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Critics Challenge Affirmative Action in Texas, Citing Success of Alternatives

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Last week the Education Department's Office for Civil Rights received its fourth letter of complaint accusing Texas universities of violating a federal civil-rights law by using race-conscious admissions policies when effective race-neutral alternatives were available. But nearly four years after the first of the complaints was filed, the federal agency has yet to weigh in on the matter, leaving the question of the legality of the colleges' policies up in the air.

In a separate letter sent to the civil-rights office last week, Roger B. Clegg, president of the Center for Equal Opportunity — the group that filed the first three complaints — said he was "disappointed at the slow pace" of the office's investigations. An Education Department spokesman, Jim Bradshaw, issued a written statement saying the agency's civil-rights office determines whether a given institution is complying with the law "only after conducting a thorough investigation." He added, "We move as quickly as we can to resolve our cases."

The latest complaint, against the University of Texas at Austin, was announced last week by the Project on Fair Representation, a Washington advocacy group that had previously focused mainly on voting-rights cases. In its July 20 letter to the federal civil-rights office, the group accused the university of violating Title VI of the Civil Rights Act of 1964, which prohibits racial discrimination by educational institutions receiving federal funds, by adopting a race-conscious admissions policy even after determining that it could enroll a sufficiently diverse body through a state law guaranteeing admission to in-state applicants in the top tenth of their high-school class.

The complaint hinges on the Supreme Court's admonition to colleges — issued in the court's June 2003 rulings involving race-conscious admissions policies at the University of Michigan at Ann Arbor, and reaffirmed this June in a court decision involving school-integration plans in Seattle and Jefferson County, in Kentucky — that they must consider race-neutral alternatives before considering applicants' race or ethnicity.

The complaint says the University of Texas "has not only considered race-neutral means to achieve diversity, but they have been effective as well." Therefore, it says, "the law prohibits them from reintroducing race and ethnicity as a factor in undergraduate admissions."

Diversity by Other Means

Similar arguments were made in the complaints the Center for Equal Opportunity filed in regard to Rice University in August 2003, Texas Tech University that October, and the University of Texas at Austin in November 2004. Like the Project on Fair Representation, the center said that the universities should be blocked from considering race in admissions because they had found effective alternatives in the years that the state was covered by a 1996 decision by the U.S. Court of Appeals for the Fifth Circuit striking down race-conscious admissions at the University of Texas' law school.

That appeals-court ruling, in the case *Hopwood v. Texas*, prompted state lawmakers to vote two years later to establish Texas' "top-10-percent plan," which guarantees Texas students in the top 10th of their high-school class admission to any public university in the state.

Because the appeals-court ruling was interpreted by state officials as covering private colleges as well, institutions such as Rice University also felt compelled to come up with alternatives to race-conscious admissions. Both private and public colleges in the state generally succeeded in bringing their minority-undergraduate enrollments back up to levels near or above where they were before Fifth Circuit's decision, although, in several cases, minority enrollments in colleges' graduate and professional schools have yet to rebound.

The Supreme Court's 2003 ruling in *Grutter v. Bollinger*, involving the race-conscious admissions policies of the University of Michigan's law school, rendered the *Hopwood* decision moot. Rice University and Texas Tech reinstated race-conscious admissions policies within months, and the University of Texas at Austin went back to considering race and ethnicity in admissions in 2005.