Wicomico High Schoool | Respondents | Steve and Jung

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Wicomico High School

Respondent

YouTube Link: https://www.youtube.com/watch?v=9BFS90QiaDI

Table of Cited Authorities

- Parents Involved in Community Schools v. Seattle School Dist. No. 1 (2007)
- Regents of University of California v. Bakke (1978)

Statement of Argument

Racial discrimination and oppression have been a large portion of the history of United States. Although the government gradually extended rights to minority groups, the formerly enslaved and other ethnic groups often find themselves predisposed to much disadvantages and barriers as extension of rights was not enough to alleviate the adverse circumstances. Therefore, the government instituted affirmative action policy to lessen these detrimental conditions.

After being rejected from admission into University of Texas at Austin (UT Austin), Abigail Fisher challenged the decision, contending that she was denied due to race being a considered factor in the admission process. However, the central question presented before the Supreme Court is the constitutionality of affirmative action—whether affirmative action conflicts with rights guaranteed by the Fourteenth Amendment of the Constitution of the United States.

The historical and modern contexts show that affirmative action is beneficial for promoting equality and interaction between different ethnic groups within the society, and race-conscious affirmative action does not violate the Fourteenth Amendment of the United States as long as they follow the guidelines precedented in previous rulings of the Supreme Court of the United States. Specifically, the admission policy of UT Austin is constitutional as it follows scrutiny articulated.

Argument

Merriam-Webster dictionary defines affirmative action as “the practice of improving the educational job opportunities of members of groups that have not been treated fairly in the past because of their race, sex, etc.” Affirmative action—as long as it abides to the scrutiny

standards articulated by the Supreme Court—endeavors to correct the transgressions made onto many minority groups whose rights were curbed throughout history and thus should rather be considered as a step towards a constitutional action in current context.

African Americans are a prime example of a minority group whom affirmative action was enacted to aid. From the colonial times up to the Civil War, the southern states of United States of America employed a slavery system consisting of forced laborers from the African continent as a means of economical foundation of the plantation economy. These forced laborers—or slaves—had no rights, freedom, or powers and soon became a topic of conflict which their northern counterparts who believed that slavery in essence is morally wrong. The conflict served as the main cause of the Civil War (1861-1865), which terminated with Union victory. The Union president, Abraham Lincoln, issued Emancipation Proclamation which fundamentally freed the slaves; and the legislative branch soon passed the Thirteenth, Fourteenth, and Fifteenth Amendments, thereby giving rights to the freed slaves. However, merely freeing the slaves was not enough; the formerly enslaved had no money, education, or other necessary means to assert independence successfully.

In the legislative debate of the first session in the 38th Congress, Republican Senator Charles Sumner acknowledges that the freed persons are in “helpless condition [without ability to obtain work] without assistance” and without the assistance “they will be left to perish.” Sumner understands that, without involvement of the government, the freed persons were most likely return to living under the horrendous conditions which defeats the primary purpose of the abolishment of slavery thus acting against the virtues specified in the Fourteenth Amendment. To prevent such disaster from reoccurring and to alleviate the distressful environment from which the recently liberated slaves were suffering, the Congress passed a bill creating the Freedmen’s Bureau. It is essentially an early form of affirmative action; the bureau advocated to help the underprivileged—the poor and the freedmen—by offering them shelter, immediate basic necessities, and education that wasn’t offered to the privileged by the government.

Another point that should be addressed is whether it was the responsibility to act upon the affirmative action should have been that of the government. Looking back historically, it is only plausible that the federal government had acted upon the matter as the south imposed many discriminative actions such as the Black Codes and Jim Crow Laws after the Freedmen’s Bureau was killed by its opponents through legislative pressure from the southern states, showing that the local states rather acted to restrict the liberties of the freed minorities. In actuality, the imposition of the laws oppressing minorities ultimately went against the virtues articulated in the Fourteenth Amendment thereby resulting in the disproportionate situations of minorities experienced today. Thus, these events in history in

addition to slavery which violated the liberties of many persons contributed to the persistence of unequal statuses of minorities; therefore, the government has the right to enforce counteraction of the inequalities created in the past through affirmative action.

As previously discussed, affirmative action programs are necessary to correct the much societal disparity caused by past injustices towards the minority groups thus rather promoting the statutes described in the Fourteenth Amendment in reality. Both the practice of slavery and further discrimination of particular ethnic groups throughout history has adversely affected their status, and most significant example is the inconsistency in the socioeconomic status based on race. The 2013 census regarding the relationship between race and poverty rate conveys that many ethnic groups that were most acutely treated throughout history—African Americans, Native Americans, and hispanics—experience at least twice as much poverty rate than that of white race and are generally composed of the highest poverty rates overall. To attenuate the imbalance that the minority groups unfairly endure socioeconomic hardships created by the inadequate treatment of racial discrimination in the first place which violated the statutes denoted in the Fourteenth Amendment, affirmative action is a necessary tool that aims to assuage the deprivation of rights guaranteed by the Fourteenth Amendment.

Another instance in which affirmative action tries to repair the violation of the rights given in the Fourteenth Amendment was during World War II after the Japanese bombing of Pearl Harbor. After the incident, America took an unfavorable view upon the Japanese Americans who were forced to relocate to internment camps. This action, unauthorized in terms of legality as personal liberty was infringed without having declared the necessary martial law which allows suspension of personal rights at the cost of national security, essentially violated many rights including the statutes indicated in the Fourteenth Amendment. Recognizing the prejudice that the America had caused, Civil Liberties Act of 1988 was passed by the Congress and signed by President Reagan. This legislation formally apologized to the Japanese Americans and provided some monetary reparation for the misdemeanor enacted by the United States government. The reparation was intended for the minorities who suffered and their heirs who had to carry on with their disadvantaged position in the society; it was not intended to benefit the entire population in whole. The affirmative action is directed at and only benefited a particular minority group that suffered, but it is illogical for an individual who was not a victim of unlawful discrimination to claim the same benefits under the equal protection of laws under the Fourteenth Amendment as the affirmative action policy aimed to serve as a mean of reparation to those whose rights had been violated.

Many previous court cases reflect the general precedent that usage of affirmative actions are appropriate provided that it abides by the strict scrutiny. In Regents of the University of California v. Bakke (1978), the Supreme Court of the United States found that—although a quota system reserving admission for minority candidates is unconstitutional—consideration of race as a factor in admission is acceptable under certain scrutiny. The scrutiny is further articulated in the cases Grutter v. Bollinger (2003) and Parents Involved in Community Schools v. Seattle School Dist. No. 1 (2007). In Grutter, the court observed affirmative action in relation to the Equal Protection Clause and determined that that the affirmative action is constitutional as long as it meets scrutiny. Moreover, Supreme Court in Parents Involved ruled that affirmative action that does not meet scrutiny standards is unconstitutional thus further demonstrating that affirmative action may deemed unconstitutional if it scrutiny is not followed.

Scrutiny is mainly stipulated by the Supreme Court with the following components: compelling interest and narrow tailoring. Compelling interest is elucidated as having a meaningful purpose of implementation; the object must not be compromised inessential motivation. Narrow tailoring is concept of law in which its methods are to achieve its purpose specifically while not creating an obstacle towards whom the policy was not intended to aim.

As described in the Fifth Circuit Decision of Fisher v. University of Texas at Austin (2014), compelling interest of UT Austin in adding race as a factor in admissions process was to represent populations more proportionately, promote diversity, and generate“educational benefits that diversity is designed to produce.” Inadequately represented between 1998 and 2004, African American population at UT Austin consisted of approximately 3 to 5 percent whereas the Hispanic population consisted of approximately 13 to 15 percent. We also acknowledge that university is not merely about professors teaching and students learning; it also consists of opportunities to experience and explore new things. The Fifth Circuit opined that diversity brings “increased perspectives” as it allows people of distinct experiences and cultures to interact, fosters “professionalism ... because the skills students need for the “increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints,” and promotes “civic engagement” as it encourages interaction with others.

The addition of race as a factor in admissions process is narrowly tailored as it considers race subtly among variety of other factors without an admission quota. In deciding which applicants to admit after the “Top Ten Percent Rule”, UT Austin uses two standards as acknowledged in the Defendant’s Answers to Amended Complaint: Academic Index (AI) and Personal Achievement Index (PAI). AI considers the applicant’s academic ability using

information such as class rank and standardized test scores, and race is not a factor thus is irrelevant to this topic. PAI considers variety of other factors including essays, leadership, extracurriculars, awards and honors, work experience, and community services as well as socioeconomic status, language spoken at home, custodial status, etc. Race as a factor is only a part of the holistic PAI, and defendants deny the petitioner's claim that there was "substantial advantage in admission process [for minority students]." Since race is only a one factor among many others and alternative completely-race-neutral ways (ex. AI or Top Ten Rule) through which the applicant can compete exists, the admission process of UT Austin meets the narrowly tailored requirements articulated by the previous Supreme Court rulings and is therefore constitutional.

Many legislation passed in the Reconstruction Era also support the notion of affirmative action. After it reached the allocated time specified in its creation, the Freedmen's Bureau was extended as the Act of July 16, 1866, ch. 200, §12, 1866 Stat. 173 made its way past the legislative action. The advocation was so immense that the Congress even overrode the opposition and veto by President Johnson. Furthermore, the support behind offering special aid to those previously discriminated was expressed even as the opposition against the Freedmen's Bureau by creating a separate department with which the education can be provided as stated in Act of July 25, 1866, ch. 245, §2. These legislations passed in the Reconstruction Era leads to the conclusion that the concept of liberty and justice are of our tradition.

However, affirmative actions should not be indefinite. Depending on the time frame, the federal government should adjust affirmative action accordingly to make sure that the minorities get aid but not so much that the rights of the majority are deterred. This concept of context and time limit was articulated even as early as the Reconstruction Era. During the first session of the 38th Congressional meeting, Mr. Charles Sumner expressed that we should establish the Freedmen's Bureau "not to support them, but simply to help them to that work which will support them." This sentiment was instituted in the Freedmen's Bureau. Act of March 3, 1865, ch. 90, § 1, 1866 Stat. 508 defines a time limit for the Bureau to continue during and one year after the Civil War, demonstrating that the earlier framers of affirmative action realized the need for the law to be limited. In addition, Justice O'Connor mentions the time limit on affirmative action as well in Grutter. She notes that after "25 years [of this case], the use of racial preferences will no longer be necessary to further the interest approved today." Although 25 years may or may not be sufficient, the idea against indefinite affirmative actions is expressed. The importance of this concept is indefinite affirmative action undermines its goal. The purpose of affirmative action is to assist previously discriminated to improve and stand somewhat equally in the society compared to the rest of the undiscriminated population. Providing minorities with further

assistance after the point at which they stand equally would then serve as a negative discrimination against the previously privileged, thus the context in which affirmative action should be instituted is an important consideration to make.

Affirmative action nonetheless should be implemented long enough to ensure that the persisting effects of past misdemeanors have been adequately treated. Take for example the Freedmen's Bureau. Although it provided substantial aid to recently freed persons, it ended too soon for its effects to have a sustainable impact. As a result, the formerly enslaved were left powerless and unable to defend or assert independence which led to further suppression by the Southern states that resulted in creation of separate African-American society within the community with its effects lingering even today as evidenced by the aforementioned Census data. Changes take generations to come, especially to penetrate into a long-oppressed society. Ending of affirmative action when the situation is improperly treated essentially undermines its goal as well as continuing it for extremely prolonged time as inequality would still persist.

Conclusion

As affirmative action rather plays to counteract the transgression of Fourteenth Amendment made onto the minority groups and as UT Austin meets the scrutiny standards previously precedented by the Supreme Court of the United States, rejection of Fisher's admission into the University of Texas is justified. Fisher had almost equal opportunity as she was did not qualify to be admitted under top ten percent and competed for admission with many others through the holistic, narrowly tailored admissions process. In fact, the those admitted through Top Ten-Percent Law consist of 81% of the freshman class; left was only small margin of admissions possible for students like Fisher to be considered holistically, not solely based on academic merits which justifies rejection of Fisher's admission. Ultimately however, affirmative action should be discontinued when the context seems to reach equality between ethnic groups to prevent any discrimination against the privileged but also to prevent continued persistence of inequality. In an ideal world, race would not be necessary to be considered as a factor at all. However, ideality is overrated; history in reality has been full of discriminations and oppressions and deviates from the ideal standards thereby needing remedies such as affirmative action.

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