

## Frequently Asked Questions about Affirmative Action

### **Q. What is affirmative action?**

A. Affirmative action is an important tool to provide qualified individuals with equal access to educational and professional opportunities they would otherwise have been denied despite their strong qualifications. These policies make certain that all Americans are considered fairly and equally for jobs and educational opportunities.

### **Q. Why is affirmative action needed?**

A. Affirmative action remedies past discrimination, fights present-day discrimination, and promotes diversity in our society. The U.S. Supreme Court agrees affirmative action is necessary, because “in order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity” (*Supreme Court majority opinion in Grutter v. Bollinger, 2003*).

### **Q. Is discrimination still a problem in America?**

A. Yes, and disparities in opportunities continue to persist. Women earn approximately 77 cents for every dollar men earn. Latinas earn 56 cents for every dollar white men earn. African-American men earn 75 percent of what white males earn. In 2002, the median household income for whites was \$44,964, compared with \$29,177 for blacks. And the poverty rate for blacks is almost triple that of whites.

### **Q. Is affirmative action fair?**

A. Yes, affirmative action encourages fairness. Affirmative action initiatives are designed to

help companies, organizations, and educational institutions evaluate candidates equally and fairly – that is, based on their qualifications. These programs provide equal access to opportunity for qualified individuals who might not have had a chance otherwise.

Courts have taken great pains to balance competing interests in shaping affirmative action remedies. Under these principles, there must be a very strong reason (e.g. to remedy discrimination) for developing any affirmative action program; the program must only apply to qualified candidates, and the program must be limited in scope and flexible.

### **Q. Why should colleges and universities use affirmative action in admissions?**

A. In June 2003, the Supreme Court issued a landmark decision on affirmative action [*Grutter v. Bollinger (2003)* and *Gratz v. Bollinger (2003)*] upholding the use of race in admissions decisions. Reiterating America’s commitment to affirmative action, the Court concluded that “effective participation by members of all racial and ethnic groups in the civic life of our nation is essential if the dream of one Nation, indivisible, is to be realized.”

Affirmative action ensures that colleges and universities can identify and attract outstanding individuals from historically underrepresented groups. The diversity of our college campuses is critical to the future strength of our society and our economy. Colleges have always admitted students based upon a wide range of criteria that includes extracurricular activities and life experiences, as well as quantitative measures such as test scores. Diversity on college campuses improves the learning process for all students – male and female, regardless of race or

gender. Affirmative action ensures that an applicant's full background and life experience can be considered as part of an admissions decision.

**Q. Why is affirmative action needed in federal government contracting?**

A. Women and people of color are still underrepresented in many of the businesses with which the government contracts. For example, even though women-owned firms represent an estimated 28 percent of all businesses in the United States, these firms obtained a mere 2.9 percent of the \$235.4 billion in federal government contracts awarded in fiscal year 2002.

**Q. Have affirmative action programs in employment worked?**

A. Yes, we have made great progress in the past generation, but there is much more to be done. Drastic inequalities still exist in hiring practices and salary. On average, college educated African-American women annually earn \$19,054 less than college educated white men. Also, on average, a woman with a Master's degree makes \$4,765 less than a man with an undergraduate degree. With the help of affirmative action, minorities and women now have greater access to the business world. We need to further this progress so that everyone has an equal shot at higher-level jobs and fair compensation. The Supreme Court agrees that the "skills needed in today's increasingly global marketplace can only be developed through exposure to widely diverse people, culture, ideas, and viewpoints" (*Supreme Court majority opinion, Grutter v. Bollinger, 2003*).

**Q. What have been the results of affirmative action programs in higher education?**

A. Affirmative action creates more open, fair, and meaningful access to higher education for

all qualified members of our society. Over the past 30 years, affirmative action has contributed to increases in the number of women and people of color enrolling and graduating from colleges and universities. Since the late 1980s, students of color have increased their total college enrollment by 57.2 percent, and the proportion of women earning bachelor's degrees is increasing steadily. The Supreme Court agrees that student body diversity is a compelling interest in affirmative action programs at colleges and universities, given that it "better prepares students for an increasingly diverse workforce and society, and better prepares them as professionals" (*Supreme Court majority opinion, Grutter v. Bollinger, 2003*).

**Q. Why do some people oppose affirmative action programs?**

A. Misperceptions drive much of the opposition to affirmative action. Large numbers of white Americans incorrectly believe that African-Americans are as well off as whites in terms of their jobs, incomes, schooling, and health care, according to a 2001 national survey by *The Washington Post*, Henry J. Kaiser Family Foundation, and Harvard University. Many Americans also believe that women have reached equality in the workplace.

In fact, government statistics show that blacks have narrowed these gaps, but continue to lag significantly behind whites in employment, income, education, and access to health care. Additionally, even though women-owned firms represent an estimated 28 percent of all businesses in the United States, these firms have obtained a mere 2.9 percent of the \$235.4 billion in federal government contracts awarded in 2002.

*For more information contact LCCR Field Associate Robyn Kurland (kurland@civilrights.org)*

## Affirmative Action

The Leadership Conference on Civil Rights (LCCR), the nation's oldest, largest, and most diverse civil and human rights coalition, representing more than 180 member organizations, and the Leadership Conference on Civil Rights Education Fund (LCCREF), the research, education, and communication arm of the civil rights coalition, believes that affirmative action has successfully extended equal opportunities to qualified women and people of color for over 25 years, leveling the playing field and encouraging diversity in the areas of education, employment, and government contracting. Americans for a Fair Chance (AFC), a project of LCCREF, was created to educate the public and the media on the ways that affirmative action benefits the nation. Affirmative action means taking positive steps to end discrimination, to prevent its recurrence, and to create new opportunities that were previously denied qualified minorities and women.

President Lyndon Johnson explained the rationale behind the use of affirmative action to achieve equal opportunity in a 1965 speech: "You do not take a person, who for years, has been hobbled by chains and liberate him, bring him up to the starting line of a race and then say 'you are free to compete with all the others,' and still believe that you have been completely fair."

The debate over affirmative action carries with it enormous implications for the lives of women and people of color, since such programs have created opportunities too long denied them.

Opponents of affirmative action, however, have attacked these policies in the federal courts with increasing frequency. In June 2003, the U.S. Supreme Court issued a landmark decision on affirmative action, upholding the use of race in admissions decisions. Reiterating America's commitment to affirmative action, the court concluded that "effective participation by members of all racial and ethnic groups in the civic life of our nation is essential if the dream of one Nation, indivisible, is to be realized."

### The Workforce

In employment, affirmative action encompasses a broad range of actions intended to ensure a fair chance at job opportunities for all Americans. Examples of affirmative action programs in the employment context include:

- Identifying and dismantling discriminatory barriers such as biased testing or recruitment and hiring practices;
- Conducting outreach to underrepresented women and minorities by targeting colleges, ethnic media, or women and minority organizations;
- Increasing workplace diversity by allowing factors such as race, ethnicity or gender to be among those considered in evaluating qualified candidates;
- Instituting and reviewing mentoring and targeted training programs;
- Addressing hidden biases in recruitment, hiring, promotion, and compensation practices, such as unnecessary job requirements; and
- Setting flexible goals for managers and supervisors.

Similarly, federal economic development programs counter the effects of discrimination that have raised artificial barriers to the formation, development, and utilization of businesses owned by disadvantaged individuals, including women and people of color.

As a result, women and people of color have broken down barriers at all levels and in all segments of the American workforce – as professors, police officers, doctors, engineers, pilots, firefighters, and corporate executives.

### **Educational Opportunity**

Affirmative efforts to extend equal educational opportunities to qualified women and people of color have significantly increased the participation of underrepresented groups in the mainstream of our society – to the benefit of our entire nation. In fact, gains in the employment context have often been made possible by affirmative action programs that created educational opportunities for women and people of color in colleges, law schools, medical schools, and elsewhere.

In the 1978 decision of *Regents of the University of California v. Bakke*, the Supreme Court ruled that diversity could be a compelling governmental interest that permits the use of race as a factor in a narrowly tailored university admissions program.

In opposing the use of race as a factor in university admissions, opponents fail to acknowledge that admissions decisions have always been based on factors in addition to grades and tests scores, such as geography, unusual talents or experiences, athletic participation, or whether the applicant is a son or daughter of an alumnus. For the past thirty years, using race along with other factors has enriched the educational experience on our nation's campuses and broadened equal opportunity for minorities in higher education.

Nonetheless, challenges to affirmative action programs continue to mount. The U.S. Court of Appeals for the Fifth Circuit barred Texas public colleges from considering the race of prospective students; Proposition 209 amended the California Constitution by banning affirmative action in higher education admissions, as well as public employment and contracting; Washington state passed Initiative-200, which also banned use of affirmative action policies in higher education admissions, public employment, and contracting; and in Florida, Gov. Jeb Bush implemented an executive order eliminating the use of race and gender in government employment, contracting, and higher education admissions decisions.

Twenty-five years after *Bakke*, in a closely watched decision on affirmative action, the Supreme Court reaffirmed that universities may take race into consideration as one factor among many when selecting incoming students. In a 5 to 4 opinion written by Justice O'Connor, the court in *Grutter v. Bollinger* specifically endorsed Justice Powell's view in *Bakke* that student body diversity is a compelling state interest that can justify using race in university admissions. *Gratz v. Bollinger* involved a separate challenge to the undergraduate admissions program used at the University of Michigan, which differs from the program used at the law school. In a 6 to 3 opinion written by Chief Justice Rehnquist, the Court held in *Gratz* that the university's use of race in this program was not narrowly tailored to achieve the university's asserted interest in diversity.

### **A Demonstrated Need**

- **Opponents of affirmative action argue that the playing field has been leveled, therefore rendering affirmative action futile.** But "judging simply by the results, the playing field would appear to still be tilted very much in favor of white men. Overall, minorities and women are in

vastly lower paying jobs and still face active discrimination in some sectors" (*The Washington Post*, October 1998).

- **The continuing need for affirmative action is demonstrated by the data.** For example, the National Asian Pacific American Legal Consortium reports that although white men make up only 48 percent of the college-educated workforce, they hold over 90 percent of the top jobs in the news media, 96 percent of CEO positions, 86 percent of law firm partnerships, and 85 percent of tenured college faculty positions.

Anyone committed to social justice and equal rights must concern themselves with the importance of preserving affirmative action as a way of helping to ensure that all individuals in our society have an equal opportunity to succeed.

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## The U.S. Supreme Court's Decisions in the University of Michigan Cases

The Leadership Conference on Civil Rights (LCCR), the nation's oldest, largest, and most diverse civil and human rights coalition representing more than 180 member organizations, and its sister organization, the Leadership Conference on Civil Rights Education Fund (LCCREF), the research, education, and communications arm of the civil rights coalition, were just two of the many organizations that worked to persuade the U.S. Supreme Court to uphold the University of Michigan's affirmative action programs.

In a closely watched decision, the Supreme Court reaffirmed that universities may take race into consideration as one factor among many when selecting incoming students. In a 5 to 4 opinion written by Justice O'Connor, the Supreme Court in *Grutter v. Bollinger* specifically endorsed Justice Lewis Powell's view in 1978's *Regents of the University of California v. Bakke* that student body diversity is a compelling state interest that can justify using race in university admissions. The Supreme Court thus resolved a split among the lower courts as to *Bakke's* value as binding precedent.

### Background

Ever since the Supreme Court's 1978 decision in *Bakke*, educational institutions throughout the country have utilized various affirmative action programs as a means of counteracting the effects of past racial discrimination and providing greater educational opportunities to racial and ethnic minorities.

Opponents of affirmative action, however, have attacked these policies in the federal courts with increasing frequency. In 2002, the Supreme Court, for the first time since *Bakke*, considered a challenge on affirmative action policies at the University of Michigan.

In *Grutter v. Bollinger*, the Supreme Court upheld the University of Michigan Law School's affirmative action program. Citing *Brown v. Board of Education* for the proposition that "Education...is the very foundation of good citizenship," the Supreme Court stated, "The diffusion of knowledge and opportunity through public institutions of higher education must be accessible to all individuals regardless of race or ethnicity."

*Gratz v. Bollinger* involved a separate challenge to the undergraduate admissions program used at the University of Michigan, which differed from the program used at the law school. The undergraduate program used a system that assigns points for certain factors including race, while the law school took a more holistic approach, resulting in an overall score for each applicant. In a 6 to 3 opinion written by Chief Justice William H. Rehnquist, the Court held in *Gratz* that the university's use of race in this program was not narrowly tailored to achieve the university's asserted interest in diversity.

Taken together, *Grutter*, *Gratz*, and Justice Powell's opinion in *Bakke* establish that the U.S. Constitution permits race-conscious admissions policies when they are carefully designed and consider race as part of a flexible and individualized review of all applicants.

### The Value of Diversity

In *Grutter*, a clear majority of the Court endorsed Justice Powell's diversity rationale. Justice O'Connor's opinion points to diversity's "substantial, important, and laudable educational benefits" and relies heavily on social science and other evidence showing that diversity "promotes learning outcomes and better prepares students for an increasingly diverse workforce, for society, and for the legal profession."

Moreover, while Justice Powell had only focused on the educational value of diversity, the *Grutter* opinion recognizes the important role that diversity plays in training the country's leaders, stating, “In order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity.”

Reinforcing the goals of affirmative action, the Supreme Court stated, “Effective participation by members of all racial and ethnic groups in the civic life of our Nation is essential if the dream of one Nation, indivisible, is to be realized.”

### The Role of Amici

Many commentators noted the important role of the friend-of-the-court briefs in the case. While many of the briefs made very similar points, the LCCR/LCCREF brief had several passages that were very similar to the language adopted by Justice O’Connor in the *Grutter* opinion.

#### U.S. Supreme Court Decision (O’Connor)

#### LCCR/LCCREF

<p>“[M]ajor American businesses have made clear that the skills needed in today’s increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas and viewpoints. (Brief for 3M. et al.)” (p. 18)</p>	<p>“Corporate leaders – running businesses, selling products, and promoting innovation for a diverse populace – likewise require a practical appreciation of the differences and similarities of both their colleagues and their customers. <i>See, e.g.,</i> Amicus Br. Of General Motors Corp...” (p.16)</p>
<p>“[S]tudent body diversity promotes learning outcomes and better prepares students for an increasingly diverse workforce and society, and better prepares them as professionals.” (p.18)</p>	<p>[“Writing for a unanimous Court, Chief Justice Burger recognized over 30 years ago that] educators should have discretion to take race into account ‘in order to prepare students to live in a pluralistic society’....” (p. 16) “The contributions of a diverse learning environment to future leadership are significant in professional and graduate studies as well as college. Students preparing for professional practice benefit from training in environments that resemble the world in which they will work.” (p. 16)</p>
<p>“We have repeatedly acknowledged the overriding importance of preparing students for work and citizenship, describing education as pivotal to ‘sustaining our political and cultural heritage’ with a fundamental role in maintaining the fabric of society.” <i>Plyler v. Doe</i>, 457 U.S. 202, 221 (1982). (p.19)</p>	<p>“Education promotes the civic values necessary to deal with the diversity of American society, to advance the historic goal of national unity, and to draw strength from the pluralism of our society...education helps to ‘maintain [] the fabric of our society.’” <i>Plyler v. Doe</i>, 457 U.S. 202, 221 (1982). (p. 18)</p>
<p>“This Court has long recognized that ‘education ... is the very foundation of good citizenship’ . . . For this reason, the diffusion of knowledge and opportunity through public institutions of higher education must be accessible to all individuals regardless of race</p>	<p>“The unique place of education in American society, its centrality to the achievement of the national goals . . . and to tackling the challenges and opportunities posed by the pluralism of American society, substantially elevates the importance of diversity in education.” (p. 13)</p>

<p>or ethnicity.” (p. 19)</p>	
<p>“[U]niversities, and in particular, law schools, represent the training ground for a large number of our Nation’s leaders.” <i>Sweatt v. Painter</i>... “Individuals with law degrees occupy roughly half the state governorships, more than half the seats in the United States House of Representatives...The pattern is even more striking when it comes to highly selective law schools.” (p. 20)</p>	<p>“Universities are the training grounds for the leaders of American society. Their mission is to produce young men and women equipped to deal with the challenges of modern life and to better our social order...” (p.13); Professional training enriched by the varied experiences of a diverse student body better prepares students to serve their communities. <i>See, e.g., Sweatt v. Painter</i> (p. 16). “Preserving diversity in legal education is particularly imperative given the leadership roles that attorneys historically have assumed in government and other civic contexts.” (p. 17)</p>
<p>“The Law School does not premise its need for critical mass on “any belief that minority students always (or even consistently) express some characteristic minority viewpoint on any issue...To the contrary, diminishing the force of such stereotypes is both a crucial part of the Law School’s mission and one that it cannot accomplish with only a token number of minority students. Just as growing up in a particular region or having particular professional experiences is likely to affect an individual’s views, so too is one’s own, unique experience of being a racial minority in a society, like our own, in which race unfortunately still matters.” (p. 21).</p>	<p>“[As these institutions concluded] fostering a diverse student body creates an educational community of individuals who bring different personal histories to their social interactions, to their extracurricular activities, and to their studies. It does not assume that race and ethnicity correlate with viewpoint, any more than geography and economic status do. Rather by expanding the horizons of students who may not have previously interacted with those of different races and backgrounds, diversity in higher education enables students to share experiences and to learn firsthand how people are the same as well as how they differ.” (p. 14)</p>
<p>“[Percentage plans] may preclude the university from conducting the individualized assessments necessary to assemble a student body that is not just racially diverse, but diverse along all the qualities valued by the university.” (p. 28)</p>	<p>“Percentage plans override the individualized judgment of educators and admissions officials...[They] are a far cruder alternative than considering race as one of many factors in admissions decisions.” (p. 27)</p>

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## Legal Cases Related to Affirmative Action

President Kennedy was among the first to use the term “affirmative action” and President Nixon was the first to adopt affirmative action goals as part of federal contracting policy. Since that time, the Supreme Court has been instrumental in determining the scope and meaning of affirmative action policies in schools, federal agencies, and government contracting. Their decisions have defined affirmative action and have governed how policies are drafted and implemented so that they are fair and equitable.

1968

- The Supreme Court, in *Green v. County School Board of New Kent County, Va.*, 391 U.S. 430 ruled that “actual desegregation” of schools in the South is required, effectively ruling out so-called school “freedom of choice” plans and requiring affirmative action to achieve integrated schools.

1978

- The U.S. Supreme Court in *Regents of the University of California v. Bakke*, 438 U.S. 912 upheld the use of race as one factor in choosing among qualified applicants for admission. At the same time, it also ruled unlawful the University of California’s medical school’s practice of reserving 18 seats for disadvantaged minority students in each entering class of 100.

1979

- The Supreme Court ruled in *United Steel Workers of America, AFL-CIO v. Weber*, 444 U.S. 889 that race-conscious affirmative action efforts designed to eliminate a conspicuous racial imbalance in an employer’s workforce resulting from past discrimination are permissible if they are temporary and do not violate the rights of white employees.

1980

- The Supreme Court ruled in *Fullilove v. Klutznick*, 448 U.S. 448 that Congress has the power to require state and local construction projects, using federal funds, to reserve ten percent of those funds to purchase goods or services from minority business enterprises, in order to remedy past societal discrimination.

1984

- The Supreme Court determined in *Firefighters Local Union No. 1784 v. Stotts*, 467 U.S. 561 that the district court exceeded its powers in entering an injunction that required white employees to be laid off, while the otherwise applicable seniority system would have called for the layoff of black employees with less seniority.

1986

- The Supreme Court upheld a challenge to a policy regarding race-conscious layoffs in a local school district in *Wygant v. Jackson Board of Education*, 478 U.S. 1014. The policy provided that minority faculty in some instances would be retained over non-minority faculty with more seniority. The Court stated that the school’s interest in diversity was not sufficient to warrant a race-conscious remedy as it pertained to layoffs.
- The Supreme Court in *Local 28 of the Sheet Metal Workers’ International Association v. EEOC* 478 U.S. 421 upheld a judicially-ordered 29 percent minority “membership admission goal” for a union that had intentionally discriminated against minorities, confirming that courts may order race-conscious relief to correct and prevent future discrimination.

1987

- In *United States v. Paradise*, 480 U.S. 149 the Supreme Court upheld a one-for-one promotion requirement (i.e., for every white candidate promoted, a qualified African American would also be promoted) in the Alabama Department of Public Safety, finding it to be narrowly tailored and necessary to eliminate the effects of Alabama's long-term discrimination, which the lower court had found "blatant and continuous."
- The Supreme Court ruled in *Johnson v. Transportation Agency, Santa Clara County, Calif.*, 480 U.S. 616 that a severe under-representation of women and minorities justified the use of race or sex as "one factor" in choosing among qualified candidates.

1989

- The Supreme Court in *City of Richmond v. J.A. Cronson Co.*, 488 U.S. 469 struck down Richmond, Va.'s minority contracting program as unconstitutional, requiring that a state or local affirmative action program be supported by a "compelling interest," and be narrowly tailored to ensure that the program furthers that interest.
- In a series of decisions (*Wards Cove Packing Co. v. Atonio*, 493 U.S. 802, and *Patterson v. McLean Credit Union*, 491 U.S. 164), the Supreme Court dramatically cut back the circumstances under which victims of alleged job discrimination could bring and win cases.

1990

- In *Metro Broadcasting, Inc. v. FCC*, 497 U.S. 547 the Supreme Court upheld programs that take race into account with the goal of furthering diversity. Further, the Supreme Court also ruled that affirmative action plans adopted by Congress, rather than a state, are not subject to strict scrutiny but something less.

1992

- In *United States v. Fordice*, 505 U.S. 717 the Supreme Court ruled that race neutral policies are insufficient to fulfill a state's affirmative obligation to dismantle a system of established segregation.

1994

- In *Adarand Constructors, Inc. v. Peña*, 513 U.S. 1012 the Supreme Court ruled that a federal affirmative action program remains constitutional when narrowly tailored to accomplish a compelling government interest such as remedying discrimination.
- The Supreme Court denied *Cert* to *Podberesky v. Kirwan*, letting stand the U.S. Court of Appeals for the Fourth Circuit's decision in the case, which declared unconstitutional a merit-based scholarship program for African American students at the University of Maryland. The Fourth Circuit found that despite present-day effects of past discrimination, the program was not sufficiently narrowly tailored.

1996

- In *Texas v. Hopwood*, 518 U.S. 1033 the U.S. Court of Appeals for the Fifth Circuit ruled against the University of Texas, deciding that the law school's policy of considering race in the admissions process was a violation of the Constitution's equal-protection guarantee. The U.S. Supreme Court declined to hear an appeal of the ruling because the program at issue was no longer in use.

1997

- The U.S. Supreme Court refused to hear a challenge to California's Proposition 209. By declining to review the case, the Court let stand the U.S. Court of Appeals for the Ninth Circuit ruling, which allowed Proposition 209 to go into effect.

2001

- In *Adarand Constructors, Inc. v. Mineta*, 534 U.S. 103 the Supreme Court dismissed the case as "improvidently granted," thereby letting stand the U.S. Court of Appeals for the Tenth Circuit's decision, which upheld the government's revised federal contracting program. In 2000, the Tenth Circuit ruled that the Disadvantaged Business Enterprise program, as administered by the Department of Transportation, was constitutional because it served a compelling government interest and was narrowly tailored to achieve that interest.

2003

- On June 23, the Supreme Court reaffirmed that universities may take race into consideration as one factor among many factors when selecting incoming students. In a 5 to 4 opinion written by Justice O'Connor, the Supreme Court in *Grutter v. Bollinger*, 124 S.Ct. 35 supported the University of Michigan Law School's affirmative action program and specifically endorsed Justice Powell's view in 1978's *Regents of the University of California v. Bakke* that student body diversity is a compelling state interest that can justify using race in university admissions. The Supreme Court thus resolved a split among the lower courts as to *Bakke's* value as binding precedent.
- On June 23, the Supreme Court also ruled in *Gratz v. Bollinger*, 537 U.S. 1044, 6 to 3, upholding the value of student body diversity but deciding that the use of race in the University of Michigan undergraduate school's affirmative action program was not narrowly tailored to achieve the university's asserted interest in diversity. The undergraduate program used a system that assigned points for certain factors such as geography, legacy/alumni relationships, including race, while the law school took a more holistic approach, resulting in an overall score for each applicant.

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## History of Affirmative Action Policies

1961

- President John F. Kennedy's Executive Order (E.O.) 10925 used affirmative action for the first time by instructing federal contractors to take "affirmative action to ensure that applicants are treated equally without regard to race, color, religion, sex, or national origin." He also created the Committee on Equal Employment Opportunity.

1964

- Congress passed and President Lyndon B. Johnson signed into law the Civil Rights Act of 1964, landmark legislation prohibiting employment discrimination by large employers (more than 15 employees), whether or not they have government contracts. He also established the Equal Employment Opportunity Commission (EEOC).

1965

- President Johnson issued E.O. 11246, requiring all government contractors and subcontractors to take affirmative action to expand job opportunities for minorities. He also established the Office of Federal Contract Compliance Programs (OFCCP) in the Department of Labor to administer the order.

1966

- President Johnson amended E.O. 11246 to include affirmative action for women; federal contractors were now required to make good-faith efforts to expand employment opportunities for women and minorities.

1968

- The Supreme Court, in *Green v. County School Board of New Kent County, Va.*, 391 U.S. 430 ruled that "actual desegregation" of schools in the South is required, effectively ruling out so-called school "freedom of choice" plans and requiring affirmative action to achieve integrated schools.

1970

- The Department of Labor, under President Richard M. Nixon, issued Order No. 4, authorizing flexible goals and timetables to correct "underutilization" of minorities by federal contractors.

1971

- Order No. 4 was revised to include women.

1972

- President Nixon issued E.O. 11625, directing federal agencies to develop comprehensive plans and specific program goals for a national Minority Business Enterprise (MBE) contracting program.

1973

- The Nixon administration issued "Memorandum-Permissible Goals and Timetables in State and Local Government Employment Practices," distinguishing between proper goals and timetables and impermissible quotas.

1978

- The U.S. Supreme Court in *Regents of the University of California v. Bakke*, 438 U.S. 912 upheld the use of race as one factor in choosing among qualified applicants for admission. At the same time, it also ruled unlawful the University of California's medical school's practice of reserving 18 seats for disadvantaged minority students in each entering class of 100.

1979

- President Jimmy Carter issued E.O. 12138, creating a National Women's Business Enterprise Policy and requiring each agency to take affirmative action to support women's business enterprises.
- The Supreme Court ruled in *United Steel Workers of America, AFL-CIO v. Weber*, 444 U.S. 889 that race-conscious affirmative action efforts designed to eliminate a conspicuous racial imbalance in an employer's workforce resulting from past discrimination are permissible if they are temporary and do not violate the rights of white employees.

1980

- The Supreme Court ruled in *Fullilove v. Klutznick*, 448 U.S. 448 that Congress has the power to require state and local construction projects, using federal funds, to reserve ten percent of those funds to purchase goods or services from minority business enterprises, in order to remedy past societal discrimination.

1983

- President Ronald Regan issued E.O. 12432, which directed each federal agency with substantial procurement or grant-making authority to develop a Minority Business Enterprise (MBE) development plan.

1984

- The Supreme Court determined in *Firefighters Local Union No. 1784 v. Stotts*, 467 U.S. 561 that the district court exceeded its powers in entering an injunction that required white employees to be laid off, while the otherwise applicable seniority system would have called for the layoff of black employees with less seniority.

1985

- Efforts by some in the Reagan administration to repeal E.O. 11246 were thwarted by defenders of affirmative action, including other Reagan administration officials, members of Congress from both parties, civil rights organizations, and corporate leaders.

1986

- The Supreme Court upheld a challenge to a policy regarding race-conscious layoffs in a local school district in *Wygant v. Jackson Board of Education*, 478 U.S. 1014. The policy provided that minority faculty in some instances would be retained over non-minority faculty with more seniority. The Court stated that the school's interest in diversity was not sufficient to warrant a race-conscious remedy as it pertained to layoffs.
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1989

- The Supreme Court in *City of Richmond v. J.A. Cronson Co.*, 488 U.S. 469 struck down Richmond, Va.'s minority contracting program as unconstitutional, requiring that a state or local affirmative action program be supported by a "compelling interest," and be narrowly tailored to ensure that the program furthers that interest.
- In a series of decisions (*Wards Cove Packing Co. v. Atonio*, 493 U.S. 802, and *Patterson v. McLean Credit Union*, 491 U.S. 164), the Supreme Court dramatically cut back the circumstances under which victims of alleged job discrimination could bring and win cases.

1990

- In *Metro Broadcasting, Inc. v. FCC*, 497 U.S. 547 the Supreme Court upheld programs that take race into account with the goal of furthering diversity. Further, the Supreme Court also ruled that affirmative action plans adopted by Congress, rather than a state, are not subject to strict scrutiny but something less.

1992

- In *United States v. Fordice*, 505 U.S. 717 the Supreme Court ruled that race neutral policies are insufficient to fulfill a state's affirmative obligation to dismantle a system of established segregation.

1994

- In *Adarand Constructors, Inc. v. Peña*, 513 U.S. 1012 the Supreme Court ruled that a federal affirmative action program remains constitutional when narrowly tailored to accomplish a compelling government interest such as remedying discrimination.

1995

- President Bill Clinton reviewed all affirmative action guidelines by federal agencies and declared his support for affirmative action programs by announcing the administration's policy of "mend it, don't end it."
- Sen. Bob Dole (R-Kan.) and Rep. Charles Canady (R-Fla.) introduced the so-called Equal Opportunity Act in Congress. The act would prohibit race- or gender-based affirmative action in all federal programs. The bill died in the House during the same session.

- The Regents of the University of California voted to end affirmative action programs at all University of California campuses. Beginning in 1997 for graduate schools and 1998 for undergraduate admissions, officials at the university were no longer allowed to use race, gender, ethnicity, or national origin as a factor in admissions processes.
- The bipartisan Glass Ceiling Commission released a report on the endurance of barriers that deny women and minorities access to decision-making positions, and issued a recommendation “that corporate America use affirmative action as a tool ensuring that all qualified individuals have equal access and opportunity to compete based on ability and merit.”

#### 1996

- California’s Proposition 209 passed (54-46) by a narrow margin in the November election. Proposition 209 abolished all public-sector affirmative action programs in the state in employment, education, and contracting. Clause (C) of Proposition 209 permits gender discrimination that is “reasonably necessary” to the “normal operation” of public education, employment, and contracting.
- In *Texas v. Hopwood*, 518 U.S. 1033 the U.S. Court of Appeals for the Fifth Circuit ruled against the University of Texas, deciding that the law school’s policy of considering race in the admissions process was a violation of the Constitution’s equal-protection guarantee. The U.S. Supreme Court declined to hear an appeal of the ruling because the program at issue was no longer in use.

#### 1997

- Voters in Houston, Texas, supported affirmative action programs in city contracting and hiring by rejecting an initiative that would banish such efforts. Houston proved that the wording on an initiative is a critical factor in influencing voters’ response. Instead of deceptively focusing attention on “preferential treatment,” voters were asked directly if they wanted to “end affirmative action programs.” They said no.
- The U.S. Supreme Court refused to hear a challenge to California’s Proposition 209. By declining to review the case, the Court let stand the U.S. Court of Appeals for the Ninth Circuit ruling, which allowed Proposition 209 to go into effect.
- The U.S. House Judiciary Committee voted 17 to 9 across party lines to defeat legislation aimed at dismantling federal affirmative action programs for women and minorities. Rep. George Gekas (R-Pa.), who moved to table the bill, said that the bill was “useless and counterproductive.” He said, “I fear that forcing the issue at this time could jeopardize the daily progress made in ensuring equality.”
- Bill Lann Lee was appointed acting assistant attorney general for civil rights at the Department of Justice, after facing opposition to his confirmation because of his support for affirmative action when he worked for the NAACP Legal Defense and Educational Fund.
- Lawsuits were filed against the University of Michigan (*Grutter v. Bollinger* and *Gratz v. Bollinger*) and the University of Washington Law School (*Smith v. University of Washington Law School*) regarding their use of affirmative action policies in admissions standards.

- In response to *Hopwood*, Texas passed the Texas Ten Percent Plan, which ensures that the top ten percent of all students at all high schools in Texas have guaranteed admission to the University of Texas and Texas A&M system, including the two flagships, UT Austin and A&M College Station.

1998

- Both the U.S. House of Representatives and the Senate thwarted attempts to eliminate specific affirmative action programs. Both houses rejected amendments to abolish the Disadvantaged Business Enterprise program funded through the transportation bill, and the House rejected an attempt to eliminate use of affirmative action in admissions in higher education programs funded through the Higher Education Act.
- The ban on the use of affirmative action in admissions at the University of California schools went into effect. UC Berkeley had a 61 percent drop in admissions of African American, Latinos, and Native American students, and UCLA had a 36 percent decline.
- Voters in Washington State passed Initiative 200, banning affirmative action in higher education, public contracting, and hiring.

2000

- Many circuit courts throughout the country heard cases regarding affirmative action in higher education, including the U.S. Court of Appeals for the Fifth Circuit in Texas (*Texas v. Hopwood*), the Sixth Circuit in Michigan (*Grutter v. Bollinger* and *Gratz v. Bollinger*), the Ninth Circuit in Washington (*Smith v. University of Washington Law School*), and the Eleventh Circuit in Georgia (*Johnson v. University of Georgia, Board of Regents*). The same district court in Michigan made two different rulings regarding affirmative action in Michigan, with one judge deciding that the undergraduate program was constitutional while another judge found the law school program unconstitutional.
- The Florida legislature passed the “One Florida” Plan, banning affirmative action. The program also included the Talented 20 Percent Plan that guarantees the top 20 percent of high school graduates admission to the University of Florida system.
- In an effort to promote equal pay, the U.S. Department of Labor promulgated new affirmative action regulations including an Equal Opportunity Survey, which requires federal contractors to report hiring, termination, promotions, and compensation data by minority status and gender. This is the first time in history that employers had been required to report information regarding compensation by gender and minority status to the federal equal employment agencies.
- The U.S. Court of Appeals for the Tenth Circuit issued an opinion in *Adarand Constructors v. Mineta*, 228 F3d 1147 and ruled that the Disadvantaged Business Enterprise as administered by the Department of Transportation was constitutional because it served a compelling government interest and was narrowly tailored to achieve that interest. The court also analyzed the constitutionality of the program in use when Adarand first filed suit in 1989 and determined that the previous program was unconstitutional. Adarand then petitioned the Supreme Court for a writ of certiorari.

2001

- In *Adarand Constructors, Inc. v. Mineta*, 534 U.S. 103 the Supreme Court dismissed the case as “improvidently granted,” thereby letting stand the U.S. Court of Appeals for the Tenth Circuit’s decision, which upheld the government’s revised federal contracting program. In 2000, the Tenth Circuit ruled that the Disadvantaged Business Enterprise program, as administered by the Department of Transportation, was constitutional because it served a compelling government interest and was narrowly tailored to achieve that interest.
- California enacted a new plan allowing the top 12.5 percent of high school students’ admission to the UC system, either for all four years or after two years outside the system, and guaranteed the top 4 percent of all high school seniors’ admission into the UC system.

2002

- The U.S. Court of Appeals for the Sixth Circuit handed down its decision in *Grutter v. Bollinger*, 288 F.3d 732 on May 14, and upheld the constitutionality of using race as one of many factors in making decisions at the University of Michigan’s Law School.

2003

- On June 23, the Supreme Court reaffirmed that universities may take race into consideration as one factor among many factors when selecting incoming students. In a 5 to 4 opinion written by Justice O’Connor, the Supreme Court in *Grutter v. Bollinger*, 124 S.Ct. 35 supported the University of Michigan Law School’s affirmative action program and specifically endorsed Justice Powell’s view in 1978’s *Regents of the University of California v. Bakke* that student body diversity is a compelling state interest that can justify using race in university admissions. The Supreme Court thus resolved a split among the lower courts as to *Bakke*’s value as binding precedent.
- On June 23, the Supreme Court also ruled in *Gratz v. Bollinger*, 537 U.S. 1044, 6 to 3, upholding the value of student body diversity but deciding that the use of race in the University of Michigan undergraduate school’s affirmative action program was not narrowly tailored to achieve the university’s asserted interest in diversity. The undergraduate program used a system that assigned points for certain factors such as geography, legacy/alumni relationships, including race, while the law school took a more holistic approach, resulting in an overall score for each applicant.
- On July 8, in a swift reaction to the Supreme Court’s decision on *Gratz v. Bollinger* and *Grutter v. Bollinger*, University of California Regent Ward Connerly announced his intention to launch a Michigan state-wide initiative to prohibit affirmative action in education, employment, and contracting. Connerly was also the architect of California’s Proposition 209 (1996) and Washington state’s Initiative-200 (1998), which ended the use of affirmative action in higher education, public contracting, and hiring, in those states.
- On October 7, California voters overwhelmingly rejected Proposition 54, the so-called “Racial Privacy Initiative” which would have banned the collection of race- and ethnicity-related data by state and local government agencies. The ballot campaign, led by Ward Connerly, was a far-reaching attempt to further an ultra-conservative goal of eradicating equal opportunity and equity in all areas of society, including the delivery of health care.

- Center for Equal Opportunity, an anti-equal opportunity/affirmative action organization, continues to file complaints against colleges and universities in targeted areas, in an attempt to discourage them from developing or continuing with their affirmative action programs.

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## **AFFIRMATIVE ACTION IN EMPLOYMENT AND CONTRACTING**

Affirmative action is a tool to provide qualified individuals with equal access to opportunities. Affirmative action programs, including recruitment, outreach, and training initiatives, have played a critical role in providing women and minorities with access to educational and professional opportunities they would otherwise have been denied despite their strong qualifications.

Although progress has been made over the last 30 years, ensuring equal opportunity for women and minorities remains an elusive goal. Affirmative action programs have opened up job opportunities for qualified women and minorities to achieve high wages, advance in the workplace, and pursue nontraditional careers. However, continued use of affirmative action in employment and contracting is necessary to help break down barriers to opportunity and ensure that all Americans have a fair chance to demonstrate their talents and abilities.

**Affirmative action in employment is an important tool to assist businesses in their efforts to build a global workforce.**

Affirmative action in employment includes: recruitment and outreach efforts to make sure that qualified women and minorities are in the talent pool when hiring decisions are made; training, mentoring, and workforce diversity initiatives to give all employees a fair chance at promotions; and management tools for measuring progress in opening opportunities such as flexible goals and timetables.

- Prior to the Supreme Court's ruling in *Grutter v. Bollinger*, 65 *Fortune* 500 companies filed an amicus brief in favor of affirmative action programs in higher education. The brief states, "The need for diversity in higher education is indeed compelling. Because our population is diverse, and because of the increasingly global reach of American business, the skills and training needed to succeed in business today demand exposure to widely diverse people, cultures, ideas and viewpoints." The brief cites several companies that have increased minority representation, including Microsoft Corporation, whose minority domestic workforce increased from 16.8 percent in 1997 to 25.6 percent in February 2003. (*Brief for Amici Curiae, 65 Leading American Businesses in Support of Respondents, Grutter v. Bollinger, 2003*)
- IBM's affirmative action program highlights early identification of employees with high leadership potential, broadening career opportunities, and recruiting qualified employees from a diversity of backgrounds. Central to IBM's Executive Resources program is the idea that recruiting, training, and retaining talented minorities is the responsibility of IBM's management, from the CEO down through second line managers. From January 1996 to March 2001, the percentage of minority executives increased 170 percent – from 117 to 316 officials. (*IBM, June 2002*)

**The persistence of a wage gap for women and minority workers still remains in the American workplace.**

- The average U.S. salary for professional positions is \$69,447. American Indians in these positions earn less than average with \$57,427. (*"The Fact Book," U.S. Office of Professional Management, 2002*)
- White college graduates earned 11 percent more than Asian college graduates. White high-school graduates earn 26 percent more than Asian high-school graduates. (*National Asian Pacific American Legal Consortium, 2000*)

- While the wage disparity has decreased since the passage of the 1963 Equal Pay Act, the statistics are still bleak. Today, Hispanic women still earn only 52 cents to every dollar earned by their white female counterparts, while Hispanic men earn only 63 cents to every dollar earned by their white male counterparts. (*U.S. Census Bureau, 2000*)
- In 2001, the median annual earnings of white males with a four-year college degree was \$55,307, while white women with the same educational attainment earned \$40,192. Black women and Hispanic women with the same education credentials suffered from an even larger gap. Black women with equal college credentials earned \$36,253, while Hispanic women with equal college credentials earned only \$34,060. Also, on average, a woman with a master's degree makes \$4,765 less than a man with a college degree. ("*The Wage Gap by Education,*" *National Committee on Pay Equity: 2001*)
- In 2001, the average per capita income was \$24,142 for white Americans and \$15,269 for black Americans. ("*Income in the United States: 2002,*" *U.S. Census Bureau, Table 4, May 2002*)

**Affirmative action programs have opened job opportunities for qualified women and minorities in the workplace. However, barriers to the highest levels of advancement still remain in the workplace and in non-traditional occupations.**

- Since 1990, the white-collar employment gap between Hispanics and other groups has widened. From 1990 to 2000, the percentage of workers who were managers or professionals increased from 29 percent to 33 percent for whites, from 16 percent to 22 percent for blacks, and from 13 percent to 14 percent for Hispanics. (*Population Reference Bureau, 2000*)
- The U.S. Department of Labor's Glass Ceiling Commission report, released in March 1995, showed that while white men are only 43 percent of the *Fortune 2000* workforce, they hold 95 percent of the senior management jobs. A report from Catalyst reveals that only 4.1 percent of the top-earnings officers in *Fortune 500* companies are women. ("*Census of Women Corporate Officers and Top Earners of the Fortune 500,*" *Catalyst, 2000*)
- According to the 2000 Census, about 24 percent of the American Indian and Alaskan Native working population over the age of 16 was employed in management and professional related occupations, compared with almost 36 percent for whites. (*Census 2000, Census 2000 Brief, August 2003*)
- Today, women remain severely underrepresented in non-traditional occupations even though these jobs pay 20 to 30 percent more than traditionally female jobs. In 2002, for example, women were only 10.8 percent of all engineers; 1.4 percent of all auto mechanics; 1.8 percent of all carpenters; 30.6 percent of all doctors; and 29.2 percent of all lawyers. (*Bureau of Labor Statistics, Current Population Survey, Table 11, June 2003*)
- Although the number of women of color in *Fortune 1000* companies has increased over the past decade, research shows that not even half (44 percent) of those women believe that they have an equal chance for promotion within their companies. ("*Making the Case for Affirmative Action: Women of Color in Corporate America,*" *Center for Women Policy Studies, 2001*)

**Some progress has been made in increasing the representation of women and minorities on boards of companies.**

- Although the representation of African Americans sitting on corporate boards has climbed 4 percent since 1999, African-American men and women held just 388 of 11,500 *Fortune 1000* board seats in 2002. (*Microquest White Paper: Shattering The Glass Ceiling, 2002*)

- While the number of corporate board seats occupied by Latinos increased in 2000, of the total places at *Fortune 1000* boardroom tables, Latinos held only 1.7 percent. (*"2001 Corporate Governance Study," Hispanic Association on Corporate Responsibility*)

**Affirmative action programs include efforts to encourage the awarding of government contracts to qualified women and minority-owned businesses. While affirmative action policies and programs have improved the success of women and minority-owned business enterprises, these businesses still receive only a fraction of total federal and state contracting dollars.**

- Even though women-owned firms represent an estimated 28 percent of all businesses in the United States, their firms have obtained a mere 2.9 percent of the \$235.4 billion in federal government contracts awarded in fiscal year 2002. This is still short of the five percent goal Congress established in 1994. (*Center for Women's Business Research; National Women's Business Council, Federal Contracting with Women-Owned Businesses FY1997-FY2002, August 2003*)
- Under the Small Business Administration's Section 8(a) program, Asian American-owned businesses more than doubled their share of contracts in a ten-year period, getting 23.7 percent of contracts in 1996 compared to 10.5 percent of contracts in 1986. (*Sharpe, Rochelle, "Asian-Americans Gain Sharply in Big Program of Affirmative Action," The Wall Street Journal, September 9, 1997*)

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## FACTS ON AFFIRMATIVE ACTION AND HIGHER EDUCATION

Affirmative action is a tool to provide qualified individuals with equal access to opportunities. Affirmative action programs, including recruitment, outreach, and training initiatives, have played a critical role in providing individuals with access to educational and professional opportunities they would otherwise have been denied despite their strong qualifications.

Although progress has been made over the last 30 years, ensuring equal opportunity for women and minorities remains an elusive goal. Further, access to higher education is essential to the development of a broadly based, well-educated citizenry, a diverse and talented workforce, competitiveness in the global economy, reduced poverty and crime, strong families and communities, and enhanced health and prosperity in our nation. Continued use of affirmative action in higher education admissions policies is necessary to help break down barriers and ensure that all Americans have a fair chance to demonstrate their talents and abilities.

### **Affirmative Action is a compelling state interest**

“In order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity”... “All members of our heterogeneous society must have confidence in the openness and integrity of the educational institutions that provide this training.” – *U.S. Supreme Court Justice Sandra Day O’Connor, writing the majority opinion in Grutter v. Bollinger, June 2003*

- On June 23, 2003, the U.S. Supreme Court delivered its landmark ruling in *Grutter v. Bollinger*, concerning the University of Michigan Law School’s admissions policies. In a 5 to 4 decision, the majority ruled that student body diversity is a compelling state interest that can justify using race in university admissions.
- On June 23, 2003, the Supreme Court delivered a ruling in *Gratz v. Bollinger*, which involved a challenge to the undergraduate admissions program used at the University of Michigan. The undergraduate program used a system that assigned points for certain factors including race, while the law school took a more holistic approach, resulting in an overall score for each applicant. In a 6 to 3 opinion written by Chief Justice Rehnquist, the Court held in *Gratz* that the university’s use of race in this program was not narrowly tailored to achieve the university’s asserted interest in diversity.

### **Affirmative action programs in education ensure that qualified African-American men and women have equal access to higher education.**

- Affirmative action programs have worked to increase diversity and correct patterns of discrimination. As a result of such initiatives, African Americans showed the largest increase in the number of doctoral degrees awarded from 1990 to 2000; however African Americans still account for only 5.1 percent of all doctoral degrees earned. (*National Center for Education Statistics, 2003*)
- Between 1999-2000 and 2000-2001, African Americans experienced a 6 percent increase in associate degrees earned, a 3 percent rise in bachelor’s degrees earned, and a 6.7 percent gain in master’s degrees earned. However, overall from 1998 to 2000, only 39.7 percent of African-American high school graduates attended college, as compared to 45.6 percent of white high

school graduates. (*Twentieth Annual Status Report on Minorities in Higher Education, American Council on Education, 2003*)

**Affirmative action programs in education ensure that qualified American Indian men and women have equal access to higher education.**

- The number of American Indians enrolled in higher education has increased in small increments over the past 20 years, but still remains low at less than 1 percent of all higher education students in 2000-2001. (*Twentieth Annual Status Report on Minorities in Higher Education, American Council on Education, 2003*)
- Almost 12 percent of eligible American Indians completed a bachelor's degree or higher in 2000 compared to 9 percent in 1990 and 8 percent in 1980 — still lower than 24 percent for the total population in 2000. (*U.S. Census Bureau, 2000*)
- Affirmative action efforts such as recruiting and outreach have set the stage for increases in the enrollment levels of American Indians at institutions of higher education. Between 1980-2001, American Indian enrollment increased by 80 percent. (*Twentieth Annual Status Report on Minorities in Higher Education, American Council on Education, 2003*)
- Overall, there has been little growth for professional degrees and decline for doctoral degrees among minorities. In 2000-2001, there was a 3 percent decline in doctorates awarded to minorities from 1999-2000. Also, in 2000-2001 American Indians experienced an 11.8 percent decline in doctorates received from the previous year, representing the lowest number of doctorates earned among all racial and ethnic minority groups. (*Twentieth Annual Status Report on Minorities in Higher Education, American Council on Education, 2003*)

**Affirmative action programs in education ensure that qualified Asian Pacific American men and women have equal access to higher education.**

- Affirmative action has been very successful in increasing the representation of minorities in institutions of higher education. From 1990 to 2001, the percentage of Asian Americans who received bachelor's degrees almost doubled. For the school year 1990-1991, the percentage of Asian Americans receiving bachelor's degrees was 3.8 percent; it was 6.3 percent in 2000-2001. (*Twentieth Annual Status Report on Minorities in Higher Education, American Council on Education, 2003*)
- Asian Pacific Americans achieved dramatic increases in all degree categories from 1990 to 2001. In 1990-1991, 3.4 percent of Asian Americans received master's degrees, and in 2000-2001, 5.2 percent did. (*Twentieth Annual Status Report on Minorities in Higher Education, American Council on Education, 2003*)
- Before Proposition 209 passed in California, Asian Pacific Americans constituted 18.3 percent of the University of California Law School class (1994 to '96). Between 1997 and '99, Asian Pacific Americans constituted 17.4 percent of the class. By contrast, Caucasian Americans' enrollment figures increase by about 12 percent. Overall, Caucasian Americans accounted for 59.8 percent of enrollment in the state law schools during the three years before the ban, but 71.7 percent after the ban. (*Kidder, William C. "Situating Asian Pacific Americans in the Law School Affirmative Action Debate: Empirical Facts About Thernstrom's Rhetorical Acts," 2000*)

**Affirmative action programs in education ensure that qualified Latinos have equal access to higher education.**

- Although an increasing number of Hispanics are earning degrees at different levels of higher education – 11.1 percent increase for associate degrees, 3.6 percent increase for bachelor's degrees,

and 11.9 percent increase for master's degrees – the overall enrollment of Hispanics in institutions of higher education are still low. In fact, high school completion rates from 1998 to 2000 for Hispanics 18- to 24-years-old (59.4 percent) were considerably lower than both African Americans (75.5 percent) and whites (87.0 percent). (*Twentieth Annual Status Report on Minorities in Higher Education, American Council on Education, 2003*)

- Although there has been an overall increase of Hispanic enrollment at institutions of higher education, this increase is reflected primarily in two-year institutions that award associate degrees. U.S. Census data indicate, further, that the income of associate degree holders is far less than their counterparts; associate degree holders earning only 73.2 percent of bachelor's degree holders and 61.3 percent of master's degree holders. (*"The Big Payoff: Educational Attainment and Synthetic Estimates of Work-Life Earnings," Current Population Reports, U.S. Census Bureau, 2002*)
- In the absence of affirmative action in California, Latinos experienced a decline in enrollment at institutions of higher education. For example, after Proposition 209 was enacted in 1996, the rate of enrollment for Latinos at the University of California at Berkley and the University of California at Los Angeles fell precipitously. At UC Berkeley, new Latino enrollees fell 14.5 percent in 1997 to 7.5 percent in 1998. At UCLA, the rate of Latino enrollees fell from 15.8 percent in 1997 to 11 percent in 1998. (*"Percent Plans in College Admissions: A Comparative Analysis of Three States' Experiences," The Civil Rights Project, Harvard University at 50, February 2003*)

**Affirmative action programs in education not only ensure that women and girls have equal access to quality education but aim to encourage females to enter traditionally male-dominated fields where it is well-documented that salaries are often higher.**

- Although in 2001 women earned 57.3 percent of all bachelor's degrees and 58.5 percent of all master's degrees, they still earned only 46.2 percent of doctorate degrees, and remain underrepresented in areas not traditionally studied by women. According to the most recent data from the National Center for Education Statistics, in 1998 women earned only 17 percent of undergraduate and 12 percent of doctorate degrees in engineering and only about 25 percent of doctorate degrees in math and physical sciences. (*U.S. Department of Education, National Center for Education Statistics, 2001*)
- By 2010, one in four new jobs will be "technically-oriented," or involving computers. However, women still lag far behind in earning computer technology degrees and working in computer technology-related professions. High school girls represent only 17 percent of computer science AP test takers and college-educated women earn only 27 percent of bachelor's degrees in computer science (down from 37 percent in 1984) and 16.3 percent of doctorate degrees in computer science. Overall, women comprise roughly 20 percent of IT professionals. (*"Tech Savvy: Educating Girls in the New Computer Age," American Association for University Women, 2000*)

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## FACTS ON AFFIRMATIVE ACTION AND AFRICAN AMERICANS

Affirmative action is a tool to provide qualified individuals with equal access to opportunities. Affirmative action programs, including recruitment, outreach, and training initiatives, have played a critical role in providing African Americans with access to educational and professional opportunities they would otherwise have been denied despite their strong qualifications.

Although progress has been made over the last 30 years, ensuring equal opportunity for African Americans remains an elusive goal. Continued use of affirmative action is necessary to help break down barriers to opportunity and ensure that all Americans have a fair chance to demonstrate their talents and abilities. Consider the following facts:

### Pay Inequity

- In 2001, the average per capita income was \$24,142 for whites and \$15,269 for blacks. (*"Income in the United States: 2002," U.S. Census Bureau, Table 4, May 2002*)
- College-educated African-American women annually earn approximately \$800 more than white male high school graduates and \$17,727 less than college-educated white men. (*"Money Income in the United States," U.S. Census Bureau, Table 10, September 2000*)
- In 2001, 22.7 percent of the African-American population lived in poverty, whereas 7.8 percent of white Americans lived in poverty. (*"The Black Population in the United States: March 2002," U.S. Census Bureau, Figure 9, April 2003*)

### Barriers to Equality

- The percentage of white males over age 25 who had earned at least a bachelor's degree was 31.8 percent in 2000. For black men, it was 16.4 percent. The percentage of white women who earned a bachelor's degree or higher was 27.3 percent, and for black women it was 17.5 percent. (*"The Black Population in the United States: March 2002," U.S. Census Bureau, April 2003*)
- Although the representation of African Americans sitting on corporate boards has climbed 4 percent since 1999, African-American men and women held just 388 of 11,500 *Fortune 1000* board seats in 2002. (*Microquest White Paper: Shattering The Glass Ceiling, 2002*)

### Affirmative action programs in education ensure that qualified African-American men and women have equal access to higher education.

- Affirmative action programs have worked to increase diversity and correct patterns of discrimination. As a result of such initiatives, African Americans showed the largest increase in the number of doctoral degrees awarded from 1990 to 2000; however African Americans still account for only 5.1 percent of all doctoral degrees earned. (*National Center for Education Statistics, 2003*)
- Between 1999-2000 and 2000-2001, African Americans experienced a 6 percent increase in associate degrees earned, a 3 percent rise in bachelor's degrees earned, and a 6.7 percent gain in master's degrees earned. However, overall from 1998 to 2000, only 39.7 percent of African-American high school graduates attended college, as compared to 45.6 percent of white high school graduates. (*Twentieth Annual Status Report on Minorities in Higher Education, American Council on Education, 2003*)

**Although progress has been made in achieving equality, research indicates that programs are still needed to ensure equal opportunity at the corporate level.**

- IBM's affirmative action program highlights early identification of employees with high leadership potential, broadening career opportunities, and recruiting qualified employees from a diversity of backgrounds. Central to IBM's Executive Resources program is the idea that recruiting, training, and retaining talented minorities is the responsibility of IBM's management, from the CEO down through second line managers. From January 1996 to March 2001, the percentage of minority executives increased 170 percent – from 117 to 316 officials. (*IBM, June 2002*)
- Prior to the Supreme Court's ruling in *Grutter v. Bollinger*, 65 *Fortune* 500 companies filed an amicus brief in favor of affirmative action programs in higher education. The brief states, "The need for diversity in higher education is indeed compelling. Because our population is diverse, and because of the increasingly global reach of American business, the skills and training needed to succeed in business today demand exposure to widely diverse people, cultures, ideas and viewpoints." The brief cites several companies that have increased minority representation, including Microsoft Corporation, whose minority domestic workforce increased from 16.8 percent in 1997 to 25.6 percent in February 2003. (*Brief for Amici Curiae, 65 Leading American Businesses in Support of Respondents, Grutter v. Bollinger, 2003*)
- Although the number of women of color in *Fortune* 1000 companies has increased for the past decade, research shows that not even half of those women of color (44 percent) believe that they have an equal chance for promotion within their companies. ("*Making the Case for Affirmative Action: Women of Color in Corporate America*," *Center for Women Policy Studies, 2001*)

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## FACTS ON AFFIRMATIVE ACTION AND AMERICAN INDIANS

Affirmative action is a tool to provide qualified individuals with equal access to opportunities. Affirmative action programs, including recruitment, outreach, and training initiatives, have played a critical role in providing American Indians with access to educational and professional opportunities they would otherwise have been denied despite their strong qualifications.

Although the progress made over the last 30 years, ensuring equal opportunity for American Indians remains an elusive goal. Continued use of affirmative action is necessary to help break down barriers to opportunity and ensure that all Americans have a fair chance to demonstrate their talents and abilities. Consider the following facts:

### Pay Inequity

- In 2002, the median family income of American Indians and others who identified themselves as Hispanic was \$33,103, which is only about 78 percent of the \$42,409 median for all families. (*U.S. Census Bureau, 2002*)
- The average U.S. salary for professional positions is \$69,447. American Indians in these positions earn less than average with \$57,427. (*The Fact Book, U.S. Office of Professional Management, 2002*)

### Obstacles to Advancement

- According to the 2000 Census, approximately 24 percent of the American Indian and Alaska Native working population over the age of 16 was employed in management and professional occupations, compared with almost 36 percent for whites. (*Census 2000, Census 2000 Brief, August 2003*)
- In 2000, American Indians had the highest percentage of unemployment, 7.6 percent. In contrast, the unemployment rate for whites in 2000 was 2.9 percent. (*Census 2000, Census 2000 Brief, August 2003*)

**Affirmative action programs targeted to American Indians at our nation's colleges and universities have resulted in the educational advancement of an increasing number of American Indian women and men. Despite these gains, however, American Indians still lag far behind whites and other ethnic groups in access to many educational areas.**

- The number of American Indians enrolled in higher education has increased in small increments over the past 20 years, but still remains low at less than one percent of all higher education students in 2000-2001. (*Twentieth Annual Status Report on Minorities in Higher Education, American Council on Education, 2003*)
- Between 1981-2001, the total number of degrees conferred on American Indians has risen substantially, by 151.9 percent. During this period, affirmative action was a key tool used to increase American Indian enrollment. (*Twentieth Annual Status Report on Minorities in Higher Education, American Council on Education, 2003*)
- Affirmative action efforts such as recruiting and outreach have set the stage for increases in the enrollment levels of American Indians at institutions of higher education. Between 1980-2001, American Indian enrollment increased by 80 percent. (*Twentieth Annual Status Report on Minorities in Higher Education, American Council on Education, 2003*)

- Overall, there has been little growth for professional degrees and decline for doctoral degrees among minorities. In 2000-2001, there was a 3 percent decline in doctorates awarded to minorities from 1999-2000. Also, in 2000-2001 American Indians experienced an 11.8 percent decline in doctorates received from the previous year, representing the lowest number of doctorates earned among all racial and ethnic minority groups. (*Twentieth Annual Status Report on Minorities in Higher Education, American Council on Education, 2003*)
- There was also a 3.7 percent decline in professional degrees earned by American Indians from 1999-2000 and 2000-2001. (*Twentieth Annual Status Report on Minorities in Higher Education, American Council on Education, 2003*)

**Affirmative action has helped American Indians in the workforce, allowing American Indian women and men greater access to higher paying jobs and new employment fields. However, limitations still remain.**

- Tribal Employment Rights Officers (TERO), representing the interests of over 130 tribes and 250 Alaska Native Villages now exist to increase the employment opportunities of Indian workers. The TEROs use existing tribal powers and federal Indian laws to capture employment opportunities and make sure that American Indians have access to those employment, training, and business opportunities that are already available on a reservation.
- The work of TEROs has also enabled American Indian workers, contractors, and entrepreneurs through training and work experience to identify and successfully compete for opportunities off the reservation through the government or private sector.

**Affirmative action programs in contracting seek to remove barriers by creating useful and measured programs to promote inclusion of American Indians in all segments of our society.**

- Many affirmative action measures are implemented only when other efforts fail. For example, the Disadvantaged Business Enterprise (DBE) Program operated by the Department of Transportation requires recipients of federal contracting dollars to give priority to outreach and technical assistance before resorting to measures such as contracting goals.
- Affirmative action programs provide for fair and reasonable measures to increase participation of qualified minorities. For example, the Department of Labor, which is charged with implementing federal affirmative action programs, provides that “[g]oals may not be inflexible quotas which must be met, but must be targets reasonably attainable by applying every good faith effort to make all aspects of the entire affirmative action program work.” (41 C.F.R. & 60-2.12)
- The number of businesses owned by American Indians and Alaska natives in the United States increased 93 percent between 1987 and 1992, from 52,980 to 102,271. The rate of increase for all U.S. firms was 26 percent – 13.7 million in 1987 to 17.3 million in 1992. (*U.S. Census Bureau, 1997*)
- Receipts for the nation’s American Indian- and Alaska Native-owned businesses increased 115 percent from 1987 to 1992, from \$3.7 billion to \$8.1 billion. Receipts for all U.S. firms during the same period grew by 67 percent, from \$2 trillion to \$3.3 trillion. (*U.S. Census Bureau, 1997*)

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*American Legal Consortium, National Women's Law Center, and the National Partnership for Women and Families, was created to educate the public and the media on the ways that affirmative action benefits the nation.*

*For more information contact LCCR Field Associate Robyn Kurland ([kurland@civilrights.org](mailto:kurland@civilrights.org))*

## FACTS ON AFFIRMATIVE ACTION AND ASIAN PACIFIC AMERICANS

Affirmative action is a tool to provide qualified individuals with equal access to opportunities. Affirmative action programs, including recruitment, outreach, and training initiatives, have played a critical role in providing Asian Pacific Americans with access to educational and professional opportunities they would otherwise have been denied despite their strong qualifications.

Although progress has been made over the last 30 years, ensuring equal opportunity for Asian Pacific Americans remains an elusive goal. Continued use of affirmative action is necessary to help break down barriers to opportunity and ensure that all Americans have a fair chance to demonstrate their talents and abilities. Consider the following facts:

### Pay Inequity

- White men make up 48 percent of the college-educated workforce, but hold more than 80 percent of the top jobs in U.S. corporations, law firms, college faculty, government, and news media. (*National Asian Pacific American Legal Consortium, 2000*)
- White college graduates earned 11 percent more than Asian college graduates. White high school graduates earn 26 percent more than Asian high school graduates. (*National Asian Pacific American Legal Consortium, 2000*)

### Affirmative action programs in education ensure that Asian Pacific American men and women have equal access to quality education.

- Affirmative action has been very successful in increasing the representation of minorities in institutions of higher education. From 1990 to 2001, the percentage of Asian Americans who received bachelor's degrees almost doubled. For the school year 1990-1991, the percentage of Asian Americans receiving bachelor's degrees was 3.8 percent; it was 6.3 percent in 2000-2001. (*Twentieth Annual Status Report on Minorities in Higher Education, American Council on Education, 2003*)
- Asian Pacific Americans achieved dramatic increases in all degree categories from 1990 to 2001. In 1990-1991, 3.4 percent of Asian Americans received master's degrees, and in 2000-2001, 5.2 percent did. (*Twentieth Annual Status Report on Minorities in Higher Education, American Council on Education, 2003*)

### Affirmative action programs have made available job opportunities for qualified Asian Pacific American women and men to achieve higher wages, and advance in the workplace, making them better able to meet the financial needs of their families. However, limitations still remain.

- Under the Small Business Administration's Section 8(a) program, Asian American-owned businesses more than doubled their share of contracts in a ten-year period, getting 23.7 percent of contracts in 1996 compared to 10.5 percent of contracts in 1986. (*Sharpe, Rochelle, "Asian-Americans Gain Sharply in Big Program of Affirmative Action," The Wall Street Journal, September 9, 1997*)
- Before Proposition 209 passed in California, Asian Pacific Americans constituted 18.3 percent of the University of California Law School class (1994 to 1996). From 1997 to 1999, Asian Pacific Americans constituted 17.4 percent of the class. By contrast, white Americans' enrollment figures increase by about 12 percent. Overall, white Americans accounted for 59.8 percent of

enrollment in the state law schools during the three years before the ban, but 71.7 percent after the ban. (Kidder, William C. "Situating Asian Pacific Americans in the Law School Affirmative Action Debate: Empirical Facts About Thernstrom's Rhetorical Acts," 2000)

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## FACTS ON AFFIRMATIVE ACTION AND LATINOS

Affirmative action is a tool to provide qualified individuals with equal access to opportunities. Affirmative action programs, including recruitment, outreach, and training initiatives, have played a critical role in providing Latinos with access to educational and professional opportunities they would otherwise have been denied despite their strong qualifications.

Although progress has been made over the last 30 years, ensuring equal opportunity for Latinos remains an elusive goal. Continued use of affirmative action is necessary to help break down barriers to opportunity and ensure that all Americans have a fair chance to demonstrate their talents and abilities. Consider the following facts:

### Pay Inequity

- While the wage disparity has decreased since the passage of the 1963 Equal Pay Act, the statistics are still bleak. Today, Hispanic women still earn only 52 cents to every dollar earned by their white female counterparts. (*U.S. Census Bureau, 2000*)
- Hispanic men earn only 63 cents to every dollar earned by their white male counterparts. (*U.S. Census Bureau, 2000*)

### Obstacles to Advancement

- Since 1990, the white-collar employment gap between Latinos and other groups has widened. From 1990-2000, the percentage of workers who were managers or professionals increased from 29 percent to 33 percent for whites, from 16 percent to 22 percent for blacks, and from 13 percent to 14 percent for Hispanics. (*Population Reference Bureau, 2000*)
- Latino workers are more likely than their black or white counterparts to earn low incomes and be poor. The median income for Hispanic workers in 2001 was \$19,651. For white and black workers, it was \$30,622 and \$23,453, respectively. Also, compared to poverty rates for white workers (four percent), the rate of poverty for Hispanic workers was 10.4 percent. (*U.S. Census Bureau, 2000*)
- While the number of corporate board seats occupied by Latinos increased in 2000, of the total places at *Fortune 1000* boardroom tables, Latinos held only 1.7 percent. ("*2001 Corporate Governance Study*," *Hispanic Association on Corporate Responsibility*)

**Although affirmative action programs aiming to recruit Latinos have resulted in the educational advancement of an increasing number of Latinos, they still lag far behind whites and other ethnic groups in access to many educational areas and opportunities beyond education.**

- Although an increasing number of Hispanics are earning degrees at different levels of higher education – 11.1 percent increase for associate degrees, 3.6 percent increase for bachelor's degrees, and 11.9 percent increase for master's degrees – the overall enrollment of Hispanics in institutions of higher education are still low. In fact, high school completion rates from 1998 to 2000 for Hispanics 18- to 24-years-old (59.4 percent) were considerably lower than both African Americans (75.5 percent) and whites (87.0 percent). (*Twentieth Annual Status Report on Minorities in Higher Education, American Council on Education, 2003*)
- Although there has been an overall increase of Hispanic enrollment at institutions of higher education, this increase is reflected primarily in two-year institutions that award associate degrees. U.S. Census data indicate, further, that the income of associate degree holders is far less than their counterparts; associate degree holders earning only 73.2 percent of bachelor's degree holders and 61.3 percent of

master's degree holders. (*"The Big Payoff: Educational Attainment and Synthetic Estimates of Work-Life Earnings," Current Population Reports, U.S. Census Bureau, 2002*)

- In the absence of affirmative action in California, Latinos experienced a decline in enrollment at institutions of higher education. For example, after Proposition 209 was enacted in 1996, the rate of Latinos at the University of California at Berkeley and the University of California at Los Angeles (UCLA) fell precipitously. At UC Berkeley, new Latino enrollees fell 14.5 percent in 1997 to 7.5 percent in 1998. At UCLA, the rate of Latino enrollees fell from 15.8 percent in 1997 to 11 percent in 1998. (*"Percent Plans in College Admissions: A Comparative Analysis of Three States' Experiences," The Civil Rights Project, Harvard University at 50, February 2003*)

**Affirmative Action has helped Latinos in the workforce, allowing them greater access to higher-paying jobs and new employment fields. Limitations, however, still remain.**

- Latino employment grew 5.1 percent in 1999, faster than other major racial and ethnic groups. (*U.S. Bureau of Labor Statistics, 2000*)
- Latinos were a major factor in the U.S. economy's recent success. In 1999, the unemployment rate for Latinos fell from 6.7 percent to 5.8 percent, the lowest since the Labor Department began calculating it in 1973. The nation's unemployment rate fell to a 29-year low of 4.2 percent in March 2000, with Latinos among the groups registering the most dramatic improvement. (*U.S. Bureau of Labor Statistics, 2000*)
- Latinos are underrepresented as Federal employees, representing 6.6 percent (98,667) of the permanent federal workforce as of September 2000, compared to 11.8 percent in the civilian labor force. (*"Annual Report to Congress," Federal Equal Opportunity Recruitment Program, 2000*)
- Latinos are more likely than whites or Asians to work in lower-paying, semi-skilled jobs or as service workers. The share of U.S. workers in farming, fishing, or forestry is greatest among Latinos, reflecting the large number of Latinos who work in agriculture. (*Population Reference Bureau, 2000*)

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## FACTS ON AFFIRMATIVE ACTION AND WOMEN

Affirmative action is a tool to provide qualified individuals with equal access to opportunities. Affirmative action programs, including recruitment, outreach, and training initiatives, have played a critical role in providing women with access to educational and professional opportunities they would otherwise have been denied despite their strong qualifications.

Although progress has been made over the last 30 years, ensuring equal opportunity for women remains an elusive goal. Continued use of affirmative action is necessary to help break down barriers to opportunity and ensure that all Americans have a fair chance to demonstrate their talents and abilities. Consider the following facts:

### Pay Inequity

- Women earn approximately 77 cents for every dollar men earn. Minority women fare significantly worse - black women earn 66 cents, while Hispanic women earn 56 cents for every dollar men earn. (*"Highlights of Women's Earnings in 1999," Bureau of Labor Statistics, U.S. Department of Labor, May 2000*)
- In 2001, the median annual earnings of white males with a four-year college degree was \$55,307, while white women with the same educational attainment earned \$40,192. Black women and Hispanic women with the same education credentials suffered from an even larger gap. Black women with equal college credentials earned \$36,253, while Hispanic women with equal college credentials earned only \$34,060. Also, on average, a woman with a master's degree makes \$4,765 less than a man with a college degree. (*"The Wage Gap by Education," National Committee on Pay Equity: 2001"*)

### Glass Ceiling

- Today, women remain severely underrepresented in non-traditional occupations even though these jobs pay 20-30 percent more than traditionally female jobs. In 2002, for example, women were only 10.8 percent of all engineers; 1.4 percent of all auto mechanics; 1.8 percent of all carpenters; 30.6 percent of all doctors; and 29.2 percent of all lawyers. (*Bureau of Labor Statistics, Current Population Survey, Table 11, June 2003*)
- The U.S. Department of Labor's Glass Ceiling Commission report, released in March 1995, showed that while white men are only 43 percent of the Fortune 2000 work force, they hold 95 percent of the senior management jobs. A report from Catalyst reveals that only 4.1 percent of the top-earnings officers in Fortune 500 companies are women. (*"Census of Women Corporate Officers and Top Earners of the Fortune 500," Catalyst, 2000*)
- Sex discrimination, including sexual harassment, continues to be a serious barrier to the advancement of women. Last year, 25,194 individual sex discrimination complaints were filed with the Equal Employment Opportunity Commission. This number includes over 15,800 sexual harassment claims –up significantly from the 10,500 filed in 1992. (*Equal Employment Opportunity Commission, Sex-Based Charges FY 1992 - FY 2000*)
- Even though women-owned firms represent an estimated 28 percent of all businesses in the United States, their firms have obtained a mere 2.9 percent of the \$235.4 billion in federal government contracts awarded in fiscal year 2002. This is still short of the five percent goal Congress established in 1994. (*Center for Women's Business Research; National Women's Business Council, Federal Contracting with Women-Owned Businesses FY1997-FY2002, August 2003*)

**Affirmative action programs in education not only ensure that women and girls have equal access to quality education but also encourage females to enter traditionally male-dominated fields where it is well-documented that salaries are often higher.**

- Although in 2001 women earned 57.3 percent of all bachelor's degrees and 58.5 percent of all master's degrees, they still earned only 46.2 percent of doctorate degrees, and remain underrepresented in areas not traditionally studied by women. According to the most recent data from the National Center for Education Statistics, in 1998 women earned only 17 percent of undergraduate and 12 percent of doctorate degrees in engineering and only about 25 percent of doctorate degrees in math and physical sciences. (*U.S. Department of Education, National Center for Education Statistics, 2001*)
- By 2010, one in four new jobs will be “technically-oriented,” or involving computers. However, women still lag far behind in earning computer technology degrees and working in computer technology-related professions. High school girls represent only 17 percent of computer science AP test takers and college-educated women earn only 27 percent of bachelor’s degrees in computer science (down from 37 percent in 1984) and 16.3 percent of doctorate degrees in computer science. Overall, women comprise roughly 20 percent of IT professionals. (*“Tech Savvy: Educating Girls in the New Computer Age,” American Association for University Women, 2000*)

**Affirmative action programs have opened up job opportunities for qualified women to achieve higher wages, advance in the workplace, and seek nontraditional careers that make them better able to meet the financial needs of their families.**

A Department of Labor study estimated that 5 million minority workers and 6 million women are in higher occupational classifications today than they would have been without the affirmative action policies of the 1960s and 1970s. (*“Affirmative Action Helps Boost Women's Pay and Promotes Economic Security for Women and Their Families,” National Partnership for Women and Families*)

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