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# A DREAM UNDONE?

## Advancing Access and Diversity in a Shifting Legal Landscape

The US Supreme Court's June 2015 decision to re-hear *Fisher vs. University of Texas at Austin* has prompted anxious speculation and genuine concern in the higher education community. While no one knows how the court will rule in "*Fisher II*," it seems clear opponents of race-conscious admission will have at least one more opportunity to limit the role of race in college admission decisions. Moreover, independent of the *Fisher* case, eight states have enacted outright bans on race-conscious admission.

But amidst all this controversy and change, one imperative remains constant: the need for American higher education to educate an increasingly diverse American citizenry and make good on its promise to break down longstanding barriers across race and class. Court rulings and ballot

initiatives may affect the parameters that govern modern college admission, but they need not affect the central goals admission offices pursue. Kedra Ishop, associate vice president for enrollment management at the University of Michigan, puts it more eloquently. "The legal landscape may

change how we do our work, but it will not change the work that we do."

It was with this legal and policy landscape in mind that we undertook with our colleague Dr. Gary Orfield of the Civil Rights Project at the University of California, Los Angeles, a first-of-its-kind survey study of admission and enrollment management leaders from across the country. Our findings are summarized in the report, *Race, Class and College Access: Achieving Diversity in a Shifting Legal Landscape* ([www.acenet.edu/adreamundonereport](http://www.acenet.edu/adreamundonereport)).

Our research questions were crafted to track recent changes in admission and enrollment



## RECONSIDERING *FISHER V. UT-AUSTIN*

In 2008, Abigail Fisher, a white Texas student, applied for admission to the University of Texas at Austin and was rejected. She sued the university for discrimination, arguing that the admission policies, which use an applicant's race as a factor in determining admission for students not admitted through the university's Top Ten Percent Plan, violated her rights under the Constitution's Equal Protection Clause.

Previous Supreme Court rulings have held that a diverse student body is a "compelling state interest," and universities may consider race as one of many factors in admission decisions in order to help achieve a "critical mass" of diverse students on campus—but that this may only be done with caution. Colleges must also demonstrate that race-neutral practices have been tried, and they fall short of bringing about the desired results. Additionally, institutions may not issue racial quotas; and race, if used, may only be used in conjunction with other factors.

The Fifth Circuit Court of Appeals held that UT–Austin met these requirements, and that its use of race in its admission procedures was constitutional. Fisher appealed the decision to the Supreme Court, which heard the case in Fall 2012. Instead of issuing a decision on the constitutionality of UT–Austin's practice, the Supreme Court ordered the appeals court to re-consider the case using a "strict scrutiny" standard, which it believed had not been adequately applied the first time around. Doing so, the lower court again found UT–Austin's policies to be constitutionally sound.

Fisher has asked the Supreme Court to consider whether the Fifth Circuit ruling can be sustained under the Supreme Court's interpretation of the Equal Protection Clause. The US Supreme Court announced in June it would review the high-profile case, which could re-shape the legal landscape of race-conscious admission policies. The court is expected to announce its decision in Spring 2016. NACAC will closely monitor *Fisher* in the coming months and update members on the implications of the decision for institutional race-conscious admission policies.

management, and more importantly to produce an accessible and useful resource for college and university leaders. We were most interested in 1) how statewide legislation and Supreme Court rulings—including the 2013 *Fisher* decision—have shaped outreach, recruitment, and admission decisions at institutions of varying selectivity; 2) widely used diversity strategies and the perceived effectiveness of those strategies; and 3) how the research, policy, and legal communities can assist institutions in preparing for an uncertain future.

With the help of NACAC and other national organizations, we received replies from admission and enrollment management leaders at 338 nonprofit, selective four-year institutions that collectively enrolled more than 2.7 million students and fielded more than 3 million applications for admission in 2013–14. Ninety-two of these schools currently consider race in the admission process, 19 don't but did so at one time, and 227 have never considered race. It was also the case that the majority of the most selective schools in our study (those that admit 40 percent or less of their applicants) currently consider race in admission.

While the use of race-conscious admission varied from one school to the next, institutions consistently ranked campus racial and ethnic diversity as a top priority. In fact, across sectors and across the selectivity spectrum, only one institutional priority outranked racial and ethnic diversity—enrolling students with outstanding test scores and GPAs. The means by which colleges and universities sought to support diversity may not surprise readers, but they do fly in the face of the popular narrative of race-conscious admission, a narrative often incomplete and ill-informed.

While policies like percentage plans, reduced emphasis on legacy admission, and test-optional admission receive widespread attention from researchers and the press, the most widely used diversity strategies in our data were decidedly less provocative. They include articulation agreements, targeted recruitment of prospective minority applicants, recruitment and additional admission consideration of community college transfers, and holistic application review. Only 13 percent of schools in our study use a percentage plan, while 82 percent use articulation agreements to support campus

diversity. Only 16 percent use test-optional practices, while 78 percent focus on targeted recruitment.

We also asked institutions about strategies that have yielded positive diversity effects (based on their data, not intuition). More than 70 percent report targeted yield initiatives for minority students were demonstrably effective, followed by holistic application review at 67 percent. Other effective supports included targeted applicant recruitment and targeted financial aid. Test-optional admission was the exception. This policy has received abundant attention in recent years, and while it is still not widely used, the practice was identified as an effective diversity support by 68 percent of admission leaders.

Among the array of effective (and relatively anonymous) diversity strategies identified in our report, bridge or summer enrichment programs deserve special attention. Bridge programs are most widely used by the more selective public schools in our study (a full 91 percent employ these programs). What is more, 90 percent of these institutions said bridge programs effectively support socioeconomic diversity and 80 percent said they support racial and ethnic diversity. As Ishop told us, "As strong as the students you admit are, some need help with stocking their tool shed in order to maximize their success. Students from smaller schools, less resourced communities, and first-generation students need an institutional commitment to their success, not just their enrollment. Summer bridge and enrichment programs are demonstrative parts of that commitment."

It may be tempting to presume these creative diversity strategies—bridge programs, articulation agreements, test-optional admission, and the like—are the province of schools that have abandoned race-conscious admission. Not true. In fact, the institutions in our study that consider race in the admission process are also the schools most likely to use other, broader diversity strategies and to find those strategies effective.



Race-neutral and race-conscious diversity tools don't just coexist; they work best in concert.

As a community, up to this point we've known very little from a national perspective about what has changed in admission since the Supreme Court's 2013 *Fisher* decision. This was a major focus of our study, and we found that post-*Fisher* changes have been modest. Applicants' socioeconomic disadvantage was the admission factor most likely to see increased emphasis after *Fisher*, and that increase occurred at 11 percent of the institutions. It was not surprising to see that few colleges and universities overhauled their admission calculus after *Fisher*. A 2013 survey conducted by *Inside Higher Ed* found 92 percent of institutions assessed their admission processes after *Fisher* and confirmed their selection approaches already met the ruling's narrow-tailoring requirements.

Limited post-*Fisher* movement in admission factors should not be mistaken for complacency. For example, nearly a third of admission offices increased admission and enrollment data analysis of socioeconomically disadvantaged student enrollment and a quarter increased analysis of first-generation student enrollment. Nearly a quarter of institutions also increased recruitment of (and additional consideration for)

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community-college transfers as part of their portfolio of diversity strategies.

Because the *Fisher* case is still in play, it may be more instructive to examine changes in schools forced to discontinue race in admission due to statewide bans on the consideration of race. Among the 19 schools in our study that discontinued race-conscious admission, the majority did alter their admission calculus—most often by increasing consideration for applicants that have overcome adversity or demonstrated “grit.” They also paid increased attention to the essay or personal statement and ramped up international diversity.

As researchers our first instinct is to measure aggregate patterns, but in doing so we must remember that the change that works on one campus may prove ineffective at another. Put simply, context matters. We asked President Santa Ono of the University of Cincinnati (OH) to compare his time there to his tenure at Emory University (GA), and he reflected on the differences between the

two: “Emory is a medium-sized elite private university with 14,000 students, and 87 percent of its incoming students on the Atlanta campus come from outside of Georgia. The University of Cincinnati, on the other hand, is a large state university with more than 43,000 students, and nearly 76 percent of them are from the state of Ohio. While UC has highly-ranked programs and several programs with selective admission criteria, overall the institution maintains a deep commitment to its home community and to offering accessible education. We therefore incorporate community-focused approaches in our diversity initiatives.” In other words, success is not always an exercise in replication. It is often one of translation and modification. Assuming success in another sector will translate to success at your institution is a recipe for disappointment.

So, what are the future prospects for race-conscious admission? It's anyone's guess. Art Coleman, managing partner at EducationCounsel, cautions against over-reading the tea leaves and over-relying on signals from the courts: “...the what, the why, and the how [of achieving diversity] should be decided in the first instance not by the lawyers, but by the education leadership from the top down. It should be institution-focused, research-based, and faculty-involved in core academic decision-making. So the homework, in a nutshell, rests with institutional leadership and actors.”

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## RESOURCES

Legal challenges to college admission practices have direct influence on college and university admission officers seeking to fulfill their mission-driven roles of ensuring a student body reflective of a changing American demographic and increasingly global society. The Access and Diversity Collaborative and the Dream Undone project presented a joint session at the 2015 NACAC National Conference in San Diego, “B11. Front Lines: The Continuing Battle over Race and Ethnicity in Admission.” It informed participants about policy and practice development, and legal compliance efforts, using the College Board's Access and Diversity Collaborative (ADC) and the American Council on Education's (ACE) “A Dream Undone?” study. The ADC provided guidelines for practice in light of the latest legal challenges and rulings on the consideration of race and ethnicity in admission, including a focus on race-neutral approaches and implications for the national and institutional research agendas. ACE provided an overview of recently released findings from a national survey of admission and enrollment management leaders examining the extent to which legal challenges have influenced contemporary admission practices. For more about the session, visit [nacac2015.quickmobile.center/tracks/detail/B11](http://nacac2015.quickmobile.center/tracks/detail/B11).

Find other access and diversity publications on NACAC's Diversity in Admission webpage: [www.nacacnet.org/issues-action/LegislativeNews/Pages/Diversity-in-Admission](http://www.nacacnet.org/issues-action/LegislativeNews/Pages/Diversity-in-Admission).