

## Affirmative Action

### points

#### Three Widespread Affirmative Action Myths:

**MYTH #1:** *We don't need affirmative action any more.*

**FALSE.** Though progress has been made, people of color and women are still more likely to be unemployed, employed at lower wages, and hold jobs with a lower base pay. The U.S. Department of Labor's Glass Ceiling Commission Report of 1995 states that while white men make up 43% of the Fortune 2000 workforce, they hold 95% of senior management jobs.

**MYTH #2:** *Affirmative action favors people of color and women, leading to reverse discrimination.*

**FALSE.** Affirmative action merely enables people who might otherwise be shut out, to get their foot in the door. Affirmative action permits factors such as race, gender and national origin to be considered when hiring or admitting qualified applicants, keeping the doors of opportunity open.

**MYTH #3:** *Affirmative action really means quotas.*

**FALSE.** Quotas are illegal. With affirmative action, federal contractors and employers must establish goals and timetables and make good faith efforts to meet them. But a legal affirmative action plan does not include quotas.



**A**FFIRMATIVE ACTION is one of the most effective tools for redressing the injustices caused by our nation's historic discrimination against people of color and women, and for leveling what has long been an uneven playing field. A centuries-long legacy of racism and sexism has not been eradicated despite the gains made during the civil rights era. Avenues of opportunity for those previously excluded remain far too narrow. We need affirmative action now more than ever.

According to 1998 U.S. Department of Labor statistics, blacks are almost twice as likely as whites to be unemployed. The unemployment rate is also higher for Latinos than for whites. Blacks and Latinos generally earn far less than whites. In 2000, the median weekly earning for blacks was \$459; for Latinos, it was \$395. In that period, average income for whites was \$590. Workers of color are still concentrated in the less well-paying, unskilled sector. In 1993, black and Latino men were half as likely as whites to be employed as managers or professionals and much more likely to be employed as machine operators and laborers. Barriers to equality also remain for women.

In 1998, women earned only 73% of the wages earned by men, according to the Census Bureau. This pay gap exists even within the same occupation. Indeed, the average woman loses approximately \$523,000 in wages over a lifetime due to pay disparities. In many sectors, sex segregation bars women from high-wage earning opportunities. Low-paying, dead-end occupations such as domestic and secretarial work remain heavily female. Sexism and racism create a double burden for women of color. In 2000, black women earned a median weekly income of \$458 compared to \$523 for white women and \$717 for white men. Latina women's median weekly income was even lower, at \$373.

## Affirmative Action Timeline

- 1791** “Original Sin” of the Constitution and Bill of Rights **legitimizes slavery.**
- 1860s** Although the **Thirteenth Amendment** of 1865 abolishes slavery, southern states revive slavetime codes, creating unattainable prerequisites for blacks to live, work or participate in society. **The Civil Rights Act of 1866** invalidates these codes, conferring “the rights of citizenship” on all people. The **Fourteenth Amendment** grants citizenship to everyone born in the U.S., forbids states from denying “life, liberty or property” without due process of law, and guarantees equal protection under the laws.
- 1870s** **The Fifteenth Amendment** of 1870 gives freedmen the right to vote, and the **1875 Civil Rights Act** guarantees equal access to public accommodations regardless of race or color. White supremacist groups, however, embark upon a campaign of terror against blacks and their white supporters.
- 1896** In *Plessy v. Ferguson*, the Supreme Court holds that “separate but equal” accommodations are constitutional, legitimizing Jim Crow laws. Segregation, lynchings, severe economic hardship, and political powerlessness for black people will begin to reach all time-highs, with few political or legal barriers.
- 1954** *Brown v. Board of Education* ends legal school segregation and sets a precedent for widespread desegregation. One year later, 4.9% of college students aged 18-24 are black.

Opponents of affirmative action deliberately distort the definition and goals of this legal remedy. They contend that the practice is unfair, that it leads to preferential treatment and reverse discrimination, and that it relies on quotas. Affirmative action programs neither grant preferences based on race, nor create quotas. The law states that affirmative action programs must be flexible, using goals and timetables, but not quotas; protect seniority and not interfere with the legitimate seniority expectations of current employees; be temporary and last no longer than necessary to remedy discrimination.

Certainly, unfair preferences in hiring and admission do exist for some groups, but, in fact, such preferences almost always favor white men. “Preferences” have been shown for veterans, for children of alumnae, and for the offspring of managers and peers.

Indeed, the argument that affirmative action is “unfair” suggests that without such programs, everyone, including women and people of color, would be treated equally. Not even the most optimistic – or misguided – observer of our nation’s history or contemporary society could make that claim in good faith.

Race and gender should not be the sole selection criteria (that would be a quota system), but they do deserve to be among the many factors that are taken into account in hiring, college admissions, and awarding grants and other types of financial aid. Harvard University and other schools, for example, assess race as a factor among others, including geographical region – provided the applicant meets other admissions criteria.

## To Be Colorblind

Foes of affirmative action frequently misinterpret Dr. Martin Luther King, Jr.’s famous “I Have a Dream” speech. They assert that Dr. King

was calling for color-blind solutions for our nation’s ills when he said, “men should be judged by the content of their character, not the color of their skin.” This implication does a severe disservice to the legacy of one of our nation’s major heroes in the struggle for equal justice. Dr. King knew, as we know today, that there is no sidestepping color and gender in our society.

The National Urban Institute proved this theory recently, when it sent equally qualified pairs of job applicants on a series of interviews for entry-level jobs. The young men were coached to display similar levels of enthusiasm and “articulateness.” The young white men received 45% more job offers than their African American co-testers; whites were offered the job 52% more often than Latino “applicants.”

Many people of color are keenly aware of such disparities, although many whites are not. A poll commissioned by The National Conference, a workplace diversity organization, found that 63% of whites thought African Americans have equal opportunity, whereas 80% of African Americans felt they do not. Furthermore, if one factors in the so-called war on crime, which disproportionately targets young men of color, and the recent wave of anti-immigrant laws, it is clear that solid legal protection from discrimination is our only hope for creating equal opportunity for all.

## Corporate America is for Affirmative Action

Many U.S. companies have adopted affirmative action policies voluntarily, because they know diverse workforces are better at tailoring their goods and services for a diverse national and global market. Diversity, they attest, is good for the bottom line. On the other hand, businesses that resist affirmative action often have had such programs imposed on them by the courts.



Whether a company adopts an affirmative action policy voluntarily or by court order, the sheer number of minorities and women is meaningless unless it is accompanied by a comprehensive and ongoing diversity management program. Many companies remain riddled with sexual harassment, racism, and unequal opportunity despite the presence of large numbers of female and minority employees.

Companies doing business with the federal government are obliged to meet federal affirmative action requirements. And several federal programs assist minority-owned businesses through contract set-asides, procurement goals, technical assistance, grant and loan programs, and other forms of development aid. Proactive recruitment efforts, diversity programs, and safeguards such as the EEOC all help to level an unfair playing ground, foster improved workplace relations – and provide recourse for workers who feel they have suffered from discrimination.

## Affirmative Action in Education

During the 30 years following the passage of the Civil Rights Act, the university community took steps to recruit and admit more minorities. In 1955, one year after the *Brown v. Board of Education* Supreme Court decision, less than 5% of college

students were black. In the 1978 *University of California v. Bakke* decision, the Court ruled that while “racial and ethnic distinctions of any sort are inherently suspect,” a university could take race into account under appropriate circumstances.

By 1990, over 11% of college students were black, a number that comes

close to being representative of the percentage of blacks in the U.S. population as a whole. Soon thereafter, however, a backlash against affirmative action in higher education took hold. The state of Texas scaled back opportunity dramatically in 1996 when the U.S. Court of Appeals for the Fifth Circuit ruled in *Hopwood v. UT* that the University of Texas Law School’s affirmative action program was unconstitutional. As a result of this decision, Latino and African American admissions plummeted by 64% and 88% respectively in just one year.

California’s Proposition 209 produced equally nefarious results in our nation’s largest public university system: law school admissions among blacks dropped nearly 72%, and Latino admissions fell 35% following passage of the anti-affirmative action ballot measure. Overall admissions of blacks, Latinos and Native American students were cut in half at the UC Berkeley campus. Though the numbers of minority admissions are rebounding in the UC system as a whole, a two-tiered system is quickly developing. The numbers are still decreasing at Berkeley and Los Angeles, the two flagship campuses, with most minority students being redistributed to less competitive campuses.

In 1997, the Texas Legislature adopted a Ten Percent Plan, entitling high school seniors in the top

### Timetable, continued...

- 1961** President Kennedy issues **Executive Order 10925**, prohibiting discrimination in federal government hiring on the basis of race, religion or national origin.
- 1964** The **Civil Rights Act** seeks to end discrimination by large private employers on the basis of race and gender whether or not they have government contracts. Title VII of the Act establishes the Equal Employment Opportunity Commission (EEOC).
- 1965** The term “affirmative action” is used for the first time, by President Johnson in **E.O. 11246**, requiring federal contractors to take “affirmative action” to ensure equality of employment. This Executive Order is extended to women in 1968.
- 1969** President Nixon’s **“Philadelphia Order”** presents “goals and timetables” for reaching equal employment opportunity in construction trades. It is extended in 1970 to non-construction federal contractors. By this time, 7.8% of college students aged 18-24 are black. 1972 Title IX of the Education Amendments Act prohibits discrimination against girls and women in federally funded education, including athletic programs.
- 1978** **University of California v. Bakke** sets the parameters of educational affirmative action, saying that quotas are unconstitutional, but that minority status can be used as a factor in admissions.

ten percent of their classes to attend the University of Texas or Texas A&M – the flagship campuses – or any other state university. In Florida, Governor Jeb Bush issued Executive Order 99-281, ending affirmative action in state contracting and university admissions. Instead, the One Florida Plan will guarantee state admissions to high school seniors in the top 20% of their classes.

However, both plans have their share of problems. In Texas, the percentage of students of color in 1999 reached the levels that they were in 1996 – pre-*Hopwood*. But upon closer inspection, the number of students of color who applied also increased in 1999. Meanwhile, in Florida, many students of color attend substandard K-12 public schools that do not offer the courses required by the state’s university system. Furthermore, the Plan does not require the state’s flagship institutions to admit the top 20%, potentially creating a two-tiered system similar to the University of California.

Standardized tests still carry disproportionate weight in university admissions, yet many high schools serving students of color do not provide the resources students need to achieve on these tests; many even fail to offer Advanced Placement (AP) courses to their excelling students.

One lawsuit addressing these disparities alleges that Berkeley’s undergraduate admissions guidelines discriminate against minority students by giving bonus grade points for AP classes. The suit points out that many minority students do not have access to AP courses and cannot earn a grade point average higher than 4.0. In another suit, the ACLU argues that the State of California discriminates against students and schools in minority and low-income neighborhoods by offering far more AP courses in schools in affluent areas, disadvantaging low-income and minority students in college admissions. Equal opportunity in education remains a crucial concern for the future of our nation.

**Resources:**

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**Timetable, continued...**

- 1990s** As black college enrollment reaches an all-time high (11.3% in 1990), a backlash against affirmative action begins. In *Richmond v. J.A. Croson Co.*, the Supreme Court rules set-aside programs unconstitutional unless specific industry-wide discrimination can be proven.
- 1995** In *Adarand Constructors v. Peña*, the Supreme Court issues a “strict scrutiny” standard for proving race-based discrimination, a ruling which critically undermines affirmative action.
- 1996** The U.S. Court of Appeals, in *Hopwood v. University of Texas School of Law*, rules that UT’s affirmative action program is unconstitutional. Latino admissions drop 64% and African American admissions drop 88% in one year.
- 1997** The anti-affirmative action initiative **Proposition 209** narrowly passes in California. Enrollment of students of color in the University of California system declines within one year.
- 1998** Washington State passes **I-200**, a similar anti-affirmative action initiative.
- 1999** Governor Jeb Bush of Florida issues **Executive Order 99-281**, ending affirmative action in state contracting and higher education.