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as I see it;  
trying not to  
offend  
those who will  
disagree."

# The truth as I see it™

Idaho Common Sense™



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## Affirmative action: working as intended?

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According to a December 27<sup>th</sup> USA Today article, five states may have proposals on their ballots this year to end affirmative action. Is it time to eliminate affirmative action? What was its original purpose? Has it helped reduce discrimination? Has it been applied as intended?

In the early 1960s the Equal Employment Opportunity Commission (EEOC) was created for the purpose of ending discrimination by contractors doing business with the government. The 1964 Civil Rights Act expanded this to include all areas of employment, both public and private. Equally important, Title VII, Section 703(j) of the Civil Rights Act states, "Nothing contained in this subchapter shall be interpreted to require any employer ... to grant preferential treatment to any individual or group (because of minority status) ... with respect to the number or percentage (of minorities) employed". In other words, employers were expected to seek out qualified individuals from minority groups allowing them equal opportunities for employment. But they could not grant preferential treatment to anyone because of their minority status in an attempt to maintain any type of percentage balance.

However, President Lyndon Johnson made this more difficult by defining proof of non-discrimination as "equality as a result". This led to government regulations with specific targets for employers by comparing percentages of minorities in a company with the percentage of minorities in the surrounding communities, expecting those percentages to be roughly equal. In some instances these regulations led to companies maintaining quotas as the best proof of compliance.

In 1978 colleges and universities were added to affirmative action when the courts addressed the issue, saying quotas were unconstitutional but

minority status could be used as a factor in admissions.

Affirmative action intended for businesses and colleges to actively seek equally qualified individuals who are in a minority group, including women. In other words, individuals with equal abilities should have equal opportunities. This sounds appropriate and is something we want our federal government to enforce. The purposes and intents of affirmative action were and are reasonable to redress discriminatory hiring and university admission practices. But, as with all good intentions, the results have been mixed.

Certainly, many minority individuals and women have seen doors of opportunity opened with affirmative action that otherwise would have remained closed. And in the majority of instances they were simply offered what affirmative action and the Civil Rights Act expected, an opportunity to compete on a level playing field. On the other hand there are businesses and universities where affirmative action has morphed into a quota system, at times necessitating accepting a lesser qualified candidate to achieve the quota. In 2004, UCLA law professor Richard Sander published a study demonstrating what happened if you had a minority student whose test scores and college grades were much lower than the median of the rest of the student body. The student learned less, was less likely to graduate, and nearly twice as likely to fail the bar exam. On the other hand, if the same student was placed in a law school appropriate to their grades they did quite well. Wouldn't the placement of this student above his/her capabilities be an act of discrimination? Aren't any types of quotas or preferential treatment a violation of the Civil Rights Act? Wouldn't equality require that students be placed in an academic setting appropriate to their performance,

regardless of any type of minority or majority status; in other words, without any discrimination?

Affirmative action has, for the most part, had notable successes. A marketing executive who is black believes affirmative action allowed her the opportunity to compete for a job that otherwise might not have been possible. But it was her qualifications that got her the job, not a quota. Unfortunately, affirmative action has also had its failures. A police officer who is black feels affirmative action has created the discrimination it was designed to prevent. He sees officers who are female and/or Hispanic getting promoted ahead of him with lower scores on the exams because of perceived or actual quotas that must be met.

The purpose of affirmative action was and is to ensure that minorities, including women are allowed equal opportunities to compete for jobs and educational opportunities, nothing more. The ACLU has stated "affirmative action does not mean hiring (or admitting) unqualified people in place of qualified ones. It means seeking out and expanding the pool of qualified candidates."

We should not implement affirmative action in such a manner that is promotes discrimination by giving preferential treatment to minorities and women. That is precisely what affirmative action seeks to eliminate, getting a job or position because of race or gender. When this happens it only serves to enhance misconceptions about the capabilities of minorities and women leading to more discriminatory values rather than less.

Affirmative action, as designed and intended, seems reasonable, fair, and necessary. The Civil Rights Act is for all Americans. We can achieve the goal of equality with no American facing discrimination.

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