Elkins HS, Elkins, WV
https://www.youtube.com/watch?v=Ef0RQqfQGrA
Petitioner

Table of Cited Authorities:

Fourteenth Amendment
Adarand Constructors Inc. v. Pena, 1995
Regents of the University of California v. Bakke, 1978
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Ricci v. DeStefano, 2009
Mitchell v. Horn, March 6, 1917
City of Richmond v. J.A. Croson Co, 1989
Schuette v. BAMN, April 22, 2014

Statement of Argument:

The petitioner believes that race conscious affirmative action is not consistent with the *Fourteenth Amendment*. The *Fourteenth Amendment* clearly states that every person should be seen as equal, while also stating that all have "equal protection of the laws." However, giving minority applicants an edge is clearly not treating everybody equally and is giving the minority applicant an upper hand in admissions. The *Fourteenth Amendment* was ratified in a time when slavery was a recent problem, and it could be argued that this amendment was essentially there for the slaves to ensure that they were no longer being treated the way that they were in the past. Using race as a factor for admission in modern times seems unnecessary. The amendment, however, is still extremely necessary to ensure equality. With state universities in Texas already accepting the top ten percent in the class at every high school, it already allows the university to achieve a diverse student body. Putting even more emphasis on essentially favoring minorities is not fair or equal in any way. Affirmative action in modern times does more harm than good; all it does is give the minorities an upper hand in some situations that seeing everybody as equal is key.

Argument:

***Fourteenth Amendment* and Affirmative Action**

The Court should see that race conscious affirmative action in university admission programs is simply unfair and unequal. As mentioned before, the *Fourteenth Amendment* was ratified so everybody is treated equally by society and has equal protection of the laws. Giving the minority applicants an edge in admissions clearly violates the *Fourteenth*

Amendment. The *Fourteenth Amendment* does seem to support the case of race-based affirmative action in some ways depending upon how it is viewed. By saying that everybody will be treated equally, race conscious affirmative action will be needed in some cases to reach that "colorblind society" equality level. However, one needs to see that this amendment was ratified in a time of when the United States had just recently went their separate ways with slavery. In the late 1800s, race conscious affirmative action was certainly needed due to all of the hate and negative views on minorities. Affirmative action, 150 years later, is not needed. Minorities are no longer treated the way they were and should be seen as an equal part of society, instead of still essentially favoring them. Yes, race-conscious admission programs may be affirmative action, but affirmative action should not still be in place years and years after slavery and other horrific racist programs were in place.

Adarand Constructors, Inc. v. Peña

In *Adarand Constructors, Inc. v. Peña*, a contracting company, named Gonzales Construction was picked over another contracting company, Adarand Construction, to help with a Department of Transportation project. Being owned and ran by socially and economically disadvantaged individuals, the US Small Business Administration would certify certain businesses as disadvantaged. In this case, Gonzales Construction had been certified by the Small Business Administration due to those factors, which meant that it essentially had an upper hand in the choice of picking between the contracting companies applying for the jobs, because the company would receive more incentives by doing so. In a five to four decision, the supreme court decided in favor of Adarand Construction and said that "all racial classifications, whether imposed by federal, state, or local authorities, must pass strict scrutiny review." In *Fisher v. Texas University*, it is essentially the same problem due to the minority receiving an edge over Abby Fisher and others.

Strict Scrutiny

Texas University has not proven that its race conscious admission program meets strict scrutiny. In a simple way, strict scrutiny is "the most stringent standard of judicial review used by United States courts. It is part of the hierarchy of standards that courts use to weigh the government's interest against a constitutional right or principle". To meet strict scrutiny, the law or policy must be narrowly tailored to meet the interest, which in this case, is achieving a critical mass of minorities. Since Texas University does not openly say how much they weigh a minority's race or background, nobody knows how much weight is on an applicant's race when applying in whether or not they become admitted, which in turn, does not meet strict scrutiny.

Regents of the University of California v. Bakke

In the case of *Regents of the University of California v. Bakke,* it was ruled that quotas set aside for minority students in admission were not allowed. Since the University of Texas will not share how much preference a minority receives or if there is a quota to receive "a critical mass", one must wonder how the University is allowed to do so and if there is actually a

quota set aside for these students. History does support affirmative action programs, due to the United States' ugly history in regards to minorities, but it is a stretch to say that minorities in today's world are affected by something that happened to their ancestors 150 years ago.

Parents Involved in Community Schools v. Seattle School District

To reference another case, in *Parents Involved in Community Schools v. Seattle School District,* it was wondered if denying a student of admission to a high school of his or her choice solely based on race violated the Equal Protection clause. It was deemed that it was indeed in violation of the equal protection clause. To touch back on a previous point, the whole reason the University of Texas puts emphasis on minorities in admission is to achieve "a critical mass." However, since the University of Texas automatically accepts the top ten percent of all high schools in Texas, this clearly allows for them to achieve that critical mass, because they will be admitting all sorts of different students and minorities. With Texas being a very large state, there are plenty of cities with high schools that have these minorities. The ten percent rule allows the university to pull these minorities from all around the state. Also, since it is unknown what number a "critical mass" represents, it could be argued that it is essentially just a quota for minority students.

Freedmen's Bureau

The Freedmen's Bureau was established in 1865 by Congress during Abraham Lincoln's Presidency. It was made to help poor African American and Caucasian families after the Civil War in the south. The Freedmen's Bureau supplied these families with food, and housing, gave them medical care, provided legal aid, and created schools for them. It only was intended to last one year after the Civil War ended but after the first year it was extended for another two years. Congress shut down the Freedmen's Bureau in 1872. The Freedmen's Bureau supplied help not only to African Americans but also to Caucasian families too. Not just minorities were supported in this Bureau. This is a fair bureau because it recognized that not only African Americans needed help but Caucasians also needed help in finical things.

Affirmative Action

Affirmative action is faulty, because it only supports minorities. For example, the Freedman's Bureau supported everyone that might need help in anyway, not just minorities. An example of affirmative action that went along with only helping one ethnicity is the Ricci v. DeStefano case. This case dealt with the discarding of test scores of White and Latino people so a minority could receive a promotion even though these people scored lower on the test. The people in charge of the promotions claimed that they did not promote the White or Latino person because it would cause an unproportioned amount of majorities to hold the job. This case deals heavily towards what Abigail Fisher went through at the University of Texas. One key thing that Ms. Fisher suffered from in the same way was that she was also not accepted because she was in the majority of people. Now the

respondent asserts that the University of Texas did not throw away test scores like in the Ricci v. DeStefano case. The respondent would be correct in that fact, but just as how the White and Latino people were kept from having a promotion, which they were more adequate for; Fisher could have been more qualified for the life of college than the opposing person that received the acceptance into the college.

A few people during the era of Reconstruction did not know how long the Freedmen's Bureau should last or what exactly it covered. President Lincoln wanted the bureau to only last one year and cover medical care, education, and food. He did a good job, for three years, at doing this until he was assassinated, but after he was killed, President Johnson kept going on with the plan of helping the people of the South.

Lingering Effects of Slavery

Slavery in modern day society is nonexistent. Even though it is nonexistent the state is trying to fix the mistakes of the past, which they can try to fix but will not succeed in the long term. Some of the ways the states try to fix the past are when they give out reparations to minorities or when they give special treatment to minorities. One example in how the state gives preferential treatment to minorities is the City of Richmond v. J.A. Croson Co case. This case was about how construction companies in Virginia were required to have at least thirty percent of their workers to come from a minority background. If the company followed this guideline, they got a tax reduction. The court found that this requirement was unconstitutional because there was a set quota for the amount of people that had to be a minority. Another example of the state trying to fix the past is when they give out scholarships to certain ethnicities instead of giving the scholarship to all people that could benefit from the scholarship. If the states continue giving money, such as scholarships, to people based on ethnicity then viewpoints will always look back to the past.

Colorblindness in Society

In society, everybody should be treated equally because that is the basis of the United States of America this is stated in the Declaration of Independence. Society should be completely colorblind because if it were there would never be cases of racism. A sad example in how society is not colorblind is affirmative action. One case that dealt with affirmative action was the Schuette v. Coalition to Defend Affirmative Action case. This case is the definition in why society needs to be colorblind. This case resolved the question that using sex and ethnicity to choice who goes into college violates the fourteenth amendment. The Court found that this case does not violate the amendment. Justice Scalia said this against the majority, "The Fifth and Fourteenth Amendments . . . protect persons, not groups." Justice Scalia was saying that we should not look at ethnicity but the actual person. The petitioner agrees because with this logic, society will never be colorblind; which it desperately needs.

Conclusion:

Overall, I believe that if affirmative action continues in society, and the world will struggle to be colorblind at all times. Without the world being equal, we could lose important things that could cause problems in society forever. The things we could lose include students not getting an education such as how Abigail Fisher could have been if she would not have gone to college at a different place. There could be more students like Fisher that do not get accepted into a college based on ethnicity that might not go to college at all after been denied in such a fashion. This could prevent some major accomplishments and advancements in society.

The court should find that Texas University showing preference for minorities during admission is violating the *Fourteenth Amendment's* Equal Protection clause. Yes, strict scrutiny is imminent in similar cases to this one, but, in this particular case, the University of Texas does not release any information about their admission filters, so there is no way to know if they are setting quotas or anything to achieve the "critical mass" that they are striving for. At one point, affirmative action was definitely needed. However, over a hundred years after slavery was abolished, affirmative action is no longer as relevant as people make it out to be. Minorities today are not affected nearly as much by these moments in history as they used to be. With that being said, they should not receive this special treatment and should be treated the same way everybody else in society is. The best way to get rid of these racist views is to simply silence society about these moments in history and trying to help these minorities, as it just lets people be reminded that these things do still exist.
