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DISAGGREGATION & DIVERSITY: A CASE FOR RACE CONSCIOUS ADMISSIONS

Connor Oniki¹

Since its founding, people all over the world have looked towards America as a land of opportunity. Immigrants viewed it as a place for fresh starts, new beginnings, and equal chances. However, for centuries, concrete and subtle barriers have slowed the opportunity for progress for those who are not in the majority. Throughout America's beginnings, lawmakers legalized segregation and discrimination throughout the country multiple times. The Chinese Exclusion Act prevented Asian Americans from immigrating to the United States to pursue opportunities.² Jim Crow laws enforced racial segregation and ensured that though African Americans were no longer enslaved, they did not have all the same rights as other citizens.³ Historically, these discriminatory systems prevented individuals from improving their own lives and contributing to wider society. In response to these systems, advocates fought to create laws and regulations that would even the playing field. The Voting Rights Act,⁴ the

1 Connor Oniki is a senior at Brigham Young University studying Economics. He will be attending law school in the fall of 2020. He would like to express his gratitude for his phenomenal editor Alixa Brobbey for all her incredible work on this paper. He would also like to thank the editorial board for all of their mentoring and hard work and Kris Tina Carlston for her guidance and help throughout this process.

2 Chinese Exclusion Act, 8 § U.S.C. § 261-299 (1943).

3 Ferris State University, *Examples of Jim Crow Laws – Oct. 1960 – Civil Rights* (2001) <https://www.ferris.edu/htmls/news/jimcrow/links/misclink/examples.htm>.

4 Voting Rights Act, 52 § U.S.C. § 10302 (2020).

Fair Housing Act,⁵ and Title VII of the Civil Rights Act,⁶ amongst others, struck down some of the societal barriers to educational and career success.

As America continues to become more diverse, it has become increasingly difficult for policymakers to determine who needs help overcoming the barriers placed in their way because of things out of their control, such as race, gender, sexuality etc. Within the larger Asian American community, specifically, members of subgroups such as Cambodians, Laotians, and Burmese, struggle to find footing in this country, as many of their mass migrations have taken place later than those of other, more-established races. They lack the foundation within the United States that many of their Asian American counterparts have. By comparing them to the more settled Eastern Asians, policymakers set these Asian Americans up for failure in their education and careers. Members of the aforementioned subcommunities who have more recently immigrated to the United States face struggles more similar to African American and Hispanic communities than to the larger Asian American community. For instance, for every dollar the average white man makes, an Asian Indian woman makes \$1.21, but a Burmese woman makes \$.50.⁷ This disparity is one example among many which shows that lumping together all groups of Asians within America presents a problem.

This paper will focus on federal laws regarding the use of race in college admissions. We suggest that in order for all Asian Americans to reap the rewards of race-conscious admissions policies without injuring other minority groups, such laws need to be revised to include language that is more inclusive of all groups and subgroups of Asian Americans, regardless of socioeconomic status, racial history, or any other factors. By legally requiring states to incorporate the use of Asian American subcategories in higher education

5 Fair Housing Act, 42 § U.S.C. § 3601-3631 (2020).

6 U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 (1964).

7 Sarah-Soonling Blackburn, *What is the Model Minority Myth?*, Teaching Tolerance (Mar. 21, 2019), <https://www.tolerance.org/magazine/what-is-the-model-minority-myth>.

admissions and disaggregating data within Asian American statistics, state legislatures and voters will be able to make more educated decisions about how their state approaches diversity in higher education. By separating the Asian American subgroups, the revised laws would achieve greater diversity within higher education.

By calling for more inclusive language in higher education admissions to be required by law, students can better identify themselves and universities can gain a better understanding of how diverse these students' backgrounds actually are. The main way to accomplish this is by including more Asian American subgroups in the application process. First, we will explore the historical contexts of Affirmative Action and the model minority myth. Next, we will discuss the current state of Asian Americans in higher education. Finally, we will propose a solution which involves disaggregating data, and then we will conclude by discussing the implications of such a proposition.

Many members of the Asian American community struggle to fight the stereotypes associated with the model minority myth. The model minority myth portrays all Asian Americans as members of a hardworking, intelligent group that represent what all minority communities should aspire to. While this may appear flattering, underlying this myth is a belief that all Asian Americans fit this mold and any who fall short are living below the expectation of what an Asian American "should" be.

I. BACKGROUND

Every major case involving Affirmative Action has included mention of the Equal Protection Clause of the 14th Amendment, as those who feel they have been discriminated against argue that their rights have been infringed because of their race. Initially, schools struggled with knowing how best to implement the policy of Affirmative Action, and so many used quotas to fill the spots in their programs with a diverse blend of students. However, in *California v Bakke* (1978) the court held that using race to fill quotas was considered

unconstitutional.⁸ The justices did rule that race could be used in admissions, if its use met the standard of strict scrutiny by serving a compelling governmental interest and being narrowly tailored to achieving that interest. Later, in *Grutter v Bollinger* (2003) the Supreme Court reaffirmed that Affirmative Action itself was constitutional and that using race as a factor among many was allowed in order to offer schools the greatest diversity possible.⁹ Affirmative Action was again upheld in *Fisher v University of Texas* (2016) wherein a young white woman who claimed to have been discriminated against lost her case.¹⁰ Like in the two aforementioned cases, the Court held that the use of race in admissions was not in violation of the Equal Protection Clause. In another related case, *Schuette v. Coalition to Defend Affirmative Action* (2014), the Supreme Court held with the state of Michigan's voters in saying that amendments to a state's constitution that prohibit race- and sex- based admissions are not in violation of the Equal Protection Clause.¹¹ These cases demonstrate that America is still learning how to deal with the ramifications surrounding laws regarding race.

Though the Supreme Court has continued to uphold the use of Affirmative Action, multiple states have followed Michigan's lead in attempting to ban its use in college admissions. Texas' vote to ban Affirmative Action was overruled by the Supreme Court in *Grutter v Bollinger* in 2003. However Affirmative Action has been successfully banned in California in 1996, Washington in 1998, Florida in 1999, Michigan in 2006, Nebraska in 2008, Arizona in 2010, New Hampshire in 2012, and Oklahoma in 2012.¹² Most recently, the aforementioned 2014 Supreme Court ruling reaffirmed that it is up to voters, and not the legislature, to make decisions about whether

8 Regents of Univ. of Cal. v. Bakke, 438 U. S. 265 (1978).

9 Grutter v. Bollinger, 539 U. S. 306 (2003).

10 Fisher v. University of Tex. at Austin, 579 U. S. 297 (2016).

11 Schuette v. Coalition to Defend Affirmative Action, 572 U. S. 291 (2014).

12 Jenna A. Robinson, *Did You Know? Eight States Ban Affirmative Action in College Admissions*, The James G. Martin Center for Academic Renewal (Oct. 24, 2019), <https://www.jamesgmartin.center/2019/10/did-you-know-eight-states-ban-affirmative-action-in-college-admissions/>.

to allow Affirmative Action in a specific state.¹³ Because it has been banned by various states, but still upheld federally, we are interested in exploring what methods besides traditional Affirmative Action policies states can use to achieve the goal of a diverse student body. The ruling in *Schuette* is a reminder that it is important for voters to be informed so that they can make judicious decisions regarding the use of race in college admissions.

II. CURRENT SITUATION

Amongst Japanese Americans 25 years and older, 46.8% hold a bachelor's degree, while only 5.3% have not graduated from high school. 53.2% of Korean Americans have attained a bachelor's degree or higher, while 7.8% do not hold a high school degree. There is more disparity amongst Chinese Americans, but still 52% hold a bachelor's degree or higher and all but 18.4% have a high school degree. These numbers reflect some truth to the "model minority" myth, as it shows the Asian American propensity to succeed in higher education. According to The National Center of Economic Studies, of all Asian Americans, 50.2% have a bachelor's degree or higher, while only 31.4% of Caucasian Americans hold a bachelor's degree or higher. This shows the incredible amount of success that Asian Americans as a broad category tend to have in education. However, as has been evidenced, this is especially strong amongst Eastern Asian Americans, especially the Japanese, Chinese, and Koreans. The statistics for Southeast and Southern Asian American groups is not as favorable.

The data that distinguishes between ethnic subgroups suggests that the educational achievements of many Southern and Southeast Asian American subgroups align more with African Americans and Latinos, groups typically thought of as underachieving academically. The percentage of Southeast Asian Americans who have not graduated high school is 26.5%. This figure lies right in between the

13 National Center for Educational Statistics, *Status and Trends in the Education of Racial and Ethnic Groups 2018* (2019) <https://nces.ed.gov/pubs2019/2019038.pdf>.

percentage of Blacks and Latinos, which are 14.6% and 33% respectively. Multiple Asian Americans groups have even lower rates of high school graduation, with 55.1% of Bhutanese and 47.5% of Burmese lacking a high school degree. Additionally, although 28.6% of Southeast Asians hold a bachelor's degree or higher, which is more than Blacks (at 20.9%) and Latinos (at 15.3%), their attainment still lags far behind the statistic of 53.6% for all Asian Americans. Looking closely at the statistics reveals that certain subgroups, such as the Bhutanese and Cambodians are less likely to attain a bachelor's than even Blacks and Latinos. The members of these subgroups with such degrees lies at 10.2% and 16.4%, respectively. This data clearly reveals that in terms of educational attainment, many Asian American subgroups line up more with minority groups such as Blacks and Latinos; they should therefore be afforded the same opportunities as the members in these groups.

These various statistics demonstrate that we should not view Asian Americans with a one-size-fits-all perspective. Grouping Southern and Southeastern Asians with Eastern Asians creates inequality within the group. If anything, Eastern Asians have educational attainment statistics that currently rank them closer to white Americans, if not outperforming them, while Southern and Southeastern Asians are performing more closely to African Americans and Latinx Americans. As *Grutter v. Bollinger* has affirmed, using race as a factor in admissions is allowed in order to increase diversity within schools.¹⁴ However, though legal segregation is no longer allowed, social segregation is still prevalent across America. Since *Brown v. Board of Education*, America has still fought against its segregated schools.¹⁵ Legally requiring the implementation of more subgroups in the admissions process will allow schools to get a more holistic view of their students, and the Asian American students are a great place to start because of their exceptional differences from top to bottom.

14 *Grutter v. Bollinger*, 539 U. S. 306 (2003).

15 *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954).

III. PATH TO IMPLEMENTATION

The University of California (UC) System has begun efforts to find a policy other than Affirmative Action to achieve diversity in public education and give opportunities to a wider range of Asian Americans. This began in 2010, over a decade after the state banned Affirmative Action. It has allowed for a more complete view of students and how their educational achievements may be tied to the challenges they had to overcome to accomplish what they have. These changes have been lauded throughout the Asian American and Pacific Islander community and have provided much needed change in California. A CARE report suggested that disaggregated data helped the UC system in crucial ways: understanding which student populations are underrepresented on campus, using resources efficiently, and justifying funding for various programs and services¹⁶

Some states, like Massachusetts, have also drafted bills that emphasize greater disaggregation of data from data-collecting state agencies. The proposed Massachusetts bill focused on data collected by any agencies related to the state, urging for them to classify Asian Americans and Pacific Islanders according to census categories. It also attempted to ensure that “the five largest Asian American and Pacific Islander ethnic groups residing in the Commonwealth shall have individually reported data as part of the total Asian American Pacific Islander reporting.”¹⁷ Though the bill ultimately failed, it provides a template for how lawmakers can address disparities within the Asian American community.

This paper argues that legal requirements to collect disaggregated data are permissible under the Equal Protection Clause and should be implemented nationwide, on a state level, and modeled after the UC system while also being tailored to the specific needs of different localities. This will not require race-based admissions but

16 iCount: A Data Quality Movement for Asian Americans and Pacific Islanders, *The Racialized Experience of Asian American and Pacific Islander Students: An Examination of Campus Racial Climate at the University of California, Los Angeles*.

17 An Act requiring state agencies to collect Asian American aggregate data, H.3361, 2017, 190th Sess. (Mass. 2017).

will simply provide schools and voters a better understanding of their student body. As *Schuette v. Coalition to Defend Affirmative Action* showed, states have the right to decide how they approach race-based admissions. This legal requirement will give states the information that they need to approach such admissions within their state.

Knowing specific details about the race of applicants and college students will not change necessarily change the outcome for each applicant. However, in states that do support Affirmative Action policies, it will give admissions offices the knowledge they need to create a diverse incoming student body. If all public universities are required to provide options to allow potential students to more accurately identify themselves, they will be able to create a space where students are judged fairly. Southern Asians and Southeastern Asians will be compared to each other, instead of being held to the higher standard that Eastern Asians are setting. If these changes can be implemented, Asian Americans will be treated in a way more representative of their demographic. Truer diversity will be achieved.

Currently, in the UC System, an important statistic that they track is the presence of underrepresented minorities (URM's) in their schools. The UC System identifies a URM as "A student who self-identifies as African American, Hispanic/Latino(a), or American Indian."¹⁸ Asian-Americans are not on this list. Because they are not, the outreach programs that the UC system uses to increase their diversity are less likely to reach the Southern and Southeastern Asian communities. If data were to be disaggregated, then members of Asian American subgroups that are less common at the school can be brought to light and seen as URM's as well. On a national level, this could be implemented on a state-by-state basis, so that local voters, lawmakers, and admissions officers can have a more accurate picture of which groups may be underrepresented in their schools relative to their applicants. Requiring greater disaggregation by law simply provides transparency from students to schools, and vice versa, so that everyone can have an equal chance to receive an education.

18 CA's freshman diversity pipeline to UC (2014), <https://www.universityof-california.edu/infocenter/ca-hs-pipeline>.

In response to the changes made in the UC System and the proposed bill in Massachusetts, there has been backlash, as some communities have felt that such laws and regulations are racist or overstep their bounds.¹⁹ However, Eastern Asians are often the ones who lead these arguments. These are the people who have a voice in the Asian American community. These are the groups that would not be hurt if data aggregation stayed as it was. The groups that get lost in that shuffle are those who, should the current systems stay as they are, do not have a voice and cannot be heard or seen. If racial data in college admissions were to be disaggregated, these underrepresented communities would legally be given representation and would be able to stand for themselves as their own demographic. This would achieve truer diversity, because we would learn more about the needs and performance of underrepresented communities rather than having students from the same few countries be over-represented.

This plan will impact many within the United States. Two of the groups that need to be considered more specifically are Eastern Asian Americans, as well as the group of historically underprivileged minorities, specifically African American and Latinx Americans. Under our proposed plan, Eastern Asians would be represented in their own race category. Though some may think that this will create greater competition within this group and make entering higher education even harder, because of the ruling in *California v. Bakke*, quotas are no longer allowed in university admissions. So, because universities cannot use race as a determinative factor, it would simply be used as information that provides universities with the best idea of who a student is. Race should not define a person in their entirety. However, the more specific students can be in identifying themselves, the more accurately they are able to represent how they have been influenced by their ethnicity. For any student, this proposal allows a more complete version of themselves to be on display for the schools to which they apply for. Allowing students to identify themselves as Southern and Southeastern Asian will open

19 Hansi Lo Wang, 'Racist Bill'? Chinese Immigrants Protest Effort To Collect More Asian-American Data, NPR (Aug. 5, 2017, 6:42 PM), <https://www.npr.org/2017/08/05/541844705/protests-against-the-push-to-disaggregate-asian-american-data>.

the doors for those minority groups that are facing systemic, socio-economic, and legal barriers that hinder their ability to succeed in higher education.

This holds true for members of the African American and Latinx communities as well. We recognize that this proposal may create more competition for African Americans and Latinx students, many of whom already face difficulties with discrimination and the poverty cycle that make success hard to achieve. It may seem that adding more applicants with systemic challenges because of their race to the applicant pool may make it increasingly difficult for students from marginalized backgrounds to compete in higher education, as there would be more students to compete with. However, we would argue that legally compelling schools to implement these subgroups on application materials will highlight the difficulties that students face when trying to get to college in many communities. Having more students with economic difficulties who aren't grouped in with the "Asian American" group but can self-identify as Southeastern Asians or as Southern Asians will help universities better understand the demographics of prospective classes. Universities will be able to better see where changes need to be made within both their specific schools and within higher education generally.

Some worry generally regarding Affirmative Action. They fear that if students have not been able to succeed in high school or in standardized tests, they certainly will not be able to succeed once they get to a university. However, this is not what we are arguing against. Though it is certainly an important and pressing subject, this paper is not meant to prove that underprivileged students can accomplish great things and succeed in school. That is what policies allowing race to be considered as one factor in holistic admissions is for. It is designed to bring justice for all. This paper argues that for justice to be granted, subgroups must be in place to help universities to see more clearly who these students are. When they are seen not just as test scores but as people who have overcome great, systemic barriers that have sought to halt their progression at every turn because of their situation, they can be treated fairly and exit from the shadows cast by those who may have not faced similar, even relatable challenges. Whether not they can succeed is not necessarily up to the

system, but it is not the duty of a system to determine who has an opportunity to succeed and who does not. By legally mandating this disaggregation, we provide a way to find out whether different groups can succeed. Society can never move forward unless we first learn where we truly are, and to do this we need to clearly define people's needs which are invariably linked to their identity. By disaggregating data, students will be able to clearly explain who they are and will be able to then truly represent themselves and their ethnicity.

The future of Affirmative Action is uncertain, and therefore we look towards state level rather than federal level initiatives to increase diversity. Like in the UC system, states can and should find methods to increase diversity even if they have race-neutral admissions programs.²⁰ If race was completely removed from the admissions process, there would be disastrous effects on Southern and Southeastern Asian Americans. As we have proved, their current educational achievements already lag far behind their ethnic counterparts. They face various social, economic, and cultural barriers that frequently hinder them from achieving their entire educational potential. They need more, rather than less, legal recourse that would help them. All Asian Americans need greater opportunities to succeed without being tied down by the model minority myth. True diversity will not be achieved unless educational achievements increase across the board. As a country, we need to make legal modifications to the way race is currently addressed in university admissions to ensure that the needs of all Asian Americans are addressed under the law.

IV. CONCLUSION

As we have shown, Affirmative Action in its present form does not achieve its stated purpose of "attaining a diverse student body." The way it is currently applied prevents many Asian Americans from being represented on college campus and limits diversity to a select group of high achieving, more historically privileged Asian Americans. We have proposed that encouraging individual states to

20 CA's freshman diversity pipeline to UC (2014), <https://www.universityof-california.edu/infocenter/ca-hs-pipeline>.

include disaggregated data in the college admissions process will be one step forward in beginning to address this problem. It better follows the Equal Protection Clause of the fourteenth amendment and thereby allows applicants to be given a fair chance to admission. There are many benefits that will come with adjusting its implementation so that it helps those it is supposed to. Changing the way that it is applied will help more Southern and Southeastern Asian Americans succeed in higher education, which in turn will help raise the educational standards across the entire country. The college admissions process will be more just to both applicants and schools because more accurate information will be used. There will be greater diversity within higher education because ethnic groups will not be viewed as monoliths and stereotypes. This is one advantageous course of action that will open the door for other forms of legal recourse to help all Asian Americans succeed in academia, the workplace, and every other area of life.