

### 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?

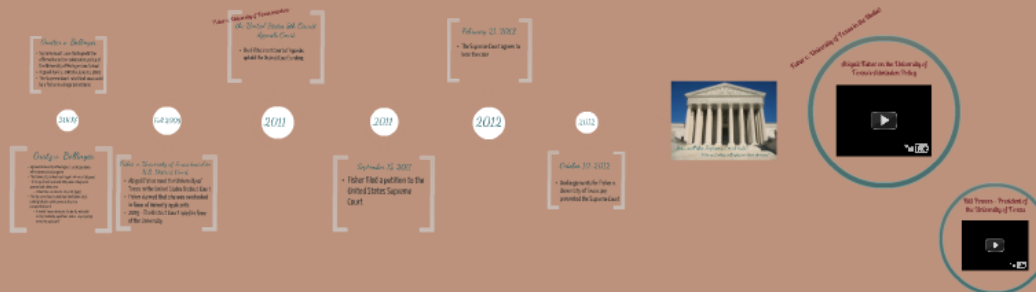
# The University of Notre Dame Endowment



Background Information

TheCaseSolutions.com

## Path to the Supreme Court



## Closure Questions

How do you feel now...(please raise your hand if you agree with what is said)

Do you think affirmative action should be banned?

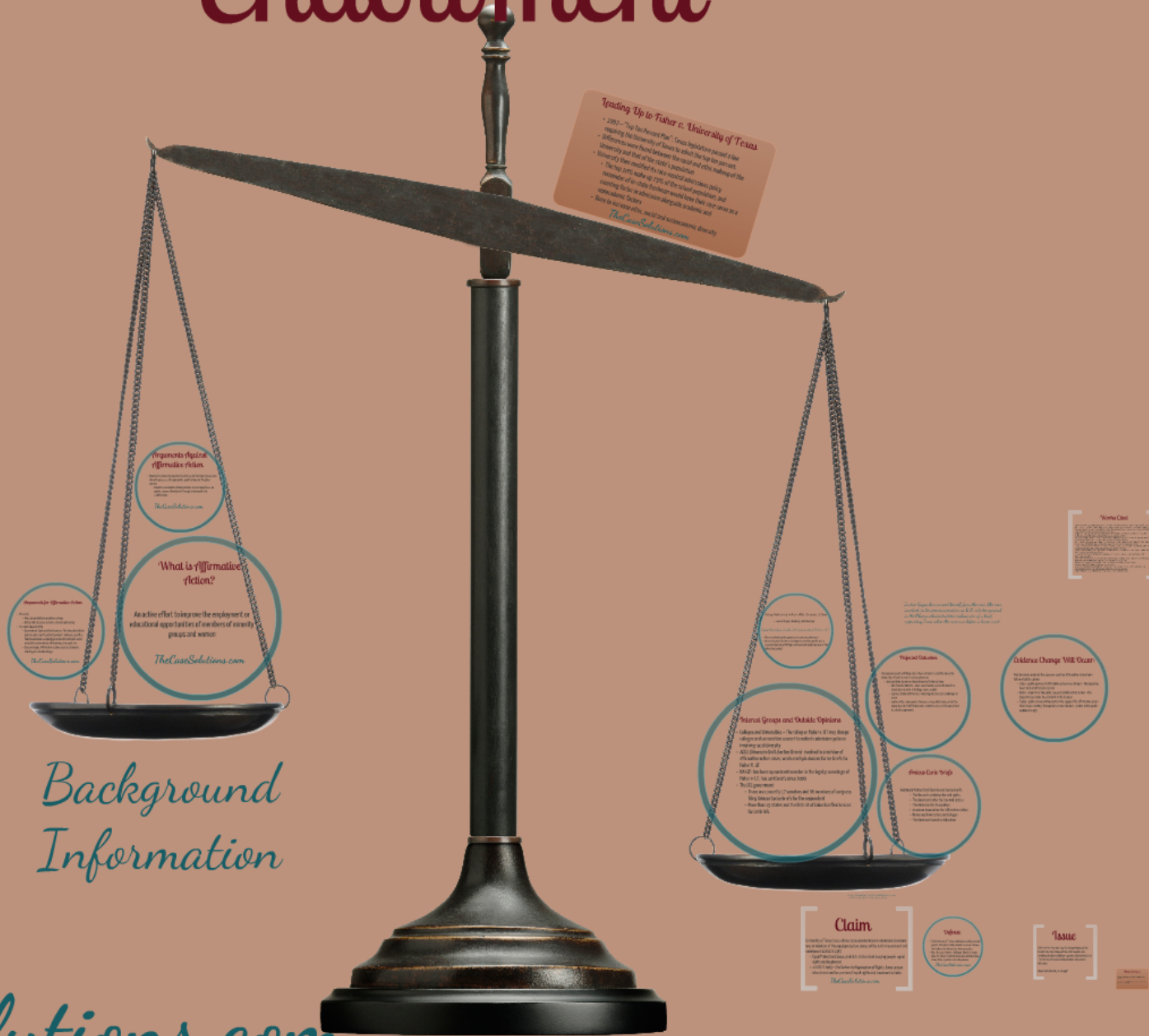
Do you think affirmative action should be restricted?

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 University of Notre Dame Endowment





# What is Affirmative Action?

An active effort to improve the employment or educational opportunities of members of minority groups and women

*TheCaseSolutions.com*

## *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

*TheCaseSolutions.com*

# 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.

*TheCaseSolutions.com*



# 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

*TheCaseSolutions.com*

- 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

*TheCaseSolutions.com*

# 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

*TheCaseSolutions.com*



# 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.

*TheCaseSolutions.com*