



Affirmative Action

The American Association of University Women supports affirmative action programs that establish equal opportunity for women and minorities and improve gender, racial, and ethnic diversity in educational institutions and in workplaces.¹ AAUW's mission to promote gender equity in school and at work is founded on the belief, articulated in AAUW's legislative program since 1939, that all individuals have the right to full and free opportunity intellectually, socially, and economically, including the right to be employed according to abilities without regard to sex.

Despite the clear progress women have made over years, ensuring equal opportunity for women in education and the paid workforce remains an elusive goal, in part because women continue to face discrimination. AAUW believes that affirmative action programs have begun to break down the barriers that confront women and minorities in education and employment, and these programs remain essential to ensure equal access to all professions at all levels through recruitment, outreach, and training.

Origins of Affirmative Action

The term "affirmative action" was first used in Executive Order 10925, signed by President Kennedy in 1961.² It requires 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." President Lyndon Johnson later expanded federal affirmative action programs to include women in 1967.³

Legal Challenges

In June 2003, the U.S. Supreme Court considered the constitutional authority for higher education affirmative action in *Grutter v. Bollinger*⁴ and *Gratz v. Bollinger*.⁵ The court upheld the consideration of race in the University of Michigan School of Law's admissions program. In previous Supreme Court terms, the justices had declined to hear cases involving the admissions programs at the University of Texas and the University of Washington, two cases in which the circuit courts came to different conclusions regarding the 1978 precedent that race could be considered to achieve a diverse student body.⁶ The Court's ruling in *Grutter* found that the Constitution does not prohibit a school's narrowly tailored use of race to further a compelling interest in "educational benefits that flow from a diverse student body."

Affirmative action programs fairly provide qualified women and minorities with full educational and workplace opportunities.

- Race, national origin, and sex are among several factors to be considered, but relevant and valid job or educational qualifications may not be compromised. In fact, affirmative action encourages higher education admissions officers to consider the variety of qualities that contribute to a person's potential to be successful.
- Goals and timetables form the basis of affirmative action policies, and federal law specifically states that failure to meet goals and timetables does not result in any

sanction as long as there are “good faith” efforts to meet them. Quotas in affirmative action programs are illegal. Affirmative action programs are illegal if (1) an unqualified person receives benefits over a qualified one; (2) numerical goals are so strict that the plan lacks reasonable flexibility; (3) the numerical goals bear no relationship to the available pool of qualified candidates and could therefore become quotas; or (4) the plan is not fixed in length.⁷

Affirmative action programs have effectively begun the process of establishing equal opportunity for women.

- Since affirmative action policies have been implemented, the numbers of women and minorities in certain professions have increased. Between 1970 and 2002, for example, the proportion of women physicians tripled from 7.6 percent to 25.2 percent,⁸ and the proportion of science, technology, engineering and mathematics bachelor’s degrees awarded to women has increased dramatically during the past four decades.⁹
- The number of majority women-owned businesses increased from 5.4 million to 7.7 million between 1997 and 2008. This figure represents an increase of 42 percent, which is almost double the pace for that of all firms (23 percent).¹⁰ In 2008, these 7.2 million majority women-owned firms employed 7.3 million people and generated \$1.1 trillion in sales.¹¹

However, despite the gains of the past 40 years, the need for affirmative action continues.

- The U.S. Department of Labor’s Glass Ceiling Commission’s 1995 report showed that while white men were only 43 percent of the workforce at *Fortune 500* companies, they held 95 to 97 percent of the senior management jobs.¹² By 2008, only 6.2 percent of corporate officer top earners in *Fortune 500* companies were women, down from 6.7 percent in 2007.¹³ In addition, even though women-owned firms represent nearly 40 percent of all businesses in the United States, these firms obtain a mere 3.4 percent of federal government contracts.¹⁴ Although the federal government has recently adopted changes to its procurement rules to benefit majority women-owned businesses, the government still falls short of the five percent government-wide procurement goal Congress established in the Federal Acquisition Streamlining Act of 1994.¹⁵
- Women remain severely underrepresented in nontraditional occupations (male-dominated occupations) despite the fact that these jobs pay an average of \$8,825 more than female-dominated jobs.¹⁶ For example, in 2010, women made up 12.9 percent of all architecture and engineering occupations; 1.6 percent of all automotive service technicians and mechanics; and 1.4 percent of all carpenters.¹⁷

Affirmative action ensures that women and minorities have equal access to quality education at all levels and provides opportunities for women to enter nontraditional occupations.

- By 2014, the U.S. will have added more than one million additional information technology jobs to the workforce.¹⁸ 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 Advanced Placement test takers.¹⁹ College-educated women earn only 26.8 percent of bachelor's degrees in mathematics and computer science (down from 39.3 percent in 1984) and 25.3 percent of doctorate degrees in mathematics and computer science.²⁰ Overall, women comprise 24.8 percent of computer and mathematical professionals, down from 27 percent in 2006.²¹

- In 2009, women earned 57 percent of all bachelor's degrees, 60 percent of all master's degrees, and 52 percent of all doctorate degrees, but were underrepresented in traditionally male-dominated fields of study, such as engineering and physical science.²² That same year, women earned only 18 percent of computer and information science bachelor degrees and 16 percent of engineering bachelor degrees.

Affirmative action and diversity in higher education and the work force are strongly supported by the education and business communities.

- Before the U.S. Supreme Court's consideration of *Grutter v. Bollinger* in 2003, 65 *Fortune 500* companies filed an *amicus* brief in favor of affirmative action programs in higher education. 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 2003,²³ and IBM where the percentage of minority executives increased 170 percent—from 117 to 316 officials—from January 1996 to March 2001.²⁴ Central to IBM's Executive Resources affirmative action 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.²⁵

State-based Attacks on Affirmative Action

Unable to dismantle affirmative action at the federal level, opponents have taken a state-by-state approach to abolishing affirmative action programs. The movement is led by Ward Connerly, founder of the American Civil Rights Institute and former member of the California Board of Regents, who was behind California Proposition 209, which outlawed race and gender-based preferences in state hiring and university admissions. In 2010, the California Supreme Court upheld Proposition 209, ruling that did not violate the federal constitution.²⁶

One recent attack on affirmative action occurred in Michigan in 2006. AAUW and its Michigan affiliates were heavily involved in a campaign to defeat a ballot measure to make affirmative action unconstitutional in higher education, public employment, and contracting in the state. The ballot measure passed with 58 percent of the vote, despite efforts to defeat it by a broad-based coalition of more than 200 mainstream Michigan organizations. In 2011, the ballot measure was decreed unconstitutional by the Sixth Circuit.²⁷

In 2008, anti-affirmative action initiatives appeared on the ballot in Colorado and Nebraska. Similar to Michigan in 2006, AAUW and our state affiliates were once again involved in helping to defeat these measures. The 2008 results were a mixed bag. In Colorado, voters managed to

defeat a proposal that would have banned affirmative actions programs in that state; in Nebraska, however, voters passed a measure ending programs aimed at increasing the participation of women and minorities in government and education.²⁸ In 2010, Arizona voters passed a ballot initiative to end affirmative action programs.²⁹

Resources for Advocates

It is AAUW advocates across the country who speak their minds on issues important to them that truly advance AAUW's mission. Stay informed with updates on affirmative action policies and other issues by subscribing to AAUW's Action Network. Make your voice heard in Washington and at home by using AAUW's Two-Minute Activist to urge your members of Congress to support policies that ensure equal opportunity for women and minorities in education and the workforce. Write a letter to the editor of your local paper to educate and motivate other members of your community. Attend town hall meetings for your members of Congress, or set up a meeting with your elected official's district office near you to discuss these policies. AAUW members can also subscribe to *Washington Update*, our free, weekly e-bulletin that offers an insider's view on the latest policy news, resources for advocates, and programming ideas. For details on these and other actions you can take, visit www.aauw.org/takeaction.

Conclusion

AAUW believes affirmative action programs still have much work to do and will continue its efforts to preserve such programs—both on the federal level and in the states. Proactively creating policies and programs to address discrimination not only creates more opportunity, but also has the potential to quell problems before they start. Discrimination can be difficult to prove in court, and the burden of proof lies solely with the victim. Affirmative action programs can prevent discrimination, and this is good news for both employee and employer.

For more information, call 202/785-7793 or e-mail VoterEd@aauw.org.

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² The White House. (March 6, 1961). *Executive Order 10925: Establishing the President's Committee on Equal Employment Opportunity*. Retrieved July 10, 2009, from www.thecre.com/fedlaw/legal6/eo10925.htm.

³ The White House. (October 13, 1967). *Executive Order 11375 – Amending Executive Order No. 11246, Relating to Equal Employment Opportunity*. Retrieved February 15, 2011, from www.presidency.ucsb.edu/ws/index.php?pid=60553.

⁴ *Grutter v. Bollinger*, 539 U.S. 306. (2003). Retrieved February 15, 2011, from www.law.cornell.edu/supct/html/02-241.ZS.html

⁵ *Gratz v. Bollinger*, 539 U.S. 244 (2003). Retrieved February 15, 2011, from www.law.cornell.edu/supct/html/02-516.ZS.html.

⁶ *Regents of the University of California v. Bakke*, 438 U.S. 265. (1978). Retrieved February 15, 2011, www.law.cornell.edu/supct/html/historics/USSC_CR_0438_0265_ZS.html

⁷ U.S. Equal Employment Opportunity Commission. (September 28, 1965). *Executive Order No. 11246*. Retrieved February 15, 2011, from www.eeoc.gov/abouteeoc/35th/thelaw/eo-11246.html; U.S. Department of Labor (January 4, 2002). *Facts on Executive Order 11246 – Affirmative Action*. Retrieved February 15, 2011, from www.dol.gov/esa/ofccp/regs/compliance/aa.htm.

⁸ American Medical Association. *Physician Characteristics and Distribution in the United States. 2004 Edition* and prior editions.

⁹ AAUW. (2010). *Why So Few? Women in Science, Technology, Engineering, and Mathematics*. Retrieved February 23, 2011, from www.aauw.org/learn/research/upload/whysofew.pdf.

¹⁰ *Biz Georgia*. (September 12, 2006). *Women-Owned Businesses Continue to Outpace Growth Rates for All Other Firms*. Retrieved February 15, 2011, from www.bizgeorgia.com/News/National/Women%11owned-firms/.

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¹² U.S. Department of Labor, Federal Glass Ceiling Commission. (March 1995). *Good for Business: Making Full Use of the Nation's Human Capital*, 12. Retrieved February 15, 2011, from www.dol.gov/oasam/programs/history/reich/reports/ceiling.pdf.

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¹⁴ Center for Women's Business Research. (September 2008). *Key Facts about Women-Owned Businesses*. Retrieved February 15, 2011, from www.nfwbo.org/facts/index.php; Women Impacting Public Policy. (October 2008). *Economic Blueprint: The Women's Business Owners' Platform for Growth*. Retrieved February 15, 2011, from www.wipp.org/resource/resmgr/Docs/EconomicBlueprintInauguralEd.pdf.

¹⁵ Center for Women's Business Research, National Women's Business Council. (October 2004). *Federal Contracting with Women-Owned Businesses FY 1998-FY 2003*. Retrieved February 15, 2011, from www.nwbc.gov/documents/Issue_brief-Federal_Contracts-2004.pdf.

¹⁶ National Alliance for Partnerships in Equity. (June 2006). *Constructing Equity: Promising Practices for Recruiting and Retaining Students in Career and Technical Programs That Are Nontraditional for Their Gender: Programs and Practices That Work: Preparing Students for Nontraditional Careers Project*. Retrieved February 15, 2011, from www.napequity.org/pdf/Constructing%20Equity.pdf.

¹⁷ U.S. Department of Labor, Bureau of Labor Statistics, Current Population Survey. (2008). *Table 11. Employed Persons by Detailed Occupation, Sex, Race, and Hispanic or Latino Ethnicity*. Retrieved February 15, 2011, from www.bls.gov/cps/cpsaat11.pdf.

¹⁸ National Center for Women and Information Technology. (2007). *NCWIT Scorecard 2007: A Report on the Status of Women in Information Technology*. Retrieved February 15, 2011 from www.ncwit.org/pdf/2007_Scorecard_Web.pdf.

¹⁹ College Board. (2008). *Program Summary Report*. Retrieved February 15, 2011, from <http://professionals.collegeboard.com/profdownload/ap-data-2008-Program-Summary-Report.pdf>.

²⁰ National Science Foundation, Division of Science Resources Statistics. (October 2008). *Science and Engineering Degrees: 1966-2006. (NSF 08-321)*. Retrieved February 15, 2011, from www.nsf.gov/statistics/nsf08321/pdf/nsf08321.pdf.

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²² U.S. Department of Education, National Center for Education Statistics. (2011). *The Condition of Education: 2011*. Retrieved August 11, 2011, from <http://nces.ed.gov/pubs2011/2011033.pdf>

²³ *Brief for Amici Curiae, 65 Leading American Businesses in Support of Respondents, Grutter v. Bollinger* (2003). Retrieved February 15, 2011, from www.civilrights.org/equal-opportunity/legal-briefs/brief-for-amici-curiae-65-leading-american-businesses-in-support-of-respondents-in-grutter-v-bollinger-et-al.html.

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²⁵ IBM. (June 2002). *Equal Opportunity in the U.S.: A 50-year Commitment that has Stood the Test of Time...and*

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²⁶ *Los Angeles Times*. (August 3, 2010). *Affirmative Action Ban Not Unconstitutional, California Supreme Court Rules*. Retrieved August 11, 2011, from <http://articles.latimes.com/2010/aug/03/local/la-me-court-affirm-20100803>.

²⁷ *The New York Times*. (July 1, 2011). *Court Overturns Michigan Affirmative-Action Ban*. Retrieved August 11, 2011, from www.nytimes.com/2011/07/02/education/02michigan.html.

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²⁹ CNN. (2010). *Election Center 2010: The States/Arizona*. Retrieved February 15, 2010, from www.cnn.com/ELECTION/2010/results/state/#val=AZ.