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Affirmative Action FAQ:

What is Affirmative Action?

Affirmative Action is the idea that, as US Supreme Court Justice Harry Blackmun stated in 1978, "to treat some persons equally, we must treat them differently." This seemingly contradictory position is meant to ensure that persons of different races, genders, and religious backgrounds receive fair and equitable treatment. It was meant as a corrective to, or means of enforcing, a system of equality. The concept was vigorously promoted by President Lyndon B. Johnson, who argued that merely labeling all peoples as equal is not tantamount to making them equal in treatment or capacity. As he stated, "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 justly believe that you have been completely fair." Affirmative Action became a catchall phrase for a range of approaches aimed at ensuring greater minority representation in colleges and for fostering broader opportunities for women and minorities in education and in the workplace.

What is the main argument against Affirmative Action?

Affirmative Action was never intended to be a permanent system, but rather a temporary palliative to the pervasive inequalities that existed in a supposedly equal society. Current opponents of Affirmative Action assert that society has made sufficient progress along the road to color- and gender-blindness to render such an institution unnecessary and that it now does more harm than good. Affirmative Action, they contend, is reinforcing differences rather than bridging them and should be discontinued. To date, three states have ended affirmative action programs within their borders: California, Washington, and Florida.

Proposition 209:

What is Proposition 209?

The first state to end Affirmative Action was California. In 1996, Proposition 209 passed the general election with 54 percent of the vote. It ended the practice of granting preferential—or discriminatory—treatment based on "race, sex, color, ethnicity, or national origin in the operation of pubic employment, public education, or public contracting." Programs specifically targeting minorities, formerly widely in use at public universities, are no longer allowed under Proposition 209.

How was Proposition 209 introduced?

As head of the California Civil Rights Initiative Campaign, Ward Connerly, a former University of California Regent, led the push for approval of Proposition 209. After witnessing the application and selection process at the collegiate level, he became convinced that affirmative action was a form of racial discrimination *against* more qualified white and Asian American applicants and *for* less qualified minorities. Opponents argued that these "less qualified" minority students were in fact the victims of poor K-12 education systems and that passage of Proposition 209 would merely perpetuate this cycle. Connerly hoped that the passage of Proposition 209 would refocus attention on these other education issues and frame the discussion more in terms of economic disparity instead of racial tensions.

What has been the impact of the Proposition 209 over the past ten years?

In "Killing Affirmative Action," Ellis Cose examines the effects of Proposition 209 since it was introduced. Immediately after its passage, minority student acceptance rates into the more elite public institutions such as the University of California-Berkeley plummeted. Berkeley accepted half as many African-American and Chicano students as it did the year before; its law school enrolled a single African-American out of 268 students the same year. By 2005, numbers slowly crept up, but still remained below the pre-Proposition 209 levels. Perhaps the most surprising and devastating effect was on the small businesses that relied on public contracts for revenue. Many of these minority-owned private contractors have gone out of business since Proposition 209 has gone into effect; overall contracts given out to such firms, according to one analysis, have dropped from 20 to 5 percent.

Michigan Civil Rights Initiative:

What is the MCRI?

The MCRI is the name given to Proposal 2, which if passed would end public sector affirmative action programs in the state of Michigan. It is an effort spearheaded by both Ward Connerly and Jennifer Gratz. Gratz was a plaintiff in the widely publicized Supreme Court case on the University of Michigan's undergraduate admissions policy, which gave preference to minority applicants using a controversial point system. The MCRI is almost an exact analogue to Proposition 209 in California, and will be voted on in Michigan this November. For a state which has suffered greatly economically over the previous years, there is much to be gained or lost with the outcome of this initiative. Like Proposition 209, the MCRI would only affect affirmative action at public institutions, though effects on the private sector would likely mirror those in California.

Who opposes and supports the MCRI?

Both gubernatorial candidates in Michigan oppose the MCRI, and a broad coalition called the One United Michigan (OUM) has formed to oppose the effort. OUM consists of delegates from trade unions, education groups, women's organizations, the NAACP, and the ACLU. It is organizing many door-to-door campaigns and local roundtables to discuss the MCRI. In addition to Gratz and Connerly, support for the MCRI comes from some state representatives, several

University of Michigan professors and alumni, as well as Barbara Grutter, a plaintiff in a second Supreme Court case similar to Gratz's.

Supreme Court:

What has been done recently at the national level?

At the national level, challenges to affirmative action programs are heard in the Supreme Court. Several noteworthy cases have been brought before this branch over the past number of years. The Court settled the two most recent major suits in June 2003. This case, *Gratz v. Bollinger*, challenged the University of Michigan's policy of using a "point" system to encourage a diverse student body, by boosting a student's chance of admission based on his or her race. Jennifer Gratz, the plaintiff in the case and a leading advocate of the MCRI, believed that she was unfairly denied acceptance into the University of Michigan, while other less qualified applicants were accepted as a sole result of their race. The Supreme Court upheld the University of Michigan's desire for diversity as a legitimate objective, but it struck down the point system it had used in this pursuit. A second case, *Grutter v. Bollinger*, challenged the University of Michigan Law School's use of the point system, and the court ruled similarly to *Gratz*.

What is the status of affirmative action in the courts?

There are two cases currently on the docket for the Supreme Court this term concerning affirmative action. These cases, *Parents Involved v. Seattle School District* and *Meredith v. Jefferson City Board of Education*, bring similar challenges as those against collegiate level education to K-12 education. The Supreme Court has not previously ruled on the use of race in the pursuit of diversity at this level of education. With several new appointments to the Supreme Court, these cases will be the new court's first rulings on affirmative action.

Affirmative Action Timeline

May 17, 1954
In *Brown v. Board of Education of Topeka*, the U.S. Supreme Court rules that mandated school segregation is illegal. "Separate educational facilities are inherently unequal," declares the court in a unanimous 9-0 decision.

March 6, 1961
President John F. Kennedy issues Executive Order 10925, creating the President's Committee on Equal Employment Opportunity. The decree orders federal contractors to "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."

June 4, 1965
President Lyndon Baines Johnson endorses the principle of compensatory treatment for African-Americans in a commencement speech at Howard University. "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 justly believe that you have been completely fair," says Johnson.

September 24, 1965
President Johnson issues Executive Order 11246, which compels federal contractors to "take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin."

April 4, 1968
The Rev. Martin Luther King Jr. is assassinated, setting off riots across the U.S. and ushering in a period of racial tension in universities and elsewhere. Within weeks of King's death, the dean of admissions at Harvard University issues a joint statement with the Ad Hoc Committee of Black Students committing the university to increasing the enrollment of black students. Other selective universities make similar commitments.

July 25, 1974
In *Milliken v. Bradley*, the U.S. Supreme Court sets aside a lower court order that requires the busing of Detroit school children to the suburbs. Desegregation does not require "any particular racial balance" and certainly does not require that children be bused across school districts, declares the court in a 5-4 opinion.

June 28, 1978
The U.S. Supreme Court approves affirmative action but bars strict quota systems in *Regents of the University of California v. Bakke*. The 5-4 decision, announced by Justice Lewis Powell, declares that race can be one of many factors used in consideration of applicants and comments favorably on Harvard University's system of "holistic review."

July 2, 1980
In *Fullilove v. Klutznick*, the U.S. Supreme Court rules that set-aside programs for minority business enterprises are permissible. "In the MBE program's remedial context, there is no

requirement that Congress act in a wholly 'color-blind' fashion," declares the court in a decision authored by Chief Justice Warren Burger.

May 19, 1986
The U.S. Supreme Court, in *Wygant v. Jackson Board of Education*, sets aside a layoff policy that attempts to protect minority employees. "We have previously expressed concern over the burden that preferential-layoffs scheme imposes on innocent parties. … Though hiring goals may burden some innocent individuals, they simply do not impose the same kind of injury that layoffs impose. Denial of a future employment opportunity is not as intrusive as loss of an existing job," writes Justice Lewis F. Powell in the 5-4 decision.

February 25, 1987
The U.S. Supreme Court, in *United States v. Paradise*, upholds a court-ordered hiring plan mandating the State of Alabama Department of Public Safety to hire or promote one African-American for every white hired or promoted until blacks constitute at least 25 percent of those in upper ranks of the department. "The remedy imposed here is an effective, temporary, and flexible measure. It applies only if qualified blacks are available, only if the Department fails to implement a promotion procedure that does not have an adverse impact on blacks," declares Justice William J. Brennan Jr., writing for the court.

June 23, 1989
The U.S. Supreme Court, in *Adarand Constructors, Inc. v. Peña*, rules against a program setting aside city construction funds for black-owned companies in the absence of clear evidence of discrimination. "Our action today makes explicit what Justice Powell thought implicit in the Fullilove lead opinion: federal racial classifications, like those of a State, must serve a compelling governmental interest, and must be narrowly interest," declares the court in a 6-3 decision announced by Justice Sandra Day O'Connor.

May 19, 1995
In one of his more famous speeches, Bill Clinton defends affirmative action: "The job of ending discrimination in this country is not over. That should not be surprising. We had slavery for centuries before the passage of the 13th, 14th and 15th amendments. … Based on the evidence, the job is not done. So here is what I think we should do. We should reaffirm the principle of affirmative action and fix the practices. We should mend it, but don't end it."

March 18, 1996
In *Hopwood v. Texas*, the Fifth U.S. Court of Appeals effectively declares the Bakke decision invalid in ending an affirmative action program at the University of Texas Law School. Subsequently, the state ended all programs explicitly using race as a factor in admissions at all public universities.

November 5, 1996
California voters pass Proposition 209, amending the state constitution to prohibit state-sponsored affirmative action: "The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting."

November 3, 1998
Voters in Washington state pass Initiative 200—a measure essentially identical to California's Proposition 209, banning "preferential treatment" by state government.

November 9, 1999
Faced with the prospect of a ballot initiative similar to those passed in California and Washington, Florida Gov. Jeb Bush calls for an end to affirmative action in university admissions and issues an executive order barring racial and gender preferences in the awarding of state contracts. Bush's "One Florida Initiative" also calls for state universities to accept all high school seniors who finish in the top 20 percent of their class.

June 23, 2003
In two separate but related decisions, the U.S. Supreme Court approves the concept of affirmative action (effectively invaliding the Hopwood decision) but rules against a rigid approach to racial diversity. In *Grutter v. Bollinger*, the court "endorses Justice Powell's view that student body diversity is a compelling state interest that can justify using race in university admissions," giving its blessing to the affirmative action program at the University of Michigan Law School. In *Gratz V. Bollinger*, the court rejects the admissions process for the University of Michigan undergrads. "We find that the University's policy, which automatically distributes 20 points, or one-fifth of the points needed to guarantee admission, to every single 'underrepresented minority' applicant solely because of race, is not narrowly tailored to achieve the interest in educational diversity that respondents claim justifies their program," declares the opinion delivered by Chief Justice William H. Rehnquist.

March 30, 2006
In rejecting legal challenges to an anti-affirmative action measure, Michigan Supreme Court essentially guarantees that the Michigan Civil Rights Initiative will be on the ballot in Michigan in November 2006. The initiative, like those in California and Washington state, would amend the state constitution to prohibit "preferential treatment" on the basis of race, gender or ethnicity.

June 5, 2006
The U.S. Supreme Court decides to review challenges to programs in Louisville, Ky., and Seattle aimed at achieving racial balance in public schools, ensuring that it will again revisit the question of race-related policies and public education.