



The affirmative action program at the University of Texas now under review by the United States Supreme Court should not be looked at in isolation. As Justice Sandra Day O'Connor wrote in *Grutter V. Bollinger*, an affirmative action case involving the University of Michigan, "context matters when reviewing race-based governmental action under the Equal Protection Clause."

An *amici curiae* (friend-of-the-court) brief filed by the Advancement Project, an equal opportunity advocacy group, in support of the University of Texas provides excellent context of how the issue of race has played out in Texas and the University of Texas for decades.

"UT is the progeny of a state that seceded from the Union in 1861 with the explicit goal of preserving 'negro slavery' for 'all future time,'" the brief observed. "Even after rejoining the Union and despite passage of the Reconstruction Amendments, Texas sought to implement its goal of excluding blacks from public life and political personhood. In the early decades of the twentieth century, the Court repeatedly struck down Texas statutes designed to deny blacks full citizenship."

The brief noted, "*Nixon v. Herndon*, 273 U.S. 536 (1927), ranks among the many Texas-based cases that illustrate the state's relegation of blacks to second-class citizenship. The litigation involved Dr. L.A. Nixon, a black physician in El Paso, Texas and a member of the Democratic Party. Dr. Nixon filed suit claiming he was unlawfully excluded from participating in the Democratic Party primary elections. The case made its way to the Supreme Court, where Justice Oliver Wendell Holmes, writing for a unanimous Court, held that Dr. Nixon's rights had been violated under the Fourteenth Amendment."

University of Texas' History of Racism

Written by George E. Curry, NNPA Columnist
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Despite the ruling, Texas refused to allow Dr. Nixon to participate in the political process. He appeared before the Supreme Court again five years later and got another ruling that forced Texas to comply.

Higher education was also subject to state-mandated segregation.

“Texas’s flagship university was founded by white Texans for white Texans,” the Advancement Project brief stated. “UT categorically barred black Americans from the University and from its graduate and professional schools.”

In one of the most famous Supreme Court cases, *Sweatt v. Painter*, the court forced the University of Texas Law School to admit Herman Sweatt, a qualified African-American who had graduated from Jack Yates High School in Houston and Wiley College.

“As the public face of the struggle against segregation in higher education, Sweatt faced harassment, on and off UT’s campus,” the brief recounted. “During Sweatt’s first semester at the law school, a cross was burned on the law school grounds. Opponents of integration threatened Sweatt’s life, in person and by mail. Vandals defaced his home and threw rocks, shattering windows. Sweatt fell ill and struggled academically, financially, and personally. Life at UT became unbearable. Sweatt eventually dropped out of school—a “physical and emotional wreck.”

Blacks who followed Sweatt at the University of Texas also faced barriers.

“UT excluded blacks from living in the on-campus dormitories designated for whites and specifically forbade all black students from entering the living quarters of white women,” the brief recounted. “UT established separate and inferior residential housing for blacks. UT barred black students from intercollegiate athletics, excluded them from extracurricular activities such as music and theater, and permitted segregated fraternities and sororities. UT even banned black students from using the same bathroom facilities as whites. All told, in Sweatt’s wake, blacks faced an all-encompassing stigma, purely on account of race.”

Not surprisingly, the *Brown* decision was not well received in Texas.

“One of the most significant racial flare-ups in recent years at UT concerned a campus landmark built in 1954 and named in honor of William Simkins, a professor at UT’s law school from 1899 until his death in 1929,” the brief stated. “Within five weeks of the Supreme Court’s decision in *Brown v. Board of Education*, UT named its new dormitory in honor of Simkins ...

“Simkins was not merely a member of the Ku Klux Klan. He, along with his brother Eldred James Simkins (a regent of UT from 1882 to 1896), was ‘a criminal and a terrorist, a gun-toting, mask-wearing, night-riding Klansman who headed a group in Florida that murdered 25 people in three years in just one county.’”

The Advancement Projected brief stated, “Black students continued to experience a hostile environment. In 1969, for example, Professor Robert Hopper greeted black sociology major Rosetta Williams on the first day of class in a most unwelcoming way. ‘I want feedback from the students because I don’t want you sitting around like a bunch of niggers nodding your heads not saying nothing.’”

A campus statue of Dr. Martin Luther King, Jr. was defaced in 2003 and again in 2004. The *Daily Texan*, the campus newspaper, came under fire earlier this year when it published a cartoon that mocked the killing of Trayvon Martin, unarmed Florida teenager, and ran a feature referring to him as “a colored boy.”

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