Respondent's Brief: Nehalem Kunkle-Read and Samarra Watson

Respondent's Brief: Nehalem Kunkle-Read and Samarra Watson, Lake Oswego High School

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Lake Oswego High School

Abigail Fisher v. University of Texas at Austin

Brief for the Respondent

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Table of Cited Authorities:

cases

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Statement of Argument

In the case of Abigail Fisher v. University of Texas at Austin, race conscious affirmative action is consistent with the Fourteenth Amendment to the United States Constitution. In 1938, the United States V. Carolene Products case determining New Deal legislation constitutionality established different levels of judicial scrutiny in its fourth footnote. With this understanding, racial discrimination is considered under strict scrutiny and regulations must be narrowly tailored to serve a compelling state interest. This standard was established during Grutter v. Bollinger. These requirements were specified under the ruling of the Gratz V. Bollinger and Grutter V. Bollinger cases, in which affirmative action efforts were accepted as long as they did not follow a mechanistic system. In Abigail Fisher v. University of Texas at Austin, the petitioner, Abigail Fisher, argued before the court saying that her denial to the University of Texas was the result of racial discrimination, as the University's affirmative action policy clearly violated the equal protection clause under the 14th amendment. However, we agree with the fifth circuit ruling that the University's policy is narrowly tailored and serves a compelling state interest of developing a diverse learning community.

Argument

I. Affirmative action is established to fulfill a compelling state interest

In the 1970 case Howe v. Brown, the court held that affirmative action should be applied to equal protection and voting rights cases. Compelling state interest includes keeping citizens safe and protecting individual rights defined by the constitution. Although there is no bright-line rule defining compelling state interest, affirmative action clearly fulfills this role. Because the purpose of affirmative action is to provide opportunity to minority students who may not otherwise have the means to receive a higher level education, supporters of affirmative action argue that it serves to combat the long lasting effects of discrimination and encourage future generations from reverting back to a society divided strictly by race. The court ruled in favor of affirmative action during California vs. Bakke, stating, "Racial and ethnic classifications of any sort are inherently suspect and call for the most exacting judicial scrutiny. While the goal of achieving a diverse student body is sufficiently compelling to justify consideration of race in admissions decisions under some circumstances, petitioner's special admissions program, which forecloses consideration to persons like respondent, is unnecessary to the achievement of this compelling goal, and therefore invalid under the Equal Protection Clause." In 2007, the supreme court ruled that in the case of Parents Involved vs. Seattle Schools, the school district's attempts to balance the schools with ethnically diverse students were unconstitutional because there was no compelling state interest present. However, in the case of Abigail Fisher v. University of Texas at Austin, rather than transporting students from campus to campus in an attempt to desegregate as many schools attempted following the Brown v. Board of Education decision, affirmative action could be the difference between a student receiving the opportunity to beat the odds and secure a brighter future.

II. The protocol for affirmative action at the University of Texas at Austin is narrowly tailored

Affirmative action policies are followed in order to promote a more diverse learning environment that promotes future equality. This goal is established by the government and the program is narrowly tailored to accomplish its purpose. A white student argued that he had not been given the right to equal protection of the laws because after he was denied from UC medical school while other minority candidates took his spot. The court found that Bakke had not been provided equal protection because the school's goals were too quota driven. In this case, affirmative action was allowed as long as it was not quota driven.

Affirmative action policies have proven to be the only effective way to promote such diversity. Affirmative action is currently banned among all public universities in California, Washington, Michigan, Nebraska, Arizona, and Oklahoma. A study conducted by the University of Washington in 2013 revealed that minority students had a 23% drop in acceptance to schools that banned affirmative action. There are a few alternative methods to accepting minority

students, however, they have proven to be unsuccessful relative to affirmative action policies. Schools have made an attempt to recruit minority students, use percentage plans, and by accepting students of a lower economic status, hoping that it will in turn help minority students. When asked whether these alternative methods were effective, Mark Long, researcher from University of Washington, stated, "they are partially helpful, but they are not fully effective in restoring the minority share that would've been admitted under affirmative action." According to his research, "41 percent of the minority share that was lost by eliminating affirmative action." No other methods made an impact as astounding as affirmative action itself, proving that it is the only method that can effectively fulfill its purpose.

III. The equal protection clause of the 14th amendment was created with the purpose of protecting minorities

The fourteenth amendment was drafted in the wake of the Civil War in order to protect the rights of the freed slaves. It sought equal protection to the men and women who were freed and was a response to discrimination that the slaves would face after their freedom. There is a belief that slavery and the discrimination that followed, opened a gap between the minority groups that is still present. The compelling interest for schools is to reach a critical amount of diversity on their campuses. Writing for the majority, Justice Sandra Day O'Connor wrote that the Constitution "does not prohibit the law school's narrowly tailored use of race in admissions decisions to further a compelling interest in obtaining the educational benefits that flow from a diverse student body." The Michigan school's goal was to obtain a "critical mass" of racially diverse students on campus, it was different from the illegal hard-line quota in Bakke. And also, very importantly, Justice O'Connor mentions that this kind of racial affirmative action is not meant to last forever, she predicted that "25 years [after this case], the use of racial preferences will no longer be necessary to further the interest approved today."

IV. Abigail Fisher lacks standing in the Abigail Fisher v. University of Texas at Austin case

Abigail Fisher has no standing in her case against the University of Texas at Austin. At the federal level legal actions cannot be bought simply because an individual is unhappy or displeased with the outcome of a government action. Further, by the time that this case had gone to court Abigail had enrolled and began school at a different university, Louisiana State University, and graduated in 2012. "The only thing I missed out on was my post-graduation years," she told The New York Times in 2012. "Just being in a network of UT graduates would have been a really nice thing to be in. And I probably would have gotten a better job offer had I gone to UT." Abigail is quoted claiming that the only harm she suffered was "probably" getting a better job offer had she gone to UT. University of Texas at Austin also states that only 5 Black/Latino students with lower grades and test scores were admitted into the university, while 42 students were white. Fisher also claimed that the 10% plan was unconstitutional, yet the court found that the case of Grutter confronted a similar program and found that

"percentage plans are a complete, workable alternative to race-conscious holistic review." Abigail's claim that UT is seeking interest in favoring minority groups is without basis, as the schools only goal is to provide a diverse learning environment for students from different backgrounds.

Conclusion

In conclusion, it is clear that race conscious affirmative action is consistent with the Fourteenth Amendment to the United States Constitution. In the case of Abigail Fisher v. University of Texas at Austin, the affirmative action policy is narrowly tailored to serve a compelling state interest of providing minority students with the means to receive an education that will improve their lives and the lives of their future children. Additionally, the equal protections clause was created with the purpose of protecting the rights of the freed slaves. Today, it continues to serve to combat the repercussions from slavery.

Therefore, we respectfully suggest that the judgement of the fifth circuit should be upheld.

Nehalem Kunkle-Read and Samarra Watson
