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June 24, 2013

UH Law Center professor expects appeals court to uphold UT's race-conscious admittance policy

U.S. Supreme Court orders greater scrutiny, leaving future of affirmative action plans unsettled

June 24, 2013 – The University of Houston Law Center professor who helped draft Texas' top 10 percent admissions policy says he expects a federal appeals court to uphold the plan in the wake of today's U.S. Supreme Court order calling for further review.

In a 7-1 decision, the court said the policy of accepting the top 10 percent of high school graduating classes regardless of race needs greater scrutiny than was given by the Fifth U.S. Court of Appeals. While many University of Texas at Austin freshmen are admitted under the percent plan, others are considered under different criteria that include several factors including race. The decision leaves unsettled the question of continued use of race-based admission policies, although unless and until it is overturned, affirmative action lives on.

“The Court vacated and remanded to the circuit court, to have them reconsider the key holding of *Grutter v. Bollinger*—that any plan be narrowly tailored,” said Professor Michael A. Olivas, William B. Bates Distinguished Chair of Law and director of the Institute of Higher Education Law & Governance at the Law Center.

“As I had feared, they misapprehended the percent plan, which is race-neutral and resulted in over half its admits being Anglos,” he said. “But the circuit court did not pin it down with enough narrow-tailoring analysis, which the remand must undertake. It could then find that the percent plan and the use of affirmative action is sufficient, or is not narrowly enough tailored.”

The suit was filed in 2008 by Abigail Fisher, who was denied admission to the university as an undergraduate. Fisher, who is white, contended the school had discriminated against her on the basis of race in violation of the Equal Protection Clause of the 14th Amendment.

“I assisted in the drafting of the percent plan, a tremendous success, and it was race-neutral,” Olivas. “It is sad that such a plan has occasioned such misunderstanding, and given aggrieved Anglo plaintiffs more occasions to assume that if they are not admitted, it must have been due to a lesser-deserving minority taking their place. This did not happen here, and the circuit court should uphold its earlier ruling.”

Olivas is the author of “Suing Alma Mater, Higher Education and the Courts,” as well as numerous other books and articles.

To schedule a media interview with Professor Olivas, contact Carrie Criado, Executive Director of Communications and Marketing, 713-743-2184, cacriado@central.uh.edu; or John T. Kling, Communications Manager, 713-743-8298, jtkling@central.uh.edu.

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About the University of Houston Law Center

The [University of Houston Law Center](#) is the leading law school in the nation's fourth-largest city. Founded in 1947, it is a top-tier institution awarding Doctor of Jurisprudence (J.D.) and Master of Laws (LL.M.) degrees. The Law Center is fully accredited by the American Bar Association and is a member of the Association of American Law Schools.