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Unpacking the Forgotten Truth: Reestablishing Affirmative Action With Hispanic-Serving Institutions and the Military Equal Opportunity Program for Hispanics

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Institutions & The Military Equal Opportunity
Program For Hispanics

Isabelle Rosado

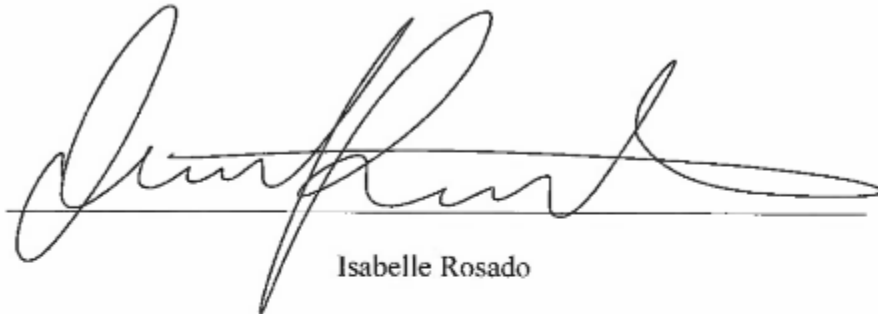
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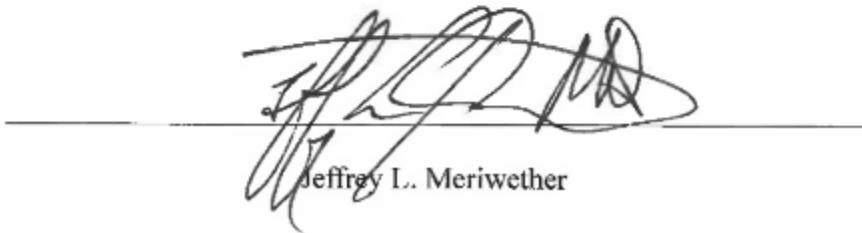


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Abstract

Affirmative Action combats discrimination amongst individuals on the basis of race, creed, color, sex, or national origin and falls under the 14th Amendment. Race has been a leading result of the reevaluation of Affirmative Action programs. Furthermore, the United States Military is an organization that also advocates for racial equality but is seldom discussed. Claims of reverse racism and privilege shield the primary purpose of Affirmative Action. Discredited opinions engulf young minds in the never-ending social conflict of racial equality. This problem continues to be unsolved which divides Americans. The increase of Hispanics/Latinxs in the U.S. forces the analysis of this minority group within postsecondary institutions, specifically Hispanic - Serving Institutions, and the military. It is significant to unravel the dissonance around Affirmative Action. The Military and higher education possess different cultures that can demonstrate a variety of perspectives on the political spectrum and can serve to create clarity.

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INTRODUCTION

This article analyzes the Affirmative Action programs in Hispanic-Serving Institutions (HSIs) and the Army's Military Equal Opportunity Program (MEO). The purpose of this thesis is to study different institutions (HSIs & MEO) that represent both sides of the political spectrum that we see in the U.S. today, to bring clarity to Affirmative Action policies and discrimination debates. With this objective in mind, I will first address Affirmative Action, Hispanic-serving Institutions (HSIs), and Military Equal Opportunity (MEO). Then, I will identify the intended and unintended consequences and controversies of HSIs and MEO. Lastly, I will break down and examine the policies of HSIs and MEO by referencing Affirmative Action court cases to identify and reestablish the primary cause and purpose of Affirmative Action.

Affirmative Action is defined as a set of procedures designed to; eliminate unlawful discrimination among applicants to schools or positions, remedy the results of such prior discrimination, and prevent such discrimination in the future. Since its creation, many challenged Affirmative Action procedures, specifically based on race and whether it should be a factor for promotional opportunities, or college admissions.¹ The racial discrepancies within the scope of Affirmative Action programs create social unrest, such as polarizing political opinions. The idea of equality and discrimination, specifically based on race, has been undeniably reconstructed by several schools of thought, many of which are directed toward minority groups. In contrast, the ideas of reverse racism and preferential treatment consume today's media and contemporary politics. Adverse attitudes and social movements about Affirmative Action have been detrimental to society and created a gap among citizens, yet the purpose of this policy is to bring diverse groups together. Minority groups and non-minorities have been separated due to the misinterpretation, and incorrect implementation of the policy.

For years, Affirmative Action has been analyzed and used between Caucasian and African American groups and not as much in connection to other minority groups such as Hispanics and Latinxs. Hispanic/Latinx is an ethnicity rather than a race and this can cause an avoidance of including Hispanics/Latinxs in Affirmative Action Policies. Additionally, the lack of attention to the difference between ethnicity and race creates further disputes on discrimination claims and is an area that is a cause for numerous faulty arguments on both sides of the political spectrum. However, this idea is a large technicality that will be briefly touched upon in this work, but will not be one of the main focuses of this thesis. For this reason, this piece will focus on the minority group of Hispanics – one of the most rapidly growing minority groups in the United States.

First, it is important to identify what Hispanic-Serving Institutions (HSI) are. Hispanic-Serving Institutions are colleges/universities that help to create equal access and opportunity for the growing population of Hispanics/Latinxs in postsecondary education.² HSIs possess positive and negative convictions. Hispanic-Serving Institutions 1) administer opportunities for Hispanic immigrants and DREAMers– which are children and descendants of illegal immigrants– through federal funding programs in postsecondary education and 2) provide access to higher education for Latinxs by bringing attention to this rapidly growing minority group because of the confusion between “race” and “ethnicity.” Both of these ideas create a sense of diversity and inclusion which represents the goals of Affirmative Action. However, some aspects of HSI programs can bring rise to some unintended consequences. It can be argued that Hispanic-Serving Institutions 1) are using borderline quotas to reach their 25% Latinx population in order to receive federal funds which goes against the current Affirmative Action policy, and 2) are overexerting the idea of underinclusion which can be viewed as preferential

treatment towards the Hispanic community.³ It is essential to analyze these perspectives in depth through case law and law review articles so that the American population understands the constitutionality and effectiveness that these perspectives have on Hispanics and non-Hispanics in society today.

The United States Army is another institution that possesses Affirmative Action procedures and requires analysis. The United States Armed Forces follow the Military Equal Opportunity (MEO) program which serves the purpose of eliminating unlawful discrimination on the basis of race, color, sex, national origin, or religion of service members.⁴ There are also positive and negative convictions about the Military's implementation of Affirmative Action. MEO 1) increases acculturation and assimilation which satisfies the purpose of Affirmative Action⁵, and 2) provides equal disciplinary action and promotional commemorations through a merit-based system that emphasizes the idea of a colorblind environment. Military service amongst Latinxs continues to increase due to the increase in Hispanic immigration. However, there are some areas in the Military Equal Opportunity Program that can produce unintended consequences. MEO can be questioned according to 1) the limit of remedies for past discrimination, and 2) the negative effect on soldier readiness⁷

It is important to analyze and critique Affirmative Action amongst Latinxs in both Higher Education and the Armed Forces because each institution possesses distinct Affirmative Action programs and procedures that create polarizing perspectives of minority groups, causing conflict within the interpretation and implementation of civil rights. It is essential to examine both organizations on the basis of race-conscious decisions in order to reestablish the primary purpose of Affirmative Action and whether it continues to be necessary for the United States today. This thesis analyzes Affirmative Action procedures in both HSIs and Army MEO to declutter the

polarizing attitudes that circle this never-ending dispute between Affirmative Action and Latinxs in society today.

BACKGROUND

A. AFFIRMATIVE ACTION

Affirmative Action has been a recurring topic of discussion for decades. A glimpse of the policy is seen in the education system for the first time during the early 1950s, with the famous court case of *Brown v. Board of Education*⁸. The policy was then introduced to the workforce in 1961 in President John F. Kennedy's Executive Order.²

*Brown v. Board*¹⁰ analyzed the idea of "separate but equal" which separated white from black children in elementary schools but claimed to have equal facilities and the same qualification of teachers under the 14th Amendment¹¹. John F. Kennedy's Executive Order applied Affirmative Action to the workforce, which mandated contractors to ensure applicants are employed and treated without regard to race, creed, color, or national origin¹². In 1964, Affirmative Action was then furthered in the education system. Title VI of the Civil Rights Act of 1964 was enacted to prohibit discrimination based on race, creed, color, or national origin in any program or activity that received federal funding.¹³ These policies served to create equality for several underrepresented groups under Affirmative Action, and yet today, there continues to be disagreement and dissatisfaction.

The courts hear countless Affirmative Action arguments over numerous factors. The following paragraphs identify the United States Supreme Court's (USSC) attempts to resolve common controversies that, unfortunately, continue to be argued today. The major court cases to

be identified in the following paragraphs are *Brown v. Board*¹⁴, *Regents of the University of California v. Bakke*¹⁵, *Fisher v. University of Texas*¹⁶, *Grutter v. Bollinger*¹⁷, and *Gratz v. Bollinger*¹⁸. Each of these cases examines specific factors of Affirmative Action policies that include the ideas of separate but equal, racial quotas, race factors, and the use of strict scrutiny. The content below will first explain the issue and holding of each case which will then be further analyzed throughout this thesis for both HSI programs and MEO.

I. Separate but Equal & the 14th Amendment

The *Equal Protection Clause* in the United States Constitution is the backbone of Affirmative Action. It establishes that US citizens have a right to life, liberty, and property under due process of law. The amendment serves to create equal treatment among all U.S. citizens. The famous court case of *Brown v. Board*, set a precedent by referencing the *Equal Protection Clause* when deciphering whether the idea of “separate but equal” can contribute to a just society on the basis of race¹⁹. During the 1950s, separate but equal was identified as the separation of black and white children in different elementary schools but claimed to possess equal facilities and treatment in both institutions. All civil rights issues, reference the 14th Amendment, especially in the education system today. In 1952, Supreme Justice Earl Warren stated his opinion in *Brown* asserting that it was important for all individuals to be granted equal protection so that they are set up for a successful career and future.²⁰

The decision in *Brown* was the beginning of equality and the abolishment of segregation in the United States. This case served as a reversal to the holding in *Plessy v. Ferguson*²¹ which claimed the idea of “separate but equal” was plausible. The issue in the case was whether the public elementary school policies of “separate but equal” complied with the 14th Amendment

based on race. The Supreme Court was significantly divided on this decision because of activism during the early years of the Civil Rights Movement. The court finally concluded that the current segregation of public schools under the doctrine of “separate but equal” was unconstitutional according to the *Equal Protection Clause*. This Supreme Court decision was a turning point for minority groups who were denied a proper education. There have been many court cases that follow Brown, in which minority groups continue to fight for equal rights and equal education. However, in the years to follow this court rule, other groups challenge this decision on the ideas of race-conscious admissions²²

II. Racial Quotas

Racial quotas are numerical requirements for hiring employees and/or admitting college applicants. Racial quotas are prohibited under Affirmative Action because they do not guarantee equal treatment to all individuals and violate the 14th Amendment. In the court case, *Regents v. Bakke*, The Medical School at UC Davis denied a white and qualified applicant from admissions because the school reserved 16 admission spots for minority students.²³ The issue was whether racial quotas were constitutional under the *Equal Protection Clause* and were in accordance with the Civil Rights Act of 1964²⁴. This act asserts, “*inter alia*, that no person shall on the ground of race or color be excluded from participating in any program receiving federal financial assistance.”²⁵ The court determined that racial quotas were unconstitutional because the means to achieve the goal of diversity at UC Davis limited applicants such as Bakke in the admission process.

III. Race Factors

As observed, racial quotas are a specified number that is expected to be met by a certain social class, but race factors are then used to meet that quota. In contrast, jobs and colleges use race factors as a form of criteria for the application process; they are used to help determine job or college acceptance such as a GPA or SAT score. *Fisher v. Texas* identifies the use of race factors.²⁶ In this case, Caucasian applicant Abigail Fisher argued against the admission process administered by the University of Texas, Austin. The University of Texas System used an undergraduate admissions system that contained two components. First, according to the state of Texas's *Top Ten Percent Law*, admissions would be offered to high school students within the top 10 percent of the graduating class. Secondly, students who did not fall within the top 10 percent, would be evaluated based on a combination of "Academic Index" (AI) and "Personal Achievement Index" (PAI). These indexes included material such as SAT scores, academic performance, and holistic reviews containing several factors, including race. In her case, Fisher challenged the race-conscious admission policy of the University, claiming that race-conscious admissions are a violation of her constitutional right under the *Equal Protection Clause*²⁷. The court held that the public university's Affirmative Action program was constitutional because the race-conscious admission plan was thoroughly reassessed to ensure that race does not play "no greater role than is necessary to meet its compelling interest" of diversity. Texas, along with other states, continue to use race-conscious admissions today.

IV. Strict Scrutiny

Affirmative Action cases always use the Strict Scrutiny test. Strict Scrutiny is identified in three forms; strict, intermediate, or rational basis. Strict Scrutiny is the highest test the supreme court administers for all discrimination claims and asks two questions; 1) what is the

compelling government interest, and 2) is the government action tailored to achieve the compelling interest?

In Affirmative Action cases, strict scrutiny applies to policies that include race-conscious admissions. However, in order for Affirmative Action programs to pass the strict scrutiny test, it must be clear that race-conscious admissions serve only as a factor in the acceptance of applicants such as in *Grutter v. Bollinger*. This Supreme Court case held that the University of Michigan Law School could pass the strict scrutiny test because the policy ensured that applicants were not solely evaluated on race, but other factors were also involved to determine acceptance²⁸. The Affirmative Action policy in this case was ruled constitutional because race factors were not the overarching factor that decided college admission.

The court case of *Gratz v. Bollinger* is also a critical case that contributed to the Affirmative Action policies that heavily relied on strict scrutiny²⁹. The Affirmative Action policy in this case was ruled unconstitutional because it relied too much on race. A white applicant filed a class action suit for the rejection of admission into the University of Michigan's College of Literature, Science, and the Arts (LSA) due to racial preference. A claim was made that the race-conscious admission process was unconstitutional under the *Equal Protection Clause* and Title VI. The Supreme Court, Chief Justice Rehnquist, held that (1) petitioners had standing to seek declaratory and injunctive relief; (2) the university's current freshman admissions policy violated the *Equal Protection Clause* because its use of race was not narrowly tailored to achieve the respondents' asserted compelling state interest in diversity; and (3) Title VI and § 1981 were also violated by that policy³⁰. The idea of “narrowly tailored” falls under the application of strict scrutiny.

I will further discuss the controversies mentioned above on Affirmative Action and analyze HSI programs and MEO programs in detail to clarify Affirmative Action with the intention to settle the endless debate around this policy. However, I will first provide further background on Hispanic-Serving Institutions and Military Equal Opportunity.

B. HISPANIC-SERVING INSTITUTIONS

In education, Hispanic-Serving Institutions (HSI) are colleges and universities that promote Hispanic inclusion and success in the areas of Science, Technology, Engineering, and Mathematics (STEM)³¹. HSIs serve as an Affirmative Action program and are directed toward the underrepresented group of Hispanics/Latinxs. As the population of Hispanics/Latinxs increases, it is important to address Affirmative Action policies that directly affect this group. HSIs are scattered throughout the United States and promote Latinx diversity on college campuses.

In order to be recognized as Hispanic-Serving, institutions must be eligible and have an enrollment of undergraduate full-time equivalent students that is at least 25 percent Hispanic at the end of the award year immediately preceding the date of application. HSIs continue to grow and in 2014, Hispanic-Serving Institutions doubled and reached about 409 Hispanic-serving colleges and universities.³²

The HSI designation was authorized and recognized by the federal government under the Higher Education Act (HEA). The HEA is a law administered by the federal government that involves any form of federal funding to students in postsecondary and higher education.³³ With the growing population of immigrants and Hispanics in the U.S. HSIs serve as the “primary vehicle” for Latinxs to enter and succeed in higher education.

C. MILITARY EQUAL OPPORTUNITY

The Military uses the Military Equal Opportunity program (MEO) to improve mission effectiveness by promoting an environment free from personal, social, or institutional barriers that prevent military members from rising to the highest level of responsibility possible based on their individual merit, fitness, and capability.³⁴ Military culture is foreign to most individuals, which is why many opinions about this organization are misunderstood. Commanding officers train soldiers to perform at the same standard and are expected to promote and discipline soldiers uniformly.

This idea of equality and inclusion in the military is portrayed in pop culture such as in the film *Full Metal Jacket*.³⁵ The movie exemplifies the basic military culture concerning race and ethnicity. R. Lee Ermey plays the role of the infamous Drill Sergeant Hartman, and he delivers a speech to his privates that includes several racial slurs and sexist remarks. However, despite the racially incorrect statements, Hartman ends the speech by informing the trainees that they are worthless and that he cares less about the color of their skin and more about individual performance and growth throughout boot camp. This last part of his speech identifies a key aspect of the military, which is that this specific institution is merit-based, and the military's merit-based system focuses on an individual's performance, capabilities, and leadership attributes.

The United States Military primarily aims to develop soldiers because it requires individuals to put personal responsibilities aside and prioritize the mission at hand. Military personnel is one of many that serve a higher purpose and organization rather than themselves. One of the most important phases of creating a soldier in basic training. Basic training serves as a

way to indoctrinate the idea that the military has complete control over every aspect of a recruit's life. David Leal says that one of the main goals of the military is to subsume individual identity and transfer loyalty to larger units, such as a nation, a branch of service, a unit, and comrades.³⁶ Individuals are first physically and mentally broken down, but then rebuilt with the intention to serve others and focus on unit orders. The military prioritizes an individual's physical and mental capabilities which help to create a colorblind organization. However, race/ethnicity is a factor in other areas of the armed forces. Other than the mental and physical training of servicemembers, promotion opportunities are also a major part of the Military.

Like college admissions, race/ethnicity contributes to the nomination of soldiers that are eligible for promotion. Promotion boards are a primary area in the Military's Affirmative Action policy that can be analyzed. Promotion boards utilize race-conscious decisions when promoting soldiers to progress to a higher service rank. Similar to other occupations, soldiers must be chosen to go through the boarding process in order to be admitted for a promotion.³⁷ The military culture and its promotion procedures will be analyzed further in order to contribute a conservative idea of Affirmative Action policy. The Military is a secular organization that can bring more viewpoints on Affirmative Action which can help to declutter the controversy and misunderstanding around the policy.

ANALYSIS

A. HISPANIC-SERVING INSTITUTIONS

I. Helping Hispanic Immigrants: Education Access

Hispanic-Serving Institutions represent an effective Affirmative Action program because they provide access to higher education for Hispanic immigrants and DREAMers. DREAMers are children of immigrants that are undocumented. These children entered the United States

before the age of 18, and therefore they reap the consequences of being illegal immigrants as a result of the decisions that their parents made to migrate to the U.S., undocumented. There are different schools of thought in the discussion of immigration and the increase of Hispanics in the U.S., specifically on equal opportunity and discrimination. Descendants of immigrants, especially DREAMers, and other undocumented students, struggle to pursue higher education due to citizenship limitations and harsh stereotypes. Roopa Nemi makes the point in an article that “Latino students are not performing as well as their peers: (1) the schools are too quick to label Latino kids as having learning problems, (2) too many non-Latino teachers may not know how to address cultural differences; (3) many Latino stereotypes may have perpetuated teachers’ lower expectation of them; and (4) parents may not push their children to work harder.”³⁸ Secondary education institutions degrade Hispanics and do not consider the limitations that this minority group endures; this results in a lack of motivation to pursue higher education. Some hardships that immigrants experience are stereotypes, language barriers, and family issues. However, Deborah Santiago asserts that most HSIs are located in urban areas and areas that possess a high concentration of Hispanics which allows individuals to attend higher education and permits them to be close to home and near family.³⁹ The location of HSIs satisfies the Equal Protection Clause because it gives Hispanics/Latinxs access to postsecondary education and the opportunity to succeed in the United States, without limitations or restrictions.

HSIs also provide various resources to Hispanics that attend these institutions. There are a number of aids such as innovative after-school, weekend, and summer programs.⁴⁰ Additionally, the institutions provide literacy and English classes for parents. These kinds of resources create opportunities for Hispanics/Latinxs to which they are not bound by language or cultural assimilation struggles. HSIs create a sense of inclusion for Hispanics through

educational programs such as administering for Hispanics in science, mathematics, engineering, and advanced technological professions (STEM). Berta Laden claims that HSI programs not only assist Hispanic college students but also receive highly personalized mentoring from working professionals. Students work with middle and high school students as tutors to raise educational aspirations, increase skill levels, and encourage earlier interest in math and science.⁴¹ Hispanics/Latinxs that struggle to attend higher education and lack the skill set to apply to have sufficient resources to do so, which avoids discrimination amongst this minority group.

Many may argue these HSI programs favor Hispanics and put other qualified non-Hispanics, at a disadvantage. The reality is that these programs *are* for Hispanics for the purpose of uplifting this minority group to the same equal level as all other social groups. As Hispanics continue to be the largest growing minority group in the U.S., it is frequently forgotten.

II. Financial Assistance and Inclusion

Hispanic-Serving Institutions can also be seen as effective Affirmative Action policies because they provide targeted funding for institutions enrolling large concentrations of Latinxs in order to improve the quality of education for this particular group of students.⁴² Colleges and universities that are eligible as Hispanic-Serving, are granted federal funding which allows applicants to be given financial aid and other forms of financial assistance in post-secondary education. Additionally, a large sum of federal funding contributes to facilities, academic programs, scholarship offers, etc. HSIs provide affordable college fees for the Latinx community through federal funding which also allows a much greater range of diversity and inclusion amongst various ethnic/racial groups. It is common for Hispanics/Latinxs to be discouraged from applying to schools due to financial dilemmas. However, HSIs provide financial support to

Hispanics and encourage diversity within the institution. Just like any university, Hispanic-Serving or not Hispanic-Serving, financial benefits are a major incentive for higher education. The growing population of Hispanics/Latinxs causes financial turmoil amongst this minority group, but HSIs programs satisfy the Affirmative Action policy by not creating separation amongst individuals and allowing the same level of success and opportunity to all college attendees.⁴³

HSIs help to accomplish two of the main purposes of Affirmative Action which are to remedy past discrimination and avoid future discrimination. Most HSIs are community colleges and are found in urban areas and serve populations that endure many hardships, Those that argue against HSIs and their purpose fail to understand the difficult experiences that this minority group experiences. Hispanic/Latinxs *are* at a disadvantage in certain situations, such as the ones listed before. HSIs provide a *remedy* for the unintended discrimination that goes against them. As the population of Hispanics/Latinxs continues to grow, so does the need for education. It is important that these programs and qualities of HSIs are recognized because they are key factors in Affirmative Action policies today and in the Hispanic community. However, there are also strong arguments that can go against the ideologies of HSIs. These arguments include topics of racial quotas and overinclusion.

II. Borderline Racial Quotas

In 1978, Bakke⁴⁴ established that racial quotas were prohibited under Affirmative Action programs and this still holds true today. There is a common misunderstanding between race and ethnicity especially with Hispanics/Latinxs. It can therefore be argued that HSIs use borderline quotas to reach their 25% Latinx population to receive federal funds. In Bakke, 16 admission

spots were held for minority applicants, however, this is unacceptable under Affirmative Action because although it allows minority groups to attend higher education, it also puts other qualified non-minority groups at a disadvantage.⁴⁵ At this point, race weighed too heavily in the admission process. HSIs can be accused of doing the same. Hispanic-Serving Institutions can receive federal funding solely if the college/university possesses a minimum of a 25% Hispanic population. Financial benefits can be an incentive for college admissions to choose Hispanic applicants over non-Hispanic applicants in order to reach the 25% population. This brings suspicion to the goal of HSIs and whether they are truly helping Hispanic/Latinxs that struggle to receive higher education. According to the current Affirmative Action policy, racial quotas are prohibited because they do not provide Equal Protection amongst all individuals.⁴⁶

The 25% requirement for HSIs creates controversy in society and is a reason why Affirmative Action is misunderstood. The racial quotas can be argued as preferential treatment toward Hispanics in HSIs; therefore claims of “reverse racism” arise. The 25% requirement of HSIs encourages Hispanics/Latinxs to attend these institutions, however, these institutions can then become secular towards serving *only* Hispanics. This takes away the goal of Affirmative Action which is avoiding discrimination and creating a colorblind admission system.⁴⁷ As discrimination and equal rights continue to be discussed today, the idea of including minority groups in higher education is now becoming an overbearing topic by overexerting the claim of “underinclusion.”

IV. Overinclusion

Additionally, it can be argued that HSIs contribute to the discussion of underinclusion. The overexertion of underinclusion can cause a distraction to the primary purpose of Affirmative

Action policies. In the article, *Trivializing Diversity: The Problem of Overinclusion in Affirmative Action Programs*, John Martinez identifies the abuse of underinclusion claims and the lack of parameters around Affirmative Action policies which can result in disputes around Affirmative Action.⁴⁸ There are unintended consequences when those who should not benefit from Affirmative Action reap the benefits of such programs and are admitted into institutions under them.⁴⁹ It can be argued that many Hispanics/Latinxs are granted access to higher education or given grants/scholarships due to their ethnicity. However, some may simply check the box on the college application stating their Hispanic origin with no justification. Many Hispanics indulge in the available educational benefits that are provided for their specific minority group, but it, therefore, defeats the purpose of Affirmative Action because not all Hispanics require additional assistance in higher education. Hispanic groups such as struggling immigrants with low incomes and DREAMers are whom most programs should be targeted toward so the category of ethnicity would not be enough.

Race factors contribute to HSI college admission and therefore, the idea of overinclusion can be questioned. Fisher identifies the use and constitutionality of race factors in college admissions.⁵⁰ It was ruled that race-conscious admissions were constitutional so long as the admission decision was necessary and met the compelling interest of the government and the institution's policy.⁵¹ The compelling interest of HSIs is to serve Hispanics/Latinxs by utilizing federal funding for further student assistance. Race factors are used today for college admissions but the parameters of Affirmative Action policies, and the limits to past discrimination remedies, especially in higher education, should be reconstructed to reduce the abuse of underinclusion.⁵² Furthermore, the definition of race vs. ethnicity should be clearly identified while also establishing a specific definition for who is considered Hispanic/Latinx. HSIs encourage Latin

communities to enroll in these institutions, but it can be unjust. There are many holes in systems similar to HSIs that can be questioned based on race-conscious admissions. At this point, being Hispanic is just as advantageous as being Caucasian in situations like this.

B. MILITARY EQUAL OPPORTUNITY

I. Acculturation & Assimilation

The United States Military utilizes MEO to create an equal environment amongst all races and ethnicities with the concepts of acculturation and assimilation of Hispanics/Latinxs. The organization creates a mixture of various social groups. In the article, *The Multicultural Military: Military Service and the Acculturation of Latinos and Anglos*, David Leal identifies the idea of acculturation in the military and how this particular institution brings together people of various races and regions. It can be implied that this large government sector encourages intercultural and intracultural learning.⁵³ The Military values an individual's mental and physical performance more than an individual's ethnic background. It is therefore asserted that the military service removes people from regular societal norms and creates individuals who do not see color, but individuals who are held to the same military standard. The current military structure does not segregate racial or ethnic groups and does not allow for groups to separate themselves; this does not excuse the fact that the military once possessed forms of racism in past decades, such as in WWII; an example would be the separation of units by race and ethnicities. However, the purpose of MEO is to assist with remedying past discrimination in the armed forces and also avoid future discrimination.

As immigration continues to increase in the U.S., so does military enlistment for minorities, specifically for Hispanics/Latinxs. Amy Lutz argues in her article, *Who Joins the Military? A Look at Race, Class, and Immigration Status*, that the cause of high immigrant enlistment was to expedite the citizenship of non-citizens.⁵⁴ Citizenship is a primary incentive for military service and therefore creates a diverse group of individuals throughout the armed forces. Another important resource offered to soldiers in order to enhance race relations is instruction on racial and ethnic differences.⁵⁵ Likewise, Hispanics/Latinxs engulf themselves in a culture that does not see color and therefore Latinxs are expected to also assimilate into the military *and* American culture.

However, the controversy surrounding Hispanic assimilation in the U.S. pits tension and a vast variety of discussions. Many argue that the Latin community does not assimilate well into U.S. culture, however, the military forces assimilation because of its attempt to create a colorblind system. No preferential treatment is given to Hispanics because they are held to the same standard as all other individuals. This situation fosters equality across the board of the military and is a major reason why the military is known for “cracking the code” when it comes to equality and Affirmative Action policies: race and ethnicity are not a primary concern, nor does it need to be. These aspects of MEO satisfy the goals of Affirmative Action through acculturation and assimilation because they inform service members of foreign cultures and therefore create less secularism amongst minority groups. This achieves the goal of avoiding future discrimination. Another form of Affirmative Action in the Military is through the Military’s promotion system.

II. Promotional Opportunities

A large part of military service and individual performance is through promotional opportunities. MEO allows for all service members of different races and ethnicities to compete for and receive promotion opportunities. The promotion procedures for service members are similar to other job applications and postsecondary education admissions. Race is used as a factor in the promotion process for service members which helps to satisfy the goals of Affirmative Action; to remedy past discrimination and avoid future discrimination. MEO enhances the idea of equality through promotions because it allows underrepresented groups the chance to be at the same level as the majority but also the ability to surpass expectations and standards through the merit-based system in order to dictate promotional qualifications.

The promotional procedures and opportunities of service members in contemporary military practices are results of MEO with the hope to combat the past discrimination that the military has been infamous for, for many years. Similar to higher education, the military is currently attempting to combat discrimination and racism while also finding ways to remedy past discrimination. A way to do this is through military promotions.

In past decades, the military has had a history of racist practices. Amy Lutz asserts that the military did not keep records of Latinx service prior to the Vietnam War and only an estimated number of Latinx military service records were accessible ⁵⁶ This idea demonstrates that Latinos were not a top priority during this time, especially those who were undocumented immigrants. African Americans experienced similar treatment throughout many wars. They were not permitted to serve during the beginning of the Revolutionary War, they were segregated by occupation which masked the truth being that all blacks were placed in similar, if not the same, military occupation in order to keep them away from other white service members.⁵⁷

The military promotion procedures in the Army are expected to follow a set of instructions and satisfy certain requirements. There are four steps to the promotion process which include: 1) the individual's placement on the "Order of Merit List" (OML), 2) the review of OML scores to further rank service members, 3) placement of individuals in categories of "fully qualified" or "not fully qualified," and 4) the administering of the equal opportunity assessment which establishes ratios of minority groups and other underrepresented groups.⁵⁸ Those that are fully qualified and part of an underrepresented group such as Hispanics/Latinxs, are given equal opportunity to compete for promotions without the argument of special treatment.

MEO and the promotion process in the Army also create a system where underrepresented groups are given the chance to exceed their peers and become highly-ranked officers. In the article, *Affirmative Action: Should the Army Mend it or End it*, Holly Cook emphasizes the idea of MEO policies and how they allow minorities to move up the hierarchal system of the military; which is known as the chain of command. The chain of command in the military encompasses leaders and their subordinates. Through MEO, Hispanics are treated equally to all other races and ethnicities and are given opportunities to be in command over mass groups of soldiers. African Americans disciplining Caucasian soldiers and Hispanics commanding troops would be unheard of during the years prior to Affirmative Action. MEO allows opportunities and remedies for these past discriminations. Immigrants are given the chance to become citizens and create great careers out of military service. Although the intentions of MEO are to create diversity and inclusion amongst servicemembers, the policy can also have some unintended consequences.

II. Ending Discrimination Remedies & Satisfying Strict Scrutiny

MEO faces similar arguments of postsecondary education, which is when do the remedies for past discrimination stop? Cook asserts that Affirmative Action policies are expected to be retired once they have reached the specified goal of diversity and eliminated all forms of discrimination.⁵⁹ However, conservatives continue to ask the question of whether race-conscious decisions will end because the remedies for past discrimination have continued for decades and there does not seem to be an end in sight. Since remedies for past racism are not causing an end to race-conscious decisions in the military, claims of “reverse racism” and “WOKEness” flood the media and cause further misinterpretation of Affirmative Action and its primary purpose. The lack of attention to discrimination remedies is an unintended consequence of Affirmative Action and must be addressed in order to create clarity in society and refrain from turmoil between Hispanics and conservative Americans.

The case decision in *Adarand Constructors, Inc v. Peña*⁶⁰ was used to influence federal programs, such as Affirmative Action in the military. Before *Adarand*, the federal government possessed limitless power to establish and operate programs that involve preferences of various categories, including race/ethnicity. The court decision ended that power and created a standard that applies to all racial classifications using the strict scrutiny test.⁶¹ The court held that the current policy under the federal contract in *Adarand* was unconstitutional because compensation benefits should not be solely directed towards disadvantaged groups and that the policy regarding equal opportunity must have a compelling government interest. There was no justification for providing compensation to a “minority business” other than that it was considered at a “disadvantage” because of its race/ethnicity. Holly Cook identifies in her article that months following the *Adarand* case, federal agencies were directed to evaluate all

Affirmative Action programs by following four major criteria; “no quotas in theory or practices, no illegal discrimination of any kind including reverse discrimination, no preference for people who are not qualified for any job...and as soon as a program has succeeded it must be retired.”⁶² This was considered a solution to race-conscious decisions in military promotions and other job opportunities, however, each of the criteria continues to be argued today.

III. MEO Affecting Soldier Readiness

As an Affirmative Action program, MEO can negatively affect soldier readiness. Similar to HSIs and “overinclusion,” the military is becoming an organization that is focusing a large number of efforts on race-conscious decisions for promotion opportunities and other forms of positive recognition of soldiers.⁶³ Race is slowly becoming a distraction to our nation's number one form of protection. The military is more concerned about diversity and inclusion than military physical and mental preparation for larger missions and country defense protocols. The Adarand⁶⁴ case creates a new standard for the military because it identifies that race-conscious decisions can be a result of reverse racism. The court case caused the federal government to enforce the avoidance of reverse discrimination when attempting to remedy past discrimination. Adarand also clarifies the importance of strict scrutiny and how any Affirmative Action policy through the federal government must be able to pass the strict scrutiny test, by proving that the policy serves a compelling government interest. However, reverse racism, lack of strict scrutiny tests, and separation of individuals by race are more present now than many would believe. In the article, *The Rise of Wokeness in the Military*, Thomas Spoehr states that WOKENESS in the military has been ingrained and soldier readiness is therefore jeopardized because race and

ethnicity continue to take top priority, which puts vital forms of military training on the back burner.

The traditional military culture of individual fitness and capabilities is fading away from America because of the constant remedying of past discrimination and there is no limit to these remedies. Hispanics who struggle to obtain citizenship and to be seen as “equal” are more than accommodated in the military. However, the military is beginning to lose its merit-based system and is becoming heavily reliant on a race-conscious system. Diversity and inclusion are deemed important to the military, but it is not the military’s overarching mission. Soldiers are expected to serve and defend the Constitution of the United States. This mission can not get done if the public’s opinion of diversity and inclusion overpowers this goal of the armed forces.

SFFA V. U.C. & SFFA V. HARVARD

I. When Will There Be A Solution?

Affirmative Action continues to be argued today in contemporary politics. The most current cases in front of the Supreme Court that concern Affirmative Action is *Students for Fair Admissions V. University of North Carolina*⁶⁵ and *Students for Fair Admissions v. the University of Harvard*.⁶⁶ SFFA made claims that both institutions’ Affirmative Action policies violated the 14th Amendment because of the race-conscious admission that was being administered. Once again, race-conscious admissions are in front of the supreme court because of the polarizing views surrounding the issue. More than 40 years of Affirmative Action court case decisions are being debated because of the dissatisfaction with inclusion⁶⁷ and the urge to end overinclusion. The decisions made in *SFFA v. U.C.* and *SFFA v. Harvard* will set yet another precedent and a

new set of criteria for an issue that should have been solved several years earlier. It is important that we unravel all the clutter around Affirmative Action by understanding its major purpose and its flaws. This serves the purpose of the analysis between HSIs and MEO.

CONCLUSION

Affirmative Action was created to remedy past discrimination and avoid future discrimination. Hispanic-Serving Institutions and Military Equal Opportunity each stand on opposite sides of the political spectrum, HSIs leaning toward the liberal side and MEO leaning toward the conservative side. Despite being considered on opposite sides of the political spectrum, they share similar objectives. Each of these institutions is analyzed side by side because they create a new reality of Affirmative Action and establish the truth behind the policy. Both organizations include specifically designed Affirmative Action programs with positive and negative effects. The positives and negatives of both policies represent that Affirmative Action is misunderstood and poorly implemented on both sides of the political spectrum.

HSIs satisfy the goals of Affirmative Action because they provide access to higher education for Hispanic immigrants and DREAMers. These institutions provide financial support and resources to help Latinxs succeed and pursue sustainable careers. However, HSIs can also be accused of using “racial quotas” in order to reach their 25 percent Hispanic population number. Additionally, many can argue that Affirmative Action programs within HSIs can favor Hispanics over other social groups, which can bring rise to reverse racism claims.

MEO is a solution to remedy the many years of racial discrimination that the Military was once infamous for. This Affirmative Action policy increases the diversity of Hispanics/Latinxs within the armed forces through race-conscious promotions and other forms of

soldier recognition. MEO also works to create a colorblind environment by focusing on individual achievement based on a merit-based system. However, MEO also possesses areas in its policy that can create fault and political debate. MEO, along with many other institutions, such as universities, businesses, and corporations, does not have a limit on past discrimination remedies. The lack of attention to discrimination remedies can create claims of reverse bigotry. Furthermore, the military continues to be focused on diversity and inclusion, and soldier readiness is no longer a top priority.

HSIs and MEO have solutions to create equality for Hispanics/Latinxs, and each of the policies has developed unintended and intended consequences. It is important that each of these institutions is analyzed in order to bring back the truth of Affirmative Action so that continuing court cases such as SFFA v. U.C. and Harvard do not happen. There is still a lot of confusion about Affirmative Action and there are therefore a lot of instances in which it is not applied correctly or justly. Affirmative Action must continue to be analyzed and discussed because the American people are still not satisfied with the current policy. There does not seem to be a change in the direction that the United States is going in regard to Civil Rights, diversity, and inclusion; and there will therefore be continued civil unrest in our nation's future.

Endnotes

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