

Discrimination Complaint Argues That the U. of Texas at Austin Considers Race Unnecessarily

By [PETER SCHMIDT](#)

A new civil-rights complaint filed with a federal agency alleges that the "Texas 10-percent plan" has been so effective in bringing about diversity at the University of Texas at Austin that the university does not have any legal justification for considering applicants' race or ethnicity.

The Project on Fair Representation, an advocacy group in Washington, announced on Monday that it filed a complaint with the Education Department's Office for Civil Rights on Friday accusing the university of violating Title VI of the Civil Rights Act of 1964, which prohibits racial discrimination by educational institutions receiving federal funds.

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

In a new twist in the application of the Supreme Court's guidance, the complaint argues that a college that has had success in bringing about diversity through race-neutral means is therefore precluded from reintroducing considerations of race or ethnicity in its admissions criteria.

Edward J. Blum, the group's director, said in a written statement issued on Monday that the university's "recent reintroduction of racial preferences in undergraduate admissions is illegal, to say nothing of being unfair and polarizing," and "the U.S. Department of Education needs to end this practice before the next round of freshman applications is submitted."

Officials of the University of Texas at Austin could not be reached late Monday for comment. Patricia C. Ohlendorf, the university's vice president for legal affairs, told the Associated Press that the university was confident that its policy complied with the Supreme Court's guidance, but it would cooperate with the Education Department if it investigates the complaint.

An Education Department spokesman told the Associated Press he could not comment on the complaint because his agency had not processed it yet.

Texas adopted its 10-percent plan, which guarantees Texas students in the top 10th of their high-school class admission to any public university in the state, in 1998. The policy came in response to a 1996 decision by the U.S. Court of Appeals for the Fifth Circuit in the case *Hopwood v. Texas*. The Fifth Circuit's ruling, which struck down the use of race-

conscious admissions at the University of Texas's law school, was interpreted by state officials as precluding the consideration of race by any public college in the state.

The Project on Fair Representation's federal complaint argues that the state's 10-percent plan has brought diversity at the Austin campus back up to where it had been before the 1996 ruling, proving that the university's consideration of race was unnecessary. But the university's response to the Supreme Court's 2003 affirmative action rulings -- which essentially overruled *Hopwood* by saying colleges could consider race in admissions to promote educational diversity -- was to reintroduce considerations of race and ethnicity into its graduate and undergraduate admissions policies beginning in 2005.

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

Mr. Blum is a former director of legal affairs for the American Civil Rights Institute who, in the past, has played a key role in challenges to the legality of college programs reserved solely for minority students. In an interview on Monday, he said he had been considering filing a complaint against the University of Texas for some time, but had wanted to see what kind of additional guidance the Supreme Court would offer in the school integration ruling it handed down last month.

"It seemed to everyone that it was time to hold UT's feet to the fire and get the Department of Education involved," Mr. Blum said. He said his group may file a lawsuit if the Education Department does not get the university to abandon its race-conscious admissions policies.