

# The Legal Rights of Students to Access Education for Racial Minorities



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# What might universities consider in admissions?

- Grade Point Average
- Test Scores
- Personal Essay and Recommendations
- Are you a legacy?
- Socio-economic status and race
- Athletic Ability



# Snapshot: Athletics

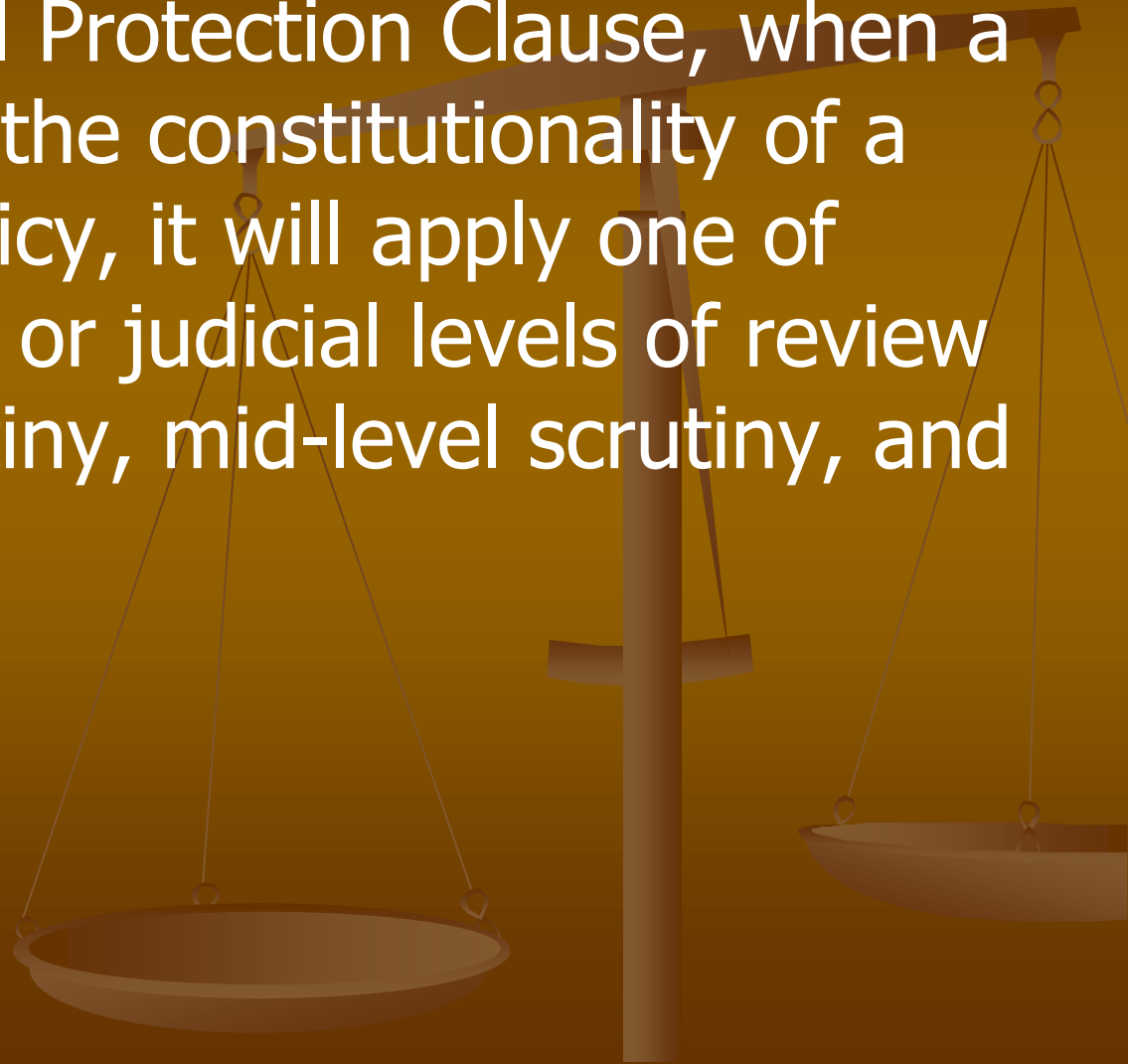
- At some Ivy League institutions, athletes can account for 20% of the class and as a group often have lower test scores and GPAs than other students in the class (see Bowen & Levin, 2003; New, 2014).
- Unlike athletic classifications, state-sponsored racial classifications are considered suspect classifications and are subject to strict scrutiny review (see Deo, 2014; U.S. Dep't of Justice, 2011).

# The Equal Protection Clause of the Fourteenth Amendment

- The Equal Protection Clause states that “no State shall ... deny to any person within its jurisdiction the equal protection of the laws” (U.S. CONST. amend. XIV, § 1, 1868).
- The Clause has been interpreted to mean that “similar individuals ... be dealt with in a similar manner by the government” (ROTUNDA & NOWAK, § 18.2 at 208, 1999).
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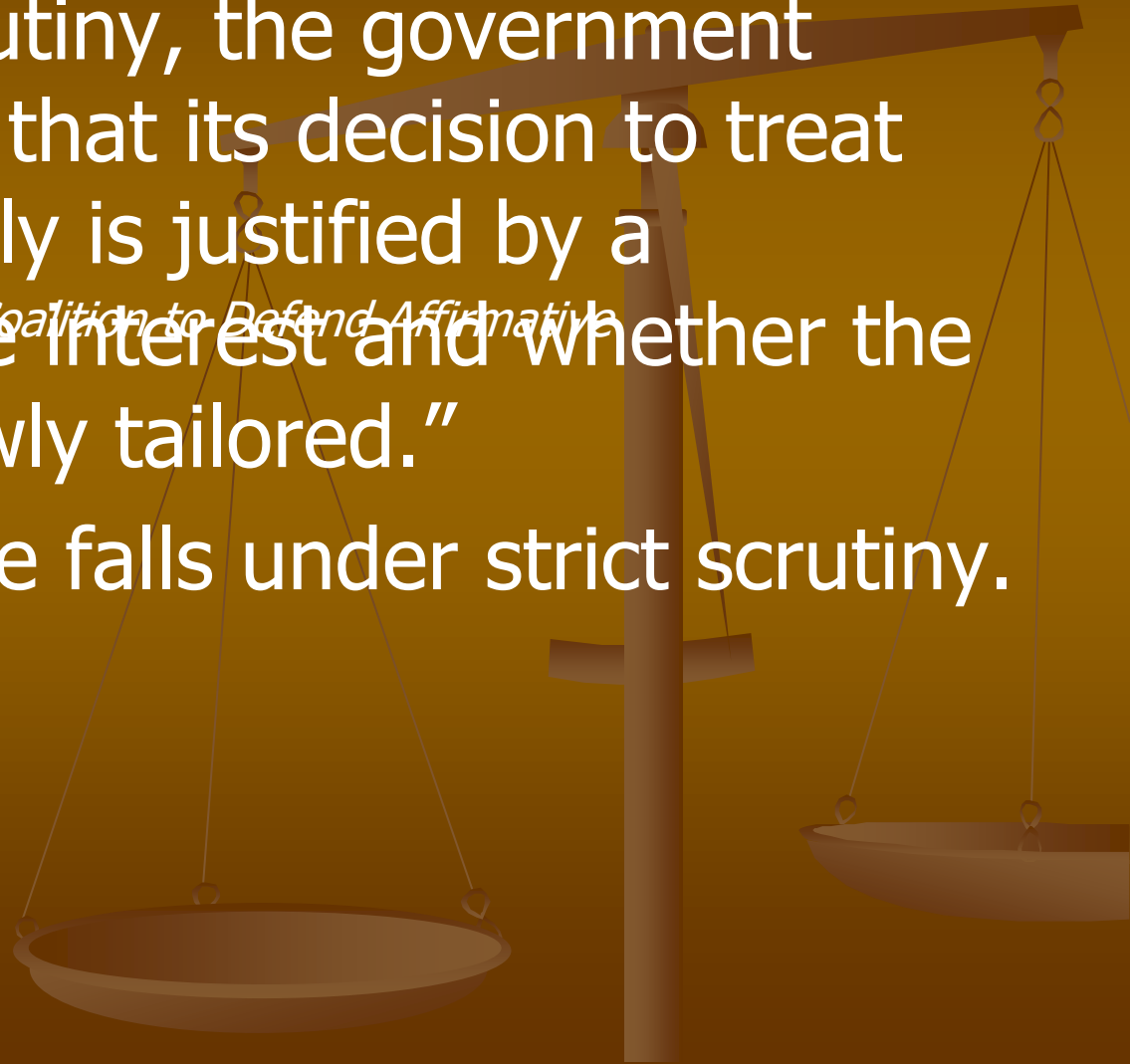
# Different Levels of Scrutiny

- Under the Equal Protection Clause, when a court considers the constitutionality of a government policy, it will apply one of three standards or judicial levels of review (i.e., strict scrutiny, mid-level scrutiny, and rational basis).



# Strict Scrutiny

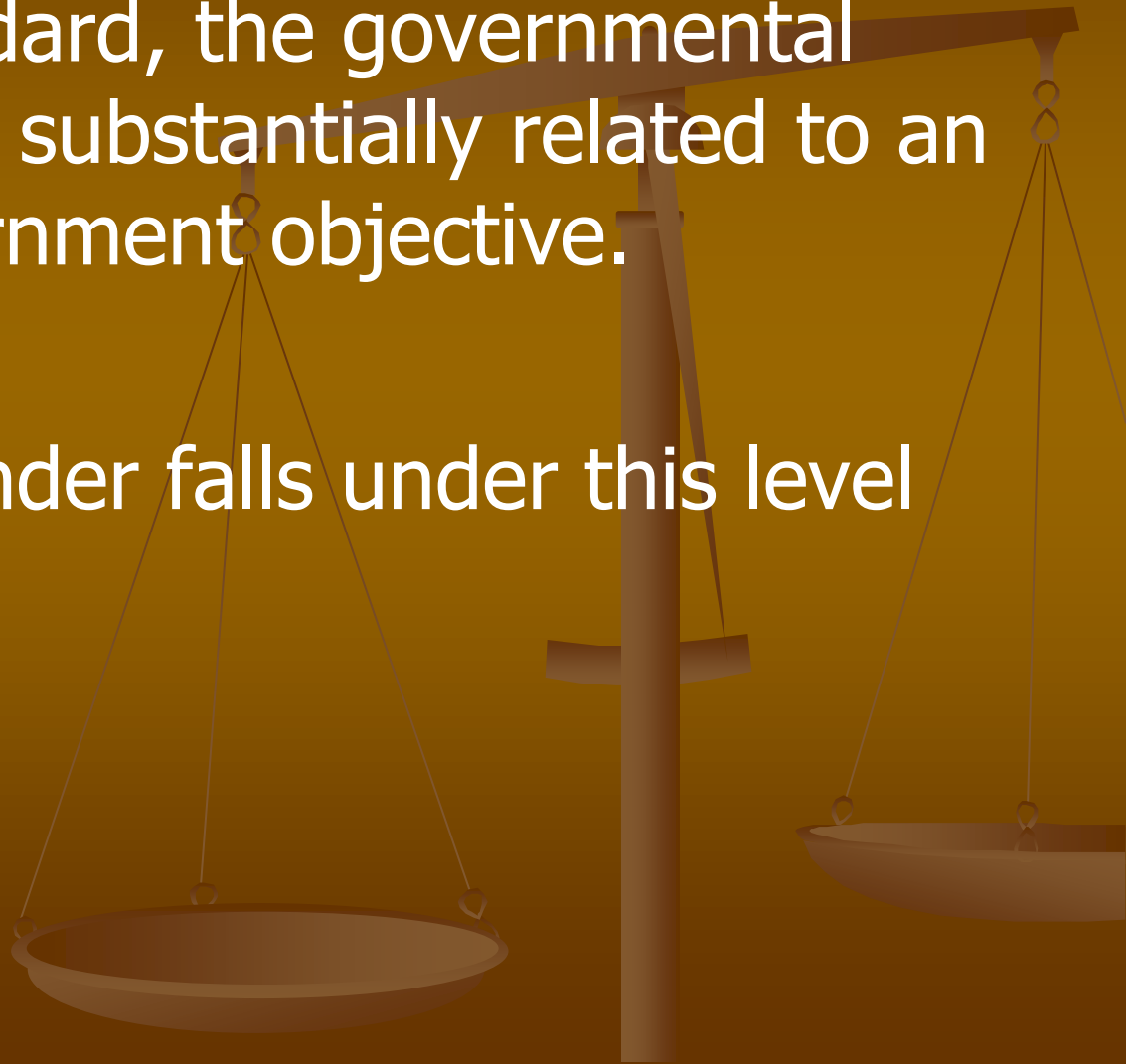
- Under strict scrutiny, the government must first show that its decision to treat people differently is justified by a compelling state interest and whether the policy is "narrowly tailored."  
*Schuetz v. Coalition to Defend Affirmative Action*
- For example, race falls under strict scrutiny.



# Intermediate Scrutiny

- Under this standard, the governmental policy has to be substantially related to an important government objective.

-For example, gender falls under this level of scrutiny.





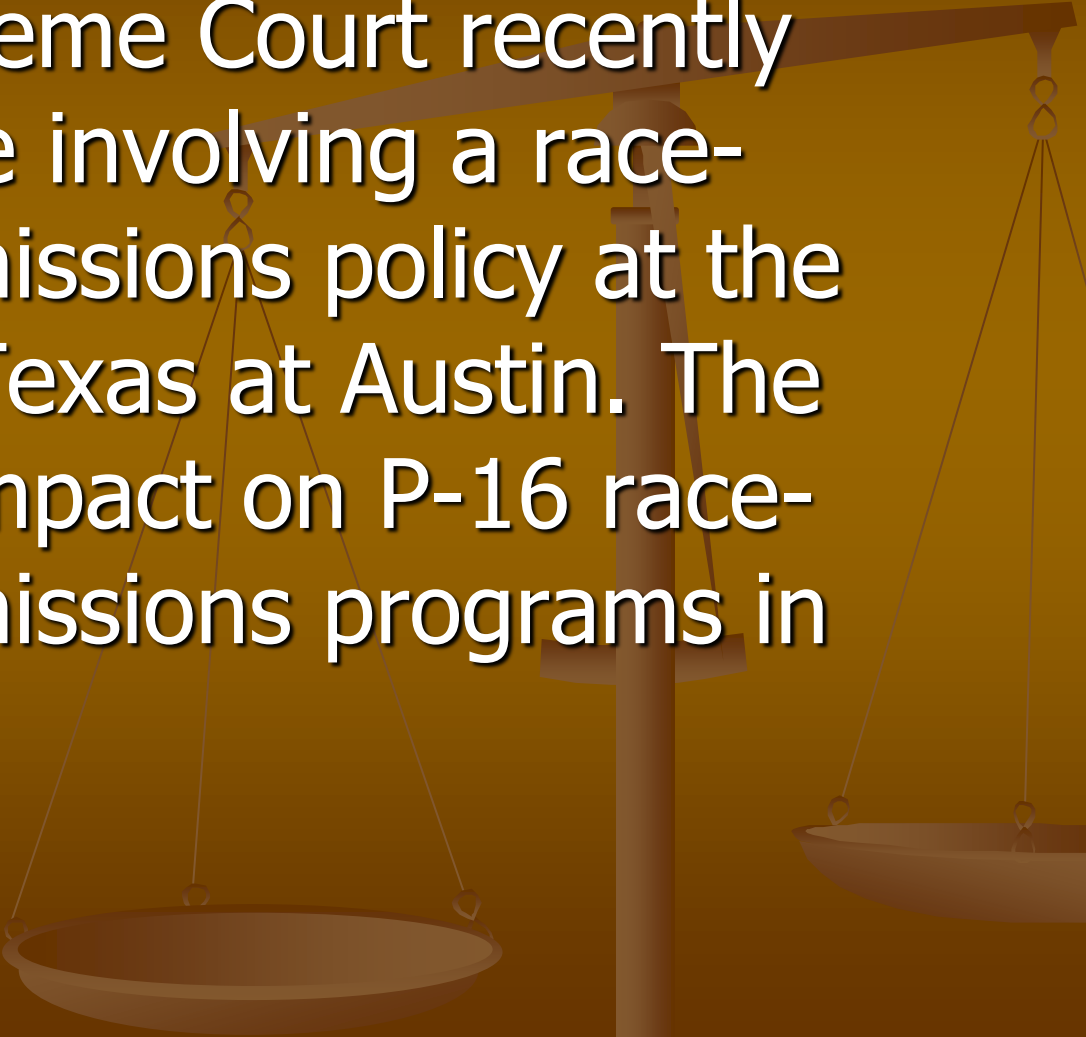
# Rational Basis



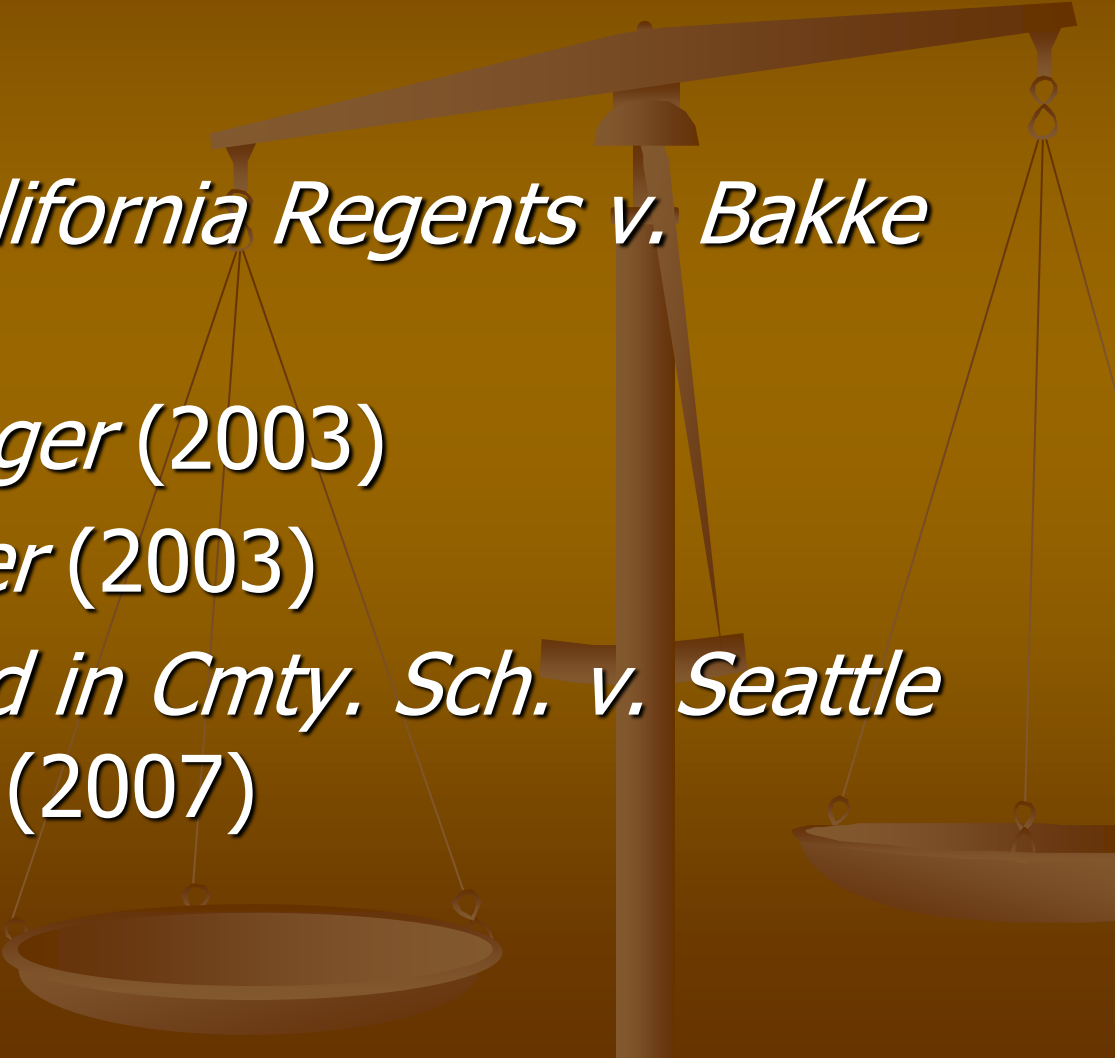
- Under rational basis, the Court will uphold the governmental action if the government is pursuing a legitimate governmental objective and if there is a rational relation between the means chosen by the government and the state objective.
  - For example, disability, age, sexual orientation fall under rational basis.

# *Fisher v. University of Texas at Austin*

The U.S. Supreme Court recently decided a case involving a race-conscious admissions policy at the University of Texas at Austin. The decision will impact on P-16 race-conscious admissions programs in education.

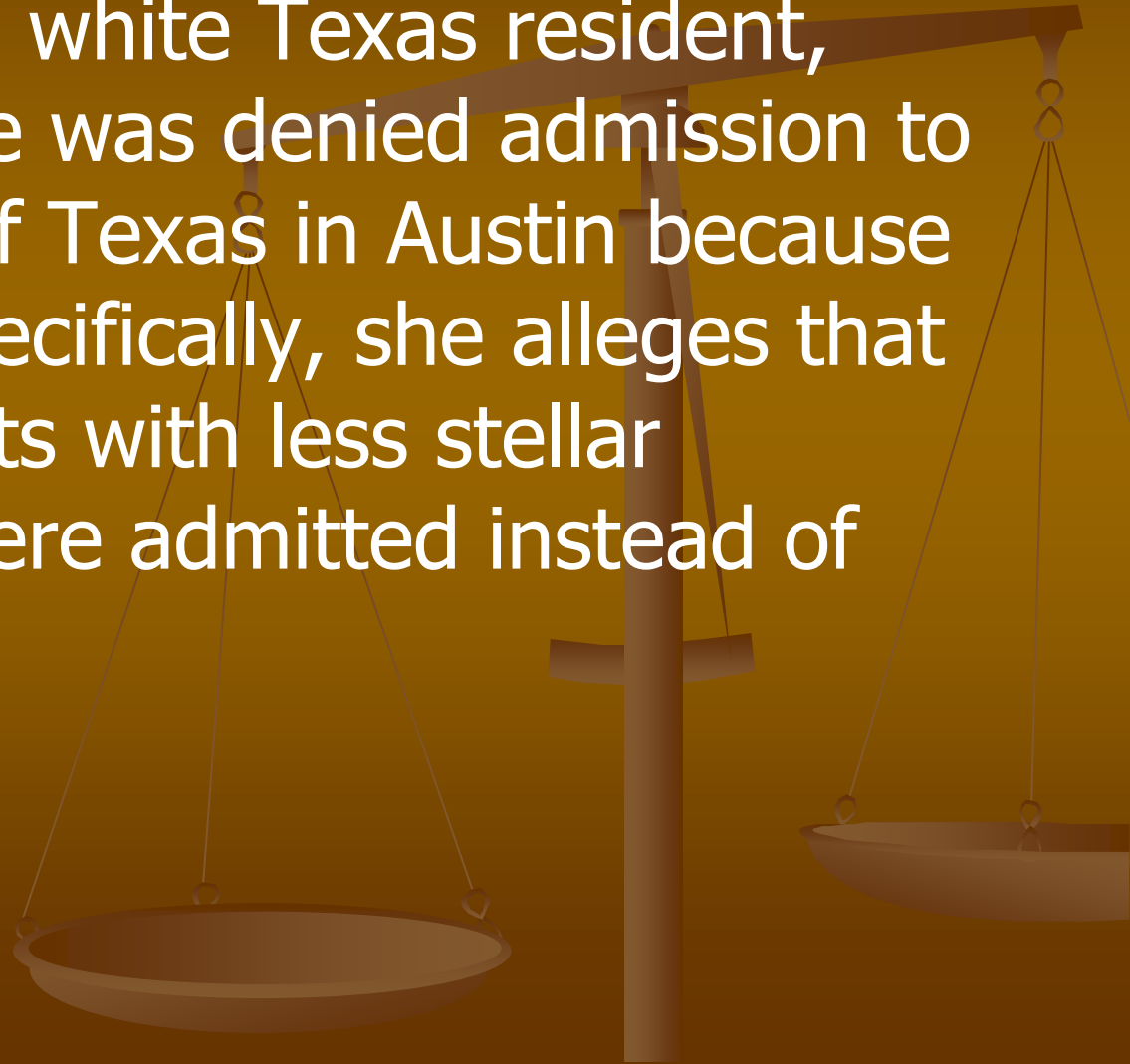


# What have earlier U.S. Supreme Court decisions said about race-conscious admissions?

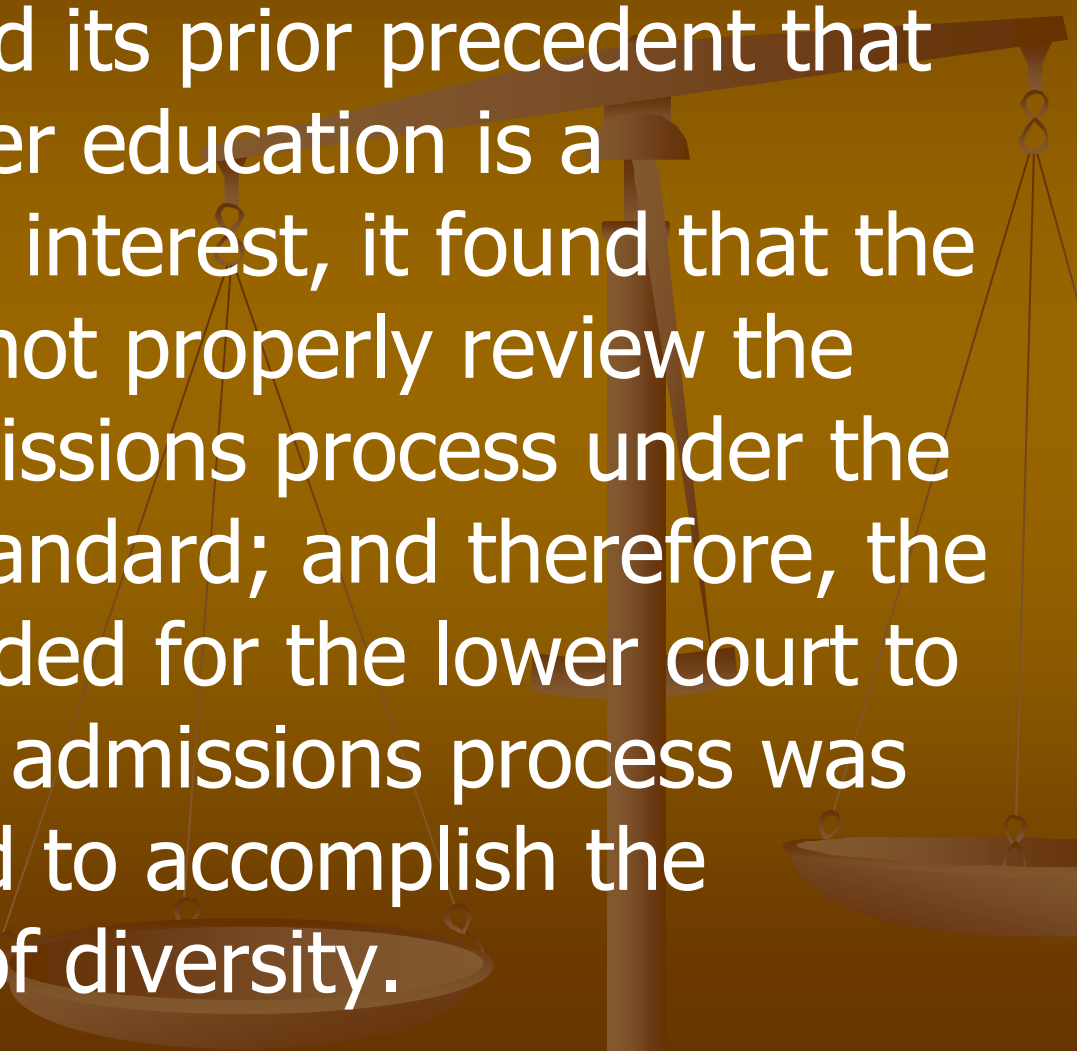
- *University of California Regents v. Bakke* (1978)
  - *Grutter v. Bollinger* (2003)
  - *Gratz v. Bollinger* (2003)
  - *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1* (2007)
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# The Facts in *Fisher*

- Abigail Fisher, a white Texas resident, claimed that she was denied admission to the University of Texas in Austin because of her race. Specifically, she alleges that minority students with less stellar qualifications were admitted instead of her.

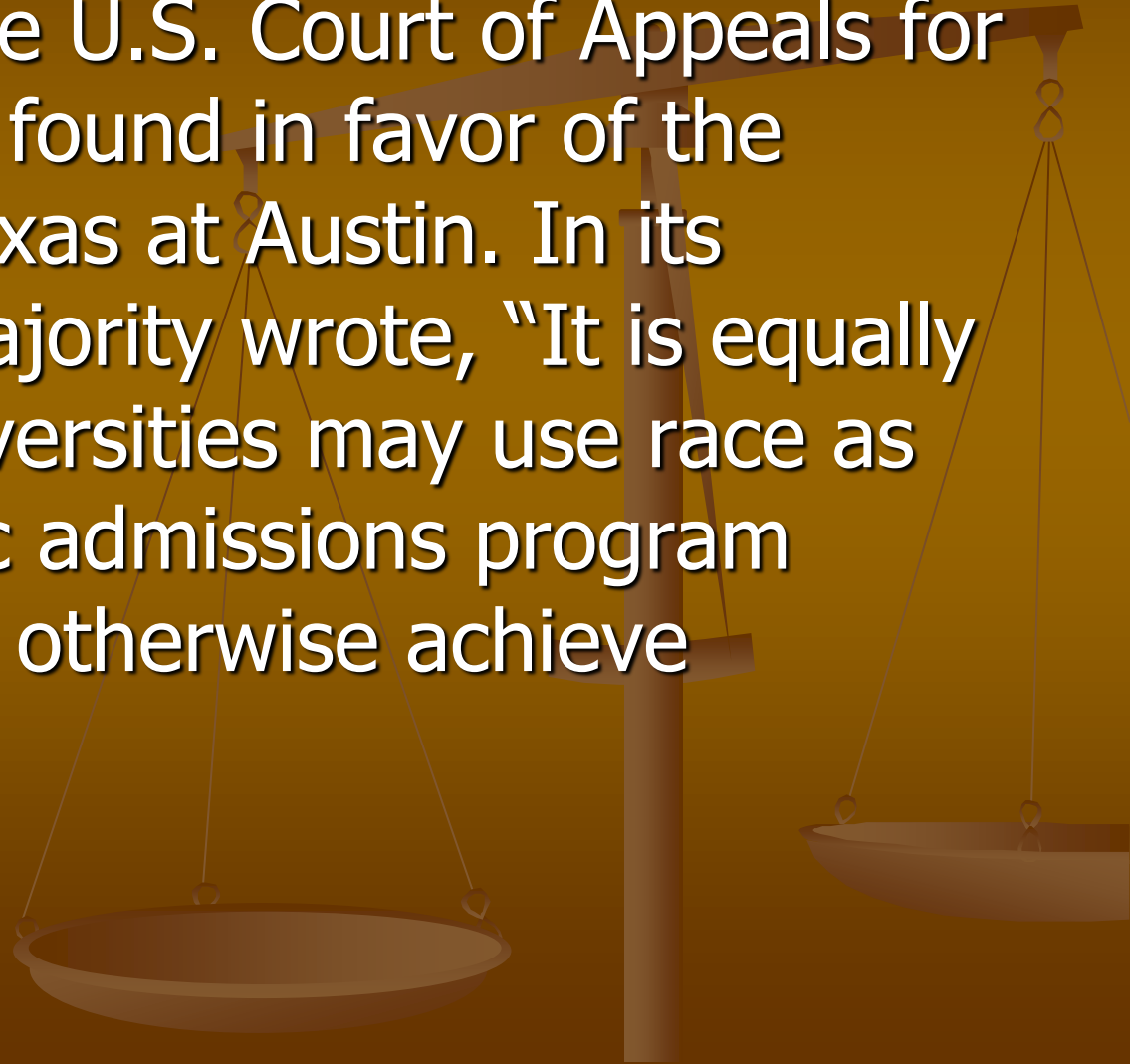


# How did the Court rule?

- The Court upheld its prior precedent that diversity in higher education is a compelling state interest, it found that the lower court did not properly review the University's admissions process under the strict scrutiny standard; and therefore, the case was remanded for the lower court to determine if the admissions process was narrowly tailored to accomplish the legitimate goal of diversity.
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# What Happened on Remand?

- In July 2014, the U.S. Court of Appeals for the Fifth Circuit found in favor of the University of Texas at Austin. In its decision, the majority wrote, “It is equally settled that universities may use race as part of a holistic admissions program where it cannot otherwise achieve diversity.”

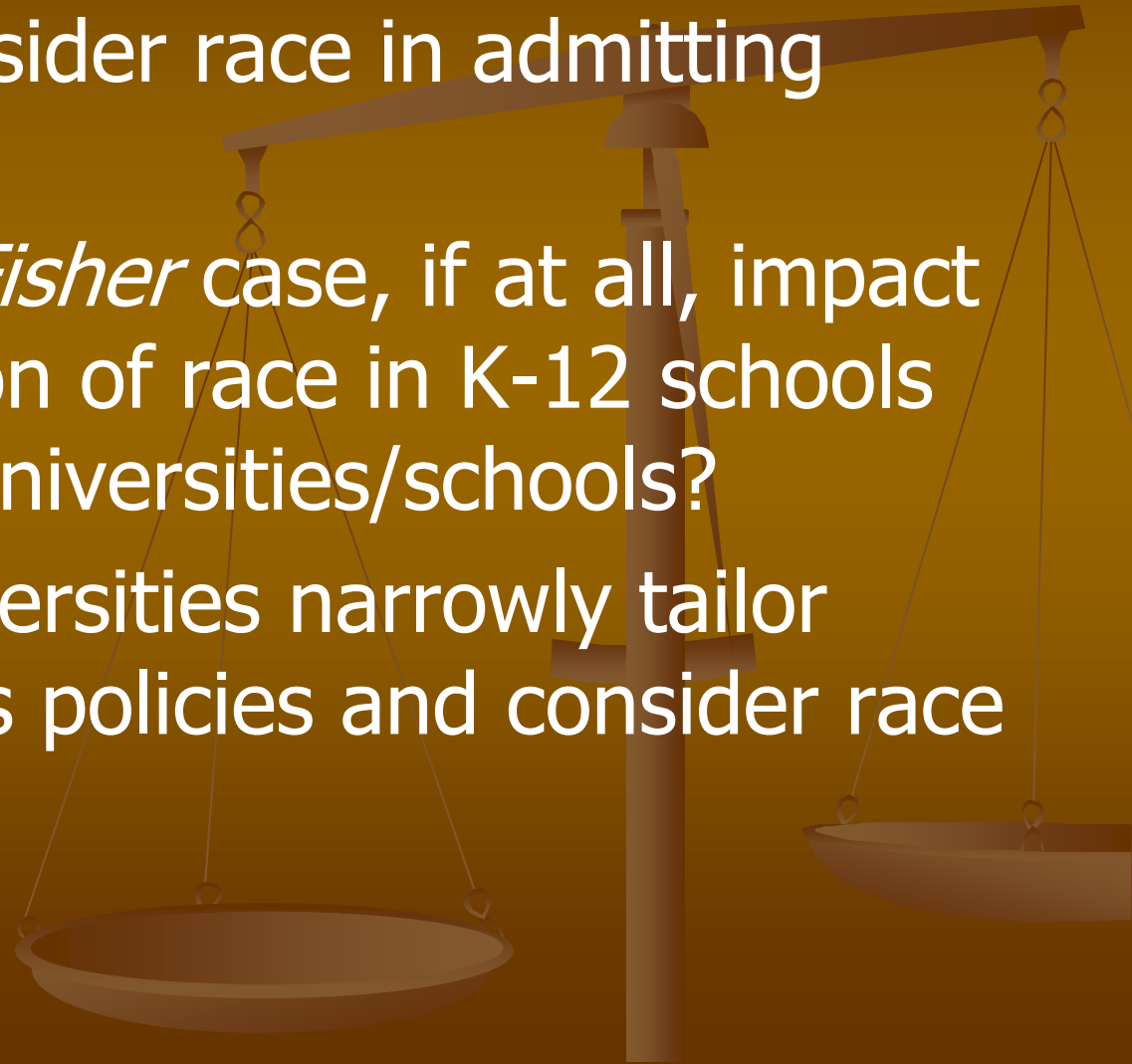


# U.S. Supreme Court in 2016

- In June 2016, in a 4-3 decision, the U.S. Supreme Court upheld the University of Texas' race-conscious admissions policy; it found no violation of the Equal Protection Clause (*Fisher II*).
- The Court warned that the university "should remain mindful that diversity takes many forms" and refrain from rigid racial classifications (p. 2210).

# Key Questions

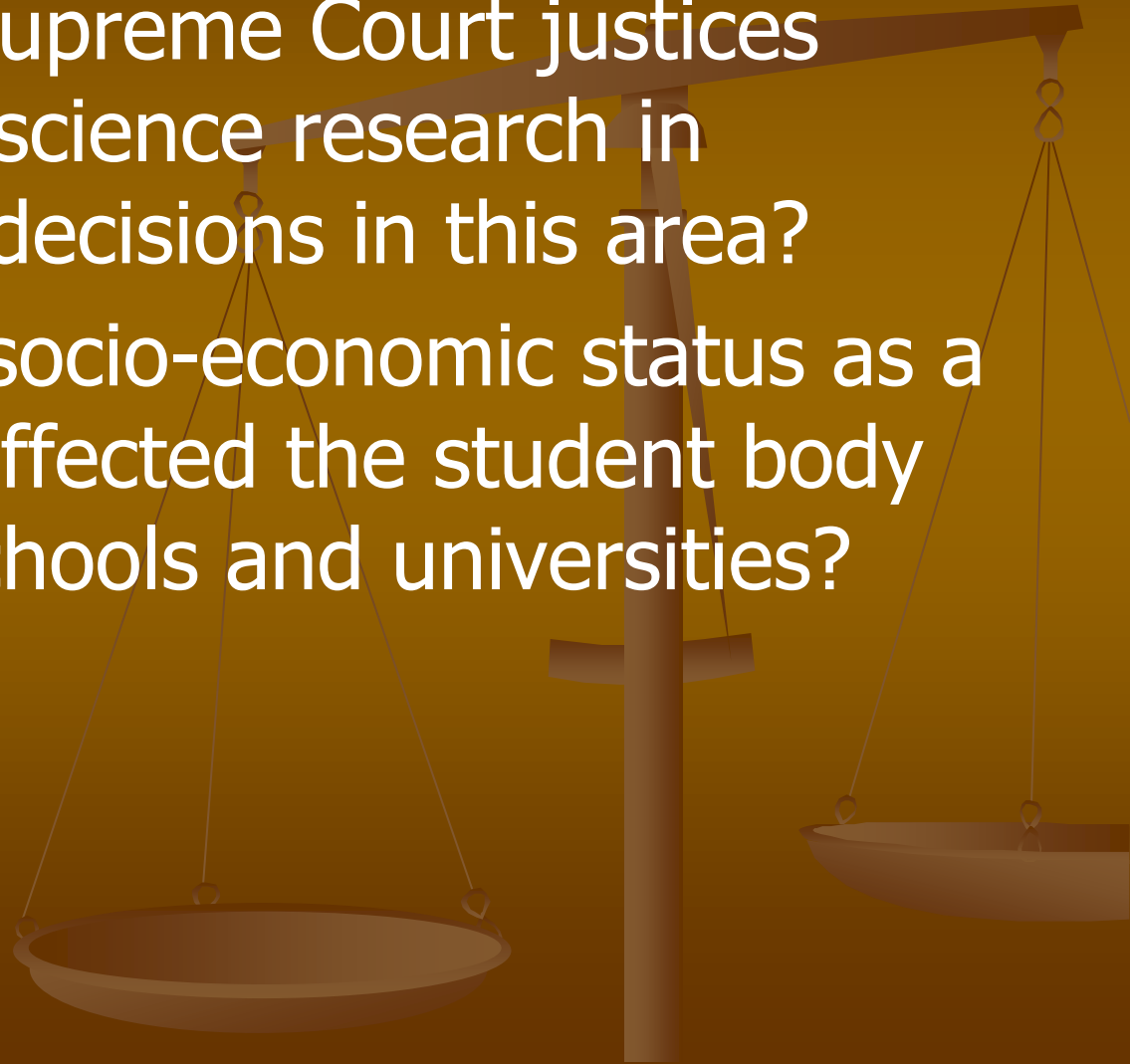
- In light of *Fisher*, may colleges and universities consider race in admitting students?
- How does the *Fisher* case, if at all, impact the consideration of race in K-12 schools and in private universities/schools?
- How might universities narrowly tailor their admissions policies and consider race in admissions?





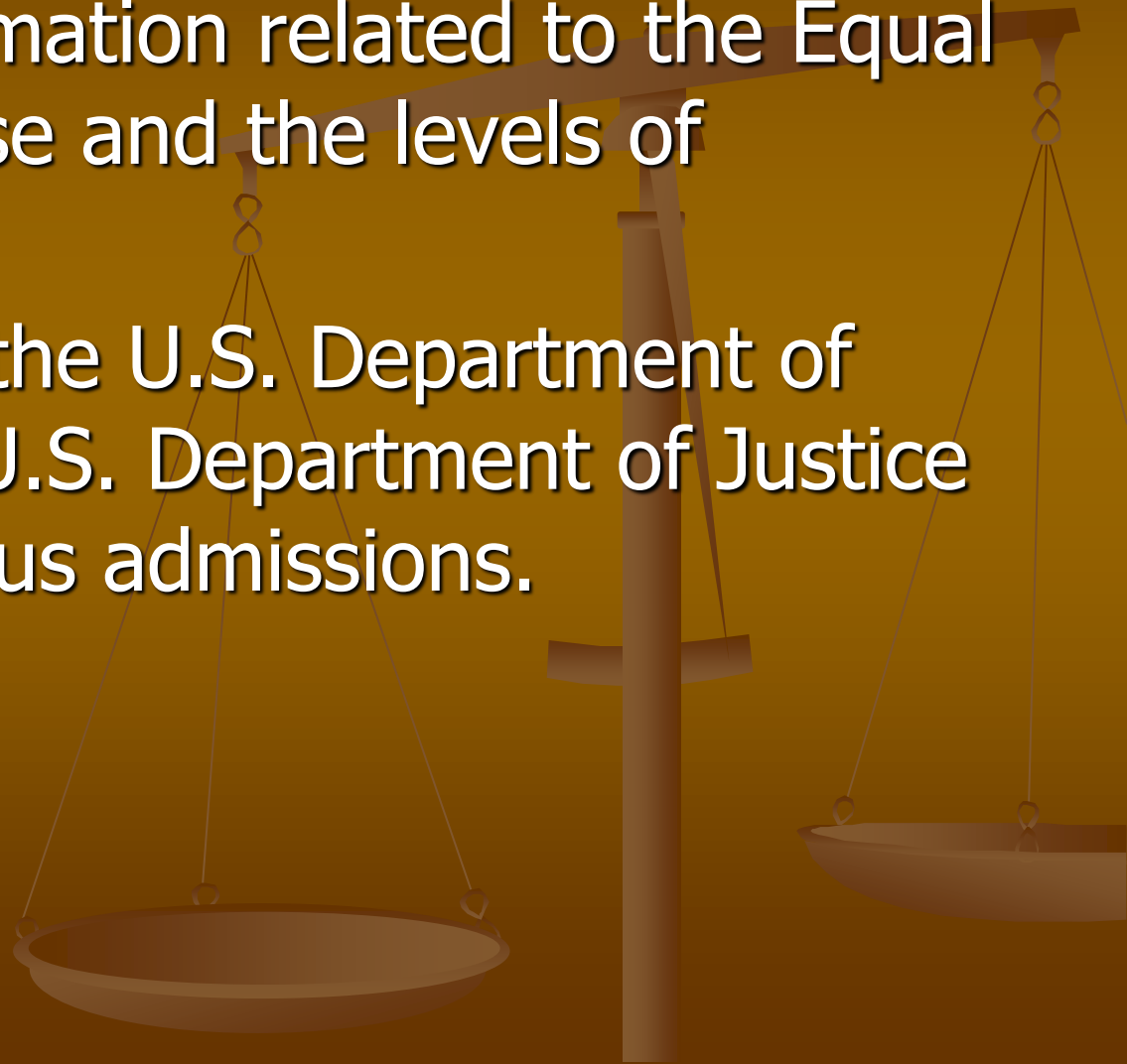
# Other Questions

- Have the U.S. Supreme Court justices relied on social science research in informing their decisions in this area?
- How has using socio-economic status as a proxy for race affected the student body population at schools and universities?

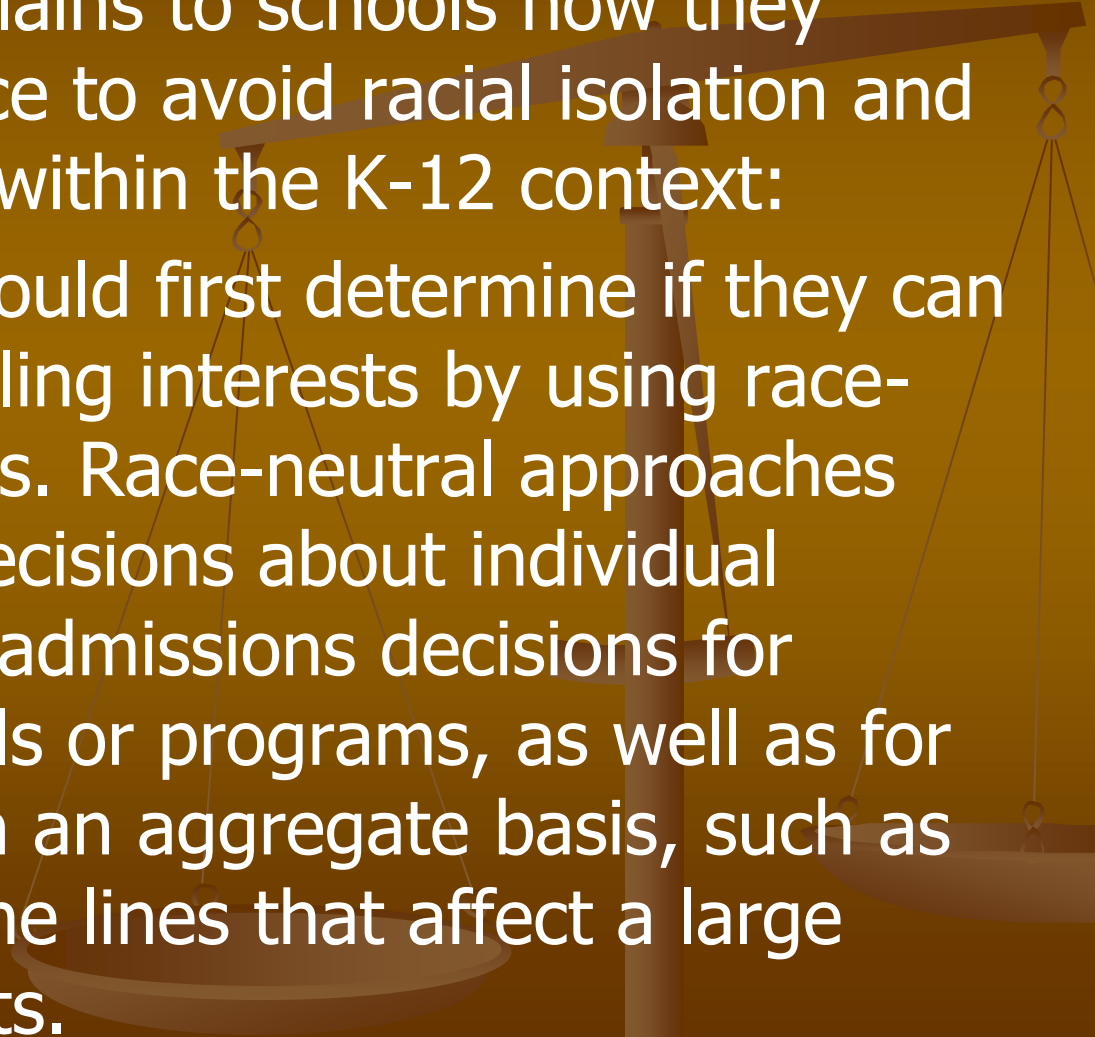


# Other Relevant Information

- Additional information related to the Equal Protection Clause and the levels of scrutiny.
- Guidance from the U.S. Department of Education and U.S. Department of Justice on race-conscious admissions.

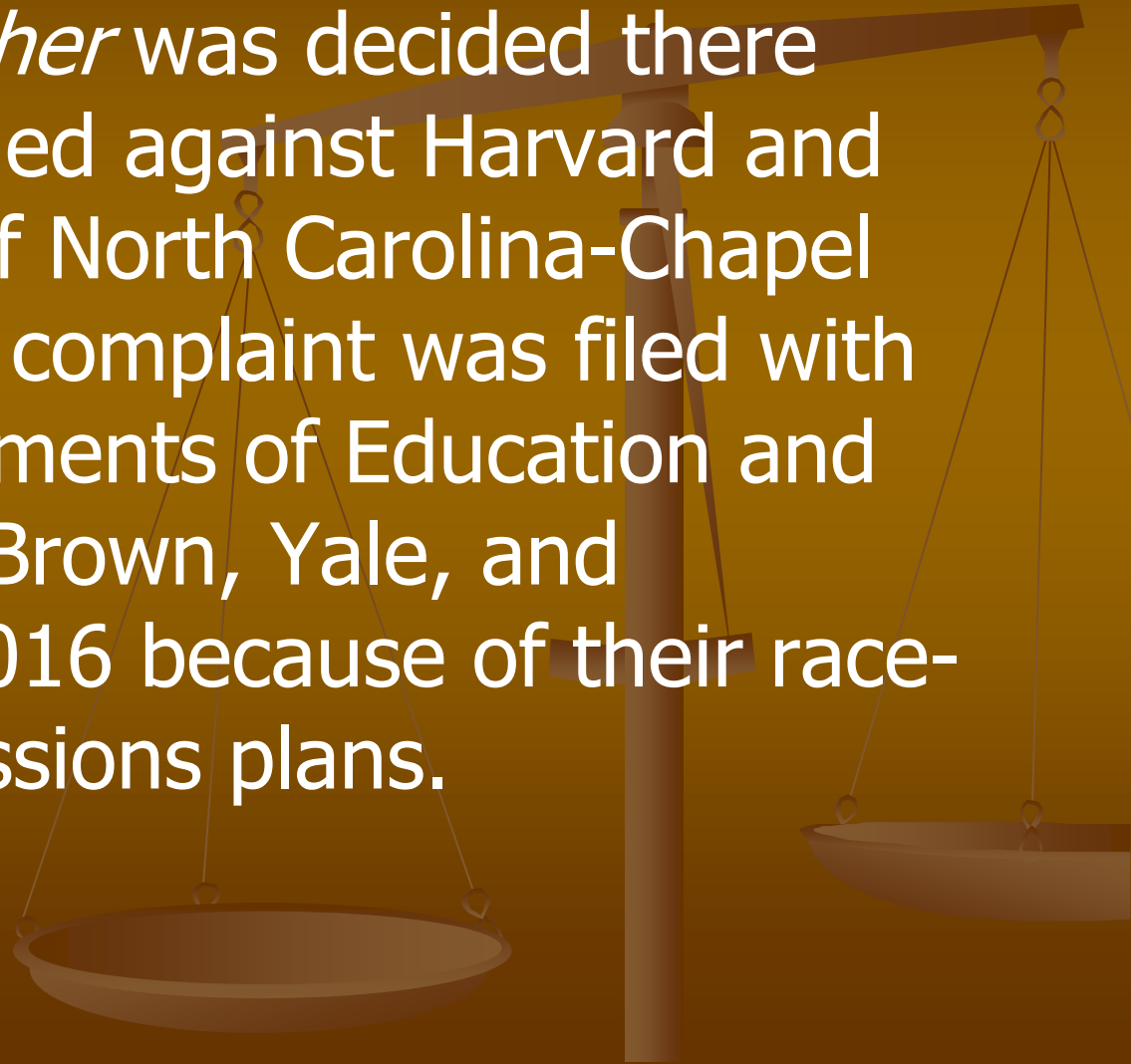


# Guidance from U.S. Department of Justice and the U.S. Department of Education (2011)

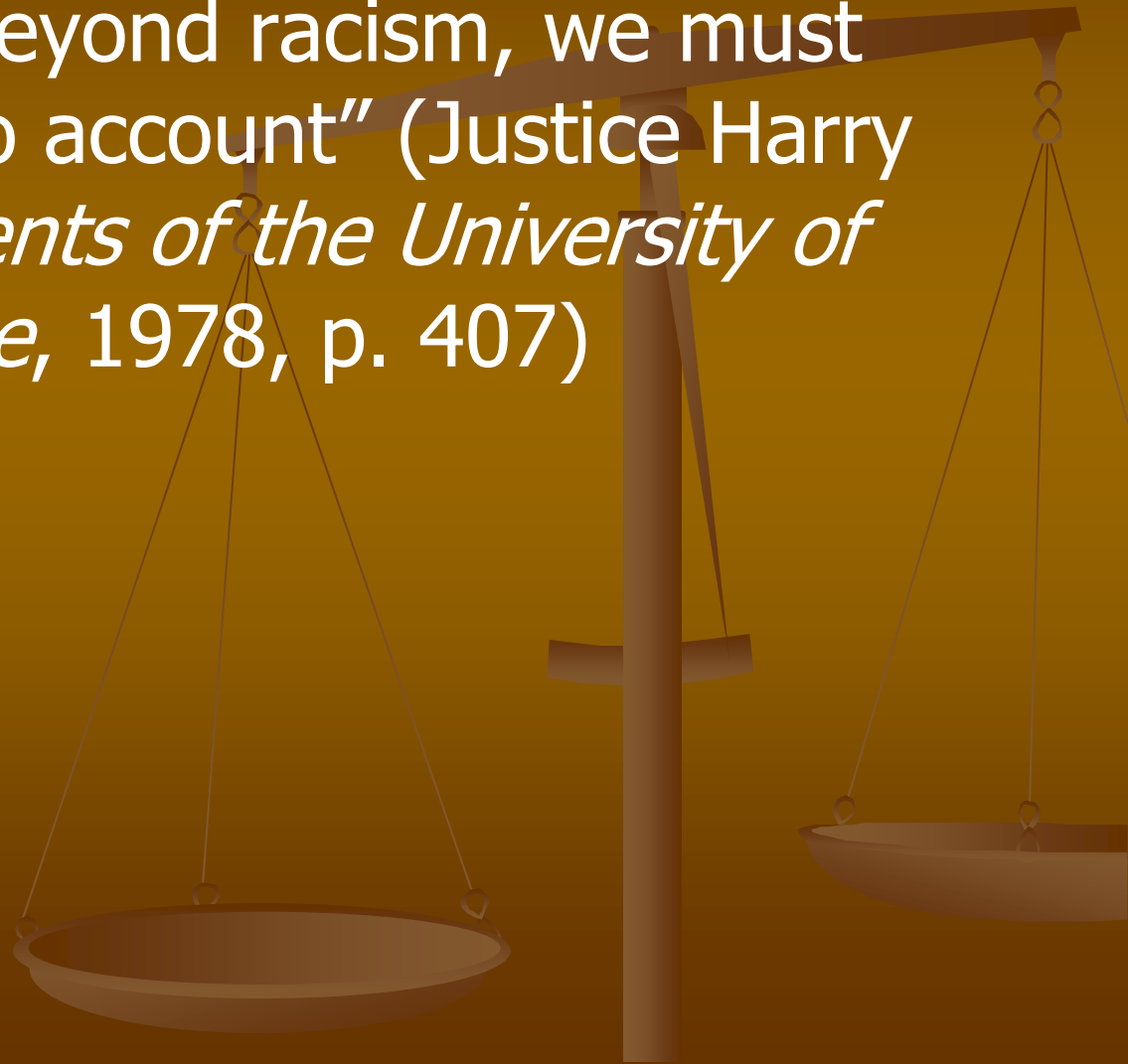
- This guidance explains to schools how they might consider race to avoid racial isolation and increase diversity within the K-12 context:
  - School districts should first determine if they can meet their compelling interests by using race-neutral approaches. Race-neutral approaches can be used for decisions about individual students, such as admissions decisions for competitive schools or programs, as well as for decisions made on an aggregate basis, such as the drawing of zone lines that affect a large number of students.
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# Future Litigation

- Even before *Fisher* was decided there were lawsuits filed against Harvard and the University of North Carolina-Chapel Hill. Likewise, a complaint was filed with the U.S. Departments of Education and Justice against Brown, Yale, and Dartmouth in 2016 because of their race-conscious admissions plans.



“In order to get beyond racism, we must first take race into account” (Justice Harry Blackmun in *Regents of the University of California v. Bakke*, 1978, p. 407)





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