

# JUDGES & THE COURTS

## FACT SHEET

### The Supreme Court's Decision in *Fisher v. University of Texas at Austin* About the Use of Race in Admissions will be Particularly Important for Women of Color

October 2012

On October 10, 2012, the Supreme Court will hear arguments in *Fisher v. University of Texas at Austin*<sup>i</sup> to decide whether UT Austin may consider race as a factor in admissions in addition to their race-neutral Top Ten Percent Plan (under which the top ten percent of graduates of each Texas high school are guaranteed admission). Abigail Fisher, a white Texas resident, brought the case claiming that she suffered discrimination when she was denied admission to UT Austin's undergraduate program because of the University's use of race as one factor in its admissions process.

Persistent racial and gender stereotypes affect societal and individual perceptions of women's capabilities and lead to women of color being clustered in certain fields of study and largely absent from others. As a result, many degree programs lack diversity and deprive all students of the benefits of learning with and from a broad array of people. UT-Austin should have the freedom to consider race as a factor among all others in order to provide the benefits of diversity to all of its students.

**Diversity at a state university benefits all students and helps produce civic, government and business leaders who are skilled at working for and with all members of the public.**

- Research shows that a diverse educational environment helps students learn to understand values that they share with individuals from different backgrounds, and to learn that there is no

single viewpoint associated with any particular group.<sup>ii</sup>

- State universities serve a unique role in preparing the future leaders of their states. This is particularly true for students of color, who historically have lacked the benefits of heredity, familial connections and other traditional avenues to leadership positions.
  - More than two-thirds of the state senators in the Texas Legislature attended a Texas state university.<sup>iii</sup>
  - Eight of the nine Texas state senators who are black or Hispanic obtained their undergraduate or graduate degrees from public institutions in Texas; seven attended schools in the University of Texas system.<sup>iv</sup>
  - Five of Texas's seven black and Hispanic federal legislators attended the University of Texas at Austin.<sup>v</sup>

**Racial and gender stereotypes negatively affect women, particularly women of color.**

- Studies show that while women are perceived favorably on college campuses, these favorable attitudes often are based not on individual abilities but on assumptions about women's nurturing and communal qualities, which continue to support notions that women are suited only for "domestic role[s]" and low-status, low-paying female-dominated jobs.<sup>vi</sup>
- Women are still perceived as inferior to men in terms of leadership qualities, particularly those regarded

as necessary for managing subordinates, such as assertiveness, competitiveness, independence, and courageousness. Women thus continue to be viewed as less fit for paid employment and for management and high-status positions in particular.<sup>vii</sup>

- This stereotyping not only informs the perceptions of others, but also affects women's own actions. Those who have been treated as inferior often internalize the beliefs and may limit their own ability to succeed, even in the absence of external constraints.<sup>viii</sup>
- Implicit and often unconscious bias particularly disadvantages women of color.
  - Studies show that individuals who intend to be evenhanded and believe that they are unbiased nonetheless often unconsciously assign unfavorable traits to members of these groups and find superficially neutral reasons to treat them as objectively less qualified than their competitors.<sup>ix</sup>
    - A recent Yale study provides powerful evidence of pervasive bias against female students pursuing careers in science. The study shows that science professors across the country regard female students as less competent than male students with identical skills and experience, and that they are more likely to mentor male students and give them higher salaries.<sup>x</sup>
  - Stereotypes about the "reproductive and domestic" roles of Latinas, for example, continue to include pervasive beliefs "that they are inferior to men."<sup>xi</sup>

### **The persistent effects of stereotyping result in women of color being clustered in "traditional" fields and a lack of actual diversity in students' academic experiences.**

- Women make up more than half of all students earning bachelor's degrees but are disproportionately concentrated in fields corresponding to gender roles once formally assigned to them.<sup>xii</sup>
  - Women receive 77% of the bachelor's degrees in psychology, 79.5% in education, 82% in public administration and social services fields, and 85% in health professions and related programs.
  - Women receive only 18.2% of the bachelor's degrees in engineering, 18.1% in computer science, and 10.1% in other engineering-related fields.<sup>xiii</sup>
- The effect is more pronounced for women of color, in part because they make up such a small proportion of

college students overall.

- Black women earned only 6.5% of bachelor's degrees in 2010, Hispanic women only 5.1%, and Asian/Pacific Islander women only 3.8%.
- Black women accounted for just 3.7% of computer-science majors and 0.1% of engineering majors. Hispanic women were only 1.3% of the computer-science majors and 1.4% of the engineering majors. And Asian/Pacific Islander women were only 1.8% of the computer-science majors and 2.8% of the engineering majors.<sup>xiv</sup>
- Therefore, even though there might be statistical diversity on a campus when considering the student body as a whole, the real, day-to-day experience for many students can be a largely homogeneous one.
  - In a field such as engineering or computer science that has traditionally been made up of white men, a student may receive few, if any, of the educational benefits of diversity. And the university's goal to afford those benefits to all students may go unrealized.
- Homogeneity in undergraduate fields leads to homogeneity in graduate/professional programs, thus denying to students the benefits of a diverse group of colleagues at the point when that educational environment might do the most to prepare them for their careers.<sup>xv</sup>
  - For example, engineering and computer science courses and majors are overwhelmingly populated by white men, and the pools of qualified candidates for graduate degrees in those fields are similarly narrow.
    - In 2010, black women earned just 3% of the master's degrees in computer science; Hispanic women, 0.8%. And each group received only 0.9% of the master's degrees in engineering.<sup>xvi</sup>
    - In 2010, just 55 black women and 70 Hispanic women earned doctoral degrees in engineering, and 17 black women and 8 Hispanic women earned doctoral degrees in computer science, nationwide.<sup>xvii</sup>
  - The story in professional schools is similar.
    - Black women received only 4.6% of the medical degrees; Hispanic women, 2.5%.
    - Black women received 4.4% of the law degrees; Hispanic women, 3.6%.

- Black women receive 3.2% of the dentistry degrees; Hispanic women 3.1%.<sup>xviii</sup>

## The clustering of women of color in particular fields affects workforce composition.

- Men still make up a majority of doctors, architects, engineers, and politicians—professions that were long formally closed to women of color. Women of color remain concentrated for the most part in lower-status occupations and sectors of the economy.
  - Less than 5.3% of the physicians and surgeons in this country are black women; less than 6.6% are Hispanic women.
  - Among lawyers, less than 5.3% are black women; less than 3.2% are Hispanic women.
  - Among architects, less than 1.6% are black women

and less than 3.2% are Hispanic women.<sup>xix</sup>

- Over half of all black women in the workforce fall into one of three fields: health services, such as nursing or home care; education; and wholesale and retail trade.<sup>xx</sup>

- While the nation's businesses and the government have long sought to hire individuals with experience in dealing with individuals of diverse backgrounds, as well as to increase the diversity of their own workforces, their recruitment of workers and managers is limited by the continuing homogeneity of the majors and degree programs from which they recruit.<sup>xxi</sup>
- As for leadership positions in business and industry, black and Hispanic women each hold only 1.9% of the director positions on the boards of Fortune 500 companies.<sup>xxii</sup> Black women hold less than 2.7% of the chief-executive positions; Hispanic women less than 4.1%.<sup>xxiii</sup>

**Unless a university is able to take steps to counteract these continuing effects of stereotypes, it will be unable to provide the diversity in fact that is necessary to fulfilling the university's educational mission.**

<sup>i</sup> *Fisher v. University of Texas at Austin*, 631 F.3d 213 (5th Cir. 2011), cert. granted, 32 S. Ct. 1536 (Feb 21, 2012) (No. 11-345).

<sup>ii</sup> Daryl G. Smith, DIVERSITY WORKS: THE EMERGING PICTURE OF HOW STUDENTS BENEFIT 29 (1997); see also Sylvia Hurtado, *Linking Diversity and Educational Purpose: How Diversity Affects the Classroom Environment and Student Development*, in DIVERSITY CHALLENGED: EVIDENCE ON THE IMPACT OF AFFIRMATIVE ACTION 187, 189 (Gary Orfield ed., 2001) (students in interracial environments show "greater openness to diverse perspectives and a willingness to challenge their own beliefs").

<sup>iii</sup> Texas Tribune, Elected Officials Directory, available at <http://www.texastribune.org/directory/>.

<sup>iv</sup> *Id.*

<sup>v</sup> *Id.*

<sup>vi</sup> Alice H. Eagly & Antonio Mladinic, *Are People Prejudiced Against Women? Some Answers From Research on Attitudes, Gender Stereotypes, and Judgments of Competence*, 5 EUR. REV. SOC. PSYCHOL. 1, 1-2 (1994) (studying attitudes among U.S. and Canadian university students).

<sup>vii</sup> Eagly & Mladinic, 5 EUR. REV. SOC. PSYCHOL. at 25-26; see also, e.g., Dasgupta, 17 SOC. J. RES. at 156 (describing study finding that people who held strong implicit gender stereotypes associating women with "communal" traits (e.g., helpful) and men with "agentic" traits (e.g., ambitious) were more likely to evaluate female candidates for leadership jobs as having poor social skills while evaluating similar male candidates positively). These differences in perception extend to other areas as well. See, e.g., Catherine Hill et al., WHY SO FEW? WOMEN IN SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS 74, 76 (2010) ("[E]ven individuals who consciously refute gender and science stereotypes can still hold th[e] belief at an unconscious level" that women are not as good at math and science as men are. "[M]ore than 70 percent of [respondents] more readily associate 'male' with science and 'female' with arts.").

<sup>viii</sup> See, e.g., Hill, WHY SO FEW?, at 77 ("Stereotypes linking science with male may create gender differences in performance among students, and those gender differences in performance may reinforce the stereotypes linking science with male."); Brian A. Nosek et al., *National Differences in Gender-Science Stereotypes Predict National Sex Differences in Science and Math Achievement*, 106 PROC. NAT'L ACAD. SCI. 10,593, 10,596- 10,597 (2009) (multinational study finding direct correlation between strength of stereotypical association of science with men and degree to which eighth-grade boys outperformed eighth-grade girls in science); Dasgupta, 17 SOC. J. RES. at 161 (describing study finding that black students' "implicit racial attitudes" were associated with "self-handicapping" in academic-testing situations); Patricia M. Gonzales et al., *The Effects of Stereotype Threat and Double-Minority Status on the Test Performance of Latino Women*, 28 PERSONALITY & SOC. PSYCHOL. BULL. 659, 660, 666-669 (2002) (stereotypes about subservience impair academic performance); Brian A. Nosek et al., *Harvesting Implicit Group Attitudes and Beliefs from a Demonstration Web Site*, 6 GROUP DYNAMICS: THEORY, RES. & PRAC. 101, 108 (2002) (survey of more than 60,000 respondents yielded "robust associations," both implicit and explicit, "of male with science and female with liberal arts"); Brian A. Nosek et al., *Math = Male, Me = Female, Therefore Math ≠ Me*, 83 J. PERSONALITY & SOC. PSYCHOL. 44, 52, 57 (2002) (finding that the more strongly that women believe in stereotype associating math with men, "the weaker was their liking for math, the lower was their identification with math, and the worse was their performance on math SATs"); Steven J. Spencer et al., *Stereotype Threat and Women's Math Performance*, 35 J. EXPERIMENTAL SOC. PSYCHOL. 4, 6-8, 21-26 (1999).

<sup>ix</sup> Eva Patterson et al., *The Id, the Ego, and Equal Protection in the 21st Century: Building Upon Charles Lawrence's Vision to Mount a Contemporary Challenge to the Intent Doctrine*, 40 CONN. L. REV. 1175, 1186-1187 (2008); see, e.g., Dasgupta, 17 SOC. J. RES. at 156 ("implicit stereotypic beliefs \* \* \* influence important judgments such as people's impressions of others [and] decisions about who should be hired for a job") (emphasis and citation omitted); Denise Sekaquaptewa et al., *Stereotypic Explanatory Bias: Implicit Stereotyping as a Predictor of Discrimination*, 39 J. EXP. SOC. PSYCHOL. 75 (2003) (finding that white men who exhibited implicit racial bias were more likely to ask racially stereotypic interview questions to black women than to white job candidates during simulated job interviews).

- <sup>x</sup> Corinne Moss-Racusin et al., Science Faculty's Subtle Gender Biases Favor Male Students, PROC. NAT'L ACAD. SCI. (Sept. 17, 2012) (published online before print), available at <http://www.pnas.org/content/early/2012/09/14/1211286109.full.pdf+html>.
- <sup>xi</sup> Berta Esperanza Hernandez-Truyol, *Las Olvidadas—Gendered in Justice/Gendered Injustice: Latinas, Fronteras and the Law*, 1 J. GENDER RACE & JUST. 353, 376 (1998).
- <sup>xii</sup> See NCES, Table 301: Bachelor's degrees conferred by degree-granting institutions, by sex, race/ethnicity, and field of study: 2009-10, available at <http://tinyurl.com/9uhhlf4>.
- <sup>xiii</sup> *Id.*
- <sup>xiv</sup> *Id.*
- <sup>xv</sup> See, e.g., Lisa Dickson, *Major Choices: Race and Gender Differences in College Major Choice*, 627 ANNALS AM. ACAD. POL. & SOC. SCI. 108, 108 (2010) ("Studies have documented the relatively low representation of women, blacks, and Hispanics with degrees in the sciences and engineering \* \* \* [ which] affects occupational choice, earnings, and the probability of pursuing advanced degrees.").
- <sup>xvi</sup> NCES, Table 304: Master's degrees conferred by degree granting institutions, by sex, race/ethnicity, and fields of study: 2009-10, available at <http://tinyurl.com/bmhbj7>.
- <sup>xvii</sup> *Id.*
- <sup>xviii</sup> NCES, Table 309: Degrees conferred by degree-granting institutions in selected professional fields, by sex, race/ethnicity, and field of study: 2009-10, available at <http://tinyurl.com/c82wksb>.
- <sup>xix</sup> Bureau of Labor Statistics, Table 11: Employed persons by detailed occupation, sex, race, and Hispanic or Latino ethnicity [2011], available at <http://www.bls.gov/cps/tables.htm>.
- <sup>xx</sup> Bureau of Labor Statistics, Table 15: Employed women by industry, race, and Hispanic or Latino ethnicity, 2009 annual averages, available at <http://www.bls.gov/cps/wlfdatabook-2010.pdf>.
- <sup>xxi</sup> See, e.g., Brief of BP America Inc. as Amicus Curiae in Support of Neither Party, *supra*, at 4 ("it is difficult to ignore that historically fewer women and persons of color have pursued careers in the technical sciences"); Brief of ExxonMobil Corp. as 28 Amicus Curiae in Support of Neither Party at 6, *Grutter v. Bollinger*, 539 U.S. 306 (2003) (No. 02-241), 2003 WL 554411 ("ExxonMobil and other companies \* \* \* draw their human resources largely from scientific, engineering, and technical fields. Minorities and women have historically been underrepresented in those areas, and invalidating all efforts directed toward increasing enrollment by minorities would exacerbate that concern.").
- <sup>xxii</sup> See Alliance for Board Diversity, MISSING PIECES: WOMEN AND MINORITIES ON FORTUNE 500 BOARDS 5 (2010).
- <sup>xxiii</sup> Bureau of Labor Statistics, Table 11, *supra*.