

ISSUES IN BRIEF

on behalf of Greater Phoenix Leadership

March 10, 1998

Affirmative Action in Arizona

For more than three decades affirmative action has been a part of the process of putting nondiscrimination and equal opportunity policies into practice across the United States. And, for much of that time, it has been controversial because of its actual and perceived features and their effects. This paper describes the current affirmative action debate in Arizona which has been prompted by discussion of a proposed state constitutional amendment to ban discrimination and preferences based on race, sex, ethnicity, or national origin. Interviews with opponents and proponents of the measure and reviews of literature from the media and local institutions were used for this briefing.

Affirmative Action's Beginnings

President Kennedy first used the phrase in 1961 when he ordered federal contractors to pledge that they would "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."¹ In a 1965 speech at Howard University, President Johnson expanded the idea. "It is not enough just to open the gates of opportunity (referring to the 1964 Civil Rights Act). All our citizens must have the ability to walk through those gates... We seek not... just equality as a right and a theory but equality as a fact and equality as a result."² Johnson and President Nixon broadened the reach of affirmative action and made it a standard feature of public and private sector activities which receive federal funds or contracts. Congressional and

judicial actions designed to remedy past discrimination or prevent it in the future complemented those in the executive branch. States, including Arizona, followed the federal lead with executive orders and affirmative action policies and programs.

By the mid-1970s however, affirmative action came under attack as a source of reverse discrimination and as a reason for a shift from equal opportunity for individuals to entitlements for specific groups. The U.S. Supreme Court's 1978 decision in Alan Bakke's case against the University of California at Davis signaled the start of increasingly narrow interpretations of what could be done under the banner of affirmative action. The decision said that reserving slots for minority applicants was prohibited, but it allowed institutions still to consider race and ethnicity as one of a number of qualifications and characteristics.

An Ongoing Debate

Throughout the 1990s, affirmative action has been, and continues to be, affected by administrative and legislative reviews, legal challenges, and election outcomes at the federal, state, and local levels. As a result, affirmative action programs generally are being revised to redress specific situations rather than societal disadvantages. For example:

- Some federal programs with "set-asides" have been dropped altogether.
- University of California regents adopted a resolution in 1995 that eliminated race and gender as considerations in admissions.

- In November 1995, the Arizona Board of Regents asked the state’s three universities to study all affirmative action programs related to students, employment, and procurement to determine their level of compliance with law and policies and whether the efforts were still necessary.
- In 1996, California voters passed Proposition 209, the California Civil Rights Initiative, which banned preferences based on race, gender, or national origin in public contracting, employment, and education. After a series of challenges ended with the U.S. Supreme Court declining to review the issue, Proposition 209 is now being implemented.
- A 1996 court opinion motivated universities and colleges in Texas to step away from affirmative action in admissions.
- In Phoenix and cities across the country, procurement practices have been changed because of a 1989 U.S. Supreme Court decision that said minority set-asides are not allowable. Price preference programs must be based on actual “disparity” studies.
- On the other hand, Houston residents voted in 1997 to maintain city affirmative action programs.
- Affirmative action remains a prominent legislative issue, especially in Georgia, and a potential ballot question in many places from Florida to Colorado. The state of Washington is expected to vote on a 209-type initiative in November 1998, and that may also be the case in Arizona.

Context for Change in Arizona

The proposal to eliminate affirmative action in Arizona is taking place in the context of:

- a strong economy in which residents’ concerns about their economic futures have decreased;
- immigration and demographic shifts that are changing the composition of the state and country’s population; In 1996, Arizona’s population totaled 4,428,068 and was 69% white (not Hispanic) and 33% Hispanic, African-American, Native American, and Asian/ Pacific Islander. In 2025, the state’s population is projected to be 6,411,000 with 57% white and 44% minority.³
- minority and women-owned businesses doing more business with the City of Phoenix, but still accounting for just 6% of 234 projects worth a total of

\$773,150,822 between April 1994 and December 1997;

- a rising rate of poverty from 16% in 1995 to 18.3% in 1996⁴;
- nearly all statistical measures showing that minorities still lag behind whites;
- minority enrollment and retention at Arizona’s universities increasing without changing standards;
- a commitment to diversity among public institutions and corporations because of the need for a quality workforce;
- a growing shortage of workers now and for the future;
- memories of the divisiveness and negative impacts on Arizona’s economy and reputation of the Martin Luther King Day issue;
- a variety of types of programs among Arizona’s state, county, and local governments and institutions.

Proposed Amendment to Arizona’s Constitution

Senate Concurrent Resolution 1005, a proposed 209-style referendum to amend Arizona’s constitution, was introduced in January 1998 and passed out of the Government Reform Committee in early February, but did not make it out of the full Senate.

SCR 1005 states:

“This state shall not discriminate against or grant preferential treatment to any individual or group on the basis of race, sex, color, ethnicity or national origin in the operation of public employment, public education or public contracting.”

The “state” means state government, universities governed by the Arizona Board of Regents, community colleges overseen by the State Board of Directors for Community Colleges, and “any city, county, school district, special district or other political subdivision or governmental instrumentality of or in the state.” The measure would apply only to actions taken after its effective date and exempt “lawful discrimination based on sex when such a distinction is a bona fide qualification and reasonably necessary for the normal operation of public employment, public education and public contracting.” Current court order or consent decrees would stand. Plus, actions that are

needed to “establish or maintain eligibility for any federal program if ineligibility would result in a loss of federal monies to this state” would not be affected. Violations of the amendment would have the same remedies available as those for existing anti-discrimination statutes. **Private companies and entities that want to continue their affirmative action programs would not be affected.**

The full Senate rejected the measure on February 25. Following the vote, the measure’s champion, Senator Scott Bundgaard (R-Glendale), spoke publicly about an initiative to put the measure on the November ballot. A recent survey indicates that there is support for the measure, at least in Maricopa County. Behavior Research Center of Arizona asked a representative sample of county residents in November about eliminating preferences. Sixty-nine percent of the respondents said yes to “Would you vote ‘yes’ or ‘no’ on a proposed Arizona constitutional amendment that would outlaw racial and gender preferences in state hiring, promotion, contracting and public education?.” Twenty-three percent reported that they would vote no on such a measure, while eight percent were not sure.

An initiative would require nearly 170,000 signatures by July 2 to qualify. Senator Bundgaard reported that he is exploring the feasibility of the November ballot now. However, opposition from the state’s Republican leaders, plus the logistics and cost of an initiative campaign, could postpone the effort until the 2000 election.

Opinions on Both Sides

The following arguments were compiled from interviews, media reports, and other materials.

Proponents of a constitutional amendment say:

- Preferences are themselves a form of discrimination because they allow minorities and women to be chosen over others. Americans have been described as in two camps: “those who could lawfully be preferred (women and minorities) under affirmative action guidelines, and those who could lawfully be discriminated against (others). This involves a fundamental violation of the principle that everyone deserves the equal protection of the laws against discrimination...”⁵
- A recent survey in all of Maricopa County and one in selected legislative districts show strong bipartisan support for the elimination of preferences.
- The discrimination inherent in affirmative action underscores Arizona’s already negative reputation on

these issues. New ways of attaining racial justice need to be found and alternatives to preferences must be developed.

- Assistance based on “class rather than race” makes more sense and will still help minorities.⁶ Helping those who have the greatest economic need with the tools to succeed on their own merits will have greater benefits than the current system.
- Activities for individuals such as tutoring, school choice, and training will help residents get the tools they need to succeed.
- The stigma of preferences forever taints those who participate in them.
- Selection on merit alone treats everyone the same way. The measure simply reiterates what the Civil Rights Act calls for.
- Preferences have resulted in unqualified people being accepted in Arizona’s universities. As Senator Bundgaard was quoted in the *Arizona Republic*, ““These schools have basically been setting up minorities to fail.””⁷
- This measure is not anticipated to have an economic impact on Arizona.

Opponents of a constitutional amendment say:

- Preferences and affirmative action are not the same, and Arizona and California are not the same. There are many ways of engaging in affirmative action. “In determining whether a program offers preferential treatment, it is imperative to understand what equal opportunity is being sought, whether there are programs that offer the same opportunity in other ways, and whether the program meets the current legal requirements.”⁸
- Public support as shown on surveys varies widely depending on the language used. For example, phrases such as “promoting equal opportunity” garner greater support than phrases such as “special preferences.”
- The great majority of programs at public agencies and institutions in Arizona simply work to increase awareness of and support for opportunities or monitor employment plans. Quotas, lesser standards, or sanctions do not figure into the efforts.
- Affirmative action is still needed in Arizona because discrimination continues to affect minorities and women adversely.
- Reverse discrimination is not a substantial issue in Arizona based on the number of complaints to the

federal Equal Employment Opportunity Commission. For example, complaints from whites ranged from 1.8% of the total of race-based complaints in FY 1993 to 3.3% in FY 1997.⁹

- This initiative, if passed, would send a chilling message that minorities are not wanted or valued in Arizona's educational institutions or public agencies or as suppliers to government. Symbolically, the "door will be shut. Even if people do not use the programs, they represent opportunity."¹⁰
- Arizona State University officials report that unqualified minority students are not admitted over qualified Anglo students. Retention rates for minority students have risen 8% since 1988 and now are higher than for Anglo students.¹¹
- The presidents of Arizona's universities jointly signed a letter to Senator Bundgaard about their institutions' policies. Even in highly competitive areas, decisions "are made considering the relative strengths and background of each candidate, considering all factors, not simply one's race, ethnicity, or gender...Graduation and retention rates of majority and minority students in highly selective majors are high. Qualified students from diverse backgrounds are being admitted and are succeeding."¹²
- Minority enrollment at Arizona State University's main campus rose from 10.6% in fall 1987 to 18.8% in fall 1997. White student enrollment changed from 83.3% to 72.3%.¹³ Minority enrollment is also rising at the University of Arizona and Northern Arizona University. Changes are bringing participation in line with Arizona's population.
- Although affirmative action may have a stigmatizing effect in some cases, interview studies and public opinion surveys suggest that such reactions are rare.¹⁴ Furthermore, a 1995 Gallup poll of employed blacks and employed white women found that 90% did not feel that their abilities had ever been questioned because of affirmative action.¹⁵
- Arizona's tourism industry could be affected by this type of action as it was during the Martin Luther King period. Some have estimated that the losses during that time totaled millions of dollars. In other areas where affirmative action has been or will be on the ballot, such as Houston and Seattle, a number of business leaders have opposed the measures because they did not feel they would be beneficial to their areas or their businesses.

- This will be a divisive issue for Arizona at a time when the state is still healing from the Martin Luther King issue.

Like so many other complex public issues, outlooks on affirmative action eventually come down to differences in philosophy. During a recent legislative hearing in Olympia, Washington, affirmative action was summed up as either an essential ingredient for managing world-class institutions or a pervasive form of modern-day discrimination.¹⁶

Only time will tell whether a constitutional amendment is in Arizona's future. However it is certain that if it comes, such an issue will be another chapter in a long debate.

Notes

1. "Stephen Cahn on the history of Affirmative Action 1995," AAD Project, <http://humanitas.ucsb.edu/projects/aa/docs/Cahn.html>
2. *Ibid.*
3. Arizona Department of Economic Security, Population Statistics Unit and U.S. Bureau of the Census. Numbers may exceed 100% due to rounding and the U.S. Census Bureau's methods of counting Hispanics.
4. U.S. Bureau of the Census, "Poverty Rising in State Low-Paying Jobs Blamed Amid Boom," *Arizona Republic*, September 30, 1997, p. A-1.
5. California Civil Rights Initiative brochure 1996, <http://www.cadap.org/flyer1.html>
6. Telephone interview with Senator Scott Bundgaard, March 8, 1998.
7. "Poll favors affirmative action ban," *Arizona Republic*, January 3, 1998, p. A-1.
8. "Affirmative action differs from preferences," ASU Insight, February 20, 1998, p. 2.
9. Equal Employment Opportunity Commission, National Database Automatic Reporting Facility, FY Years 1993-1997.
10. Telephone interview with Lionel Lyons, Equal Opportunity Director, City of Phoenix, March 4, 1998.
11. "Poll favors affirmative action ban," *Arizona Republic*, January 3, 1998, p. A-1.
12. Letter to Senator Scott Bundgaard from Presidents Clara Lovett, Lattie Coor, Peter Likins, February 3, 1998.
13. Arizona State University Minority Report, http://www.asu.edu/Data_Admin/MinRprt.pdf.
14. Plous, S. "Ten Myths About Affirmative Action," Wesleyan University, <http://www.wesleyan.edu/spn/affirm.htm> The studies referred to in the first quote are Heilman, Simon, and Repper, 1987; Steele, 1990; Taylor 1994.
15. *Ibid.*
16. Serrano, Barbara A. "Legislators hear two sides in affirmative-action debate," *Seattle Times*, February 5, 1998, <http://www.seattletimes.com>

Prepared by
Nancy Welch

Morrison Institute for Public Policy
School of Public Affairs
College of Public Programs
Arizona State University
P.O. Box 874405
Tempe, AZ 85287-4405
Phone: 602-965-4525
Fax: 602-965-9219