

# Analysis on Race-Based Affirmative Action in College Admission

Zhixin Tan<sup>1,a</sup>

<sup>1</sup>Graduate School of Education, University of Pennsylvania, Philadelphia, PA, 19104, United States

<sup>a</sup>tanzhi@sas.upenn.edu

## ABSTRACT

In light of the case *Students for Fair Admissions v. Harvard*, race-based affirmative action in college admission is under spotlight for more controversies. In order to fully understand the role of race-based affirmative action in US higher education, a detailed analysis is needed. Through literature review, this paper offers extensive analysis on the role of affirmative action in higher education, and on how race-conscious admissions were casted doubts as a band-aid solution and reverse discrimination, along with studies that focus on college admissions without affirmative action and simulations of a SES-based affirmative action in substituting race-based affirmative action. Upon conclusion, this research paper offers advice for future research, specially to rationally approach the role of affirmative action and incorporating voices from different groups of students, as well as incorporating considerations of shifting focus from promoting racial diversity to socio-economic diversity when assessing the long-term impacts of different alternatives for race-based affirmative action.

**Keywords:** college admission, Harvard, SES-based affirmative action, racial diversity

## 1. INTRODUCTION

In the 1960s, the federal government has pushed for legislature measures to tackle with the persisted discrimination toward minorities and historically unequal relations. The Executive Order 10925 introduced by President John F. Kennedy in 1961 demanded federal contractors to take “affirmative action to ensure that applicants are treated equally” disregarding their race and ethnicities [3]. The introduction of affirmative action in the 1960s has laid the foundation of today’s race-based college admissions in ensuring equal educational opportunities for all races in the U.S. higher education.

Despite various controversies on the embedded affirmative action in college admission processes, race-based college admissions has long stood in the higher education system with the goal to increase diversity in the student body. Nonetheless, the recent case, *Student for Fair Admissions v. Harvard* has given rise to a new round of controversies. In 2014, a famous court battle between *Students for Fair Admissions (SFFA)* representing a group of Asian Americans rejected by Harvard University admissions and president and fellows of Harvard College began. SFFA alleged that Harvard admissions imposed an implicit racial quota to Asian Americans students, and that they are biased against the

supposedly racial-protective policies -- affirmative action in college admission [3]. In 2019, Judge Burroughs ruled in favor of Harvard. The conclusion from the docket of the case highlights that Harvard does not have racial quotas due to the lack of statistical support [2] and “the Court will not dismantle a very fine admissions program that passes constitutional muster, solely because it could do better” [2]. While admitting that the admission system of Harvard is not perfect, the Court could not rule against Harvard due to the imperfection. The case has yet to provoke controversies regarding race-based admissions, and subsequently the role of affirmative action in college admissions. Two competing views dominate the debate – race-based admission as the remedy for historically mistreated students and equal opportunity for all students, disregarding their races and ethnicities. Abundant studies emerged with elaborated evidence provided in analyzing the role of affirmative action in college admissions, arising from the competing views. In responding to the case, numerous alternatives for race-based college admissions were proposed with statistical analysis. The future of affirmative action in college admissions is pushed to the center stage as the *SFFA v. Harvard* case is yet to be reviewed by the supreme court.

Therefore, this paper aims to provide composed analysis on the impacts of race-based college admissions

to Asian American students and the long term effects in general, along with an analysis on current popular proposed alternatives to provide a comprehensive view on the role of affirmative action in college admissions. Advice is provided for recommended future studies after the case of *SFFA v. Harvard* is heard by the supreme court. Therefore, the main research questions for this paper include how effective is the role of affirmative action in healing the historical wounds, the impacts of college admissions without affirmative action, and what are the pros and cons of the current proposed alternative – SES-based affirmative action in college admissions. The paper’s methodology includes literature review, including quasi-experimental models of different-in-difference and regression discontinuity conducted by Bleemer in investigating the long term impacts of race-based affirmative action to historically underrepresented minorities. It hopes to provide a comprehensive understanding of the current impacts of race-based college admissions, and offer a future provision in guiding the studies for the role of affirmative action in higher education.

## **2. LITERATURE REVIEW**

### ***2.1 Revisiting Affirmative Action***

Before the rise of affirmative action, the unequal treatment of minorities in the United States has long been an issue. The lack of recognition in the legislature has left people of color in future unequal positions in the society. J. Scott Carter and Cameron D. Lippard has followed closely on the beginnings of affirmative action in chapter “Affirmative Action and Higher Education” of the book *The Death of Affirmative Action*. By stressing that “unequal relations and pernicious treatment of minorities have left an indelible mark on the current landscape of the US since its inception”, the chapter brings the spotlight to the historically inequity of minorities in the US society [3]. Due to the fact that “The lack of recognition of inequality and persistent discrimination was primarily fueled by legislature antipathy”, the enforcement of equal opportunities is needed to ensure that historically mistreated groups have the rights to equal access and the legislature power to combat persistent discrimination [3]. In the 1960s, the federal government “took a more forceful stance to eliminate persistent racism and discrimination” [13]. President John F. Kennedy announced to support equal opportunity of employment for minorities, followed by a “restructured federal effort to improve the conditions of groups historically disadvantaged” [3].

The Executive Order 10925 of 1961 demanded federal contractors to “take affirmative action to ensure that applicants are treated equally” regardless of their race, ethnicities and nationalities [3]. This order was the very first proposal that incorporated the concept of

affirmative action, followed by strict enforcement and specific guidelines to reinforce the implementation of affirmative action in employment. Federal government agencies were “asked to reconsider their policies and procedures to ensure that they did not block the hiring of minority candidates through faulty practices”, therefore enforce that opportunities provided by affirmative action effectively reach to minorities [3]. The implementation of affirmative action has marked a good beginning, as the representation of African Americans “rose significantly”, marked by Carter and Lippard. Despite the elaboration on the governmental efforts and the enforcement of the executive order structured by President John F. Kennedy, the overall impact of affirmative action under the executive order is not presented to other minority groups, leaving a gap in discussions on the effectiveness of affirmative action in increasing representation of other historically underrepresented groups.

### ***2.2 Affirmative Action in College Admissions***

Decades after the first executive order incorporating the concept of affirmative action, race-based affirmative action is now an overarching factor in not only ensuring educational access for the minority groups, but also in increasing diversity within higher education institutions. In light of the case in 1978, *Regents of the University of California v. Bakka*, the Supreme Court has ruled the imposed “racial quotas” in college admissions is unconstitutional, yet using affirmative action in increasing minority groups applicants is constitutional in specific circumstances [4]. Carter and Lippard comment that the legal rationale of diversity was established after this case and “setting the stage for current lawsuits against affirmative action” [3]. Promoting to increase diversity through affirmative action is usually employed by schools that have difficulties in admissions of minorities and have underwent histories of racial segregation, especially schools that have elite status with high selectivity [3]. The significance of racial diversity ensured by affirmative action is also emphasized in the case of *SFFA v. Harvard*, where the conclusion of the docket illustrates “For purposes of this case, at least for now, ensuring diversity at Harvard relies, in part, on race conscious admissions.” [3]. Utilizing race conscious admissions reinforce the importance of diversity within higher education, yet how effective is the race-based admission in remedying the historical wounds of racial segregation is controversial.

### ***2.3 Race Conscious Admissions as Band-Aid Solution***

The indelible history of mistreatment toward minorities pushed forward the implementation of affirmative action in college admissions to ensure education equity and promote increasing racial diversity. Carter and Lippard specifically note that the Supreme

Court reprimanded using affirmative action to “atone for past discrimination”, quoting Justice Lewis Powell that affirmative action could not be used to counter ‘the effects of societal discrimination’ [3]. Without principled basis for deciding what groups will be benefited and which would not by ‘heightened judicial solicitude’ [3], it is difficult to lay claim on the effectiveness of using affirmative action, or the race conscious admissions derived from affirmative action, to resolve the past racial discrimination.

The discussion regarding the inability of affirmative action policies in combating societal discrimination and cases that casted doubts on affirmative action, is addressed by Wendy Leo Moore as “continuous assault on affirmative action policies” and hence posited the policy as structurally irrelevant [5]. In “Maintaining Supremacy by Blocking Affirmative Action”, Moore stressed that the “diversity-only rationale” has constructed race as “amorphous concept”, and the Court’s conception of racial diversity is connected to the rhetorical frame that “simultaneously disavowing the relevance of historical and contemporary institutional and structural racism.” [5], such legal formation will fail to redress structural racial inequality. The boundaries of current affirmative action, especially its inability in tackling the structural racial hierarchy, including the race-based college admissions, “has become a powerful rhetorical device for White conservatives... to mobilize support for anti-civil rights activism” [5]. The compelling argument addressed by Moore raised questions about the current discussions on affirmative action policies. When public opinions are directed to oppose affirmative action due to the lack of fundamental impacts on racial hierarchies, the race-based admissions will also be depicted as the band-aid solution on historical wounds and a mere device used to reinforce white domination. The argument offered by Moore is essential in reminding that after the case of *SFFA v. Harvard*, race-based affirmative action in college admissions could be used against minorities by mobilizing Asian American students. It will cause more backlashes, therefore, to irrationally support the elimination and blocking of affirmative action, since it could be easily used in favor of conservatives to reinforce white supremacy.

Along with Moore’s argument, Kermit Roosevelt III also casts doubt on race-based affirmative action in college admissions regarding the overall effectiveness of which. In his writing “The Ironies of Affirmative Action”, he emphasizes that the diversity rationale recognized by the Supreme Court only benefit minorities incidentally, because “The point of affirmative action under the diversity rationale ...is not to enhance the career prospects of its recipients, but rather to improve the educational experience of all students” [6]. In the current settings where students employed by the programs in schools are mostly white, race-based admissions in increasing diversity benefit the learning

experience of all students, especially white students, yet have little effect on improving career prospects of minority students. Under this scenario, the goal for colleges to increase diversity through race conscious admissions becomes doubtful. Without sufficient evidence on how race conscious college admissions improve minority students in the long term, the concept of affirmative action as a band-aid solution will be further reinforced.

## **2.4 Affirmative Action and Reverse Discrimination**

While a number of discussions refer affirmative action in higher education is rather a band-aid solution and a tool used to reinforce white supremacy, opponents of affirmative action have claimed that the policy becomes institutional support to reverse discrimination against whites [3]. The case of *SFFA v. Harvard* also sheds light on increasing diversity at the expense of Asian American students. Carter and Lippard describes such accusation as “a call that turns racial prejudice on its head and portrays whites as the victims of racial discrimination” [3].

The ongoing debate of race conscious affirmative action has, however, shifted from the perspective of “whites as the victims” to the lens of Asian American students as the victims. In Jennifer Lee’s “Reckoning with Asian America and the New Culture War on Affirmative Action”, Lee shifted the narrative to public assumptions to Asian Americans themselves, to counter the fact that Asian Americans “voices have been drowned out by polarizing rhetoric... who claim that Asians are both victims and opponents of the policy” [7]. Such perspective is becoming more overarching in understanding voices coming from students who have directly or indirectly been impacted by race conscious admissions, rather than be a mere representation of victims of reverse discrimination, a tool that could be used to advocate for anti-affirmative Action by conservatives.

In the original complaint brought by Student for Fair Admissions against Harvard, it is illustrated that the “admissions plan Harvard advocated for in *Bakke*” has been utilized as a mechanism to hide “systematic campaign of racial and ethnic discrimination against certain disfavored classes of applicants” [8]. The plaintiff than draw parallel between how Harvard has employed the mechanism in hiding away the discrimination against Jewish applicants in 1922 to today’s case of Asian American applicants. The “admissions plan”, according to *SFFA*, has been used as a tool to “...justify its disparate treatment of another high-achieving racial and ethnic minority group” [8]. Despite the Court eventually ruling in favor of Harvard, the original complaint brings forth a question about whether college admissions have been utilizing the admissions plan against specific groups of

students. It also questions that whether using affirmative action in college admissions with embedded intention to raise or lower different groups of students, will consider as a reverse discrimination. If race conscious affirmative action admissions is broadly used against Asian Americans, then the dreams of the groups of students are sadly, not affirmed due to the system that supposedly helps ensure equal opportunity.

### **2.5 Study on College Admissions without Affirmative Action**

A study conducted by Zachary Bleemer discerned the impacts of banning race-based affirmative action at California public universities in 1998. California Proposition 209 ended affirmative action in UC in 1998, and the study aims to detect the “impact of affirmative action on students’ college quality, course performance, choice of major, degree attainment, and wages over the subsequent 15 years” [9]. The outcomes of Black and Hispanic applicants are compared with the academically comparable white and Asian applicants before and after Proposition 209, and additionally Bleemer links the data statistics to measure applicants’ university quality [9].

### **2.6 Methodology**

In Bleemer’s study, he employed a quasi-experimental approach, difference-in-difference, to estimate the impact of Prop 209 on underrepresented minority (URM) US applicants. The control group is non-URM UC applicants, serving as the comparison to the treatment group, the URM UC applicants [9]. In identifying “the value of being admitted to a selective public university for the on-the-margin white and Asian students likely to obtain greater university access after Prop 209”, Bleemer also employed a regression discontinuity design [9].

## **3. OUTCOME ASSESSMENT AND DISCUSSION**

Through the models of difference-in-difference, Bleemer shows that ending affirmative action to URM freshman applicants “cascade into lower quality colleges” [9]. The decreased admissions of URM applicants resulted in the disproportionate declines in UC enrollment [10], and as URM applicants had higher likelihood to exit UC system, it led to more than 4 percentage points for these applicants to earn Bachelor's degree from any colleges in the U.S. [10]. These have suggested that Prop 209 reduced both equity and efficiency of higher education in California [9].

The regression discontinuity conducted with admissions data from UC Berkeley have shown that “students just below Berkeley’s admissions threshold nevertheless ended up with similar educational and labor

market outcomes after enrolling at other universities” [9]. Bleemer concludes that the value of selective public universities’ access for on-the-margin non-URM students was small in the long-run educational or wage returns. In addition, Bleemer noted that “White and Asian students were proportionally impacted by Prop 209, with no evidence of disparate impacts for one or the other” [9] based on the provided results analysis on the long term impacts. These findings together contribute to offer causal evidence that ending affirmative action has “exacerbates socioeconomic inequities”, and Bleemer concludes that “affirmative action’s net educational and wage benefits for URM applicants exceed its net costs for on-the-margin white and Asian applicants.” [9]

The outcome of the confounding study conducted by Bleemer suggests that affirmative action has potential impacts on socio-economic mobility when compared to the aftermath of banning race conscious college admissions. With the perspective of ending affirmative action will aggravate the socioeconomic inequities, maintaining affirmative action in college admissions have sufficient benefits in outweighing the negative effects – “net costs for on-the-margin white and Asian applicants” [9]. The conclusion has offered a new lens for the current discussions provoked by the case *SFFA v. Harvard*, as the study offers a long term impact assessment in ending race conscious admissions may lead to further socioeconomic inequalities for minorities. While studying the future of affirmative action and other proposed alternatives, it is overarching to incorporate the potential effects in the long run for URM students.

## **4. SES-BASED AFFIRMATIVE ACTION AS ALTERNATIVE AND ANALYSIS**

While the *SFFA v. The Harvard* case remained controversial topics, numerous studies have been conducted to research on proposed alternatives for affirmative action to offer a future provision of possible options in substituting race conscious admissions. Current dominant strategy for race neutral admissions is Socioeconomic Status (SES)-based Affirmative Action.

SES-based affirmative action proposed that admissions advantages are given to students with disadvantaged socioeconomic backgrounds instead of races. This proposed alternative aims to achieve the similar goal of race-based college admissions in increasing diversity in academic settings, but through socioeconomic-based admissions. Reardon et al. have conducted the study on the effectiveness of SES based affirmative action in reaching the same goal as race-based admissions. Upon the study conducted based on simulations of this alternative, Reardon et al. have found that although SES-based affirmative action had impacts on socioeconomic diversity, it fails to substantially increase racial diversity, which is the original goal for implementing affirmative action in US higher education

[11]. The study concluded that race-based affirmative action, although imperfect, effectively increases racial diversity at schools compared to SES-based affirmative action [11].

Although the study conducted by Reardon et al. offers confounding simulations on SES-based college admissions, it has an embedded emphasis on reaching racial diversity as the overall purpose. That being said, although race-based affirmative action is more effective than SES-based affirmative action, the effects of SES-based college admissions also have irreplaceable effects on increasing the educational opportunities for lower class minorities. Increasing racial diversity in academic settings through race conscious admissions did not account for historically mistreated minorities that are coming from lower socioeconomic backgrounds. In fact, according to Raj Chetty's finding on socioeconomic backgrounds of currently enrolled students at Harvard, "approximately 3% of children at Harvard in the 1980-82 birth cohorts come from the lowest income quintile of families" relative to "more than 70% from the top quintile" [12]. While many elite colleges, similar to Harvard, have placed emphasis on racial diversity as the critically important, minority students with higher socioeconomic backgrounds have larger chances in being admitted into these universities, leaving out the lower minority students with lower socio-economic status. It is essential in considering whether shifting the focus from race-based to socioeconomic-based affirmative action could further maximize the concept of equal opportunities for all students.

## 5. CONCLUSION

While race-based affirmative action is still widely adopted by college admissions, especially federal contractors, the overall effects of affirmative action in remedying the long term historical wounds is controversial. College admissions that merely utilize race conscious admission to increase racial diversity for higher educational quality are not directly effective in improving career prospects of minority students in the long run. Therefore, it is essential in noting that extreme support or opposition to affirmative action is irrational in providing future provision of college admissions.

The case of *SFFA v. Harvard* questions whether affirmative action lead to reverse discrimination toward specific groups of students, and if race conscious affirmative action admissions is broadly used against Asian Americans, then the dreams of the groups of students are sadly, not affirmed due to the system that supposedly helps ensure equal opportunity. It is overarching in noting that in discerning the whether the race conscious admissions has led to reverse discrimination, voices came from students who have been directly impacted are essential, as the other alleged "representation" of voices from Asian Americans

students could drown the voices from the students groups.

While discussing the aftermath of ending affirmative action in college systems, in Bleemer's study conducted before and after Prop 209, the conclusion has offered a new lens for the current discussions provoked by the case *SFFA v. Harvard*. The study offers a long term impact assessment in ending race conscious admissions may lead to further socioeconomic inequalities for minorities. The study has provided that race-based affirmative action is overarching in increasing socio-economic mobility and equity. In addition, the study noted the importance of incorporating the potential effects in the long run for URM students.

Current proposed alternative, SES-based affirmative action, is proved to be effective in increasing socioeconomic diversity in college settings but is not compatible with race-based affirmative action in increasing racial diversity according to the study conducted by Reardon et al. Nevertheless, the lens for many studies conducted to examine the effectiveness of SES-based affirmative action have incorporated the purpose of increasing racial diversity. While many elite colleges, similar to Harvard, have placed emphasis on racial diversity as the critically important, minority students with higher socio-economic backgrounds have larger chances in being admitted into these universities, leaving out the lower minority students with lower socio-economic status. It is essential in considering whether shifting the focus from race-based to socioeconomic-based affirmative action could further maximize the concept of equal opportunities for all students.

In order to fully understand the future of affirmative action, especially after the case *SFFA v. Harvard*, which is to be heard by the Supreme Court soon, future studies need to focus on rationally approaching the role of affirmative action in college admissions, and possibly incorporating voices from different groups of students in discussing the direct impacts of race-based college admissions. When assessing possible alternatives as substitutions of affirmative action, the long term impacts of URM students need to be clearly addressed with sufficient and transparent data from college admissions. While most studies on current alternatives now focus on the goal to increase diversity, it is essential in considering shifting the focus from increasing racial diversity to socio-economic diversity to see possible long term impacts on overall impacts on socio-economic equity of minority students in the long run.

## REFERENCES

- [1] Varyani, N. Students for fair admissions v. harvard: Affirmative action, race-based policies, and preference falsification. *Boston Bar Journal*, 2021, 65(2), 1.

- [2] UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS. 2019. FINDINGS OF FACT AND CONCLUSION OF LAW. [https://lawyerscommittee.org/wp-content/uploads/2020/07/Docket-672\\_Findings-of-Fact-and-COL\\_Harvard\\_GBT.pdf](https://lawyerscommittee.org/wp-content/uploads/2020/07/Docket-672_Findings-of-Fact-and-COL_Harvard_GBT.pdf)
- [3] Carter, J. S., & Lippard, C. D. Affirmative Action and Higher Education. In *The Death of Affirmative Action: Racialized Framing and the Fight Against Racial Preference in College Admissions*, Bristol University Press. 2020. 1st ed., PP. 19–40. <https://doi.org/10.2307/j.ctvz938hc.6>
- [4] Regents of the University of California v. Bakke. Applications and Motions. 1977. <http://blackfreedom.proquest.com/wp-content/uploads/2020/09/bakke3.pdf>
- [5] Moore, W. L. Maintaining Supremacy by Blocking Affirmative Action. *Contexts*, 2018, 17(1), 54–59. <https://doi.org/10.1177/1536504218766552>
- [6] Roosevelt, Kermit III, "The Ironies of Affirmative Action". Faculty Scholarship at Penn Law. 1598. 2015. [https://scholarship.law.upenn.edu/faculty\\_scholarship/1598](https://scholarship.law.upenn.edu/faculty_scholarship/1598)
- [7] Lee, J. Reckoning with Asian America and the New Culture War on Affirmative Action. 2021. <https://doi.org/10.1111/socf.12751>
- [8] UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS BOSTON DIVISION. Original Complaints. Students for Fair Admissions v. Harvard. 2014. <https://lawyerscommittee.org/wp-content/uploads/2020/07/Original-Complaint.pdf>
- [9] Bleemer, Z. AFFIRMATIVE ACTION, MISMATCH, AND ECONOMIC MOBILITY AFTER CALIFORNIA'S PROPOSITION 209. 2021. [https://zacharybleemer.com/wp-content/uploads/2020/08/AA\\_Mismatch\\_Paper.pdf](https://zacharybleemer.com/wp-content/uploads/2020/08/AA_Mismatch_Paper.pdf)
- [10] Bleemer, Z. Proposition 209 and Affirmative Action at the University of California. 2020. <https://zacharybleemer.com/wp-content/uploads/Policy-Briefs/UC-CHP-2020.4-Affirmative-Action.pdf>
- [11] Reardon, S. F., Baker, R., Kasman, M., Klasik, D., & Townsend, J. B. What levels of racial diversity can be achieved with socioeconomic-based affirmative action? Evidence from a simulation model. *Journal of Policy Analysis and Management*, 2018, 37, 630–657. <https://doi.org/10.1002/pam.22056>
- [12] Chetty, R. et al. Mobility Report Cards: The Role of Colleges in Intergenerational Mobility. 2017. [http://www.equality-of-opportunity.org/papers/coll\\_mrc\\_paper.pdf](http://www.equality-of-opportunity.org/papers/coll_mrc_paper.pdf)
- [13] Kellough, J.E. Understanding affirmative action: politics, discrimination, and the search for justice. 2006.