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VCC-Topic A
Backgrounder Guide



Affirmative Action Policies in Post-Secondary Education - US Senate

Topic A

PacificMUN



Letter from the Director

Dear Delegates,

Welcome to Pacific Model United Nations 2018 and the United States Senate. My name is Siddharth Shende and I will be the Director of the UNHRC, this year. I am an 11th grader at Tesla STEM High School in Redmond, Washington, United States. Serving alongside me, is the Chair - Irene Zhang, a 12th grader at Fraser Heights Secondary School. And, the other chair - Hattie Zhang, a 12th grader at Southridge School.

The senate was founded to pass legislature on relevant and pressing topics in the United States - and represent the people. It is the job of senators like you to ensure that you are representing the views of the citizens in your state.

The topic that senators will work together to solve is the “Reformation of Gun Laws”. We chose these topics because they are very relevant in the world we live in today, and their many intricacies make for a very engaging and intellectual process for all senators to collaborate for a, hopefully, shared solution.

The intention of this background guide is to provide information and background research for further exploration. The types of debate we would like to see in this committee is debate that is both compromising and persistent debate - delegates should know when it is right to compromise and when it is right to stay strong to their country's policy.



Feel free to email us with any questions you have. I am very excited to be meeting you all and cannot wait to hear all the types of interesting debate that I know I will see.

Sincerely,

Siddharth Shende
Director of US Senate
PacificMUN 2019

Committee Overview

The United States (US) Senate is one of the two houses of the legislature in the United States. Alongside the House of Representatives, the US Senate is responsible for all the lawmaking in the United States. The US Senate was founded on July 16, 1787, by the framers of the constitution – to represent all the states equally by the senators (unlike the House of Representatives). The Senate can propose legislation and even debate and propose bills. Each senator represents the people living in his/her state of the United States. The Senate can also give opinions on the current president, and if need be, vote on the impeachment of the said president. Most importantly, the role of the Senate is to make sure that each person's views are being heard through the type of legislative bills that are being passed – albeit for security, the economy, healthcare etc. In addition, the US Senate can review, approve, and even reject presidential appointees to executive and judicial branches.

The US Senate and all of its proceedings and bills passed are crucial to upholding the very constitutional framework that the United States was built on. Some recent achievements accomplished by the United States Senate include passing a great quantity of bills to relevant topics. For example, the H.R.5428 or the "Stand with UK against Russia Violations Act" focused on condemning the actions of Russia with their spies this past year. In addition, another bill the H.R2353 or the "Strengthening Career and Technical Education for the 21st Century Act" focused on strengthening specialty education within the American school system. The terms of each of the senators are constantly changing so that only about 1/3 of the Senate is up for reelection during any election, with elections to the Senate being staggered over even years. Senators also serve six-year terms per senator, adding to the continuous flow of the United States senate. The US Senate has been involved in all the major judicial processes and proceedings within the United States and has



continued to serve as a key functioning body within the United States to solve relevant problems and issues.

Topic A: Affirmative Action Policies in Post-Secondary Education

Introduction

In the general term of the phrase “affirmative action policies”, it tends to mean “those in which an institution or organization actively engages in efforts to improve opportunities for historically excluded groups” (NCSL). The phrase was first coined by President John F. Kennedy in an executive order for employment purposes in regards to race, creed, color, or national origin. Policies were initially focused on improving opportunities for African-Americans in employment and education. For example, the Supreme Court’s Brown v. Board of Education decision in 1954 outlawed school segregation.

In more recent years, post-secondary institutions (colleges and universities across the United States of America) have begun to adopt similar recruitment policies. According to a study done by Pew Research, from the years of 1996 to 2012, college enrollment among Hispanics aged 18 to 24 more than tripled (240% increase). With African Americans having an almost 72% increase in college enrollment. On August 30th, 2018, the Justice Department under President Donald Trump sharply criticized Harvard University’s admission practices - engaging in “racial balancing” when selecting a class (Chicago Tribune). Attorney General Jeff Sessions said in a statement, “No American should be denied admission to school because of their race, ... As a recipient of taxpayer dollars, Harvard has a responsibility to conduct its admissions policy without racial discrimination...” The plaintiff in the Harvard case was a group called Students for Fair Admissions that sued in 2014 for Harvard’s alleged unfair and unlawful admissions practices against Asian-Americans.

The first major legal setback for voluntary affirmative action was “Regents of the University of California V. Bakke” (1978), in which the Supreme Court struck down an admission plan at the University of California, Davis, medical school. The legal debate stemmed from the university setting aside a quota for admissions, based on race, and the plaintiff - Allan Bakke was denied admission even though he had higher test-scores than other applicants (Legal Dictionary). They key challenges lie



within the defining of the certain situations in which such bias is legally acceptable and how to determine those instances.

Timeline

March 6, 1961 - Executive Order 10925 makes the first reference to "affirmative action". President John F. Kennedy creates the Committee on Equal Employment Opportunity to ensure that hiring and employment practices are free of racial biases.

June 28, 1978 - "Regents of the University of California v. Bakke". This landmark Supreme Court Case imposed limitations on affirmative action due to quotas being set on admissions by the University of California, Davis, Medical School.

March 18, 1996 - "Hopwood v. University of Texas Law School". Cheryl Hopwood and three other white law-school applicants at the University of Texas challenged the school's affirmative action program - the 5th U.S. Court of Appeals suspended the university's affirmative action admissions program as a result.

November 3, 1997 - "Proposition 209 enacted in California". This enacted a state ban on all forms of affirmative action in the state of California, including public employment, public education, or public contracting.

December 3, 1998 - "Initiative 200 enacted in Washington State". Washington becomes the second state to abolish state affirmative action measures - similar to California's Proposition 209.

February 22, 2000 - "Gov. Jeb Bush's One Florida Initiative". Florida legislature approved education component of the initiative, aimed at ending affirmative action in the state.

March 27, 2001 - "Grutter v. Bollinger". A different judge ruled on a case similar to the University of Michigan case, ruling that "intellectual diversity bears no obvious or necessary relationship to racial diversity"



June 23, 2003 - "Grutter v. Bollinger". The Supreme Court upheld affirmative action in university admissions. The court (5-4) upheld University of Michigan Law School's policy, ruling that race can be one of many factors considered by colleges when selecting their students.

June 24, 2013 - "Fisher v. University of Texas". The court allowed universities to continue considering race as a factor in admissions to achieve diversity.

August 30, 2018 - The U.S. Justice Department sharply criticize Harvard University's admission practices, suggesting that the university engages in racial balancing.

Historical Analysis

Discrimination is usually defined as certain treatment and/or consideration based on class or category, rather than individual merit.¹ Racial and gender discrimination has existed in the United States since the age of colonialism and remains a controversial topic today. In 1865, the Thirteenth Amendment to the United States Constitution abolished slavery, however, the separation of people of colour and white Americans through the Jim Crow laws persisted well into the 1960s.² The presence of women in higher education has mostly been non-existent in America until the first wave feminism movement of the 20th century.³ It is only after the 1930s where it has been desensitized as gradually more and more institutions becomes coeducational.⁴

In 1954, through the Brown v. Board of Education case, the US Supreme Court rules that the "separate but equal" doctrine violates the Constitution, thus ending racial segregation in school. To further eliminate pre-existing discrimination, affirmative action was first established through President John F. Kennedy's "Executive Order No. 10925" in 1961, which included a provision 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 national origin."⁵ Four years later, in a graduation speech by President Johnson at Howard University, he defined the concept underlying affirmative action, and the program came in full order for the first time in 1965.⁶ In the following year,

¹ <https://www.thefreedictionary.com/Social+discrimination>

² https://en.wikipedia.org/wiki/Racism_in_the_United_States

³ https://en.wikipedia.org/wiki/Women%27s_education_in_the_United_States

⁴ https://en.wikipedia.org/wiki/Mixed-sex_education#Colleges

⁵ https://en.wikipedia.org/wiki/Affirmative_action

⁶ <https://www.infoplease.com/spot/timeline-affirmative-action-milestones>



the order, Executive Order 11246, was amended to cover gender discrimination.⁷ Historically and internationally, affirmative action were implemented to bridge inequalities in employment and pay; increase access to education; enrich state, institutional, and professional leadership with the full spectrum of society; redress apparent past wrongs, harms, or hindrances, in particular to the social imbalance left by systematic slavery and slave laws.⁸

The first opposition of affirmative action came in June of 1978, where Allan Bakke, a white applicant, was rejected by the University of California, Davis, Medical School even though some minority students with lower test scores than his were admitted into the program.⁹ This issue was brought into court and prompted the Supreme Court to impose limitations on affirmative action, that to ensure greater opportunities for minorities did not come at the expense of the majority.¹⁰ On July 19, 1995, a White House memorandum called for the elimination of any program that “(a) creates a quota; (b) creates preferences for unqualified individuals; (c) creates reverse discrimination or (d) continues even after its equal opportunity purposes have been achieved.”¹¹ In 1997, California became the first state to ban all affirmative action, and this action was emulated a year later by Washington, however only abolishing state affirmative action measures.¹² Although the necessity of affirmative action has been questioned again and again through cases such as the 2001 “Grutter v. Bollinger” and “Fisher v. University of Texas”, the Supreme Court has continuously allowed universities to consider race as a factor when it comes to diversifying admission.¹³

More recently, the conversation regarding affirmative action seems to revolve around America’s most prestigious university: Harvard. In November of 2014, Students for Fair Admissions sued Harvard University for its alleged intentional discrimination against Asian-Americans.¹⁴ This lawsuit again brought affirmative action under the spotlight, and has since increased the racial tension between minority Americans.¹⁵ In 2018, the Justice Department criticized Harvard’s admission practices, asserting that the institution engages in “racial balancing”. Although the university has denied the

⁷ http://www.understandingrace.org/history/gov/begin_end_affirm.html

⁸ https://en.wikipedia.org/wiki/Affirmative_action

⁹ <https://www.infoplease.com/spot/timeline-affirmative-action-milestones>

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

¹³ Ibid.

¹⁴ <https://www.cnn.com/2013/11/12/us/affirmative-action-fast-facts/index.html>

¹⁵ https://en.wikipedia.org/wiki/Affirmative_action



claim, the Trump administration has been sympathetic to the plaintiff's argument, further politicizing the issue.¹⁶

Current Situation

Overview of Affirmative Action Policies

Affirmative action is the policy of promoting the education and employment of members of groups that are known to have previously suffered from discrimination, aimed to bridge inequalities in employment and pay, and to increase access to education, promote diversity and readdress apparent past wrongs, harms, or hindrances – especially the aftermaths of slavery.¹⁷ The term “affirmative action” originated from an executive order by President John F. Kennedy on March 6, 1961 to promote non-discrimination in the United States. In the workplace, it has been the single most important economic factor in raising the black middle class.¹⁸ However, when it comes to post-secondary education, the question remains: “Should universities admit ‘less qualified’ applicants, on the basis of criteria designed to help offset historical inequities?¹⁹ Black and Hispanic Americans would benefit the most from affirmative action since higher education has been proven to be the key in breaking the cycle of poverty.²⁰ Most Americans agree with the statement that the government should promote actions to achieve non-discrimination, however, the exact measure and degree of help given has been the subject of ongoing legal and political controversy.²¹ Additionally, while a lot of the discussion has been centered around race as a critical factor in post-secondary institutions’ admissions, there is a role that gender plays within this, as well. For example, 67% of Americans support affirmative action for women, which is more than the 58% of Americans that support affirmative action for racial minorities.²²

¹⁶https://www.washingtonpost.com/education/2018/08/30/justice-dept-criticizes-harvard-affirmative-action-case/?utm_term=.9858724d7a4f

¹⁷ https://en.wikipedia.org/wiki/Affirmative_action

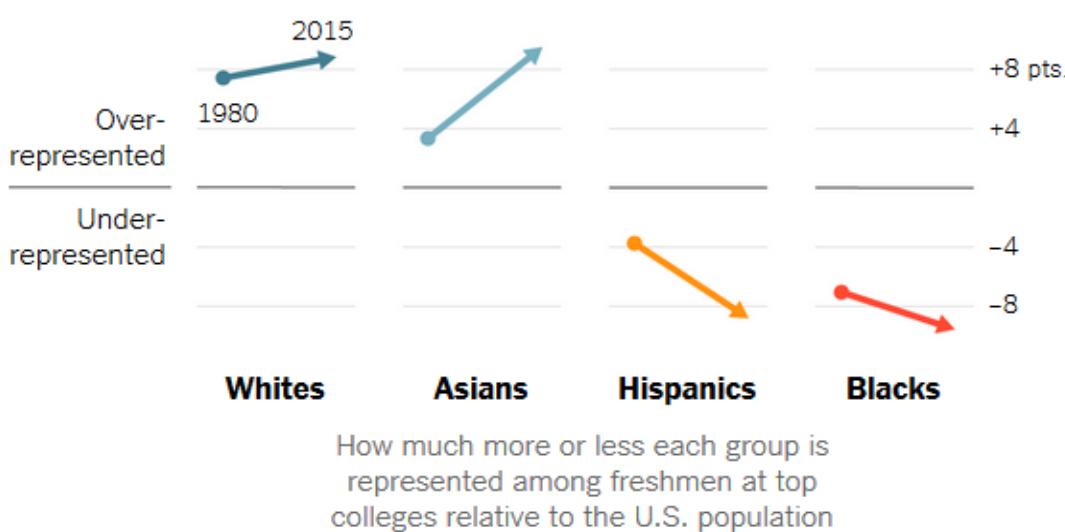
¹⁸ <https://www.nytimes.com/1995/08/07/opinion/affirmative-action-on-the-merit-system.html>

¹⁹https://www.washingtonpost.com/news/answer-sheet/wp/2017/08/02/actually-we-still-need-affirmative-action-for-african-americans-in-college-admissions-heres-why/?utm_term=.1de70d0e92a0

²⁰ https://www.huffingtonpost.com/gloria-bonilla-santiago/education-key-to-breaking_b_14369716.html

²¹ <https://www.nytimes.com/interactive/2017/08/24/us/affirmative-action.html>

²² <https://news.gallup.com/poll/184772/higher-support-gender-affirmative-action-race.aspx>



This above graph shows that even with some affirmative action policies, blacks and hispanics are more underrepresented at top colleges than over 5 years ago.²¹ According to this graph, from the New York Times, it is evident that statistically, affirmative action policies have actually helped Asians and Whites - but have not tended to help (as seen in under-representation) hispanics and blacks--the races that were supposed to be being helped by the affirmative action policies.

Controversies Regarding the Issue

Opinions regarding affirmative action policies in post-secondary education could be categorized into two main factions, with one side believing strongly that it is the route to equitable access in tertiary education, and the other believing that it can amount to unfair discrimination. Some advocates against affirmative action policies argue that the system should judge the applicants according to income, not race, thus ensures lower-class Asian and white students in receiving equal assistance during the application process.²² Critics of the idea argue that affirmative action replaces “old wrongs with new wrongs”, undermines the achievements of minorities, increases racial tension, and benefits the less fortunate in the expense of the more fortunate.²³ Nevertheless, a diverse population has proven to aid students gain a greater awareness of social issues, adds a plurality of different ideas and life experiences to the classroom and campus dynamic, therefore bridges the overall racial gaps in society.²⁴ In the end, more Americans are for rather than against affirmative action. According to a Gallup poll in 2015, 67% of the general population supported programs aimed at increasing female representation, while 58% supported such programs aimed at increasing the representation of racial minorities.²⁵

²² <https://www.theatlantic.com/national/archive/2012/10/the-painful-truth-about-affirmative-action/263122/>

²³ https://en.wikipedia.org/wiki/Affirmative_action

²⁴ https://www.huffingtonpost.ca/entry/affirmative-action-still-matters_us_5981d9b6e4b0353fb33e1bb

²⁵ https://en.wikipedia.org/wiki/Affirmative_action



Past and Recent Actions

In 2003, US Supreme Court decisions permitted educational institutions to consider race as a factor when admitting students, extending admission and offering financial aids in order to meet the aim of diversity.²⁶ At the same time, universities must also show that other measures to increase diversity have been taken and failed in order to increase the number of minority students. Furthermore, quotas, which is “the fixed minimum or maximum number of a particular group of people allowed to do something”, have been ruled as illegal in the United States.²⁷ Nonetheless, despite all the regulations, some students still feel indignant towards the application process. Over the years, cases such “Regents of the University of California v. Bakke” have been continuously on the rise, challenging the Supreme Court in its legislations on affirmative action.²⁸ Finally, in August 2017, the Trump administration abandoned the previous Obama-era policies to diversify university campuses.²⁹ The Obama administration believed that students benefit in an educational environment surrounded by diverse classmates, however, the Trump Justice Department officials identified the policy as problematic and that schools should instead aim to utilize race-blind standards.³⁰

Actions Taken by the United Nations and Individual Countries

The International Convention on the Elimination of All Forms of Racial Discrimination articulates that “affirmative action programs may be required of countries that ratified the convention, in order to rectify systematic discrimination”, but however such programs “shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.”³¹ Following this comment, some countries such as Brazil acted in favour of affirmative action. Brazil in 2012 implemented a quota system, where the law reserves half of all places in the country’s 63 federal universities for less-advantaged students or students of African or indigenous descent.³² Other countries, such as the United Kingdom has rendered affirmative action illegal since it favours one race over another and instead takes a more “color blind” approach.³³ In addition to the apprehension of reverse racism, the debate of affirmative action the international community seems to revolve around “does the equality of opportunity equal to the equality of outcome?” This concern arises from the theory of mismatch where affirmative action

²⁶ Ibid.

²⁷ Ibid.

²⁸ <https://www.cnn.com/2013/11/12/us/affirmative-action-fast-facts/index.html>

²⁹ <https://www.nytimes.com/2018/07/03/us/politics/trump-affirmative-action-race-schools.html>

³⁰ Ibid.

³¹ https://en.wikipedia.org/wiki/Affirmative_action

³² <https://gemreportunesco.wordpress.com/2017/05/01/growing-demand-for-higher-education-puts-affirmative-action-in-the-spotlight/>

³³ <https://www.gov.uk/discrimination-your-rights>



places a student in an institution that is beyond his or her academic ability, thus increasing the student's chance of dropping out.³⁴ However, research from Israel and Brazil indicates that students benefited from the action perform just as well in academia than those who didn't, and generally do better at elite institutions than at less prestigious universities.³⁵

Issues Faced Today

On the bright side, since the implementation of the affirmative action policies, the enrollment of minorities and women in post-secondary education have been gradually on the rise.³⁶ However, Asian Americans stand out as a special case in this statistic. Conversely, although the population of Asian Americans have nearly doubled since the 1990s, their enrollment in Ivy League institutions have roughly stayed the same.³⁷ As a result, in 2015 the Asian American Coalition for Education filed a complaint with the federal government against Harvard University, alleging that it discriminates against Asian American applicants.³⁸ The parents and students called out for a more merit-based admission system, and has since gained the support of President Donald Trump.³⁹ Moreover, caucasian students have also echoed the same concerns, such as in the University of California and the University of Michigan lawsuits, where their application policies were called to be "reverse discrimination" and violations of the Fourteenth Amendment. These abolitionists believe that affirmative action perpetuates social division, separating the country into a power struggle between the "oppressor" and the "oppressed", and shifts its purpose from ending unequal treatment to crusading for statistical diversity.⁴⁰ As of now, whether affirmative action reduce or amplify racial tensions is still hugely up for debate.

³⁴ Ibid.

³⁵ <https://gemreportunesco.wordpress.com/2017/05/01/growing-demand-for-higher-education-puts-affirmative-action-in-the-spotlight/>

³⁶ <https://www.youtube.com/watch?v=8ixzZYxM7Hc>

³⁷ Ibid.

³⁸ Ibid.

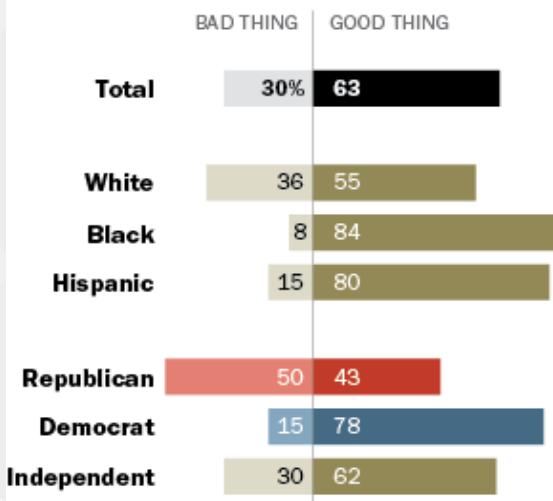
³⁹ <http://www.latimes.com/nation/la-na-harvard-race-admissions-20180830-story.html>

⁴⁰ <http://www.foxnews.com/opinion/2018/08/20/yes-its-time-for-affirmative-action-to-end-finally.html>



Americans Support Affirmative Action on College Campuses

In general, do you think affirmative action programs designed to increase the number of black and minority students on college campus are a good thing or a bad thing?



According to a study done at Pew Research Center, Americans overall tend to support affirmative action on college campuses.⁴¹

Seeking Resolution

Affirmative action in post-secondary education is an issue that has been around for a very long time, and many have tried to bring about change with varying degrees of success. Keep in mind that in addition to affirmative action policies, there are also many social, cultural, and political aspects to consider. Each state will be facing different challenges as well, and tackling the issue may require a combination of different resolutions. Based on the current situation, delegates should focus on the following three possible solutions.

Funding Under-privileged Public Elementary and Middle Schools

The core root of this issue lies in students from certain races not having the proper educational opportunities to succeed, placing them at a much more disadvantage (in terms of college admissions) than those students from much more affluent backgrounds. By providing funding for those under-privileged schools with tendencies to have students from less affluent backgrounds, the issue of different races having less opportunities can be stopped at its core. This is more of a long-term

⁴¹ <http://www.pewresearch.org/fact-tank/2014/04/22/public-strongly-backs-affirmative-action-programs-on-campus/>



solution, and is a solution that doesn't infringe upon the policies of either party, while still solving the problem in a sustainable manner.

Race-blind and Income Based College Admission Processes

By eliminating the race factor on the college admission process, but still keeping the income factor, colleges can make a more educated and responsible decision not based solely on race. This can not only help out the applicant in need, but at the same time not focus as much as on the race. However, a solution of this sorts would need to consider the views of each party - as this solution might infringe upon the views of the Democratic Party.

Require Colleges That Use Racial Preferences/Quotas to Be Transparent With Data

This solution allows applicants to know exactly what college they are applying to, and doesn't get the expectations of potential applicants up after they apply. This way, not only is the Democratic party satisfied because of affirmative action policies in play, but, also the Republic Party is satisfied due to the transparency within these "affirmative action" policies. With this sort of transparency implemented in some colleges across the United States of America, it sets a precedent for other colleges to follow in suit.

Bloc Positions

The US Senate is mainly divided into two sides: the Democrats, who are generally pro-affirmative action, and the Republicans, who are generally against affirmative action. Keep in mind that these two parties make up opposite sides of a wide spectrum of opinions on affirmative action. The party is also an overall representation of the group's policies, and there may be some deviation in opinion and agenda among individual senators.

Democratic Party

The Democratic Party, or the left wing, has historically and presently pushed for affirmative action policies throughout the United States. For example, the recent criticizing of Harvard's admission processes by President Trump's (republic) administration and justice system (Attorney General Jeff Sessions). According to the Democratic Party platform, "The federal government will push more colleges and universities to take quantifiable, affirmative steps in increasing the percentages of racial and ethnic minority, low-income, and first-generation students they enroll and graduate". The Democratic Party believes that the key way to achieve proper affirmative action is through state and



federal investment in both students and their teachers - faculty must be supported. The opposition to this left-wing view lies in that adoption of these policies can be considered by some as "racist", favoring those because of their race rather than capability or how much they deserve it.

Republican Party

The Republican Party, or the right wing, has historically and presently pushed against the adoption of affirmative action policies throughout the United States. President Trump's (Republican) office said on July 3rd, 2018, that they were abandoning Obama's administration policies that called on universities to consider race as a factor in diversifying their campuses, according to the New York Times. A critical piece of this side of the argument lies in that sometimes students attending college because of affirmative action, might receive unfair treatment because peers and professors might view their admission as "unearned". The republicans have been historically against the affirmative action policies put into play by ex-president Obama, and have focused efforts on equal-opportunity in post-secondary-school admissions. These sentiments have been echoed in recent criticism of Harvard universities policies by Attorney General Jeff Sessions (Trump Administration, Republican), in opposition to affirmative action.

Discussion Questions

1. Where is the correct line drawn between both parties in this issue?
2. What legal and constitutional basis do most affirmative action policies base themselves off of?
3. What are the social and cultural factors involved in affirmative action policies?
4. What does discontinuation of affirmative action policies mean for the minorities that were previously benefitting from those policies?
5. What are the pros and cons of either enforcing or abolishing affirmative action policies in the United States of America?
6. What are some of the contributing factors for the role of race in college admissions processes?
7. What are some drawbacks to extreme solutions (complete abolition or complete enforcement) solutions and what are ways in which these drawbacks can be mitigated?
8. Is it possible to ever truly get rid of number-based quotas for racial profiling in college admissions decisions, if so, then how?
9. Has Affirmative Policies been successful in giving minorities more opportunities?



Further Reading

<https://definitions.uslegal.com/a/affirmative-action/>

https://www.senate.gov/legislative/legislative_home.htm

https://www.law.cornell.edu/wex/affirmative_action

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