



SENATE OF COLLEGE COUNCILS
THE UNIVERSITY OF TEXAS AT AUSTIN

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Senate of College Councils and Graduate Student Assembly
November 19, 2015
J.R. 1503

A Joint Resolution In Support of the University in the Case of *Fisher v. The University of Texas at Austin*

- 1 WHEREAS, In 1996, the 5th Circuit Court of Appeals ruled in *Hopwood v Texas* that race could not be used in
2 University admissions decisions¹; and,
- 3 WHEREAS, The University of Texas at Austin implemented race-neutral admissions efforts, including
4 bolstering the recruitment budget, adding new recruitment centers, launching campaigns to recruit
5 underrepresented applicants, and implementing scholarships targeted at underrepresented
6 applicants; and,
- 7 WHEREAS, African American enrollment at The University of Texas at Austin dropped 40% between 1995
8 and 1997, and Hispanic enrollment dropped 5%²;and,
- 9 WHEREAS, In 1997, the Texas Legislature passed House Bill 588, granting automatic admission to any Texas
10 public university to those Texas high school students that graduate in the top 10% of their class;
11 and,
- 12 WHEREAS, In 1997, UT Austin implemented a holistic review process for non-Texas residents and students
13 outside of the 10%, consisting of a Personal Achievement Index (PAI) and an Academic Index
14 (AI); and,
- 15 WHEREAS, In June 2003, *Grutter v Bollinger* overturned the outright ban on consideration of race in admissions
16 outlined in *Hopwood*, allowing for a “narrowly tailored use of race in admissions decisions to

¹ *Hopwood v. Texas* 78 F3d 932 (5th Cir. 1996) United States Court of Appeals, Fifth Circuit, 3 Race & Ethnic Anc. L. Dig. 97 (1997)

² Implementation and Results of the Texas Automatic Admissions Law (HB 588) at The University of Texas at Austin (December 2006) Table 1.

17 further a compelling interest in obtaining the educational benefits that flow from a diverse student
18 body³; and,

19 WHEREAS, In June 2004, after a year-long assessment, The University of Texas at Austin made a proposal to
20 the University of Texas Board of Regents, calling for consideration of race to be added to “an
21 individualized, holistic review of each applicant, taking into consideration the many ways in which
22 the academically qualified individual might contribute to, and benefit from, the rich, diverse, and
23 challenging educational environment of The University of Texas at Austin⁴; and,

24 WHEREAS, In August 2004, the Board of Regents approved University of Texas at Austin’s new admissions
25 plan; and,

26 WHEREAS, The University of Texas at Austin added a racial factor to the “special circumstances” section of
27 the PAI starting with the 2006 entering class and,

28 WHEREAS, By 2007, the number of African American students had doubled since 2004; and,

29 WHEREAS, 20% of all African American students and 15% of all Hispanic students offered admission in 2008
30 were through holistic review; and,

31 WHEREAS, In March 2008, Abigail Fisher and Rachel Multer Michalewicz, not in the 10% of their respective
32 graduating high school classes, were denied admission to the University of Texas at Austin, but
33 admitted into the CAP program; and,

34 WHEREAS, Ms. Fisher and Ms. Michalewicz brought suit against the University of Texas at Austin in 2008,
35 alleging that their 14th Amendment right of equal protection had been violated; and,

36 WHEREAS, In 2009, a United States District Court upheld the University of Texas at Austin’s admissions
37 policy⁵; and,

38 WHEREAS, In 2009, the Texas Legislature passed SB 175, allowing the University of Texas at Austin to
39 restrict top 10% admissions to 75% of the incoming class, allowing for 25% of the class to be
40 admitted through holistic review⁶; and,

41 WHEREAS, The Bill Analysis for SB 175 states that the law was put in place because, “A university needs the
42 flexibility to consider criteria other than high school rank, such as test scores, special talents,

³ *Grutter v. Bollinger*, 539 U.S. 306, 123 S. Ct. 2325, 156 L. Ed. 2d 304 (2003).

⁴ *Proposal to Consider Race and Ethnicity in Admissions*, The University of Texas at Austin

⁵ *Fisher v. Univ. of Tex. at Austin*, 645 F. Supp. 2d 587 (W.D. Tex. 2009)

⁶ Texas S.B. 175 2009

43 leadership ability, personal achievements, or other relevant aspects of what the student can offer
44 the academic environment⁷; and,
45 WHEREAS, A clause of this law stipulates that this cap is invalidated if “a final court order applicable to the
46 institution prohibits the institution from considering an applicant's race or ethnicity as a factor in
47 the institution's decisions relating to first-time undergraduate admissions⁸; and,
48 WHEREAS, In 2011, the case of *Abigail Fisher and Rachel Michalewicz v. The University of Texas at Austin* was
49 appealed to the 5th Circuit Court of Appeals⁹; and,
50 WHEREAS, In 2011, the 5th Circuit upheld the University of Texas at Austin’s admissions policy¹⁰; and,
51 WHEREAS, In 2011, Ms. Michalewicz withdrew from the lawsuit; and,
52 WHEREAS, In September 2011, Fisher petitioned the Supreme Court for review¹¹; and,
53 WHEREAS, In February 2012, the Supreme Court granted certiorari in *Fisher v. University of Texas at Austin*¹²;
54 and,
55 WHEREAS, On October 10, 2012, the Supreme Court heard oral arguments in the case; and,
56 WHEREAS, On June 24, 2013, the Supreme Court vacated and remanded the Fifth Circuit’s ruling, stating that
57 “the Fifth Circuit must assess whether the University has offered sufficient evidence to prove that
58 its admissions program is narrowly tailored to obtain the educational benefits of diversity¹³; and,
59 WHEREAS, On July 5, 2014, the Fifth Circuit Court of Appeals again ruled in favor of The University of
60 Texas at Austin¹⁴; and,
61 WHEREAS, In February 2015, Fisher issued a Petition for a Writ of Certiorari¹⁵; and,
62 WHEREAS, In June 2015, the Supreme Court again granted certiorari¹⁶; and,
63 WHEREAS, *Amicus curiae* in support of the University of Texas at Austin have been filed by Fortune 100
64 Countries, 10 US Senators, 85 members of Congress, the Ivy League and 6 other private colleges,

⁷ Senate Research Center, SB 175 Bill Analysis

⁸ Texas S.B. 175, 2009

⁹ Civil Action No.1:08-cv-00263-SS

¹⁰ *Fisher v. Univ. of Tex. at Austin*, 631 F.3d 213 (5th Cir. 2011)

¹¹ http://lgdata.s3-website-us-east-1.amazonaws.com/docs/971/504846/Petition_for_Writ_of_Cert.pdf

¹² http://lgdata.s3-website-us-east-1.amazonaws.com/docs/971/504820/Doc._104_Supreme_Court_Notice__Petition_for_Writ_of_Cert_Filed.pdf

¹³ *Fisher v. University of Texas*, 133 S. Ct. 2411, 570 US __, 186 L. Ed. 2d 474 (2013)

¹⁴ *Fisher v. University of Texas*, 758 F.3d 633 (5th Cir. 2014).

¹⁵ <http://lgdata.s3-website-us-east-1.amazonaws.com/docs/971/1328421/Fisher-II-cert-petition-2-10-15.pdf>

¹⁶ http://lgdata.s3-website-us-east-1.amazonaws.com/docs/971/1407726/062915zor_4p25.pdf

65 the American Bar Association, College Board, the NAACP, the ACLU, and 17 former and recent
66 University of Texas Student Body Presidents¹⁷; and,
67 WHEREAS, Should the Supreme Court strike down considerations of race in University admissions, the
68 University will be forced to resume race-neutral admissions policies; and,
69 WHEREAS, Should the Supreme Court strike down considerations of race in University admissions, the
70 University of Texas at Austin will no longer be able to cap automatic admission at 75% of total
71 undergraduate class; therefore, be it,
72 RESOLVED, The Senate of College Councils and the Graduate Student Assembly support considerations of
73 race in holistic admissions in order to promote racial and ethnic diversity on campus; and
74 therefore, be it,
75 RESOLVED, The Senate of College Councils and the Graduate Student Assembly support the continuation of
76 the 75% cap, and 25% admission of holistic-review applicants; and therefore, be it,
77 RESOLVED, The Senate of College Councils and the Graduate Student Assembly affirm that a ruling against
78 The University of Texas at Austin by the Supreme Court would have dire consequences for both
79 racial and ethnic diversity, and overall diversity and class size; and therefore, be it,
80 RESOLVED, The Senate of College Councils and the Graduate Student Assembly support the University in the
81 case of *Fisher v The University of Texas at Austin*; and therefore, be it,
82 RESOLVED, That this resolution be sent to the Board of Regents, the Office of the Chancellor, the Office of
83 the President, the Office of the Executive Vice President and Provost, the Vice President of
84 Student Affairs, the Department of Diversity and Community Engagement, the Office of the
85 Dean of Students, the Office of Admissions, and the Office of the Vice President of Legal
86 Affairs.
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¹⁷ <http://www.utexas.edu/vn/irla/Fisher-V-Texas.html>

