

HISTORICAL OVERVIEW OF RACE PREFERENCE AND AFFIRMATIVE ACTION POLICY IN AMERICA

ORIGINS

President John F. Kennedy first introduced the nation to the concept of “affirmative action” in March 1961. Executive Order 10925 stated that “affirmative action” must be taken to “ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin.” Kennedy’s message was simple – treat all people equally, without regard to race.

On July 2, 1964, Congress again sought to affirm the ideal that government should be “colorblind” and enacted the historic 1964 Civil Rights Act. During debate, Senator Hubert Humphrey delivered a passionate speech on the floor of the Senate, declaring the CRA, “would prohibit preferential treatment for any particular group....” (110 Congressional Record 11848 (1964).) In September of 1965, Lyndon B. Johnson reiterated this sentiment in Executive Order 11246. Johnson maintained “The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor 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.”

In time, various programs have carelessly introduced policies that actually discriminate by granting racial preferences and have done so in the name of “affirmative action”. Contrary to the original intent, many present day affirmative action programs exist as color-conscious rather than color-blind programs. In 1965, President Lyndon B. Johnson started the nation down this path, when he stated: “You do not take a man who for years has been hobbled by chains, liberate him, bring him to the starting line of a race, saying, 'you are free to compete with all the others,' and still justly believe you have been completely fair.” Then, in 1969, President Richard M. Nixon went further by saying, “We would not impose quotas, but would require federal contractors to show 'affirmative action' to meet the goals of increasing minority employment.” Today, many “affirmative action” programs do exactly what they originally sought to outlaw.

CHALLENGES EMERGE

In 1979, the Supreme Court weighed in. *Bakke vs. Regents of the University of California* was the first challenge to college admission programs that employed “affirmative action” programs and gave preference based on race. The Supreme Court ruled that race could be a factor in college admissions, but that the use of quotas was unconstitutional. After the *Bakke* decision there were a series of challenges to employment and contracting programs that employed quotas, set-asides, and race-based goals.

Nearly two decades after the *Bakke* decision, Ward Connerly, a newly appointed University of California Regent, brought the debate full-circle. When Regent Connerly discovered that the University had different admissions standards based on race, alarm bells went off. Nervous that the University was susceptible to a lawsuit, Ward Connerly encouraged the Regents to end race preference programs in college admissions. The Regents passed Connerly’s SP-1 and SP-2 in June of 1995. SP-1 outlawed preferences in admissions and SP-2 operated similarly in contracting and employment.

The battle in California, however, was not over. With people like Jesse Jackson and Al Sharpton leading an effort to overturn the Regents decision, Ward Connerly decided that the California constitution should be amended to make it unconstitutional to discriminate against or grant preferential treatment to any individual or group on the basis of race, sex, color, and ethnicity in the operation of public employment, public contracting, and public education. In 1996, Connerly led the effort to secure a place on the ballot and ultimately pass what was known as the California Civil Rights Initiative (Prop 209). On November 5, 1996 the voters of California agreed with Connerly, by a margin of 55%-45%, that government should be colorblind.

After success in CA, Connerly set out to help other states end state-sponsored discrimination. Due to the separate admissions standards that the University of Washington was using, the state of Washington emerged as a key battleground. In 1997, Connerly began helping the Washington Policy Center mount a campaign for a ballot initiative similar to California's Prop 209. Despite being outspent by a substantial margin, on November 3, 1998 the Washington Civil Rights Initiative (I-200) passed 59%-41%.

Success in California and Washington brought hope that the Supreme Court would finally recognize that race has no place in American life or law. In 1997, two companion lawsuits were filed against the University of Michigan. *Gratz v. Bollinger* challenged the undergraduate admission's policy and *Grutter v. Bollinger* challenged the law school's policy. On June 23, 2003, the U.S. Supreme Court struck down the preference programs at the University of Michigan's undergraduate college, ending the wholesale use of mechanical race preferences in admissions. But, in the case against UM's Law School, the Court inexplicably allowed the continued use of race in admissions. Justice O'Connor opined that "The Law School's narrowly tailored use of race in admissions decisions to further a compelling interest in obtaining the educational benefits that flow from a diverse student body is not prohibited by the Equal Protection Clause."

BATTLE LINES ARE DRAWN

Within days of the US Supreme Court decision in *Gratz* and *Grutter*, Ward Connerly was asked by Jennifer Gratz and state representative Leon Drolet to help with the Michigan Civil Rights Initiative. Connerly cautioned that the opponents would view this campaign as a "must-win" and would therefore pull out all of the stops. The campaign was launched and, as predicted, the entire establishment – including major businesses and special interest groups like the ACLU, BAMN, and the NAACP -- lined up to oppose the initiative. Despite access to significantly less manpower and money, on November 7, 2006, the Michigan Civil Rights Initiative (Proposal 2) passed by a landslide margin of 58-42%.

Just months later, the US Supreme Court followed the Michigan victory with another blow to race preferences. The Court agreed to hear a challenge to programs in Seattle and Louisville that used race to assign children to elementary and middle schools. And in a 5-4 ruling, Chief Justice Roberts eloquently stated "the way to stop discrimination on the basis of race is to stop discriminating on the basis of race."

THE END OF AN ERA

After significant victories in Michigan and at the US Supreme Court, Ward Connerly has launched his "Super Tuesday for Equal Rights" to bring the issue of race preferences to the forefront of the debate in 5 states – Arizona, Colorado, Missouri, Nebraska and Oklahoma. A simultaneous victory in these five states would effectively end the era of race preferences and move our nation closer to the true promise of the 1964 Civil Rights Act – colorblind government.