Affirmative Brief Mireles and Reyna: IDEA Quest

Michael Mireles

Tanya Reyna

IDEA Quest College Preparatory

Edinburg, Texas

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Statement of Facts

In 2008, caucasian Abigail Fisher applied to the University of Texas at Austin and was denied acceptance. After having been rejected, Fisher represented herself, as well as numerous other caucasians, in testifying that she was not equally viewed in the application process, thus evoking the question: Does the Equal Protection Clause of the 14th Amendment permit the consideration of race in an undergraduate admissions decision?

The holistic approach of University of Texas at Austin has caused significant controversy due to the fact that its admissions office considers race as part of the "Academic Index/Personal Achievement Index" (AI/PAI) score of applying students who do not meet the qualifications of automatic acceptance through the “Top 10%” Texas law (HB 588) which constituted for approximately 81% of admitted freshmen for the Fall 2008 class. UT’s model, while established to diversify the student body, is being widely condemned by Americans arguing that its methods violate the Equal Protection Clause of 1868. However, advocates of UT’s methods argue that the consideration of race promotes diversity amongst the State University over a less preferable homogeneous student body and is vital in stimulating educational propositions. This controversial issue is certainly one in which my partner and I were obliged to scrutinize all aspects of, and, having done so, we contend with the University of Texas at Austin. **The University of Texas at Austin should be permitted to use race as a decisive factor in their application process because it does not infringe on the rights of any U.S. citizen.**

Statement of Argument

Abigail Fisher Did Not Meet the Requirements of UT

Being rejected from the 16th listed top public university in the nation, with an acceptance rate of 39.7%, is something a vast portion of prospective college students have experienced, throughout the state, throughout the nation, and throughout the world. Abigail Fisher contends that she was not equally viewed in the admissions process merely because of her race, she is however incapable of proving so. She lacks any verification on her behalf, thus my partner and I maintain the position that she was equally viewed in all aspects, and being rejected was solely based on her incompatibility as an ideal student of the University of Texas at Austin.

The process in which UT Austin evaluates any submitted application is a holistic approach, regardless of race or any other predominant factor. This means that socioeconomics, gender, the rigor of taken classes, standardized test scores, essays, anything that has the potential of aiding an eager student in attending the university, is looked at and compared with other prospective students.

Taking a look at Fisher's grade point average (Huffington Post), she had a GPA of 3.59 (on a 4.0 scale); the standard GPA for UT is a 3.71, already putting Fisher at a disadvantage just through the University's mere consideration of a student's GPA. More so, her SAT score was an 1180 (measured on the former 1600-point scale), which were good but not sufficient in meeting the standards of the highly selective flagship university.These two aspects of Fisher's admission would have already placed her amongst the 25th percentile of applying students, meaning that, in order for her to have been accepted, other factors in her application would have had to have been protrude.

A major flaw in Abigail Fisher's testimony is her failure to recognize and provide a rationale for the 42 of 47 caucasian students who were admitted despite having lower AI/PAI scores than she did. On the other end, UT Austin rejected 168 Latino and African American students with equal or better scores than Fisher (Propublica).

If race is as determinate a factor as Fisher presumes it to be, then UT Austin should be looked at not for its number of admitted minority groups, but rather for the number of caucasians admitted each year. The University population in 2008, according to UT News, was 50,006; of these 50,006 students, caucasians constituted for 27,234, over half of the entirety of the population. Caucasians currently account for 45.1% of UT's population, meaning that although the population of whites has dropped in the university, it is no drastic number in which any individual should concern themselves with. Whites remain the majority race, and are only followed by Hispanics who constitute for 19.5% of UT's population. The

assumption that UT is prejudice towards whites in the application process, should be widely dismissed because statistics and individual cases alone have proven this to be a false assertion.

How the University of Texas at Austin Meets Standards Set by Preceding Cases

The special program ran by Davis Medical School was found to have operated as a racial quota because minority applicants in that program were rated only against one another rather than the entirety of applicants. Sixteen places in a class of 100 were specifically reserved for applicants coming from this special admissions program. This was the set quota that ceased the court case, causing them to rule in favor of Bakke. The University of Texas at Austin does not operate in this manner; rather than reserving a number of spots or claiming some percentage of their students in which they aspire to have represent minority groups, UT has a narrowly tailored goal set to achieve diversity while maintaining the absence of a set quota. This is very similar to the final decision in the 2003 Supreme Court case *Grutter v. Bollinger* which upheld that "the Equal Protection Clause does not prohibit the Law School's narrowly tailored use of race in admissions decisions to further a compelling interest in obtaining the educational benefits that flow from a diverse student body."

The 1978, the case of *Regents of the University of California v. Bakke* set the standards that all universities were meant to follow in order to avoid any claims of having violated the Equal Protection Clause of the Fourteenth Amendment. In an 8-1 decision for Bakke, justices of this court contended that any racial quota system supported by government violated the Civil Rights Act of 1964. To presume that UT Austin maintained any system similar to that of Davis Medical School of the University of California would be considerably erroneous for numerous reasons. First of all, each applicant of UT is holistically evaluated, there are no special admissions programs specifically targeted for disadvantaged minority groups. There is no cutoff GPA for certain students and none for others; each student's application is viewed in its entirety. There are an abundance of other factors that distinguish UT's admissions process from Davis Medical School's, but what remains vital is the consideration of the status quota system that justices claimed to have violated the Fourteenth Amendment; this is what UT Austin does not implement.

In her case, the plaintiff contends that UT Austin does not have a narrowly tailored goal, something that has been demanded of all State Universities that consider race in their admissions process following the *Regents of the University of Cali v. Bakke* court case. Her rationale behind this is that "because the Top Ten Percent program allowed automatic admissions to UT for diverse students at the top of their high school classes" there is no further need to use race as a determinative factor in the standard application process. However, the top 10% plan has not accomplished diversity as it was

intended to, as we see that whites constitute for a profound amount of UT's population (54.5% of the population in 2008 and 45% in present day). In addition to this, the 10% Plan has been drastically altered; it now accepts only the top 7% of high school graduates, making it evermore strenuous and rigorous for students of any race to be admitted through this process. Yet, we expect this to suffice; we expect diversity to be achieved merely through the Top 10% Plan. Yes, this plan did account for 81% of admitted freshmen in 2008, but since then it has shrunken to account for 70% of the 2015 admitted freshmen. And of these newly admitted freshmen, whites remain the predominant race that form the 70% of admitted freshmen of 2015. There is only the slightest chance of racial assimilation remaining present in The University of Texas at Austin if the university relies only on the Top 10% Plan to accomplish this.

Moreover, as aforementioned, UT Austin follows the regulations set by the decision in Grutter vs. Bollinger, 2003. UT's consideration of race in its admission process has been defamed as a violation of the Equal Protection Clause, which upholds that no state shall "deny to any person within its jurisdiction the equal protection of the laws." In this case, it is argued that because UT Austin is allowing race to be a factor, those who do not benefit from such process --primarily caucasians and Asians-- are not being viewed equally because race as a factor grants minority applicants more acclaim for equal if not lesser academic achievements. What again fails to be recognized by the plaintiff's side, however, is that this very issue was addressed in *Grutter vs. Bollinger* when, in 1997, Barbara Grutter was denied admission into the University of Michigan Law School. Bollinger contested that racial preferences in a student body violated the Equal Protection Clause. Yet, in a 5-4 decision, the Fifth Circuit held that because Michigan Law School implemented a narrowly tailored goal-- which was the use of race in the admission process-- to achieve a more diverse student body, the Equal Protection Clause was not violated. This decision has become the cornerstone of UT's admission process, which, in striving for a more diverse student body, complies with the additional grounds established by Grutter vs. Bollinger: Because there is a state compelling interest in creating educational benefits, and because there is an application of strict scrutiny, the use of race in the admission process as a mean to increase the critical mass of minority student-bodies is, by law, acceptable and just.

Why Race Is Such a Determinative Factor

Proposition 209, also known as the California Civil Rights Initiative, became the first enacted legislation to contest affirmative action policies. Since its passing in November 5, 1996, many supporters of the bill have contested that graduation rates for minorities in California's higher-learning institutes have increased because of said legislation. However, mere growth in graduation rates, while an indicator of relative university success, cannot be attributed to a bill that limits the enrollment opportunity of

minorities. In fact, while graduation rates have increased among all racial masses in California schools, minority enrollment has dropped significantly. Within the first three years of the passing of Proposition 209, the number of admitted African-American, Latino and American Indian undergraduates decreased by 58%. Within the following decade, minority enrollment has increased although marginally and unimpressively. This issue has been combated in 1996 and 2010 to no avail. More recently, this issue allowed Gibor Basri, outgoing vice chancellor for equity and inclusion of UC Berkeley, to aid in the creation of the "African-American Initiative." As of today, African-American enrollment in UC Berkeley accounts for 3% of the student population.

Minority enrollment in California colleges has shown a deteriorating increase since 1998 which is discouraging since the Hispanic population in California has surpassed the commonplace majority of white residents throughout the nation. Unsurprisingly, little effort to institute ethnic integration in university bodies has resulted in a widening composite of Hispanics who are receiving fewer educational opportunities because of the disappearance of systems such as an admissions process that considers race. According to The Campaign for College Opportunity, "fewer than two in ten working-age Latino adults have a college degree." This reality is accounted by the worsening oppositions Hispanics and other minorities are progressively facing. Since its enactment, the "average total tuition and fees at UC, CSU, and CCC increased by approximately 150 percent since 2003-04" Even with the growing, average college tuition fees, California's appropriations has decreased from an average $9,220 in 2003 to $7,303 in 2013. Such barriers have only have deterred the expected educational advancement that was suspected to result from Proposition 209. With growing fees, lower minority enrollment and a widening educational gap correlated to socioeconomic status, California is unintentionally cultivating a state where Hispanics constitute the majority of the population yet are one of the most underrepresented in terms of higher education, a crisis no state, not even Texas, could afford.

VI. Prayer

We pray that you overturn the 7-1 decision for Abigail Fisher. Not only did she fail to meet the norm GPA and standardized test scores set by UT Austin, but a substantial amount of fellow caucasians were admitted while having a lower AI/PAI score. Meanwhile, numerous members of minority groups were denied admissions despite having a higher AI/PAI score than the plaintiff. We maintain the need for the incorporation of affirmative action in assuring that individuals raised in low-income, unstable communities are fostered in their aspirations to excel, thus bringing innovation to their hometown, and essentially bettering the nation as a whole. Fisher was denied on the basis of valid rationale, and in no way should the University of Texas at Austin, or the millions of Americans deriving from minority

groups, face the repercussions the court will uphold if it continues to fail in distinguishing the justice done by UT in its use of race as a factor in the admissions process.