

## Affirmative Brief Muro and Perez Del Valle

### **Affirmative Brief**

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### **Table of Cited Authorities**

American For Fair Action

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Changing Texas, 2014

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**GRUTTER V. BOLLINGER (02-241) 539 U.S. 306 (2003)**

*Judging Opportunity Lost: Assessing the Viability of Race Based Affirmative Action Fisher v University of Texas*, Mario L Barnes et al.

**Parents Involved in Cmty. Scho. V Seattle Sch. Dist. No. 1, 551, U.S. 701, 787 (2007)**

Texas Education Agency, Texas Public School Statistics

### **Statement of Facts**

In the *Brown v The Board of Education*, Topeka, Kansas (1954) Chief Justice Earl Warren wrote: *Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.*

Today we are applying these thoughts to a college education at State Universities. A State University is not really much different than Public School and should obey the laws governing our public education. Because of this single fact, we cannot consider anything more important in today's society than equal opportunity under the law. This may appear to be odd and strange, but we firmly support the resolution- **Resolved: Is race conscious affirmative action consistent with Fourteenth Amendment to the United States Constitution?**

### **Statement of Argument**

### **Abigail Fisher should have benefited from race conscious affirmative action consistent with the 14<sup>th</sup> Amendment to the U.S. Constitution**

Abigail Fisher is a Caucasian and a 2008 graduate of Stephen F. Austin High School in Sugarland Texas, Abigail Fisher, applied to the University of Texas during her senior year. Fisher was in the top 12% and had a 3.59 GPA on a 4.0 scale, plus she had an 1180 score on her SAT. UT had adopted Texas HB 588 that allowed state universities to admit the top 10% of each high school graduating class automatically. Eighty-one percent of the 2008 freshman class at UT entered under this Top Ten rule. Whereas being a Caucasian in Texas makes Abigail a minority then she should have had special treatment under a race conscious affirmative action program that was consistent with the Fourteenth Amendment.

Steve Murdock, founding director of Rice University's Hobby Center for the Study of Texas and the state's former demographer, has projected that by the year 2040 Hispanics might make up more than 50 percent of the population in Texas as the Anglo population declines to 26 percent. According to the US Census 2014 estimate of the Texas population 38.6% of the population in general are Hispanic and 43.5% of the population is white or Caucasian. However, if you look at the school population in the state of Texas this trend is entirely different. "There's a tidal wave coming," said Marco Portales, a Texas A&M University professor who studies education trends. The number of Hispanic students in public schools has mushroomed while the number of white students has decreased. Today, close to 50 percent of Texas public school students are Hispanic and studies indicate that number will rise dramatically. Hispanics are also disproportionately young – one out of three under the age of 18, compared to one out of five for whites. In recent years, the school districts that have seen the percentage of Hispanic students increase often are far-removed from the Texas-Mexico border. Over the past 15 years, the five of the top 10 school districts with the highest percentage increase in the number of Hispanic students were around the largest urban areas – including Dallas and Houston. Throughout the state, the number of mostly Hispanic public schools continues to rise. About 23 percent of Texas schools have a Hispanic student population of at least 80 percent. Fifteen years ago, it was 16 percent. Over those years, the Dallas Independent School District saw a six percent decrease in the

white student population and a 23 percent increase in the Hispanic population. Hispanics are now almost 70 percent of DISD's enrollment. The Irving Independent School District saw a 35 percent increase of Hispanics in the same period and a 31 percent decline in its white student population.

This goes along with the trend of high school graduates from Texas High Schools.

According to *Changing Texas (2014)* the population of young children under the age of 18 in Texas in 2000 was 2.5 White non-Hispanic and 2.38 million Hispanic or 42.6% of this age group were White and 40.5% were Hispanic. Then in 2010 it was 3.3 million that were Hispanic and 2.3 million who were White this translates to 48% of the age group being Hispanic and only 33.8% of the age group being white. Clearly if program wanted to a race conscious affirmative action consistent with Fourteenth Amendment to the United States Constitution the only way they could now do so would be through the use of the new demographics. We cannot nor should we not deal with the statistics of the past because they do not reflect our current situation. In fact if we do so all we do is continue the gross miscarriage of justice that reflected the problem in the first place. The problem was that minority students in the State of Texas were not getting benefits of college enrollment. If we agree with the premise of race conscious affirmative action programs we must have this program tailored to the needs of the people it is to serve. It is just that simple. Affirmative action was meant to help the minority student and we should do exactly that if you support this program.

*Changing Texas (2014)* also pointed out that population of student age group in the Houston area (the area in which Abigail was from) 86.5% of the growth came in the Hispanic population. In 2000 there were 2.3 white children and 1.3 million Hispanic children. Then by 2010 there were still about 2.3 million white children but the Hispanic population had grown to almost. 2.2 million. Clearly the population of Texas schools has changed.

According to the Texas Education Agency, Texas Public School Statistics, Pocket Edition, 1994-1995 & 2004-2006 graduates of high school in the State of Texas- 1994 56% White, 29% Hispanic, and 12% Black; In 2004 is was 48% White, 35% Hispanics, and Black 13%; In 2014 it was 37 % White, 44 Hispanic, and 12 Black. These statistics point out the rapidly changing demographics of the student population here in Texas.

### **Being A White Student Still Means You Can Be Discriminated Against And You Can Not Loose Your 14<sup>th</sup> Amendment Rights Because of Race**

The heart of our opponent's argument is also the proof of our argument. If you agree that discrimination can and does occur and if you agree that this discrimination can be based on race- then you must also believe that no matter what race you are- if you are a minority you should be able to qualify for affirmative action. It works very simply. If you have a minority group of people and if the group of people need affirmative action and this need is based on

a person belonging to a minority then the 14<sup>th</sup> amendment could be applied to insure that all people who are in the minority are afforded the same treatment. To discriminate against Abigail Fisher simply because she was white is against the Texas law. The law required that minorities be given race conscious affirmative action. Ms. Fisher is in a minority in the state of Texas- white students graduating from High School. Because of such, she should have been given the same points as other minority students. Minority in this case deals with the term in relation to the general population.

### **The Need For Affirmative Action**

Affirmative action is an important tool to provide qualified individuals with equal access to educational and professional opportunities they otherwise may have been denied despite their strong qualifications. These policies make certain that all Americans are considered fairly and equally for jobs and educational opportunities. (American For Fair Action, 2015) Affirmative Action remedies past discrimination, fights present day discrimination, and promotes diversity in our society. The U.S. Supreme Court agrees affirmative action is necessary, because “in order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity.” (**Supreme Court majority opinion in Grutter v Bollinger, 2003 Sandra Day O Connor**)

The University of Texas has asserted that they had a similar admission policy like the one in the case of *Grutter v Bollinger*. One in which the school sought to achieve diversity within the student body through compliance with the *Regents of the University of Cal. v Bakke* case. The petitioner in *Grutter v Bollinger* filed suit because, the law school rejects him because its admission policy uses race as a “predominant factor.” Giving applicants belong to a certain minority group a significantly greater chance of admission. Now, if we hold that same logic and apply this to the Fisher case would it surprise anyone that the result would be to support Abigail Fisher request for affirmative action. Look at the Michigan census in 2004, about 79.9% of the population was predominantly white. So cross applying this holding from Grutter with the Fisher case, you would find that the state has the right and duty to support Affirmative action to minority students. The difference here is that in Grutter- Grutter was not a minority and was white and Fisher- Abigail Fisher is both white and a minority. If our opponent were truly following the ideas set forth in Grutter, they would support Fisher’s request for minority status and affirmative action. Your Honor, times have changed and we need to accept the changes. As we are right now- less than one and three high school graduates in the state of Texas is white and clearly this is a minority. We need to accept this. In this very case, our client Abigail Fisher is a member of the minority. Not only was discriminated against in the Admissions process by not recognizing this fact, we have denied a right and opportunity to many more students all across the state of Texas. If we have Affirmative Action we must support giving it to

minorities. You cannot argue that giving Affirmative Action to majority students is anything more than mere discrimination and illegal under the 14<sup>th</sup> amendment. When the University of Michigan Law School denied admission to petitioner Grutter, a white Michigan resident with a 3.8 GPA and 161 LSAT score, she filed this suit, alleging that respondents had discriminated against her on the basis of race in violation of the Fourteenth Amendment, Title VI of the Civil Rights Act of 1964, and 42 U.S.C. 1981; that she was rejected because the Law School uses race as a “predominant” factor, giving applicants belonging to certain minority groups a significantly greater chance of admission than students with similar credentials from disfavored racial groups; and that respondents had no compelling interest to justify that use of race. Please across apply that both Grutter and Fisher were minority in respect to women as well as both were white. The major difference here is in the drawing pool. This is the significant aspect of the case. In Grutter the majority of applicants for the law school positions were white students and the majority of students who were graduating from college from Michigan were white. In the Abigail Fisher case this is not the case. In 2016, the year that Fisher case is being argued again. The number of white students who are graduating from Texas High Schools will be less than 30%. Clearly the white population is in the minority of pool of Texas high school graduates down from 50 % in 1999. This rapid change in population should be clearly reflected in a new Affirmative Action policy was developed when the situation was much different. Therefore, this fact of the change of population versus the non change of policy completely takes out the University of Texas argument that they were supporting Affirmative Action. They were not supporting affirmative at all in fact they were going against the heart of Grutter in the first place.

Affirmative Action is not a right given to a person or group of people forever. It is something that can change due to changes in our society. In June of 2003, the Supreme Court issued a landmark decision on affirmative action (*Grutter v Bollinger* (2003) and *Gratz v Bollinger* (2003) upholding the use of race in the admissions process. Reiterating America’s commitment to Affirmative Action, the court concluded, “Effective participation by members of racial and ethnic groups in civic groups civic life of our nation is essential if the dream of one Nation, indivisible, is to be realized.” As the demographics of state of Texas and our country change we must also change the dynamics of the Affirmative Action Plan. In 2016 this is not your grandmother’s Affirmative Action plan. By making the needed changes to reflect the current population of the United States, colleges and universities can identified plus attract outstanding individuals from all parts of our society. The diversity of our colleges is critical to the future strength of our society and our economy. We need, no we must include an Affirmative Action plan that actually reflects the population of state of Texas in 2016 in this case.

The purpose of the Admissions process is to obtain students who can graduate from college in four years. In 2008 Ms. Fisher applied to the University of Texas. She was denied. She

was denied according to the University of Texas now because she was not qualified yet she did attend Louisiana State University and graduated in four years. This one single fact also shoots down the concept that the University of Texas Admissions Office was correct about Ms. Fisher in the first place. Today the average freshman who enrolls at the University of Texas Austin will take almost six years to graduate. The University of Texas Admissions Office was mistaken about Ms. Fisher. The University of Texas is mistaken about Affirmative Action. Affirmative Action is not about trying to get more diversity of students into the University it is to allow more diversity of students to attend. There is subtle difference here. The University of Texas is advocating a discriminatory process that denied qualified students admission because of their race. This is illegal. Ms. Fisher's case should prove to all people who at this point and time Affirmative Action should reflect the realities of our present society not the realities of an institution to preserve the past. If we do the later we will be discriminating and this is illegal.

## **VI. Prayer**

We pray that you vote against the lower court ruling and uphold the rights of Abigail Fisher who has done nothing but fought of the rights of students across this great state and nation to stand up and say no to discrimination. Discrimination by poor schools, discrimination by race, and discrimination by failure of our institutions of higher learning to be transparent and upfront with parents, students, and taxpayers- the University of Texas clearly should have admitted Abigail Fisher in 2008. Her graduation from another University in 2012 proved this. The University of Texas in 2009 lobbied and changed the Top Ten Percent rule because they thought it limited their ability to attract good candidates. These are not our words these are their words and you know we agree with them. After weighing these facts the only conclusion can be to vote to end this discrimination right here and right now and vote for Abigail Fisher