

BLUEPRINT FOR REFORM

THE JAMES G.
MARTIN
CENTER
FOR ACADEMIC
RENEWAL

Affirmative Action

"[I]n the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal." Brown I, 347 U.S., at 495

"At the heart of this interpretation of the Equal Protection Clause lies the principle that the Government must treat citizens as individuals, and not as members of racial, ethnic or religious groups." Missouri v. Jenkins, 515 U.S. 70 at 120-21

Why end affirmative action?

On March 6, 1961, President John F. Kennedy signed into law Executive Order No. 10925, 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." President Lyndon B. Johnson later issued Executive Order 11246 which requires government contractors "to take affirmative action to ensure that equal opportunity is provided in all aspects of their employment."¹

1. To read more from the Martin Center about the importance of viewpoint diversity, visit: <https://www.jamesmartin.center/tag/affirmative-action/>

Today, colleges and universities often use affirmative action as part of a "holistic" admissions process to create a student body that reflects the ethnic, racial, or sexual demographics of the population—at the expense of academic merit, competence, and preparedness.² While the original aim of the policy was to end discrimination and promote fairness, it has led to unequal treatment on the basis of race, gender, economic status, and national origin. Top-tier universities are currently facing lawsuits due to discrimination against Asian and white students.³ State laws prohibiting discrimination, such as

2. Leef, George. "Letters to the Editor: The case against affirmative action in California and Prop. 16," *Los Angeles Times*, September 5, 2020.

3. See Hartocollis, Anemona. "The Affirmative Action Battle at Harvard Is Not Over," *New York Times*, February 18, 2020 and Fu, Benjamin L., and Kim, Dohyun. "DOJ Issues Discrimination Findings Against Yale Amid Harvard Admissions Investigation, Lawsuit," *Crimson*, August 16, 2020.

California's Proposition 209, are now under renewed assault by proponents of affirmative action.⁴ There's also evidence that affirmative action not only fails to provide any long term equality,⁵ but also hurts minority students, especially those whom it claims to help.⁶

In sum,

- Affirmative action policies treat people unequally based on immutable characteristics, which is neither fair nor morally justifiable. Today's students and workers should not be held accountable for the injustices of the past.
- Affirmative action undermines the idea of individual merit and the expectation of academic excellence.
- Affirmative action policies often harm the students they are intended to help.
- Affirmative action reinforces the primacy of group identity and undermines the ideas of individual responsibility and personal agency.

Recommendations

The **Martin Center recommends** that legislatures, university boards, and faculty governing committees take steps to end the use of affirmative action on college campuses and recommit themselves to nondiscrimination, equality of opportunity, and academic freedom.

4. Shackford, Scott. "Affirmative Action in College Admissions Will Be on California's Ballot in November," *Reason*, September 18, 2020.

5. Sacks, David and Thiel, Peter. "The Case Against Affirmative Action," *Stanford Magazine*, September/October 1996.

6. Sander, Richard and Taylor, Stuart. "The Painful Truth About Affirmative Action," *The Atlantic*, October 2, 2012.

Universities should:

- End policies that discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, national origin, geographic area, legacy status, or other identity group for all purposes, including:
 - Student admissions, programs, activity, and financial aid; and
 - Faculty recruitment, hiring, promotion, and tenure.
- Institute "blind admissions" in which demographic information is not considered during the admissions process.

Model university policies:

Wyoming Catholic College's [non-discrimination policy](#): "Wyoming Catholic College admits students of any race, color, religion, national and ethnic origin to all the rights, privileges, programs, and activities generally accorded to or made available to students at the school. It does not discriminate on the basis of race, color, religion, national and ethnic origin in the administration of its educational policies, admissions policies, hiring and employment practices, scholarship and loan programs, and athletic and other school-administered programs."

Policymakers should:

- Follow [California's](#) prohibition against discrimination and preferential treatment, and eliminate state and local government affirmative action programs in so far as they involve "preferential treatment" based on race, sex, color, ethnicity, national origin, or other identity categories.

Model Legislation

Michigan Civil Rights Initiative: [Michigan Civil Rights Amendment Proposal 2 \(2006\)](#)

The American Legislative Exchange Council's [Civil Rights Act](#)

An Act to prohibit preferential treatment in higher education employment practices. (SDC § 13-49-14)

Further Reading

From the Martin Center:

- [Another Weak Argument for Affirmative Action](#) by George Leef (July 7, 2011)
- [A Weak Defense of an Obsolete Idea](#) by Martin Morse Wooster (April 6, 2010)
- [Discrimination Can be Good?](#) by George Leef (October 15, 2013)
- [Did You Know? Eight States Ban Affirmative Action](#) by Jenna A. Robinson (October 24, 2019)
- [Eager to Torch Legacy Preferences](#) by George Leef (October 4, 2010)
- [Let the Sunshine In](#) by Roger Clegg (March 1, 2007)

Other sources:

- [The Liberal Failure on Race/Affirmative Action: It's Time for Liberals to Admit It Isn't Working](#), *Slate*
- [Hard Truths About Race on Campus](#), *The Wall Street Journal*
- [Discriminating Toward Equality: Affirmative Action and the Diversity Charade](#), Heritage Foundation
- [The Effects of Affirmative Action Bans on Low-Income College Access, Upward Mobility, and College Quality](#), Department of Economics, University of Connecticut
- [The Case Against Affirmative Action](#), Louis P. Pojman
- [The Case Against Affirmative Action](#), Terry Eastland

For More Information

For supplemental data or additional research on this topic, please contact the Martin Center by phone or email. You can reach us at 919-828-1400 or info@jamesgmartin.center.

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About the Martin Center

The James G. Martin Center for Academic Renewal is a private nonprofit institute dedicated to improving higher education policy. Our mission is to renew and fulfill the promise of higher education in North Carolina and across the country.

We advocate responsible governance, viewpoint diversity, academic quality, cost-effective education solutions, and innovative market-based reform. We do that by studying and reporting on critical issues in higher education and recommending policies that can create change—especially at the state and local level.

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