

# Affirmative action in higher education law general essay

Law



Twinkle Suthar Mrs. Etheridge AP U. S. Government February 10th, 2013

Affirmative Action in Higher Education: A Continuing Trend or Not?

Affirmative action is often started in government and education to ensure that minority groups within a society are fairly included in all programs. The justification for affirmative action is that it "...helps to compensate for past discrimination, persecution or exploitation by the ruling class of a culture (Wikipedia)." From its beginning, the U. S. Commission on Civil Rights has focused on ways to promote equal opportunity in education, including advocating the preservation of affirmative action programs (U. S. Commission on Civil Rights). In the past, minorities have been restricted from advancing in higher education and that is why affirmative action has been implanted. Now in the 21st century people have been questioning whether affirmative action is actually useful or causing reverse discrimination. In fact, some universities in the United States have shown a superfluous amount of contempt for affirmative action. Affirmative action in higher education has been the topic of heated discussions; for the reasons of continuing the tradition or completely eliminating it. The breakthrough of affirmative action in higher education kicked off with the 1954 U. S. Supreme Court decision, *Brown v. Board of Education*, which defined that where education is provided, it must be provided equally to all, regardless of race. The name " *Brown v. Board of Education*" is not essentially the name one case, but five totaled together because it all involved racial discrimination within schools. This case included "...*Briggs v. Elliott* (filed in South Carolina), *Davis v. County School Board of Prince Edward County*, filed in Virginia, *Gebhart v. Belton*, filed in Delaware, and *Bolling v. Sharpe*, filed in

Washington D. C. (Wikipedia)." A case was filed against the Board of Education of the City of Topeka, Kansas and thirteen parents represented their children. They wanted the Board of Education to change its policy regarding racial segregation. The law in Kansas allowed districts to maintain separate elementary school facilities for black and white students (United States Courts). Oliver Brown was one of the five parents who joined the case, his daughter Linda had to walk six blocks to reach her bus stop where she rode to her elementary school. The separate school was one mile while a white elementary school, was only seven blocks from her house (Wikipedia). On May 17, 1954, U. S. Supreme Court Justice Earl Warren announced the unanimous ruling in Brown v. Board. The ruling stated that "...segregation of public schools was a violation of the 14th amendment and was therefore unconstitutional." This caused the ruling of Plessy v. Ferguson to become invalid and set the end to the "separate but equal" decision set by the Supreme Court earlier on (United States Courts). The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, along with the rest of the Fourteenth Amendment was put into law in 1868. It was the first evidence of affirmative action and it stated that no state can "...deny to any person within its jurisdiction the equal protection of the laws (US Const. amend. XIV)." Right after the Civil War, the Thirteenth Amendment was enacted, which abolished slavery in 1865. In response to this, many "Confederate" states started using Black Codes, which controlled the labor, migration and other activities of newly-freed slaves (History). In retaliation, Congress passed the Civil Rights Act of 1866. This Act stated that all those born in the United States were citizens of the United States and required that

" citizens of every race and color ... [have] full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens (Civil Rights Act of 1866)." On March 6, 1961, Executive Order 10925 was signed by President John F. Kennedy to make sure that government contractors will "...take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, creed, color, or national origin (Wikipedia)". And in 1965, President Lyndon B. Johnson also signed an Executive Order (11246), prohibiting federal workers from discriminating in employment decisions on the basis of race, color, religion, sex, or national origin (Edwards, et\_al, pg. 172). The President Committee's functions were divided between the Equal Employment Opportunity Commission and the Office of Federal Contract Compliance. " The EEOC has the authority to investigate charges of discrimination against employers who are covered by the law (EOCC)." This means that the EEOC can address allegations and then come to a conclusion. If they find that discrimination has happened, then they will try to solve the accusation between whoever is involved. However in most cases it turns out that this does not happen and then the EEOC has the authority to file a lawsuit. The constitutional status of affirmative action is still not clear. Some state and federal laws have discriminated in favor of previously disadvantaged groups, and some state governments adopted affirmative action programs to increase minority enrollment (Edwards, et\_al, pg. 173). Another case, Grutter v. Bollinger, was held in 2003. Barbara Grutter applied to the University of Michigan Law School. She had a 3. 8 undergraduate GPA and an LSAT score of 161. Grutter ended up with a

rejection letter. The University of Michigan Law School had an undergraduate admissions policy that gave minority applicants twenty points added to their score to get into the undergraduate programs as a fixed point boost (The Wall Street Digital Journal). The District Court held that "...the Law School's stated interest in achieving diversity in the student body was not a compelling one and enjoined its use of race in the admissions process (Oyez)." However, the Court of Appeals stated that the decision in Regents of the University of California v. Bakke, "...constituted a binding precedent establishing diversity as a compelling governmental interest sufficient under strict scrutiny review to justify the use of racial preferences in admissions (Oyez)." The Supreme Court agreed with the University of Michigan officials that assembling a racially ethnic diverse class in the law school was an interest because it was important to have all parts of society represented in the leadership ranks of the country and that it was good for the educational atmosphere of the school itself to have people from different backgrounds mixing in the classroom (The Wall Street Digital Journal). The Supreme Court held a five - two vote in favor of affirmative action in higher education. Fisher v. University of Texas is one of the most recent affirmative action in higher education cases. Abigail Fisher was denied admission to University of Texas at Austin in 2003. She sued the University of Texas, "...arguing that the denial violated her Fourteenth Amendment right to equal protection because she was denied admission to the public university in favor of minority applicants with lesser credentials (Cornell University Law School)." However, in 1996, a federal appeals court stated that any racial plus points for students entering the school was unconstitutional. When the amount of

diversity in the university dropped, the state Legislature enacted a law. This law secured "...admission to all students in the top ten percent of their high school class (Totenburg)." After the 2003 Supreme Court ruling in *Grutter v. Bollinger*, the University of Texas added ethnic background as one of the factors that could be for the people who did not fit into the top ten percent plan. Fisher claims that race was the main reason she got rejected. She also states that "...people in [her] high school class with lower grades and similar activities were admitted, [and] the only difference between us was the color of our skin (Totenburg)." The University of Texas asserts that Fisher's claim is untrue. Admissions at the university states that they combine the student Academic Index score (depending on grade point average) and their Personal Achievement Index, " based on two independently graded essays plus six other factors: leadership potential, honors and awards, work experience, community service, extracurricular activities and special circumstances (Totenburg)." they also affirm that only in the " special circumstances" category, race is thought about. Anyone who falls below the mark is not accepted into the university. The university says Fisher fell below the line. Gregory Garre, lawyer for the university, utterly states, " even if Abigail Fisher had received a perfect Personal Achievement Index score she would not have been admitted ... because her Academic Index was simply not high enough and that Fisher would not have been admitted, no matter what her race (Totenburg)." The university argued that its policy was upheld in *Grutter v. Bollinger*. This case made the Supreme Court to reevaluate *Grutter v. Bollinger* in order to come to a decision in *Fisher v. University of Texas*. It is predicted that if *Grutter v. Bollinger* is overridden then it may end affirmative

action in higher education for a while. As much as there is evidence to support affirmative action there is the same amount of evidence to support affirmative inaction. It is specified that, "...affirmative action harms its intended beneficiaries, that it punishes the most innocent and industrious of persons, and that it defies an essentially individualistic American work ethic (Stolyarov)." The Head of the Center for Equal Opportunity, Roger Clegg, believes that the "...practice of affirmative action in higher education has put the country on the path to grievous error" (Chace). Clegg has stated in a 2007 speech to the Heritage Foundation, that the policy " passes over better qualified students, and sets a disturbing legal, political, and moral precedent in allowing racial discrimination;... it stigmatizes the so-called beneficiaries... fosters a victim mindset, removes the incentive for academic excellence, and encourages separatism; it compromises the academic mission of the university and lowers the overall academic quality of the student body (Chace)." Many complain that the process of affirmative action is completely wrong and that " racism cannot be undone through more racism (Pojman)." In Martin Luther King Junior's most famous speech, he enforces, " I have a dream that my four little children shall one day inhabit a world where they will be judged not by the color of their skin, but by the content of their character (Stolyarov)." It also comes back to the point that race-conscious programs are a let down on Martin Luther King's dream of a non-discriminatory community (Sacks). Correspondingly, based on the merit principle, the sole principle in finding the members of this class and in defining " merit" should be individual achievement -- not just grades and test scores, of course, but a broad range of accomplishments, in athletics, music,

student government, drama, school clubs and other extracurricular efforts. But race and ethnicity (or gender or sexual preferences) do not have a place on this list; these are traits, not achievements (Sacks). Based on a study "African Americans are primary privileged, women second, Native Americans third, Hispanics fourth, Handicapped fifth, and Asians sixth and so on until White males (Pojman)." In 1978 a popular affirmative action case was initiated; *Regents of the University of California v. Bakke*. University of California at Davis adopted an affirmative action program. This program was placed in order from the federal government to improve the amount of minority admissions. If an institution adopted these programs then they received federal aid from the government. The medical school at UC—Davis set aside 16 of the 100 places in the entering class for the minority groups. Allan Bakke applied for UC—Davis for two straight years but did not get in. Bakke found out that the mean scores on the Medical College Admissions Test (MCAT) of the minority students were in the forty-sixth percentile on verbal tests and in the thirty-sixth percentile on the science portion. His test scores were in the ninety-sixth and ninety-seventh percentile on that same test. Bakke resulted in suing Davis asserting that the university had denied him equal protection because of his race (Edwards, et\_al, pg. 173). *Regents of the University of California v. Bakke* went all the way to the Supreme Court and it was decided that UC—Davis discriminated against Bakke and violated the Equal Protection Clause of the Fourteenth Amendment (Cornell University Law School). The U. S. Supreme Court ruled that Bakke must be admitted and concluded that affirmative action systems are constitutional but state universities could not admit less qualified individuals only based on



their race (U. S. Commission on Civil Rights). Supreme Court Justice Lewis Powell emphasized that in some cases " the goal of achieving a diverse student body is sufficiently compelling to justify consideration of race in admissions decisions (U. S. Commission on Civil Rights)." Colleges and universities, over the past twenty five years, changed admissions policies agree the California v. Bakke verdict. Affirmative action in higher education is likely to be attacked more nowadays because people get an important start on their lives and careers in colleges. When you think that you have your rights taken away when you are denied admission, you aren't likely to be happy about it (About). Ironically, because of affirmative action more citizens are underestimating other populations of different races. They think that because of affirmative action, people who have different ethnical backgrounds are less qualified to occupy any job or position. Thomas Sowell, an African-American researcher at the Hoover Institute at Stanford, reveals that " today many Americans will refuse to visit a black physician or dentist because of their assumption that he or she was admitted both to medical school and to the position held through ' special preferences', set-aside quotas, and relaxed standards" (Stolyarov). According to libertarian activist Aaron Biterman (on affirmative action) of Endicott College, " people are kept down because of the past actions of their ancestors. The innocent are punished because of what the guilty have done. At the University of California Davis in 2002, every 16 out of 100 openings were automatically given to minority students (Stolyarov)." One major concern is that Caucasian students are being disadvantaged because there is a probability that they may be smarter than the student who benefit from affirmative action.

Bitterman further questions, " are the Jews and Japanese asking for affirmative action? No. Because the Jews and the Japanese have made it in America through the only way you can make it in America: hard work, smart investing, and personal responsibility. Groups such as African-Americans, Hispanics, and women should learn from the experiences of their oppressed brethren (Stolyarov)." Claims of reverse discrimination have been spreading like wildfire. Steven Plaut, a newspaper reporter, explains, " If a woman [or any 'minority member'] happens to be the most qualified person for a position, then she will be automatically hired by anyone... There is no reason for quotas or double standards in hiring. Such quotas ensure only one thing: that the person hired will not be the most qualified. After all, that is the whole point of reverse discrimination (Stolyarov)!" These ideas themselves create a wide range of criticisms for affirmative action in higher education and call upon the government to abolish affirmative action. The argument for affirmative action comes in two versions: " one, it is not needed because discrimination is already illegal and nothing more is required; two, it is not needed because the pendulum has already swung too far in the direction of women and minorities (Fish)." Activists of eliminating affirmative action in higher education insist that affirmative action has a " Two Wrongs Make a Right Thesis". Louis P. Pojman explains the Two Wrongs Make a Right Thesis; it goes like this: " Because some Whites once enslaved some Blacks, the decedents of those slaves, some of whom may now enjoy high incomes and social status, have a right to opportunities and offices over better qualified Whites who had nothing to do with either slavery or the oppression of Blacks, and who may even have suffered hardship comparable to that of poor Blacks

(Pojman)." He sarcastically states that the Equal Protection Clause of the Fourteenth Amendment is starting to mean "equal protections for all equals, but some equals are more equal than others (Pojman)." Even in government we need diversity. Congressmen, in order to make laws, have to reflect the views of their constituents. Therefore, a diverse population has to have a diverse government. In the meantime, diversity gets conflicted with people's own capability to own a job or get into a university. Louis P. Pojman addresses, "I do not care whether the group of surgeons operating on me reflect racial or gender balance, but I do care that they are highly qualified. Neither do most football or basketball fans care whether their team reflects ethnic and gender diversity, but whether they are the best combination of players available. And likewise with airplane pilots, military leaders, business executives, and, may I say it, teachers and university professors (Pojman)." Fair play also comes into question. Everybody knows that African Americans and other ethnic groups were discriminated in the past and that it was a wrongful thing to do. However, in this day and age, as a country we have less discrimination so, should not we limit affirmative action? Arthur G. Mosley, a well-known affirmative action author, states his point of view; since we don't know whether groups are different in talent, we should infer that they are equal in every respect. "Hence, it is only fair - productive of justice - to aim at proportionate representation in these fields. But the logic is flawed. Under a situation of ignorance we should not presume equality or inequality of representation - but conclude that we don't know what the results would be in a just society. Ignorance doesn't favor equal group representation any more than it favors unequal group representation. It is

neutral between them (Pojman)." Mosley further insists that African Americans do not need any type of "protection" anymore. And when this realization occurs the affirmative action will stop. Much of the current study on affirmative action in higher education suggests that ethnic and gender conflicts are "...consequences of subtle bias, injustice, or overt sexism, and racism by individuals within institutional systems who maintain power and control over others (Ibarra). In the near future it is uncertain that affirmative action is going to stay mainly because this society is transforming into a more educationally balanced community. Affirmative action was put into place to "...helps to compensate for past discrimination, persecution or exploitation by the ruling class of a culture (Wikipedia)" but, have not we already compensated for our past? How are we to make sure that minorities are treated fairly? Therefore, humanity still cannot separate from racial discrimination. Now the side that I am on is still the same when I started this paper, conflicted. I thought that by writing this paper I would be clear on the side I will take but, it seems like I am even more confused, just like everybody else. The two conclusions that I have come to is that discrimination will always exist because it is human to look down upon others who they feel are inferior and that affirmative action, no matter how many people are against it, affirmative action will always be kept—to some extent.