Respondent-Burgess, Hummer-Elkins, WV

Student Name: Elizabeth Burgess, Ben Hummer

https://youtu.be/syppUdXiOEI

Table of Cited Authorities:

Ricci v. DeStefano (2009)

Fisher v. Univ. of Tex. at Austin, 631 F.3d 213 (5th Cir. 2011)

Fourteenth Amendment

Freedmen's Bureau (1865)

Fullilove v. Klutznick (1980)

Grutter v. Bollinger (2003)

Parents Involved in Community Schools v. Seattle (2007)

Regents of the University of California v. Bakke (1978)

United States v. Paradise (1987)

Statement of Argument:

May it please the Court that race conscious affirmative action is consistent with the Fourteenth Amendment to the United States Constitution. University of Texas at Austin automatically grants all students within the top ten percent admission to the university, a criteria that the petitioner, Abigail

Fisher did not achieve. University of Texas at Austin offers an alternative method of possible admission to those like the petitioner, taking into account many factors such as grade point average, standardized test scores, extracurricular activities, community involvement, and race. The admissions office deemed that Fisher was not an ideal candidate for acceptance, and offered the spot to another applicant. *Grutter v. Bollinger* and *Regents of the University of California v. Bakke* support the argument that race may be used as a factor in university admissions decisions.

Argument:

I.Previous Cases Support Race Conscious Admissions Processes

Regents of the University of California v. Bakke supports race-conscious admissions through its declaration that race quotas are unconstitutional, but race may be considered in the admissions process. While Allan Bakke gained admission to UC, Affirmative Action was not only upheld, but was endorsed by five Supreme Court Justices.

In *Parents Involved in Community Schools v. Seattle*, Justice John Roberts supported the idea that as long as race is not the only or main factor in an admissions decision, it can be considered. The type of diversity needed for a holistic college experience is different than what may be needed for a middle or high school education, and the Supreme Court explained that when comparing *Parents Involved in Community Schools* and *Bakke*. Previously, the Supreme Court had considered racial diversity a compelling interest, but mostly on university campuses rather than high school premises, which was the issue in this particular case.

Grutter v. Bollinger allowed University of Michigan to weigh heavily an applicant's race in the admissions decision. Justice Sandra Day O'Connor stated that programs that assist minorities would be necessary for at least twenty-five years, and this case falls within that scope of time. Contrary to the petitioner's argument, *Ricci v. DeStefano* is not relevant to this case, as the respondent is not a

university attempting to achieve campus diversity, but a group of firefighters throwing away test scores. While race was involved, it would be a stretch, at most, to compare the two cases. The petitioner is arguing a very different claim than what is presented in *Ricci*.

II. Race Conscious Admissions Processes Meet Strict Scrutiny

The University of Texas at Austin's use of race in the admissions process does meet strict scrutiny. The Fifth Circuit Court of Appeals reviewed this case multiple times before it was sent to the Supreme Court, finding the admissions process lawful. Strict scrutiny is used to solve a specific, important issue without causing unnecessary negative effects. The compelling interest in this case is a public university offering a racially diverse campus, and the narrowly tailored policy is that race is one of many factors, not the only factor. A racially diverse campus cultivates a variety of knowledge and experience, feeding students, and in turn, society. The government's interest in the health and expansion of young minds must be top priority. As long as race is not the main or deciding factor, the admissions process meets strict scrutiny.

III. The Fourteenth Amendment Supports Race Conscious Admissions Processes

The language of the Fourteenth Amendment and the context in which it was written both support affirmative action tremendously. The Fourteenth Amendment was written in response to the mistreatment of African American citizens of the United States (minorities). While the Emancipation Proclamation technically freed slaves on paper, it was met with opposition and resentment by many American citizens. To rectify the wrongdoings of those in disagreement with the Emancipation Proclamation, the Fourteenth Amendment was made. Similarly, affirmative action attempts to make up for the resentment left behind from slavery. Although many laws are passed, enforcement in social issues is sometimes difficult to ensure— and that is the case in this situation. The Fourteenth Amendment states that, "No Stateshall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or

property, without due process of law;nordeny to any person within its jurisdiction the equal protection of the laws." and affirmative action simply rectifies an amendment that has not been properly followed. Affirmative action is needed to account for the historical disregard of previous laws. Examples of this disregard may include Southerners'rebellion against the Emancipation Proclamation and the lack of respect for the Fourteenth Amendment.

IV. Reconstruction-era Legislation Supports Affirmative Action

Reconstruction-era legislation supports affirmative action programs in an attempt to make restitution for the gruesome acts committed during the time of slavery. The Freedmen's Bureau, created through Act of June 21, 1866, ch. 130, § 2, 1866 Stat. 69 ensured that freedmen would be given opportunities to obtain a higher education and transition into society as equals. This legislature was necessary to counteract the resentment and opposition many Southerners exhibited against the advancement of minorities. Congressional Globe, 39th Congress, 1st Session 240 prompted Representative Henry Wilson to voice concerns that minorities required assistance in fighting against legislation that Southerners may try to pass in attempt to lessen minority rights. Education is woven into this subject by the Freedmen's Bureau, and its obvious goal to make restitution to minorities by providing them with an increased chance of getting higher education. The reasoning behind this is that a higher education will provide many more opportunities throughout a person's life. While there is a university that is a product of the Freedmen's Bureau, African Americans and other minorities should not be limited to a specific university. They should have equal protection under the law, but because that is not reality, affirmative action must be enacted. [1]

V. The Freedmen's Bureau Supports the Theory of Affirmative Action

The precedent for Affirmative Action can be traced back to a Civil War era institution known as the Freedman's Bureau. It was designed by the United States government to both help integrate newly freed slaves into American Society and to deal with the surge of refugees created by the destruction the Civil

War caused upon the South. Throughout its three year existence, the bureau helped former slaves gain a foothold in the post-war economy. One of the original plans was to redistribute former confederate land to landless freedmen so that they could farm it and in turn build wealth, but it was repealed by Congress after the bill was passed. That left the only real way to improve the situation that former slaves found themselves in was to provide education opportunities for them to take advantage of. This is regarded as one of the biggest successes of the Freedman's Bureau.

VI. Affirmative Action is a Necessary Response to Historical Acts

Today, Americans still live in a society where certain minority groups, particularly African-Americans, lack the same access to quality education that White America is provided. It has become a goal of the United States government to help these disadvantaged groups achieve parity with their white peers, as no other group or institution has the power or will to adequately tackle this challenge facing our nation. This has been reinforced by Supreme Court cases, such as *Grutter v. Ballinger*, where the Supreme Court ruled that Affirmative Action is constitutional when the school in question is trying to achieve a "substantial"level of minorities to create a diverse campus.

VII. History Still Affects Society

The social and economic damage caused by slavery is still visible in modern society. When slaves were freed, they had to start out with virtually nothing to their name. Not enough of them were able to get an education via the Freedman's Bureau during its limited tunure. Former slaves and their descendants lacked a fair opportunity to buy land or make any real form of investment in their future, leading many ex slaves to return to plantations to work for slim wages, a practice known as sharecropping. On top of this, Reconstruction was never able to solve the pre-existing discrimination against the black population, leading to segregation and Jim Crow laws that forced African Americans to settle for schools that were severely underfunded compared to white schools. This only deepened the economic divide between white and black and created a culture that accepted and promoted active discrimination

against the black population. The government must be the one to solve this problem. Individuals and Non-Profits lack the power, weight, and ability to effectively tackle the challenge of inequality. One of the crucial stepping stones to this is to help disadvantaged groups gain access to higher education. This is the basic premise of Affirmative Action, and has been backed by many court cases dealing with the issue. In *Fullilove v. Klutznick*, the Supreme Court ruled that, should an institute desire, set up modest quotas for minorities. Also, in *United States v. Paradise*, it was ruled that government organizations, specifically schools, could choose to promote minorities in order to create a more equal work environment. Cases like these have proven the constitutionality of Affirmative Action.

Conclusion:

The Court should find that the University of Texas at Austin had the constitutional right to deny Abigail Fisher admission to its campus. The University of Texas at Austin's admissions policies meet the tests of strict scrutiny, and are supported by *Grutter, Bakke,* and Fisher v. Univ. of Tex. at Austin, 631 F.3d 213 (5th Cir. 2011). The admissions decision may consider race as a factor in acceptance as long as it is one among many, and it was in this case. Affirmative action is an acceptable means of restitution for historical wrongdoings, especially when it is made right through education and educational opportunities. University of Texas at Austin's decision is supported by several pieces of legislation, dating back to Reconstruction-era. The mere existence of the Freedmen's Bureauand content in which the Fourteenth Amendment was written exemplifies the need for affirmative action, especially when a critical mass or racial diversity on a university campus is being pursued. [2]

In an ideal world, all Americans of all backgrounds would live together in perfect harmony and equality. Unfortunately, Americans do not live in that world. Even today, minority groups across the United States are significantly poorer than the rest of America. Because many minority groups, including rural white Americans who would be the first in their family to gain a higher education, live in lower income neighborhoods, they often go to schools that are drastically underfunded and

understaffed, creating a divide in education between them and wealthier Americans. This limits employment opportunities, which in turn closes the routes out of poverty. Those who would advocate for a colorblind society do not always see the impact of such a mindset. If everyone is viewed the same, we as a nation would not see the adversity that many minorities overcome just to reach a form of parity with the typical white American. In the Supreme Court case *Ricciv. Destefano*, it was reinforced that race should not be a barrier to an individual's opportunity in our nation. The U.S. has made much progress over the past decades, from the ending of segregation and Jim Crow laws to the embracement of immigrants and minorities into our everyday culture. However, America has yet to achieve the end of race and religion as a deciding factor of somebody's standing in society. Sometime in the future, we will have a colorblind society but in order for that to happen, all colors of people must be the same. The respondent asks the Court to uphold affirmative action as a program and as an idea so that disadvantaged Americans can continue to pull themselves out of poverty and help create a truly equal and distinctly American society.

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Normal
false
false
false
EN-US
X-NONE
X-NONE

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[1]

[2]

/* Style Definitions */
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mso-tstyle-rowband-size:0;
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