Respondent-Shane Bodkin, Greyson Teets

Student Names: Shane Bodkin and Greyson Teets
https://www.youtube.com/watch?v=0JIAFOUTWSc
Elkins HS, Elkins, WV
Respondent

Table of Cited Authorities:

Grutter v. Bollinger (2003)
Regents of the University of California v. Bakke (1978)
Civil Rights Act of 1964
Fisher v. University of Texas at Austin
Texas House Bill 588 (1997)
Parents Involved in Community Schools v. Seattle School District (2007)
Freedmen's Bureau (1865)
Hopwood v. Texas (1996)
United Steelworkers v. Weber (1979)
Ricci v. Destefano (2009)
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Statement of Argument:

The University of Texas practices a holistic approach to admitting students not accepted through the state's top ten percent program. The constitutionality of this admission process maintains consistency with the Fourteenth Amendment. As dictated in the Fourteenth Amendment, all citizens are granted equal opportunities under "the equal protection of the laws." Ultimately, students are presented equal opportunities to earn a spot in the top ten percent of their respective graduating high school class. This evidence is a supporting factor for the respondents in the Supreme Court Case, *Abigail Fisher v. The University of Texas at Austin,* along with many other Supreme Court Rulings. With the confirmation of previous court rulings, the court should see that the University is following protocol set by the following cases: *Grutter v. Bollinger, Regents of the University of California, Hopwood v. Texas*, and *Parents Involved in Community Schools v. Seattle School District*. The University of Texas at Austin is aware of the way that minorities have been treated by Caucasian ancestors before the Civil Rights Movement. They take in account their efforts to achieve higher education. To offer the same opportunities to all ethnicities, they strive to create a "critical mass" to support education outside of the classroom, by offering a chance to understand the culture of their peers. The Court should rule in favor of the University of

Texas.

Race Conscious Admissions Programs:

History of the Courts has proclaimed that affirmative action is constitutional, as it pertains to acceptance of students at a university. The Supreme Court should not monitor race-conscious admissions programs; previous rulings of the Supreme Court have upheld that affirmative action is constitutional. It has been deemed acceptable to be able to consider ethnicity in the admissions process. *Grutter v. Bollinger (2003)*—a case at the University of Michigan Law School—upheld the affirmative action admission policy. In this case, the sole intention of the respondent, the University of Michigan, was to create and establish a diversified campus; a campus by which students may experience a vast majority of ethnicities. With this diversified campus, the University of Michigan, as well as the University of Texas, allows tolerance of other races. While not in the classroom, students are able learn about the history of their peers and gain an understanding of their cultures. However, from an educational basis, the selection process was not limited to race, academic success and test scores was also considered. The petitioner (Grutter) stated that the University discriminated against her ethnicity, claiming that race was paramount to any other qualifications of the Law School application. The majority decision of the Supreme Court gave their consent in favor of the University of Michigan, claiming that an ethnic diversity was salient in order to maintain a critical mass. The University of Texas was obeying the law when they decided to not admit Ms. Abigail Fisher. They decided that to assure no one on campus felt isolated in their ethnicity, they would follow the laws of affirmative action (Civil Rights Act of 1964) to create a racially diverse environment for all students. In a similar case, *Regents of the University of California v. Bakke,* the Supreme Court ruled that a quota cannot be used to reach a set number of minorities. The court ruled that, to create diversity, an applicant's race may be assessed only as a factor. There is minimal, if any, evidence in the case of *Fisher v. University of Texas at Austin* that the hierarchy used a quota to admit a set number of minorities into the University of Texas.

Strict Scrutiny and the University of Texas:

The university has passed the strict scrutiny test because they are not giving the African Americans, or any other race, an advantage. The University admit the top ten percent of students from each high school throughout Texas. The amount of Caucasians compared to other races were still drastically higher than those of the minorities. Strict scrutiny is a way of examining the process involved in each case to guarantee that it is not contradicting The Constitution. The test was established during the case of *United States v. Carolene Products Company* (1938) by Justice Harlan F. Stone. The Fifth Circuit Court has looked back at this case closely because it was ruled after Grutter v. Bollinger the Strict Scrutiny Test must be applied to any admissions program using racial categories or classifications.

The Fourteenth Amendment:

The Fourteenth Amendment states "All persons born or naturalized in the United States... equal protection of the laws." In context, the amendment helps the petitioner. But, society today is plagued by chants of "black lives matter," a phrase that displays inequality among the citizens of the United States. The trend of racism towards minorities has raised issues in society for years, therefore leaving opportunities that these minorities had previously missed out on. When the Amendment was written, Caucasians were the ones that were of a higher authority. The Freedman's Bureau has helped make affirmative action what it is today. It has transformed the way that minorities are treated, it also was renewed multiple times to compensate for the inhumane treatment that certain ethnicities endured. The Texas House Bill 588, created in 1997, also provided equal opportunity for all races. It allowed the top ten percent of any high school in Texas to automatically be admitted to a state university. This bill did not create the appropriate amount of diversity on each campus around the state. For every one of every race to be able to feel comfortable and not isolated, the University of Texas admissions committee needs to be able to create a "critical mass" with a diverse student body. Not only do African American students need the opportunity for higher education, but they are also able to enlighten other ethnicities about their predecessors and how far each culture has come in acceptance of each other. Justice Sandra O'Connor previously stated in result of *Grutter v. Bollinger*, "In the future... affirmative action would not be necessary in order to promote diversity," but for now the Court should uphold the policies of the University of Texas at Austin's admissions program.

A question lingers as to whether or not race conscious affirmative action is, or is not, consistent with the Fourteenth amendment. In the specific case, *Fisher v. The University of Texas at Austin*, the University derives its student body from the best of the best students, by selecting the top ten percent, and holistically selecting the other students. Abigale Fisher maintained that her Fourteenth Amendment rights were violated by the University of Texas, yet, Ms. Fisher was not in the top ten percent of her graduating class. Ultimately, the Supreme Court should not monitor race conscious affirmative action, as it has been concluded in previous rulings (Grutter v. Bollinger, 2003). In the Supreme Court Case—*Parents Involved in Community Schools v. Seattle School District*—the respondents (Seattle School District) practiced a method for High-School students to apply for schools, which eventually raised a problem regarding affirmative action. The Seattle school district normally became oversubscribed with students, constitutionally, they used a system to regulate the excess of students by using a secondary measure known as a racial factor. The intent of this racial factor was to not only allow ethnic diversity, but to prevent one school or the other from exceeding the maximum amount of students. A neutral group of parents sued the district, pleading under the Fourteenth amendment. However, the racial selection standards was only put in place if other neutral alternatives failed. Students were presented an opportunity to select a preferred school, and if that specific school reached a carrying capacity, then a different selection process was set forth. Without the ethnic diversity being

imposed in schools, the district risked having predominantly un-cultural student body. The standards in this case apply to high school, at the collegiate level.

The Freedmen's Bureau:

The Freedmen's Bureau was simply a U.S. Agency that offered aid to freed African American slaves during the Reconstruction Era. This Post-Civil War agency, established in 1865, presented former slaves with items such as food, clothing, medical care, etc. However, the extent of the Bureau should be considered the basis of modern-day affirmative action. The Freedmen's Bureau has laid down the necessary actions, intently to help former slaves recover. Some questions that arose during the Reconstruction Era as a response to the Freedmen's Bureau, came from white southerners. White southerners were a majority of the opponents, simply because they upheld that there wasn't enough room to offer millions of slave a free-labor society, while at the same time, offer medical care, houses, and simply help them bounce back from slavery. Contrary to this, proponents of the Freedmen's Bureau came from African Americans, and poor white males, because the aid and care of this bureau granted them an opportunity to recover from the Civil War.

Modern Day Effects of Slavery:

Years after the creation of the Freedmen's Bureau, modern-day effects of slavery are still lingering. Examples of this would include the recent display of Rebel flags, and individuals who still feel connected historically to slavery and the way their ancestors were treated. In response to incidents regarding ethnicity, it becomes the states responsibility to ensure that racism and the treatment of minorities is being addressed efficiently. It should be their power, to create diversity not only in communities, but universities, in order to guarantee a multicultural education system that grants everyone opportunities.

Almost 20 years after the success of *Regents of the University of California v. Bakke*, another, more modern case was presented to the Supreme Court. *Hopwood v. Texas* (1996), was a Supreme Court case that argued the use of affirmative action as a factor in the admission process. Texas argued that ethnicity was only considered if the applicant was not in the top ten percent, which led them to select students based upon the idea of a diversified campus. After the 1996 Hopwood decision, it was decided that race conscious affirmative action was a necessity, in order to create a diversified campus—one by which students may experience different ethnic groups and minorities. This echoes the *Fisher v. Texas* case simply because a set quota is not in place. Students of any ethnicity are granted equal opportunities to earn a spot in the top ten percent, and those who do not qualify for this admission standard, fall into the holistic selection process.

Should the World Live in a Colorblind Society:

The argument pertaining to living in a "colorblind" society reflect many previous Supreme Court rulings. If society intended to transform into a colorblind society, that would leave minorities unable to overcome the troubles they dealt with in the past, and in modern-day society. Essentially, it would leave those who still feel connected to the past unable to obtain

an equal living standard. Not only would it be difficult to disregard the past, living in a "colorblind society" would limit the diversity needed to expand each culture. Ultimately, the discrimination many minorities face in modern society has led to the inability to alleviate personal connections to the past. Living in a "colorblind society" ties into the Supreme Court case *United Steel Workers v. Weber (1979).* This case involved a white male, (Weber) who was hopeful to work for the United Steel Workers. Weber was denied a spot, and instead, the spot was taken by another African American male. Weber argued that it violated his civil rights, claiming it was discrimination. The Court ruled that the United Steel Workers, in fact, did not violate the Civil Rights Act. Denying Weber's application was simply an act of correcting statistical imbalance among minorities, and did not prevent other white males from climbing the ranks. The University of Texas is creating a balance among minorities and majorities on campus, it does not hold race against anyone and offers the same opportunity to all.

Unconstitutional Acts of Affirmative Action:

It is evident that a committee can try too hard to accommodate for the poor treatment of minorities. In *Ricci v. Destefano,* the city of New Haven tried to give a slight advantage towards the minority firefighters applying to a job. They threw out test scores that were crucial to the application process. The court ruled that discarding the test scores was unconstitutional. However, in *Fisher v. Texas,* test scores are not disposed of. In fact, the top ten percent scorers are able to get into any state school of their choice. The instance of *Gratz v. Bollinger*, it was deemed unconstitutional to set a quota for minorities to be enrolled into college. However, there is no quota set at the University of Texas, the staff was simply trying to create a critical mass amongst the students on campus. It is shown that there are acts of affirmative action that can violate the equal protection clause, but the University of Texas is compliant within the jurisdiction of the Constitution.

Conclusion:

Ultimately, The University of Texas at Austin's admissions policy complies with the United States Constitution, and should be deemed Constitutional. The Court should vote in favor of the University due to its efforts to create a diverse campus. Higher education is not only about earning a degree towards an occupation; it is about preparing students for future endeavors far beyond the school system. In the workplace, workers are susceptible of exposure to individualized cultures, which the university is offering within its campus. Race is not the only factor associated with admitting the students into the university. Using a holistic approach of the University involves consideration of race, which is only a factor if the student falls short of other essentials, such as the top ten percent law. The committee does not have a quota to admit a certain number of minorities, but it does try to create a "critical mass" in hopes of easing historically attached students, and avoiding any means of ethnical segregation. Essentially, the University of Texas offers the opportunity to connect with others with similar and different upbringings, to help students of all cultures learn to

strive together. The Court should show deference to the previous rulings which have already resolved the legal questions of *Fisher v. Texas.*
