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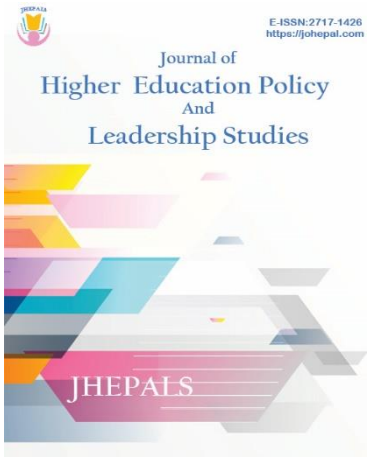

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Race Based Admissions and Affirmative Action: Revisiting Historical Implications on Black Students in Higher Education

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Abstract

The legacy of discrimination and oppression against Black Americans has influenced the development and implementation of policies rooted in a desire to decrease inequities. However, the parallels of advancements in civil rights efforts and simultaneous challenges associated with systemic barriers to social mobility have created a paradox of perspectives surrounding Black education in the U.S. Among these varying viewpoints exists a critique of the continued use of Affirmative Action to support the access and enrollment of Black students in higher education. Affirmative Action has had several positive and negative impacts on the experiences of Black students in higher education. The authors provide a historical overview of Affirmative Action policies and its implications on higher education for Black students.

Keywords: Affirmative Action; Higher Education; Black Students; Policy; Access

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Introduction

Some Americans argue that we currently live in a post-racial society. In recent years, the United States has had a Black president, the first Black and South Asian woman vice president, and a population that is more diverse than ever before. Despite these encouraging steps toward a more equitable society, Black Americans in the United States still experience several inequalities. Given the numerous challenges Black Americans have suffered since their historical enslavement in the United States, many of these disparities have generated a gap in American culture, particularly within higher education (Anderson, 1988; Harper et al., 2009; Majors & Gordon, 1994). The system of slavery has had lasting effects on Black Americans, including numerous federal and state responses throughout history, such as Affirmative Action. This paper will examine the origins of Affirmative Action and its ongoing educational challenges in order to expand upon what is known about higher education and historical barriers for Black students.

One of the many historical ripples is Executive Order 11246, also known as Affirmative Action, which led to significant advances for underrepresented groups in 1965. (Harper et al., 2009). In the field of education, Affirmative Action allowed People of Color, specifically Black Americans, to enroll in historically white institutions (HWIs) that were not educational possibilities for them prior to the signing of Executive Order 11246. (Anderson, 1988; Harper et al., 2009). The outcome encouraged other colleges and institutions to highlight diversity and the inclusion of all individuals in their mission statements and guiding principles (Harper, 2012b; Smith, 2015). Despite its popularity, Affirmative Action has been the subject of much controversy throughout history. Many scholars, policymakers, researchers, and faculty members have questioned the practicability of Affirmative Action in recent years (LeBeauf et al., 2007). Today, numerous have outlawed Affirmative Action based on race after many court challenges. This scholarship will provide a historical overview of Affirmative Action policies and their detrimental effects on the higher education of Black students. The following paragraphs will discuss the historical origins and legacy of Affirmative Action and alternative enrollment strategies for Black students.

What Is Affirmative Action?

In the early 1960s, President Lyndon B. Johnson invented the term "Affirmative Action" during a speech at Howard University (Harper et al., 2009). However, its origins can be traced to Roosevelt's New Deal legislation (Anderson, 2005). While Affirmative Action could not heal the historical wounds of prejudice in the United States, the objective of the movement is to level the playing field for Black people in many industries (Brown, 2001; Harper et al., 2009; Weber et al., 2005), including education. After introducing the term, the United States government utilized the concept of Affirmative Action to guarantee equal rights and opportunities for women and minorities in education, housing, business, and government services (Harper et al., 2009). President Lyndon B. Johnson observed,

> "You do not wipe away the scars of centuries by saying: 'now, you are free to go where you want, do as you desire, and choose the leaders you please.' You do not take a man who for years has been hobbled by chains, liberate him, bring him to the starting line of a race, saying, 'you are free to compete with all the

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> others,' and still justly believe you have been completely fair . . . This is the next and more profound stage of the battle for civil rights. We seek not just freedom but opportunity—not just legal equity but human ability—not just equality as a right and a theory, but equality as a fact and as a result" (Zarefsky, 2004, p. 616).

Specifically, race-based Affirmative Action programs and regulations enacted by the United States government to improve the lives of disenfranchised individuals throughout American history. Numerous disenfranchised groups, such as Blacks, Latinx, and other traditionally marginalized groups, have been hampered by the historical effects of oppressive laws, institutions, and systemic conditions (Majors & Gordon, 1994). In the context of higher education, Affirmative Action is used to level the playing field and offer students of color with equal educational opportunities. Yosso et al. (2004) posit that race-based Affirmative Action is used as a *remedy to compensate* for past and current racial discrimination against students of color. Additionally, the community service rationale asserts that universities include race in their admissions policies to "(a) improve the delivery of social services to underserved minority communities in the areas of health care, legal services, education, business, government, and political representation; (b) develop a leadership pool in the minority community, and (c) provide role models for minorities in these communities (Yosso et al., 2004 p. 8).

To understand the evolution of Affirmative Action in race-based admissions, the historical backdrop of policies affecting the experiences of Black students in the United States must be further examined. Several court cases, policy consequences, and race-relation laws in the United States have influenced the establishment of Affirmative Action for race-based admissions. Consequently, numerous researchers and academics debate the significance of race-based Affirmative Action and whether its positive goal has had a long-lasting negative effect on the success of minorities in higher education (Allen et al., 2002; Rhoads et al., 2004).

Historical Context Needed to Understand the Current State of Affirmative Action

Since the beginning of Black students' participation in education in the United States, college access, affordability, and accountability for Black student success in higher education have been themes of discussion (Anderson, 1988). Questions such as, who is permitted to attend college? How much should education in America cost? What skills are required for a specific demographic to achieve social mobility? These questions, along with many others, were and continue to be prevalent among higher education officials. We argue that the discussion over Affirmative Action begins with the question of how Black Americans gained access to higher education.

Access to Higher Education Before *Brown v Board of Education*

Black students have had access to postsecondary education in the United States prior to the Civil War (Brown, 2001). While not access for all, Oberlin College was the first to allow African American students in 1835. (Brown, 2001). Wilberforce University, Cheyney State Training School (now Cheyney University), and Ashmun Institute (now Lincoln University) became three of the first institutions of higher education for African Americans in the United

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States after Oberlin College (Harper et al., 2009). The First Morrill Act of 1862 was one of the first significant regulations regarding access to higher education for African Americans. This Act created agricultural and mechanical colleges and universities in the United States and laid the path for public education institutions (Ford & Sumpter, 2018). According to Harper and colleagues (2009) highlight "The law annexed wide neglected areas to the domain of instruction. Widening the gates of opportunity, it made democracy freer, more adaptable, and more kinetic" (p. 394). While more than 40 private Black colleges existed prior to 1890, the Second Morrill Act of 1890 authorized the establishment and expansion of public colleges and universities in the South for the education of African Americans (Albritton, 2012; Brown, 2001; Harper et al., 2009). As researchers, we contend that the beginnings of Affirmative Action may be traced to unequal access to education for Black American students following the separation of the first government-funded public schools in the United States.

Understanding Brown vs. Board of Education

Many claim that the origins of Affirmative Action in the United States date back to the beginnings of the Civil Rights Movement in the 1940s (Brown, 2001; Weber et al., 2005). In the United States, debates about non-discrimination rules became common early after World War II (Anderson, 2005; Thelin, 2011). In 1954, the first significant educational component for equitable educational opportunity was implemented. Brown v. Board of Education, Topeka, Kansas, 1954, was an important victory for equal rights advocates and equitable educational opportunities for individuals of color in the United States (Anderson, 1988; Weber et al., 2005). The 1954 Brown v. Board of Education, Topeka, Kansas case was utilized by the US Supreme Court to invalidate the 1896 Plessy v. Ferguson case (Weber et al., 2005). In the United States, Plessy v. Ferguson established the "separate but equal" doctrine (Weber et al., 2005). This judgment, which lasted 58 years, authorized states to create and maintain racially segregated public schools if they had comparable facilities and resources to their White counterparts (Albritton, 2012; Brown, 2001; Harper et al., 2009). Following the Plessy court ruling, historically White land-grant colleges and universities earned 26 times more state funding than black colleges, according to Harper and team (2009). Also, compared to historically White colleges and universities, Black colleges received a quarter of the state expenditure rate for students (Harper et al., 2009).

The US Supreme Court heard Brown v. Board of Education and altered the landscape of education for African Americans as a result of the escalation of issues relating to educational inequality. The court ordered desegregation to occur "with deliberate speed" (Weber et al., 2005). Despite the directive to rectify disparities swiftly, the decision to end "separate but equal" did not occur immediately (Albritton, 2012; Brown, 2001). Changes to remove "separate but equal" encountered numerous barriers and obstacles, including the affordability, accountability, and accessibility of higher education institutions for many populations, including Black Americans.

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The Civil Rights Act of 1964 and its Aftershock

Brown v Board of Education had several impacts on education, specifically in the K-12 sector. However, for higher education institutions, Brown (2001) concludes, "the mandate to desegregate did not reach higher education until one decade after Brown when President Lyndon B. Johnson signed the Civil Rights Act of 1964" (p. 49). More specifically, within the Civil Rights Act of 1964, Title VI established direct implications for Black people. Malaney (1987 p. 17) state,

> Title VI of the Act provided that "no person in the United States, on the grounds of race, color, or national origin, be excluded from participation in, or the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

Additionally, Title VI restricted the federal funding of segregated schools. The objective was to offer public funds to desegregate institutions of higher education. Title VI prohibited colleges and universities from receiving federal money if they discriminated against students based on race, color, or national origin (Albritton, 2012; Brown, 2001).

Establishing Affirmative Action in the United States and its Impact

Affirmative Action enacted programs establishing equal rights and opportunities for women and minorities in education, housing, business, and government (Harper et al., 2009). Prior to the establishment of Affirmative Action, 90% of all Black students were educated at HBCUs (Harper et al., 2009). As a result, Affirmative Action increased the educational opportunities available to African Americans. Black students entered historically white institutions (HWIs) in unprecedented numbers for the first time (Harper et al., 2009). Given that an increase in enrollment would result in a rise in government funding, a number of HWIs enacted race-based policies to encourage more Black students to apply and enroll at their institutions (Anderson, 1988). This change enabled traditionally White research schools of the highest caliber to provide more financial aid to recruit high-achieving Black students than HBCUs (Ford & Sumpter, 2018; Harper et al., 2009). The effect of these recruitment strategies negatively affected enrollment at HBCUs. As a result of HWI's increased financial support for students of color, it became increasingly difficult for HBCUs to compete for Black students with high academic achievement. These inequalities presented HBCUs with new obstacles, including retaining student enrollment, providing comparable financial aid packages, and recruiting high-achieving students.

Opposition to Affirmative Action Throughout History

Many Americans saw Affirmative Action as a public good. However, it also has faced opposition over its history and existence. The battle for equal rights for all individuals spawned a fresh set of court decisions that would have long-lasting negative repercussions on education and race-based admissions standards. This paper will provide an overview of the following cases and their collective impact on the experiences of Black students: Regents

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of the University of California vs. Bakke, Hopwood vs. University of Texas Law School, Gratz vs. Bollinger and Grutter vs. Bollinger, and Fisher vs. the University of Texas.

Regents of the University of California vs. Bakke

After President Johnson signed the Affirmative Action policy into law, opposition arose. In 1973, the Regents of the University of California vs. Bakke case was the first notable dissent against Affirmative Action. Allan Bakke, a white male applicant to medical school, brought a case against the University of California-Davis (UC Davis) after two failed attempts to gain admission in 1973 and 1974. Bakke argued in federal court that he was the victim of "reverse discrimination" (Weber et al., 2005). Bakke claimed that he would have been admitted to UC Davis without Affirmative Action because his Medical College Admission Test results were comparable to or greater than those of other applicants. The college was cautioned by admission denial rates since UC Davis had a minority enrollment quota to satisfy (Weber et al., 2005).

To establish a diverse environment and ensure representation of students of color (Black, Chicano, Asian, and American Indian, according to Weber and colleagues, 2005), UC Davis implemented two admissions tracks. The standard track set an undergraduate grade requirement. Students with a grade point average (GPA) below 2.5 on a scale of 4.0 were denied entrance. The second track was a special track that admitted underprivileged students on a case-by-case basis and did not need these students to have a 2.5GPA. The admissions authorities at UC Davis used this technique to admit 16 students of color out of the total number of applicants. In 1978, the Supreme Court of the United States upheld Bakke's argument against racial quotas in college admission (Weber et al., 2005).

This case had four major ramifications for higher education. First, it established that colleges and universities may not adopt quotas to reserve spaces for specific interest groups in entering classes. Second, it established a precedent for higher education institutions to pursue racial diversity as a goal. Third, colleges were permitted to consider race as an admissions consideration, but it could not be the exclusive factor (Weber et al., 2005). In addition, students may not be selected from two distinct candidate pools. According to Justice Powell,

> Racial and ethnic classifications of any sort are inherently suspect and call for the most exacting judicial scrutiny. While the goal of achieving a diverse student body is sufficiently compelling to justify consideration of race in admissions decision under some circumstances, petitioner's special admission program, which forecloses considerations of person like respondent, is unnecessary to the achievement of this completing goal, and therefore invalid under the Equal Protection Clause (as cited in Weber et al., 2005, p. 16).

By upholding Bakke's claim of reverse discrimination, this judgment preserved the dominant power structure in the United States. Reverse discrimination contends that the majority population will suffer if the minority group receives preferential academic treatment (Dietrich, 2015). The notion and belief of reverse discrimination are centered on Whiteness and minimize the voices of people of color by victimizing the dominant white identity to sustain the existing racial social institutions (Dietrich, 2015). This narrative defeats the goal of giving opportunities for underprivileged communities and fails to

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highlight how institutional racism has established systematic impediments to Black Americans' upward mobility and educational gains.

After the Bakke case, higher education institutions adhered to the established requirements, and Affirmative Action programs remained uncontested for over two decades. The Bakke ruling permitted Historically White Institutions (HWIs) to continue encouraging Black students to view HWIs as viable options, hence permitting them to have diverse student bodies. Regardless of the outcome of the Bakke case, HWIs continued to encourage Black students to view HWIs as viable options, allowing them to maintain diverse student bodies.

Hopwood vs University of Texas Law School

In 1996, Hopwood vs. The University of Texas Law School was brought against Affirmative Action policies, following the 1973 Regents of the University of California vs. Bakke decision (Fritz & Tucker, 2002; Long & Tienda, 2008). White law school applicants Cheryl Hopwood, Douglas Carvell, Kenneth Elliott, and David Rogers challenged the University of Texas' law school admissions policy. The students filed this lawsuit after they were denied entrance to the law department at the University of Texas. Hopwood and her other applicants claimed that the University of Texas rejected them because of an unfair preference for poorly qualified minority students. The court ruled that the University of Texas Law School could not consider race during the admissions process for its incoming cohort. In contrast to the 1973 case the University of California vs. Bakke, the Supreme Court declined to hear Hopwood vs. The University of Texas Law School. Consequently, the case's ruling was only valid in the 5th district of Texas (Fritz & Tucker, 2002).

This case had several implications for universities and the Affirmative Action policy. After the Hopwood Affirmative Action case, the Supreme Court ruled that the 1978 Regents of the University of California v. Bakke ruling was null and void. Due to the Supreme Court's decision not to hear the case, administrators in higher education were forced to reconsider their Affirmative Action policy following Texas's finding. In addition, Hopwood v. The University of Texas School of Law negated the advantages of a varied educational environment (Fritz & Tucker, 2002). Following this ruling in 1996, Victor Morales wrote to all universities in Texas. He indicated that "race-based scholarships and funding may be eliminated from the state's public institutions of higher education" (Fritz & Tucker, 2002, p. 23). The broader implications would impact students from low-income families (Long & Tienda, 2008).

The University of Michigan: Gratz v. Bollinger and Grutter v. Bollinger

Michigan, unlike California, Texas, Louisiana, and Mississippi, did not alter its Affirmative Action policies in response to the Hopwood decision (Weber et al., 2015). Nevertheless, beginning in 2003, the University of Michigan was confronted with two lawsuits that affected Affirmative Action in the United States. 2003's Gratz v. Bollinger was the first case to challenge the undergraduate admissions policy (Ledesma, 2013; Weber et al., 2005). A white undergraduate student was denied admittance to the program at the College of Literature, Science, and the Arts. The second case, Grutter v. Bolinger, was filed in 2003 after a white graduate student was denied entrance to the law school department at the University of Michigan. Both students, like Allan Bakke, claimed to have experienced reverse

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prejudice (Weber et al., 2005). Both students in each case claimed they were not afforded equal protection under the law due to the admissions standards, and the University of Michigan's Center for Equal Opportunity funded both cases (Ledesma, 2013; Weber et al., 2005). Despite the similar chronology of the two events, the outcomes of each were distinct.

In Gratz v. Bollinger, the court ruled that the University of Michigan's admissions program violated the Constitution (Ledesma, 2013). Prior to this case, the University of Michigan admitted students using a predefined point distribution system. 20 of the 150 points required for admission to the University of Michigan were attained by students of color based purely on their racial background (Ledesma, 2013; Weber et al., 2005). Similar to its diversity ruling in the Bakke case, the Supreme Court held that diversity was sufficient justification for using race as a criterion in college admissions.

In Grutter v. Bollinger, as opposed to Gratz v. Bollinger, the US Supreme Court upheld the University of Michigan Law School's admission rules. It contradicted the Gratz v. Bollinger ruling from the same year. The Supreme Court concluded that the law school admissions approach was appropriate since it provided students with a comprehensive and tailored evaluation. It later ruled that race is a concept for college admissions diversification (Ledesma, 2013; Winkle-Wagner et al., 2014). The significance of both cases to the realm of higher education was undeniable. According to Ledesma (2013), "these cases have established the governing legal standard within which colleges and universities can craft and implement Affirmative Action policy" (p. 222). In addition to higher education professionals, academics, scholars, and campus partners, hundreds of stakeholders, including legislators, military officials, business leaders, and other invested Americans, offered their perspectives on the future of Affirmative Action in higher education (Ledesma, 2013; Weber et al., 2005).

Fisher v University of Texas at Austin

The University of Texas at Austin experienced similar difficulties as the University of Michigan in Gratz v. Bollinger and Grutter v. Bollinger. In 2012, Abigail Fisher, a white woman, claimed she was denied admittance due to her race. Fisher was interested in the University of Texas at Austin because her father and sister were alumni. Before she submitted her application to the University of Texas, the Top 10 Percent Law was passed. After Hopwood v. The University of Texas, the 1996 Top 10 Percent Law would define how the state of Texas will examine innovative methods to enhance access to higher education for students of color. This law allowed students who graduated in the top 10 percent of their high school class from any high school in Texas to be admitted to any public university in Texas. Fisher's academic record did not qualify her for the top ten percent of her graduating class due to her lack of legacy choices. Fisher was denied admission despite her academic credentials and compliance with the Top 10 Percent Law.

In 2015, the Supreme Court heard Fisher's case again following the 2012 verdict. In June 2016, the Supreme Court ruled that Affirmative Action applies to college admissions decisions. Declaring it an educational advantage, the court emphasized that race-based admissions were directly tied to the overall diversity of an institution. Fisher did not win and was consequently denied admission to the University of Texas in Austin.

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Consequences of the Policy: Issues of Equity and Opportunity

Today, numerous researchers and academics demonstrate the absence of primary and secondary school preparation for Students of Color entering higher education, notably Black students (Reid & Moore, 2008). Nevertheless, equity and access to high-performing K-12 schools and are well documented (Winkle-Wagner et al., 2014). In particular, primary and secondary schools usually have insufficient resources for neighborhoods with a large population of Black students and students of color in general (Darling-Hammond, 2007). The domino effect of unequal resources and inadequate elementary education generates financial support, equity, and access challenges for college students (Jackson et al., 2021; Jackson et al., 2020; Fox & Zamani-Gallaher, 2018; Wright et al., 2017). Furthermore, for example, Black college students frequently endure sentiments of being undervalued (Bryan, et al., 2016; Wallace, 2022; Wallace & Ford, 2021), microaggressions (Matthew et al., 2022; Smith et al., 2011), and a lack of sense of belonging (Strayhorn, 2009). These deeply established difficulties impede the academic progress of Black students, perpetuate deficit thinking, and create a system of discrimination regarding their admission to higher education (Mayes et al., 2019; Winkle-Wagner et al., 2014).

Percent Plans and Elimination Race-Based Affirmative Action

Additionally, percent plans were direct results of Affirmative Action. According to Daugherty and the team (2014), "percent plans are an essential sort of strategy designed to increase diversity at elite public colleges" (p. 20). As a result of persistent debates against race-based Affirmative Action, Texas, California, and Florida developed percent plans (Daugherty et al., 2014). Many of these cases originated in the concept of preferential treatment for student applicants (Fritz & Tucker, 2002; Daugherty et al., 2014). The Texas state policy enacted after Hopwood v. University of Texas is one of the most noteworthy percent programs. The Texas Top 10 Percent Law stipulates that a student with a high school score above the 90th percentile are automatically admitted to any public college or university in the state (Daugherty et al., 2014). The Top 10 Percent Law also limited admittance to 50 percent based on GPA, high school ranking, and standardized test scores. The concept was created to enhance access for students of color and those with low incomes. Policymakers believed that accepting all students from the top 10 percent of high schools would improve diversity at colleges and institutions (Daugherty et al., 2014).

In addition to the Top 10 Percent Law in Texas, Proposition 209 was passed in California in 1996. This proposition abolished discriminatory employment, government, and public education practices. Within one year of the policy's implementation, enrollment at the University of California, Los Angeles (UCLA) decreased by 43%, while enrollment at the University of California, Berkeley decreased by 38%. (Teranishi & Briscoe, 2008). Consequently, Teranishi and Briscoe (2008) assert that the standardization of admissions criteria is responsible for the low admissions rate at both institutions. As a result of Proposition 209, the increased admissions standards and elimination of race-based Affirmative Action led to fewer Black student admissions (Daugherty et al., 2014; Teranishi & Briscoe, 2008). A few students in the Teranishi and Briscoe (2008) research regarded their admissions efforts without Affirmative Action as challenging, stating things like "you need to have a 4.0 even to get your application looked at - that's not saying that you might even get

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in," "it's real hard to get into." (p. 20). Concerning Proposition 209, one student stated (Smith et al., 2011),

> You can see the differences between before they got rid of Affirmative Action and when they did get rid of Affirmative Action. The percentage [of Black students] is almost down to zero, really, when you look at it. There's, like, almost no African American students. I don't know. It's horrible to me. It makes me feel like they don't want people (p. 20).

These student perceptions are also having an impact on the socialization of Black students into education. The societal messages passed down from parents and educators from generation to generation have lasting effects on the development of Black Americans and perpetuate a culture of inferiority. In addition, with no studies suggesting positive outcomes of how the Texas Top 10 Percent Law or Proposition 209 are leveling educational disparities for people of color, racial diversity will continue to be a problem facing politicians, educators, and the American people.

Recommendations and Contemporary Challenges

This historical analysis has examined multiple court cases that have affected Affirmative Action. In addition, many recommendations for the future of Affirmative Action and race-based admissions have been generated by analyzing the effects of this policy. We are curious as to how we may keep admissions policies based on race. Based on the events in Texas and California reported by Fritz and Tucker (2002), Teranishi and Briscoe (2008), and Daugherty et al. (2014), we do not believe that removing race-based Affirmative Action in the United States would be a beneficial step. After the elimination of Affirmative Action, the concerns of admissions at UCLA and UCB demonstrate an increasing concern for Black students. Historically, its favorable impact on the academic progress of Black students, could not be maintained. The benefits of college access and campus diversity are sufficient to preserve the policy's necessity. If students do not have the opportunity to work, learn, and interact with others from all backgrounds, we have failed in our role as educational institutions to develop students. Similar to the Grutter v. Bollinger decision, each student should strive for affordability through a comprehensive and tailored examination in which admissions personnel examine cultural, racial, and socioeconomic status.

There is still much work to do in higher education. Research questions surrounding affordability, accountability, and accessibility will continue to have representation in race-based enrollment and Affirmative Action conversations. More specifically, the attack on Affirmative Action has more implications outside Black student enrollment. In recent years, the assertion of more Black men in prison has become a dominant narrative in education rhetoric. While this has been proven false, the report received considerable media attention in the mid-2010s. In addition to the school-to-prison pipeline myth, Harvard's most recent challenge on Affirmative Action received increased attention on the policy's importance and if it is still valid.

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Changing the Narrative of the School-to-Prison Pipeline

Affirmative Action has had many forecasted outcomes in higher education, including Black students seeing and acknowledging themselves as students who deserve opportunities to attend college. While not directly connected, one of the hurdles facing Black students is the school-to-prison pipeline. Many American citizens believe there are more Black students in prisons than in higher education systems (Toldson, 2019). However, there are more Black students in higher education systems than in prison (Harper, 2012a; Toldson, 2019). The elimination of race-based admissions could cause a shift in Black students entering colleges and negatively impact them. The impact of diminishing the number of Black college graduates could negatively affect the American economy and the educational pipeline for Black students.

The White House and Harvard University

The Justice Department and White House targeted Harvard University and the Affirmative Action policy, which was the first battleground of Affirmative Action under the Trump Administration (Savage, 2017; Syrluga & Anderson, 2017). This case against Affirmative Action was the first since the 2016's Fisher v University of Texas case. Like many other institutions, Harvard receives federal funding, and Title VI of the Civil Rights Act prohibits discrimination against any person despite race, color, and national origin (Syrluga & Anderson, 2017). Unlike cases in the past, Harvard faced discrimination issues, but from Asian students, not White students. Harvard's student advocacy group for Asian American students has stated,

> For decades, Harvard has unfairly and unlawfully restricted the number of Asians it admits. Harvard's Asian quotas, and the overall racial balancing that follows, have been ignored by our federal agencies for too long. This investigation is a welcome development (Syrluga & Anderson, 2017, para 10-11).

As stated by Edward Blum, a former student cited in this work, this racial balancing was said to favor Hispanics and African Americans over Asian students. Harvard University's admissions rate is slightly more than 5% (Syrluga & Anderson, 2017). Of the 2,056 students offered a place in the incoming class, Svrluga and Anderson (2017) state, "22.2 percent were Asian American, the university said, while 14.6 percent were African American, 11.6 percent Latino, and 1.9 percent Native American" (para 21). For the first time in history, a minority group had gained national attention by expressing concerns about a policy designed to provide them with access to higher education institutions. In early 2020, Federal Judge Allison Burroughs ruled that (Hortocollis, 2020, para. 2), "...although Harvard's admissions system was "not perfect," it nonetheless met the legal standard needed to ensure that it was not motivated by racial prejudice or stereotyping", leaving mean questions to be answered on this topic.

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Affirmative Action in the 2020s

Recent studies support diversifying learning spaces in juxtaposition to contributing to student development and experiences through Affirmative Action (Aberson, 2021). Affirmative Action is an asset to Students of Color in the current state of higher education. Without Affirmative Action, students may experience threatening environments that negatively impact minoritized students' sense of belonging and academic success (Hu et al., 2022; Long & Bateman, 2020). In the current state of higher education, minoritized students are still facing a significant debt crisis that impacts academic performance and trajectories despite Affirmative Action changes (Mustaffa & Dawson, 2021; Hu et al., 2022). Additionally, a central theme within Affirmative Action is its bans and whether it negatively impacts underrepresented populations, their admission efforts, and their graduation retention (Bateman, 2020).

In addition to the recent issues within Affirmative Action, researchers have challenged if Affirmative Action bans are impactful or detrimental to student populations (Bateman, 2020; Hu et al., 2022). Furthermore, nine states have implemented racially-driven Affirmative Action bans (California, Florida, Texas, New Hampshire, Michigan, Oklahoma, Arizona, Washington, and Nebraska). Research has illustrated that there needs to be more evidence of empirical research that holistically addresses the relationship between why some states have implemented racially-driven Affirmative Action bans in juxtaposition with other states who have not (Baker, 2019). Due to the lack of research used by Affirmative Action ban supporters to contextualize their viewpoints, it is challenging to anticipate trends relating to the discussion and what states will support or challenge the policy bans (Baker, 2019). This divide has influenced discussions and policies around Affirmative Action's usefulness in today's climate and whether it should apply throughout the United States. Additionally, the Affirmative Action bans across the United States have caused researchers to question the policy decision-makers and what influences the bans, how the bans impact minority representation at institutions, and accessibility opportunities for in-state students (Baker, 2019; Liu, 2022).

The University of North Carolina at Chapel Hill (UNC) and Harvard are currently facing lawsuits against racial discrimination through the admission process. These lawsuits, amongst other Affirmative Action endeavors, have led the U.S. Supreme Court to discuss and vote on whether race should be a factor in admission processes in higher education. The Washington Post (Anderson et al., 2022) reported a poll stating that approximately 63% of U.S. citizens favor banning race and ethnicity-based enrollment in admission processes.

Reports have illustrated the oppressive experiences of minoritized students throughout higher education (Vogue, 2022). In recent research, Asian-American students have expressed concerns about hidden curriculums, segregation, and lack of admission opportunities and academic support at top-tier institutions such as Harvard and UNC (Lee, 2021; Moses et al., 2019). Historically, top-tier institutions, such as UNC and Harvard, were founded centuries ago in the United States under the sociological, political, and cultural precedents that normalized racist, sexist, and misogynist practices.

While the minoritized students provide context, data, and research to support their fight against Affirmative Action bans, supporters of the Affirmative Action bans holistically have expressed little to no empirical research to support their viewpoints on why the bans

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support minority applicants while providing data that supports an elevation of top-tier institutions admitting minoritized applicants in states that have banned Affirmative Action. Representatives of the University of California and the University of Michigan have reported to the U.S. Supreme Court that the institutions' developments toward admitting minoritized students have massively failed since the implementation of their states' Affirmative Action bans (Saul, 2022). Failure to admit and embrace minoritized demographics in prestigious institutions is still an ongoing issue in today's climate in higher education.

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