

## **Tribal Sovereignty: Its impact and Role in Affirmative Action Discussions**

A RED Paper

California Indian Culture & Sovereignty Center

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### *I. Affirmative Action and American Indians*

On, Thursday July 29, 2023, the U.S. Supreme Court invalidated race-conscious admission programs at colleges and universities in a six-justice conservative majority that invalidated admissions programs at Harvard and the University of North Carolina (See SFFA v. Harvard and SFFA v. University of North Carolina). The fallout from this ruling will inevitably impact affirmative action policies, which were first introduced in the 1960s to address historical discrimination and promote diversity in higher education. While Black and Hispanic organizations have voiced their concerns about this new ruling, the population most impacted by radical admissions changes is also the most ignored. American Indian/Alaska Natives in public colleges and universities represent the most consistently underrepresented group; the most consistently underprepared group; and the most consistently non-persistent group. American Indians/Alaska Native students are descendants of the only racial group targeted by federal policy and practice with genocide. This is especially concerning since public institutions stand on stolen land. The negative implications of changing admission policies have, therefore, magnified the invisibility of American Indian/Alaska Native students in the academic landscape.

While affirmative action policies are designed to create “equal treatment” of historically disadvantaged groups, policies imposed by public colleges and universities that impact Tribal students infringe on Tribal sovereignty by imposing inappropriate external standards. American

Indian tribes have a unique legal and political status in the United States, as inherent sovereign nations. This recognition of tribal sovereignty is codified in treaties, federal laws, and court decisions. The history of colonization and dispossession of Tribal lands has created profound disparities in higher education for American Indian students.

## *II. The Conflict with Tribal Sovereignty*

Affirmative action policies clash with Tribal sovereignty and the nation-to-nation status of Tribal citizens in the following ways:

- **Disregard for Tribal Identity:** Affirmative action policies categorize American Indians as a homogenous group, disregarding the diverse identities, cultures, and histories. This ignored the fact that Tribal sovereignty is rooted in the unique governance structures and traditions of individual Tribes.
- **Imposition of External Standards:** Affirmative action policies impose external standards of identity and qualification on American Indian applicants, undermining the Tribal self-determination.
- **Lack of Consultation:** Public college and universities do not consult with Tribal governments or educational leaders when implementing policies impacting American Indian students. This omission reflects a lack of respect for the nation-to-nation relationship and Tribal autonomy. This omission clearly ignores the fact that each public institution is housed on Tribal lands.
- **Tokenism:** Affirmative action policies encourage admission based to meet diversity quotas, rather than for the individual's qualifications, perpetuating stereotypes.

Moreover, a significant aspect is the recognition of tribal citizenship. While some Native students may not belong to a federally recognized tribe, they can demonstrate their heritage

through documentation, affirming their indigenous status. Such measures ensure that the political identity of Native Americans is prioritized over racial categorization.

### *III. Honor and Respect Tribal Sovereignty in Admissions*

The California Indian Culture and Sovereignty Center's recent test-optional research, sponsored by the Bill and Melinda Gates Foundation, interviewed American Indian/Alaska Native students across California about their experiences with college admissions. This opportunity to "hear" voices that are typically ignored resulted in the following findings:

- Students rarely had consistent communication with college admissions personnel.
- Families of students and Tribal communities had minimal outreach from local public colleges and universities.
- American Indian/Alaska Native students relied on family members or Tribal Education personnel who were alumni to provide them with support in admissions.
- There is a significant lack of support for American Indian students once they are accepted by a college or university. There are very few American Indian/Alaska Native staff/faculty in public universities in California.

It is evident that while affirmative action policies may impact broader demographics, their influence on American Indian/Alaska Native students remains inconsistent. Public institutions, especially those with problematic histories regarding Tribal nations, have a significant responsibility to actively engage in efforts to build respectful relationships with Tribal nations. To ensure equitable opportunities and respect for tribal sovereignty, more profound engagement with Tribal communities is imperative.