Watchdog.org Texas Bureau

Supreme Court asked to look at UT's backdoor admissions program

By Jon Cassidy

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The University of Texas practices two forms of discrimination in admissions.

Its practice of racial discrimination has gone before the U.S. Supreme Court, which huffed and puffed two years ago in the well-known case of Abigail Fisher v. University of Texas, but didn't quite blow it down.

The university also discriminates against everyone who applies for admission according to the publicized procedures, setting extraordinarily high standards for competitive admission, while opening a back door for hundreds, even thousands, of mediocre students from wealthy or influential families.

Ironically, it's the discovery of this secret program of affirmative action for the privileged that may lead to the termination of the university's other, less cynical affirmative action program and others like it nationwide.

Lawyers at the Cato Institute filed an amicus brief last week with the Supreme Court, which is considering whether to take up Fisher's case again, arguing that UT's "own report on this hitherto secret track … concludes that race and ethnicity were an 'important consideration' in these decisions, which resulted in the admission of students with scores and achievements substantially below those of other applicants."

The university's recent report on admissions favoritism found President Bill Powers intervened to admit freshmen with triple-digit SATs and grade point averages below 2.9, sometimes as a favor to donors or lawmakers. In other cases, the report insists, that intervention actually "demonstrated a commitment to ethnic and racial diversity."

If this is true, it could only mean Powers finds the admissions office is just not letting in enough minority applicants through official procedures. So he becomes a sort of Willy Wonka, distributing golden tickets at random.

The problem is the university didn't say anything about Wonka to the court last time around, and the only way affirmative action passes muster these days is if it's "narrowly tailored to obtain the educational benefits of diversity" in the broadest sense.

"Narrowly tailored" might cover just about any systematic practice, but it clearly doesn't mean one man making freelance decisions to admit a Spanish-speaking kid with a 1.8 grade point average as a favor to a member of the state's Mexican American Legislative Caucus.

In Fisher v. UT, the Supreme Court ruled no court could "accept a school's assertion that its admissions process uses race in a permissible way without a court giving close analysis to the evidence of how the process works in practice," but that's proved hard to enforce, because admissions are shrouded in secrecy.

A few years ago, UT's admissions officers swore to a story about careful consideration of holistic attributes and subtle formulae for weighing academic qualifications, but they never mentioned Powers had reserved up to a fifth of the competitive seats in each freshman class so he could dole them out to the children of politicians and donors.

UT enrolls upwards of 7,000 freshmen each year, but three-quarters of those spots are filled automatically based on high school class rank under the state's Top Ten Percent law. Competition for the remaining 1,500-1,800 seats is fierce, and that's where the courts review UT's racial considerations.

Yet they weren't even told hundreds of those seats are decided by Powers using criteria he won't share; in fact, the notes of all meetings concerning his favored applicants are shredded.

This isn't marginal. In 2010 alone, Powers and a few select deans placed "holds" on 527 applications, preventing the admissions office from rejecting them.

If the high court is serious about wanting "evidence of how the process works in practice," it should take a close look at the report by Kroll Associates on admissions favoritism at UT.

Before this scandal, the benchmark for an admissions program corrupted by politics was set by the University of Illinois, where the president, chancellor and much of the board had to resign. As an official with the National Association for College Admission Counseling described it last year, "That's one extreme where you do not want to be."

At Illinois, officials maintained a "clout list" of applicants sponsored by the rich and well-connected, which they called "Category I." At Texas, Powers placed "Q holds" on well-connected applicants, ensuring they wouldn't be rejected by the admissions office without his approval.

The 2009 Illinois report found that "(s)ince 2005, about 800 undergraduate students have landed on the 'Category I' list," and their acceptance rate was 77 percent, compared with 69 percent for other applicants.

That suggests something on the order of 64 beneficiaries. At UT, a nod from the president is taken far more seriously, as Cato explains, citing an analysis by Watchdog.org:

Of the 1,140 in-state applicants over the six-year period whose applications were subject to presidential 'holds' and who did not qualify for automatic admission under the Top Ten Percent Plan, 842 were admitted to the University — for an admissions rate of 72 percent. By comparison, the admissions rate for all in-state applicants undergoing 'holistic review' is a paltry 15.8 percent. This difference is particularly remarkable in light of the fact that only 6 percent of the students admitted with the president's support had above average academic scores.

So that gets you 640 or so favorite sons, but the bad grades suggest even higher numbers. Then there are holds for out-of-state and foreign students, holds placed by deans, shenanigans in the law school's admissions and so on. The problem for Texas is that the scandal threatens so many high-ranking politicians that nobody wants to investigate.

The Supreme Court does, in a way, or at least it realizes "strict scrutiny" and "close analysis" of the evidence is the only way to get answers. The court ought to send a message about what "strict scrutiny" means by taking this case. It doesn't mean a little thumb-twiddling long division, followed by a rubber stamp, as that's all the lower courts have managed. It means a full trial to get something that resembles the truth, even when dealing with a university administration willing to lie to the Supreme Court.

The policy fix for both kinds of discrimination is simple, though. Make college applications public record. If you show up at UT Law after scoring a 136 on the Law School Admission Test, it doesn't matter who let you in or why, they're all going to laugh at you.