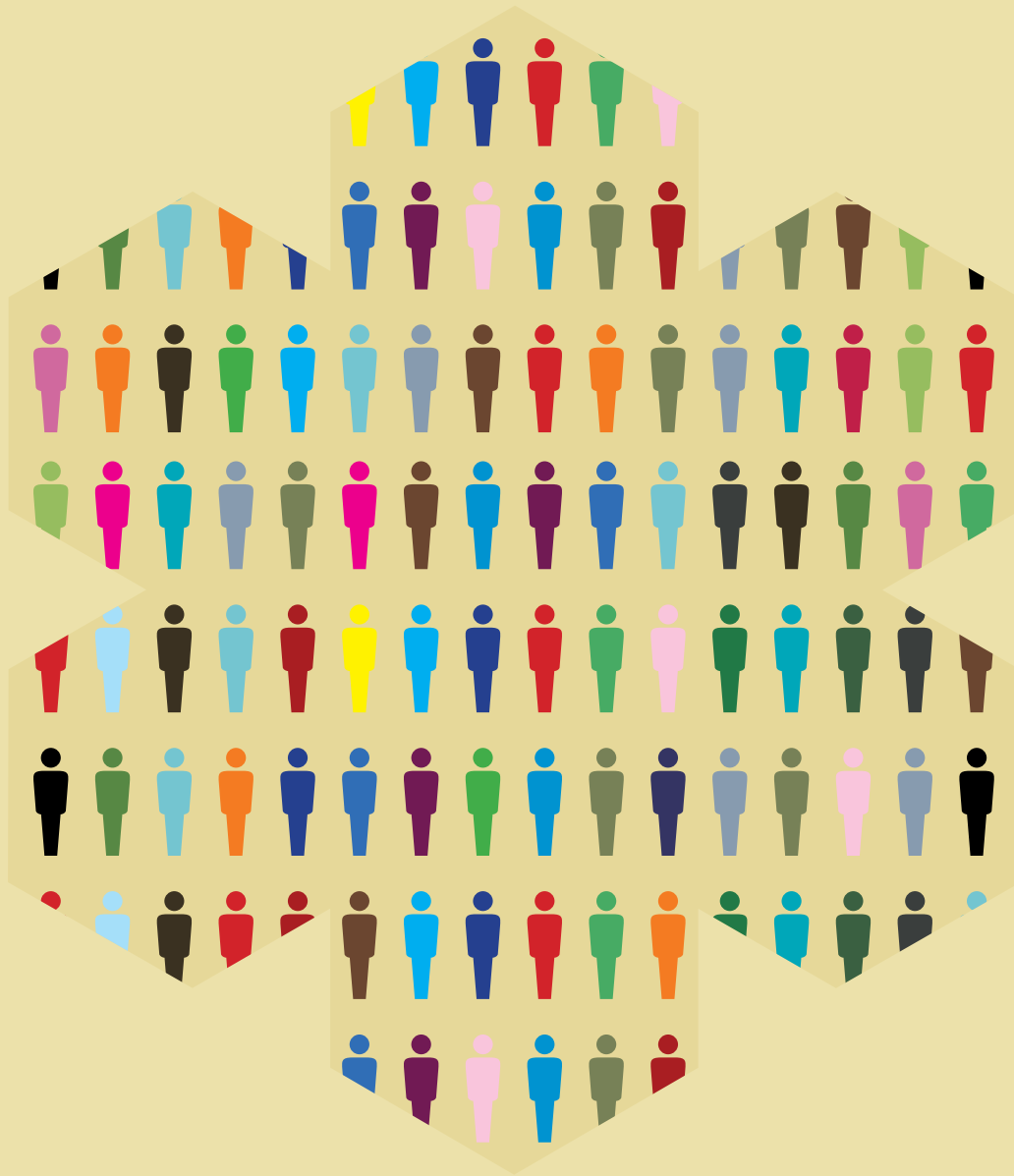


EQUAL OPPORTUNITY: THE EVIDENCE



A summary of **key ideas, current research, and relevant information** for those who aim to promote and protect equal opportunity

This information can be read as a report or used as a reference for specific topics. Companion packets are available for selected states.

Download this report at: law.berkeley.edu/files/EOTTheEvidence

WHY EQUAL OPPORTUNITY MATTERS

STRIVING FOR FAIRNESS

Equal opportunity is deeply rooted in the American ideals of fairness, justice, and equality. Programs to meet the goals of equal opportunity seek to realize these basic values. Moreover, equal opportunity not only helps individuals but also helps communities in need and benefits our larger society.

THE CASE FOR EQUAL OPPORTUNITY

EQUAL OPPORTUNITY DERIVES FROM OUR FUNDAMENTAL VALUES AS A NATION

The American ideal of equality was proclaimed in the earliest declaration of our nationhood. Today, equal opportunity is a moral obligation of our democracy to a diverse citizenry, and works to counter the wrongs of discrimination, both past and present.

EQUAL OPPORTUNITY EXPANDS OUR NATIONAL POOL OF TALENT

Half of the population of the United States is female and soon half will be people of color. Discrimination continues to prevent too many women and people of color from achieving their full potential. Equal opportunity harnesses the potential of all people so that our country is strong and energetic.

"All of us do not have equal talents, but all of us should have an equal opportunity to develop our talents."

- John Fitzgerald Kennedy

EQUAL OPPORTUNITY HELPS DISADVANTAGED COMMUNITIES AND ENABLES THEM TO CONTRIBUTE TO OUR LARGER SOCIETY

Too many of our communities are disadvantaged by past and ongoing discrimination. Equal opportunity offers members of these communities better chances to succeed and improve their communities.

EQUAL OPPORTUNITY FOSTERS DIVERSITY

Equal opportunity can increase diversity, which enhances decision-making, creates a rich educational environment, and helps teams to perform better.

A REMEDY FOR INEQUALITY

Equal opportunity efforts attempt to remedy inequality by promoting access to the building blocks of a secure economic life. Equal opportunity works to:

- Create a society in which everyone has a fair chance to succeed
- Provide pathways to education, employment, and business ownership for all
- Create environments in which no group is specifically excluded and members of all groups can feel included



“Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly.”

- Martin Luther King, Jr., Letters from a Birmingham Jail



IMPLEMENTING EQUAL OPPORTUNITY

Equal opportunity programs can be implemented in a number of ways to suit the needs of particular contexts, but there are key practices that distinguish equal opportunity efforts. These include:

- Enforcing nondiscrimination policies
- Setting goals for diversity
- Collecting and analyzing data on diversity
- Examining how important decisions such as the hiring and promotion of employees, the admissions of students, and the awarding of contracts might be biased and looking for ways to overcome such bias
- Providing mentorship and other resources for members of underrepresented groups
- Establishing staff positions or working groups dedicated to strengthening equal opportunity efforts

Equal opportunity efforts also adapt to different settings. For example, **schools and universities** create equal opportunity by admitting a diverse student population and by recruiting faculty who are representative of that student population.

Employers encourage equal opportunity by taking steps to ensure that people of color and women see job openings for which they are qualified, and then by providing mentoring, especially in fields that have been traditionally populated by White (Not Hispanic, or NH) men, such as science, technology, engineering, and mathematics (referred to as STEM), as well as construction. **Agencies that award public contracts** support equal opportunity by enabling businesses owned by people of color and by women to work with prime contractors and grow to become prime contractors, as well as by providing financial assistance, such as help with loans, bonding, and insurance.

EQUAL OPPORTUNITY DOES NOT:

- Set quotas
- Require the hiring or promotion of unqualified individuals
- Prevent Whites (NH) or men from competing for employment, contracts, or admission to schools
- Create mandatory requirements

THE EQUAL OPPORTUNITY DEBATE

NATIONAL EFFORTS AND STATE-LEVEL BATTLES

Affirmative action and equal opportunity programs were initiated and continue to this day by executive orders and federal and state legislative actions. Court rulings have upheld equal opportunity, while recent state-level ballot initiatives seek to overturn it.

A BRIEF HISTORY

UP TO THE 1960s

It is widely acknowledged that the United States systematically excluded people of color and women from equal treatment in public life for much of its history. Prominent examples of injustice include the forced removal and massacres of Native Americans, slavery, the conquest of lands held by Hispanic/Latinos, Jim Crow laws, the internment of Japanese Americans during World War II, and imposed residential segregation called redlining. Additionally, for many years, all women, including White (NH) women, were denied many rights, including the right to vote, to be employed in many positions, or to control their finances when married, resulting in unequal opportunities for women. In the 20th century, however, a countering trend of equal opportunity started to emerge and have an impact.

1960s

Affirmative action and equal opportunity programs began in earnest with the Kennedy administration's Executive Order 10925 which required all government 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." The Kennedy administration also created the President's Commission on Equal Employment Opportunity, which later became the Equal Employment Opportunity Commission (EEOC). The Department of Defense issued Directive 5120.36 in 1963 which mandated that "Every military commander has the responsibility to oppose discriminatory practices affecting his men and their dependents and to foster equal opportunity for them..."

During the Johnson administration, segregation was outlawed in certain types of employment with the Civil Rights Act of 1964. The Nixon administration mandated the Revised Philadelphia Plan, the first equal opportunity initiative to include numeric goals, in 1969.

1970s

Equal opportunity programs were widely used. Beginning with *Regents of the University of California v. Bakke* in 1978, the United States Supreme Court ruled affirmative action to be legal, but placed certain limitations on both its applicability and scope, including a ban on the setting of quotas in public education.

1980s

Although the Courts continued to uphold affirmative action, right-wing political groups and an increasingly conservative judiciary began consistent opposition to equal opportunity, including affirmative action.

1990s

Equal opportunity opponents, led by Ward Connerly and the American Civil Rights Institute, successfully limited the use of affirmative action in two states via ballot measures, but were defeated in Houston, Texas.

2000s

Anti-equal opportunity advocates won additional statewide victories limiting affirmative action, but also suffered defeats in gaining access to the ballot in several states. Another initiative was rejected outright by voters in Colorado. Court decisions affirmed the legality of affirmative action, but continued to place limits on its use.

MORE INFORMATION

Anti-Affirmative Action Threats in the States: 1997-2004 and FAQ

Americans for a Fair Chance

www.protectcivilrights.org/pdf/reports/aa-in-the-states/aa-in-the-states-2005.pdf

www.civilrights.org/equal-opportunity/fact-sheets/fact_sheet_packet.pdf

A history of state ballot measures in all fifty states and answers to frequently asked questions.

Anti-Affirmative Action Ballot Initiatives

Kirwan Institute for the Study of Race and Ethnicity

research.kirwaninstitute.org/publications/anti-affirmative_action_ballot_initiatives_report.pdf

An in-depth analysis of the 2008 ballot measures.

Affirmative Action: State Action

National Conference of State Legislatures

www.ncsl.org/default.aspx?tabid=12857

An overview of key statewide actions from the mid-1990s to 2010.

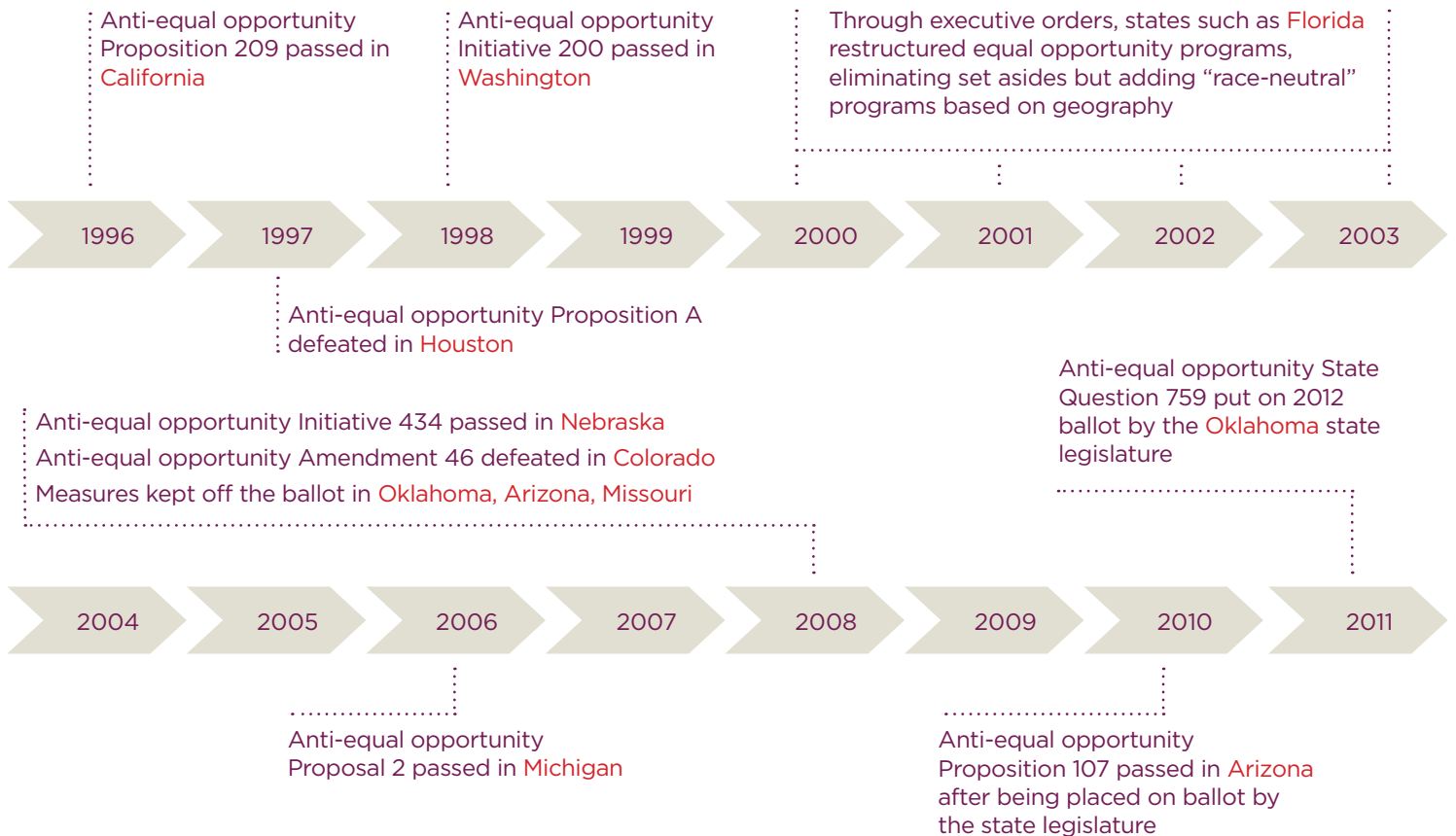
State Policies and Programs for Minority- and Women-Business Development

Tim Lohrentz, Insight Center for Community Economic Development

insightcced.org/uploads/publications/assets/50%20state%20inclusive%20business%20policy%20scan.pdf

A timeline of state efforts to bolster or undercut equal opportunity efforts in public contracting from 1996 to 2006.

HISTORY OF STATE BALLOT MEASURES



STATE-LEVEL BATTLES OVER EQUAL OPPORTUNITY

Major decisions about equal opportunity have taken place at the ballot box and have been decided by voters. This chart summarizes action by pro- and anti-equal opportunity advocates in the political sphere over the last two decades.

MAKING INEQUALITY VISIBLE

THE CASE THAT EQUAL OPPORTUNITY IS STILL NECESSARY

Equal opportunity efforts can be justified by revealing ways that people of color and woman continue to be unfairly affected by discrimination and bias.

STRUCTURES OF INEQUALITY

Although the United States has made considerable strides in reducing inequality, people of color and women still face formidable barriers to equality. Equal opportunity helps to make these barriers visible by identifying mechanisms of inequality, such as current, overt discrimination, modern manifestations of past discrimination, structural and institutional exclusion, and implicit bias. Each of these result in disparity that equal opportunity programs attempt to remedy.

CURRENT, OVERT DISCRIMINATION

People of color and women continue to face overt discrimination that prevents their advancement and hinders their ability to freely compete. Although blatant racism and sexism are less common than in the past, they are still widely prevalent.

MODERN MANIFESTATIONS OF PAST DISCRIMINATION

As a result of their historical exclusion from political agency, economic opportunity, and educational access, people of color and women have limited access to the resources, institutions, relationships, and capital necessary for success.

STRUCTURAL AND INSTITUTIONAL EXCLUSION

The policies and actions of institutions can have discriminatory effects even in the absence of outright discriminatory intention. This can include the way schools are funded and discipline is administered, the way banks lend money, and the way the media frames and presents news.

IMPLICIT BIAS

Negative stereotypes of people of color and women can affect the behavior and decisions of all people, even those who do not consciously believe in the validity of those stereotypes; people are often not even aware they are using stereotypes.

Efforts to promote equal opportunity are necessary because these discriminatory forces continue to create disadvantage for some and prevent equal opportunity for all.

"Affirmative action has helped me because I had all the experience [in highway construction]...Knowing the 'good ole boy' system and working in it, I would literally never have had the opportunity."

- Sharon Arnold, Interviewed by the Leadership Conference

www.civilrights.org/equal-opportunity/real-people/more-real-people.html

SEVERAL RESOURCES
HIGHLIGHT THE
ISSUES DISCUSSED
IN THIS SECTION,
INCLUDING THE
FOLLOWING:

**The State of Communities of Color in the US Economy:
Still Feeling the Pain Three Years Into the Recovery**
The Center for American Progress
www.americanprogress.org/issues/2012/04/pdf/comm_of_color.pdf

**One Nation Divisible: What America Was and What It
Is Becoming**
Michael B. Katz and Mark J. Stern, 2006
www.russellsage.org/publications/one-nation-divisible-0

The Race Equity Project Blog
Legal Services of Northern California
www.equity.lsnrc.net

THE USE OF TESTING STUDIES TO DOCUMENT DISCRIMINATION

In “matched pair” testing studies, researchers dispatch pairs of people who attempt to acquire things, including employment, housing, or loans. The only difference between the pairs is one key factor, such as the race of the person. Since all other factors are the same, any difference in treatment of the testers must be related to discrimination. Relative to White (NH) testers, testing studies have found evidence of discrimination when people of color attempted to:

- Rent or buy a home
- Gain employment
- Obtain a loan

Fair Lending Testing: Best Practices, Trends and Training
Paul Lubin
www.jchs.harvard.edu/sites/jchs.harvard.edu/files/ucc08-4_lubin.pdf

*Discrimination in Metropolitan Housing Markets: National
Results from Phase 1 of HDS2000*
The Urban Institute/HUD
www.urban.org/publications/410821.html

*National Report Card on Discrimination in America: The Role of
Testing*
The Urban Institute
www.urban.org/publications/308024.html

*The Use of Undercover Testers to Identify and Eliminate
Discrimination in the Selection and Hiring of Employees*
The University of Iowa Clinical Law Program’s Law and Policy
in Action Project
[www.uiowa.edu/legalclinic/documents/
SpecialReportToTheICRCEmploymentTesters.pdf](http://www.uiowa.edu/legalclinic/documents/SpecialReportToTheICRCEmploymentTesters.pdf)

MAKING INEQUALITY VISIBLE

THE CASE THAT EQUAL OPPORTUNITY IS STILL NECESSARY

STATISTICAL EVIDENCE OF INEQUALITY

EMPLOYMENT

Women and people of color are poorly represented in many employment-related areas, notably on Fortune 500 boards, in which:

White (NH) men hold 75% of all Board seats
White (NH) women hold 13% of all Board seats
Men of Color hold 10% of all Board seats
Women of Color hold 3% of all Board seats

Missing Pieces: Women and Minorities on Fortune 500 Boards
Alliance for Board Diversity
www.catalyst.org/file/469/abd_2010_census.pdf

People of color are underrepresented in six out of the seven highest-salaried occupations on the Top 30 Largest Growing Occupations list, but are overrepresented on three of the six lowest-salaried occupations. People of color also disproportionately bear the brunt of unemployment. The jobless rate is:

1 in 6 for African Americans
1 in 8 for Hispanic/Latino Americans
1 in 12 for Whites (NH)

From Jim Crow Jobs to Employment Equity
Center for Social Inclusion
www.centerforsocialinclusion.org/publications/from-jim-crow-jobs-to-employment-equity

Compensation is lower for women and people of color. Relative to the compensation of White (NH) men, the wage gap is:

80% for White (NH) women
74% for African American men
70% for African American women
66% for Hispanic/Latino men
60% for Hispanic/Latina women

The compensation gap between men and women is not just due to different career pathways. An analysis of 2010 data found that women earn less than men in nineteen out of the twenty most common male-dominated careers and female-dominated careers. Part of the pay gap for women is due to the lack of family-friendly policies, such as support for childcare and the care of sick relatives, tasks that fall primarily to women.

The Gender Wage Gap:2010 and The Gender Wage Gap by Occupation
Institute for Women's Policy Research
www.iwpr.org/publications/pubs/the-gender-wage-gap-2010-updated-march-2011
www.iwpr.org/publications/pubs/the-gender-wage-gap-by-occupation-1

"I have dealt with discrimination my entire life, and I still deal with it. Last year, one of my employees receive[d] a quote on new tires. The supplier quoted us more than \$613 for each tire. I called a white business associate and learned that he had only paid \$400 per tire for the same tires, from the same supplier. My employee who obtained the original quote has what might be described as an ethnic sounding voice. So I used a white voice, called the tire supplier, and got the \$400 price. When asked why we had initially been given the higher price, nothing the supplier said justified the actions. A 50 percent markup on one of the most basic supplies in my business puts me at a huge disadvantage....No business person can succeed if they are paying a race-based markup on supplies."

- Chuck Covington,
Hearing before the Committee on Transportation and Infrastructure, U.S. House of Representatives
www.gpo.gov/fdsys/pkg/CHRG-111hrg48413/html/CHRG-111hrg48413.htm

CONTRACTING

Businesses owned by people of color and women do not receive a fair share of government contracts. A summary of research in this area found that people of color-owned businesses received only 57% of the contract dollars that might be expected in a non-discriminatory environment, while women-owned businesses received only 29%. Numerous disparity studies have found evidence of disparity and discrimination in public contracting.

Do Minority-Owned Businesses Get a Fair Share of Government Contracts?
Urban Institute
www.urban.org/publications/307416.html

Guidelines for Conducting a Disparity and Availability Study for the Federal DBE Program
Transportation Research Board
www.trb.org/Main/Blurbs/162898.aspx

EDUCATION

Racial segregation in American schools is at its highest point in forty years. Students of color are more likely to attend schools with fewer resources than White (NH) students. Students of color are also more likely to be harmed by zero-tolerance policies, which increase their chance of suspension, expulsion, and contact with the juvenile justice system.

For example, research has shown that youth of color are more likely to be suspended than White (NH) students who commit the same offenses. The criminalization of youth by schools is called the school-to-prison pipeline and disproportionately affects youth of color.

Housing Costs, Zoning, and Access to High-Scoring Schools
Metropolitan Policy Program at Brookings
brookings.edu/-/media/research/files/papers/2012/4/19%20school%20inequality%20rothwell/0419_school_inequality_rothwell.pdf

School-to-Prison Pipeline and Race & Ethnicity in America: Turning a Blind Eye to Injustice
The American Civil Liberties Union
www.aclu.org/racial-justice/school-prison-pipeline
www.aclu.org/pdfs/humanrights/cerd_full_report.pdf

Girls and women have made many educational gains in the last few decades. However, women are consistently underrepresented in key educational areas (notably the areas known as STEM: science, technology, engineering, and mathematics) that lead to many high quality, well-compensated jobs. Although women make up 48% of the workforce, they hold only 25% of STEM jobs.

Women in STEM: A Gender Gap to Innovation
U.S. Department of Commerce
www.esa.doc.gov/Reports/women-stem-gender-gap-innovation

MAKING INEQUALITY VISIBLE

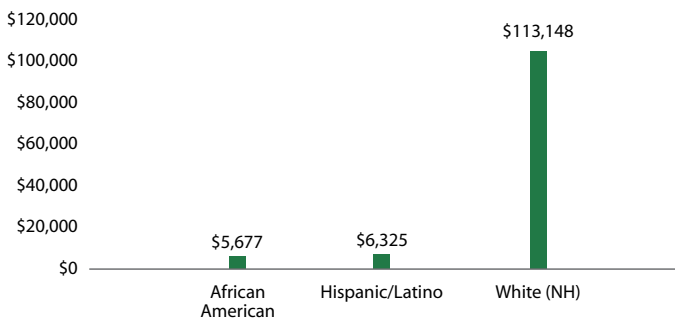
THE CASE THAT EQUAL OPPORTUNITY IS STILL NECESSARY

WEALTH

The wealth gap between people of color and Whites (NH) is now the widest it has been in at least twenty-five years. The wealth gap relative to Whites (NH) is 20:1 for African Americans and 18:1 for Hispanic/Latinos.

In terms of dollars, the typical wealth (assets minus debts) per household in 2009 was:

Wealth



Source: Pew Research Center tabulations of Survey of Income and Program Participation data

Twenty-to-One: Wealth Gaps Rise to Record Highs Between Whites, Blacks and Hispanics

Pew Research Center

pewsocialtrends.org/files/2011/07/SDT-Wealth-Report_7-26-11_FINAL.pdf

See also:

Lifting as We Climb: Women of Color, Wealth, and America's Future

Insight Center for Community Economic Development

www.insightcced.org/uploads/CRWG/LiftingAsWeClimb-WomenWealth-Report-InsightCenter-Spring2010.pdf

Part of the wealth gap is the result of disparities in homeownership. In 2010, 73% of Whites (NH) owned a home compared to 47% of people of color.

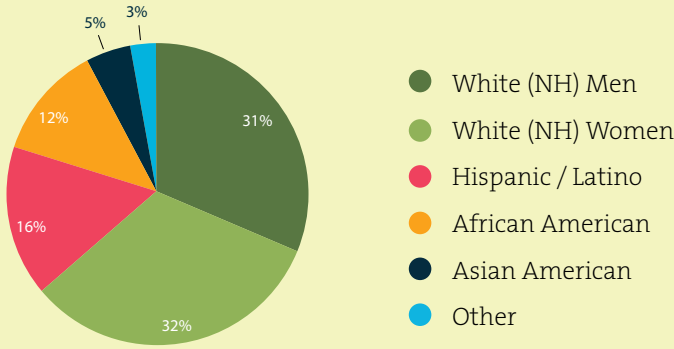
Homeownership by Race

2010 American Community Survey via Corporation for Enterprise Development

scorecard.assetsandopportunity.org/2012/measure/homeownership-by-race

The U.S. Census shows that women and people of color are more likely to be in poverty. For example, in households with only one parent, female-headed households were twice as likely to be under the poverty line in 2010 (32%) compared to male-headed households (15%).

IN 2010, THE UNITED STATES WAS 36% PEOPLE OF COLOR, 32% WHITE (NH) WOMEN, AND 31% WHITE (NH) MALE. BY 2050, PEOPLE OF COLOR WILL ACCOUNT FOR 54% OF THE POPULATION.

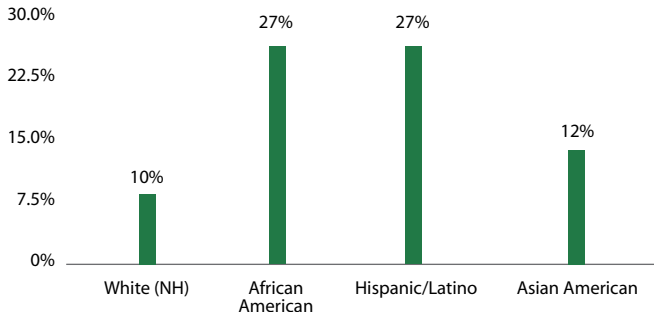


2010 Census Summary File 2, Tables PCT3 and PCT4
U.S. Census Bureau

Projections of the Population by Sex, Race, and Hispanic Origin for the United States: 2010 to 2050
U.S. Census Bureau
census.gov/population/www/projections/files/nation/summary/np2008-t4.xls

By race/ethnicity, people of color are much more likely to be in poverty, especially African Americans and Hispanic/Latinos.

Households in Poverty



Source: U.S. Census Bureau

Income, Poverty, and Health Insurance Coverage in the United States: 2010
U.S. Census Bureau
www.census.gov/prod/2011pubs/p60-239.pdf

HEALTH

Overall, people of color rate their health status lower than Whites (NH). The life expectancy at birth for African Americans is five years less than for Whites (NH), which is an improvement compared to previous years. In general, people of color report less access to health care and poorer quality health care than Whites (NH).

Racial and Ethnic Disparities in U.S. Health Care: A Chartbook
Commonwealth Fund
www.commonwealthfund.org/usr_doc/Mead_raceialethnicdisparities_chartbook_1111.pdf

"Affirmative Action has given me the access to countless opportunities...Affirmative Action means that I'm a better citizen...It means I want my 401K to grow. I worry about taxes. I want to have a family I can be proud of in a neighborhood that is as economically diverse as it is ethnically. I want peace. And, I want my students at John Jay (a Hispanic-serving institution) to look at me and say, if he can do it, so can I."

- Edward Paulino, Interviewed by the Leadership Conference
www.civilrights.org/equal-opportunity/real-people/more-real-people.html

IMPACT OF AFFIRMATIVE ACTION BANS

A THREAT TO DIVERSITY

Equal opportunity has been banned in public contracting, education, and employment in several states for a number of years. Although the effects of these bans are complicated to assess, there is a recurring pattern of decreased diversity.

EVIDENCE THAT EQUAL OPPORTUNITY MAKES A DIFFERENCE

Equal opportunity advocates warn that banning traditional affirmative action efforts will hinder the ability to eliminate discrimination and disparity, and caution that diversity gains might even be reversed. Equal opportunity opponents, on the other hand, argue that traditional affirmative action is inappropriate and ineffective, and claim it may actually prevent diversity.

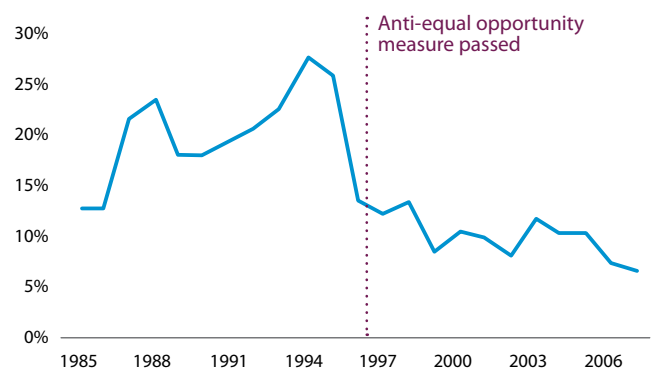
Several states have now banned equal opportunity in public employment, higher education, and contracting. Emerging patterns suggest that the removal of equal opportunity programs has varying effects. For example, public contracting, which is dominated by White (NH) men, shows a different pattern than public employment, where people of color and women have had some success in securing jobs over the last few decades, especially in lower-level positions.

Most of the research on the impact of these measures comes from California and Washington, the two states where bans have been in place the longest.

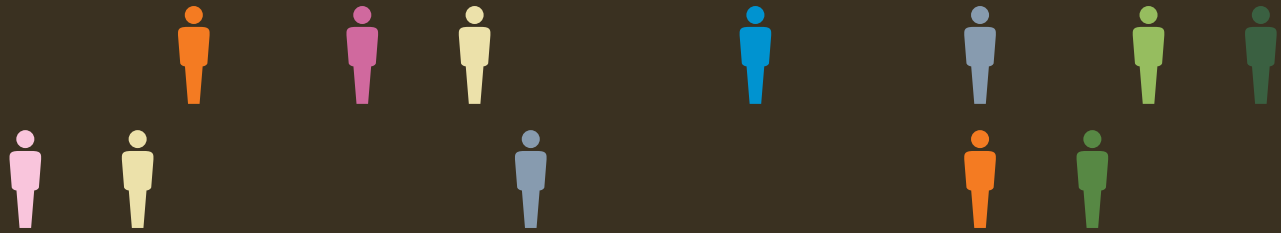
PUBLIC CONTRACTING

Research on transportation construction awards in California shows increased diversity under affirmative action and large decreases in diversity after it was banned by Proposition 209 in 1996.

Awards to Businesses Owned by People of Color and Women in California



Source: Thelton E. Henderson Center for Social Justice



“I started out in a [iron working] class with five other women and at the end of my three-year apprenticeship I was the only woman that completed the program. Iron work is hard but it’s hard for men too. It wasn’t always easy, but it was an adventure. Affirmative action gave me access and opportunity to the trades. I asked for no special treatment, my success was up to me.”

- Randy Loomens, Interviewed by the Leadership Conference

www.civilrights.org/equal-opportunity/real-people/more-real-people.html

Awards to businesses owned by people of color and women doubled when affirmative action was in place, but decreased by over 50% and continued to decline as affirmative action was scaled back. In California, the long-term survival rate (ten or eleven years) is between 32% and 36% for businesses owned by people of color and women.

Although supporters of California’s anti-affirmative action Proposition 209 claimed it would create equal opportunity, minority and women contractors believe that it failed to address the root causes of the discrimination and disparity they face. In fact, they note that it appears to have had a chilling effect on contracting diversity in the state. For example, one female contractor noted:

“When Proposition 209 passed, I was working on \$200,000 worth of projects. The day after Proposition 209 passed, the senior project manager walked up to me and said, ‘Hey, Prop 209 passed, and we don’t have to use you anymore.’”

Free to Compete? Measuring the Impact of Proposition 209 on Minority Business Enterprises
Discrimination Research Center
www.law.berkeley.edu/files/thcsj/Free_to_Compete.pdf

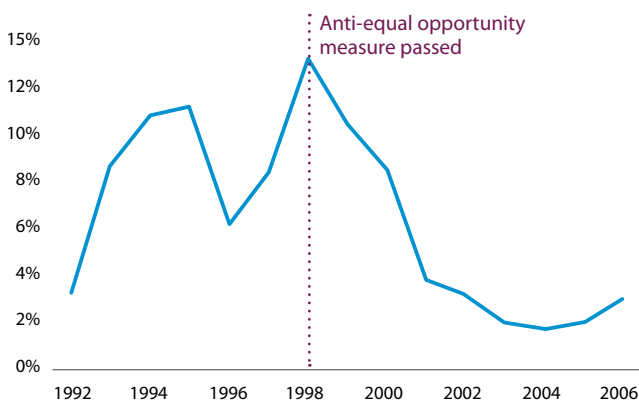
A Vision Fulfilled? The Impact of Proposition 209 on Equal Opportunity for Women Business Enterprises
Thelton E. Henderson Center for Social Justice
www.law.berkeley.edu/files/thcsj/A_Vision_Fulfilled_Sept_2007.pdf

IMPACT OF AFFIRMATIVE ACTION BANS

A THREAT TO DIVERSITY

Transportation construction awards in the State of **Washington** experienced the same pattern of increasing awards under affirmative action and sharp reductions after it was banned by Initiative 200 in 1998.

Awards to Businesses Owned by People of Color and Women in Washington



Source: Insight Center for Community Economic Development (redesigned by authors)

State Policies and Programs for Minority- and Women-Owned Business Development

Insight Center for Community Economic Development
insightcced.org/uploads/publications/assets/50%20state%20inclusive%20business%20policy%20scan.pdf

PUBLIC EDUCATION

In **California** after Proposition 209 passed, admissions of students of color fell sharply at several schools, including the top-tier University of California, Berkeley and University of California, Los Angeles. Although the enrollment of students of color has begun to rebound in the years since Proposition 209, much of that gain may be due to increasing diversity in the population of California over the past decade. Furthermore, admission to elite schools and graduate schools still offers evidence of disparity. African American enrollment, in particular, has never recovered since Proposition 209 was passed.

Equal Opportunity in Higher Education: The Past and Future of California's Proposition 209

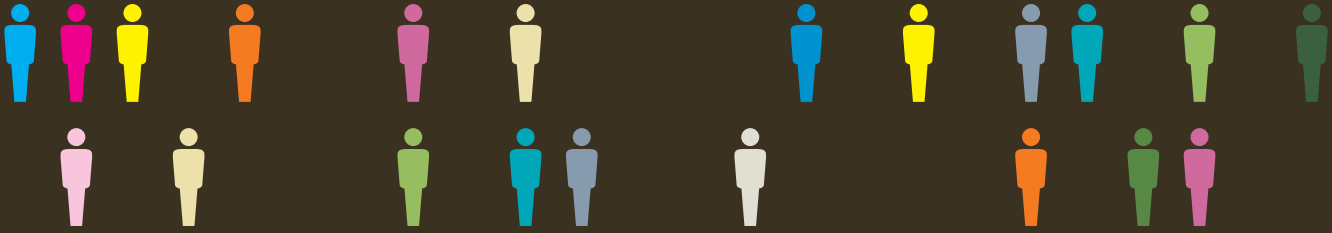
Eds. Eric Grodsky & Michal Kurlaender

www.hepg.org/hep/book/127/

EqualOpportunityInHigherEducation

Ralph J. Bunche Center for African American Studies

www.bunchecenter.ucla.edu/index.php/2012/05/bunche-research-report



“The truth is...there’s kind of an apartheid developing in the UC system, with big numbers of students of color being shunted to the least competitive of the campuses. And it does make a difference, in my view, when it comes time to get interviews with the best private and public sector organizations or when it’s time to apply to graduate schools.”

- Bob Laird, Interviewed by Ellis Cose in Killing Affirmative Action

After the passage of Initiative 200 in **Washington**, there was a sharp reduction in applicants of color and enrollment at the University of Washington and less severe decreases at other public universities.

After Initiative 200: Trends in Minority Undergraduate Admissions & Emerging Trends in Race-Neutral Policies to Attain Diversity

Linnea Limbach

evans.washington.edu/files/psclinics/Linnea_Nissa_Limbach.pdf

Research from several states that curtailed affirmative action, including California and Washington, found that elite law schools saw reduced numbers of African American, Hispanic/Latino, and Native American students after affirmative action was restricted.

The Struggle for Access from Sweatt to Grutter: A History of African American, Latino, and American Indian Law School Admissions, 1950–2000

William C. Kidder

www.law.harvard.edu/students/orgs/blj/vol19/kidder.pdf

Extensive analyses have been undertaken to determine why people of color are not admitted to public colleges and universities in the numbers expected. One researcher analyzed racial differences in rates of admission to the most selective California and Washington public universities. She found that institutions accused of admitting too many minority applicants by affirmative action opponents have actually admitted White (NH) applicants at consistently higher rates than African American and Hispanic/Latino applicants since the passage of state anti-affirmative action laws.

The River Runs Dry: When Title VI Trumps State Anti-Affirmative Action Laws

Kimberly West-Faulcon

papers.ssrn.com/sol3/papers.cfm?abstract_id=1393898

IMPACT OF AFFIRMATIVE ACTION BANS

A THREAT TO DIVERSITY

PUBLIC EMPLOYMENT

In **California**, the representation of people of color and women in public employment was similar before and after the passage of an affirmative action ban. Since 1990, increases in diversity among California's public employees have matched increases in the diversity of the state's population.

One explanation for these trends is that there were very few affirmative action policies being implemented and thus very little changed after the ban. Another explanation is that public employment in California had already reached a critical mass of diversity, reducing the impact of the ban.

However, the picture is far from ideal. After the passage of an affirmative action ban, the private sector workforce became less diverse. Additionally, in the public sector, despite relatively high overall diversity, negative outcomes appear when examining compensation and job quality.

White (NH) women and men of color working in the public sector earn less than White (NH) men, and women of color earn the least. White (NH) men are overrepresented and people of color are underrepresented in top-level positions such as chiefs and managers. White (NH) women, who were underrepresented in top positions in the 1990s, have made large gains; however, men and women of color remain underrepresented.

Proposition 209 and Public Employment in California: Trends in Workforce Diversity

Thelton E. Henderson Center for Social Justice at Berkeley Law

www.law.berkeley.edu/files/September_2008_Proposition_209_and_Public_Employment_-_Workforce_Diversity.pdf

The Impact of Proposition 209 on Public Employment in California

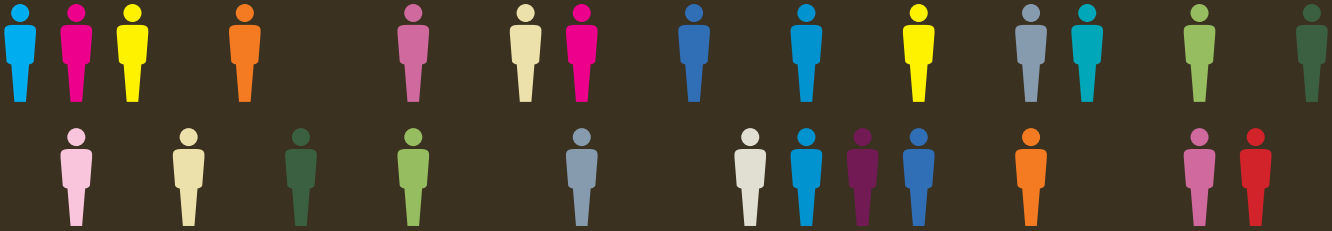
Michael Sumner

law.berkeley.edu/files/Prop209EmploymentCAERP.ppt

A Cure for Discrimination? Affirmative Action and the Case of California's Proposition 209

C.K. Myers

Industrial & Labor Relations Review. 60(3), 379-396



“Julie worked for a company in the food industry for 12 years. She was a General Manager for 6 of those years. The company had a policy that prohibited employees from sharing information about their pay. Julie found out that her male colleagues who had only been with the company from 1 to 4 years were making just as much as or more than she was. She brought this to the attention of her employer, and within 5 months, was fired.”

9to5, National Association of Working Women

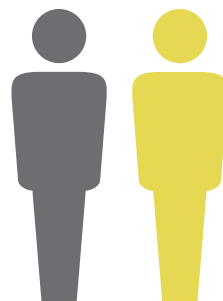
In **Washington**, the diversity of state employees before and after the passage of the anti-equal opportunity Initiative 200 in 1998 has not been tracked. But Washington has recently begun to report on the diversity of its public workforce. From 2006 through 2010, the state workforce was similar in diversity to the private sector. However, people of color were slightly less well represented in the public sector, and women were better represented in the public sector relative to the private sector. People of color and women were less likely to be managers than lower-level employees.

2010 State Workforce Report

Washington State Department of Personnel

www.hr.wa.gov/SiteCollectionDocuments/Reports/2010WashingtonStateWorkforceReport/2010StateWorkforceReport-web.pdf

The terminology involved in discussions of equal opportunity and affirmative action can be complicated because there is little consensus about how or when to use either term, and there is no official legal or political definition to draw upon. We use equal opportunity to encompass both terms broadly, and use affirmative action when discussing it in historical, political, and legal contexts.



IMPACT OF AFFIRMATIVE ACTION BANS

A THREAT TO DIVERSITY

GENDER-SPECIFIC PROGRAMS

In the wake of affirmative action bans, legal action has been taken against popular gender-specific programs. In California, two lawsuits were brought against battered women's shelters and breast cancer screening programs that only served women. Both cases were defeated by a California-specific statute used in the defense of the shelters.

Blumhorst vs. Haven Hills and NCFM LA vs. State of California

Both pro- and anti-affirmative action advocates agree that the passage of affirmative action bans ends the ability to give public dollars to programs such as science camps for girls. Such programs would have to either drop their focus on girls or rely exclusively on private donations.

No Summer Science Camp for Girls!

American Civil Rights Institute

www.acri.org/blog/2008/10/27/no-summer-science-camp-for-girls

ANALYSIS OF FIRST ELECTORAL DEFEAT OF AN ANTI-AFFIRMATIVE ACTION MEASURE AT THE STATE LEVEL

In Colorado, Amendment 46 was defeated by voters in 2008. A vital post-defeat investigation identified important lessons from the electoral defeat. Key recommendations include:

- The intent, meaning, and consequences of such initiatives should be made clear to voters. Clarity on such initiatives ensures a more accurate outcome that is based on voters' intent.
- Advocacy efforts need one primary spokesperson to provide information to the media.
- Education and advocacy efforts should begin well before petition signatures are collected to get the initiative on the ballot.
- Advocates should plan for both traditional grassroots and door-to-door education efforts, and also for the use of new media and technologies in communicating their message to the public.

Investigating the Defeat of Colorado's Amendment 46: An Analysis of the Trends and Principal Factors Influencing Voter Behaviors

The Leadership Conference

www.civilrights.org/publications/colorado-46



“In graduate school, my most important brush with a de facto affirmative action came through the personal actions of a mentor, professor, and researcher at the University of Miami Marine Laboratory who included 2 females in his group of graduate students to do his field work in the Everglades and at sea. Not only did he firmly believe that we could do the work, but also he was a champion in pushing back barriers which allowed us to go to sea on oceanographic ships to collect the data needed for our research. Women had been prohibited from going to sea and he forced a change of policy.”

- Nancy G. Maynard, Interviewed by the Leadership Conference
www.civilrights.org/equal-opportunity/real-people/more-real-people.html

MORE INFORMATION

Analyses of the impact of anti-equal opportunity initiatives:

“One Michigan” at the Crossroads: An Assessment of the Impact of Proposal 06-02

Michigan Civil Rights Commission
www.michigan.gov/documents/mdcr/FinalCommissionReport3-07_1_189266_7.pdf

Consequences of Ward Connerly’s Anti-Equal Opportunity Initiatives - Fact Sheet

Americans for a Fair Chance
www.civilrights.org/equal-opportunity/michigan/consequences.html

The Politics of Affirmative Action: Access to Higher Education in the States

The Howard Samuels Center
www.howardsamuelscenter.org/conference/PoliticsofAffirmativeAction.pdf

Affirmative Action Impact and Strategies: Contracting and Employment Webinar

www.impact209.org/wp-content/uploads/2008/08/contracting-employment-webinar-ppt.pdf

“Yes On 107”: Battered Women’s Shelters Should Be Open to Men

www.blogforarizona.com/blog/2010/11/yes-on-107-wouldnt-mind-if-battered-womens-shelters-and-breast-cancer-screening-programs-closed-thei.html

EQUAL OPPORTUNITY EDUCATION STRATEGIES

The Colorado Unity Coalition has created a resource guide of the materials and resources used in Colorado to successfully educate the public about the importance of equal opportunity policies in that state. In 2008, Colorado became the first state to defeat a statewide anti-equal opportunity ballot initiative (Amendment 46) by popular vote. This guide presents the tactics used and lessons learned around a broad range of strategies, including: public education about the importance of equal opportunity programs, grassroots outreach, fundraising, messaging, media, and legal tactics.

Equal Opportunity in Colorado: Successful Strategies to Inform the Public

Colorado Unity Coalition

www.civilrights.org/equal-opportunity/colorado/success.html

FRAMING EQUAL OPPORTUNITY

KEY LESSONS

The public perception of equal opportunity is framed by the language and message of its advocates and detractors. This section summarizes some of the language, messages, values, and terms that resonate with Americans.

The African American Policy Forum (AAPF) has produced a thirteen-part series on affirmative action myths and facts. Several are excerpted below:

MYTH 1

Affirmative Action is preferential treatment.

FACT

Affirmative action creates a fair competition by removing the barriers that obstruct the lanes of women and minorities in the race toward the American Dream.

For example, because female business owners remain outside traditional old boy networks, they often receive only a fraction of the public contracting dollars that men do. Similarly, women and minority job seekers are frequently shut out of good jobs in trades where opportunities go only to those who are in the loop. Efforts to ensure that outsiders have equal access to opportunities are only fair and do not amount to “preferential treatment.”

MYTH 2

Affirmative action is no longer needed in America.

FACT

Since exclusion and unfair treatment persist in America, we need remedies to deal with them.

Affirmative action opponents turn a blind eye to the effects of race and gender on access to opportunity. But common sense tells us that any attempt to solve a problem by ignoring it makes no sense at all. Imagine

trying to eliminate the deadly consequences of lead poisoning by being blind to lead paint! If we want to create opportunities that are truly equal, we need to address the barriers to opportunity. Promoting equality and supporting affirmative action go hand in hand!

MYTH 3

Affirmative action rewards the unqualified.

FACT

The real myth is that we have an equal playing field and that the most qualified people are the ones who get ahead. In fact, affirmative action helps to offset barriers that unfairly block the pathways of qualified Americans who are fully able to succeed. In so doing, it promotes equal opportunity.

The world is full of people whose talents are not always recognized by traditional measures of intelligence. For example, although he went on to be one of the most gifted orators of the 20th century, Dr. Martin Luther King, Jr. scored very poorly on a standardized verbal test in his youth. Research has shown that such tests and similar criteria are often biased and underestimate the capabilities of working class individuals, women, and people of color, and that they do not accurately predict professional or educational success. In countering built-in discrimination, affirmative action policies offset limited measures of merit and identify individuals whose talents and potential might otherwise be overlooked.

MYTH 4

Opposing affirmative action is consistent with Dr. King's dream of a colorblind America.

FACT

Dr. King and other civil rights leaders never believed that racial inequality could be fixed by ignoring the problem of racism.

In fact, Dr. King supported affirmative action and advocated the use of race-conscious measures to provide opportunities for minorities.

MYTH 5

Affirmative action only targets African Americans.

FACT

Affirmative action targets many people who continue to face opportunity barriers, including women, Native Americans, Latinos, Asian Americans, South Asians, African Americans, Arab Americans, and others.

By opening fair access to more Americans, affirmative action benefits families, businesses, coworkers, communities, and our entire society.

MYTH 6

Affirmative action should be about class, not race.

FACT

Race and gender discrimination continue to be significant problems in our country, and race- and gender-conscious policies are needed to correct them.

For example, a recent study showed that job applicants with “white-sounding names” were twice as likely to be called back for interviews as applicants with “black-sounding names” who had the same qualifications.

Another study found that a white job applicant with a criminal record was more likely to receive a second interview than a similarly qualified African American applicant with no criminal record. Policies that address only class issues cannot address such injustices, and are not sufficient to combat the barriers limiting opportunities for racial minorities. Fortunately, many affirmative action programs do take economic status into account, so race, gender and class need not be pitted against one another in the pursuit of equality. Local decision-makers should remain free to determine the scope of affirmative action in their communities, and national campaigns should not impose a one-size-fits-all version of equality.

13 Myths Flyer for Votes in Colorado and Nebraska 2008
African American Policy Forum
www.scribd.com/AAPFdocs/d/60304982-13-Myths-Flyer-for-Votes-in-Colorado-and-Nebraska-2008

FRAMING EQUAL OPPORTUNITY

KEY LESSONS

There are a number of ways that anti-affirmative action views can be countered positively and proactively. The following has been composed by the Kirwan Institute for the Study of Race and Ethnicity:

ANTI-AFFIRMATIVE ACTION VIEW

Affirmative action is not needed, and it leads to “reverse discrimination.”

Talking about race is divisive and polarizing; colorblindness is the answer.

The real issue is class, not race.

We all get what we deserve in life. If some racial groups aren’t doing as well as others, people just need to work harder.

People like Tiger Woods, George Lopez, and Oprah Winfrey are proof that anyone can be successful in America.

Racism is about blatant, intentional bigotry.

The kind of overt racial bias and discrimination that we saw in the past does not exist today.

PRO-AFFIRMATIVE ACTION VIEW

Affirmative action continues to be a vital – if imperfect – tool for removing discriminatory obstacles that confront women and people of color. The goal of affirmative action is to give ALL PEOPLE equal access to opportunities in education and employment.

There are unifying transformative ways to talk about race. Even when race is not talked about, people see race and make racialized decisions and policies. Not talking about race masks racial disparities and inhibits movement toward social justice.

Race and class are intertwined. A strictly class-based movement will ultimately fragment because of race.


While individual effort matters, our well-being is also powerfully shaped by institutional conditions/arrangements and opportunity structures.

Cumulative structural inequality has its greatest impact on groups, not individuals. There have always been exceptionally successful people from all races and ethnicities.

The consequences of structural/institutional racism are greater than those of personal racial animus.

While research indicates that implicit (subconscious) racial bias is more pervasive than explicit, overt discrimination, overt discrimination in sectors like housing and lending tells us that racial prejudice is still alive.

Talking About Race: Toward a Transformative Agenda - Resource Notebook
Kirwan Institute for the Study of Race and Ethnicity
www.racialequitytools.org/resourcefiles/kirwan1.pdf



Research from California finds that discrimination is still seen as a relevant issue for all groups, but especially for African Americans and Hispanic/Latinos. This research also found equal opportunity to be a more effective and widely acceptable term than affirmative action. People participating in this research all agreed with the following statements:

- The government should play an active role in guaranteeing equal opportunity.
- Diversity is good for our economic future.
- We cannot wish racial and ethnic inequality away or pretend it doesn't exist.
- We cannot just depend on the marketplace to solve the problem of racial and ethnic inequality; government has a responsibility to make sure people are treated fairly and everyone has equal access to opportunity.
- Government has a responsibility to address the legacy and consequences of racial discrimination.
- Businesses should be allowed to take actions to ensure that their workforce is diverse.

Survey Findings on Racial Discrimination and Affirmative Action in California
Lake Research
www.impact209.org/download/lakeresearchpartners_Survey_Racial_Discrimination_AffirmativeAction_California.pdf

“The question is not whether affirmative action is required; it is what kind of affirmative action is required. It may be that the kind of mechanistic maintenance of goals and timetables that we have defended thus far is not radical enough. It may well be that real affirmative action — what we used to call compensatory opportunity, which I always thought was a much more meaningful phrase than affirmative action — means that in order to compensate for the structured inequality of opportunity that is the legacy of Jim Crow and slavery, we have to find ways of creating assets and wealth for those who are excluded by law for centuries.”

-Ira Glasser
aapf.org/aarl/background_affirmative_action-2/ira-glasser

KEY RESOURCES

LEARNING ABOUT EQUAL OPPORTUNITY

Many individuals and organizations offer insights and evidence on the importance of equal opportunity. This section points to key resources for building greater knowledge about equal opportunity, including websites, collections of research, and documents.



Kirwan Institute
Many Differences **One Destiny**

OVERVIEWS OF EQUAL OPPORTUNITY

[9to5, National Association of Working Women](#)

www.9to5.org

A national membership organization of women in low-wage jobs working to improve policies on issues related to equal opportunity, family-flexible workplace policies, good jobs, and economic security.

[American Association for Affirmative Action](#)

www.affirmativeaction.org

Webinars and other training materials, weblinks, blog, and many other resources on affirmative action and equal opportunity.

[African American Policy Forum: Affirmative Action Website](#)

aapf.org/our-work/affirmative-action/

A variety of resources and reports on affirmative action. A noteworthy report includes the mapping of key affirmative action history by time and geography:

aapf.org/wp-content/uploads/2011/08/Mapping-Affirmative-Action-Rome-website1.swf

[American Civil Liberties Union](#)

www.aclu.org/racial-justice/striving-equal-opportunity-why-aclu-supports-affirmative-action

A defense of affirmative action and links to a variety of ACLU resources on the topic.

[Fulfilling the Dream Fund, Public Interest Projects](#)

fulfillingthedreamfund.org/resources-and-reports

Links to reports and web resources, as well as summaries of equal opportunity convenings.

[Kirwan Institute for the Study of Race and Ethnicity](#)

racetalkblog.org/research/projects/affirmative-action/index.php

The Affirmative Action Project offers access to national organizations, state news, legal actions, and communications resources.



[The Leadership Conference on Civil and Human Rights/Leadership Conference Education Fund’s Americans for A Fair Chance Project](#)

www.civilrights.org/equal-opportunity

The latest news, reports, fact sheets, blog posts, and links to important research on equal opportunity.

[NAACP Legal Defense and Educational Fund](#)

www.naacpldf.org

Work on equal opportunity issues through litigation, advocacy, and public education, including educational equity, school integration, and the school-to-prison pipeline.

ADDITIONAL RESOURCE

Why Affirmative Action Remains Essential in the Age of Obama

Reginald T. Shuford in the Campbell Law Review
law.campbell.edu/lawreview/articles/31-3-503.pdf

Includes a summary of why affirmative action is necessary and beneficial and refutes several counter arguments.

DEBUNKING EQUAL OPPORTUNITY MYTHS

[African American Policy Forum \(AAPF\)](#)

aapf.org/focus/

A comprehensive thirteen-part series on myths and truths about affirmative action, previously excerpted in this report.

[National Organization of Women \(NOW\)](#)

www.now.org/issues/affirm/talking.html

Myth-debunking facts in an easy to use format.

[Race, Racism and the Law](#)

academic.udayton.edu/race/04needs/affirm15.htm

Popular Myths about Affirmative Action and Women of Color. Excerpted from a longer article by Laura M. Padilla.

[UnderstandingPrejudice.org](#)

www.understandingprejudice.org/readroom/articles/affirm.htm

Ten myths about affirmative action.

KEY RESOURCES

LEARNING ABOUT EQUAL OPPORTUNITY



The **Opportunity**Agenda

FRAMING AND COMMUNICATIONS STRATEGY

[The Center for Social Inclusion & The Diversity Advancement Project \(a collaboration with the Kirwan Institute\)](#)

www.centerforsocialinclusion.org/publications/the-diversity-advancement-project-thinking-change/

Research on a variety of topics, including framing, structural exclusion, and the impact of the Stimulus Bill and post-Katrina reconstruction.

[The Leadership Conference](#)

www.civilrights.org/publications/colorado-46

Investigating the Defeat of Colorado's Amendment 46: An Analysis of the Trends and Principal Factors Influencing Voter Behaviors

Valuable insights and lessons on defeating state-level ballot initiatives.

[Neighborhood Partnerships](#)

neighborhoodpartnerships.org/advocacy-college/

Materials from their “Advocacy College” are available in PowerPoint slides and documents.

[Opportunity Agenda](#)

opportunityagenda.org

Multiple reports on framing and messaging, with tips such as:

- [Lead with shared values](#)
- [Show that it's about all of us](#)
- [Document the barriers to equal opportunity, especially racial bias](#)
- [Acknowledge the progress we've made](#)

Ten Lessons for Talking About Racial Equity in the Age of Obama

opportunityagenda.org/talking_points_ten_lessons_talking_about_racial_equity_age_obama

Expanding Opportunity, Expanding the Common Good: Promoting Equal Opportunity Policies

opportunityagenda.org/files/field_file/Affirmative%20Action%20Talking%20Points.pdf

LEGAL OVERVIEW

Americans for Civil Liberties Union

These reports provide legal guidance both by circuit court and by state, including relevant case law and ballot measures.

Promoting Opportunity and Equality in America -- A Guide to Federal Circuit Authority on Permissible Government Actions to Promote Racial and Gender Equality

www.aclu.org/files/assets/Promoting_Opportunity_and_Equality_in_America.pdf

Promoting Opportunity and Equality in America: Part II -- A Guide to Federal Circuit Authority on Permissible Government Actions to Promote Racial and Gender Equality

fairrecovery.org/docs/PromotingOpportunityII.pdf

"To become angered by affirmative action in college admissions, for instance, is to ignore the ways in which we as whites have been favored throughout the K-12 educational process... [W]e are one-tenth as likely as our black or Latino counterparts to have attended a concentrated poverty school; we are twice as likely to have been taught by the most experienced and qualified instructors, and half as likely as kids of color to have been taught by the least qualified and experienced; we are 2-3 times more likely to have had access to a full range of honors and advanced placement classes; and the schools we attended receive, on average, about \$1000 more per pupil, per year than the schools that serve mostly black and brown kids. Yet despite our longstanding advantages, over and over again we hear the same arguments about how people of color are taking things away from whites—and specifically things to which we are presumably entitled."

Tim Wise

www.timwise.org/2011/09/getting-what-we-deserve-wealth-race-and-entitlement-in-america



EQUAL OPPORTUNITY: THE EVIDENCE

THE HENDERSON CENTER FOR SOCIAL JUSTICE, BERKELEY LAW
IN PARTNERSHIP WITH THE MWM CONSULTING GROUP, LLC

JULY 2012



The MWM Consulting Group, LLC conducts research and provides technical assistance to advance concepts of fairness, diversity, and inclusion in the public and private sphere. Toward the goal of elevating a collective consciousness and implementing policies that promote fairness and diversity, the MWM Consulting Group, LLC facilitates processes to remove structural barriers to equality and justice for all.

www.mwmconsultinggroupllc.com



Thelton E. Henderson
Center for Social Justice

The intellectual hub of the law school's vibrant social justice community, the Thelton E. Henderson Center for Social Justice is a training and research center that prepares the next generation of lawyers to represent underserved communities and produces innovative and accessible scholarship on issues of race, sex and poverty.

Thelton E. Henderson Center for Social Justice
University of California, Berkeley, School of Law
2850 Telegraph Ave., Suite 500
Berkeley, CA 94705-7220

www.law.berkeley.edu/HendersonCenter.htm

This report was made possible by the generous support of the Fulfilling the Dream Fund, Public Interest Projects.