

# The Other Nonprofit Discrimination Lawsuit in the News

07.12.16 | Linda J. Rosenthal, JD



“The nation’s colleges and universities have been on pins and needles waiting for the U.S. Supreme Court to decide whether race can be a factor in their admissions policies.”

On June 23, 2016, the United States Supreme Court issued a 4-3 decision upholding the affirmative action program at the University of Texas. Rejecting a challenge by a white student, the court concluded: “The race-conscious admissions program in use at the time of petitioner’s application is lawful under the Equal Protection Clause.”

UT’s admission policy is complicated. There is a system of guaranteed admission to the top students of every Texas high school; other students are admitted on a formula involving many factors including academic achievement, race, and ethnicity. Justice Anthony Kennedy, writing the majority opinion, made clear that the ruling “does not necessarily mean the University may rely on that same policy without refinement. It is the University’s ongoing obligation to engage in constant deliberation and continued reflection regarding its admissions policies.”

This landmark ruling “brought a sigh of relief to much of the higher education world,” although each public university against which a challenge is made must defend on the ground that “consideration of race is necessary – but narrowly tailored to create a diverse student body.”

## *Discrimination Lawsuit Against Getty Foundation*

Notwithstanding this good news for public higher education in *Fisher v. University of Texas at Austin*, there is another admissions/acceptance discrimination case just getting underway in Los Angeles Superior Court. This interesting lawsuit, filed in late May 2016, is hitting the radar of the nonprofit community and raising concerns.

## Facts

*Niemann v. Getty Foundation* involves a challenge to the acceptance criteria for a prestigious and highly coveted arts internship. This case –

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*has generated all manner of headlines and Internet jabs after the white university student claimed she had been deterred from applying for an internship program geared toward underrepresented minorities. But the discrimination lawsuit filed in Los Angeles Superior Court is no laughing matter.*

“If the case were to be decided in court,” according to an article in the Los Angeles Times, “it could be precedent-setting, affecting the ways that private foundations approach issues of diversity.”

For over two decades, the Getty Foundation’s Multicultural Undergraduate Internship program has attracted stellar young talent for internships at dozens of cultural organizations around Los Angeles County, including some placements at Getty. The program includes “vital” training about the professional aspects of arts management, a field notoriously lacking in diversity. The internship program draws applicants from top schools including the Ivy League; one former intern was a Rhodes Scholar.

The Getty Foundation “has adapted the program over the years to shifting definitions of diversity.” To apply for the internships, students must “be of a group underrepresented in museums and visual arts organizations, **including, but not limited to**, individuals of African American, Asian, Latino/Hispanic, Native American, or Pacific Islander descent.” (*emph. added*)

Suzanne Neimann, a student with a 3.7 GPA at Southern Utah University, alleged that Getty –

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*harassed, discriminated, and retaliated against Plaintiff due to and substantially motivated by Plaintiff’s race/national origin*

in violation of: California Government Code section 12940 et seq. (prohibiting discrimination in professional training programs), and the California Civil Code section 51 (Unruh Civil Rights Act, prohibiting racial and other discrimination in private business).

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*I was denied an hire [sic] to an internship program because I am white and because I am not within the specified minority [sic] groups African American, Asian, Latino, Hispanic, Native American or Pacific Islander, \* \* \* I protested, and was still denied opportunities to work for The Getty Foundation. The getty [sic] failed to investigate and failed to take appropriate remedial action and failed to hire me.*

### *Analysis*

“The vast majority of cases about affirmative action generally involve the government”; that is, white applicants filing suit against public universities, observes Dean Erwin Chemerinsky, dean at UC Irvine School of Law and frequent TV legal commentator. “This is an unusual situation because it’s a private foundation using its money to promote diversity through internships.” Dean Chemerinsky believes it may be a tough case for Ms. Neimann because of “...Getty Foundation’s nuanced definition of diversity” and the fact that at least one white student (albeit with an unusual personal story and background) has been accepted into the program.

### *Conclusion*

This lawsuit in Los Angeles state court may be a long shot for liability; nevertheless, the Getty Foundation must defend against this lawsuit – and a different fact situation might be a problem for a different nonprofit defendant. It will be interesting to watch this intriguing case.