



# CAMPUS COUNSEL

A legal blog written for administrators, HR professionals, in-house counsel, and deans at colleges and universities

## Supreme Court Upholds Affirmative Action in College Admissions

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On June 23, 2016, the United States Supreme Court issued a [landmark decision](#) upholding the race-conscious admissions program at the University of Texas. Under UT's plan, approximately 25% of an incoming class is filled through a combination of applicants' "Academic Index" (SAT scores, high school grades) and their "Personal Achievement Index." The Personal Achievement Index consists of a holistic review of numerous factors, including an applicant's race. A student who was denied admission filed a lawsuit to challenge the program, claiming that UT's consideration of race as a factor in admissions denied her rights under the Constitution's Equal Protection Clause.

The Supreme Court—in a 4-3 vote (Justices Kennedy, Ginsburg, Breyer and Sotomayor were in the majority, Justices Thomas, Alito and Chief Justice Roberts dissented, and Justice Kagan did not participate)—decided that UT's consideration of race as part of its admissions process did not violate the Constitution. Applying a "strict scrutiny" standard, the Court found that UT had articulated precise and concrete goals for its race-conscious admissions program (including combating stereotypes, promoting racial understanding and preparing students for a diverse workforce). The Court further found that UT had shown that the race-conscious program was narrowly-tailored to address these goals (the Court noted that consideration of race had only a minor impact on the number of minority students admitted to UT) and that race-neutral programs would not achieve UT's diversity goals. However, the Supreme Court also sounded a cautionary note: it stressed that UT must continually evaluate its race-conscious admissions program to ensure that race plays no greater role than necessary to accomplish its diversity goals.

Justice Alito filed a lengthy dissent, arguing that the Court majority did not, in fact, apply a "strict scrutiny" standard of review but rather deferred in large part to UT's asserted justifications for its admissions program without requiring UT to meet its burden to show that a race-conscious program was necessary and that the particular race-conscious program it put in place was narrowly-tailored to meet that necessity.

**Client Tip:** *While race-conscious admissions programs in public college admissions continue to be permissible, the Court's warning that institutions have a "continuing obligation" to ensure that such programs is significant. Institutions should continue, both now and at regular intervals in the future, review any race-conscious admissions program to ensure that it*

*complies with the standards the Supreme Court reiterated in Fisher.*