2016 Harlan Institute Virtual Supreme Court – Sophie Croome and Mckenna Murray

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Speech: 2016 Harlan Institute Virtual Supreme Court Oral Arguments

Question Presented:

Is race conscious affirmative action consistent with Fourteenth Amendment to the United States Constitution?

Table of Authorities:

1. Basis of Jurisdiction:

On January 18, 2011, a panel of the Fifth Circuit Court of Appeals affirmed the judgement of the United States District Court For the Western District Of Texas. A request for the case to be heard in the Supreme Court was filed on September 15, 2011. The Supreme Court

agreed to hear the case and, after listening to oral arguments, ruled that the Fifth Circuit Court of Appeals needed to reexamine the case. The case was sent back to the Fifth Circuit Court of Appeals in June of 2013. On July 15, 2014, the Fifth Circuit Court of Appeals ruled in favor of the University of Texas at Austin. Fisher was denied a rehearing en banc with the Fifth Circuit. A petition for certiorari to the Supreme Court was filed on February 9, 2015.

2. Constitutional Provisions:

The Fourteenth Amendment to the United States Constitution provides:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall 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; nor deny to any person within its jurisdiction the equal protection of the laws.

3. Statement of Case

1. Background:

Abigail Fisher applied to the University of Texas at Austin in 2008 and was not accepted. Fisher, who is of caucasian decent, claims that she was denied admission on the basis of her race. She states that the University of Texas at Austin violated the Equal Protection Clause of the Fourteenth Amendment by using her race as grounds for admissions.

The university follows the Top Ten Percent rule during the admissions process in which they automatically accept the top 10% of each Texas high school's graduating class. Fisher was in the top 11% of her class, not the top 10%. Since Fisher was not automatically admitted, she was then reviewed by the university's admissions officers on the basis of leadership qualities, talents, family life, and race. The University of Texas at Austin strives to have a critical mass of minority students and, therefore, take into account an applicant's race. While Fisher was involved in numerous extracurricular activities, her test scores were on the lower end of the spectrum.

Affirmative action policies were developed to offset the unjust discrimination that began with slavery and continued on through the Reconstruction Era, giving disadvantaged

minorities more opportunities. Many universities use affirmative action in order to diversify their student population. Fisher claims that she was not accepted into the University of Texas at Austin because she was white. She claims that if she had been of a minority race, she would have been admitted. Fisher claims that the university's affirmative action policy violated her Fourteenth Amendment rights, specifically under the Equal Protection Clause.

2. District Court Proceedings

After Fisher was denied admissions to the University of Texas at Austin, she filed a complaint against the university in the United States District Court for the Western District Of Texas. She argued that her right to Equal Protection was violated when University of Texas at Austin considered race as a factor in her admissions. After filing the complaint, Fisher was joined by another plaintiff, Rachel Michalewicz. Together, they primarily sought declaratory and injunctive relief – a declaration that the race-conscious admissions practices at UT are unconstitutional and an order that those practices cease. Represented by the law firm Wiley Rein LLP, the two women brought their case to the United States District Court For the Western District Of Texas. Rather than presenting the case as a class action on behalf of future non-minority applicants, Fisher and Michalewicz argued for their personal admissions to be reviewed under race-neutral criteria. Considering the fact that both women enrolled at other colleges with no intention of reapplying or transferring to University of Texas at Austin, the university argued that they had no standing in the case. A prominent precedent in this case was Grutter v. Bollinger, which ruled that as long as affirmative action policies were not mechanical or point based, they were constitutional. Judge Sam Sparks of the United States District Court For the Western District Of Texas upheld the University of Texas at Austin's affirmative action policy, stating that it meets the standards laid out by Grutter v. Bollinger, 539 US 306 (2003).

3. First Opinion by the Fifth Circuit

After United States District Judge, Sam Sparks, held that the University of Texas at Austin's policy followed the standards set by Grutter v. Bollinger, 539 US 306 (2003), the case was sent to the Fifth Circuit court. Sparks' decision was affirmed by a Fifth Circuit panel of judges. The judges determined that Texas' 10% rule was increasing the amount of minorities gaining admission into the school. Fisher then requested for an en banc hearing of her case, which was denied in a 9-7 vote by the circuit judges.

4. Proceedings on Remand

Fisher v. Texas, 570 US (2013) primarily focuses on the precedent set by Grutter v. Bollinger, 539 US 306 (2003). In Grutter v. Bollinger, 539 US 306 (2003), the question of

affirmative action came into play and the court ruled in favor of the affirmative action processes at the University of Michigan Law School. Justice Sandra Day O'Connor of the Supreme Court wrote the majority in the 5-4 decision, ruling that the University of Michigan Law School had a compelling interest in promoting class diversity. The Supreme Court stated that a race-conscious admissions process that may favor "underrepresented minority groups" is constitutional. However, the court also stated that race can not be the only factor in an applicant's admission or denial. Unlike the previous case of Regents of the University of California v. Bakke, 438 US 265 (1978), in which the court ruled that the university's affirmative action policies were not narrowly tailored enough and instead were too mechanical, the Court ruled that the University of Michigan's policies did not amount to a quota system and were, therefore, constitutional.

In another case involving the University of Michigan's affirmative action policy, Gratz v. Bollinger, the Court ruled in favor of Jennifer Gratz, who had been denied admission. The Court ruled that the University's policy to have a quota system was unconstitutional and that affirmative action policies could not be a mechanical process and instead must be more holistic.

Since race falls under strict scrutiny, affirmative action processes must be both narrowly tailored and have a compelling state interest. In Bakke, 438 US 265 (1978), the Court announced that diversity is a compelling government interest. This means that affirmative action is constitutional so long as it is narrowly tailored.

5. Fifth Circuit's Opinion (on previous cases)

The Supreme Court determined that the fifth circuit failed to apply strict scrutiny to the university's admissions policy, sending the case back to the fifth circuit. In July of 2014, the fifth circuit decided in favor of the University of Texas at Austin, saying that the university can use race as a basis on deciding whether or not to admit applicants where it may not otherwise be able to achieve diversity. After again having en banc denied, this time in a 10-2 decision, Fisher filed a petition for certiorari to the Supreme Court.

4. Statement of Argument

The text of the Fourteenth Amendment states, "Nor deny to any person within its jurisdiction the equal protection of the laws." In terms of Affirmative Action cases, the Supreme Court has repeatedly affirmed that as long as the processes are narrowly tailored

and not mechanical, they are constitutional. In Fisher v. Texas, 570 US (2013), the university's affirmative action processes are constitutional as they are narrowly tailored for the sole purpose of increasing diversity on campus and they ensure that race is only one factor of many when an applicant's application is reviewed.

First, diversity is a compelling state interest, and because affirmative action's sole purpose is to ensure diversity, affirmative action fulfills a compelling state interest.

Second, the University of Texas at Austin's affirmative action processes were narrowly tailored as each applicant was examined individually to see if they not only met the academic requirements of the university but helped to enhance the diverse population on campus.

Third, the affirmative action processes did not use race as a sole factor in determining whether a student was accepted or not. The Top Ten Percent rule singled out academically strong students, not only minority students. And, race was one factor of many in the holistic review process of the University of Texas at Austin.

Fourth, Fisher has no standing in this case as she applied to other colleges, enrolled in a different college, and had no desire to transfer to the University of Texas at Austin. Fisher has already graduated from another college, so the only declaratory and injunctive relief that she is seeking is the $100 application fee.

Fifth, affirmative action is needed in our country. Colleges and universities should not be blind to the past discrimination that our country has faced, especially in the South. If we are to be working towards a more equal society, it is necessary that we pay extra attention to those minorities who have been discriminated against for decades.

5. Argument

The Supreme Court has ruled again and again and against and against in favor of affirmative action policies being used in the application reviewing process in colleges. As long as the taking into account of race is not mechanical and the policy is narrowly tailored per individual, the process is constitutional. In Bakke, 438 US 265 (1978), the Supreme Court found diversity in the classrooms to be a compelling state interest. The best way to bring diversity to higher educational facilities is to use affirmative action and the Supreme Court has ruled this way time and time again. In Grutter v. Bollinger, 539 US 306 (2003), and Bakke, 438 US 265 (1978), the Court ruled this way. In Bakke, 438 US 265 (1978), Justice Lewis Powell found that since diversity is a compelling state interest, affirmative action is

legal under the Fourteenth Amendment, as long as a quota is not used. When Fisher was applying to school at the University of Texas at Austin, the school did not use a quota system. They took race into consideration as they were admitting students, but they also considered extracurricular activities, GPA, and standardized test scores. The university's affirmative action policy was narrowly tailored. The sole purpose for affirmative action is to create a more racially diverse environment at the school. Each applicant was examined individually, with their academic capabilities taken into consideration along with their race and how that could diversify the campus. US District Court Judge Sam Sparks upheld the university's policy, saying that it followed the standards set by Grutter v. Bollinger, 539 US 306 (2003), one of which was that the policy was narrowly tailored. Along with her race, the University of Texas at Austin considered Fisher's academic strength and activities that she participated in outside of school. Although Fisher was in the top 11% of her class at Stephen F. Austin High School and had plenty of activities outside of school, Fisher was on the lower end of the spectrum when it came to her test scores. The admissions officers determined that she was not capable of handling the academic environment at the university. There is no way to make up for all of the damage that has been done to minorities since before the Reconstruction Era, but there is a way to grant minorities opportunities when it comes to their pursual of a higher education. This is to take race into account as admissions officers are looking at the applications of prospective students. By taking race into account, someone who is African American may have a better chance of getting into the college than one who is of caucasian descent. Since the Bakke, 438 US 265 (1978), decision ruled that quotas are not allowed to promote class diversity, the University of Texas at Austin's policy is the next best thing that can be used as a way of promoting diversity at the school.

6. Conclusion

In conclusion, the University of Texas at Austin's affirmative action processes are constitutional by the Fourteenth Amendment. The processes of the Top Ten Percent rule and considering race as a factor in the application process contain a compelling government interest in diversifying the campus population and are narrowly tailored. The Supreme Court decision in Bakke, 438 US 265 (1978), proved that diversity is a compelling government interest to promote class diversity. The processes are narrowly tailored in that each student is reviewed on the basis of not just their race, but also academics, activities, and leadership qualities are all important qualities for the University of Texas at Austin. Fisher has no standing in the case as she has since graduated from another university – if the Court revoked the affirmative action processes, Fisher still would not attend the University of

Texas at Austin. Affirmative action is an important interest for the United States as we, as a whole, are attempting to create a society in which everyone, no matter what race, has the same opportunities. The Court should rule in favor of the University of Texas at Austin because their processes were constitutional under the Equal Protection Clause of the Fourteenth Amendment.
