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PERSPECTIVE

A dangerous attack on desegregation

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This fall, for the second time in as many years, the U.S. Supreme Court will consider Abigail Fisher's complaint against the University of Texas at Austin claiming that she was not accepted into that institution because she's white.

The case, *Fisher v. University of Texas at Austin*, is the centerpiece of a dangerous attack on desegregation in higher education through race-conscious admissions. Fisher and her supporters rely on the mythology of racial equality in this country, which is ironic during these times of heightened awareness of racism and racial oppression.

On the other side, proponents of race-conscious admissions will encourage the court to recognize the racial realities of contemporary society and preserve what protections are left of the 14th Amendment.

The authors will employ social science to demonstrate how racism operates in the 21st century and emphasize the measurable benefit of diversity in education, the workplace and in our social structures.

Our country's future is at stake. A diverse, well-educated generation of Americans is critical to our nation's success. To accomplish that goal, the Supreme Court should reaffirm the principles set by its 2003 decision in *Grutter v. Bollinger*, which upheld a race-conscious admissions policy at the University of Michigan law school and broadly affirmed the educational importance of diversity.

The Supreme Court is revisiting Fisher after it remanded the case back to the lower court as part of its 7-1 ruling in June 2013. (The authors jointly submitted an amicus brief in that case on behalf of 13 of the nation's leading social scientists.)

The court determined that the 5th U.S. Circuit Court of Appeals addressed the issue of strict scrutiny too narrowly by giving too much deference to the University when it affirmed the district court's ruling favoring the University of Texas. The court remanded the case back to the 5th Circuit to reconsider the evidence under that standard.

A three-judge panel of the 5th Circuit found again last year that UT Austin's admission policy was constitutional under Grutter. Fisher petitioned for en banc review, but was denied. In February, she appealed to the Supreme Court, which granted certiorari, and the court is expected to hear arguments next month.

The New York Times

Abigail Fisher, plaintiff in the Fisher v. University of Texas case, at the U.S. Supreme Court in 2012.

There are two aspects of this case worth noting. First, Fisher was so underqualified for UT Austin that even positive consideration of her ethnicity would not have granted her admission. Second, it is puzzling that Fisher even has standing in the case since she graduated from another university.

Since the Roberts court appears determined to revisit Grutter through Fisher, it is essential to again share with the justices the importance of looking at racial discrimination through the lens of social science, as was done during the case's first trip to the high court. There, a number of studies were brought to the court's attention to offer a deeper understanding of why diversity is even more crucial to academic achievement and civic engagement than previously understood. Research presented for the first time to the Supreme Court showed how diversity improves academic performance, reduces prejudice, lowers stress and psychological barriers, and has broad positive effects on workforce development.

There is a long tradition of using social science to educate and influence both the public and the justices of the Supreme Court. In *Brown v. Board of Education*, the court relied on data presented by more than 30 social scientists affirming the harmful effects of segregation on blacks and whites, offered through the arguments and brief from the NAACP Legal Defense Fund. The court also considered social science findings in Grutter.

A study led by Dr. Katherine W. Phillips at Columbia Business School shows that diversity leads to innovation because groups collaborate more when they recognize that alternative perspectives exist, leading to novel insights and solutions. The inclusion of diverse viewpoints in decision-making leads to creativity and efficiency in how group members work together.

Another study reveals that when people of color are part of a multiracial group, it can lead to divergent thinking, more creativity, and more accurate judgments. Diverse environments can also lead White individuals to "exhibit more thorough information processing," found a study led by Dr. Samuel R. Sommers, associate professor of psychology at Tufts University.

Research by Dr. Patricia Gurin at the University of Michigan concludes that extensive and meaningful interracial interaction enhances education outcomes. Her study showed higher levels of intellectual engagement and academic skills for white, black, Latino and Asian students, based on data collected from more than 11,000 students across 184 institutions.

In addition, an analysis of over 200 studies reveals that continued contact with people from other ethnic backgrounds reduces prejudice. The analysis, by Dr. Thomas F. Pettigrew and Dr. Linda R. Tropp, indicates that interracial interactions over time reduce anxiety and other negative emotional responses.

Courts are beginning to recognize the value of social science and concepts like implicit bias in evaluating racial discrimination. Justice Anthony Kennedy was present at the 2014 9th Circuit Judicial Conference, where one author, Eva Paterson, discussed implicit bias and its applicability to maintaining the disparate impact standard. Kennedy's subsequent opinion in *Texas Department of Housing and Community Affairs v. The Inclusive Communities Project Inc*. reflected a conclusion that substantive bias operates at the unconscious level but fuels discriminatory decision-making.

When correctly applied in the law, social science can transform our nation's consciousness about race. Social science reveals the benefits of diversity from a data-driven rather than ideological framework. It's critical that we maintain and enhance diversity in education if we're to create a better future for our country. Putting an end to Fisher will be a huge step in that direction.

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