Olympiads School/11 English/Handout 7

This week, we will weigh affirmative action on the scales of justice.

Affirmative Action

Read Emma Sarran Webster's *Teen Vogue* article "Affirmative Action: What It Is and How It Works"

On August 1, *The New York Times* reported that Donald Trump's administration will be tasking the Justice Department's civil rights division with taking on affirmative action — namely, investigating whether or not the policy is discriminatory. The next day, the Justice Department refuted that claim, but spokesperson Sarah Isgur Flores did say the department is looking into a complaint filed by a group of Asian-American associations that centers around the assertion that affirmative action discriminates against certain minorities. The Department of Education dismissed the complaint in 2015 because Harvard University was facing a similar lawsuit in federal court, a case that is still ongoing. Affirmative action has long been a controversial policy, with lawsuits dating back decades. Here's what you need to know about it.

What is affirmative action? Affirmative action is a policy used by colleges and universities to improve the educational opportunities for minority groups (including minority races, genders, and sexual orientations) that are commonly and historically discriminated against. The term was first introduced in 1961 by President John F. Kennedy, who, in an executive order, stated that government contractors "take affirmative action to ensure that applicants are employed, and employees are treated during employment, without regard to their race, creed, color, or natural origin." That order further emphasized the need for equal opportunity, and the policy soon made its way to higher education admissions.

Historically, "the people who [had] benefited by...higher education admissions policies had been essentially white males, particularly if they had a legacy [meaning they were relatives of alumni]," Peter W. Cookson Jr., senior researcher at the Learning Policy Institute, tells *Teen Vogue*. "[Affirmative action] was an attempt to bring equity and equal opportunity to the admissions process."

1. What is your initial opinion affirmative action?

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How widely is it used? Not every school uses affirmative action in its admissions. In fact, *Slate* reported that based on recent findings, the policy has been on the decline over the past couple decades. And eight states have prohibited public universities from taking race into consideration in admissions.

But affirmative action is still commonplace among America's most competitive schools. "Most colleges are not that competitive to be admitted," Cookson says. "There are more than 3,000 [four-year] colleges in the United States [and] probably only a couple hundred of them are really competitive. That's important to know, because that's where the action is. It's not by chance it was Harvard that's being sued," he notes, referencing the lawsuit alleging the university's affirmative action policies discriminate against Asian-American applicants. Which brings us to…

2. Where, if anywhere, should affirmative action be employed?

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What do the critics say? Opponents of affirmative action believe the policy is outdated and no longer necessary, and that it leads to reverse discrimination by disadvantaging majority groups, like white students, either by admitting minority applicants over white ones who are more qualified, or by prioritizing minority applicants over white applicants who are otherwise on a level playing field. "That is, if there are two students with equal qualifications and one happens to be African American and one happens to be Caucasian, that the African American will have an advantage over the Caucasian," Cookson says. "There isn't really much evidence of this, but that's the argument that's made."

And then there's the aforementioned argument that affirmative action discriminates against Asian students, who typically need higher test scores and grades to be admitted into very competitive universities — though *BuzzFeed News* reports some Asian-American groups believe cases like the one against Harvard are using Asian students to dismantle policies aimed at helping black and Latinx students, and recent polls have shown the majority of Asian-Americans support affirmative action overall.

The reverse discrimination argument was the center of a landmark Supreme Court case decided last year. Abigail Fisher sued the University of Texas after being denied admission, claiming the decision was made because she is white. But the university stated that Fisher wasn't denied because of her race; she was denied because of her academic performance. Texas does have a rule in place that grants graduates in the top 10 percent of their high school classes automatic admission to state universities (though the flagships' percentages are smaller, top 7 or 8 percent in recent years), and Fisher — who was 82nd out of 674 students in her graduating class — did not qualify. Ultimately, the Supreme Court ruled against Fisher and in favor of upholding affirmative action. "The Court's affirmance of the University's admissions policy today does not necessarily mean the University may rely on that same policy without refinement," Justice Anthony M. Kennedy wrote in the majority opinion. "It is the University's ongoing obligation to engage in constant deliberation and continued reflection regarding its admissions policies."

And the proponents? The basis of the argument is that "minority groups, which include women, have been discriminated against historically, and that there is a constitutional protection that they should have equal opportunity," Cookson says. And when it comes to college, the opportunity to attend generally helps foster even more opportunity beyond graduation: According to *USA Today*, college graduates earned 56 percent more than high school graduates in 2015. And as *Slate* points out, graduating from an elite school — which is more likely to use affirmative action — typically helps open even more doors than graduating from a less competitive school, particularly for minorities and first-generation college attendees because it helps open up professional networks.

Plus, learning in a diverse environment (not just as it pertains to race and ethnicity, but also gender, sexual orientation, and more) is arguably beneficial to all students, not just minorities. Affirmative action "diversifies the student body, and actually that's a huge deal," Cookson says. "Having people from different backgrounds in colleges actually improves educational opportunities for students."

And while affirmative action critics may say the policy is outdated and unnecessary for ensuring diversity on campuses, statistics say otherwise. According to the National Center for Education, of the nearly 20 million students enrolled in postsecondary institutions in the fall of 2015, 55 percent were white, while 14 percent were black and 17 percent were Hispanic. And the race gap is far greater at elite schools: According to the Brookings Institution, black students account for only 4 percent of undergraduate attendees at the nation's top colleges.

Affirmative action policies have helped steadily increase enrollment of minority students, whereas the lack thereof has done the opposite. *FiveThirtyEight* reported in 2015 that in states where race-based affirmative action has been banned, black and Hispanic enrollment has suffered.

And then there's the argument that affirmative action may help balance out the admissions advantages afforded to legacy students, the majority of whom at prestigious Ivies are white. The fight against affirmative action "overlooks legacy issues that are really important, particularly in selective colleges," Cookson says. "I'm afraid [the Justice Department] might end up...defining the problem in a very narrow way and not see the bigger picture."

3. What are the arguments for and against affirmative action?

For	Against

What are the most common misconceptions about it? Perhaps one of the biggest misconceptions about affirmative action is that it gives black and Latinx applicants an unfair advantage. But affirmative action-style policies can be used to increase diversity in more than just racial terms. (And class-based affirmative action programs can also increase socioeconomic diversity in schools.) Many have argued that white women have historically benefited significantly from it.

Though some may believe otherwise, the use of affirmative action doesn't mean that universities blindly accept unqualified minority applicants simply to fill some a specified quota. In fact, in 1978 the Supreme Court ruled that using racial quotas in college admissions is unconstitutional. But it *is* legal to consider race (or another minority status) as one of many factors in an admissions decision. "It's looking at the whole student," he says. "You can look at their background, their essays, all the things that people put into their applications," Cookson says. "It's a process of making a judgment about who will be successful and who will fit into the school." For example, he notes, admissions officers may also consider things like special skills (such as musical or athletic) and even academic specialties as factors when admitting applicants to make up a diverse student body.

And that plays into what Cookson thinks is another misguided belief relating to affirmative action: that GPAs and test scores should be the only criteria used to evaluate applicants. For example, in the case of the Asian-American applicants represented in the lawsuit (which was filed by the nonprofit Students for Fair Admissions) against Harvard, they may have had higher grades or test scores than some other minority students who were accepted, but that doesn't mean they were the most

qualified or the best fit for the school. "A university is in large part defined by those intangible 'qualities which are incapable of objective measurement but which make for greatness,'" Justice Kennedy wrote in the Supreme Court majority opinion in Fisher's case last year. "Considerable deference is owed to a university in defining those intangible characteristics, like student body diversity, that are central to its identity and educational mission."

Cookson emphasizes that point as well. "Standardized tests don't really explain much of...what it takes to be successful in college," he says. "I'm not saying they're not important, but there are many other things that matter: determination, grit, background. If you look at kids who come from low-income families who do get into college, often they've overcome tremendous odds to get there and they have all kinds of personal characteristics that are [valuable] not only to college but also...to society. So I think we need to broaden the discussion about that and what makes for a really healthy, diverse, inclusive, intellectually stimulating student body."

4. List the misconceptions about affirmative action in the space below.

5. Watch the video "What we get wrong about affirmative action": youtube.com/watch?v=HuUDhfKV3bk

What's next? The Justice Department may have refuted the report that it'll be broadly attacking affirmative action, but Cookson says the topic is worth revisiting. "I think this is worth a public debate," he says. "Obviously, there [are] a lot of people who have concerns about it, and so we live in a democracy and we should have this debate in an open way."

That doesn't necessarily mean suing all of the schools that still use the policy, though. Rather, it may mean pushing for more transparency in the process. "Part of the solution, I think, lies with college admissions officers," Cookson says. "Leaving aside issues of affirmative action...it's a pretty private set of decisions that people make, particularly in private universities...and somehow, maybe, that [process] needs to be opened up. We need to understand how people go about making these decisions, and maybe be a little bit more transparent and forthright about that."