



Supreme Court

OF THE OKLAHOMA INTERCOLLEGIATE LEGISLATURE

CHIEF JUSTICE: Karina Salcedo-Naylor
VICE CHIEF JUSTICE: Kathryn Kleiner
ASSOCIATE JUSTICES, By Seniority:
Ruth Herman
Alyssa Cross
Emma Busby
Noah Yust



MOOT COURT CASE

Spring 2021

**Oklahoma Intercollegiate Legislature
Spring 2021**

ANDREA HENDRIX, Petitioner

V.

OLYMPUS STATE UNIVERSITY, Respondent

On writ of certiorari to the Supreme Court of the State of Olympus

ORDER OF THE COURT ON SUBMISSION

IT IS THEREFORE ORDERED that counsel appear before the Supreme Court to present oral arguments on the following issues:

1. Whether Respondent's admissions policy, which gives preferential weight to male applicants, violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution?
2. Whether Respondent violated Petitioner's right to freedom of expression under the First Amendment to the United States Constitution, as applied to the states through the Due Process Clause of the Fourteenth Amendment?

Facts of the Case

Equal Protection Facts

Olympus State University (“OSU”) is a selective public institution with a long and storied history as the flagship university of a ten-campus state system. The Law School is a Tier One law school that has consistently been ranked in the top 50 law schools in the United States and among the top five in its region of the country.

The OSU Law School has a student body of 750 students. Its average incoming class is 275 students (100 in the night program and 175 in the day program). To obtain a yield of 275 students, the Law School admits an average of 1,000 students. There are 270 students in the evening program and 480 in the day program. In the evening program, 175 (65%) are women and 95 (35%) are men. In the day program, 288 (60%) are women and 192 (40%) are men.

On average, the OSU Law School receives about 3,500 applications each year. Of the typical 3,500 applicants, 2,000 were women and 1,500 were men. Of the 1,000 accepted, 600 were women and 400 were men. Of the 275 who accept and enroll, 170 (62%) were women and 105 (38%) were men. Of the 250 who graduate, 137 (55%) were women and 113 (45%) were men. This women-to-men ratio is a long-term trend that extends back to the start of the 21st century. In fact, in the years since 2000, the percentage of females who comprise the incoming student body has never dipped below 60%, and it has been as high as 70%.

Nationally, there is a trend that more women apply to and attend law school in the United States. In 2016, 50.3% of the total number of law students in the United States were women. The same year, 51.4% of first-year law students were women and 48.6% were men. Presently, of the nation’s 200 accredited law schools, 85 have student bodies that are a majority female. Of these 85, 15 have 100 more women than men enrolled in their programs. While 115 have student bodies that are a majority male, few have student bodies of greater than 55% men and none have 100 more men than women students.

While the OSU Law School’s gender imbalance is duplicated at many other law schools around the nation, the Law School’s Fall 2018 admitted class had a ratio of 62% women to 38% men, which is higher than average and inconsistent with most Tier One law schools. This is especially true of the nation’s top twenty-five law schools, most of whose incoming classes are split fairly evenly between men and women. Of the law schools ranked 26 to 40, ten of the incoming classes are fairly evenly split while five of the incoming classes have ratios of 55% women to 45% men. None have classes that have more than 55% of either gender.

The Law School has argued that achieving gender balance is necessary to retain its status as a Tier One law school. The Law School is especially concerned that if its ratio of women to men continues to widen, it will negatively affect its law school ranking. This concern reflects three facts. First, most law students today view an equitable balance of men and women as crucial to a well-rounded academic experience. Second, once a school becomes decidedly one-sided in terms of gender, fewer students, male or female, find it an attractive option. Third, the ratio of men to women is a factor weighed in ranking law schools. Thus, administrators at the

Law School worry that top applicants, men and women alike, will question the benefits of attending a predominantly female institution and will cease to apply to and/or attend the Law School.

The OSU Law School takes the position that having a proper gender balance is critically important to high quality education. Admissions officers at the OSU Law School have devoted considerable time and resources trying to bridge this gap. These efforts include: increasing its recruitment budget by 20%; targeting talented male students through the Law School Admissions Council's (LSAC) Candidate Referral Service; visiting every undergraduate campus within 500 miles of the Law School twice a year; offering 80% of all males who apply fee waivers; hosting application workshops for males only; offering male applicants who sign up for tours of the Law School free tickets to athletic events or Amazon.com gift cards; creating several diversity scholarships for male applicants, and offering baseball caps to the first 500 male students who apply. In addition, the Law School created the Preparation Program for Male College Students. This program is funded by a \$300,000 diversity grant award from the LSAC and is available to male students regardless of race or ethnicity. The program was designed to address gender imbalance by giving participants faculty mentoring, assistance with preparing for the Law School Admission Test, guidance for interviews, and helping with personal statements for law school applications. Despite these efforts, the gap persists.

The Law School's 25th/median/75th percentile LSAT and GPA scores for the class that matriculated in 2019 when Hendrix applied are as follows: 156/161/164 and 3.31/3.6/3.75. These figures indicate the level of the Law School's selectivity. Graduate school GPAs are typically higher than undergraduate GPAs. While law schools do not include graduate school GPAs into the cumulative GPA used for admissions purposes, they do consider how well an applicant did in their graduate program when evaluating their application.

On March 26, 2018, the Law School's Dean, Jonathan Wiley, directed the Dean of Admissions, Michael Unruh, and the Assistant Dean of Admissions, Anne FitzPatrick, to begin the Policy of affirmative action designed to help reduce the gender gap and to increase diversity overall at the Law School. The Law School gives each applicant an individualized review and gives consideration to a range of attributes that would add to the overall diversity of each entering class, even beyond gender. The Law School admits that in some instances male applicants are admitted with lower grades and LSAT scores than their female counterparts, but it does not employ any fixed numerical quota for men or women.

The Law School considers letters of recommendation, quality of their undergraduate curriculum, life experiences, including post-graduate degrees/experiences, extracurricular involvement, and quality of the personal statement. The Law School has stated a preference to have as much balance between men and women as possible.

Hendrix is a 30-year-old white female who has no children and has never been married. She earned a Bachelor's in Religious Studies from Kedesh College and a Master's in Women's Studies from Apollo State University. Hendrix taught at OSU for five years as a part-time lecturer in the Department of Women's, Gender and Sexuality Studies. Hendrix, a popular figure in the classroom, has been frequently nominated as one of the best and most prominent faculty

members on campus. In 2018, she was awarded the S. Borden Jeanne Award for Teaching Excellence.

In January 2019, Hendrix applied to the Law School for acceptance into the 2019 fall class. Generally, applicants who apply in the winter are typically less likely to be admitted than fall applicants. OSU was the only law school to which Hendrix has ever applied. Hendrix indicated a preference for the evening program so she could continue to work part time. Most students in the evening program work full or part time.

On March 17, 2019, Hendrix was notified that her application had been rejected. Hendrix's fall 2016 LSAT score of 159 put her in the 77th percentile nationally, her 3.5 undergraduate GPA placed her in the top 15% of her graduating class at Kedesh College, and her 3.75 graduate GPA placed her in the top 25% of her graduating class at Apollo State University. At Kedesh College, Hendrix volunteered as a tutor and participated in undergraduate moot court through the American Moot Court Association. Using the Freedom of Information Act to get data from the school, Hendrix discovered that while every female who was accepted met or exceeded her portfolio, many of the male students who were accepted were not equal in GPA and LSAT scores. In fact, male students were admitted with undergraduate GPAs as low as 3.0 and with LSAT scores as low as 150—but not necessarily in combination with each other.

The Law School does not deny any of the aforementioned. The Law School contended in the District Court, however, that the male students in question all brought other soft variables and experiences, in addition to gender, which allowed them to add to the diversity of the incoming class in ways in which Hendrix did not. Some of the admitted male students, for example, came from impoverished backgrounds; had traveled broadly and experienced other cultures; were single fathers; had started their own businesses; had been student-athletes in college or brought unique artistic talents. Thus, while gender was a factor in their admission (and by extension in Hendrix's rejection) the Law School argues it was not the deciding factor. Even though the Policy requires consideration of a number of factors in the admissions process, the Law School concedes that had Hendrix been a male she would have been accepted.

Freedom of Expression Facts

Hendrix is a former part-time lecturer in the Department of Women's, Gender and Sexuality Studies at OSU. She worked in that capacity from August 2014 to May 2019. Hendrix taught two courses per term. Hendrix was thrilled to work in gender studies and excited to work at an institution that has long expressed openness to new ideas and a commitment to free expression, especially in the classroom. For example, OSU had posted a statement on its website that reads as follows:

We are committed to delivering the highest quality of education to prepare students for their post-graduate lives. In order to best prepare our students, we do not condone shielding students from controversial ideas and perspectives. Students will not be warned about speakers whose remarks may be controversial, nor will faculty be required to issue trigger warnings

before exposing students to class materials. As a public university, it is our role and mission to foster the free exchange of ideas.

In the spring of 2019, Hendrix taught a small seminar on gender and the law and a large introductory survey class on gender issues. At the outset of the term, Professor Bronner informed Hendrix that although OSU was facing budget cuts that would result in some part-time faculty not returning for the following term, her preference was to bring Hendrix back, especially if Hendrix agreed to keep teaching at least one section of the survey class each semester. Hendrix agreed. This agreement was not put in writing.

After Hendrix's application to the Law School was rejected, she began to complain in class about the Policy. Specifically, Hendrix complained that her right to equal treatment had been violated. At times she called on male students to defend the Law School's actions and the Policy. Hendrix was critical of women in class who either did not agree with her or were not actively trying to end the Policy. As the term progressed, Hendrix's attitude became more vociferous, and she began to complain in settings outside her classroom. For example, Hendrix voiced her complaints in the following settings:

- At lunch with other faculty members both on and off campus;
- At two academic conferences where she presented papers. The first was at a forum on gender and the law held on OSU's campus and the other was at a professional association meeting held out of state that was funded by OSU travel support. These papers identified Hendrix as a lecturer at OSU; and
- At two political rallies—one held off campus and the other on campus. Hendrix spoke at a rally sponsored by two organizations: Nasty Women Against Discrimination (NWAD) and Women for True Equality (WTE). NWAD and WTE held the event off-campus for women to come and share their stories of how they had been discriminated against by men. Hendrix was introduced at the event by WTE founder Sydney Kirsch as “a victim of OSU's male-first policy.” Hendrix spoke about the evils of the Policy and shared her personal story. Neither Hendrix nor anyone else noted that she was employed at OSU. The second rally, known as Unity Fest, was sponsored by the OSU Student Government and was held on campus. Unity Fest is discussed in greater detail below.

In April 2019, OSU student government organized a campus event called Unity Fest to promote campus-wide unity regardless of nationality, religion, race, gender identity, or sexual orientation. Unity Fest was open to OSU employees and students, as well as the local community. OSU President William Helsing gave the student government permission to host the event and recommended the inclusion of professors, including, inter alia, Hendrix, who was well-known as a popular professor who liked to write poetry about social issues.

Hendrix asked several of her colleagues at OSU, including Professor Bronner, for suggestions as to which of her poems she should recite. Hendrix did so because several professors were familiar with her work. The consensus of the faculty was that Hendrix should present a poem that she had written about the Policy. This poem, entitled “Look What They've Done to Affirmative Action, Ma” was a mock letter addressed to her mother (Appendix 1). It

addressed society's preference for male domination, and its theme was that affirmative action had been hijacked by men to harm those whom it was originally intended to assist. Hendrix blasted "the powers that be" and asserted that "they use their laws to keep us down because they are scared of a world where most attorneys are women." She called for "an end to laws that favor men" and called for "students to rise up and challenge sexism in whatever form it takes and wherever they find it—including at OSU."

At Unity Fest, OSU student government president, Julieta Hernandez, who was a member of WTE and a former student of Hendrix's, introduced Hendrix. Hernandez's introduction did not identify Hendrix as an employee of OSU, but instead stated she "was excited to call to the stage one of my favorite people ever—a true visionary, a voice for the truth, and a woman who has communicated to me the need to fight for what I believe in." Hendrix went on stage, took the microphone, and introduced herself as "Ms. Andrea Hendrix, a lecturer in the Department of Women's, Gender and Sexuality Studies and a victim of the corrupt system in society, both afar and close to home, that enslaves and keeps women down, regardless of their race, class, religion, or ethnicity, while at the same time favoring and lifting men up."

The next day, videos of Hendrix's performance went "viral" on several social media sites. A blogger named "Action Jackson" live-streamed the performance on her Facebook page, which was viewed by more than 1.5 million followers. Students around the nation and prominent activists for women's rights across the country praised Hendrix for her courage, strength, and message. After Unity Fest, Hendrix did several radio interviews, each time being introduced as a lecturer at OSU. Hendrix even accepted an invitation to appear on the Ellen Show. By the end of the spring, Hendrix was a well-known public figure and the phrase "Look What They've Done to Affirmative Action Ma" had become a popular hashtag across social media. Posters, t-shirts, and other merchandise featuring Hendrix performing her poem could be found on college campuses and online and were commonly seen in audiences at rallies for women's rights.

The offices of OSU President William Helsing and Dean Comerford were inundated with phone calls, emails, and letters, the overwhelming majority of which disapproved of Hendrix's message and the manner in which she continued to criticize the Law School. A great many of these messages came from the parents of students, groups that advocate for the rights of men, donors, and alumni. Several elected officials who called upon OSU to take action in defense of the male students at the Law School—many of whom had been "trolled" on social media and had been labeled "Affirmative Action Babies!" By and large, the persons who contacted OSU were upset that the university, by virtue of the fact that it employed Hendrix, appeared to endorse her point of view. Some influential alumni, including Governor Brianna Wilbur, Secretary of State Amethyst Jefferson-Roberts, and state legislators Ryan Manners and Wyatt Rice, withdrew their financial donations for the following year. Others told OSU that they would discontinue any future donations.

The Board of Trustees met with President Helsing to discuss the impact of losing alumni donations, and how it would affect OSU's nationally recognized athletic programs, especially since recruiting future student-athletes was dependent on these donations. In addition, and quite significantly, the Law School reported that applications filed by men were down by 20%.

In May 2019, President Helsing contacted the provost of OSU, Dr. Geronimo Gusmano, and instructed him to direct the Dean of the College of Liberal Arts, Dr. Charles Noble, to have Hendrix fired. That same day, Dean Noble, over the objections of Professor Bronner, informed Hendrix that her contract would not be renewed – thus firing her. The non-renewal was announced on OSU’s website, and President Helsing even took additional steps by contacting all donors, parents of current students, and alumni to inform them of OSU’s actions and to apologize for any pain that they may have been subject to or any offense that they had taken.

Hendrix filed suit in federal district court claiming: (1) that Olympus State University School of Law’s admissions policy that gives preferential weight to male applicants violated her right to equal protection of the law, and (2) that Olympus State University violated her First Amendment rights when it fired her for complaints she made about the Law School’s admissions policy. The Court ruled in favor of Olympus State University. The Petitioner appealed. To date, Hendrix has not enrolled in, nor has she been admitted to a professional, research, or academic degree-seeking program.

Cases Cited:

Fourteenth Amendment Cases:

1. *Frontiero v. Richardson*, 411 U.S. 677 (1973)
2. *Regents of the Univ. of California v. Bakke*, 438 U.S. 265 (1978)
3. *Kirchberg v. Feenstra*, 450 U.S. 455 (1981)
4. *U.S. v. Virginia*, 518 U.S. 515 (1996)
5. *Tuan Anh Nguyen v. INS*, 533 U.S. 53 (2001)
6. *Grutter v Bollinger*, 539 U.S. 306 (2003)
7. *Fisher v. Univ. of Texas at Austin II*, 136 S.Ct. 2198 (2016)

First Amendment Cases:

1. *Pickering v. Bd. of Educ.*, 391 U.S. 563 (1968)
2. *Connick v. Myers*, 461 U.S. 138 (1983)
3. *Rankin v. McPherson*, 483 U.S. 378 (1987)
4. *Garcetti v. Ceballos*, 547 U.S. 410 (2006)
5. *Gorum v. Sessoms*, 561 F.3d 179 (3d Cir. 2009)
6. *Demers v. Austin*, 746 F.3d 402 (9th Cir. 2014)
7. *Brown v. Chicago Bd. of Educ.*, 824 F.3d 713 (7th Cir. 2016)

Appendix I

“Look What They’ve Done to Affirmative Action, Ma”
Affirmative Action, Affirmative Action.
Look what they’ve done to Affirmative Action.
The sons of witches.
Women worked to gain its assistance.
Betty, Shirley, and Susan B.
Gloria, Bella, and Notorious RBG.
When it was created the men jeered and hissed.
“Diversity, diversity, diversity, what a crock,” they sneered.
A sham, they said. So unfair to men.
The “weaker sex” they called us.
Now, the men all demand Affirmative Action, Affirmative Action, Affirmative Action
Look what they’ve done to Affirmative Action.
The sons of witches.
Women worked to gain its assistance.
Betty, Shirley, and Susan B.
Gloria, Bella, and Notorious RBG.
The Policy is perverse. A travesty even.
Now the men say OSU needs to be more diverse.
They want Affirmative Action.
I ask you now, who is the weaker sex?
Affirmative Action, Affirmative Action
Women worked to gain its assistance.
Betty, Shirley, and Susan B.
Gloria, Bella, and Notorious RBG.
Oh, Mamma,
Look what they’ve done to Affirmative Action.
The sons of witches.
Oh Maman, regarde ce qu’on a fait à la discrimination positive
On l’a tordue, on l’a piquée, on l’a tout changée.
Les mauvais hommes
Affirmative Action, Affirmative Action
Women worked to gain its assistance.
Betty, Shirley, and Susan B.
Gloria, Bella, and Notorious RBG.
And, my Mamma. She worked to bring about change, to make things fair. Oh, Mamma, what
can I say to you.
Oh Sisters, what can I say to you, except those sons of witches.
Look what they’ve done to Affirmative Action.
They’ve turned it all upside down.
It’s a world gone mad.
Oh Mamma, look what they’ve done to Affirmative Action.