



## CAMPUS COUNSEL

A legal blog written for administrators, HR professionals, in-house counsel, and deans at colleges and universities

### Affirmative Action in Higher Education Admissions Under Review Once More

FEBRUARY 16, 2016

On December 9, 2015, the Supreme Court heard oral arguments in [Fisher v. University of Texas at Austin](#). This is the Court's second hearing in the [Fisher](#) case, which focuses on the University's use of race in its admissions process.

To recap, the petitioner in this case is Abigail Fisher, a white female who applied for admission to the University of Texas at Austin but was denied. Fisher did not qualify for the University's "Top Ten Percent Plan," which guarantees admission to the top ten percent of every in-state graduating high school class. For the remaining spots, the University considers many factors, including race. In 2008, Fisher sued the University and argued that the use of race as a consideration in the admission process violated the Equal Protection Clause of the Fourteenth Amendment. The district court held that the University's admissions process was constitutional, and the U.S. Court of Appeals for the Fifth Circuit affirmed the district court's ruling.

The Supreme Court first heard the [Fisher](#) case in 2013, when it reaffirmed that obtaining the educational benefit of a diverse student body is a compelling government interest that can justify narrowly tailored consideration of race. The Court stressed that the manner in which race is considered in admissions is subject to "strict scrutiny," and remanded the case to the U.S. Court of Appeals for further consideration of whether the University's admissions program is sufficiently "narrowly tailored to obtain the educational benefits of diversity."

The U.S. Court of Appeals for the Fifth Circuit found that the University of Texas had met the strict scrutiny standard, which led Fisher to appeal again.

**Client Tip:** *Public colleges and universities should be on the lookout for the Supreme Court's decision in this case. The Court rarely rehears cases, which has led some to speculate that a landmark decision on the issue of affirmative action may be forthcoming.*