

Primary Source

Fisher v. University of Texas, 2016



What progress has been made in the twentieth century in the fight to realize Founding principles of liberty, equality, and justice for African Americans? What work must still be done?

- ☐ I can interpret primary sources related to Founding principles of liberty, equality, and justice in the 1960s to the present day.
- ☐ I can explain how laws and policy, courts, and individuals and groups contributed to or pushed back against the quest for liberty, equality, and justice for African Americans.
- ☐ I can explain why the civil rights movement fractured in the 1960s.
- ☐ I can compare movements for liberty, equality, and justice for African Americans over time.
- ☐ I can create an argument using evidence from primary sources.
- ☐ I can analyze issues in history to help find solutions to present-day challenges.

Building Context

In *Fisher v. University of Texas*, the court once again took up the question of affirmative action. Abigail Fisher, a white female, was denied entrance to the university, filed suit against it and related defendants, and claimed that its use of race as a consideration in admission decisions violated the Equal Protection Clause of the Fourteenth Amendment. The university argued that its use of race was a narrowly tailored means of pursuing greater diversity. In a 4–3 decision, the court ruled that the use of race as a factor in the holistic review of applicants at a certain point in the admissions process served a compelling state interest and was therefore constitutional.

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Source: <https://supreme.justia.com/cases/federal/us/570/297/#tab-opinion-1970747>

Justice Kennedy delivered the opinion of the court.

The University of Texas at Austin (or University) relies upon a complex system of admissions that has undergone significant evolution over the past two decades. Until 1996, the University made its admissions decisions primarily based on a measure called “Academic Index” (or AI), which it calculated by combining an applicant’s SAT score and academic performance in high school. In assessing applicants, preference was given to racial minorities

In striking this sensitive balance, public universities, like the States themselves, can serve as “laboratories for experimentation.” The University of Texas at Austin has a special opportunity to learn and to teach. The University now has at its disposal valuable data about the manner in which different approaches to admissions may foster diversity or instead dilute it. The University must continue to use this data to scrutinize the fairness of its admissions program; to assess whether changing demographics have undermined the need for a race-conscious policy; and to identify the effects, both positive and negative, of the affirmative-action measures it deems necessary.

The Court’s affirmance of the University’s admissions policy today does not necessarily mean the University may rely on that same policy without refinement. It is the University’s ongoing obligation to engage in constant deliberation and continued reflection regarding its admissions policies.

Notes

Comprehension and Analysis Questions

1. Justice Kennedy refers to positive and negative effects of affirmative action measures. What might these be?

2. What is the “ongoing obligation” with which Justice Kennedy charges the University of Texas at Austin? What does this obligation suggest about the larger question of affirmative action?