

## Applying Precedents Activity

**Comparison case:** *Fisher v. University of Texas* (2016)

**Precedent case:** *Brown v. Board of Education of Topeka* (1954)

**What you need to know before you begin:** When the Supreme Court decides a case, it clarifies the law and serves as guidance for how future cases should be decided. Before the Supreme Court makes a decision, it always looks to precedents—past Supreme Court decisions about the same topic—to help make the decision. A principle called *stare decisis* (literally “let the decision stand”) requires that the precedent be followed. If the case being decided is legally identical to a past decision, then the precedent is considered binding and the Supreme Court must decide the matter the same way. However, cases that make it to the Supreme Court are typically not completely identical to past cases, and justices must consider the similarities and differences when deciding a case.

The process of comparing past decisions to new cases is called applying precedent. Lawyers often argue for their side by showing how previous decisions would support the Supreme Court deciding in their favor. This might mean showing how a previous decision that supports their side is analogous (similar) to the case at hand. It can also involve showing that a previous decision that does not support their side is distinguishable (different) from the case they are arguing.

**How it’s done:** In this exercise, you will analyze a precedent and compare it to *Brown v. Board of Education of Topeka*. You have been provided with information about two cases: **1)** the facts, issue, and constitutional provisions/precedents of the comparison case (*Fisher v. University of Texas*) and **2)** a full summary of a precedent case (*Brown v. Board of Education of Topeka*).

After reading about the cases, you will look for evidence that *Fisher v. University of Texas* is analogous (similar) to the precedent case and evidence that the cases are distinguished (different) from each other. After considering both possibilities, you must decide whether the precedent is analogous enough to command the same outcome in the comparison case, or whether the comparison case is different enough to distinguish itself from the precedent.

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1. Using factual and legal similarities, show how *Fisher v. University of Texas* is **analogous** (similar) to the precedent case (*Brown v. Board of Education of Topeka*):



## Comparison Case: *Fisher v. University of Texas at Austin (2016)*

**Argued:** December 9, 2015

**Decided:** June 23, 2016

### **Background**

Public colleges and universities in the United States use a variety of factors to determine which students will be accepted. Universities often want a student body with diverse academic interests, talents, and backgrounds. They consider factors such as applicants' grades, standardized test scores, community service, athletic or musical ability, and geographic location. Sometimes universities also consider an applicant's race or ethnicity.

Americans disagree whether it is acceptable to consider race in the application process. The practice of making a conscious effort to enroll more minority applicants is called "affirmative action." Some people think that it violates the U.S. Constitution. The 14<sup>th</sup> Amendment says, in part, that states cannot "deny to any person ... the equal protection of the laws." Therefore, any government action—such as the admissions process at public colleges and universities—that treats people differently based on their race may violate the Equal Protection Clause.

Some supporters of affirmative action argue that such programs are necessary because they help to correct a long history of racism and discrimination in America. Opponents often argue that the best way to correct a history of discrimination is to make all admissions decisions without looking at race. The Supreme Court has said that some affirmative action programs are acceptable, but only because public universities gain very important educational benefits by creating a diverse student body.

When ruling on laws that treat people differently because of their race, courts require the government to justify the use of race. To be acceptable, the racial classification must:

- serve a compelling (very important) government interest; and
- be "narrowly tailored" to achieve that interest. "Narrowly tailored" means that the law or policy must be extremely well designed to achieve a specific goal and must minimize any interference with the rights of others. Typically, it is difficult for the government to justify using a racial classification.

### **Facts**

This case is about whether the University of Texas at Austin's admissions policies violate the 14<sup>th</sup> Amendment and its guarantee of equal protection.

The majority of freshmen applicants at UT Austin are admitted under the state's Top 10% Law. This law automatically admits all Texas high school students who finish at the top of their class. In

2008, 80% of the freshman class was admitted through the law; 25% of this group was African American or Latino.

The rest of the spots in the freshman class went to general applicants: students from Texas who were not in the top 10% of their high schools and students from outside Texas. These “general” applicants are each given scores based on academics and personal achievement. The score for personal achievement is based on two essays and six additional factors (including leadership potential, extracurricular activities, and special circumstances). The “special circumstances” factor breaks down into seven attributes, including language spoken at home, socio-economic status, and race. None of these factors are given any numerical value. Rather, they are all viewed together to see the totality of the applicant.

Abigail Fisher, a White student who was denied admission to UT Austin in 2008, sued the school. She argued that this admissions program discriminated against White students. Fisher argued that the school got enough diversity from the Top 10% Law; therefore, additional affirmative action measures were unconstitutional.

The U.S. District Court ruled against Fisher. The Fifth Circuit Court of Appeals upheld the District Court’s decision that there was no Equal Protection Clause violation. Fisher appealed to the U.S. Supreme Court in 2012. In 2013, the Supreme Court sent the case back to the Fifth Circuit for additional consideration. The Supreme Court said that the Fifth Circuit must look to whether UT Austin’s admissions program was “narrowly tailored” to obtain the educational benefits of diversity. The Fifth Circuit still decided there was no constitutional violation and affirmed UT Austin’s policy. Fisher appealed again to the U.S. Supreme Court in 2015. The Supreme Court agreed to hear the case. Justice Kagan recused herself, meaning she would not hear the case, because she was involved in the lower court case when she was U.S. Solicitor General.

### **Issue**

Does the University of Texas at Austin’s consideration of race in undergraduate admissions violate the Equal Protection Clause of the 14<sup>th</sup> Amendment?

### **Constitutional Provisions and Supreme Court Precedents**

- **14<sup>th</sup> Amendment to the U.S. Constitution**

“No State shall ... deny to any person within its jurisdiction the equal protection of the laws.”

- *Regents of the University of California v. Bakke* (1978)

The University of California at Davis Medical School had an admissions procedure that reserved 16 spots for minority applicants. Minority applicants were placed on a special admissions track and scored only against each other rather than the entire pool. The U.S. Supreme Court ruled that this program violated the Equal Protection Clause of the 14<sup>th</sup>

Amendment because it set a specific quota of minority applicants to be admitted. However, it said that the attainment of a diverse student body is considered a compelling interest to justify the use of race in admissions, but only if race is used merely as a “plus” factor that might tip the scales in a close case.

– *Gratz v. Bollinger* (2003)

The University of Michigan used a 150-point ranking system that considered grades, high school reputation, high school curriculum difficulty, alumni relationships, and “unusual circumstances” factors such as race and socio-economic status. Being part of a racial minority group was worth 20 points. The Court decided that giving applicants a specific number of points due to their race alone was not narrowly tailored, and, therefore, violated the Constitution.

– *Grutter v. Bollinger* (2003)

The University of Michigan Law School considered a student’s race as part of a holistic (whole-person) application process. The U.S. Supreme Court said the policy was Constitutional because the law school had a compelling interest in attaining a diverse student body. In addition, the policy was specifically written to serve that interest by including race merely as a “potential ‘plus’ factor.”

**Precedent Case:**  
***Brown v. Board of Education of Topeka (1954)***

**Argued:** December 9–11, 1952

**Reargued:** December 7–9, 1953

**Decided:** May 17, 1954

**Background**

In 1868, the 14<sup>th</sup> Amendment to the U.S. Constitution was ratified in the wake of the Civil War. It says that states must give people equal protection of the laws and empowered Congress to pass laws to enforce the provisions of the Amendment. Although Congress attempted to outlaw racial segregation in places like hotels and theaters with the Civil Rights Act of 1875, the U.S. Supreme Court ruled that law unconstitutional because it regulated private conduct. A few years later, the Supreme Court affirmed the legality of segregation in public facilities in the 1896 *Plessey v. Ferguson* decision. There, the justices said that as long as segregated facilities were of equal quality, segregation did not violate the U.S. Constitution. This concept was known as “separate but equal” and provided the legal foundation for Jim Crow segregation. In *Plessey*, the Supreme Court said that segregation was a matter of social equality, not legal equality; therefore, the justice system could not interfere. “If one race be inferior to the other socially, the constitution of the United States cannot put them on the same plane.”

By the 1950s, many public facilities had been segregated by race for decades, including many schools across the country. This case is about whether such racial segregation violates the Equal Protection Clause of the 14<sup>th</sup> Amendment.

**Facts**

In the early 1950s, Linda Brown was a young African American student in Topeka, Kansas. Every day she and her sister, Terry Lynn, had to walk through the Rock Island Railroad Switchyard to get to the bus stop for the ride to the all-Black Monroe School. Linda Brown tried to gain admission to the Sumner School, which was closer to her house, but her application was denied by the Board of Education of Topeka because of her race. The Sumner School was for White children only.

At the time of the Brown case, a Kansas statute permitted, but did not require, cities of more than 15,000 people to maintain separate school facilities for Black and White students. On that basis, the Board of Education of Topeka elected to establish segregated elementary schools.

The Browns felt that the decision of the Board violated the Constitution. They and a group of parents of students denied permission to White-only schools sued the Board of Education of Topeka, alleging that the segregated school system deprived Linda Brown of the equal protection of the laws required under the 14<sup>th</sup> Amendment.

The federal district court decided that segregation in public education had a detrimental (harmful) effect upon Black children, but the court denied that there was any violation of Brown's rights because of the "separate but equal" doctrine established in *Plessy*. The court said that the schools were substantially equal with respect to buildings, transportation, curricula, and educational qualifications of teachers. The Browns asked the U.S. Supreme Court to review that decision, and it agreed to do so. The Court combined the Brown's case with similar cases from South Carolina, Virginia, and Delaware.

### **Issue**

Does segregation of public schools by race violate the Equal Protection Clause of the 14<sup>th</sup> Amendment?

### **Constitutional Amendment and Supreme Court Precedents**

- **14<sup>th</sup> Amendment to the U.S. Constitution**

"No State shall...deny to any person within its jurisdiction the equal protection of the laws."

- *Plessy v. Ferguson* (1896)

A Louisiana law required railroad companies to provide equal but separate facilities for White and Black passengers. A mixed-race customer named Homer Plessy rode in the Whites-only car and was arrested. Plessy argued that the Louisiana law violated the 14<sup>th</sup> Amendment by treating Black passengers as inferior to White passengers. The Supreme Court declared that segregation was legal as long as facilities provided to each race were equal. The justices reasoned that the legal separation of the races did not automatically imply that African Americans were inferior, and that legislation and court rulings could not overcome social prejudices. Justice Harlan wrote a strong dissent, arguing that segregation violated the Constitution because it permitted and enforced inequality among people of different races.

- *Sweatt v. Painter* (1950)

Herman Sweatt was rejected from the University of Texas School of Law because he was African American. He sued school officials alleging a violation of the 14<sup>th</sup> Amendment. The Supreme Court examined the educational opportunities at the University of Texas School of Law and the Texas State University for Negroes' new law school and determined that the facilities, curricula, faculty, and other tangible factors were not equal. Therefore, they ruled that Sweatt's rights had been violated. In addition to the more straightforward criteria the justices examined at the two schools, they reasoned that other factors, such as the reputation of the faculty and influence of the alumni, could not be equalized.

**Arguments for Brown (petitioner)**

- The 14<sup>th</sup> Amendment’s Equal Protection Clause promises equal protection of the laws. That means that states cannot treat people differently based on their race without an extremely good reason. There is not a good reason to keep Black children and White children from attending the same schools.
- Racial segregation in public schools reduces the benefits of education to Black children, solely based on their race. Schools for Black children are often inadequate and have less money and other resources than schools for White children.
- Even if states were ordered by courts to “equalize” their segregated schools, the problems would not go away. State-sponsored segregation creates and reinforces feelings of superiority among White students and inferiority among Black students. Segregation places a badge of inferiority on the Black students, perpetuates a system of separation beyond school, and gives unequal benefits to White students as a result of their informal contacts with one another. It undermines Black students’ motivation to seek educational opportunities and damages identity formation.
- At least two of the high schools in Topeka, Kansas, were already desegregated with no negative effects. The policy should be consistent in all of Topeka’s public primary and secondary schools.
- Segregation is morally wrong.

**Arguments for Board of Education of Topeka (respondent)**

- The 14<sup>th</sup> Amendment states that people should be treated equally; it does not state that people should be treated the same. Treating people equally means giving them what they need. This could include providing an educational environment in which they are most comfortable learning. White students are probably more comfortable learning with other White students; Black students are probably more comfortable learning with other Black students. These students do not have to attend the same schools to be treated equally under the law; they must simply be given an equal environment for learning.
- In Topeka, unlike in *Sweatt v. Painter*, the schools for Black and White students have similar, equal facilities.
- The United States has a federal system of government that leaves educational decision-making to state and local legislatures. States and local school boards should make decisions about the best environments for school-aged children.
- Housing and schooling have become interdependent. Segregated housing has led to and reinforced segregated schools. Students might need to travel far away from their local school to attend an integrated school. This places a heavy burden on local government to deal with the changes.

**Decision**

The Supreme Court ruled for Linda Brown and the other students; the decision was unanimous. Chief Justice Earl Warren delivered the opinion of the Court, ruling that segregation in public schools violates the 14<sup>th</sup> Amendment's Equal Protection Clause.

The Court noted that public education was central to American life. Calling it “the very foundation of good citizenship,” they acknowledged that public education was not only necessary to prepare children for their future professions and to enable them to actively participate in the democratic process, but that it was also “a principal instrument in awakening the child to cultural values” present in their communities. The justices found it very unlikely that a child would be able to succeed in life without a good education. Access to such an education was thus “a right which must be made available to all on equal terms.”

The justices then compared the facilities that the Board of Education of Topeka provided for the education of Black children against those provided for White children. Ruling that they were substantially equal in “tangible factors” that could be measured easily (such as “buildings, curricula, and qualifications and salaries of teachers”), they concluded that the Court must instead examine the more subtle, intangible effect of segregation on the system of public education. The justices then said that separating children solely on the basis of race created a feeling of inferiority in the “hearts and minds” of African American children. Segregating children in public education created and perpetuated the idea that Black children held a lower status in the community than White children, even if their separate educational facilities were substantially equal in “tangible” factors. This deprived Black children of some of the benefits they would receive in an integrated school. The opinion said, “We conclude that in the field of public education the doctrine of ‘separate but equal’ has no place.” Separate educational facilities are inherently unequal. This ruling was a clear departure from the reasoning in *Plessy v. Ferguson*, and, in many ways, it echoed aspects of Justice Harlan's dissent in that earlier case.

**Impact**

*Brown v. Board of Education of Topeka* was a single decision signed by all nine Justices. The Court acknowledged the importance and potential controversy of this decision, so they acted uniformly to try to lessen dissent in society. The decision that ordered the desegregation of public schools was praised by many Americans who supported the civil rights movement.

One year after the decision, the Court addressed the implementation of its decision in a case known as *Brown v. Board of Education of Topeka II*. Chief Justice Warren once again wrote an opinion for the unanimous Court. The Court acknowledged that desegregating public schools would take place in various ways, depending on the unique problems faced by individual school districts. After charging local school authorities with the responsibility for solving these problems, the Court instructed federal trial courts to oversee the process and determine whether local authorities were desegregating schools in good faith, mandating that desegregation take place with “with all deliberate speed.”

That language proved unfortunate, as it gave the Southern states an incentive to delay compliance with the Court's mandate.

Many White people fought the implementation of the decision. In Little Rock, Arkansas, the school board agreed to desegregate its schools. But when nine African American students tried to enter Little Rock Central High School, those who still supported segregation, along with the Arkansas National Guard, physically blocked the African American students from entering the school. President Eisenhower quickly deployed the U.S. Army to enforce the integration decision by providing an armed escort to the African American students.

Resistance to integration led to further litigation. In *Griffin v. County School Board of Prince Edward County* (1964), the Court stated that “[t]he time for mere ‘deliberate speed’ has run out, and that phrase can no longer justify denying . . . school children their constitutional rights.”

Today all segregation by law (*de jure* segregation) in public education is unconstitutional. However, many schools are still largely made up of students from a single racial or ethnic group because enrollment is assigned based on neighborhoods. This is called *de facto* segregation because it occurs in practice without a law mandating it.

Additional information about *Brown v. Board of Education of Topeka*, including background at three reading levels, opinion quotes and summaries, teaching activities, and additional resources, can be found at <https://www.landmarkcases.org/>.