

November 5, 2015

TO: Deans of United States Dental Schools
Directors of Advanced Dental Education Programs
Directors of Allied Dental Education Programs
ADEA Board of Directors
ADEA Legislative Advisory Committee

FROM: Richard W. Valachovic, D.M.D., M.P.H., ADEA President and CEO
Yvonne Knight, J.D., ADEA Chief Advocacy Officer

RE: Amicus Brief Filed in *Fisher v. University of Texas at Austin*

On June 29, 2015, the U.S. Supreme Court ("Court") [announced](#) that it would again hear arguments in [Fisher v. University of Texas at Austin](#) ("Fisher") during its October 2015 term. In anticipation of the Court's review of the case, ADEA joined, as a signatory, on the Association of American Medical Colleges' (AAMC) *amicus brief* in support of the University of Texas at Austin, along with 32 other education and health care organizations. By way of this memorandum, we are transmitting a copy of the filed [amicus brief](#), and we provide a brief background and next steps in this seminal case.

Background

The *Fisher* case centers on the admissions policy of the University of Texas at Austin ("UT"). The majority of UT's entering undergraduate class is admitted via a process whereby students in the top 10% of their Texas high school graduating classes receive automatic admission to a Texas university. UT adopted the program of upholding the use of race as one of many "plus factors" in an admissions program that considers the overall individual contributions of each candidate. In 2008, Abigail Fisher, who is Caucasian, was rejected for admission to UT and sued alleging that the university's consideration of race in admissions violated the Equal Protection Clause. The case made its way through lower courts and finally to the Supreme Court in 2013. In a 7-1 ruling, the Court held that UT may consider race as a factor as part of its holistic review used to admit a portion of its undergraduate entering class. However, the court emphasized that UT's ability to consider race is subject to the "strict scrutiny"¹ standard, and sent the case back to lower court for further consideration. On July 24, 2015, the U.S. Court of Appeals for the Fifth Circuit [found](#)

¹ A legal standard to determine the constitutionality of a statute, used when the statute implicates a fundamental right or relates to a suspect classification under the Equal Protection Clause (such as race). To determine if a statute passes the test, a court considers whether the government has a compelling interest in creating the law, whether the statute is "narrowly tailored" to meet the government's objectives, and whether there are less restrictive means of accomplishing the same thing.

that UT had met the strict scrutiny standard, leading the plaintiff, Abigail Fisher, to once again appeal to the U.S. Supreme Court.

Next Steps

The Court is scheduled to hear oral arguments in *Fisher* on Dec. 9, 2015. The question presented to the Court is whether the Fifth Circuit's re-endorsement of UT's use of racial preferences in undergraduate admissions decisions can be sustained under the U.S. Supreme Court's decisions interpreting the Equal Protection Clause of the 14th Amendment.

As the Court prepares to hear *Fisher*, ADEA and the other signatories to the *amicus brief* assert, "At a time when our Nation is becoming more diverse and health disparities remain so stark, constraining a . . . school's ability to consider a student's entire background would negatively impact not only the classroom, but also patients." Furthermore, signatories argue, "Given the persistence of health disparities among minority communities and the unconscious bias that contributes to that problem, [we] strongly believe that it remains necessary in 2015 for institutions to continue to take action to ensure diversity in the admissions process." A ruling by the Court should be handed down possibly late Spring or early Summer 2016.

If we can be of further assistance in this regard, please do not hesitate to let us know. Please contact Yvonne Knight, J.D., ADEA Chief Advocacy Officer at KnightY@adea.org.