissions policy
 - The top 10% make up 75% of the school population, and remainder of in-state freshman would have their race serve as a counting factor in admission alongside academic and nonacademic factors
 - Done to increase ethnic, social and socioeconomic diversity

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- Caucasian
- SAT Score: 1180
- GPA: 3.56 out of 4.00
- 2008: Applied for undergrad admission
 - Not part of the top 10%, so competed for admission with other non-top 10% in-state applicants
- She was denied, as are thousands of applicants each year

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Claim

University of Texas's use of race as a consideration in admission decisions was in violation of the equal protection clause of the 14th Amendment and violation of 42 USC § 1983

- Equal Protection Clause: prohibits states from denying people equal rights and treatment
- 42 USC § 1983—Civil Action for Deprivation of Rights: Every person who denies another person of equal rights and treatment is liable

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Defense

- The University of Texas's admissions policy pursued greater diversity to help students overcome biases and make contributions to a diverse society.
- Stare Decisis: Grutter v. Bollinger (heard in 2003)
- Also, Ms. Fisher would not have been admitted even if race had played no role in the process.

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