Respondent-Armstrong, Bosserman

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https://www.youtube.com/watch?v=MQGJi4yRnaM
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Table of Cited Authorities:

Fourteenth Amendment of the Constitution
Act of March 3, 1865, ch. 90, § 1, 18
Grutter v. Bollinger, 539 U.S. 306
Regents of the University of California v. Bakke, 438 U.S. 265
Hopwood v. Texas
Parents Involved in Community Schools v. Seattle School Dist. No. 1, 551 U.S. 701
Ricci v. DeStefano, 129 S. Ct. 2658
Thirteenth Amendment of the Constitution
Jones v. Alfred H. Mayer Co
66 Stat. 5

Statement of Argument:

The case of *Fisher v. University of Texas at Austin* has called into question the constitutionality of race conscious affirmative action in public universities. It has been previously decided by the Supreme Court in the case of *Grutter v. Bollinger* that affirmative action does not violate the 14th Amendment of *The Constitution*. Therefore, the legality of Abigail Fisher's denial of admission by the University of Texas at Austin should not need to be reviewed, and deference should be shown to the lower courts' previous rulings in favor of the University of Texas at Austin.

Argument:

Historical Overview Supporting Affirmative Action

The Fourteenth Amendment was passed in 1868 as a Reconstruction Amendment designed to contest the Black Codes of the South that limited the basic rights of formerly-freed African Americans. In fact, the same men who drafted and ratified the 14th Amendment endorsed a variety of laws that were intended to achieve the betterment of the conditions of African American lives. One objective that was very important to the framers of the Fourteenth Amendment was improving access to education by racial minorities. Therefore the Respondents believe the spirit of the Fourteenth Amendment would support

affirmative action.

The U.S. Bureau of Refugees, Freedmen and Abandoned Lands, known as the Freedmen's Bureau, was established in 1865 by Congress to help former African slaves and low socioeconomic whites residing in the South during the aftermath of the U.S. Civil War. Many southern communities were left in ruins and the South's plantation-based economy was destroyed after nearly four million slaves were granted freedom. The purpose of the Freedmen's Bureau was to provide food, housing and medical aid, established schools and offered legal assistance to these people. From the start, the Freedmen's Bureau faced opposition from an assortment of fronts, including white Southerners, the terror group known as the Ku Klux Klan, and President Andrew Johnson. President Johnson undermined the bureau's authority by pardoning former Confederates and restoring their land, as well as removing Bureau employees he thought were too sympathetic to blacks. Although the bureau faced many setbacks, it was instrumental in building thousands of schools for blacks, and helped to found such colleges as Howard University, Fisk University, and Hampton University. This early progress in providing higher education for oppressed peoples has set the foundation for the United States' current affirmative action policies. While the United States is no longer trying to lick its wounds after a civil war, the purpose of the Bureau is still relevant in providing higher education for the people who need it. Affirmative action is simply a policy to help those who tend to suffer from discrimination, especially in education. Although the Freedmen's Bureau no longer exists, affirmative action is making up for its loss.

On March 6th, 1961 President Kennedy issued an executive order stating that the government "take affirmative action to ensure that applicants are employed, and employees are treated during employment, without regard to their race, creed, color, or national origin." The goal of this executive order was to ensure equal opportunity for all. Then in 1965, President Lyndon B. Johnson amended this to include gender along with minorities. A written affirmative action plan was established that included placement goals for women and minorities. Affirmative action has been used to help everyone obtain equal rights and in this case, The University of Texas is following its affirmative action and doing what is "ethically responsible."

Previous Rulings on Affirmative Action

The Court should take into consideration other universities that use these same procedures when deciding who they allow into the school. A few previous court cases to consider would be *Grutter v. Bollinger, Regents of University of California v. Bakke*, and *Hopewood v. Texas*. All of these cases have to do with universities admissions decisions that were based off of racial preference to create diversity within the school.

In reference to the case of *Grutter v. Bollinger*, in which the University of Michigan Law School put "substantial weight" on the ethnicity of applicants in order to guarantee campus diversity, the Supreme Court ruled that the application process used by the University of

Michigan Law School was indeed constitutional. The Court deemed the use of an applicant's ethnicity in deciding admission constitutional, as long as the use of ethnicity was considered a "compelling interest of the state" in order to create a diverse student body and it is used in consideration of one individual vs. another. Keep in mind that consideration for admission is given to each application. The case of *Fisher v. University of Texas at Austin* closely mirrors the case of *Grutter v. Bollinger* in the respect that the University of Texas at Austin careful considered the ethnicity of applicants in the hope that a vast number of different cultural and socioeconomic backgrounds within the student body would create an environment beneficial to all students.

In 1978 the case of *Regents of University of California v. Bakke,* a white applicant named Allan Bakke was denied acceptance to the Medical School of the University of California because of his ethnicity. In the *Regents of the University of California v. Bakke* case, the Supreme Court found the U.C. Davis Medical School's policy of saving 16 out of 100 slots in their program for "disadvantaged minorities" unconstitutional because of its infringement of the Fourteenth Amendment. The Court decided that the "quota system" used by the school was the aspect that created the infringement of the Equal Protection Clause and that it was constitutional for a university to determine admission while considering the ethnicity of the applicant.

By looking at the statistics of the University of Austin at Texas' student body, the university has absolutely shown strict scrutiny in their admissions choices. Strict Scrutiny is a form of judicial review that courts use to determine if certain laws are constitutional. This certainly applies in this case because the question at hand is, does the University of Texas at Austin's admission decisions violate the *Fourteenth Amendment*? According to Forbes, as of right now their student body consists of 47% white, 21.7% Hispanic/Latino, 17.8% Asian, and 4.7% Non-Resident Alien, 4.3% African Americans, and 3.1% of two or more other races. Since the University of Texas at Austin does not reserve a set number of spots for minorities, the case of *Regents of the University of California v. Bakke* supports the case of the respondent.

In 1996, in the case of *Hopwood v. Texas,* a girl named Cheryl Hopwood was denied acceptance into the University of Texas Law School despite the fact that she help higher qualifications than some minority applicants who were accepted. The Supreme Court denied to review this case, but for a time, banned affirmative action in a number of states. Upon later review, the Supreme Court ruled that in "certain conditions," race can be used as a factor of admissions. In the case of *Fisher v. University of Texas at Austin, these* "certain conditions" relate to the decision made by the University of Texas because of the University's desire for diversity within the student body.

With regard to the cases of *Parents Involved in Community Schools v. Seattle School Dist. No. 1* and *Ricci v. DeStefano,* the respondent would like to bring attention to the differences that are present between these two cases and the case of *Fisher v. University of*

Texas at Austin. In *Parents Involved in Community Schools v. Seattle School Dist. No. 1*, the Court struck down a policy favoring minorities within a high school because it failed to comply with the "Equal Protection" clause of the Fourteenth Amendment; but the University of Texas at Austin is not a high school, it is an establishment of higher education and seeking diversity within an institute of higher education is far different that seeking diversity within a high school. There is an even larger variance present in the case of *Ricci v. DeStefano*. The University of Texas at Austin is not promoting firefighters, the University is working to educate the young men and women of America.

Does the Future of America Rest in the Hands of Affirmative Action?

The aftermath of slavery gave us a Civil War, Reconstruction, Jim Crow laws, and finally a civil rights movement. But as anyone even vaguely aware of the social conditions in modern America knows, we still face a "problem of the color line." The dream that race might someday become an insignificant classification in our life now seems innocently idealistic. In cities across the country and in rural areas of the South, the situation of the African American underclass is worsening. The effects of slavery have changed the morals of African Americans, as well as their values and even their mentalities. The changing of these things can all be traced back to the days when slavery ran this country. Although it has been one hundred and fifty years since slavery was abolished, its' legacy is still alive today. According to a county-by-county analysis of census data and opinion polls of more than 39,000 southern whites, racism and discrimination that we see today is a direct result of slavery. The shadow of slavery still lingers over the African American families who face racial prejudice and are denied certain opportunities because of the warped view of African Americans and other minorities.

The Thirteenth Amendment states that "[n]either slavery nor involuntary servitude . . . shall exist within the United States." In *Jones v. Alfred H. Mayer Co.,* the Supreme Court interpreted the Amendment as not only abolishing slavery, but also facilitating Congress to "pass all laws necessary and proper for abolishing all badges and incidents of slavery in the United States." Jones, a black man, charged that a real estate company in Missouri's St. Louis County refused to sell him a home in a particular neighborhood on account of his race. The Court in *Jones v. Alfred H. Mayer Co.* reopened the issue of linking racism in present-day society to the history of slavery in the United States.

The idea of living in a colorblind society is the act of ending discrimination by treating individuals as equally as possible without regard to race, culture, or ethnicity. However, this idea of living in a colorblind society is not sufficient enough to take away the damage that has already been done to minorities throughout history. For most minorities colorblindness creates a society that denies their negative racial experiences, rejects their cultural heritage, and ignores their perspectives. Many people view colorblindness as helpful to people of color by saying that race does not matter. However most minorities will state that race does matter because it affects opportunities, perceptions, income, and so much more. Instead of

helping, colorblindness has a lack of awareness of racial privilege. People should not be blind when it comes to things like a person's culture or racial identity.

Conclusion:

The court should find that in the case of *Fisher v. University of Texas at Austin*, the University of Texas at Austin has, in no way, violated *The Constitution* by admitting minority students in order to achieve campus diversity. It has been ruled in the *Grutter v. Bollinger* case that it is constitutional to admit minority students with lower test scores over non-minority applicants in the interest of diversity because it serves as a "compelling interest of the state." The University of Texas at Austin asks the Court to show deference to the University of Texas at Austin's admissions committee and uphold previous rulings of lower courts that have already decided upon the constitutionality of this matter.

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