

Welcome to
February's
Knowledge Cafe
x DEI



Affirmative Action

[ə-'fər-mə-tiv 'ak-shən]

A policy aimed at increasing workplace and educational opportunities for people who are underrepresented in various areas of society.

Agenda

1. Introduction
2. Presentation by Jeffrey Feldman, UW School of Law
3. Q & A (*post questions in the Zoom chat box or raise hand*)

Video camera & audio are completely optional!



Things to Consider

- Be open & listen attentively to others opinions & experiences
- Own your words & be receptive to the impact they may have on others
- Speak one's truth without blame or judgement



Introduction

Americans have battled over the **constitutionality and ethics** of the affirmative action policies used by schools and employers to increase diversity in the last decades since the 1960's.

The number of cases brought to the Supreme and state courts and to voters is proof of this.

Last June 2023, in a historic decision, the Supreme Court banned race-conscious admission programs at colleges and universities across the country.

This decision broke nearly 50 years of precedent that allowed a limited use of affirmative action.

Introduction

Nine states had banned affirmative action policies, starting with California in 1996
Washington state was one of those nine with Initiative 200 in 1998.

Proposed Ballot Summary

This initiative prohibits government from discriminating against or granting preferential treatment to individuals or groups based on race, sex, color, ethnicity, or national origin in public employment, public education, or public contracting. Government includes all public entities, including the state, cities, counties, public

Is this the end of affirmative action policies?

Will affirmative action continue to be banned in other areas of society?

Will we see affirmative action policies & practices, or something similar, return again in the future?

One way to answer this question is to look at data:

The American Association of Medical Colleges (AAMC) tracks diversity of medical school applicants and matriculants. A 2017 report on “Trends in Racial and Ethnic Minority Applicants and Matriculants to the U.S. Medical Schools, 1980-2016”, provide these numbers that compare 1980 with 2016.

Medical school matriculants 1980, 2016

Table 2. Number and Percentage of U.S. Medical School Matriculants in 1980 and 2016 by Race or Ethnicity

Race or Ethnicity	1980		2016	
	Number	Percent	Number	Percent
American Indian or Alaska Native	63	0.4%	54	0.3%
Asian	679	4.0%	4,475	21.3%
Black or African American	999	6.0%	1,497	7.1%
Hispanic or Latino	807	4.9%	1,335	6.3%
White	13,884	83.7%	10,828	51.5%
Total	16,587 ¹		21,030 ²	

Source: AAMC Data Warehouse: Applicant Matriculant File as of August 22, 2017.

1. Total includes 155 (9% of matriculants) unknown and non-U.S. citizens and nonpermanent residents not included in the analysis.
2. Total includes 2,841 (13.5% of matriculants) Native Hawaiian or other Pacific Islander, multiple-race, other, unknown, and non-U.S. citizens and nonpermanent residents not included in the analysis.

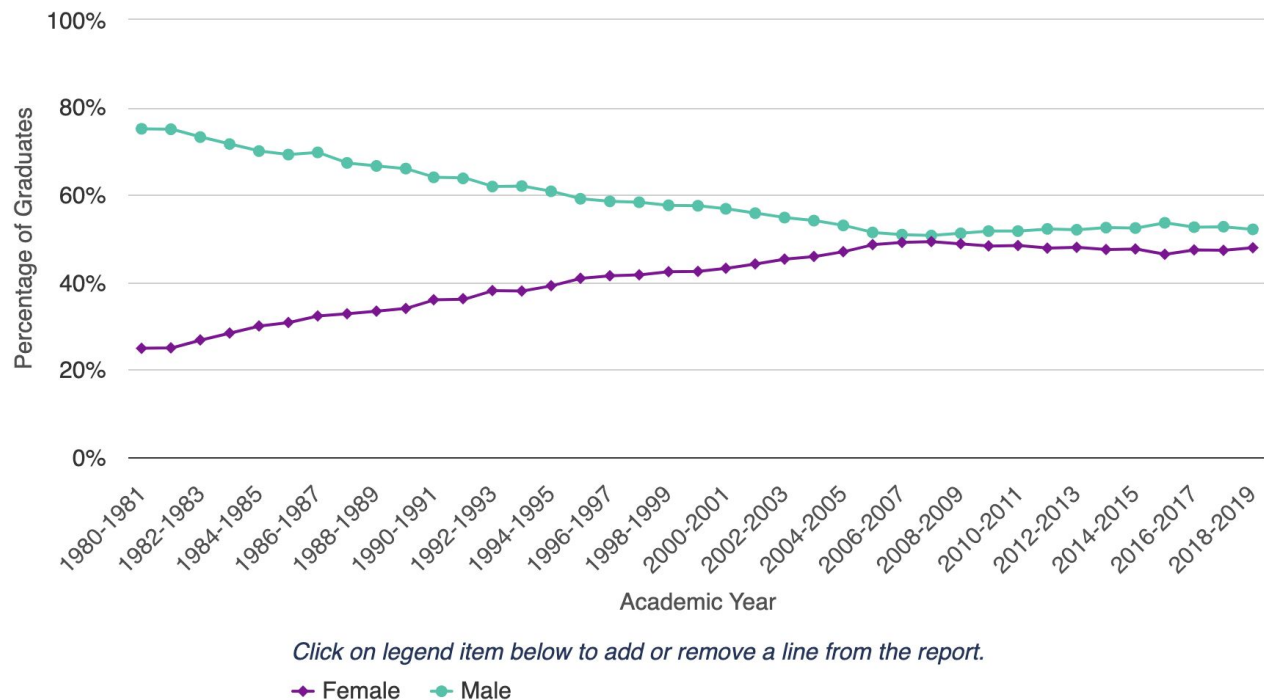
2023	
Number	Percent
36	.2%
5901	25.7%
1845	8%
1493	6.5%
9534	41.5%
22981	

“... these data reveal that the gains have not been as robust as might have been expected in light of diversity efforts.”

“...results indicate that there has not been a notable increase in the proportion of matriculants in any group that has been underrepresented in medicine (URM) over three and a half decades.”

Medical school graduates by sex, 1980-2019

Figure 12. Percentage of U.S. medical school graduates by sex, academic years 1980-1981 through 2018-2019.



Guest presenter: Jeffrey Feldman



We are pleased to have [Jeffrey Feldman](#), faculty member in the School of Law, here to present and then answer any questions.

Jeff teaches constitutional law and has practiced law for many years. He regularly litigates and appeals constitutional issues.



Feel free to raise your (zoom) hand to ask a question or post one in the chat box.

Quick facts & references

- [UW President Cauce's post on the June 2023 ban](#)
- [40% of US Nobel Prize laureates were/are immigrants](#)
- [Affirmative action worked well for the US Army \(3\)](#)
- [US Army 2022 stats](#)
- [University of Tennessee guarantees admissions of top 10%](#)
- [History of Affirmative Action policies](#)
- [States that banned affirmative action](#) prior to June 2023 SCOTUS ruling
- [Inslee rescinds affirmative action ban](#)
- [PBS video short \(8-mins\) on UW Medical School impact after I-200](#)
- [The case against affirmative action \(1996\)](#)
- [The case for affirmative action \(1996\)](#)
- [Washington's I-200 banned affirmative action \(1998\) & I-200 PDF](#)
- [Trends in diversity in Medical School applicants 1980-2016](#)
- [Texas Top 10% plan](#)
- [Supreme Court rejects Thomas Jefferson high school admissions case](#), Feb 20, 2024
- [Supreme Court passes on West Point affirmative action case](#), Feb 5, 2024
- [Race vs Ethnicity definitions](#)

UNIVERSITY OF WASHINGTON SCHOOL OF LAW



AFFIRMATIVE ACTION

1

What is Affirmative Action?



Policies and practices by the government or an organization aimed at benefitting groups that historically were subject to discrimination or under-representation.

2

What is Affirmative Action?

Found in:

- Public contracting
- Collective bargaining agreements
- Government license programs
- Education

3

What is Affirmative Action?

First referenced in JFK Executive Order



4

What is Affirmative Action?

First referenced in JFK Executive Order

“Take **affirmative action** to ensure that applicants are employed, and employees are treated fairly during employment, without regard to their race, creed, color, or national origin”

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What is Affirmative Action?



Labor Secretary Arthur Fletcher

- Pushes hiring of minorities
- “Father of Affirmative Action”

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Affirmative Action in Education

Early Affirmative Action Programs

- Preferences
- Quotas
- Plus factors

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Affirmative Action in Education



Allan Bakke

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Regents of Univ. of Cal. v. Bakke (1978)



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Regents of Univ. of Cal. v. Bakke

US Davis Medical School reserved 16/100 places for members of disadvantaged groups.

- Race could be used as a factor in admissions decisions
- But quota system too rigid
- Program unconstitutional because it was not narrowly tailored to achieve diversity

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Grutter & Gratz v. Michigan



Gratz
Undergrad

Grutter
Law School

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Grutter & Gratz v. Michigan

- **Grutter:** University of Michigan's law school used race as one of many "plus" factors considered in reviewing each applicant through an individualized, holistic review process
- **Gratz:** University of Michigan's undergraduate admissions guidelines automatically awarded racial and ethnic minorities 20 points of the 100 needed to guarantee admission

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Grutter & Gratz v. Michigan

- **Grutter:** University of Michigan's law school used race as one of many "plus" factors considered in reviewing each applicant through an individualized, holistic review process. 
- **Gratz:** University of Michigan's undergraduate admissions guidelines automatically awarded racial and ethnic minorities 20 points of the 100 needed to guarantee admission. 

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Grutter & Gratz v. Michigan

- **Grutter:** Court upheld law school's admissions policy, concluding "student body diversity" is a "compelling" interest and that the law school's **policy was "narrowly tailored"** to achieve diversity.

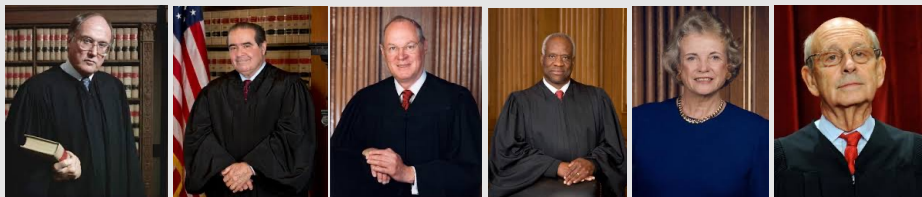


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Grutter & Gratz v. Michigan

- **Gratz:** Court overturned admissions policy used in undergraduate admissions, holding that policy was not narrowly tailored because **point system was too rigid** and inflexible.



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Parents Involved in Schools v. Seattle (2007)



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Parents Involved in Schools v. Seattle

- Divided high students into two categories
- White and non-white
- Race taken into account as a tiebreaker for high school assignment

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Parents Involved in Schools v. Seattle

- Divided high students into two categories
 - White and non-white
 - Race taken into account as a tiebreaker for high school assignment
- Plan fails because not narrowly tailored
 - Insufficient consideration of race-neutral alternatives

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The Rest of the Story

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- Before *Parents Involved*, Washington voters passed I-200
- Prohibits “**preferential treatment**” based on race, sex, color, ethnicity, or national origin in public employment, education, and contracting
- In 2019 (12 years after *Parents Involved*), voters narrowly voted against reinstating affirmative action
- I-200 remains the law in Washington

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States that Ban Affirmative Action

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- | | |
|--------------|-----------------|
| • Washington | • Nebraska |
| • California | • Arizona |
| • Texas | • New Hampshire |
| • Florida | • Oklahoma |
| • Michigan | • Idaho |

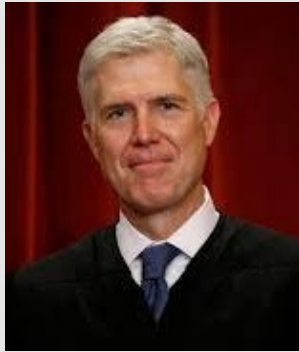
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Trump Appointees to Supreme Court

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Justice Brett
Kavanaugh



Justice Neil
Gorsuch

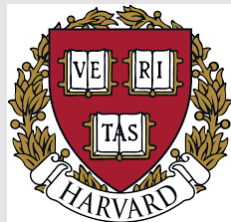


Justice Amy
Conan Barrett

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SFFA v. Harvard (2003)

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SFFA v. Harvard

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Harvard and UNC admission programs considered

- Academic performance
- Standardized test scores
- Extracurricular activities
- Athletics
- Recommendations
- Race

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SFFA v. Harvard

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Compelling interests advanced

- Train future leaders
- Prepare graduates to adapt to pluralistic society
- Provide better education through diversity
- Produce new knowledge from diverse outlooks

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SFFA v. Harvard

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Edward Blum
Students for Fair Admissions

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SFFA v. Harvard

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Chief Justice John Roberts

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SFFA v. Harvard

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Defects in Harvard and UNC Programs:

- Insufficiently Measurable
 - *How does court know when compelling interest has been reached*
 - *Absence of meaningful connection between means and goals*
 - *Not entitled to deference*

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SFFA v. Harvard

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Defects in Harvard and UNC Programs:

- Insufficiently Measurable
 - Fail twin commands of equal protection:
Race cannot be used as a negative or operate as a stereotype

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SFFA v. Harvard

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Defects in Harvard and UNC Programs:

- Insufficiently Measurable
- Fail twin commands of equal protection:
Race cannot be used as a negative or
operate as a stereotype
- Programs lack an end date

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SFFA v. Harvard

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Court's Holding:

“Both programs lack sufficiently focused and measurable objectives warranting the use of race, unavoidably employ race in a negative manner, involve racial stereotyping, and lack meaningful end points.

We have never permitted admissions programs to work in that way, and we will not do so today.”

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SFFA v. Harvard

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Roberts' Final Comment:

"At the same time, as all parties agree, nothing in this opinion should be construed as prohibiting universities from considering an applicant's discussion of how race affected his or her life, be it through discrimination, inspiration, or otherwise."

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SFFA v. Harvard

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Roberts Final Comment:

"At the same time, as all parties agree, nothing in this opinion should be construed as prohibiting universities from considering an applicant's discussion of how race affected his or her life, be it through discrimination, inspiration, or otherwise."

Sotomayor Response:

"This supposed recognition that universities can, in some situations, consider race in application essays is nothing but an attempt to put lipstick on a pig."

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Impact of Affirmative Action

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Pew Survey

- 50% of general public opposes using race as factor in university admission
- 59% of students say diversity improves learning environment
- 62% of students say diversity improves social experience

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Impact of Affirmative Action

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Black undergraduate enrollment

1965

5%

2001

10%

34

Impact of Affirmative Action

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Black undergraduate today

Harvard

9.37%

UC Berkeley

6%

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