

CLIENT NEWS BRIEF

U.S. Supreme Court Reiterates the High Standard Universities Must Satisfy to Consider Race in Admissions Decisions

In *Fisher v. University of Texas at Austin* (June 24, 2013) __ U.S. __ 2013 WL 3155220, the United States Supreme Court reaffirmed that public higher education institutions may only consider race in admissions if the means of doing so is narrowly tailored to further a compelling state interest. The Court also clarified that a reviewing court may defer to a higher education institution's good faith determination that a diverse student body is essential to its educational mission. The Court emphasized that this deference *does not*, however, extend to a determination as to whether the institution has shown that its consideration of race is narrowly tailored to further the compelling interest of diversity.

Abigail Fisher, a Caucasian female, was denied admission to the University of Texas at Austin's undergraduate program in 2008. Ms. Fisher believed that less qualified applicants were admitted due to their race. She sued the University on the grounds that its consideration of race violated the Equal Protection Clause of the Fourteenth Amendment. The court of appeals held that controlling law, the 2003 decision in *Grutter v. Bollinger* (2003) 539 U.S. 244, required the court of appeals to give substantial deference to the University on both "the definition of the compelling interest in diversity's benefits and in deciding whether its specific plan was narrowly tailored to achieve its stated goal." Ms. Fisher appealed to the United States Supreme Court.

The Supreme Court overturned the appellate court's decision because it misapplied the rule established in *Grutter*. The Court explained that in order to pass constitutional muster, any governmental use of racial classifications must survive strict scrutiny. To do so, the government must show that a compelling government interest is served by the use of race and demonstrate that the use of race is *narrowly tailored* to serve that compelling government interest.

The Court affirmed that diversity is a compelling state interest noting: "a diverse student body serves values beyond race alone, including enhanced classroom dialogue and the lessening of racial isolation and stereotypes." Moreover, it affirmed the finding in *Grutter* that courts may defer to an institution's determination that diversity is an essential goal for the institution. The Court, however, made it abundantly clear that this deference did not extend to the manner in which race was considered in order to achieve this goal.

The Court explained that the lower courts wrongly deferred to the University as to how it used race in the admissions process by not subjecting the process to strict scrutiny. The Court held that the appellate court improperly expanded the deference described in *Grutter* and applied it to both the finding of a compelling interest and also to the finding that the consideration of race was narrowly tailored to achieve the compelling interest. As a result, the Court returned the case for rehearing by the court of appeals to apply strict scrutiny to how race was used in the admissions process.

This case clarifies the limited and narrow deference given to public colleges and universities with regard to the use of race as a factor in admissions.

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Although a court may largely accept an institution's reasonable determination that diversity is an appropriate goal for the institution, the court must look closely and critically at how the institution then uses race to achieve the goal of diversity. In light of *Fisher*, colleges and universities should review their admissions practices and policies to evaluate whether they would satisfy the narrow tailoring requirement of the strict scrutiny test.

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