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IDRA Files Amicus Brief in Fisher v. University of Texas at Austin

IDRA's Brief Encourages U.S. Supreme Court to Consider Systemic Challenges Facing Latino and African American Students in Public Schools

November 5, 2015 – IDRA has filed a friend of the court, or amicus, brief in the higher education admissions case now pending before the U.S. Supreme Court, *Fisher v. University of Texas at Austin*. Filed on October 30, 2015, [IDRA's brief](#) presents research for the court to consider on several challenges facing, and being overcome by, Latino and African American students in Texas' PK-12 public education system, including under-resourced schools, under-preparation for college entrance exams, disparate student discipline referrals, student mobility, and the importance of diverse experiences.



“The state of public education for Latino and African American students, is very challenging – to say the least,” the brief states. “However, this does not mean that minority students are any less deserving of entering the pipeline of future success and leadership opportunities that universities like UT offer. Indeed, for those minority students failing to rank in the top 10 percent of their class but still graduating with a strong academic record, their resilience and fortitude are the precise personal qualities that would lend well to the college environment and allow for ‘enhanced classroom dialogue and the lessening of racial isolation and stereotypes.’ Their race and related experiences remain highly relevant.”

Dr. María “Cuca” Robledo Montecel, IDRA President & CEO stated: “A vision of inclusion and success demands that all students of all backgrounds and financial circumstances be prepared to enter and graduate from college. And it demands that our colleges and universities adapt to welcome students and provide the supports needed for them to graduate.”

“When the Top Ten Percent Plan law and UT’s exhaustion of race neutral alternatives failed to yield a critical mass of Latino and African American students, UT was well within its right to add race as one of several factors in pursuing diversity through narrowly tailored means,” said David Hinojosa, J.D., IDRA National Director of Policy. “Affirming the Fifth Circuit’s decision below will ensure the doors remain open for qualified African American and Latino students through constitutional means.”

Following are highlights of the brief.

I. Texas’ demographics are changing rapidly, yet the pipeline path to the University of Texas still proves difficult for many African American and Latino students.

Texas has experienced tremendous student growth in grades PK-12, especially among Latino students – who now comprise a majority of public school students – but also an increasing number of Asian and African American students. The proportion of White students to Latino students

switched from 45 percent White students and 37.9 percent Latino students in 1997-98 to 34.8 percent White students and 47.2 percent Latino students a decade later.

In 2004, African American students comprised nearly one out of every seven high school graduates but only one out of 20 students admitted into UT. Latino students accounted for over one out of every three high school graduates, but only one out of every six admits. In contrast, White students made up nearly one out of every two high school graduates but 58 percent of all admits, and Asian American students were one out of every 33 graduates but over one out of every six (17 percent) freshman admits to UT.

II. Texas has a sordid history of providing unequal educational opportunities in PK-12.

The State of Texas has been sued six times for failing to provide equitable and adequate opportunities to its schoolchildren. In 2012, the 100 wealthiest school districts had access to an additional \$1,000 to spend per child than the 100 poorest districts, while taxing 9¢ less. Latino students are more likely to attend under-resourced schools with limited access to quality teaching and curriculum when compared to White students. Preparing African American and Latino students will lead to “higher income for all racial-ethnic groups, and higher levels of education can reduce the differences in income disparities between majority and minority populations.”

III. Texas’ failure to invest sufficient resources in its Latino and African American students results in those students, on average, struggling on the SAT for example. But many still show promising results.

The data demonstrate that minority students show a clear interest in attending college, despite their underperformance on the exam. African American and Latino high school students are taking the SAT at increasing rates. And in 2008, a larger percentage of African American high school graduates took the SAT than White students.

IV. Schools subject minority students to a range of disciplinary actions at far greater rates than White students, jeopardizing those students’ academic performance.

Disciplinary actions include in-school suspensions, out-of-school suspensions and expulsions. A 2011 Texas study found that far fewer White male students (59 percent) had at least one minor, or “discretionary,” violation compared to African American male students (83 percent) and Latino male students (74 percent). The stark disparities between White and African American and Latino students for discretionary referrals such as “disrespect” raise questions about teacher perceptions and the impact of implicit bias.

V. Student mobility disparately impacts African American and Latino students.

African American and Latino students are more likely than White students to change schools for non-promotional reasons. Having to change schools for non-promotional reasons can negatively impact student achievement, as well as social and emotional development.

VI. Texas schools push out Latino and African American students at much higher rates.

Numerous factors, including disparate discipline referrals and poorly resourced schools, can lead to schools forcing African American and Latino students to drop out. IDRA’s annual attrition study found that schools lost a significant number of minority students. The attrition rate for Latino students was 44 percent, for African American students it was 38 percent, and for White students it was 18 percent.

VII. African American students and Latino students who achieve despite the many systemic challenges show resiliency, academic competitiveness, and character that helps contribute to the diverse university classroom setting.

Diversity at UT should reflect a broad range of experiences and should not be relegated solely to the Top Ten Percent Plan students, as non-Top Ten Percent Plan minority students may equally and individually bring tremendous attributes based on their diverse educational experiences. Interracial contact helps students socially and academically, and it prepares all students for diverse workplace settings. The benefits of diverse school settings have been found to connect with positive learning outcomes for White students as well.

Texas PK-12 schools are now majority minority, and Latino and African American student access and success at institutions like UT are keys to economic competitiveness.

Background on Case

In 2008, Plaintiff Abigail Fisher filed suit in federal district court against UT claiming that the university denied her admission because of her race in violation of her equal protection rights under the Fourteenth Amendment of the U.S Constitution and Title VI of the Civil Rights Act of 1964. Fisher's central argument is that the State of Texas' race-neutral Top Ten Percent law passed in 1997, which granted automatic admission to state universities for students graduating in the top 10 percent of their class and fulfilling certain course requirements, had provided UT enough diversity. UT countered that it had extensively examined its level of diversity in 2003-04 and determined that the Top Ten Percent Plan and its other substantial race-neutral efforts had fallen short of its diversity mission as a flagship university; therefore, UT added race as one of several factors considered holistically for admission.



On cross-motions for summary judgment, the federal court held in 2009 that UT's admissions plan was constitutional. The Fifth Circuit Court of Appeals affirmed the judgment in 2011. In 2013, the U.S. Supreme Court remanded the case back to the Fifth Circuit, ordering the court to revisit its ruling and determine whether UT's limited use of race was narrowly tailored to achieve its compelling interest in diversity. The Fifth Circuit re-examined the admissions plan under the Supreme Court's revised standard and again upheld the plan in 2014. In 2015, the Supreme Court granted Fisher's petition for review.

Oral argument is set for December 9, 2015.

Resources

[Amicus Brief of IDRA in Support of Respondents, Fisher v. University of Texas at Austin](#)

[IDRA Statement: The Right to Inclusion and Success in Education is Reaffirmed – July 16, 2014](#)

[IDRA Statement: Affirming the Right to Inclusion and Success in Education – June 24, 2013](#)

[Top Ten Percent Plan in Texas](#)

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We are a small organization with a powerful mission: to create schools that work for *all* children.

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