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An Assessment of Affirmative Action in Business

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Honors Thesis

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Abstract

Affirmative action has become an inevitable aspect of the employment hiring process. It has been put into place to assist in eradicating the institutionalized discrimination that inherently exists in such practices. On the surface, affirmative action may appear to be something that is beneficial to both the hiring institution and the individual; it seems to be a win-win situation because the business is creating a more diverse workplace and the individual is getting a job that they desired. However, the way that affirmative action is practiced may prevent its overall effectiveness. For example, there are several fundamental flaws with this practice, such as its dependence on employers, despite federal regulations, and reverse discrimination, which may create an adverse affect on both the business and the individual. The shortcomings as well the positive effects of affirmative action including its affect on corporate America, potential employees, and actual employees will be explored deductively throughout this paper.

First, a definition and a simple explanation of affirmative action and its origin will be given. Next, relevant areas will be analyzed, such as college education and the effects affirmative action has had on that given institution. Soon after, currently existing affirmative action practices in business will be investigated, as well as the positives and negatives of each will be considered. Then, a connection will be drawn between affirmative action in the workplace and in the educational setting, discussing overlapping ideologies, such as culture and similar mission statements. Relevant court cases will be explored throughout, in addition to the role of the EEOC in hiring decisions. Finally, based on the research set forth in this paper, a conclusion as to the assessment of affirmative action as a whole will be provided.

What is affirmative action?

Unfortunately so, there is no steadfast definition of affirmative action; it varies fluidly, dependent upon the given context to which it is applied (White, 2004). However, there are some underlying themes that tend to intersect with each situation this concept is applied to. For example, the dictionary definition of affirmative action, according to Merriam Webster's Collegiate Dictionary, is: "an active effort to improve the employment or educational opportunities of members of minority groups or women" (Merriam-Webster, 2004). This ideology consisting of the advancement of formally oppressed groups is fundamental to affirmative action and the goals that it hopes to achieve.

Additionally, there is much scholarly literature on the issue and many authors have provided their own definition and interpretation. Nonetheless, most of the literature seems to provide some overlap in terms of definition. For example, some scholars have defined affirmative action as a "policy designed to ameliorate historical injustices against women, ethnic minorities, and other disadvantaged groups" (Gu, McFerran, Aquino, & Kim, 2014). Similarly, others have described affirmative action on the basis of its expression, stating that it "occurs whenever an organization devotes resources (including time and money) to making sure that people are not discriminated against on the basis of their gender or ethnic group" (Crosby, Iyer & Sincharoen, 2006). Thus, the overlap pertains to its application: a method of prevention and elimination of discrimination.

Affirmative action programs are not merely bound to the United States; many countries such as Japan have made significant strides in terms of equal opportunity employment, while others have not. For example, the Equal Employment Law of 1985 had profound effects on the

advancement of “university-educated” women in the workplace (Konrad & Linnehan, 1999).

This program is not representative of countries abroad, however. Belgium has voluntary antidiscrimination policies, which is why proponents argue that affirmative action in Belgium has not been as effective as it could be. Furthermore, India has an affirmative action program that benefits the majority as opposed to minorities. For example, the minority of people who have migrated to India are better educated and therefore have a better opportunity to become more successful than the majority of those who are indigenous to India (Konrad & Linnehan, 1999).

From a business standpoint, affirmative action does not stop solely with the hiring of underrepresented applicants; it also has a goal of facilitating their growth and advancement within the organization (Kurtulus, 2012). Historically speaking, women and minorities, namely African Americans and Hispanics, have been the targeted beneficiaries of affirmative action. These two groups have faced a significant amount of oppression. One of the reasons affirmative action is in place is to prevent such oppression from continuing. It can be very difficult to break a cycle that perpetuates itself throughout society and hinders the success of certain groups. It is likely, but not impossible, that individuals who are bound to these groups may not be able to achieve the corporate success that members of other ethnic groups are achieving given their lack of opportunities. Furthermore, the lack of opportunities (historically) afforded to underrepresented groups prevents them from even getting their foot in the door. Even if potential hires did have qualifications, employment discrimination could still occur solely on the basis of being a member of an underrepresented group (Reskin, 1998). Thus, it has been argued that affirmative action is necessary in order to not only eliminate such discrimination, but to also advance minorities up the corporate ladder.

Conclusively, affirmative action is designed to make “equal employment opportunities a reality for members of groups that have commonly been the object of discrimination” (Reskin, 1998). The practice strives to provide a remedial solution to those who have been previously oppressed. Proponents argue that without affirmative action, minorities would not be able to realize their potential and would not be afforded the opportunities they deserve. The same proponents also argue that affirmative action is necessary because the conditions that required its implementation still exist today (Reskin, 1998). Employment discrimination, an “unfair differential treatment of current or prospective employees solely based on their social or demographic group membership” is the driving factor here, and in some instances, has required an order by the Court in order to be implemented (Dietz, Joshi, Esses, Hamilton, & Gabarrot, 2015). For these reasons, in conjunction with requiring accountability for employers who do not comply with regulations, proponents of affirmative action believe that this practice, as well as its policies, is a necessary step towards achieving a more equal and balanced society.

The History of Affirmative Action

The roots of affirmative action can be traced as far back as the Civil Rights Movement. Even before *Plessy v. Ferguson*, there was a radical case that pioneered future developments in antidiscrimination law; this case was known simply as the Civil Rights Case of 1883, and it was significant because it overturned the Civil Rights Act of 1875. Justice Joseph Bradley, in his decision, wrote that the time has come for African Americans to “take the rank of a mere citizen and ceases to be the special favorite of the laws” (Konrad & Linnehan, 1999). In other words, Justice Bradley was at the forefront of the Civil Rights Movement because this is one of, if not

the, first steps toward race equality. Moreover, this court case implicitly stated that the U.S. Government needed to take some sort of measures to ensure that previous social injustices are reconciled. *Plessy v. Ferguson*, the dissent of the Civil Rights Case of 1883, ruled that “separate but equal” was not only constitutional but also necessary (White, 2004). Understandably, the upholding of such a law that would later prove to be unconstitutional was disheartening, to say the least, for minorities in the Deep South. Nonetheless, it was this very case that ignited the flames of the Civil Rights Movement, motivating the NAACP and its key members, such as Thurgood Marshall. Marshall, who experienced the backlash of this law as well as Jim Crow Laws, established a legal strategy to prove that “separate but equal” inherently contradicted itself and was, therefore, unconstitutional (White, 2004). Thus, through the elaboration and legal analysis of the Fifth Amendment and Equal Protection Clause of the Fourteenth Amendment, the Supreme Court had no other choice but to strike-down the laws set forth in *Plessy v. Ferguson* during the groundbreaking case of *Brown v. Board of Education*.

Executive action by a succession of presidents was required to successfully exercise affirmative action policies. President Roosevelt, Truman, and Kennedy (respectively) all signed executive orders that facilitated the implementation of such policies, and while Roosevelt and Truman did assist in the eradication of discrimination, particularly in employment, it was Kennedy’s executive order that was the first to actually use the words “affirmative action” (Konrad & Linnehan, 1999). But it was the executive order by Lyndon B. Johnson that was even more impactful than that of any such former presidents because, while the other three outlined affirmative action and its processes, President Johnson’s affirmative action executive order implemented enforcement of the policy (Konrad & Linnehan, 1999). Therefore, such executive orders culminated to propel affirmative action forward and ensure its effectiveness. It ensured

that not only would such practices be implemented through the hiring process but they would also be actively monitored to establish its consistency.

These laws are now governed by a variety of governmental sectors, such as: “Title VII of the Civil Rights Act of 1964, the Equal Protection Clauses of the Fifth and Fourteenth Amendments, and U.S. Presidential Executive Order 11246” (Eisaguirre, 1999). Title VII was and continues to be a massive preventative measure against further discrimination against minorities. To be more specific, Title VII of the Civil Rights Act of 1964 prohibited “discrimination in employment on grounds of race, color, religion, sex, or national origin” (Konrad & Linnehan, 1999). Such measures are set into place as a means to an end: to remedy the past and present effects of discrimination in the employment setting (Eisaguirre, 1999). Additionally, affirmative action can be utilized to improve the standard of living of underprivileged minorities through offering them a breadth of opportunities that they may not have been available otherwise, especially in terms of employment and education. Therefore, today’s affirmative action policies and regulations have been derived from all three branches of the U.S. Government.

It is worth noting, however, that the Civil Rights Movement still continues today and affirmative action is certainly a part of the present day movement. Minorities, particularly African Americans, still experience many similar struggles that they experienced in the past. For example, despite segregation being illegal today, separate and very unequal communities still exist in both housing segregation and statewide negligence of public schools (de Jong, 2010). Arguably so, affirmative action has been put into place in order to combat the perpetual cycle that minorities still encounter, with the hopes of advancing those minorities who are less privileged.

Affirmative Action in Education

Before we examine how affirmative action can have an effect on education, it is important to reflect upon why, as advocates claim, affirmative action is necessary. Essentially, this revolves around two notions: overt and institutional racism. The former, which can be defined as “harm [that] is inflicted or a benefit withheld either because of the perpetrator’s racial bias against the victim or because of that perpetrator’s obliging the race prejudice of others,” is something that we do not see very often today (Ezorsky, 1991); if we do see it today, it is not something that a perpetrator is willing to admit to. Institutional racism, which occurs when “a firm uses a practice that is race-neutral but that nevertheless has an adverse impact on [minorities] as a group,” is much more common (Ezorsky, 1991).

These two seemingly dissimilar variations of a shared origin are not too different. Racism inevitably perpetuates itself through the very being of society. Racist attitudes arise as a byproduct of race-neutral practices. For example, blacks are often assimilated to underprivileged housing complexes. This viewpoint by others, in conjunction that African Americans predominately occupy the lowest of jobs, creates the attitude through the eyes of others that “blacks naturally belong there” (Ezorsky, 1991).

The situation presented above is absolutely analogous to what we see in today’s education system, specifically public schools. In 1995, Elaine Woo of the Los Angeles Times calculated the average SAT scores over a 10-year period, comparing whites directly to blacks. She found that white students are seven times more likely than black students to obtain a 650 or higher on the verbal section. Additionally, roughly 90,000 (13 percent) of all white students scored 650 or higher on the math section of the SAT. Comparatively, 2,050 black students scored

650 or above on the math portion of the SAT (Eisaguirre, 1999). One potential conclusion from this study is that African American students may not necessarily have the same resources as white students. This could be a potential consequence of the institutionalized racism that is plaguing today's schools, or even the lack of funding that afflicts public schools in underprivileged communities.

In order to try and combat the potentially inevitable cycle, graduate schools have taken drastic affirmative action measures. A research study in 1994 by Michael Lynch of the Pacific Research Institute has established the following conclusions:

- “UC Berkeley School of Law admitted every black applicant with a GPA of 3.5 and Law School Admission Test (LSAT) [score] of 90.0 or above, when only 42 percent of similarly qualified whites were admitted.
- “UC Davis School of Law admitted all three black applicants with GPAs between 2.75 and 2.99 and LSATs in the 70.0-74.9 range, yet none of the 23 whites or Asians with similar ranges.
- “UCLA School of Law admitted 61 percent of black applicants but only 1 percent of whites and 7 percent of Asians all having a GPA between 2.5 and 3.49 and an LSAT Score between 60.0 and 89.0.
- “UCLA School of Medicine admitted 27 blacks, but no whites or Asians, with GPAs of 3.24 or below and MCAT biology and chemistry percentile scores of 93.4 and below (Eisaguirre, 1999).”

Unavoidably, there have been some critics of such affirmative action procedures. These critics assert that by admitting students who are significantly below the medians for that given school, they are diminishing the school's overall performance and reputation (Eisaguirre, 1999).

The GPA of students in the previous level of education is correlated to the overall performance of students in higher education. Such students with low GPAs may result in higher attrition rates (Eisaguirre, 1999). Moreover, when students are aware of affirmative action measures, they often assume that minority students were only accepted to a certain institution because of their race, and they may not have been accepted to that institution if they were not a minority.

Understandably so, the long-term effects of such acceptance practices can be detrimental to the school. But it is also worth noting that the subtle, institutionalized discrimination that minority individuals may have had to experience during their studies may have also had an effect on their GPAs and standardized test scores. Making education more accessible to those who may have been hindered has actually revolutionized the higher education system. It is possible that the increase in opportunities, for example, has led minorities to obtain multiple leadership roles in their schooling, which can be seen through a college matriculant study conducted by William G. Bowen and Derek Bok; the study demonstrated that 25 percent of both men and women African American students held three or more leadership positions, compared to only 19 percent of white respondents (Eisaguirre, 1999).

Affirmative Action in Employment

It is important that we begin with a definition of affirmative action in this context to provide a necessary foundation for the forthcoming evaluation. According to Barbara Reskin, author of “The Realities of Affirmative Action in Employment,” affirmative action in the office can be defined as “policies and procedures designed to combat on-going job discrimination in the workplace” (Reskin, 1998). In this sense, affirmative action is designed to prevent hiring

discrimination and to promote a more diverse environment. The latter, for example, is often an initiative that companies establish to build upon their foundational corporate culture and mission statement. Promoting a more diverse workplace, proponents believe, will foster a plethora of new ideas given the varying cultural backgrounds of their employees. Thus, affirmative action in business began as a both a balancing and a preventative measure to assist in the eradication of inequality in the workplace.

During the Civil Rights Movement, most employers were apprehensive to hire minorities. However, the swift enactment of Title VII, a key component of the Civil Rights Act of 1964, sought to end discrimination by private organizations, regardless of their government contracts (Eisaguirre, 1999). This was a particularly grey area due to the privatization of large corporations that was occurring at roughly the same time. Nonetheless, in conjunction with the executive order by President Lyndon Johnson, Title VII overrode any obligations that organizations had to continue their discriminatory practices.

Even though corporations and other organizations have made significant strides as of late, underrepresented groups such as minorities and women still face discrimination in terms of employment (Leslie, Mayer, & Kravitz, 2014). Such barriers to future opportunities have created a playing field that favors adequately represented groups over others. Thus, measures have been taken in order to eradicate workplace inequality. These measures, known as affirmative action plans are “designed to facilitate workplace success for the members of the groups they target” (Leslie, Mayer, & Kravitz, 2014). Because of the potential for positive outcomes, it has been argued that affirmative action is a necessary procedure. In order for today’s corporations to continue and sustain their growth, they must adopt and foster a diverse workplace. Such arguments also state as a point of contention that corporations and other organizations that

require a diverse environment may not be able to achieve such goals without affirmative action (Crosby, Iyer & Sincharoen, 2006). On the basis of such arguments, affirmative action appears to facilitate the diversity of the workplace as well as other organizations.

Research further establishes the importance of creating a diverse workplace. For example, diversity enables employees to take a different perspective on their work while simultaneously embracing the differing ideas of coworkers, providing employees additional opportunities to learn and further their own professional growth (Crosby, Iyer & Sincharoen, 2006). Thus, not only, can affirmative action be of benefit to corporations, it can also aid in eliminating the subtle, ongoing discrimination that still exists. Studies have shown that discrimination is an expensive business practice; it prevents workers from receiving certain assignments and decreases their overall contribution to their organization (Reskin, 1998). Awareness of such implications can lead to employers avoiding discriminatory practices.

As a result of affirmative action implementations to both the public and the private sectors, minorities have made, and continue to make, significant leaps in terms of the number of employees in both industries. In the public sector alone, for example, African Americans increased their numbers at a rate nearly double that of whites; in fact, nearly 25 percent of all employed African Americans work in the public sector (Konrad & Linnehan, 1999). Regardless of the whether or not such programs are court ordered, proponents argue that such figures provide direct evidence that affirmative action has provided minorities with many opportunities that they may not have been afforded otherwise. The private sector, conversely, is quite different. Research has shown that advancement of underrepresented minorities has occurred much faster than organizations that are federally contracted as opposed to those who are not (Konrad & Linnehan, 1999). It can be somewhat inferred from this information that there are employers

who, when not being scrutinized by the government, are not necessarily likely to heed to affirmative action measures. The study also suggested that African Americans and white women were the two groups that benefit the most from affirmative action programs in the private sector. In this industry, Asians and Hispanics were considered “other minorities” and therefore weren’t afforded the same opportunities as African Americans and white women (Konrad & Linnehan, 1999).

Affirmative action sounds great on paper. It should work due to the government regulations set forth by Title VII and the Equal Employment Opportunity Commission. However, affirmative action works only if a President’s policy does not have a haphazard stance on the issue at hand (Reskin, 1998). Thus, it logically follows that if a President’s policy does have such a stance, then it will be impossible for affirmative action to be effective. This is particularly concerning because the requirements set forth by the government (including Federal and State governments) in conjunction with the Federal contract compliance program have aided in the reduction of discriminatory practices. Furthermore, the lack of initiative by employers only confounds these issues because when proper hiring measures are made, such as “advertising job openings to a wider and more diverse pool of prospective employees,” it has been shown that affirmative action actually can lead to the advancement of minorities (Reskin, 1998). Hence, a fundamental flaw with affirmative action lies in its dependence on the voluntary actions of the employers: it works only if employers want it to. If an employer does not have an attitude that aligns with affirmative action and its goals, as critics argue, it is unlikely that these goals are going to be achieved (Konrad & Spitz, 2003). While the EEOC may prevent hiring discrimination to ensure equality, it does not necessarily ensure the advancement of minorities, despite the fact that it does outline potential affirmative action policies.

Moreover, research has suggested that there are several flaws with affirmative action that preclude its success as a practice. These flaws are not only limited to external strains that others impose on it, they also includes internal burdens that negatively affect the same individuals they claimed to assist. The beneficiaries of affirmative action are often stigmatized as incompetent and incapable (Heilman, Block & Stathatos, 1997). Externally, when an organization has an affirmative action plan or program, fellow employees assume that the individual only received the job on the basis of their demographic. The perception that such a beneficiary lacks qualification causes the targets of affirmative to be evaluated negatively, regardless of their actual performance (Leslie, Mayer, & Kravitz, 2014). Such external developments create a cycle that then perpetuates itself to the individual and his or her evaluation of him or herself. The individual then believes that they are not capable of doing their job properly. For one, evaluations of work performance that is completed by supervisors lack clarity (Heilman, Block & Stathatos, 1997). Thus, the individual, upon receiving the evaluation of their performance does not believe that they are able to succeed in the workplace because they are not fulfilling the organization's performance standards. This further leads the individual to evaluate him or herself negatively. Their self-perception leads to a negative view of oneself and a lack of confidence to thrive in that given corporate environment.

It is worth noting that the negative affects of affirmative action are not solely limited to women and minorities; whites can also be negatively affected by affirmative action. When compared to Asian Americans, for example, whites, depending on the context, have been seen as being incompetent (Leslie, Mayer, & Kravitz, 2014). This is because Asian Americans have been characterized as "model minorities," with performance levels that are too high to be considered disadvantaged (Weathers & Truxillo, 2008). In this context, affirmative action not only

discriminates against whites but it also discriminates against Asian Americans. Additionally, corporations who do not include Asian Americans as a part of their diversity programs are undermining the motives of affirmative action because they are hindering its intended goals. There appears to be a contradiction amongst the evaluation affirmative action in this context. Those who implement affirmative action in this context are picking and choosing when they want to apply the practice. There is no indication of this being acceptable by the definition of affirmative action. In fact, it appears as though the practice of excluding Asian Americans from affirmative action programs prevents an organization from achieving the diversity that it desires. The reason, whites claim, for such exclusion is that they perceive Asian Americans to be more represented and less discriminated against compared to whites (Weathers & Truxillo, 2008). Research suggests that their views may be mistaken and their perceptions are unfounded. Therefore, it appears as though such an unsubstantiated view by whites creates a rut in the affirmative action system that precludes its potential for success.

Critics of affirmative action believe that embedded in its concept is a violation of “merit” (Guinier & Strum, 2001). Rightfully so, depending on the extent to which affirmative action is applied, it impedes upon this ideology, potentially resulting in reverse discriminatory practices. However, in some situations, this may not be the case. Let’s say, hypothetically speaking, two completely identical candidates in terms of qualification, one minority and one white, are applying for a job; both receive interviews and both say exactly the same thing during that interview. If they are the two best candidates, it is not possible for notion of merit to be desecrated because the best candidate will be chosen regardless. In this instance, if the organization is to uphold affirmative action and therefore hire the minority candidate over the white candidate, it would be acceptable to do so because this voluntary action, in compliance

with the EEOC, set forth by the employer simultaneously upholds merit by not sacrificing it in order to hire a minority applicant.

Commonalities Between Affirmative Action in Education and Business

If we create a dichotomy in order to effectively compare affirmative action in education to affirmative action in business, we can see striking similarities. For one, affirmative action in both cases has the underlying goal of the advancement of minorities who may have been deprived of further opportunities. History has been unbalanced towards the favoring of whites in both education and business, particularly with hiring practices (Eisaguirre, 1999). In this sense, affirmative action acts as a weight that is balancing the scales of justice. Additionally, minorities can bring a lot to the table because they come from varying backgrounds and can change the ideas that an organization produces. In today's day and age, it is almost essential for organizations to have a diverse workforce. Similarly, it is crucial towards the advancement of students to have a diverse student body. For example, the increase in diversity amongst the student body can increase the likelihood that whites would have interactions with minorities, interactions that they may not necessarily be subject to otherwise (Crosby, Iyer & Sincharoen, 2006). Contact with other ethnic groups is merely sufficient for individual growth, as it allows individuals to become privy to learn from cultures that they may not have been aware of previously. The same can be seen through a parallel to Corporate America: if an entire workforce is predominantly all one ethnicity, for example, it is unlikely for them to grow in terms of diversity because they are not interacting with other groups who may have a variety of views that could positively affect a business.

Perhaps the most directly comparable aspect of both fields is college acceptances to hiring practices. Currently, in both areas, it appears that the road that affirmative action has paved may encourage reverse discrimination. For minorities applying to law school, for example, it is a tacit rule that minorities are still able to get into the top programs in the country despite having lackluster LSAT scores: “African Americans average ten points below, Hispanics five points below, and American Indians three to five points below [the average LSAT score for that given school]” (Montauk, 2011). Richard Montauk, author of “How to Get into the Top Law Schools,” goes on to say “If you are African American, for example, a [LSAT] score equal to a school’s 25th percentile is likely to help rather than hinder your chances.” This is certainly a grey area of the college admission process because there are many unwritten rules here. It is to be advised that colleges be careful in this aspect; they are walking a fine line, so to speak. Colleges such as the University of Texas at Austin have already had to deal with Supreme Court litigation regarding this issue. As seen through the case of *Fisher v. University of Texas at Austin*, a white student sued the University because she was “unfairly” denied admission on the basis of her race (Purdy, 2014). Nevertheless, the Supreme Court upheld the decision, claiming the decision does not violate the Equal Protection Clause of the Fourteenth Amendment.

From the business standpoint, the issue is a similar one: qualification. When determining the best employee for any job, the decision is usually based on how qualified the applicant is to the rest of the pool. However, according to affirmative action, race should also play a substantial role in that process, not only for the advancement of minorities but also in order to increase workplace diversity. Diversity has been shown to foster a variety of skills, values, and points of view in the workplace, which is a direct result of the hiring of dynamic individuals (Guinier & Strum, 2001). It is these particular qualities that breed imaginative solutions to complex

problems that arise in business. Furthermore, similar to education, Guinier and Strum argue: “Racial and cultural diversity in a workplace can also provide opportunities for companies marketing products that serve racial and culturally diverse client groups” (Guinier & Strum, 2001). People like to do business with those that they can relate to. By providing a human element, an intangible aspect of business interactions, organizations can improve their profits and become more successful. We often see this in the services industry, where minorities who have a particular need tend to work with those who they can relate to.

Both industries need to be cautious, however. Affirmative action for the advancement of minorities and the Equal Protection Clause Fourteenth Amendment of the U.S. Constitution have been at odds over recent affirmative action policies. Individuals argue that affirmative action violates the Equal Protection Clause of the Fourteenth Amendment because, while minorities are advancing as a result of affirmative action, white individuals are no longer being treated equally (Purdy, 2014). *Grutter v. Bollinger* attacks this very issue. In fact, they even rule against affirmative action on the basis of race at the University of Michigan Law School. The difference between this case and *Fisher v. University of Texas at Austin* is that, when considering affirmative action from a legal standpoint, strict scrutiny must be applied, meaning that it must further a “compelling government interest” and must have narrowly tailored the law to that interest (Purdy, 2014). Nonetheless, the rulings do not contradict each other because in the former case, strict scrutiny was not applied properly and in the latter case it was.

Likewise, a similar practice in business may be considered employment discrimination, and thus not necessarily a cause of affirmative action but an effect that may unintentionally discriminate against whites. This concept of discrimination against whites, intended or not, is known as reverse discrimination. Even though, according to a 1994 survey, 70 to 80 percent of

whites believed that affirmative action could cause reverse discrimination, the process is actually relatively rare; this can be seen through the fact that of the 7,000 reverse discrimination cases filed last year, the EEOC found only 28 of them to be plausible (Reskin, 1998). Thus, similar to the *Fisher v. University of Texas at Austin* case, it appears as though whites are somewhat overreacting to recent affirmative action practices. There is little evidence that affirmative action is actually having a negative effect on whites; it also does not appear to hinder their success or any future opportunities. The fact that in the business industry, less than one percent of reverse discrimination cases were upheld provides direct evidence to this matter. Furthermore, the laws in regulations of affirmative action appear to be achieving its goals in, at least, this sense.

However, it must be noted that the negative effects of affirmative action are applicable in both senses: education as well as business. In business, for example, individuals who are the beneficiaries of affirmative action are often perceived as incompetent (Heilman, Block, & Lucas, 1992). Such incompetence is internalized and leads to a self-fulfilling prophecy that minorities are not good enough to do their jobs. Similarly, nearly the same thing occurs in higher education, namely law schools. For example, minorities are able to get into top tier law schools with little regard to their GPA and LSAT scores. However, because these minorities are not necessarily able to uphold the academic standards of a given institution, such individuals are likely to be at the bottom of their law school class. This series of events leads to a high attrition rate amongst minorities, creating a negative impact amongst both the individual and the school (Crosby, Iyer & Sincharoen, 2006). Critics cite this reason alone as being sufficient to conclude that affirmative action may not be as effective as intended because it contradicts itself, hurting the same individuals it intended to help.

The parallels between two seemingly different industries help to draw critical conclusions about both the positive and negative affects affirmative action can have. On one hand, proponents advocate that the positive effects outweigh the negatives, concluding that it is a necessary procedure that will ensure the advancement of minorities. Despite the potentially negative consequences, they hold that the affirmative action is still crucial because the advancement of minorities is necessary to ensure diversity. However, the critics argue that affirmative action is too contradictory and hurts people more than it helps them. They cannot agree with the proponents of affirmative action in order to conclude that the diversity that it hopes to achieve is worthwhile. Instead, they believe that if minorities are going to be negatively affected as significantly as they claim, then it may not be advisable to carry out such policies and procedures.

Overall Assessment and Conclusion

Given the aforementioned policies, it seems as though affirmative action has its strengths and its weaknesses: it may lead to the advancement of minorities but it is ultimately dependent on employers to foster such a chain reaction. Where most organizations claim to be an “equal opportunity employer,” they fail to consider that minorities may not have been provided the necessary opportunities in order to facilitate their growth and advancement. This is quite the “slippery slope,” which certainly requires clarification.

A key to affirmative action in business is qualification, and is the clarification to this “slippery slope.” Affirmative action cannot work if under-qualified minorities are obtaining jobs over more qualified candidates. Let’s say, for example, we have two candidates of the exact

same race and ethnic origin. In fact they are essentially the same individual, with the exception that one of the individuals is much more qualified for the job than the other. It seems rather counterintuitive to hire the much less qualified over the much more qualified individual. The same ought to be said for hiring practices: race should be considered only in cases where two applicants have approximately the same qualifications. This situation is much more practical and applicable than the idealized, hypothetical case made earlier in this paper. Understandably so, approximately is the key word here; the reason for this is because minorities may not have been privy to the same opportunities or experiences that a white individual may have been privy to. Thus, hiring the minority who is slightly less qualified than the white individual is justified because the minority can make an active contribution to the organization's diversity that a white individual probably would not be capable of.

Furthermore, the ideology of model minorities creates interesting dilemmas for affirmative action. First of all, as mentioned earlier, whites can be considered as being disadvantaged. This actually turns affirmative action on its head because in this sense, the minorities are the ones being perceived as competent and the whites are being perceived as incompetent. Paradoxically, in such situations whites would actually be a part of the beneficiaries of affirmative action programs, as they would now be in the minority of a predominately Asian-American corporation. Also, if the idea of being a model minority does apply to the currently standing intents and purpose of affirmative action, Asian Americans cannot be considered as being a beneficiary of affirmative action. Thus, both the positive and the negative outcomes of affirmative action are being withheld from Asian Americans, despite them actually being minorities. However, if an Asian American comes from a similar background and faces similar struggles, compared to someone who is African American, for example, it does not

logically follow that that the Asian American individual should be withheld any of the privileges awarded to the African American solely on the basis of race. The reason for this conclusion lies in the aforementioned definition of affirmative action. Affirmative action is designed to assist members of minority groups. The definition does not distinguish between minorities and model minorities; thus neither should its methods of enactment. Consequently, the distinction must be established solely on the basis of qualification.

It is advised that those institutions that implement affirmative action procedures be vigilant. In recent years, this has been a litigious issue, especially where there have been several cases regarding affirmative action in the Supreme Court. Litigation is an extremely expensive expedition; it can be a metaphorical war of attrition, where, ultimately, the side with the best resources will have the best chances. Regardless, even if both sides have equal resources, a corporation may be taking its valuable assets and using them to fight the litigation when there could be more pressing matters that the organization is currently facing, potentially hindering overall business. Hence, if affirmative action is going to be implemented, a given institution ought to ensure that its measures to achieve this goal are legitimate.

Affirmative action can be a worthwhile endeavor if it is established properly. Sometimes, however, that is not the case. Critics of affirmative action in the educational setting, for example, do have a legitimate point when they argue that significantly under-qualified individuals who are accepted to a university may have an overall detrimental effect on the university: they may not be able to achieve the level of excellence that a top institution requires. Arguably so, this is analogous to business institutions as well: it is unlikely that an under-qualified individual would be able to achieve what a firm desires of its employees. Underperforming employees are a detriment to a corporation because they are wasted wages and provide a loss of productivity.

Thus, hiring an under-qualified individual can create a potential causal chain that is damaging to the company and the individual involved.

In conclusion, affirmative action is a controversial concept that requires debate to determine the best and most legitimate procedures that will ultimately facilitate its success. Employers must be wary of the potential repercussions of illegitimate practices in this regard. They also ought to be wary of the potential benefits that affirmative action can provide. Qualified minorities in the workplace can contribute to the firm's diversity, while providing a different perspective that other employees may not have. The benefits are mutual, with the employee being given the opportunity to further his or her professional growth while making a positive contribution to a firm's organizational behavior.

References

- Crosby, F., Iyer, A., & Sincharoen, S. (2006). Understanding Affirmative Action. *Annual Review of Psychology*, 585-611.
- Dietz, J., Joshi, C., Esses, V., Hamilton, L., & Gabarrot, F. (2015). The skill paradox: Explaining and reducing employment discrimination against skilled immigrants. *The International Journal of Human Resource Management*, 1318-1334.
- De Jong, G. (2010). *Invisible Enemy: The African American Freedom Struggle after 1965*. Chichester, West Sussex, U.K.: Wiley-Blackwell.
- Eisaguirre, L. (1999). *Affirmative Action: A Reference Handbook*. Santa Barbara, Calif.: ABC-CLIO.
- Ezorsky, G. (1991). *Racism and Justice: The Case for Affirmative Action*. Ithaca: Cornell University Press.
- Gu, J., McFerran, B., Aquino, K., & Kim, T. (2014). What Makes Affirmative Action-Based Hiring Decisions Seem (Un)Fair? A Test Of An Ideological Explanation For Fairness Judgments. *Journal of Organizational Behavior*, 722-745.
- Guinier, L., & Sturm, S. (2001). *Who's Qualified?* Boston, MA: Beacon Press.
- Heilman, M., Block, C., & Lucas, J. (1992). Presumed Incompetent? Stigmatization And Affirmative Action Efforts. *Journal of Applied Psychology*, 536-544.
- Heilman, M., Block, C., & Stathatos, P. (1997). The Affirmative Action Stigma Of Incompetence: Effects Of Performance Information Ambiguity. *Academy of Management Journal*, 603-625.
- Konrad, A., & Linnehan, F. (1999). Affirmative Action: History, Effects, and Attitudes. *Handbook of Gender and Work*, 429-452.
- Konrad, A., & Spitz, J. (2003). Explaining Demographic Group Differences in Affirmative Action Attitudes. *Journal of Applied Social Psychology*, 1618-1642.
- Kurtulus, F. (2012). Affirmative Action and the Occupational Advancement of Minorities and Women During 1973-2003. *Industrial Relations: A Journal of Economy and Society*, 213-246.
- Leslie, L., Mayer, D., & Kravitz, D. (2014). The Stigma of Affirmative Action: A Stereotyping Based Theory and Meta-analytic Test of the Consequences for Performance. *Academy of Management Journal*, 964-989.
- Merriam-Webster's Collegiate Dictionary (11th ed., 2004). *Springfield, MA: Merriam-Webster*.

Montauk, R. (2011). *How to Get into the Top Law Schools* (5th ed.). *New York: Prentice Hall Press.*

Purdy, R. (Winter, 2014). *Fisher v. University of Texas at Austin: Grutter (Not) Revisited.* *Missouri Law Review*, 79(1), 1-26.

Reskin, B. (1998). *The Realities of Affirmative Action in Employment.* *Washington, DC: American Sociological Association.*

Weathers, V., & Truxillo, D. (2008). Whites' and Asian Americans' Perceptions Of Asian Americans As Targets Of Affirmative Action. *Journal of Applied Social Psychology*, 2737-2758.

White, J. (2004). What is Affirmative Action? *Tulane Law Review*, 78, 2117-2206