

# Affirmative Action in Admissions in Higher Education

Ann Bennett, Shiya Liu, Annya Mohlman  
Ohio University – Department of Higher Education

## History & Definition

### Definition:

*“...availability of equal educational opportunities for individuals by reason of race, color, religion, or national origin in public educational institutions at all levels in the United States...”* Civil Rights Act 1964 section 402

Affirmative Action in admissions in higher education was first introduced in 1965 to address the continuing discrimination in the United States despite civil rights laws and constitutional guarantees.

Affirmative action has been present on college campuses for over thirty years with the first two cases being reviewed by the Supreme Court. The two cases were *DeFunis v. Odegaard* (1974) and *Regents of the University of California v. Blake* (1978).

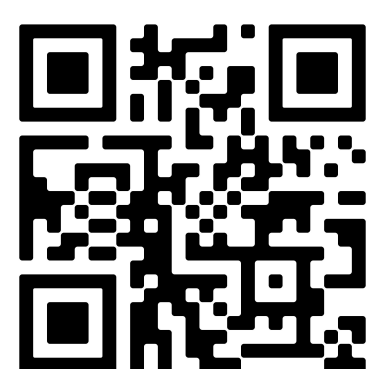
## Legal Aspects

### • Related legal regulations

- Civil Rights Act of 1964
- Equal Protection Clause, Fourteenth Amendment
  - “... No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; *nor deny to any person within its jurisdiction the equal protection of the laws.*”
- 42 U.S.C. § 1981. Equal rights under the law
  - All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.
- States’ Legislation
  - California (1996, 2014), Texas (1997), Washington (1998), Florida (1999), Michigan (2006), Nebraska (2008), Arizona (2010), New Hampshire (2012), and Oklahoma (2012)

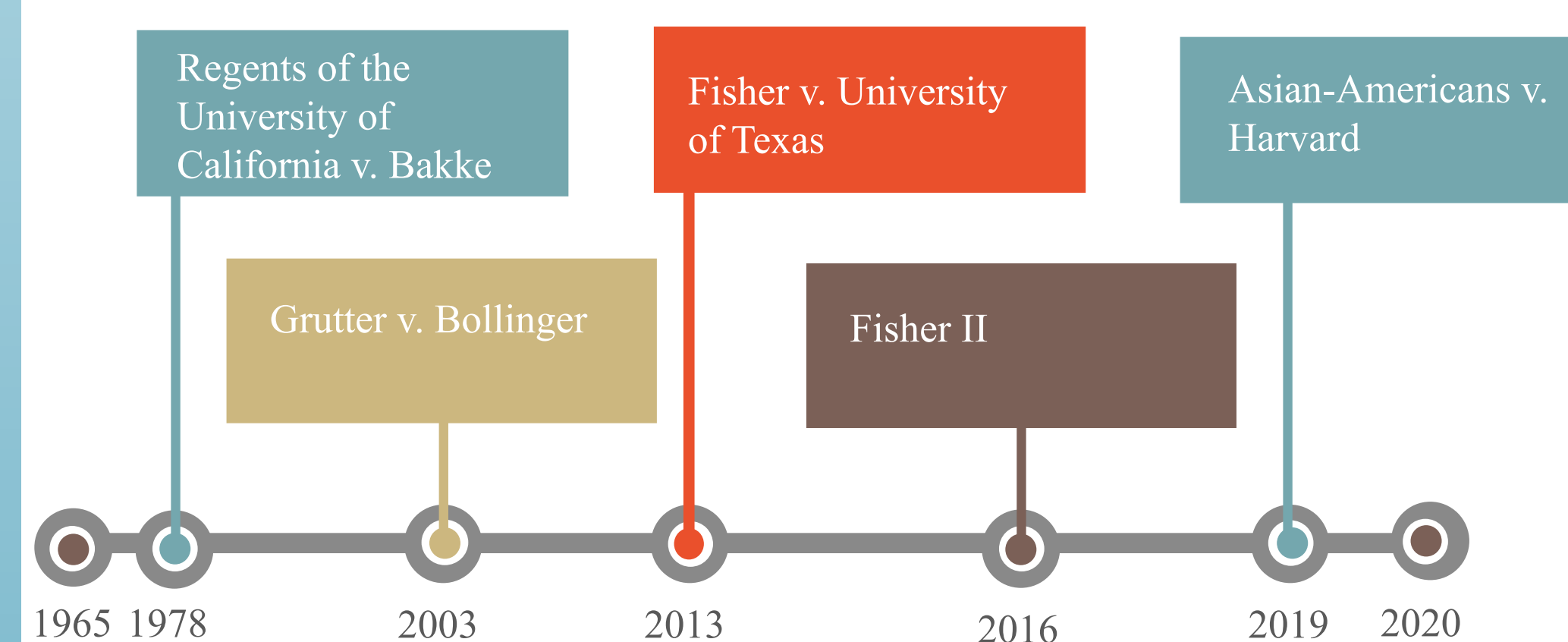
### • Contested Areas

- Strict scrutiny
  - “Compelling interest” for HEI to have diverse student population
  - “Narrowly tailored” interpretation
  - “least restrictive means” available
- Remedy past discrimination vs. equal educational opportunities
- Mismatch theory



## Civil Rights Act 1964 Section 402

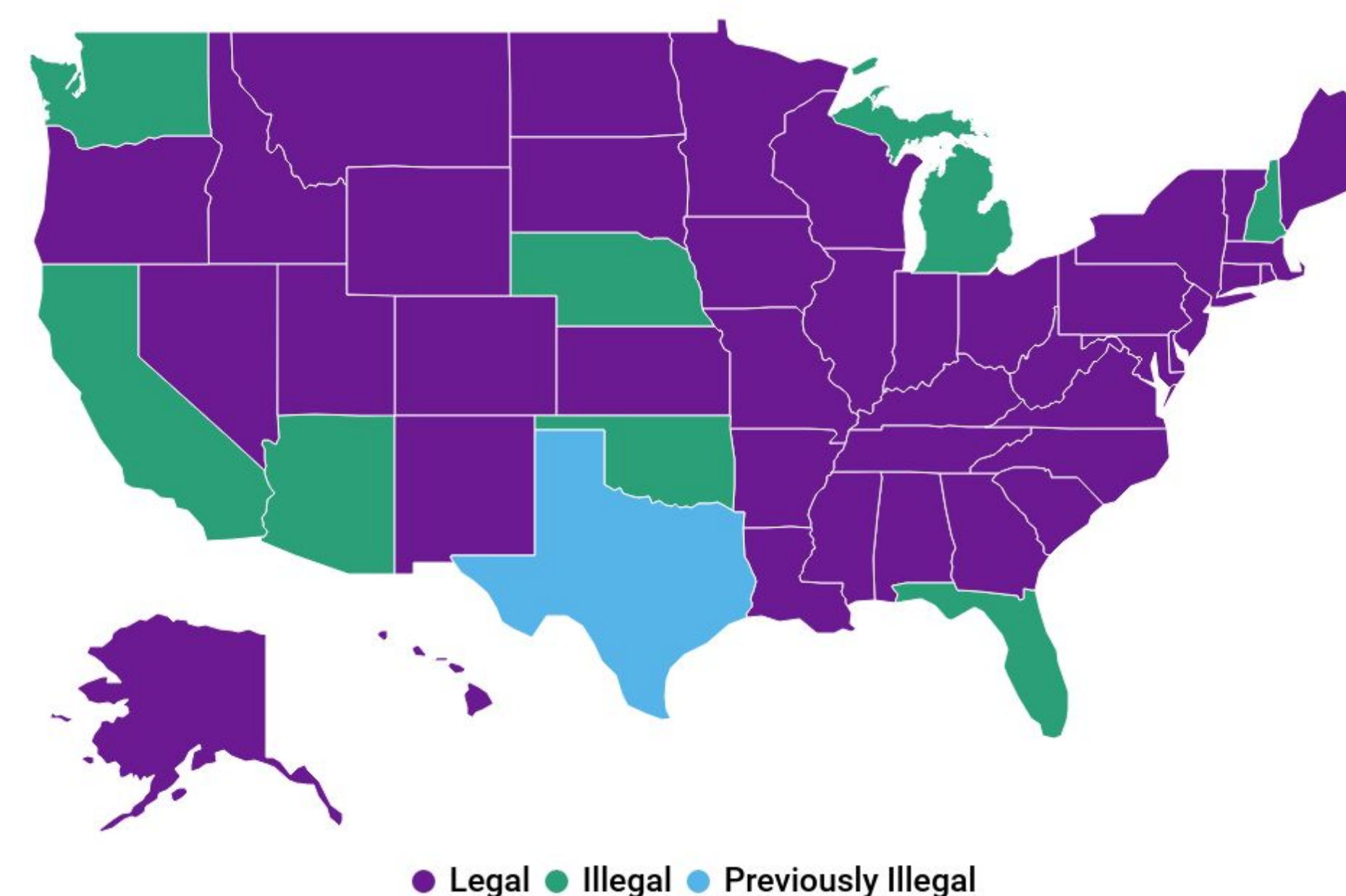
The signing of the Civil Rights Act taken in the White House.



## Inequalities

- The beneficiaries of affirmative action in higher education have been primarily white women and African-Americans. Other under-represented populations continue to be under-represented or otherwise disadvantaged.
- Colleges and universities competitively recruit minorities from a handful of high schools in major metropolitan areas. In some cases, those students are middle-upper class minorities.
- Admission via affirmative action is about access, not persistence or graduation and can lead in some cases to “mismatch,” essentially encouraging students to attend an elite institution instead of another institution with which their high school academic performance is a better match.

## Eight States Ban Affirmative Action in College Admissions



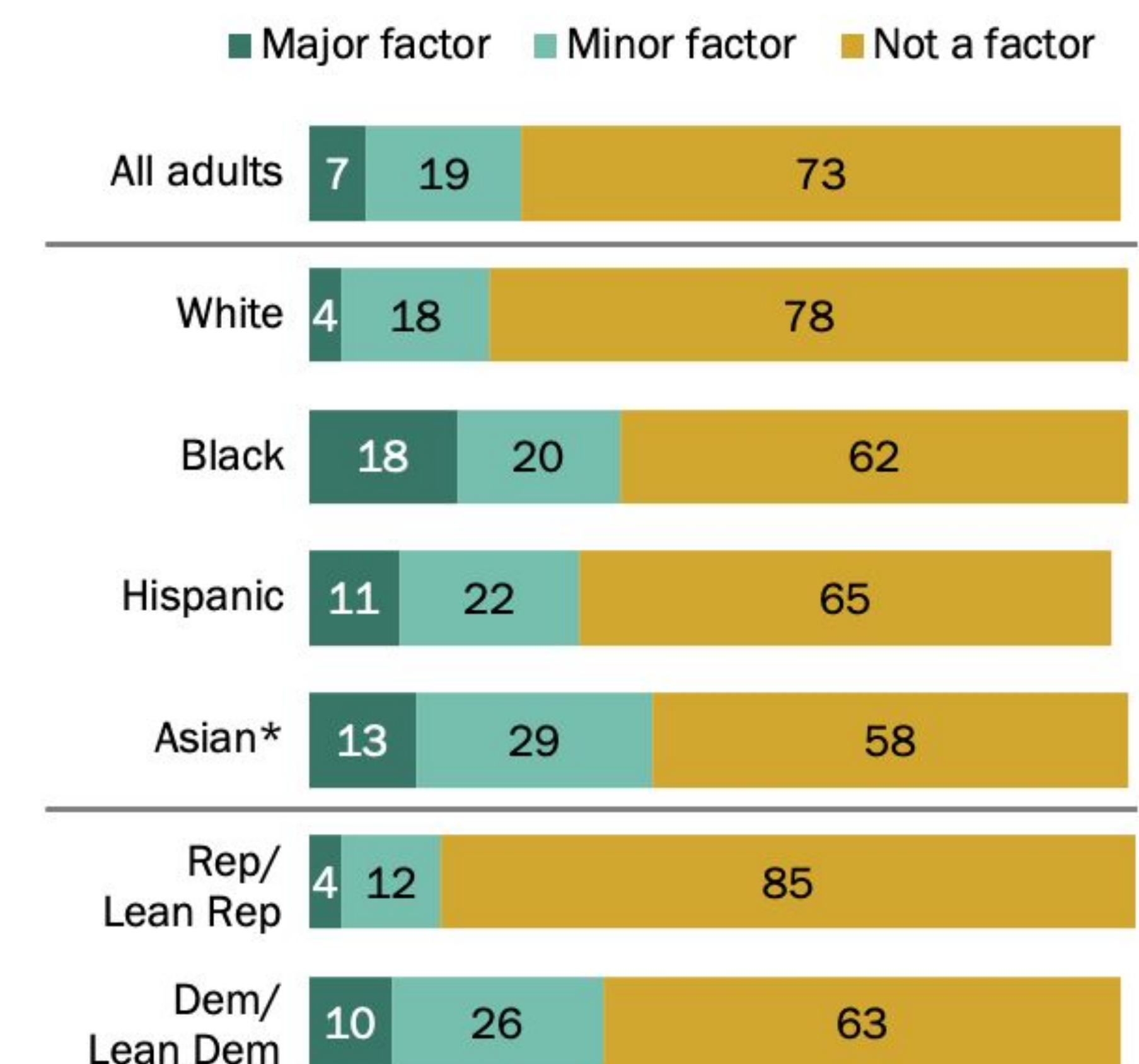
<https://www.jamesgmartincenter.org/2019/10/did-you-know-eight-states-ban-affirmative-action-in-college-admissions/>

## Significance for Higher Education

- Higher education is a public good in part because it provides a path out of poverty for many. Affirmative action in admissions has and can support that goal of colleges and universities.
- Given the state bans on the use of race-based criteria in higher education, recruitment and admissions professionals need to develop alternatives to meet the goals of affirmative action in other ways.
- Efforts need to be inclusive with regard to how institutions define “minorities”.

## Majorities across racial and ethnic groups say colleges should not consider race in admissions

% saying race or ethnicity should be a \_\_\_\_ in college admissions decisions



\*Asians were interviewed in English only.

Note: Share of respondents who didn't offer an answer not shown. Whites, blacks and Asians include those who report being only one race and are non-Hispanic. Hispanics are of any race.

Source: Survey of U.S. adults conducted Jan. 22-Feb. 5, 2019.

PEW RESEARCH CENTER

[https://www.pewresearch.org/fact-tank/2019/02/25/most-americans-say-colleges-should-not-consider-race-or-ethnicity-in-admissions/#\\_r=19-05-06-19\\_admissions\\_majoritiesracialethnicgroups\\_corrected/](https://www.pewresearch.org/fact-tank/2019/02/25/most-americans-say-colleges-should-not-consider-race-or-ethnicity-in-admissions/#_r=19-05-06-19_admissions_majoritiesracialethnicgroups_corrected/)

## References

- Arcidiacono, P. and Lovenheim, M. (February 2015). *Affirmative Action and the Quality-Fit Tradeoff*. National Bureau of Economic Research. <https://www.nber.org/papers/w20962>.
- Dale, S. and Krueger, Alan B. (June 2011). *Estimating the Return to College Selectivity Over the Career Using Administrative Earnings Data*. National Bureau of Economic Research. <https://www.nber.org/papers/w17159>.
- Long, B.T. (2018). *Elevating College Completion*. American Enterprise Institute and Third Way Institute. <https://www.thirdway.org/report/the-college-completion-landscape-trends-challenges-and-why-it-matters>.
- Peterson, J.A. and Rudgers, L.M. (2017 August 15). *The Attack on Affirmative Action is Simple and Powerful - and Wrong*. Inside Higher Education. <https://www.insidehighered.com/views/2017/08/15/why-colleges-and-universities-need-affirmative-action-programs-essay>.
- Reardon, S.F., Baker, R., & Klasik, D. (2012 August 3). *Race, income, and enrollment patterns in highly selective colleges, 1982-2004*. Center for Education Policy Analysis. [https://inequality.stanford.edu/sites/default/files/reardon-baker-klasik\\_race\\_income\\_select\\_college.pdf](https://inequality.stanford.edu/sites/default/files/reardon-baker-klasik_race_income_select_college.pdf).