



SMART DEVELOPMENT INSTITUTE  
3110 Fairview Park Drive, Suite 120  
Vienna, VA 22042-4536 U.S.A.  
☎ 1-833-77-SMART (777-6278)  
📠 1-833-777-6278  
🌐 [www.sdinst.org](http://www.sdinst.org)

## Research

# Affirmative Action and Asian-Americans

Author: BBA, BA, and MS David Fernandez, Business and Data Analyst of Smart Development Institute  
Date: February 24, 2022

### Objective:

The Smart Development Institute (SDI), a certified IRS 501(c)(3) non-profit firm, transforms communities into Smart Communities to improve the quality of life of the citizens of communities. The following research helps SDI better understand the challenges faced by our members in Academic Institutions, in order to help us bridge the gap between Government and Citizens.

### Introduction:

Discrimination has been a constant presence throughout many American institutions; certain groups of people often get excluded, whether it be in the military, in job opportunities, or in finding homes. But perhaps, one of the most important institutions, in which discrimination occurs, is higher education, more specifically, however, in affirmative action (AA) programs. This is not to discount the discrimination that happens at earlier levels of education; there continues to be biases in teacher's preferences and in the segregation of schools which separates low income from high income students, causing a disparity in education. Without affirmative action diversity in the workplace and in universities would be severely lacking. Affirmative action is important in instituting an accurate demographic representation of the United States as well as creating an environment where opinions and views can be shared without reprimand.

Initially, when the order was created in 1961, its original intentions were to increase representation and to improve outcomes for blacks and Hispanics in the workplace, and later in higher education. A question that presents itself due to this fact, however, is: does affirmative action hurt Asian-Americans because of the way in which it was initially designed (for blacks and Hispanics)? The court cases against Harvard and UNC Chapel Hill, which are taking place right now, attempt to shed some light on the issues with affirmative action.

As of November 21<sup>st</sup>, 2017, the Justice Department is actively investigating Harvard University's use of race in undergraduate admission policies, where it may deem the institution to be out of compliance with federal law. In this case, Harvard is being accused of discriminating against Asian-Americans. Harvard's percentage of Asian-Americans has been consistent over several decades, even when the population of Asian-Americans has grown exponentially since the 1960s. Due to the popular conception of Asian Americans as the model minority, that is a group that is perceived to achieve a greater degree of socioeconomic success, this group is often used in arguments in favor of repealing affirmative action. Exploring the Harvard, UNC Chapel Hill, *Regents of the University of California v. Bakke*, and *Fisher v. UT*



*Austin* cases, will display the flaws in the affirmative action system as well as proving its continued necessity in contrast to a merit-based system.

### **Historical Context:**

Affirmative action became law in 1961 when President John F. Kennedy signed Executive Order 10925. It began, not as a tool to enhance diversity in higher education, but primarily for the workplace, and over the years evolved into an active effort to improve employment and educational opportunities for historically disadvantaged groups and women. While each sitting president since 1961 has had a varied definition of AA, the general consensus is that it was created and continues to exist today in order to “right historical wrongs” from decades of discrimination against minority groups and women. This may not be the view most Americans hold anymore; according to a Gallup poll, about three fourths of whites and Latinos think that college applicants should be considered solely based on merit (Jones 2013). This can mean two things: people may be misinformed or not informed at all about the concept of righting historical wrongs, or that there is a belief that the country has moved past the point of thinking about race, so therefore, it should not be considered.

One such group that has suffered from discrimination, although not to the extent of African Americans, for which AA was originally created for, are Asian-Americans. Discrimination against Asian-Americans is not new in US history. Seen in the Chinese Exclusion act of 1882 where Chinese people were banned from entering the country, and in Japanese internment camps during World War II, Asian-Americans are consistently viewed as the “perpetual foreigner.” This means that no matter how “American” an Asian-American individual may appear to be, there will always be the preconception of them not belonging due to their physical appearance or ethnicity. Furthermore, the notion that Asian-Americans are the model minority, that is a group that is perceived to achieve a higher socioeconomic status than the average, is problematic moving forward. This model minority myth is composed of stereotypes that Asians are docile, polite, and harmless, which makes them the scapegoat for some social and economic problems. If this notion continues to be perpetuated, Asian-Americans will always be the fallback for problems in society, and as we will later read, the fallback for AA. Additionally, Asian-Americans are also caught in an awkward space in the midst of AA debate. On one hand, they are a beneficiary of AA, a minority groups seeking increasing representation in higher education to match with their rapid growing population within the United States. On the other hand, they are used in the argument against AA because of their strong academic achievement and strong applications, but are denied from colleges even though they may be more qualified than people of other races who may be applying. Conservative groups who wish to repeal AA use this as their tool to argue instead for a merit based system which would ultimately be more “fair” towards Asian-Americans. For example, a piece of evidence used to argue against AA is that, on average Asian-Americans have to score one hundred and forty points higher on the SAT to be given equal chance of admission as whites.

### **The Precedent Cases:**

In order to fully understand the cases against Harvard and UNC Chapel Hill, two important precedent cases were *Regents of the University of California v. Bakke*, and *Fisher v. University of Texas*.



In *Regents of the University of California v. Bakke*, Allan Bakke, a white man in his thirties, had applied to UC Davis' medical school and had twice been rejected. Under the school's AA program, sixteen spaces out of each incoming class of one hundred were reserved for qualified minority students. Allan Bakke then contended in the Supreme Court that he was denied solely based on race. The Supreme Court then ruled that UC Davis' use of quotas was unconstitutional and ordered the school to admit Bakke. A similar case to that of Bakke's took place in 2016 in the Supreme Court case that was *Fisher v. University of Texas*. In this case, The Supreme Court ruled in favor of The University of Texas at Austin's application of strict scrutiny to their admissions process. Ms. Abigail Fisher argued that she should have been accepted to the university, but ultimately was not because they discriminated against her on the basis of race in violation of the Equal Protection Clause of the Fourteenth Amendment (Richey 2012). This landmark case pitted two viewpoints. The first, by Justice Alito explaining that the university no longer demonstrated the need for race based admissions and that the system benefitted advantaged students over impoverished ones. The second, Justice Kennedy views that UT Austin's admissions process was direct and concise with what a higher institution's diversity goals should be.

### **The Cases:**

One nonprofit membership group spearheading the case against Harvard and UNC Chapel Hill is Students for Fair Admission, who believe that race should not be a factor in college admissions. In accordance with this belief they currently accuse Harvard University and UNC Chapel Hill of discrimination in their undergraduate admission process on the basis of race and ethnicity. This seems paradoxical because their argument constitutes acknowledging race in admissions, but the organization itself believes race should be eliminated from consideration altogether. The active investigation into Harvard's admissions policies by the Justice Department accuse the institution of discriminating against Asian-Americans by unlawfully keeping a quota for how many students it will admit (Morris 2015). Additionally, in a complaint by over sixty Asian-American organizations, they argue that Asian-Americans have to, "perform much higher in almost every metric in college admissions process than other races" (Morris 2015).

In an opinion piece in the Washington Post written by Edward Blum, who also happens to be the president for Students for Fair Admission, shares his concern over Harvard's "holistic" admission system (2017). This system, Blum says, was put in place after the college became alarmed at the increasing number of Jewish students. It decreased the applicant's academic achievement to give way for other traits such as leadership and sociability, ultimately decreasing the number of Jewish students admitted (Blum 2017). Similarly, this is the case Asian-Americans face in Harvard admissions: although they are represented in the college, the numbers of Asian-Americans have not increased from 1992 (19%) until 2013 (18%) even though the number of Asian-American applicants had risen dramatically (Blum). Furthermore, according to Morris, although Asian-Americans, "make up only 5.6% of the US population, they disproportionately participate in prestigious high school programs such as the National Merit Scholarship, the U.S. Math Olympiads and U.S. Physics Olympiads" (2015). This statistic signals that Asian-Americans are consistently outperforming other demographic groups, but, these achievements are not being recognized by Harvard admissions.

A contrasting opinion piece to that of Blum's would be from Professor Higginbotham from the University of Baltimore. Higginbotham says, "Race-based preference is still vital in the US given the country's history of slavery and continued pervasive racial discrimination" (2014). In his article, he argues that



until there is actual equality of opportunity in the United States, there still needs to be a race-conscious system in place. Other institutions such as the criminal justice system, housing, and in the military, to name a few, perpetuate the racial hierarchy that exists in the America and affirmative action is one outlet that truly aids in providing opportunity to the most oppressed.

The second case, made against The University of North Carolina at Chapel Hill, alleges that the institution is not in compliance with the strict scrutiny requirements set in *Fisher v. UT Austin*. The non-profit also claims that UNC verbally commit themselves to constructing a critical mass, however, do not actually actively pursue it. Students for Fair Admission's goal in their case against UNC is actually to increase diversity in the school by encouraging race-neutral policies and end race-based AA. The lawsuit also states that the racial preference for each underrepresented minority is so large that it equates to a penalty for whites and Asian-Americans. Ultimately Students for Fair Admissions strongly pushes for non-race-based solutions such as socioeconomic affirmative action, that they argue, can promote diversity as well as racial preferences (Consovoy 2016).

#### **Merit Based System vs. Race-Based Affirmative Action in context of APIAs:**

Law school professor Margaret Y. K. Woo, of Northeastern University cites in her journal article *Reaffirming Merit in Affirmative Action* that the traditional defense of AA is no longer resonating with contemporary audiences (1997). AA's remedial justification of righting historical wrongs and the argument that race-based AA benefits everyone because it ensures diversity, Woo says, fails to resonate with opponents. This argument, opponents point out, prioritizes membership to a "group" as opposed to an individual's personal achievements, a concept not in accordance with the American definition of equality. Additionally, Woo points out that merit can be a legitimate system as well; "it can be an efficient system for distributing opportunities because it maximizes our human resources" (1997). Woo argues that society has pitted race versus merit, creating a binary where an individual has to take a side.

Supporters of meritocracy hold that merit does not, "refer to inherited characteristics such as race or gender." However, Woo that these inherited characteristics of race and gender can be a starting point to asses a person's history and development and numerical indicia does not, "tell much about a person's character and worth of persons who must face and overcome societal obstacles such as racial or gender discrimination" (1997). Furthermore, adopting a merit system assumes that every child born in America has access to equal resources. Not every child has access to good schools or parents who emphasize and support their children's education (Woo 1997). This system also rewards high test scores which can be problematic because it does not accurately reflect results in the long run. Additionally, standardized test scores while they may measure intelligence, they do not track progress or potential.

In contrast, race-based AA continues to function as a way to level the playing field for historically disadvantaged groups, Professor Higginbotham at the University of Baltimore says, "Race-based preference is still vital in the US given countries history of slavery and continued pervasive racial discrimination" (2014). Race-based AA ensures a critical mass, that is, sufficient representation of minority groups that allow for an environment where opinions are comfortably shared.

#### **Affirmative Action Effect on Asian-American Community:**



In Karen Inkelas' journal article, she describes how Asian/Pacific Islander American enrollments at colleges have skyrocketed in recent decades when her article was published (2003). Inkelas notes that even though Asian-Americans made up only 2%-3% of the nation's population, they occupied a third to a quarter of several of the nation's most competitive public and private institutions (2003). However, Inkelas notes, the rise has been met with controversy. Even though many of these applicants had strong applications and strong academic credentials, acceptance rates at some higher institutions remained static. This suggested that certain institutions were purposefully setting quotas to limit the number of Asian-Americans into their universities. According to Inkelas, these charges were not entirely unfounded, as "Brown University and the University of California at Berkley admitted that their admissions practices were biased and made revisions to their procedures" (2003).

Due to this static admissions rate, Asian-Americans are unwillingly placed into the middle of the AA argument. Conservatives use Asian-Americans to support their position that AA should be repealed, Asian-Americans argue that they are being discriminated against by unlawful quotas. Liberals, on the other hand, are defending AA. With both groups claiming to speak for the Asian-American community, Inkelas points out the irony that the only group we do not hear from are Asian-Americans themselves. This silence plays into the model minority notion: that Asian-Americans will sweep these issues under the rug to appear tougher, and more American for enduring and not complaining about the discrimination. Ironically enough, however, this may be the root of the problem; that the continued blind eye the Asian-American community perpetuates the group being used as the scapegoat in political parties and individual's agendas.

### **Conclusion:**

Asian-Americans have both benefitted from affirmative action despite its inherent design being for blacks and Hispanic, and, in the future, can be hurt by the system. According to the Harvard and UNC cases, it appears that discrimination is still an ongoing reality for Asian-Americans. Furthermore, the *Fisher v. UT Austin* case, at least temporarily, assures us that race-based AA will still be in place. Although race-based affirmative action may not be a perfect system, it takes factors into account that the merit system does not, that is, characteristics beyond the simple metrics. Using one minority group as the scapegoat out of affirmative action policies does not constitute repealing the whole program because greater benefits towards equality of opportunity for the underrepresented do come from the program. Ultimately, the Asian-American community needs to step up in order to make their voices heard instead of being made the bystanders of an argument where their input is not valued. Asian-Americans, even though used as the fallback, must fight for their rights while at the same time being conscious of AA's overarching benefits. As for the time being, higher institutions continue to hold biases in their admissions policies. The switch to a colorblind system will only continue to perpetuate these biases without taking into account many other factors that make higher education a place where diversity of opinion is truly valued.

In conclusion, Smart Development Institute's research into improving student life through their mobile application is a promising initiative that can have significant positive impacts on campus communities. This tool can serve as a means of communication and information sharing, helping students access important resources and stay connected with their peers. In a broader sense, initiatives such as affirmative action can also contribute to creating a more inclusive and supportive campus environment by ensuring that students from underrepresented communities have equal opportunities to succeed. By



combining innovative technological solutions with progressive policies, universities can continue to foster a culture of diversity and inclusivity, ultimately enriching the educational experience for all students.

### **Bibliography**

Blum, Edward. August 8, 2017. "Harvard's discrimination against Asian Americans must end."

The Washington Post, Retrieved December/16, 2017.

Consovoy, William. 2016. "UNC Complaint." Students for Fair Admission, Retrieved

December/18, 2017.

Higginbotham, F. M. 2014. "Race-based Affirmative Action Is Still Needed." The New York

Times, Retrieved December 18, 2017.

Inkelas, Karen K. 2003. "Diversity's Missing Minority: Asian Pacific American Undergraduates'

Attitudes Toward Affirmative Action." *The Journal of Higher Education* 74(6):601-639.

Jones, Jeffrey M. 2013. "In U.S., Most Reject Considering Race in College Admissions." Gallup,

Retrieved December/8, 2017.

Morris, Catherine. 2015. "Asian American Groups File Federal Complaint Against

Harvard." *Diverse: Issues in Higher Education* 32(9):8.

Woo, Margaret Y. K. 1997. "Reaffirming Merit in Affirmative Action." *Journal of Legal*

*Education* 47(4):514-523.