Respondent-Mach, Cain, Elkins, WV

Student Name: Alex Mach, Brendan Cain
Respondent

Elkins HS, Elkins, WV
https://www.youtube.com/watch?v=mroFk7TwPH0

Table of Cited Authorities

Statement of Argument

Abigail Fisher v. University of Texas at Austin has already been decided, multiple times. It has been decided in cases such as *Grutter v. Bollinger*, *Parents Involved in Community Schools v. Seattle School Dist. No. 1, Regents of the University of California v. Bakke*, and again when the *Fisher* case was heard by the U.S. District Court for the Western District of Texas, and twice when the case was heard in the Fifth Circuit Court of Appeals. In all of these cases, it was ruled constitutional for colleges and universities to use race as a factor when admitting students, especially because "racial diversity can be a compelling government interest in university admissions." Having a more diverse student population also encourages insight into different communities.

Argument

I. Legislative History

The questions raised by this case have been argued multiple times in American history since the aftermath of the Civil War. Passed on March 3rd, 1865, the Freedmen's Bureau was one

of the first government funded assistance program in The United States and offered assistance to newly freed slaves and white families fleeing the South. The goal of these early assistance programs was to help the freed slaves and refugees survive in a very discriminatory, racist society. The Freedmen's Bureau did disappear due to lack of funding in the late 1870's, but assistance for African Americans did not end then. Howard University is a government funded private school whose aim was to provide higher education for the freed slaves. By giving these underprivileged African Americans college level educations, it better provided them to provide for themselves and their communities. The University of Texas is doing something similar by giving extra consideration to race, minority applicants they are providing them a better way to provide for themselves.

Throughout American history, especially during the Reconstruction-Era of history, laws have been passed to ensure that all citizens are treated equally and are given the same rights and benefits, regardless of race or privilege. In the 1860's and 1870's, programs were started, funded, and run by the government in an attempt to give everyone equality. In the 1964, the Civil Rights Act of 1964 passed, reinforcing and spelling out the ideals set forth in the Fourteenth Amendment. The Supreme Court did not rule against these laws and actions to support equality among the people. To take away college's ability to use race as a factor in admission, would be to take away another way for minorities to be successful and equal in reality, rather than just on paper.

II. Fourteenth Amendment

The Fourteenth Amendment of the Constitution states that all native born or naturalized citizens are entitled to "equal protection of the laws." All citizens of the United States are entitled to the same opportunities and experiences and if some of those citizens are deprived of those opportunities through racism, financial hardships, and discrimination, it is the responsibility of the state to assist those who are being discriminated against. Everyone is created equal in the eyes of the law, but people are not born into equal situations. The Fourteenth Amendment was established in order to help ex-slaves truly become citizens. Standardized test scores are not the most accurate predictors of student achievement. Standardized tests reflect how well the student takes tests and how well the school they attended prepared them. When ethnicity and background are not factored into the college application process, many smart, capable students are denied access due to attending schools with higher poverty levels and being ill prepared for the standardized tests. Through no fault of their own, these children don't get the chance to show their true potential.

Imagine two average students who go to different public schools, one who lives in a nice school district and one who lives in a low income school district. Statistically, in Texas, in most of the larger cities, minorities make up a larger percentage of the impoverished

population than white citizens (http://www.texastribune.org/library/data/demographics-poverty-texas-2011/). The student from the poorer school will statistically be more likely to have a lower standardized test score than the student from the higher income school district. The students of these lower income school districts are at a disadvantage when it comes to standardized testing. These schools are underfunded, making it difficult for teachers to offer the latest technology and resources that are available to the higher income school districts. These low income school students may also live in communities where the literacy abilities of the adults is less than par, where they grow up hearing and learning improper language skills at home and in the classroom. Taking these factors into consideration it is clear why the academic achievements can suffer in these communities. Two students with the same intellectual ability, attending different schools in different districts, can score drastically different on standardized tests. Low test scores do not necessarily mean low intelligence. The best way to fight poverty is with education, and the higher the education, the more benefits will be reaped. Giving these minorities the same higher education opportunities as non-minorities will benefit these students and the community as a whole.

III. Regents of the University of California v. Bakke

Unlike *Regents of the University of California v. Bakke*, when the University of California reserved 16 of the 100 openings of the freshman class for minorities, the University of Texas at Austin has no set number of spots reserved for minority applicants, the University of Texas is simply trying to expand its minority population. In order for the University to be more diverse and culturally beneficial to all students, they must admit more minority students than they had been with previous admission policy. Having a larger minority presence benefits all the students because it offers more, different perspectives on subjects in and out of the classroom. Due to automatic acceptation of the top ten percent of high school classes, the minority population can be significantly less when compared to other, non-minority ethnicities on campus in Austin. In order to make up for this difference, the University of Texas tries to accept minority students below the top ten percent to keep their campus diverse and classrooms full of different perspectives.

IV. Grutter v. Bollinger

The *Grutter v. Bollinger* ruling stated that using race as a factor to promote a racially diverse student body. This is exactly what the University of Texas at Austin was trying to do. The University's previous admissions policy was resulting in a "critical mass" of minorities not being achieved. The new admission policy, which factors in race, allows the University to better achieve a "critical mass." The Supreme Court has ruled that "racial diversity can be a compelling government interest in university admissions." Year after year, the remaining twenty to twenty five percent of the freshman class, those not from the top ten percent of

their high school class, mostly consists of non-minority students who have good standardized test scores.

V. Parents Involved v. Seattle

It was ruled unconstitutional to place students in high schools based on their race in order to have minorities more balanced throughout the schools in *Parents Involved in Community Schools v. Seattle School Dist. No. 1*. This is not what the University of Texas at Austin is trying to do. The Seattle school district was placing student based solely on race, while the University of Texas is using race as one of many factors in the application process. Although the Supreme Court ruled that the actions of Seattle School Dist. No. 1 was unconstitutional, they still upheld that race could be used as a factor for admission as long as race was not the only factor used. Chief Justice John Roberts wrote "the present cases are not governed by *Grutter*." Not only is the situation in *Parents Involved in Community Schools v. Seattle* different than *Grutter v. Bollinger* and *Fisher v. University of Texas,* if *Parents Involved in Community Schools v. Seattle* is not governed by *Grutter v. Bollinger* because it is a high school and *Grutter v. Bollinger* dealt with the University of Michigan, then the ruling on *Parents Involved in Community Schools v. Seattle* cannot really be applied to the Fisher case, which also deals with a college.

VI. Fisher v. University of Texas

Because no two cases really are exactly the same, the most applicable case is this case itself. This case has been heard first by the U.S. District Court for the Western District of Texas, who ruled in favor of the University of Texas at Austin. This case then went before the Fifth Circuit Court of Appeals, who also ruled against Miss Fisher. The then case went before the Supreme Court and was sent back to the Fifth Circuit Court of Appeals, who once again ruled, like in *Grutter v. Bollinger*, and in *Regents of the University of California v. Bakke,* in favor of the University of Texas at Austin. This case has been ruled on three times by some of the highest courts in the nation, and three times it has been decided that race based affirmative action is constitutional.

VII. Ricci v. DeStafano

In the *Ricci v. DeStafano* case, the Supreme Court ruled that the New Haven Fire Department's decision to disregard test scores in order to keep the work place more racially diverse was unconstitutional. Like in the *Parents Involved v.* Seattle, the New Haven Fire Department was using race as the only factor. Although the Fisher and Ricci situations are somewhat similar, there is a big difference between the work place and college settings. When choosing employees for a job, the most qualified applicants should get the position to ensure the jobs are being performed in the safest, most efficient, and effective way possible.

In college settings however, the job is to learn. Students with different backgrounds have different strengths and weaknesses and when put together in a learning environment, it allows them to benefit from each other. By including those who are from minorities, it allows them to become more highly educated and gain the same experiences as those who come from a position of privilege, leveling the playing field in the work place. By allowing minorities with lower scores into universities and colleges, it provides a more diverse learning environment. The University of Texas is also trying to provide equal opportunities to students from both privileged and under-privileged backgrounds.

Conclusion

Affirmative action on the basis of race has been a part of this country's history for one and a half centuries because it has been needed in order for all citizens to have equal opportunities. Until the day comes when affirmative action is no longer necessary, it is the job of those who can balance the scales to do so. Abigail Fisher was not denied access because of her race; she and many other students who also were not a part of the top ten percent of their high school classes were not admitted for many different reasons. In *Regents of the University of California v. Bakke*, it was ruled unconstitutional to reserve spots for minorities, but ruled that using race as one of the factors in selecting applicants is acceptable. In the very similar *Grutter v. Bollinger* case, it was ruled that it was constitutional to use race as a factor in accepting applicant to have a more diverse student population. And once again in *Parents Involved v. Seattle*, it was ruled that race can be used as a factor in higher education admission. Three times the Supreme Court has ruled that race is an acceptable factor in admissions to school, as long as it is not the only factor and that there is "individualized consideration of students." Twice the Fifth Circuit Court of Appeals ruled that the University of Texas' admission policy is constitutional. By admitting lower scoring minorities they provide a more diverse campus giving everyone more perspectives on classroom subjects and on campus life. Having a diverse campus also discourages against racism by truly giving everyone the same and opportunities in college, which then leads to better opportunities in life. Before any of the court cases involving The University of Texas, and before the admission policy was adopted by this government funded, state university, it was first approved by the University of Texas at Austin. The Supreme Court must rule in favor of the University of Texas at Austin and race based affirmative action in the higher education setting.
