

ADEA and *Fisher*: The Basics¹

- ADEA has long acknowledged that diversifying the health professions is an essential step in addressing persistent disparities in health care delivery.
- Dental education is not in imminent danger of having to abandon current admissions policies and practices. Nevertheless, to simply continue doing what we've been doing may be a strategic mistake.
- How the ruling will affect ADEA Member Institutions is not entirely clear, but ADEA is monitoring the case, assessing its potential impacts, and considering ways we can help our members adapt to the changing legal landscape.
 - At the 2013 ADEA Fall Meetings, we explored with ADEA AFASA members *Fisher's* potential to change the affirmative action landscape.
 - At the 2014 ADEA Annual Session & Exhibition, we discussed how institutions of higher education can advocate for the educational benefits of diversity in a post-*Fisher* environment.
 - ADEA is working to help schools and programs identify and implement race-neutral admissions policies that promote diversity while remaining in compliance with the law.
 - ADEA will offer [ADEA Holistic Review Workshops](#) to disseminate holistic review and other admissions practices that foster diversity.
 - ADEA has modified questions on the ADEA AADSAS and ADEA DHCAS applications to get a better picture of the socioeconomic status of applicants.
- Each school must set its own priorities and choose a means of admitting students in keeping with its particular mission.
- ADEA is committed to advocating for efforts aimed at promoting access and diversity within the health professions and finding new and effective means of bringing individuals from every background into predoctoral, allied and advanced dental education.
- For more information about fostering student diversity in dental schools, ADEA members can visit <http://www.adea.org/transformingadmissions/>.

¹ ADEA President and CEO Dr. Rick Valachovic's opinion on *Fisher*, the guidance for "The Basics", is available at: <http://adeachartingprogress.wordpress.com/2013/08/15/preparing-to-lead-in-the-post-fisher-era/>

Understanding *Fisher v. University of Texas*

Overview

On June 24, 2013, the U.S. Supreme Court rendered its decision in *Fisher v. University of Texas*, the first challenge to the use of race in college admissions considered by the Court since the landmark 2003 University of Michigan cases, *Grutter v. Bollinger* and *Gratz v. Bollinger*. In a 7-1 decision, the Court did not rule on the merits of the challenged University of Texas (UT) admissions policy. Instead, the Court concluded that the Fifth Circuit Court of Appeals had not faithfully applied "strict scrutiny" principles consistent with its precedent, provided further guidance on those principles, and returned the case for further action consistent with the Court's opinion. Regardless of the ultimate outcome of the case, institutions of higher education remain justified in basing policies and practices on the premise that the educational benefits to all students of a broadly diverse student body can be a compelling goal.

While leaving a number of key questions unanswered, *Fisher* notably clarifies aspects of the *Grutter* and *Gratz* framework in several ways that should inform and guide institutional judgments, particularly with regard to determining and demonstrating when the use of race or ethnicity is necessary – and, therefore, permissible – as a means of achieving an institution's diversity goals. More specifically:

- The Court preserved the existing legal framework governing the use of race in higher education admissions and other enrollment decisions.
- The Court clarified that some deference may be appropriate for a court's compelling interest analysis, but not for narrow tailoring.
- In holding that institutions of higher education must present sufficient evidence to demonstrate that their programs are narrowly tailored, the Court emphasized the importance of workable race-neutral alternatives.
- But, the Court left many questions unanswered.

Key Takeaways from the Decision

- The *Grutter* and *Gratz* framework for strict scrutiny analysis of race-conscious policies and practices in higher education remains good law.
- Institutions face a high (but not insurmountable) bar to justify their race-conscious policies and practices.
- Courts must review institutional policies *and practices* with care.

Institutional Policy Implications

- Institutions of higher education that seek to achieve the educational benefits of diversity should focus as deliberately on race- and ethnicity-*neutral* practices as they do on the contours of race and ethnicity-*conscious* practices.
- Evidence of institutional practice that exhibits institutional policy should be compiled and evaluated as part of any institution's periodic review of race- and ethnicity-conscious policies.
- The concept of critical mass remains good law – but calls for more robust, practice-oriented research and program evaluation.

Source: *Understanding Fisher v. the University of Texas: Policy Implications of What the U.S. Supreme Court Did (and Didn't) Say About Diversity and the Use of Race and Ethnicity in College Admissions*. Retrieved from <https://diversitycollaborative.collegeboard.org/sites/default/files/document-library/diversity-collaborative-understanding-fisher.pdf>