From: Tom Sullivan
To: UVM Community
Re: Supreme Court Decision

Today, the U.S. Supreme Court issued its long-awaited decision in Fisher v. University of Texas at Austin, which examined the constitutionality under the Equal Protection Clause of an undergraduate admissions process that considered race among various factors.

The U.S. Supreme Court (“Court”) set aside the decision of the U.S. Appeals Court for the Fifth Circuit, which had upheld the admissions plan. The Court, however, also sent the case back to the Fifth Circuit for application of the correct legal standard, “strict scrutiny.”

Under “strict scrutiny”, a university must clearly demonstrate that its purpose or interest is both constitutionally permissible and substantial, and that its use of the racial classification is necessary to the accomplishment of its purpose. The Court deemed the courts below correct in deferring to the University’s expertise about its educational mission. Nevertheless, the Court stated, once the University had established a constitutionally permissible and substantial goal, it must prove that the means it chose to attain it are narrowly tailored. Specifically, the University must show that its admissions processes ensure that each applicant is evaluated as an individual and not in a way that makes an applicant’s race or ethnicity the defining feature of his or her application.

“Narrow tailoring” also requires a reviewing court to verify that it is “necessary” for the university to use race to achieve diversity, that is, that no workable race-neutral alternatives would produce the educational benefits of diversity.

This ruling implicitly upholds Court precedents including Bakke, Grutter and Gratz, which established that race may be considered among other factors in admissions decisions, subject to adherence to the standards just described. The “narrow tailoring” question will be taken up by the Fifth Circuit in due course. A decision is unlikely in the calendar year.

The University remains committed to the compelling educational policy goal of diversity and will comply with the rule of law as set forth in U.S. Supreme Court precedent and today’s ruling.

Cc: UVM Board of Trustees