

# ***Impact of the U.S. Supreme Court's Struck Down of the Affirmative Action on Human Rights Protection Law***

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**Abstract:** Recently, the U.S. Supreme Court invalidated affirmative action. However, from the perspective of the Human Rights Protection Law, the judgement has brought about three negative impacts. Firstly, it damages the educational rights of Asian-American students. Secondly, it violates the principle of balancing interests in the admissions procedures of tertiary educational institutions. Finally, it also harms the development rights of marginalized groups and underdeveloped regions, further exacerbating existing political and economic disparities. Moreover, the fear associated with affirmative action is deeply rooted in the fear of losing opportunities. It is worth noting that China's directed employment admission policy presents a potential solution to mitigate this concern.

**Keywords:** affirmative action, human rights, balancing of interests, human rights protection law

## **1. Introduction**

The assertion of universal entitlement to fundamental human rights underscores the imperative that no individual or collective entity unlawfully infringe upon or withholds another's fundamental human rights [1]. Furthermore, the development of any policy's should align with the principles of human rights principles. The pursuit of equal rights for historically marginalized or subjugated groups has been a persistent preoccupation within the realm of human rights advocacy.

In June 2023, the U.S. Supreme Court invalidated long-standing race-conscious admissions practices that had been employed by colleges for decades. This decision came as a result of the court's alignment with Students for Fair Admissions (SFFA) in their legal proceedings against both Harvard University and the University of North Carolina at Chapel Hill [2].

In fact, there were already signs of this happening—*Grutter v. Bollinger* (2003), in which the Supreme Court upheld affirmative action in college admissions and Justice Sandra Day O'Connor wrote that "25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today" in the majority opinion [3]. Whether the society has already reached this reckoning point is something worth considering.

From the perspective of human rights protection, the decision of *Students for Fair Admissions v. President and Fellows of Harvard College* (2023) may violate three human rights. Firstly, it damages the educational rights of Asian-American students. Secondly, it violates the principle of balancing interests in the admissions procedures of tertiary educational institutions. Finally, it also harms the

development rights of marginalized groups and underdeveloped regions, further exacerbating existing political and economic disparities.

## **2. The Educational Rights of Asian-American Students**

### **2.1. The Concept of the Right to Education**

Education stands as a potent instrument for ameliorating the socioeconomic status of marginalized individuals, encompassing both children and adults, thereby serving as a pivotal gateway to the realization of fundamental human rights. The entitlement to a high-caliber educational experience is firmly enshrined within the Universal Declaration of Human Rights and various international legal conventions. To elucidate, within the framework of the Universal Declaration of Human Rights (UDHR), Article 26 expressly articulates that "Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms." In essence, education's overarching objective lies in fostering holistic human development, thereby fostering equitable prospects for survival and progress in the forthcoming epochs.

### **2.2. The Seeming Victory of Asians and Their Actual Impairment of the Right to Education**

This article argues that the outcome of the aforementioned judicial decision scarcely constitutes a triumph for Asian Americans. In the context of Harvard University's admissions procedures and the broader affirmative action debate, Asian Americans have been depicted as aggrieved parties subjected to inequitable admission processes. Although the constitutionality of affirmative action has been questioned, American institutions of higher education possess manifold alternative mechanisms for advancing principles of "corrective justice" and fostering diversity. Notably, numerous private universities, including Harvard, employ a specialized admissions protocol known as ALDC [4], encompassing athletic recruits, legacies, the dean's interest list, and children of faculty and staff. The outcomes of this approach, which involve the redistribution of opportunities from Latino and African-American students to Caucasian students, suggest a zero-sum competition within minority communities.

For example, recruitment and admissions strategies that account for students' income or wealth, the high schools they attended, or other aspects of their educational or social context have been explored and tested in various ways over the past 25 years [5]. If this policy compels universities and colleges to diminish the significance of standardized test scores, such as the SAT, in favor of a more comprehensive "Holistic Review," it may not be advantageous for Asian Americans who traditionally held an advantage in standardized testing. Given that the Holistic Review may emphasize personal attributes like integrity, helpfulness, courage, kindness, fortitude, empathy, self-confidence, leadership ability, maturity, or grit, an enhanced focus on personality traits could potentially disadvantage Asians [6]. This is because, despite their strong academic records and extracurricular engagement, Asians may not receive high ratings in terms of personality assessment.

The question arises: Does affirmative action constitute discrimination against Asians? Historically, the underlying objective of affirmative action was to extend benefits to minorities, including Asians, without specific targeting of blacks and Latinos. However, as Asian students have excelled academically, and their representation in college admissions surpasses their demographic proportion, some individuals within the Asian community perceive affirmative action policies benefiting other minority groups as discriminatory against them. However, the decisive factor in evaluating discrimination relies on the initial intent and purpose of a system rather than on changing external influences. The assertion that the system is discriminatory when external circumstances change is a matter of interpretation influenced by self-interest under specific conditions, rather than an inherent

truth. Consequently, the question of whether a system is discriminatory or not should be static and unchanging, rather than fluctuating. If future declines in Asian performance were to transpire for specific reasons, would this then constitute discrimination against Asians once more? The nature of a system's discrimination or fairness is inherently rooted in its initial design and purpose.

Moreover, the repercussions of this case may potentially strain relations between Asian and African-American communities in the future. The judgment significantly disadvantages African-Americans and Latinos, prompting concern that they may redirect their grievances towards Asians in subsequent discourse.

### **3. The Balancing of Interests Principle**

#### **3.1. The Justification Basis for Balancing of Interests**

Balancing of interests is one of the important doctrines of human rights law. Admission to institutions of higher education serves as a typical mechanism for balancing interests. Its primary objective lies in ensuring the equitable allocation of educational resources and the promotion of broader societal interests. It seeks to reconcile the tension between exclusive educational privileges and the collective sharing of educational resources while meeting the public's burgeoning demand for such resources, thereby fostering holistic human and societal development. As the fundamental tool of governance and control in contemporary societies, the law should, to the extent possible, protect all societal interests and uphold an equilibrium or harmony between them that is consistent with the protection of all interests [7]. This paper contends that the 2023 decision in this regard may potentially disrupt the delicate balance inherent in the principle of harmonizing the interests of higher education.

#### **3.2. Balancing of Interests in Higher Education Admission Process**

The principle of balancing interests in admission focuses on balancing the interests and obligations among four subjects, namely, students, higher education institutions, boards of trustees and the government. Students and higher education institutions are the central subjects, while the board of trustees and the government are the secondary subjects. Each of the four subjects has specific interests and pursuits.

##### **3.2.1. Students**

Students pursue the equal right to education, seeking access to quality education without discrimination or unfair barriers.

To elaborate on it, students are primarily interested in gaining admission to a university that aligns with their academic and career goals. They seek a quality education, a vibrant campus life, financial affordability, and sometimes, specific extracurricular opportunities.

The economically disadvantaged white students, who does not receive support from affirmative action initiatives, encounters greater challenges in their educational and living environments in comparison to affluent African American households. Whether characterized as a form of reverse discrimination or as a propagation of animosity between economically disadvantaged white individuals and minority communities, it essentially entails the utilization of economically disadvantaged white individuals as a focal point and instrument.

##### **3.2.2. Higher Education Institutions**

Higher education institutions typically pursue a combination of interests, including maintaining a high standard of education, attracting a diverse and qualified student body, and often securing funding or tuition fees to support their operations and improvements.

Firstly, they aim to uphold a high standard of education, ensuring that their programs and faculty provide quality learning experiences to students. This commitment to excellence helps maintain their reputation and competitiveness.

Secondly, these institutions seek to create a diverse and talented student community. A diverse student body enriches the learning environment by bringing together individuals from different backgrounds and perspectives, fostering a more inclusive and holistic educational experience.

Lastly, securing funding, whether through tuition fees, grants, or donations, is crucial for the sustainability and growth of higher education institutions. These financial resources enable them to maintain their facilities, invest in research and development, and continually improve their programs, thus ensuring their long-term viability and ability to meet the evolving needs of students and society. In short, higher education institutions balance these interests to provide quality education and contribute to the advancement of knowledge and society as a whole.

### 3.2.3. Boards of Trustees

The board of trustees or directors of educational institutions usually seeks to ensure the long-term viability and success of the school. They are responsible for making strategic decisions, managing resources, and overseeing the school's policies and direction.

The board of trustees in U.S. universities is a group of individuals responsible for overseeing and governing the institution. They typically have a wide range of responsibilities, including setting the university's mission and strategic goals, approving budgets, selecting and evaluating the university president, and ensuring the institution operates in compliance with applicable laws and regulations. Trustees often include alumni, prominent community members, business leaders, and others with a vested interest in the university's success. Their role is crucial in shaping the direction and policies of the university. Their interests in admissions process involve financial stewardship, strategic planning, fundraising and governance [8].

While the university's interests are primarily focused on academic and educational goals, the board of trustees' interests often encompass broader institutional management and financial considerations. Trustees are responsible for the financial health of the institution, which includes managing budgets, fundraising, and overseeing endowments. The board sets strategic goals and priorities for the institution, which may involve decisions related to expansion, program development, or capital projects. Trustees often play a key role in fundraising efforts, which can include seeking donations from alumni, corporations, and other sources. The board is responsible for overseeing the institution's leadership, including the appointment and evaluation of university presidents and other top administrators. It's essential for the board to work in tandem with the university leadership to ensure that financial and strategic decisions align with the institution's educational mission and values. They want to admit students who will contribute positively to the university's image and potentially secure future funding and support.

### 3.2.4. Governments

The principle of balancing interests involves recognizing both rights and obligations among various stakeholders. In this context, the government often assumes the role of a supervisor to ensure that this balancing act is carried out fairly and in accordance with established laws and regulations. However, it's important to note that the government's involvement in this process typically aims to promote equity and safeguard the rights of all parties rather than seeking direct financial gains. Government oversight is primarily focused on upholding principles of fairness, equal opportunity, and justice within the framework of public policies and regulations.

Governments may require universities to be transparent about their admissions processes and outcomes. This accountability can involve reporting on acceptance rates, demographics of admitted students, and other relevant data. In some cases, governments may have specific national priorities, such as promoting STEM (science, technology, engineering, and mathematics) education, and they may influence university admissions policies to align with these priorities [9].

### **3.3. Interaction among the Mixed Interests**

Balancing these interests can be challenging, as they may sometimes conflict with each other. The goal is to find a harmonious equilibrium that serves the best interests of all four subjects while upholding the principles of fairness, equality, and quality in education.

Affirmative action policies are designed to promote diversity and equal access to education. If banned, some students from historically disadvantaged backgrounds may face increased barriers to accessing quality education. This could hinder their pursuit of the equal right to education, upsetting the balance in favor of more privileged students. Higher education institutions often benefit from a diverse student body, as it fosters a rich learning environment and prepares students for a multicultural world. Banning affirmative action could reduce diversity on campuses, potentially affecting the quality of education and the overall experience for all students. The boards of educational institutions may face challenges in maintaining their institutions' reputations and competitiveness if diversity diminishes. Additionally, financial considerations may come into play, as enrollment and funding may be affected. Governments often play a regulatory and oversight role in education. Banning affirmative action policies may lead to increased government intervention to address disparities, potentially impacting the autonomy of educational institutions.

In summary, banning affirmative action can disrupt the delicate balance in enrollment management by potentially reducing diversity, affecting educational quality, and requiring increased government intervention to address inequalities. The extent of disruption would depend on the specific policies and their implementation.

## **4. Exacerbating Political and Economic Imbalances**

The prohibition of affirmative action can exacerbate political and economic imbalances by limiting access to education, reducing workforce diversity, widening socioeconomic gaps, disenfranchising minority communities, fostering social unrest, and missing out on the contributions of marginalized individuals. These consequences can have far-reaching effects on society and hinder progress toward a more equitable and inclusive society.

### **4.1. The Concept of the Right to Development**

The right to development, as a third-generation human right, has been gradually recognized by the international community [10]. The value of the right to development is characterized by the fact that it breaks through the content and form of traditional human rights, enabling the subject of human rights to move from individual thinking to wholeness, and revealing the issue of development from the perspective of human rights. The right to development is a human rights concept that emphasizes the right of all individuals and communities to participate in, contribute to, and enjoy economic, social, cultural, and political development. It's closely related to the idea that every person has the right to an improved standard of living, access to basic necessities, education, and participation in the development process.



#### **4.2. The Widening Regional Disparities May Lead to an Increased Concentration of Graduates in Developed Regions**

Banning affirmative action can exacerbate the concentration of graduates in developed regions because it removes mechanisms that promote educational and employment opportunities for marginalized groups in less developed areas. This can perpetuate existing inequalities and hinder the equitable distribution of talent and resources across regions.

If a medical school predominantly comprises individuals of solely White students or talented Asian Americans with the aspiration of producing proficient physicians, who are willing to go to the black community and serve the blacks after graduation? So there must be people of different ethnicities. Faculty members at the institution posit that their ultimate goal is to instill in their students a commitment to return to their respective communities post-graduation, thereby dedicating their medical expertise to the betterment of their own communities. This ethos underscores the fundamental objective of their educational endeavors.

#### **4.3. A Potential Solution to Mitigate the Loss-of-Opportunity Concern: China's Directed Employment Admission Policy**

In China, directed employment admission refers to the admission that determines the region and industry in which students will be employed after graduation at the time of admission to the college entrance examination.

For example, the High-level Minority Backbone Talents Program. The majority of privileged universities in China have this program on their official websites. This postgraduate enrollment program for high-level cadres of ethnic minorities is a special enrollment plan for nationally directed training (including full-time and part-time). Universities should follow the principles of "directed recruitment, directed training, directed employment" and "voluntary application, unified examination, separate line, and admission based on excellence" to do a good job of enrollment and admission.

In contrast to the fierce controversy and endless litigation (e.g. *Regents v. Bakke*, *Gratz v. Bollinger*, *Grutter v. Bollinger*, *Fisher v. Texas*.....) that has characterized the implementation of affirmative action policies in the United States, there has been almost zero litigation related to such issues in China during the past decade. This suggests that directed employment enrollment has been effective in mitigating conflicts.

As a large united multi-national state, China is composed of 56 ethnic groups. Among them, Han Chinese account for nearly 90% of the overall Chinese population and the other 55 make up the remaining 10%. It is the potential loss of future career opportunities in large and wealthy cities due to minority enrollment that is offensive and threatening to the Han Chinese, yet one can accept preferential treatment if the precondition for admitting minorities is that they must return to their hometowns after graduation, serve their hometowns for a minimum of five to eight years before going to anywhere they want, and are not allowed to stay in large and wealthy cities, but can only flock to less-developed regions in China and start their careers in villages or grass-roots communities. When preferential treatment is unrestricted formal and quantitative equality, it will naturally cause people to rebel fiercely.

The paper believes that the hard-and-fast decision made on affirmative action by the U.S. Supreme Court this year is probably not a reasonable one-the changing point is still yet to come. What affirmative action policy needs is a transparent, fair, quantitative, and restricted design, such as one that requires those who are admitted with reduced scores or preferential treatment due to their ethnic factor to return to and serve their less-developed hometowns for a few years after graduation, to narrow the imbalance of development between regions and between ethnic groups.

## 5. Conclusion

In conclusion, the June decision by the U.S. Supreme Court to strike down affirmative action has raised significant concerns from the perspective of Human Rights Protection Law. This decision has had three potential negative impacts: first, it has been detrimental to the educational rights of Asian-American students, even though the superficial benefits may seem to be in their favor; second, it appears to violate the principle of balancing interests in the admissions procedures of tertiary educational institutions; and third, it has adverse effects on the development rights of marginalized groups and underdeveloped regions, exacerbating existing political and economic disparities.

Addressing these concerns is crucial for ensuring equitable access to education and upholding the principles of human rights. Interestingly, the paper suggests that China's directed employment admission policy may serve as an inspiration to mitigate the loss-of-opportunity concern. This calls for further research and dialogue to explore alternative approaches to achieving educational equity while safeguarding human rights in the United States. The complexities surrounding affirmative action and its implications on human rights underscore the importance of ongoing discussions and policy reforms to strike a delicate balance between addressing historical injustices and promoting fairness in higher education.

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