

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Students for Fair Admissions, Incorporated v. University of Texas at Austin

Students for Fair Admissions, Inc. v. University of Texas at Austin, 37 F.4th 1128 (5th Cir. 2022) · No. No. 21-50715 · Decided June 20, 2022

SUMMARY

The Fifth Circuit held that Students for Fair Admissions had associational standing to challenge the University of Texas at Austin's race-conscious admissions policy. It reversed the district court's dismissal on res judicata grounds, concluding that the parties were not identical or in privity with those in the earlier Fisher litigation and that the claims differed. The court remanded for further proceedings.

CASE DETAILS

COURT	United States Court of Appeals for the Fifth Circuit
WRITING FOR THE COURT	Stuart Kyle Duncan; King; Jones; Duncan
JURISDICTION	Federal
DECIDED	June 20, 2022
DOCKET	No. 21-50715
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from a summary judgment dismissing with prejudice claims challenging the University of Texas at Austin's race-conscious admissions policy. The district court held that Students for Fair Admissions had standing but that res judicata barred its claims based on the prior Fisher litigation.
STANDARD OF REVIEW	De novo review of summary judgment, standing, and res judicata rulings.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Students for Fair Admissions, Incorporated v. University of Texas at Austin, James B. Milliken, Steven Leslie, Daniel H. Sharporn, Jay Hartzell, Board of Regents of the Texas State University System, David J. Beck, Christina Melton Crain, Kevin P. Eltife, R. Steven Hicks, Jodie Lee Jiles, Janiece Longoria, Nolan Perez, Kelcy L. Warren, James C. (Rad) Weaver, Daniel Jaffe, Rachelle Hernandez,

Miguel Wasielewski, The Black Student Alliance, The Texas Orange Jackets, Texas NAACP, Adaylin Alvarez, Morgan Bennett, Liz Kufour, Brianna Mallorie McBride, Desiree Ortega-Santiago, Nima Rahman, Alexandra Trujillo, Rosaleen Xiong

TOPICS

equal protection standing res judicata summary judgment appellate procedure

PRACTICE AREAS

constitutional law civil rights civil procedure appellate procedure

QUESTIONS PRESENTED

1. Whether Students for Fair Admissions had associational standing to challenge UT's race-conscious admissions policy.
2. Whether Students for Fair Admissions was a traditional membership organization entitled to assert claims on behalf of its members without satisfying an indicia-of-membership test.
3. Whether the alleged denial of admission to SFFA members constituted an Article III injury in an equal-protection challenge to a race-conscious admissions policy.
4. Whether claim preclusion barred SFFA's claims because of the prior Fisher litigation.
5. Whether issue preclusion independently barred SFFA's claims.

HOLDINGS

1. SFFA has associational standing to challenge UT's race-conscious admissions policy because its members would have standing, the claims are germane to SFFA's purpose, and neither the claims nor requested relief requires individual-member participation.
2. SFFA is a traditional membership organization, and the court therefore did not apply the indicia-of-membership test.
3. SFFA adequately alleged that its white members suffered an Article III injury by being denied the opportunity to compete for admission on an equal basis because of race.
4. Claim preclusion did not apply because SFFA and the Fisher plaintiffs were neither identical parties nor in privity.
5. Even if the parties were identical or in privity, claim preclusion would not bar SFFA's claims because they arise from a different nucleus of operative facts than the Fisher claims.
6. Issue preclusion did not independently bar SFFA's suit because the doctrine requires party privity and identical issues, neither of which was established.

KEY QUOTATIONS

“We agree that SFFA has standing, but we disagree that *res judicata* bars its claims.” (at 1132)

“Because the parties here and in Fisher are not identical or in privity, and because this case presents different claims, the district court erred in holding SFFA’s lawsuit is barred by claim preclusion.” (at 1145)

FACTUAL BACKGROUND

The University of Texas at Austin used race in admissions before 1997, discontinued the practice after *Hopwood v. Texas*, and reintroduced race-conscious admissions in 2004. Abigail Fisher previously challenged UT's 2008 admissions policy, and the Supreme Court held in *Fisher II* that the policy satisfied strict scrutiny as applied to Fisher's 2008 application while emphasizing UT's continuing obligation to reevaluate its policy. Students for Fair Admissions later challenged UT's admissions policies used in 2018 and 2019, alleging that the policies had changed, increased reliance on race, and placed white and Asian-American applicants on unequal footing.

PROCEDURAL HISTORY

Students for Fair Admissions sued the University of Texas and related defendants under the Fourteenth Amendment, 42 U.S.C. §§ 1981 and 1983, and Title VI. The district court denied motions based on lack of standing but granted summary judgment for defendants on claim-preclusion grounds. The Fifth Circuit reviewed the standing and *res judicata* rulings *de novo*, reversed, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remanded for further proceedings consistent with the opinion.

CASES CITED

- *Fisher v. University of Texas (Fisher II)*, 579 U.S. 365 (2016)
- *Fisher v. University of Texas (Fisher I)*, 570 U.S. 297 (2013)
- *Hopwood v. Texas*, 78 F.3d 932, 948, 955 (5th Cir. 1996)
- *Grutter v. Bollinger*, 539 U.S. 306 (2003)
- *Salinas v. R.A. Rogers, Inc.*, 952 F.3d 680, 682 (5th Cir. 2020)
- *Texas Alliance for Retired Americans v. Scott*, 28 F.4th 669, 671 (5th Cir. 2022)
- *SED Holdings, L.L.C. v. TM Property Solutions, L.L.C. (In re 3 Star Properties, L.L.C.)*, 6 F.4th 595, 604 (5th Cir. 2021)
- *Southwestern Elec. Power Co. v. U.S. E.P.A., Southwest Electric Power Co. v. EPA*, 920 F.3d 999, 1014 n.18 (5th Cir. 2019)
- *Association of American Physicians & Surgeons v. Texas Medical Board*, 627 F.3d 547, 550 (5th Cir. 2010)
- *Funeral Consumers Alliance, Inc. v. Service Corporation International*, 695 F.3d 330, 344 n.9 (5th Cir. 2012)
- *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 980 F.3d 157, 183-84 (1st Cir. 2020)

- Friends of the Earth, Inc. v. Chevron Chemical Co., 129 F.3d 826, 827, 829 (5th Cir. 1997)
- Gratz v. Bollinger, 539 U.S. 244, 262 (2003)
- Northeast Florida Chapter of the Associated General Contractors of America v. City of Jacksonville, 508 U.S. 656, 666 (1993)
- Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992)
- United States v. American Railway Express Co., 265 U.S. 425, 435-36 (1924)
- Maxim Crane Works, L.P. v. Zurich American Insurance Co., 11 F.4th 345, 350-51 (5th Cir. 2021)
- Smith v. Bayer Corp., 564 U.S. 299, 312 (2011)
- Taylor v. Sturgell, 553 U.S. 880, 893-95, 898 (2008)
- Benson & Ford, Inc. v. Wanda Petroleum Corp., 833 F.2d 1172, 1174 (5th Cir. 1987)
- Gonzalez v. Banco Central Corp., 27 F.3d 751, 758 (1st Cir. 1994)
- Clark v. Amoco Production Co., 794 F.2d 967, 973 (5th Cir. 1986)
- Howell Hydrocarbons, Inc. v. Adams, 897 F.2d 183, 188 (5th Cir. 1990)
- Assurance Co. of America v. Kirkland, 312 F.3d 186, 190 (5th Cir. 2002)
- Johnson v. City of Houston, 444 F. App'x 26, 31 (5th Cir. 2011)
- FDIC v. Henderson, 61 F.3d 421, 431 (5th Cir. 1995)
- Snow Ingredients, Inc. v. SnoWizard, Inc., 833 F.3d 512, 521 (5th Cir. 2016)
- ASARCO, L.L.C. v. Montana Resources, Inc., 858 F.3d 949, 956 (5th Cir. 2017)
- New York Life Insurance Co. v. Gillispie, 203 F.3d 384, 387 (5th Cir. 2000)
- Houston Professional Towing Association v. City of Houston, 812 F.3d 443, 447 (5th Cir. 2016)
- OJSC Ukrnafta v. Carpatsky Petroleum Corp., 957 F.3d 487, 504 (5th Cir. 2020)
- Oreck Direct LLC v. Dyson Inc., 560 F.3d 398, 402 (5th Cir. 2009)
- Lucky Brand Dungarees, Inc. v. Marcel Fashions Group, Inc., 140 S. Ct. 1589, 1596 (2020)
- Test Masters Educational Services, Inc. v. Singh, 428 F.3d 559, 571-72 (5th Cir. 2005)
- Steen v. Harvey, 247 F. App'x 511, 514-15 (5th Cir. 2007)
- Parklane Hosiery Co. v. Shore, 439 U.S. 322, 326-27 (1979)
- Rabo Agrifinance, Inc. v. Terra XXI, Ltd., 583 F.3d 348, 353 (5th Cir. 2009)