



## 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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

### Legal Challenges

In June 2003, the U.S. Supreme Court considered its first higher education affirmative action case since 1978, *Grutter v. Bollinger*<sup>4</sup> and *Gratz v. Bollinger*.<sup>5</sup> The high court sustained a May 2002 ruling issued by the U.S. Court of Appeals for the Sixth Circuit that upheld the consideration of race in the University of Michigan School of Law's admissions program. In previous Supreme Court terms, the justices 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.<sup>6</sup> The Court's ruling in *Grutter* reaffirms the precedent established in the *Regents of the University of California v. Bakke* decision.

### 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.<sup>7</sup>

**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.<sup>8</sup> Between 1972 and 2004, the percentage of women awarded science and engineering degrees increased from 30 percent to 50.4 percent for bachelor’s<sup>9</sup> and 19 percent to 43.6 percent for master’s degrees.<sup>10</sup>
- The number of majority women-owned firms increased from 5.4 million to 7.7 million between 1997 and 2006. This figure represents an increase of 42 percent, which is almost double the pace for that of all firms (23 percent).<sup>11</sup> In 2008, 7.2 million majority women-owned firms employed 7.3 million people and generated \$1.1 trillion in sales.<sup>12</sup>

**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 report showed that while white men are only 43 percent of the workforce at *Fortune 1500* companies, they hold 95 percent of the senior management jobs.<sup>13</sup> Meanwhile, only 6.2 percent of corporate officer top earners in *Fortune 500* companies are women.<sup>14</sup> In addition, even though women-owned firms represent nearly 40 percent of all businesses in the United States, these firms currently obtain a mere 3.4 percent of federal government contracts.<sup>15</sup> This is still short of the five percent government-wide procurement goal Congress established in the Federal Acquisition Streamlining Act of 1994.<sup>16</sup>
- 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.<sup>17</sup> For example, in 2007, women made up 14.4 percent of all architecture and engineering occupations; 1.8 percent of all auto mechanics; and 1.9 percent of all carpenters.<sup>18</sup>

**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.<sup>19</sup> 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.<sup>20</sup> 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.<sup>21</sup> Overall, women comprise 24.8 percent of computer and mathematical professionals, down from 27 percent in 2006.<sup>22</sup>

- In 2007, women earned 57.4 percent of all bachelor's degrees and 60.6 percent of all master's degrees awarded, but only earned 50.1 percent of doctorate degrees and remain underrepresented in traditionally male-dominated fields of study, such as engineering and physical science.<sup>23</sup> In 2001, women earned only 19.9 percent of undergraduate, 21.2 percent of master's, and 16.5 percent of doctorate degrees in engineering and only 26.8 percent of doctorate degrees in physical sciences and science technologies.<sup>24</sup>

**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*, 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.<sup>25</sup>
- At IBM, the percentage of minority executives increased 170 percent—from 117 to 316 officials—from January 1996 to March 2001.<sup>26</sup> 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.<sup>27</sup>

**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 so-called 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.

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 the broad-based One United Michigan coalition, which represented more than 200 mainstream Michigan organizations including women's groups, educators, business groups, racial and ethnic minority groups, and labor. Proposal 2 went into effect on December 22, 2006.

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 results this time around 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 that ends programs aimed at increasing the participation of women and minorities in government and education.<sup>28</sup> In 2010, an anti-affirmative action initiative is already slated to be on the ballot in Arizona.<sup>29</sup>

### 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](http://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](mailto:VoterEd@aauw.org).

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<sup>1</sup> American Association of University Women. (June 2009). *2009-11 AAUW Public Policy Program*. Retrieved July 9, 2009, from [http://www.aauw.org/advocacy/issue\\_advocacy/principles\\_priorities.cfm](http://www.aauw.org/advocacy/issue_advocacy/principles_priorities.cfm).

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

<sup>3</sup> The White House (October 13, 1967). *Executive Order 11375 – Amending Executive Order No. 11246, Relating to Equal Employment Opportunity*. Retrieved July 10, 2009, from <http://www.presidency.ucsb.edu/ws/index.php?pid=60553>.

<sup>4</sup> *Grutter v. Bollinger*, 539 U.S. 306 (2003).

<sup>5</sup> *Gratz v. Bollinger*, 539 U.S. 244 (2003).

<sup>6</sup> *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978).

<sup>7</sup> U.S. Equal Employment Opportunity Commission. (September 28, 1965). *Executive Order No. 11246*. Retrieved January 12, 2009, from <http://www.eeoc.gov/abouteeoc/35th/thelaw/eo-11246.html>; United States Department of Labor (January 4, 2002). *Facts on Executive Order 11246 – Affirmative Action*. Retrieved July 10, 2009, from <http://www.dol.gov/esa/ofccp/regs/compliance/aa.htm>.

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

<sup>9</sup> National Science Foundation, Division of Science Resources Statistics. *Women, Minorities, and Persons with Disabilities in Science and Engineering*. Retrieved January 12, 2009, from <http://www.nsf.gov/statistics/wmpd/pdf/tabc-4.pdf>.

<sup>10</sup> *Ibid.*

<sup>11</sup> Biz Georgia. (September 12, 2006). *Women-Owned Businesses Continue to Outpace Growth Rates for All Other Firms*. Retrieved January 12, 2009, from <http://www.bizgeorgia.com/News/National/Women%11owned-firms/>.

<sup>12</sup> Center for Women's Business Research (September 2008). *Key Facts about Women-Owned Businesses*. Retrieved January 12, 2009, from <http://www.nfwbo.org/facts/index.php>.

<sup>13</sup> 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 January 12, 2009, from <http://www.dol.gov/oasam/programs/history/reich/reports/ceiling.pdf>.

<sup>14</sup> Catalyst. (2008). *Census of Women Corporate Officers and Top Earners of the Fortune 500*. Retrieved January 12, 2009, from <http://www.catalyst.org/publication/283/2008-catalyst-census-of-women-corporate-officers-and-top-earners-of-the-fortune-500>.

<sup>15</sup> Center for Women's Business Research (September 2008). *Key Facts about Women-Owned Businesses*. Retrieved January 12, 2009, from <http://www.nfwbo.org/facts/index.php>. Women Impacting Public Policy (October 2008). *Economic Blueprint: The Women's Business Owners' Platform for Growth*. Retrieved January 12, 2009, from <http://www.wipp.org/resource/resmgr/Docs/EconomicBlueprintInauguralEd.pdf>.

<sup>16</sup> Center for Women's Business Research, National Women's Business Council. (October 2004). *Federal Contracting with Women-Owned Businesses FY 1998-FY 2003*. Retrieved January 25, 2008, from [http://www.nwbc.gov/documents/Issue\\_brief-Federal\\_Contracts-2004.pdf](http://www.nwbc.gov/documents/Issue_brief-Federal_Contracts-2004.pdf).

<sup>17</sup> 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*, 5. Retrieved January 12, 2009, from <http://www.napequity.org/pdf/Constructing%20Equity.pdf>.

<sup>18</sup> Bureau of Labor Statistics, Current Population Survey. (2008). *Table 11. Employed persons by detailed occupation, sex, race, and Hispanic or Latino ethnicity*. Retrieved January 12, 20089, from <http://www.bls.gov/cps/cpsaat11.pdf>.

<sup>19</sup> National Center for Women and Information Technology. (2007). *NCWIT Scorecard 2007: A Report on the Status of Women in Information Technology*. Retrieved June 26, 2009, from [http://www.ncwit.org/pdf/2007\\_Scorecard\\_Web.pdf](http://www.ncwit.org/pdf/2007_Scorecard_Web.pdf).

<sup>20</sup> College Board. (2007). *Program Summary Report*. Retrieved July 1, 2009, from <http://professionals.collegeboard.com/profdownload/ap-data-2008-Program-Summary-Report.pdf>.

<sup>21</sup> National Science Foundation, Division of Science Resources Statistics. (October 2008). *Science and Engineering Degrees: 1966-2006. (NSF 08-321)*. Retrieved December 29, 2008, from <http://www.nsf.gov/statistics/nsf08321/pdf/nsf08321.pdf>.

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<sup>23</sup> U.S. Department of Education, National Center for Education Statistics. (2008). *Postsecondary Institutions in the United States: Fall 2007 and Degrees and Other Awards Conferred: 2006-07* (NCES 2008-159). Retrieved January 12, 2009, from <http://nces.ed.gov/pubs2008/2008159rev.pdf>.

<sup>24</sup> U.S. Department of Education, National Center for Education Statistics. (November 2004). *Trends in Educational Equity of Girls & Women: 2004*, 78, 82. Retrieved January 12, 2009, from <http://nces.ed.gov/pubs2005/2005016.pdf>.

<sup>25</sup> *Brief for Amici Curiae, 65 Leading American Businesses in Support of Respondents, Grutter v. Bollinger* (2003).

<sup>26</sup> Leadership Conference on Civil Rights. (January 1, 2004). Equal Opportunity and African Americans. Retrieved: June 2, 2009 from <http://www.civilrights.org/equal-opportunity/fact-sheets/african-americans.html>.

<sup>27</sup> IBM. (June 2002). *Equal Opportunity in the U.S.: A 50-year Commitment that has Stood the Test of Time...and Audits*. Retrieved January 12, 2009, from [http://www-03.ibm.com/employment/us/diverse/50/eo\\_us.shtml](http://www-03.ibm.com/employment/us/diverse/50/eo_us.shtml).

<sup>28</sup> CNN (2008). *Election Center 2008: Ballot Measures*. Retrieved January 13, 2009, from <http://www.cnn.com/ELECTION/2008/results/ballot.measures/>; USA Today (August 25, 2008). *Affirmative-Action Ban on 2 State Ballots*. Retrieved July 10, 2009, from [http://www.usatoday.com/news/nation/2008-08-24-affirmative\\_N.htm](http://www.usatoday.com/news/nation/2008-08-24-affirmative_N.htm).

<sup>29</sup> East Valley Tribune (June 23, 2009). *Affirmative Action to Go on 2010 Ballot*. Retrieved June 30, 2009, from <http://www.eastvalleytribune.com/story/140852>.