Bill as Introduced

HB 55 – AS INTRODUCED

2003 SESSION

03-0019
08/09

HOUSE BILL ***55***

AN ACT prohibiting preferences in recruiting, hiring, promotion, or admission by state agencies, the university system, the regional community-technical colleges, and the postsecondary education commission.

SPONSORS: Rep. M. Harrington, Straf 68; Rep. Hopper, Hills 48; Sen. Sapareto, Dist 19; Sen. Boyce, Dist 4

COMMITTEE: Executive Departments and Administration

ANALYSIS

This bill prohibits preferences in recruiting, hiring, promotion, or admission by state agencies, the university system, the regional community-technical colleges, and the postsecondary education commission. It prohibits preferential treatment or discrimination based on race, sex, national origin, religion, or sexual orientation.

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

HB 55 – AS INTRODUCED

03-0019
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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Three

AN ACT prohibiting preferences in recruiting, hiring, promotion, or admission by state agencies, the university system, the regional community-technical colleges, and the postsecondary education commission.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Department of Administrative Services; Classified Employees; Preferential Treatment or Discrimination Based on Race, Sex, National Origin, Religion, or Sexual Orientation Prohibited. Amend RSA 21-I:52, I to read as follows:

I. No person shall be appointed or promoted to, or demoted or dismissed from, any position in the classified service, or in any way favored or discriminated against with respect to employment in the classified service because of the person's political opinions, religious beliefs or affiliations, age, sex, or race. In addition, no person shall have any such employment action taken on account of such person's sexual orientation. ***Additionally, except as provided in paragraph I-a, there shall be no preferential treatment or discrimination in recruiting, hiring, or promotion based on race, sex, national origin, religion, or sexual orientation.*** Nothing in this section shall require the appointment or prevent the dismissal of any person who advocates the overthrow of the government by unconstitutional and violent means. No person shall use, or promise to use directly or indirectly, any official authority or influence, whether possessed or anticipated, to secure or attempt to secure for any person an appointment or advantage in appointment to a position in the classified service, or an increase in pay or other advantage in employment in any such position, for the purpose of influencing the vote or political action of any person, or for any consideration. No employee in the state classified service shall hold any remunerative elective public office, or have other employment, either of which creates an actual, direct and substantial conflict of interest with the employee's employment, which conflict cannot be alleviated by said employee abstaining from actions directly affecting such classified employment. Determination of such conflict shall be made by the personnel appeals board after the parties are afforded rights to a hearing pursuant to RSA 21-I:58. The burden of proof in establishing such a conflict shall be upon the party alleging it. No action affecting said employee shall be taken by the appointing authority because of such public office or other employment until after a full hearing before and approval of such action by the personnel appeals board. If an actual, direct and substantial conflict of interest, which cannot be alleviated by abstention by the employee, is found by the personnel appeals board, the board must approve any action proposed by the appointing authority; and the employee shall be given a reasonable amount of time to leave the employee's public office or other employment or otherwise end the conflict before the appointing authority initiates that action.

I-a. Notwithstanding the prohibition on preferential treatment or discrimination in paragraph I:

(a) Nothing in this section shall be interpreted as prohibiting bonafide qualifications based on sex which are reasonably necessary to the normal operation of public employment, public education, or public contracting.

(b) Nothing in this section shall be interpreted as invalidating any court order or consent decree which is in force as of the effective date of this section.

(c) Nothing in this section shall be interpreted as prohibiting actions necessary to establishing or maintaining eligibility for any federal program where ineligibility would result in a loss of federal funds to the state.

2 New Section; State College and University System; Prohibition on Preferential Treatment and Discrimination. Amend RSA 187-A by inserting after section 16 the following new section:

187-A:16-a Prohibition on Preferential Treatment and Discrimination.

I. Within the state college and university system, there shall be no preferential treatment or discrimination in recruiting, hiring, promotion, or admission based on race, sex, national origin, religion, or sexual orientation.

II. Notwithstanding paragraph I:

(a) Nothing in this section shall be interpreted as prohibiting bonafide qualifications based on sex which are reasonably necessary to the normal operation of public employment, public education, or public contracting.

(b) Nothing in this section shall be interpreted as invalidating any court order or consent decree which is in force as of the effective date of this section.

(c) Nothing in this section shall be interpreted as prohibiting actions necessary to establishing or maintaining eligibility for any federal program where ineligibility would result in a loss of federal funds to the state.

3 New Section; Regional Community-Technical Colleges; Prohibition on Preferential Treatment and Discrimination. Amend RSA 188-F by inserting after section 2-a the following new section:

188-F:2-b Prohibition on Preferential Treatment and Discrimination.

I. Within the state's regional community-technical colleges, there shall be no preferential treatment or discrimination in recruiting, hiring, promotion, or admission based on race, sex, national origin, religion, or sexual orientation.

II. Notwithstanding paragraph I:

(a) Nothing in this section shall be interpreted as prohibiting bonafide qualifications based on sex which are reasonably necessary to the normal operation of public employment, public education, or public contracting.

(b) Nothing in this section shall be interpreted as invalidating any court order or consent decree which is in force as of the effective date of this section.

(c) Nothing in this section shall be interpreted as prohibiting actions necessary to establishing or maintaining eligibility for any federal program where ineligibility would result in a loss of federal funds to the state.

4 Postsecondary Education Commission; Staff; Prohibition on Preferential Treatment and Discrimination. Amend RSA 188-D:4 to read as follows:

188-D:4 Staff.

I. The commission is hereby authorized to employ such staff as may be necessary to carry out its work within the limits of its appropriation.

II. There shall be no preferential treatment or discrimination in recruiting, hiring, or promotion based on race, sex, national origin, religion, or sexual orientation.

III. Notwithstanding paragraph II:

(a) Nothing in this section shall be interpreted as prohibiting bonafide qualifications based on sex which are reasonably necessary to the normal operation of public employment, public education, or public contracting.

(b) Nothing in this section shall be interpreted as invalidating any court order or consent decree which is in force as of the effective date of this section.

(c) Nothing in this section shall be interpreted as prohibiting actions necessary to establishing or maintaining eligibility for any federal program where ineligibility would result in a loss of federal funds to the state.

5 Repeal. RSA 188-D:3, relative to criteria for appointments to the postsecondary education commission, is repealed.

6 Effective Date. This act shall take effect January 1, 2004.

Speakers

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # HB 55 Date JAN 23, '03

Committee EDTA

** Please Print All Information **

Name	Address	Phone	Representing	(check one) Pro	Con
Kenneth H. Gould	Dist 77				X
Peter H. Allen	Dist 27				X
NO BAXLEY	EPSOM NH				X
Amanda Giles	Barrington, NH				X
Claudette Williams	Merrimack, NH			[redacted]	X
Stuart Trachy	136 No. Main Concord	226-2984	National Assoc. Social Workers		X
JAMES E. TWOMBLY	DIST 47 ROCHESTER		REP	[redacted]	
Andrew Mangan	PO Box 443 Campton				✓
Gloria J. Timmons	3 Roedean Dr Nashua NH				X
Freddye Bass	Manchester NH	749-6362		✓	✓
Hilda W. Sokal	Hanover NH	643-2702			X
← Peter Solomon	Conway				X
Jeanie Holt	12 Farrar Rd Henniker	428-6141			X
Michele Holt-Sharron	14 Florence St. Dover NH	743-1603			X
Sen Robert Boyce	Dist 4			X	
Bernard Streets	600 Auditorium Acres, Manchester				X
Rep. Bob Giuda	Warren	271-1193	Grafton 13	X	
Bob Brown	NAACP Nashua				X
Luc Schuster	21A Federal St. Concord, NH 03301				X
Ada Cano	Latino Outreach Program	320-3794			X
Ingrid Lemaire	NH		NH Higher Education Assistance Found		X
Amy Antonucci	31A Monarimet Dr Madbury	750-7506			X
LEE A JONES	12 FOX BORO ST, NASHUA NH	03063 883-5738			X

independent to legislature

SIGN UP SHEET

(2)

To Register Opinion If Not Speaking

Bill # HB 55 Date JAN 23, 2003

Committee EDTA

** Please Print All Information **

Name	Address	Phone	Representing	(check one) Pro	Con
Chandra Cockell	8C Cedarbrook V. Hooksett NH	6033355427			X
Lacey Brickner-Wood	1 Colony Cove Rd. Durham	868-6917	UNH Campus Ministry		X
Andrew Houston	121 Front St.	Exeter, NH	03833		X
Charles A Russell	33 Columbus Ave	Concord NH			X
Martin Gerencser	182 Middle St				X
Samia Medina-Rogers	37 mayflower dr.	Milford NH			X
Kimberly Rondeau	20 Greatstone Dr.	Merrimack	490-7829		X
Chris Sensing			NHHEAT		X
ARNOLD Alpert,	AMERICAN FRIENDS SERVICE COMMITTEE				X
Rep Barbara C French		MERR 34			X
Harriet M Ward	43 N. Fruit St.	Concord	League of Women Voters of Concord		X
Marlene St Cheun	POBX 123 Barrington NH	03825	335-0800		X
Rep. Christine Kongos	10 Decator Drive	Nashua	03062 888-7271		X
Linda Vernon	66 Old Post Rd	York Me	03909 207.351-3009		X
Rep G. Michael Gilman	Grafton 9	448-2682		X	
Rep Casey Crane	37 Burnside St	Nashua	881-9048	X	

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # HB 55 Date JAN 23, '03

Committee ED+A

**** Please Print All Information ****

Name	Address	Phone	Representing	(check one) Pro	Con
Jacqueline Bunting	190 Washington Street, Dover	743-0900	Self		X
Elle Petcavage	40 Gables Way	295-6419	self		X
Kim Crawford	4970 GSS, Durham	295-7623	self		X
Sean McGhee	140 Leighton Cr. Rd, Strafford	296-2744	self		X

Hearing Minutes

HOUSE COMMITTEE ON EXECUTIVE DEPARTMENTS AND ADMINISTRATION

PUBLIC HEARING ON HB 55

BILL TITLE: prohibiting preferences in recruiting, hiring, promotion, or admission by state agencies, the university system, the regional community-technical colleges, and the postsecondary education commission

DATE: January 23, 2003

LOB ROOM: 100 SH **Time Public Hearing Called to Order:** 10:05 AM

Time Adjourned: 12:30 PM

(please circle if present)

Committee Members: Reps. O'Neil, Hamel, Langer, Goulet, Zolla, N. Allan, Dexter, Hall, C. Robertson, Bergin, LaFlamme, Milligan, W. Field, Fitzgerald, Maybeck, Clayton, Schulze, DeJoie, Irwin, Pilotte and F. Sullivan.

Bill Sponsors: Rep. M. Harrington, Straf 68; Rep. Hopper, Hills 48, Sen. Sapareto, Dist 19; Sen. Boyce, Dist 4

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep. Harrington, sponsor. Supports the conditions of the constitution. Similar to last year's bill but not as detailed. Nothing in the bill will cover loss of federal funds. University states that they do not discriminate. They have goals. He read from many papers that will be available to sub-committee. A moral issue.
*Ron Rodgers, representing University System of NH. 862-0960. Opposes the bill. Read the written testimony. Wants to delay action on this bill pending NH Supreme Court rendering a decision based on federal court decisions.
Rep Hopper, co-sponsor. Signed on because hiring and firing due to race is unconstitutional.
*Rep. Peter Allen, opposes bill.
*Rep. Dennis Vachon, opposes bill. States quotas are not used today. Talks about affirmative action. Supports public policy.
*Rep. Harvey Keye, opposes bill. Refers to Martin L. King. HB 55 is like a time bomb – did not elaborate. Talked about American working harder to maintain standard of living.
Sen. Sapareto, supports as co-sponsor second time around. He believes that minority is not receiving secondary education because they don't seek it, not because of quotas.
*Valerie Mahar, representing Commissioner John O'Donnell of NH Community Technical College. Opposes bill. Read her written testimony. 75% are instate. The UNH Counsel would not answer
Bob Brown, representing NAACP, Nashua, 557-0358. Opposes the bill.
*Sheila Evans, representing NH Women's Lobby, PO Box 382, Henniker, 224-9105. Opposes bill. Creates more problems than it corrects. Couldn't advertise for women to apply for jobs.
Purnell Ross, representing NAACP, 82 Littleworth Rd., Dover, 749-6362. Opposes bill. Read a statement from their president in opposition to Bush's statement about affirmative action at University of Michigan. They are looking to maintain affirmative action.

*Terri deLangis, representing Commission on the Status of Women, 271-2660. Opposes bill. Read written testimony.
Andrew C. Houston, representing Diversity Support Coalition of UNH, 121 Front St., Exeter, 778-6144. Opposes bill. Come from out of state. Talked about quality and qualified women's status in the state of NH.
Chanda C. Corbett, 8C Cedarbrook Village, Rochester, 335-5427. Opposes bill. She is black psychologist hired by UNH as requested by the Black Student Union. Does not know of a case of reverse discrimination.
Claire Ebel, representing NH Civil Liberties Union, 225-3080. 18 Low Ave., Concord. Opposes bill.
*Jeanie Holt, 12 Farron Rd., Henniker, 428-6144, opposes bill.
Gloria Timmons, 3 Roedean Dr., Nashua, 595-2195. Opposes bill. Works for NH Dept. of Employment Security. 4x last higher positions – can't get promoted. Has become part of permanent record.
Nina Jordan, 2 Cortland Rd., Lee, 659-5448, opposes bill. Came from NY.
Larry Brickner-wood, representing United Campus Ministry to UNH and is a town manager.. 1 Colony Cove Rd., Durham, 868-6917. Opposes bill. Diverse community is a healthy community, Diversity is more than religion.
Rep. Barbara French, opposes bill. Appreciates diversity.
Samia Medina-Rogers, 37 Mayflower Dr., Milford, 672-6231. Opposes bill. She is a nurse in an inter racial marriage. Believes in diversity. She is Puerto Rican, wants to do well for her two children.
Lee A. Jones, 12 Foxboro St., Nashua, 883-5738. Opposes bill. Need to get to the real problems in NH. Mentor a child.
Linda Gaithright, 28 Marian Lane, Nashua, opposes bill. Issues re: schools, particularly high school. Going in right direction. We all should be treated equal. NH should go forward.

Respectfully submitted,

Rep. Ray Langer, Clerk

Sub-Committee Minutes

HB 55 Subcommittee meeting 1/29/03 9:00am

Meeting was opened at 9: 00 am by Chair Rep. Peter Bergin. Present were subcommittee members Rep. Dexter, Rep. Hall, Rep. Robertson and Rep. Schultz. Sitting in were committee members Rep. Irwin and Rep. Sullivan.

The Chair asked each member if they had any questions or concerns with HB 55. Rep. Dexter had several questions for a representative of UNH. He asked if anyone from UNH was present. The university's General Counsel Rogers came forward to answer Rep. Dexter's question. Because they were another subcommittee working in the room, he was asked to sit at the table with the committee to answer Rep. Dexter's questions. Rep. Dexter asked him to explain UNH's policy as shown in their diversity statement. Also, how this related to former President Joan Leitzel's agreement with the student African American Caucus in 1998.

He explained that President Leitzel met with the African American caucus and agreed to set a goal to have 300 African American students on campus by the year 2003. This was a goal and it was not setting up a quota system. He further explained that under federal executive order 11246 the university must have an affirmative action policy in place for hiring. If it did not have a policy in place, it could not receive federal funds.

While General Counsel Rogers was answering Rep. Dexter's question, Rep Harrington (sponsor of HB55) came into the room and sat at the table and stated: " I have several Representatives who want to testify". Chair Bergin indicated to Rep. Harrington that he had interrupted General Counsel Rogers and that he would get to him after Rogers finished.

After Rogers, finished, Rep. Harrington was given an opportunity to answer questions. He said that HB 55 was not an affirmative action bill but was a bill to codify Part I, Article 2.

Chair Bergin told the representatives present that it was the policy and procedure that testimony could not be given a subcommittee. However, if Representative who did not testify at the hearing, he or she could submit a letter or email to the subcommittee voicing their opinion.

Various members of the committee had several other questions and other comments about the bill. Also, could someone show evidence that UNH was giving preference to applicants abased on race, color or creed?

The meeting was adjourned at 9:30am and another subcommittee meeting was scheduled for 2/4/03 at 9:00 am on SH room 100.

Subcommittee Meeting
HB 55

February 4, 2003

Sponsors complained they weren't fairly heard.

Present Reps. C. Robertson, C. Hall, J. Dexter, J. Schulze, P. Bergin, Chair

C.H. heard we need to take a harder look

J.D. Confusion because of numbers set hasn't heard (l) complaint re: N.H. need to reword good statement.

J.S. ITL

C.R. There have been no complaints. Doesn't support passage of bill. There may be some changes made on national level
Worried re: unseen consequences of bill

P.B. Harrington and other reps say it is to codify the constitution:
Part I Article II of the NH Constitution refers to
Natural rights

Rep. Pilotte Observing – concurs with subcommittee. We do need to expose our kids in NH to the world

J.D. We find no problem. U.S. Supreme Court is dealing with the problem

C.R. If we pass this bill, we define ourselves to the rest of the country

P.B. Could retain bill until U. Michigan decision is made
Pass or ITL?
At UNH students have to meet the school's standards
Wants good support for the "codifying the constitution"

Ron Rogers if constitution says what – why did legislature use different words that would have to be explained? Potential mischief in new words.

J.D. Need to use the university words in "blurb"

C.H. Do we know the completion number of student-studies?
70-72% completion rate for general population
minorities are about 1% less

J.D. Retain until federal decision. We either ITL or retain

P.B. Will work on the blurb and develop same next week @ 9:00

February 11, 2003

Present: Reps Bergin, Hall, Robertson, Schulze

1974 when law was defined – the constitution has protected our rights

No problem has been identified

Affirmative action plans are now in place

Ron Rogers--Students are admitted considering their potential success

Discussion was around the fact that this bill would cause more problems than solve anything at this time.

Vote 5-0 ITL

Testimony

STATE OF NEW HAMPSHIRE
COMMISSION ON THE STATUS OF WOMEN

January 23, 2003

TO: **Rep. Michael O'Neil, Chair**
Executive Departments and Administration

FROM: **Theresa de Langis, Executive Director**
New Hampshire Commission on the Status of Women

RE: **House Bill 55: An Act prohibiting preferences in recruiting, hiring, promotion, or admission by state agencies, the university system, the regional community-technical colleges, and the postsecondary education commission.**

Good afternoon Chairman O'Neil and members of the Committee.

My name is Terri de Langis and I am the Executive Director of the New Hampshire Commission on the Status of Women. The Commission is a non-partisan state agency that is legislatively mandated under RSA 19-B to "recommend methods of overcoming discrimination against women in public and private employment and civil and political rights."

It is in this context that I testify today in opposition to HB 55. This bill, if passed, which would effectively dismantle equal employment opportunities in the state's governmental and educational institutions.

The use of "preference" in the wording of HB 55 reveals a common misunderstanding about affirmative action. Affirmative action is not about preference; rather, its purpose is to eliminate discriminatory policies and practices that have historically excluded women and minorities from access to education and employment. It is best defined as an inclusive tool that actively and affirmatively promotes equal opportunity. Indeed, when properly understood as an employer's "genuine effort to broaden the applicant pools to include more qualified women and minorities," 70 percent of white people support affirmative action programs. Affirmative action does not guarantee jobs through preferential hiring; rather, it safeguards the opportunity for all qualified persons to apply for and to advance in employment and education.

State governmental and educational agencies are required, under federal equal opportunity legislation, to promote fair recruiting, admissions, hiring and promotion practices. The state would jeopardize access to billions of federal dollars if it prohibited affirmative action in the way HB55 suggests.

The purpose of affirmative action is to eliminate discriminatory practices. It should be dismantled only when discrimination itself is obsolete. Yet, despite enormous gains made in this country, women and minorities continue to face obstacles in the labor force and in education. An astonishing 70 percent of schools, for example, are not in compliance with Title IX—the federal education equal opportunity law passed in 1972. At the national level, for every dollar earned by men, women on average earn 74 cents, African American women earn 63 cents, and Latina women earn 57

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cents. Here in New Hampshire, there is evidence of continuing inequities, too. According to the Institute for Women's Policy Research, New Hampshire ranks 34th in the country for the pay gap between men's and women's annual wages. The average income for single women in New Hampshire, in 1998 dollars, was $16,229; for men, it was $23,723. It should come as no surprise, therefore, that 19.3% of New Hampshire women live in poverty, as compared to 13.5% of men.

These figures are the result of persistent historical discrimination in access to education and in recruitment, hiring and promotion practices by employers. The federal government purposefully included both government employers and higher education institutions under equal opportunity legislation. The federal law makes explicit the link between educational attainment and life-long earning potential.

Indeed, let me give you a snapshot in time to make my point. In the 1998-99 academic year, women represented 58 percent of the Bachelor's Degree candidates at the University of New Hampshire. Yet, women comprised only 22 percent of the student body in the College of Engineering and Physical Sciences. That percentage is quite alarming when we consider that UNH is one of only two schools in New Hampshire with an accredited engineering program—the other being Dartmouth College. In 1999, when UNH's engineering graduates entered the job market, only 12.4 percent of the 1,888 applicants for engineers, architects, surveying, and related technicians were women.

At the same time, the state is suffering from a shortage of engineers—so much so that it must import its labor force in the high-tech fields. Indeed, the New Hampshire Employment Security has become concerned enough by the increasing demand for engineers in the state that it published in October 2001 a report "Engineers in New Hampshire." The report states that "engineers have starting salaries significantly higher than those of other college graduates. . . . Across the wage spectrum in New Hampshire, engineering disciplines were about $10.00 per hour higher than wages for the total of all occupations." In fact, in 1999, when UNH graduates entered the labor force, civil engineers in New Hampshire made $25.09 an hour.

One of the single largest employers of engineers in New Hampshire is a state agency—the Department of Transportation. Presently, the department employs 144 engineers. Of these, 10 are women. At the same time, more than 50 of the positions in the department are currently unfilled because of lack of applicants. The department has created a comprehensive and model affirmative action plan to fill this gap. Inclusive recruitment and equal opportunity that makes best use of the state's labor pool is good business.

HB 55 assumes that New Hampshire too aggressively pursues affirmative action recruitment. I would like to suggest that, in comparison to neighboring New England state, New Hampshire does not do enough to encourage affirmative action policy. In comparison to our neighboring New England states, New Hampshire has no state-mandated affirmative action plan. Maine State Government, in contrast, is an Equal Employment Opportunity/Affirmative Action employer—by official state policy. Rhode Island, by executive order, requires affirmative action programs for state agencies. Governor Rowland of Connecticut has stated that "Affirmative Action is a program of positive action . . . to overcome the present effects of past practices, policies, or barriers to Equal Opportunity, and to achieve the full and fair

participation of women, blacks, Hispanics, and any other protected group found to be underutilized in the work force."

Affirmative Action programs acknowledge that hundreds of years of discrimination cannot be erased in a few decades. Equal opportunity legislation is a bridge between changing laws and deeply engrained cultural attitudes. If passed, HB 55 would make punitive the positive goal of actively including as applicants those groups previously excluded in the inner circles of governmental positions and higher educational institutions. The Commission on the Status of Women urges the Committee to vote HB 55 as inexpedient to legislate.

Respectfully submitted,

Theresa de Langis
Executive Director
Rm. 334, State House Annex
Concord, NH 03301

Sources

"Engineers in New Hampshire." Economic and Labor Market Information Bureau of New Hampshire Employment Security. October 2001.

"New Hampshire Affirmative Action, 1999." Economic and Labor Market Information Bureau of New Hampshire Employment Security. February 2001.

"Report on the Status of Women Students, 1998-1999." President's Commission on the Status of Women. University of New Hampshire-Durham. December 1999.

The Status of Women in New Hampshire. New Hampshire Commission on the Status of Women and the Institute for Women's Policy Research. November 2000.

Documents on Affirmative Action Policies in Maine, Rhode Island, and Connecticut were obtained from official state government websites. Copies of these documents are available to committee members upon request.

New Hampshire Commission on the Status of Women

FAST FACTS: AFFIRMATIVE ACTION

In the 1960s and 1970s, the federal government passed Equal Employment Opportunity (EEO) legislation to prohibit discrimination in hiring and promotion, thus protecting many individuals deemed to be of minority status. As with so many well-intentioned policies, EEO legislation could not affect change without a strong plan of implementation and policy review. So was born Affirmative Action. Affirmative Action is best understood as a recruitment tool designed to increase opportunities for qualified individuals of minority status to apply for jobs. The basis of Affirmative Action is to implement goals and guidelines that actively promote the aims of EEO legislation.

Under EEO and Affirmative Action regulations, establishing quotas or giving preferential treatment in hiring or promotion is explicitly illegal.

There are four basic types of Affirmative Action.

- Federal Contractors. Instituted by President Nixon, the law requires all firms with more than $50,000 in federal contracts and at least 50 employees to produce a written Affirmative Action plan. For an agency or business to successfully bid for federal contracts, they must produce a set of goals and written steps to promote fair hiring and promotion practices. The agencies and businesses are not evaluated on the number or percentage of minorities they employ but instead the effort they put forth.

- Government Agencies. Governmental agencies are required at the federal level to implement goals and steps to encourage employment opportunities. Some of these goals are recruitment methods that reach the entire pool of qualified candidates; developing and fully utilizing an employee's skills; training lower level employees to enhance promotion opportunities; and identifying target positions for which lower level employees may be eligible.

- Court Ordered. When a private business has been found guilty of discriminatory practices in employment, the court can order the adoption of an Affirmative Action program. In cases of gross discriminatory practices, the court can choose to institute quotas as part of their affirmative action plan. This type of situation is strictly the only instance where quotas are allowed under federal law.

- Voluntary Implementation. Employers may voluntarily implement affirmative action programs because they deem them to be ethical, cost effective, and good business practice. While voluntary, employers must adhere to EEOC guidelines so as to prevent any type of reverse discrimination.

Affirmative Action is a necessary tool in holding employers accountable to Equal Employment Opportunity legislation. Supported by the majority of the workforce, when Affirmative Action is appropriately defined as an employer's "genuine effort to broaden the applicant pools to include more qualified women and minorities," approximately 70% of white persons endorsed it.

- **Discrimination still exists in the workplace.**

White women and black men make approximately 74% of what white men make. Black women make 63%, Hispanic men make 62%, and Hispanic women make 57% that of their white male counter parts.

Since 1965, women and minorities have filed over 1.5 million discrimination complaints.

- **Affirmative action prevents employment discrimination.**

As a result of Xerox Corporation's voluntary adoption of an affirmative action program between 1964 and 1996, minority share of jobs rose from 3% to 27%.

After adopting an affirmative action, Merk and Co. increased its female representation among employees and managers by 5%.

National affirmative action programs in law enforcement have increased tenfold the number of female and minority police officers.

- **Affirmative action has no adverse effect on productivity and workers hired under affirmative action programs are as qualified as other candidates.**

A study of Chicago's 100 largest firms that spanned 13 years found no statistical relationship between their profit margin and their amount of women and minority employees.

A study involving many regions of the United States found that performance evaluations of women and minorities hired under affirmative action did not differ from the evaluations of persons hired outside of affirmative action plans.

- **Affirmative action is worth every penny.**

The estimated cost of enforcement and compliance of affirmative action in the United States is 1.9 billion dollars. In comparison, the projected inefficient use of African American's productive capacity is set at $138 billion.

In 1973, women earned on average 56 cents for every dollar that men earned. Today, in part due to the effects of equal opportunity legislation, women earn on average 74 cents to a man's dollar.

Sources:

Elliot, James. 1999. "Social Isolation and Labor Market Insulation: Network and Neighborhood Effects on Less Educated Urban Workers." *The Sociological Quarterly* 40:199-216.

Mitra, Aparna. 1999. "The Allocation of Blacks in Large Firms and Establishment and Black-White Wage Inequality in the US Economy." *Sociological Inquiry* 69:382-403.

Moreno, Paul. 1997. *From Direct Action to Affirmative Action*. Baton Rouge, Louisiana: Louisiana State University Press.

Reskin, Barbara. 1998. *The Realities of Affirmative Action In Employment*. Washington, DC: American Sociological Association.

Rosenfeld, Michel. 1991. *Affirmative Action and Justice*. Binghamton, NY: Vail-Ballou Press.

NEW HAMPSHIRE WOMEN'S LOBBY

PO BOX 1072 • CONCORD, NH 03302-1072 • PHONE 603-224-9105 • FAX 603-224-0033

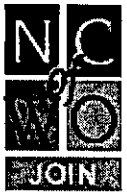
01/23/03
To: Executive Dept. & Admin. Committee
From: Sheila Evans

The NH Women's Lobby OPPOSES HB 55 *prohibiting preferences in recruiting, hiring, promotion or admission by state agencies, the university system, the regional community-technical colleges and the postsecondary education commission.*

The new language inserted into the existing anti-discrimination statute sets up limitations and government restrictions that would be an impediment to our economy and to our state agencies and education systems. **It creates more problems than it solves and it does nothing to improve New Hampshire.** The bill prohibits positive steps to end discrimination, including outreach, recruitment, training and notification. An example of recruitment would be when an employer develops ads to interest women in jobs usually done by men. To restrict such creativity goes beyond the scope of good government.

This bill is bad for our economy; research shows that outreach efforts and programs, termed "affirmative action" have contributed to women's progress in employment, education and business. Diversity strengthens the workforce by enlarging the pool of workers.

The issue of pay equity is still a problem; white women earn 74 cents for every white man's dollar; for African-American women it drops to 63 cents, and for Latinas it plunges to 53 cents. According to the Natural Academy of Sciences, between one-third and one-half of the wages difference between men and women cannot be explained by differences in experience, education or other legitimate qualifications. So what is going on and how does this bill help and not hurt the situation?



Issues & Projects

National Council of Women's Organizations

Top

AFFIRMATIVE ACTION AND WOMEN: A NATIONAL FACT SHEET

Affirmative gives qualified individuals equal access and equal opportunity to contribute their talents in employment, education, and business. It means taking positive steps to end discrimination. It is about ending a system of preferences, not starting one. Quotas are illegal. Successful affirmative action programs for women include, for example:

Outreach: A college designs a program to encourage young women in math and science.

Recruitment: An employer develops ads and brochures to interest women in jobs usually done by men.

Training: A union trains skilled craftworkers to mentor women in apprenticeships.

Notification: A prime contractor faxes women-owned businesses notices of contract solicitations.

AFFIRMATIVE ACTION

programs have contributed to women's progress. For example, in:

Employment: The proportion of women lawyers increased from 5% in 1970 to 28% in 1998.

Education: The percentage of medical degrees earned by women increased from 9% in 1970 to 41% in 1996.

Business: In federal highway construction, women's share of procurement dollars increased by 175% since 1987.

AFFIRMATIVE ACTION

needs to be strengthened, not eliminated, because, despite recent progress, women still have not achieved parity. For example, in:

Employment: Women represent only 5% of senior managers, 12% of clergy, 11% of engineers, 6% of machinists, and less than 3.5% of firefighters, carpenters, electricians, and pilots.

Earnings: Women earn only 73 cents for every dollar earned by white men; African-American women earn only 63 cents and Latinas earn only 53 cents for every dollar white men earn.

Education: Women receive only 12% of doctoral degrees in engineering and physics.

Business: Women-owned businesses receive less than 3% of the over $200 billion in federal procurement dollars.

SOURCES

Employment Statistics: Annual Average Tables from the January 1971 and 1999 Issues of Employment and Earnings.

U.S. Department of Labor, Office of Federal Contract Compliance. 1997. The Glass Ceiling Initiative: Are There Cracks in the Ceiling? Washington, DC: U.S. Government

01-23-03
To: Executive Dept.&Admin.Committee
From: Sheila Evans, NHWomen's Lobby

Re: HB55 *prohibiting preferences in recruiting, hiring, promotion, or admission by state agencies, the university system, the regional community-technical colleges, and the postsecondary education commission.*

PAY EQUITY DOES NOT EXIST

- Wages for women consistently fall behind men across all occupations and education levels.

- The wage gap for African-American women is 62.6 cents to a white man's dollar; for Hispanic/Latina women it is 53.9 cents and for white women it is 73 cents.

- According to the February 1998 issue of Working Woman, pay disparities exist across all industries. In 120 direct job comparisons, men earned more in 108 of the jobs.

- According to the National Academy of Sciences, between one-third and one-half of the wage difference between men and women cannot be explained by differences in experience, education, or other legitimate qualifications.

01-23-03
To: Executive Dept.&Admin.Committee
From: Sheila Evans, NHWomen's Lobby
Re: HB55 *prohibiting preferences in recruiting, hiring, promotion, or admission by state agencies, the university system, the regional community-technical colleges, and the postsecondary education commission.*

Study: It helps to have 'white name' in job search

Associated Press
Jan. 14, 2003 11:06 AM

CHICAGO - It helps to have a white-sounding first name when looking for work, a new study has found.

Resumes with white-sounding first names elicited 50 percent more responses than ones with black-sounding names, according to a study by professors at the University of Chicago Graduate School of Business and the Massachusetts Institute of Technology.

The professors sent about 5,000 resumes in response to want ads in The Boston Globe and Chicago Tribune. They found that the "white" applicants they created received one response - a call, letter or e-mail - for every 10 resumes mailed, while "black" applicants with equal credentials received one response for every 15 resumes sent.

The study authors, including University of Chicago associate professor of economics Marianne Bertrand, said the results can solely be attributed to name manipulation.

"Our results so far suggest that there is a substantial amount of discrimination in the job recruiting process," they wrote.

The professors analyzed birth certificates in coming up with what names to use. The white names included Neil, Brett, Greg, Emily, Anne and Jill. Some of the black names used were Tamika, Ebony, Aisha, Rasheed, Kareem and Tyrone.

Companies that purported to be equal opportunity employers were no more likely to respond to black resumes than other businesses, the study found.

Carolyn Nordstrom, president of Chicago United, a group that seeks to increase corporate diversity, said the study shows the need to educate those that make hiring decisions.

"We like to believe that this has changed, but this is evidence that it hasn't," she said.

Subj:	**HB55**
Date:	1/23/2003 10:11:06 AM Eastern Standard Time
From:	eholt20@attbi.com
To:	pfbergin@aol.com
Sent from the Internet (Details)	

Dear Sir,
I am white, I am a resident of Fremont, NH and I oppose this bill and any attempt to end or weaken affirmative action. Until we can clearly demonstrate that one's race, gender, religion, or ethnicity are not barriers to obtaining both jobs and education we will continue to need to have affirmative action programs. We have not done this, either in New Hampshire or in the nation. It is to the benefit of all of us, myself as well as those still discriminated against, to provide equal opportunity for all. Until we do this we must retain affirmative action programs in our schools, our businesses and our government. Where help is needed we must provide help. Where this society is the source of problems our responsibility is all the greater. DO NOT RETREAT. Oppose HB55 as I do.
Eric R. Holt
9 North Road
Fremont, NH 03044

Subj:	**HB 55, Please record my support**
Date:	1/24/2003 8:45:00 PM Eastern Standard Time
From:	armlaw@hotmail.com
To:	pfbergin@aol.com
Sent from the Internet (Details)	

Peter....Since I was unable to attend the public hearing on the captioned, I noted that you have been assigned Chairman of the sub committee to deliberate on the contents. I want the record to show that I will honor my subscribed oath and will support and maintain the New Hampshire Bill of Rights and wish to be recorded as supporting the enactment of this most important proposed statute as it merely places a statutory focus on Article Two of the Bill of Rights. It is beyond my comprehension as to why we must statutize constitutional rights unless it is because many fail to understand that rights can not be diminished. Perhaps this will raise the level of public awareness to that which is needed to recover the republic that has been lost. I too, have a Bill to establish Article 14 of the Bill of Rights as a statute. I believe that the attorneys that draft these bills should include a penalty clause for violation of the statute. My bill does not have a penalty clause and I am thinking of amending it. Have you any thoughts on my dilemma?. Sincerely, Dick Marple, Merrimack #37

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Subj:	**HB55**
Date:	1/24/2003 8:49:42 PM Eastern Standard Time
From:	itsenh@attbi.com
To:	pfbergin@aol.com
Sent from the Internet (Details)	

Rep. Bergin,

I am sorry that I was unable to attend the hearing on HB55. I testified last year.

It is fact that the University of New Hampshire hires and admits preferentially based on gender and race. This is a stated policy. This can be resolved in either of two manners. End the practice, or amend the New Hampshire Consititution to allow such practices.

Rep. Dan Itse

Subj:	**Rep. Harrington's anti-affermative action bill**
Date:	1/25/2003 6:31:55 PM Eastern Standard Time
From:	bridge@sugar-river.net
To:	pfbergin@aol.com
Sent from the Internet (Details)	

The following is the text of my message to Rep. Harrington. I hope you share my support of his bill.

"My congratulations for having the courage to stand up and point out the hypocrisy of the whole Affirmative Action concept.

Mr. Rogers says UNH doesn't engage in such conduct but if not, why does he protest to strongly.

I encourage you and Seen. Sapareto to push this issue as hard as you can."

Ernie Bridge, Unity
UNH "63"

Subj:	**RE:**
Date:	1/29/2003 4:43:15 PM Eastern Standard Time
From:	kmcargill@attbi.com
To:	PFBergin@aol.com
Sent from the Internet (Details)	

Hi, Peter.....the questions I have are on the intro to the letter copy that I sent to both of you ???? Racks ? Minimums ? Either can e-mail me the answers please ? Thanks ! k

-----Original Message-----
From: PFBergin@aol.com [mailto:PFBergin@aol.com]
Sent: Wednesday, January 29, 2003 4:36 PM
To: kmcargill@attbi.com
Subject: Re:

Kerry,

Thanks

Craig called and gave me his cell 206-402-9323. If you need any help or have any questions, call him.
Peter

Subj:	**HB 55**
Date:	1/24/2003 9:29:04 PM Eastern Standard Time
From:	redryder82@metrocast.net
To:	pfbergin@aol.com
CC:	nhhra@yahoogroups.com
Sent from the Internet (Details)	

Sir: I do not recall meeting you but here we are in the same House, so to speak.
I am Elbert Bicknell, Rep for District #73 (along with four others) any way, I will not bore you with long story and antidotes but, at this time I would like to voice my strong support for HB 55. We need it, we want it, and we deserve it, as People of NH, not as one color or ethnicity or type of religion. We are all the same and the only way it will be realized by all, is when we stop giving preferential treatment to some. please support this bill. and thanks for taking the time to read this
sincerely Elbert Bicknell

Subj:	**Preferential Treatment Bill**
Date:	1/24/2003 9:34:51 PM Eastern Standard Time
From:	pingbretson@stowetel.com
To:	pfbergin@aol.com
Sent from the Internet (Details)	

Rep. Bergin

Just wanted to let you know I am in support of ending preferential treatment as recommended in HB55. Will likely join in a floor fight to pass.

Thanks Rep. Paul Ingbretson Dist 13

Subj:	**HB55**
Date:	1/25/2003 3:41:18 AM Eastern Standard Time
From:	rjwg75@screaminet.com
To:	pfbergin@aol.com
CC:	nhhra@yahoogroups.com
Sent from the Internet (Details)	

Dear Rep. Bergin -

I write in unequivocal support of HB55, which has been assigned to your subcommittee for action. Discrimination **for** people based upon natural features is as wrong as discrimination **against** people for natural features. One cannot advantage a group at the expense of opportunity for another group. It is especially egregious when government is the force behind such discrimination.

Please report this bill out of subcommittee as OTP. Any other finding permits the reprehensible policy of government sanctioned discrimination on the basis of race, creed, or other physical features. Neither Dr. King nor President John Kennedy envisioned a system where natural features trumped aptitude.

Sincerely,

Bob Giuda
State Rep.
Grafton 13

Subj:	**HB55**
Date:	1/25/2003 12:24:24 PM Eastern Standard Time
From:	Repbuhl
To:	PFBergin

Dear Rep. Bergin:

I am writing you to express my strong support for HB55. It is important for the legislature to express its clear intent that the discrimination associated with affirmative action programs and quotas is wrong. Those who lose out because they're the wrong color end up bitter, while those who "benefit" can go through life with the essence of an asterisk associated with their activities. Such discrimination also violates the 14th Amendment's spirit and guarantee of equal protection under the law relative to the expenditure of public money.

Thank you, and hope to meet you and/or other committee members on the 29th.

Rep. Dave Buhlman
District 66 Hudson-Pelham, MCG Committee

Subj:	**Rep. Harrington's anti-affermative action bill**
Date:	1/25/2003 6:31:55 PM Eastern Standard Time
From:	bridge@sugar-river.net
To:	pfbergin@aol.com

Sent from the Internet (Details)

The following is the text of my message to Rep. Harrington. I hope you share my support of his bill.

"My congratulations for having the courage to stand up and point out the hypocrisy of the whole Affirmative Action concept.

Mr. Rogers says UNH doesn't engage in such conduct but if not, why does he protest to strongly.

I encourage you and Seen. Sapareto to push this issue as hard as you can."

Ernie Bridge, Unity
UNH "63"

To: PFBergin
CC: harringt@metrocast.net

Peter:

I am sorry I couldn't make the hearing for HB 55. I am in favor of the bill. The concept is very simple. If racial or ethnic prejudice is wrong, then it is wrong. Whether some newly "politcally correct" group is helped or not, does not change the basic premise of the whole civil rights movement. We should all be judged on our merit and performance, otherwise some people are being denied their rights.

Ken Weyler

Subj:	**OTP HB 55**
Date:	1/26/2003 6:53:06 AM Eastern Standard Time
From:	jbuttolph@adelphia.net
To:	pfbergin@aol.com
Sent from the Internet (Details)	

Dear Rep. Bergin -

I remember years ago, when I was in IBM management training, I was in a class where we were being taught the intricate details and subtleties of how we were expected to enforce affirmative action legislation in our practices of appraising and promoting employees. There would be special development plans for "protected class" people, and we were expected to make every effort to advance those who fell in these categories in order to satisfy government auditors. For example, although there were few African Americans who our college recruiters could convince to move to Owego NY where we were based, we were expected to ensure that there was a certain percentage of people of African American background within our promotion plans.

While this seemed unfair to me, and I repeatedly asked the personnel instructor how this squared with the equal rights legislation that we were also expected to enforce, I felt sympathy for the poor gentleman who was charged with explaining these two obviously contradictory concepts to a roomful of IBM engineers.

However, during this session, a most disturbing consequence of this affirmative legislation became obvious to me for the first time. I noticed a second level manager in the corner who happened to be of African American origin. He was getting increasingly uncomfortable with the discussion, and eventually spoke out. I will never forget it. He was usually a mild mannered gentleman. He was bright, compassionate and extraordinarily talented, but he lost his temper. He was appalled. It was finally clear to him that any advancement he would accomplish at IBM in his career would be forever tainted by the reality that perhaps he was promoted not because of his talents, skills, work and determination, but simply because of the color of his skin. He realized that many would always doubt his accomplishments as having been truly earned.

Affirmative action is championed in this country by well meaning people who do not understand that, in the end, they are hurting the very people that they are trying to help. They are, by their actions, forever tarnishing the accomplishments of so called "protected class" people, watering down their achievements and casting doubt on their legitimacy. At IBM, it was clear. Anyone who was black in IBM management got there not because he or she earned it. Instead, he or she got there because of unjust affirmative action legislation that placed them ahead of their peers simply due to the color of their skin.

If discrimination is wrong, it is wrong for everybody.

Please report HB 55 out of subcommittee as OTP.

Sincerely,

Jim Buttolph
Rumney, NH

Subj:	**Bill HB55**
Date:	1/27/2003 9:50:08 AM Eastern Standard Time
From:	michael_makowicz@fpl.com
To:	pfbergin@aol.com
Sent from the Internet (Details)	

Peter, I strongly support house bill HB55, which prohibits preferential treatment based on race, sex, nationality, religion, or sexual orientation. I do not believe such preferential treatment is in accordance with our constitution, in society's best interest, or fair to individuals.

Mike Makowicz

Subj:	**HB 55**
Date:	1/28/2003 5:39:06 PM Eastern Standard Time
From:	Reintrone
To:	PFBergin
CC:	Reintrone

Rep Bergin–just a quick note to give my support of HB 55. I have had several calls from my constituents in Londonderry and Auburn stating their support. After all, it comes directly from Article 2 of the NH Constitution. I have heard that the testimony was rather overwhelming in quantity from the UNH group, but I do not believe that is the majority view not the right view. Thanks for your consideration. Do what is Right!
Bob Introne
State Representative
Londonderry/Auburn

Subj:	**HB 55**
Date:	1/28/2003 2:30:58 PM Eastern Standard Time
From:	scotsmannh@attbi.com
To:	pfbergin@aol.com
CC:	harringt@metrocast.net

Sent from the Internet (Details)

Dear Mr. Bergin,

I am writing to you to express my support for Representative Harrington's bill (HB 55) that is intended to codify the elimination of preferential treatment by state agencies. To me, this is an issue of FAIRNESS, pure and simple.

To me, HB 55 seems like a logical slam-dunk in fairness for all and preference for none. The phrase "with liberty and justice for all" resonates in the Harrington Bill. I find it amazing that so many people believe that being fair to all is somehow being unfair.

One should ask if the bill fails, how much preference and for whom will be considered fair?

Cal Bowie
58 Trenton Street
Manchester, NH 03104
623-6256

Subj:	**HB 55**
Date:	1/28/2003 8:06:57 AM Eastern Standard Time
From:	trottcx@NU.COM
To:	pfbergin@aol.com
CC:	michael_harrington@fpl.com
Sent from the Internet (Details)	

Dear Sir:

I want to express my support for HB 55. I strongly believe we are all equal under the eyes of God and people should be judged solely on the content of their character. I recognize that discrimination exists and certain people, by virtue of their birthright or circumstances, are disadvantaged in this country. However, I do not believe this ill is cured by potentially discriminating against others. I would hope the supporters of Affirmative Action would strive to provide education and guidance to the less advantaged rather than spending resources to potentially encourage discrimination against others.

Thank You.

Craig M. Trottier
Goffstown, NH

Subj:	**HB55**
Date:	1/27/2003 10:03:56 PM Eastern Standard Time
From:	ljb@metrocast.net
To:	PFBergin@aol.com

Sent from the Internet (Details)

Rep. Bergin, I am in total support of HB 55. I plan to be at your sub-committee meeting on the 29th. I was not able to make the presentation that Rep Harrington made to the comittee last week, and was happy to hear it was given to a sub-committee. Will there be any timer to speak Wed. a.m.? Rep Laurie Boyce

Subj:	**HB 55**
Date:	**1/27/2003 8:22:28 PM Eastern Standard Time**
From:	ftroop444@earthlink.net
To:	pfbergin@aol.com
CC:	Harringt@metrocast.com

Sent from the Internet (Details)

Dear Mr Bergin,
I am writing to express my support for House Bill HB 55. I believe this is is long overdue. It is unfortunate that the hearing was full of the professional Affirmative Action people who are paid to attend these sessions. Working people cannot take time off of work to attend these sessions so the voice of the majority goes unheard.
Sincerely
Mark C. Franklin
Strafford NH

Mark Franklin
ftroop444@earthlink.net
Why Wait? Move to EarthLink.

Subj:	**HB55**
Date:	1/27/2003 1:46:13 PM Eastern Standard Time
From:	dmcallister@fire.mv.com
To:	pfbergin@aol.com
CC:	harrington@metrocast.net
Sent from the Internet (Details)	

Dear Mr. Bergin

Please consider this E-mail support for HB55.

Don McAllister
2614 Dick Brown Road
Bridgewater, N.H.

Subj:	**HB 55**
Date:	1/27/2003 1:36:57 PM Eastern Standard Time
From:	cantdog@attbi.com
To:	pfbergin@aol.com
Sent from the Internet (Details)	

Dear Mr. Bergin,

I am contacting you to make it known that I am in favor of HB 55.

Sincerely,
Julie Smith
8 Sapling Circle
Apartment 7
Nashua, NH 03062

Subj:	**Support HB55**
Date:	1/30/2003 6:06:00 PM Eastern Standard Time
From:	ccsc@metrocast.net
To:	pfbergin@aol.com
Sent from the Internet (Details)	

Mr. Bergin:

It is entirely fitting that we be discussing HB 55 so close to Martin Luther King's holiday. Rev. Dr. King is best remembered for his dream of a society where his children would be judged "not on the color of their skin, but on the content of their character." HB 55 strives to ensure we have exactly that kind of society.

Any preferences granted on the basis of "race, creed, color, sex or national origin" are in direct contradiction to the Constitution of the State of New Hampshire and to that vision. In California, where similar legislation was overwhelmingly approved by voters, the minority attendance at and graduation from state colleges has significantly increased.

HB 55 calls our state to its best. To judge people completely on the basis of their achievement. I urge you to support it.

Respectfully,
Kurt Wuelper
1336 Parker Mountain Road
Strafford, NH 03884

Subj:	**HB-55**
Date:	1/28/2003 7:10:28 PM Eastern Standard Time
From:	JTwo101588
To:	PFBergin, nhhra@yahoogroups.com

Rep. Bergin:

I signed on to co-sponsor HB-55 because I felt we in New Hampshire had to stand up for what our New Hampshire Constitution addresses in Art.2 Part First in the Bill of Rights. What better place to exercise this Constitutional fact but at a place where we have some control as legislators, the University System.

My life experiences tell me that people are more proud when they have been given the opportunity to perform and demonstrate their abilities versus being given preferencial treatment and thereby compromise the outcome of their effort.

No where is this better demonstrated than in the US Military were job performance is the key to success. Skin color is not an issue and is not part of the evaluation process for promotion.

Peter, I would hope your group would look at this bill as a great opportunity to align New Hampshire's policies with what Martin Luther King had for a vision of America. Thanks. Rep. Jim Twombly

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West Point and White House go opposite ways on diversity

By Wayne Washington, Globe Staff, 2/2/2003

WASHINGTON - The United States Military Academy at West Point sets goals to achieve racial diversity in its student body, a practice that the Bush administration has opposed in legal briefs filed in the affirmative action case at the University of Michigan.



Colonel Michael L. Jones, director of admissions at West Point, said the academy, which has trained such military luminaries as Douglas MacArthur and George S. Patton, sets a goal of having blacks make up 10 percent to 12 percent of its student population.

Bush administration lawyers said the effort for a targeted range of minority student enrollment at Michigan was akin to a quota system. Although West Point likewise sets specific recruitment goals, a White House spokesman, Scott McClellan, denied the two systems were similar.

"What we're addressing in the Michigan case is the University of Michigan's policies," McClellan said. "It is a race-based policy. That was the wrong way to achieve diversity."

There were no plans, he said, to challenge the admissions policies at West Point or any of the other service academies.

Unlike admissions officials at the University of Michigan, those at West Point offer no extra points in considering the applications of minority students. The Bush administration says that awarding points based on an applicant's race amounts to the establishment of a quota system, McClellan said.

At West Point, Jones said, admissions officials rely on aggressive, targeted recruiting that would increase the number of minority applicants who meet the school's rigorous academic and physical standards.

But supporters of affirmative action have said that even the stated goal of having African-Americans make up 10 percent to 12 percent of the student population at West Point would probably be impermissible if the courts rule the way the Bush administration urges them to in its briefs.

"It's remarkable that this administration hasn't questioned the affirmative action programs for our military academies," said Senator Edward M. Kennedy. "Clearly, diversity in our military is a national priority. But it's also a national priority for our colleges and universities, which are the gateways to opportunity. If we followed the administration's policies, we'd be a lesser nation, a lesser society."

The US Military Academy at West Point, the Naval Academy in Annapolis, Md., and the Air Force Academy in Colorado Springs, Colo., are in unique positions. While public universities tend to be state entities that draw students from their area, the military academies take in students from across the country. And they serve as a major source of officers for the armed services.

In addition, military leaders have long stressed the importance of having the armed services reflect the diversity of the country they protect.

None of the military academies come close in that regard, and the Bush administration's brief makes it clear that the administration prefers race-neutral efforts.

That emphasis might seem like a conflict with having a stated percentage goal for a minority group, but Jones said West Point simply wants a diverse corps of officers. The extra recruiting efforts that target minority students have not drawn criticism from whites, Jones said, because they already know about opportunities at the academy.

Admissions officials at each of the academies have said they want a student body that is diverse, but only those at West Point have a specific range they want to reach.

"There's no need to have a target," said Rollie Stoneman, the associate dean of admissions at the Air Force Academy.

Stoneman said he and his colleagues also try to increase the number of applications they receive from minority students. But when he was asked why the Air Force Academy does not set goals in an effort to have its student population reflect the population, he said: "We haven't needed it."

Blacks, who make up slightly less than 13 percent of the US population, account for 5.6 percent of the student population at the Air Force Academy. Hispanics, 13 percent of the US population, are just under 6 percent of the student population.

At West Point, Hispanics are reported to involve 6.3 percent of the student population. Just over 8 percent are black.

Hispanics make up 8.2 percent of the student body at the Naval Academy. Blacks are reported to account for 6.1 percent of students.

Affirmative action supporters and even some who oppose focusing on race to achieve diversity say the Bush administration's briefs in the Michigan case tends only to confuse things.

"It's hardly a brief that a lot of conservatives wanted," said Abigail Thernstrom, a conservative member of the US Commission on Civil Rights. "I think they've done something odd, which is to jump in but not really tackle the central issue."

The briefs, one of which challenges the admissions policies at Michigan's law school and another that disputes its undergraduate admissions system, offers some comfort for both supporters and opponents of affirmative action.

At one point, Bush administration lawyers write: "Measures that ensure diversity, accessibility, and opportunity are important components of government's responsibilities."

UNIVERSITY OF NEW HAMPSHIRE

Department of English
College of Liberal Arts
Hamilton Smith Hall
95 Main Street
Durham; New Hampshire 03824-3574

Michael O'Neil
Chair, Executive Departments and Administration Committee
State House
107 N. Main
Concord 03301
January 26th, 2003

Dear Sir,

As both a new Hampshire resident (Durham, NH) and a faculty member at the University of New Hampshire, I am writing in regards to HB 55. I urge the Committee to vote no on the proposed changes. Employers, admissions officers, and others who hire and admit workers, students, and colleagues ought to be free to pursue the goal of a fully integrated and diversified community, one that both accurately reflects the community and enables us to pursue the dream of full and equal access for all citizens. Affirmative action is not about quotas: it is about affirmatively ensuring that those who historically been denied access to the benefits of full participation in American society have access to those benefits. The State of New Hampshire has an affirmative obligation to participate in that goal.

HB 55 is especially harmful when applied to university settings. Opponents of Affirmative Action argue that "less qualified" students of color take the place of "more qualified" white students. Not so: we admit students and hire colleagues based on a number of important qualifications and complementary goals. We want individuals whose talents, ambitions, abilities, and life experiences will provide the members of our community with a full education about the diverse circumstances in which people around the country and around the globe live. Those qualities cannot be codified solely by scores and grades; they are assessed by the individual's own statements, their drive to succeed, the activities that evidence their commitment to their own education and to making their communities and themselves better people. An individual's experience of race makes a significant contribution to how they view the world and their ability to affect positively the university community. The university ought to be free, in the interests of a more talented and committed student body or faculty, to consider those factors. The state should not prohibit the university from exercising its obligation to all its applicants and to all its students.

Moreover, affirmative access to the university, its classes and its staff and faculty positions, provides a larger community benefit. Derek Bok and William Bowen, in their exhaustively researched demographic study, The Shape of the River, eloquently make the case that universities with affirmative commitments to student and faculty diversity provide all members of their campuses with better educational experiences. In addition, their longitudinal comparative study of minority and white students found that minority students outperformed their white classmates after graduation, in their involvement in their communities, their charitable contributions, their volunteer activities, and their leadership roles. At the University of New Hampshire, we have an obligation to train those future leaders, regardless of race or ethnicity.

I hope the members of your committee will study the facts of the New Hampshire situation, free from rhetoric, poiltical maneuvering, and cynical manipulating of misunderstanding and mistrust. New Hampshire residents deserve better.

Thank you for your consideration.

Sincerely yours,

Lisa MacFarlane

Lisa MacFarlane
Associate Professor of English and American Studies

General Counsel's Office
University System of New Hampshire
Dunlap Center
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February 11, 2003

The Honorable Peter F. Bergin
House of Representatives
Executive Departments and Administration Committee
Room 100 – State House
107 N. Main Street
Concord, NH 03301

RE: House Bill 55

Dear Representative Bergin:

At your subcommittee's work session on Tuesday, February 4, you asked us to provide some further information regarding student completion rates at the University of New Hampshire. Those rates are most often expressed as the percentage of full time students who graduate within six years of matriculation ("six-year completion rates"). For the class entering UNH in the 1996 academic year (the most recent class for which the six-year completion rates are available), the completion rates for minority and non-minority students are virtually identical – within a couple points on either side of seventy percent. The experience at UNH has been the same over time with the rates varying only slightly from year-to-year; the minority student completion rate is higher in some years than the non-minority rate and lower in others. The same holds true across the other institutions of the University System.

I would like to take this opportunity to thank you and the members of your subcommittee for the careful consideration you have given to this very important issue and, in particular, for permitting us to describe the reasons why we believe House Bill 55 should be voted "inexpedient to legislate." Principal among those reasons are the following:

- The University System of New Hampshire does not in any way shape or form use quotas, set asides, or numerical evaluations that assign points on the basis of one's race, ethnicity, national origin, sex or religion

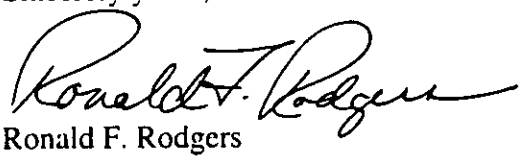
- The University System admits every qualified New Hampshire student solely on the basis of their ability to succeed at our institutions and without consideration of any other factor.

- The University System, along with every other major employer in the public and private sectors, complies with its obligations under Executive Order 11246 to be an equal opportunity and affirmative action employer. HB 55 explicitly takes into account this important reality and would permit the University System to continue to do just exactly what it is and has been doing.

- The United States Supreme Court is currently considering two student admissions cases from the University of Michigan – the outcome of those cases will likely have a significant impact on our understanding the application of the Equal Protection Clauses, both state and federal, to the area of student admissions.

I hope this information is helpful to you and your subcommittee. Please let us know if we can answer any further questions you may have and, again, thank you for this opportunity to comment on House Bill 55.

Sincerely yours,



Ronald F. Rodgers
General Counsel and Secretary

Cc: Chancellor Stephen Reno
Kathleen Salisbury

February 1, 2003

The Honorable Peter Bergin
New Hampshire House of Representatives
Concord, New Hampshire
Subject HB 55 (The non-discrimination bill)

Dear Mr. Bergin:

I am in support of HB 55 and would like this letter to represent and document that position.

At the time of the hearing on HB 55, on 23, January, I was involved in other committees and unfortunately unable to attend and give my testimony. I was advised, later, on the same day of the subcommittee hearing that there was in fact to be a subcommittee meeting at 0900 on The 29th of January. I made it a point to attend that meeting so that I may present my testimony to the subcommittee.

When I appeared prior to 0900 to testify, in room 100, I was informed that no testimony would be taken so I left. I had other committee assignments to check into. I am a freshman Representative and as one I am still learning the rules of the House, so I would ask for a clarification on a procedural issue. Do the rules of the house or Masons Rules, permit a subcommittee or maybe in this instance the chairman, the option of allowing some individuals representing one side to speak, in this case the University of New Hampshire, while not allowing myself and other State Representatives, representing the other side, the same opportunity to provide testimony? I ask this as I have heard that testimony had been given at the subcommittee hearing. Also sir, Is it not a fact, according to House Rule 43 (c) that any notice for subcommittees must be posted or if you prefer, announced, in the House Calendar? I did not happen to see such a posting, but then maybe the deadline came and went and it was posted on the door or else where, that I did not see. I hope I am not out of order in requesting this from you. I just want to do what is right according to the House Rules and Mason Rules.

My written testimony follows:

1974 was a very good year. Why you may ask? Because it was in that year that the State of New Hampshire amended our Constitution to eliminate discrimination through out the whole of the State. At least that is my definition of a part of our Constitution. If I may, Mr. Chairman, I refer the committee to: part the first, (article) 2 (Natural Rights): I will not quote it here but ask that all members look it up and read for themselves what those members of the House and Senate, at that time, as well as the people of New Hampshire, meant, when they voted to include that last sentence in that particular article of our Constitution.

Therefore, many of you may be able to see my dilemma, when I later read that the President of the University said something to the effect, " that the university now has 450 undergraduate of color and still have a long way to go". (Emphasis is mine).
Does this in fact mean the University policy is giving preference to individuals whose skin color is other than white? Does this mean discrimination based on a subjective

measurement, such as the color of ones skin, is the criteria for admissions? Seems to me, that if this is so then it is in direct violation of our Constitution, as sited in, Part the First (Article) 2.

Quality should be the qualification for admission and employment at our State Universities and else where. Prejudice against any particular color is discrimination. It does not matter whether it's against black, yellow or white, its DISCRIMINATION.

In closing let me do so with a question, though it be rhetorical, If in fact our University's do not have a policy of discrimination, as they profess, why then are they against this bill?

Thank you Mr. Chairman and committee members for listening (reading) this and please, this bill, all it does, is codify that article of the Constitution we have addressed, thank you again.

Respectfully



Represenetive: Elbert Bicknell
District # 73

Cc:

The Honorable Michael O'Neill

The Honorable Speaker Gene Chandler

Hon O'Neil

David Scott

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January 31, 2003

The Honorable Peter Bergin
New Hampshire House of Representatives
Concord, New Hampshire

CC: The Honorable Michael O'Neill
The Honorable Speaker Gene Chandler

Subject HB 55 - The non-discrimination bill

Dear Mr. Bergin:

I am in support of HB 55 and would like to document that support. I would also like clarification on procedure.

At the time of the hearing of HB 55 on January 23 at 10:00 AM I was involved in other business and was unfortunately unable to attend and provide my testimony. I was pleased to hear that there would be a subcommittee meeting at 9:00 am on the 29th of January and made it a point to attend that meeting to provide my testimony.

Even though I appeared at 9:00 and filled out the pink card and waited for my opportunity to speak in support of the bill, I was not called, even though I spoke up and asked to be called.

I am a freshman Rep and still learning the rules of the House and I would like clarification on a procedural issue. Do the rules of the house permit a subcommittee chairman the option of allowing two individuals representing one side to speak, in this case the University of New Hampshire, while not allowing myself and two other state reps representing the other side the opportunity to provide testimony?

My written testimony follows:

I joined the regular army when I was 17 and that was before the US army had been desegregated. At that time I felt the army was wrong both morally as well as from an efficiency standpoint to discriminate based on the shading of one's skin color. Therefore I was delighted to find that the army eliminated color barriers and became integrated shortly after I was discharged.

In 1974 the State of New Hampshire amended their constitution with an overwhelming majority to eliminate discrimination in all state and state sponsored organizations. Consequently I was puzzled when I read that the new President of the University seems to be following a policy which is at variance with our constitution.

She said something like "we now have 450 undergraduate students of color and still have a long way to go." I don't think I know what "students of color" means, other than

university policy is to give preference to any individual whose skin color shade is other than white. Such discrimination based on some subjective measurement of skin pigment seems to me to be in violation of our constitution and is just plain wrong.

The testimony of Dr. Rubinstein of the University and their lobbyist Mr. Rogers seemed to be inconsistent. They both said that the University doesn't have a policy that discriminates, rather there are targets. Is a rose by any other name not a rose?

Quality not appearance should be the qualification for admission and employment at our state Universities. Since I am of Nordic ancestry and it is very likely that my future offspring will have a skin color at the far end of the color spectrum I feel particularly sensitive to skin pigment discrimination. My posterity should not be placed in an inferior position and to paraphrase Dr Martin Luther King Jr. There should come a time when a person is not judged by the color of his skin but by his ability and the content of his heart.

Finally, if the University of New Hampshire doesn't have pigment discrimination policy, why are they lobbying against this bill?

Respectfully,

David Scott

David Scott
District 71

February 1, 2003

The Honorable Peter Bergin
New Hampshire House of Representatives
Concord, New Hampshire
Subject HB 55 (The non-discrimination bill)

Dear Mr. Bergin:

I am in support of HB 55 and would like this letter to represent and document that position.

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When I appeared prior to 0900 to testify, in room 100, I was informed that no testimony would be taken so I left. I had other committee assignments to check into. I am a freshman Representative and as one I am still learning the rules of the House, so I would ask for a clarification on a procedural issue. Do the rules of the house or Masons Rules, permit a subcommittee or maybe in this instance the chairman, the option of allowing some individuals representing one side to speak, in this case the University of New Hampshire, while not allowing myself and other State Representatives, representing the other side, the same opportunity to provide testimony? I ask this as I have heard that testimony had been given at the subcommittee hearing. Also sir, Is it not a fact, according to House Rule 43 (c) that any notice for subcommittees must be posted or if you prefer, announced, in the House Calendar? I did not happen to see such a posting, but then maybe the deadline came and went and it was posted on the door or else where, that I did not see. I hope I am not out of order in requesting this from you. I just want to do what is right according to the House Rules and Mason Rules.

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Therefore, many of you may be able to see my dilemma, when I later read that the President of the University said something to the effect, " that the university now has 450 undergraduate of <u>color</u> and still have a long way to go". (Emphasis is mine).
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measurement, such as the color of ones skin, is the criteria for admissions? Seems to me, that if this is so then it is in direct violation of our Constitution, as sited in, Part the First (Article) 2.

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In closing let me do so with a question, though it be rhetorical, If in fact our University's do not have a policy of discrimination, as they profess, why then are they against this bill?

Thank you Mr. Chairman and committee members for listening (reading) this and please, this bill, all it does, is codify that article of the Constitution we have addressed, thank you again.

Respectfully



Represenetive: Elbert Bicknell
District # 73

Cc:

The Honorable Michael O'Neill

The Honorable Speaker Gene Chandler

Hon. Bergin

NEW HAMPSHIRE GENERAL COURT

House of Representatives
Executive Departments and Administration Committee

Hearing on:
House Bill 55

State House
Room 100
January 23, 2003

Testimony of:
Ronald F. Rodgers, General Counsel,
University System of New Hampshire

Mr. Chairman, Members of the Committee:

For the record, I am Ronald Rodgers, General Counsel of the University System of New Hampshire. I appreciate this opportunity to present testimony on behalf of the University System in regard to HB 55.

For the first time in nearly twenty five years the United States Supreme Court is set to hear and decide a case involving the intersection of the constitutional guarantee of equal protection under the law and the admissions policies of a public institution of higher education. For twenty five years public higher education, the students it serves, and the citizens of our country have analyzed, interpreted, debated and attempted the best we could to comply with law of equal protection while at the same time creating, preserving, and improving one of this country's greatest assets, its public colleges and universities. During that time we have seen the lower courts struggle with real cases involving real people, searching for immutable principles to guide their decisions and reaching disparate and often irreconcilable conclusions. Recently, a couple of states, tired of the seemingly interminable uncertainty, passed their own laws establishing a particular interpretation of equal protection within their own borders.

On April 1, the United States Supreme Court will hear oral arguments in twin cases from the University of Michigan, one involving undergraduate admissions and the other law school

admissions. We will have the benefit of the Court's decision and opinion by June at the latest. The attention being paid to these cases and the number of parties intending to file amicus briefs on all sides of the issue is enormous and, in the end, may be unprecedented. True enough, the Court's decision will not answer every question for all time on this topic – no case ever does – but all factors present suggest they will decide the most central of the issues on the merits. Importantly, because no two schools make their admissions decisions in precisely the same way, the Supreme Court does not just decide a case up or down, it issues an opinion, speaking more broadly on an area of the law, giving the lower courts and all interested parties principles and guideposts that will help inform the policies and decide the cases yet to come.

Because we are fast approaching what will likely be an historic juncture in the development of equal protection law, the University System believes that consideration of HB 55 should be deferred until after the Supreme Court issues its decision. At that point we will have a significantly clearer picture of the federal law backdrop against which this state law would be implemented. (Incidentally, we also will know more about our own state constitution, as the New Hampshire Supreme Court often looks to federal court decisions to guide its interpretations of our state's equal protection clause.) It is possible the Court's decision will obviate the need for any further consideration of the matter, at least insofar as the bill would apply to student admissions. Even if that is not the case, we will certainly have a better understanding of issues, legal and otherwise, that are the subject of this most important debate. A state legislative response that takes into consideration the pending Supreme Court decision and the accumulated wisdom offered during this considered process will be more accurate, more effective, and more likely to stand the test of time.

With that said, I want to be clear on four general points regarding the policies and practices of the University System. First, the mission statement of the University System of New Hampshire calls, in part, for our colleges and university to enroll a diverse student body – understanding diversity in the fullest sense of the word as including, among others, factors such as geographic, socio-economic, and experiential diversity, and always and in all ways clearly in line with our best understanding of our obligations under the state and federal laws. The sole purpose for this

approach, recognized explicitly in our mission statement, is to make our students' educational experiences the best they can possibly be. Diversity of people, experiences and ideas is an important element and aspect of the learning process, and a reality in today's world and global economy. It is also a value embraced by President Bush and underscored no less than four times in his brief statement announcing the administration's filing of amicus briefs in support of the student-petitioners in the University of Michigan case.

Second, let me also be clear the University System of New Hampshire does not in any way shape or form use quotas, set asides, or numerical evaluations that assign points on the basis of one's race, ethnicity, national origin, sex or religion.

Third, as we have said on many occasions, the University System admits every qualified New Hampshire student solely on the basis of their ability to succeed at our institutions and without consideration of any other factor. That has always been the case and our Board of Trustees is dedicated to ensuring that it always will be.

Finally, with respect to the provisions of this bill that would apply to the hiring and promotion of University System employees, we, along with every other major employer in the public and private sectors, meet our obligations under Executive Order 11246 to be an equal opportunity and affirmative action employer. This we must to do protect our eligibility for the substantial amount of federal funding that we and our students receive each year. HB 55 explicitly takes into account this important reality and would permit the University System to continue to do just exactly what it is and has been doing, thus raising the question, "Why take the time and effort to pass a law that has no practical effect?" We know of no good reason to do so.

For those reasons the University System respectfully requests this committee to vote House Bill 55 "inexpedient to legislate." Thank you very much for this opportunity to testify – I would be pleased to answer any questions you may have.

NH Community Technical College System

26 College Drive, Concord, NH 03301-7400
TDD Access: Relay NH 1-800-735-2964
E-mail: system@nhctc.edu

603-271-2722
1-800-247-3420
Fax: 603-271-2725

JOHN O'DONNELL, Ph. D
Commissioner

THOMAS WISBEY
Deputy Commissioner

The Honorable Michael O'Neil, Chairman
Executive Departments & Administration Committee
Room 100, State House
Concord, NH 03301

January 23, 2003

Reference: HB 55, prohibiting preferences in recruiting, hiring, promotion, or admission by state agencies, the university system, the regional community-technical colleges, and the postsecondary education commission.

Good morning Mr. Chairman and members of the Committee:

Thank you for the opportunity to present our concerns with House Bill 55 as its content relates to your Community Technical Colleges.

Let me first affirm that as a state agency and an Equal Opportunity Employer, the NH Community Technical Colleges abide by the New Hampshire State Constitution and all federal and state laws regarding employment and the federal Higher Education Act.

Our commitment is to provide quality education to all our constituencies. Furthermore, the Community Technical Colleges admit <u>all</u> applicants with a GED or high school diploma into our colleges. Open access is, in fact, the cornerstone to our mission...all are invited and welcomed to attend.

The Community Technical Colleges are, in effect, microcosms of our greater society. We are responsible for creating environments where understanding, tolerance and respect is modeled and can flourish, while providing the highest possible quality of education to meet the needs of New Hampshire's highly technical, entrepreneurial and interconnected economy. For these reasons, I respectfully ask the Committee to view House Bill 55 as unnecessary in light of the laws that currently exist within the state's Constitution.

Sincerely,

John O'Donnell, Ph.D.
Commissioner

Public overwhelmingly supports end to racial preferences

A recent poll conducted by the *Washington Post* shows how dramatically attitudes have hardened against racial preferences in recent years. Now almost no one in the general public supports affirmative action.

Question: In order to give minorities more opportunities, do you believe race or ethnicity should be a factor when deciding who is hired, promoted, or admitted to college?

Whites responded:	
NO	***94%***
Yes	3%
Don't Know	3%

Blacks responded:	
NO	***86%***
Yes	12%
Don't Know	2%

Men responded:	
NO	***92%***
Yes	5%
Don't Know	2%

Women responded:	
NO	***92%***
Yes	4%
Don't Know	4%

Democrats responded:	
NO	***87%***
Yes	8%
Don't Know	5%

Republicans responded:	
NO	***96%***
Yes	2%
Don't Know	2%

Source: A Washington Post, Henry J. Kaiser Family Foundation and Harvard University poll conducted by telephone March 8 - April 22, 2001, among a random national sample of 1,709 adults. Washington Post, July 10, 2001, p. A1

I have a dream that my four little children will one day live in a nation where they will not be judged by the color of their skin, but by the content of their character.

Martin Luther King, Jr.

Jeanie Holt, MS, ARNP
12 Farrar Road
Henniker, NH 03242
428-6144
January 23, 2003

RE: HB 55

Good Morning. Honorable Chair O'Neil and Committee members,

Thank you for this opportunity to speak with you today. My name is Jeanie Holt. I am from Henniker and I work in Manchester. I wish to speak in opposition to HB55.

I don't think this bill will address the real issue which is that there is a de facto preference already in our society which favors white, Anglo-Americans over all other ethnicities, cultures, and races. In the United States today whites are far more likely to attend college that Blacks or Latinos. While more than 20% of whites live in poverty, at least 50% of African-Americans, Latinos, and Native Americans are poor. Infant mortality, one of the most sensitive indicators of the health and well-being of a population, are more than twice as high among African-Americans as Anglo-Americans. So while the bill purports to be about eliminating preferences, the reality is that it is about eliminating "preferences" for minorities.

But more than opposing HB55, I want to speak in support of some form of preference for racial, ethnic and cultural minorities. The bill states that "nothing in this section shall be interpreted as prohibiting bonafide qualifications based on sex which are reasonably necessary to the normal operation of public employment, public education, or public contracting." I submit that race, ethnicity, and culture are also "bonafide qualifications" that should be considered. Let me speak of what I know, nursing. I work with a bilingual Puerto Rican nurse. I, too, speak Spanish. I study the cultural values of Latino cultures and have a reputation for being culturally sensitive when working with Latinos. But I can see the difference. Latinos respect and appreciate me. But they are comfortable with her. I can clearly see the difference between our abilities in reaching and teaching Latinos. She is more qualified.

A Black man, an athlete and hard-working New Hampshire man, told me of injuring his ankle playing with his sons. He went to a doctor in Manchester. When the doctor came into the room, he immediately put on gloves and then proceeded to "examine" the ankle by asking my friend to "point to where it hurts". "He never once touched my ankle," my friend told me. Do you think a Black physician would have hesitated to touch this man's black skin? Who would be more qualified to care for my friend?

And then there are the Latino and African-American mothers who tell me how they long for role models for their children who are not sports heroes. "My son loves computers and hates sports but he can't imagine being an engineer because he doesn't see anyone who looks like him in those jobs." Who is qualified to be a role model for that child?

These are not isolated incidents. I hear stories like this almost daily.

I have another reason for supporting a preference for racial, ethnic, and cultural minorities. It provides a better education for my own children and a better work environment for myself. I recently heard Governor Benson speak. He commented on the growth of Cabletron to the point of having a world wide network. He said that sometimes it was difficult and challenging to work with such diversity but he also saw how that very diversity stimulated broader, more creative thinking which he believes contributed to Cabletron's success.

I do not advocate a quota system which admits people strictly on the basis of their racial or ethnic background. I am advocating a system which values race and ethnicity as ONE qualification to be considered along with other factors. Recruiting people with a variety of qualifications and achieving the value that this brings may require some "preferences" in recruiting, hiring, or admission. Vale la pena. (it is worth the pain) As the Puerto Rican nurse I mentioned earlier points out, "even if I had gained admission by some sort of preference system, I took all the same exams, I wrote all the same papers, and when I sat down to take my Board exams, the computer had no idea I was Latina."

If we truly want to eliminate preferences, let's start with the system of white preference. When our professions, our legislatures, and our public institutions reflect the faces America, then we will know we have eliminated preferences. But at that point a bill to eliminate preferences won't be necessary.

TESTIMONY OF ROGER CLEGG
VICE PRESIDENT AND GENERAL COUNSEL OF
THE CENTER FOR EQUAL OPPORTUNITY
SUBMITTED TOTHE NEW HAMPSHIRE HOUSE OF REPRESENTATIVES
EXECUTIVE DEPARTMENTS AND ADMININSTRATION COMMITTEE
RE: HB 55, PROHIBITING PREFERENCES IN RECRUTING, HIRING, PROMOTION, OR ADMISSION BY STATE AGENCIES, THE UNIVERSITY SYSTEM, THE REGIONAL COMMUNITY-TECHNICAL COLLEGES, AND THE POSTSECONDARY EDUCATION COMMISION
JANUARY 23, 2003

I am submitting this statement with regard to HB 55. This is very important and very desirable legislation, and I am delighted that it has been proposed and am happy to discuss it with the committee today, and appreciate the invitation to do so.

My name is Roger Clegg, and I am vice president and general counsel of the Center for Equal Opportunity, a nonprofit, nonpartisan, Section 501(c)(3) tax-exempt research and educational organization based in Sterling, Virginia. We focus on civil rights, bilingual education, and immigration issues nationwide. The president of our organization is Linda Chavez.

I am a graduate of Rice University and Yale Law School. After clerking for a federal appellate judge, I served in the U.S. Department of Justice from 1982 to 1993, including four years as a deputy in the civil rights division, where I supervised appellate litigation. In 1993 I left the department and since then have done a great deal of research, writing, and speaking on civil rights laws and issues. In recent years I have focused much of my attention on the civil rights laws and enforcement policies of the federal government. My statement will be focusing on racial and ethnic discrimination, because it is the most controversial and the most likely to be affected by the proposed bill.

The Need for the Legislation

Article II of the New Hampshire Constitution guarantees that "Equality of rights under the law shall not be denied or abridged by this state on account of race, creed, color, sex or national origin," and a New Hampshire statute already makes it illegal for individuals to be "in any way favored or discriminated against" in the classified service. The U.S. Constitution and a variety of federal civil rights laws also ban racial and ethnic discrimination by the states. But there are those who are willfully blind to these bans. While, as I discuss in greater detail below, I think it is clear that this discrimination is already illegal under federal law, the fact of the matter is that state legislation is still needed, because many state agencies continue to discriminate anyhow.

The University of New Hampshire, for instance, entered into an agreement with the Black Student Union there on November 10, 1998, that set out a series of goals, including: adding 50 black students each year until a target of 300 students is reached in 2004; a total of 10 black tenure track faculty by 2003; and no fewer than two black visiting scholars per year through 2003. It is inevitable that "goals" like these will become quotas—if they aren't to start out with—and it will certainly result in some candidates being either "favored or discriminated against" because of race.

Unfortunately, this kind of discrimination—using quotas, goals, guidelines, or timetables—is very common, in both employment and university admissions. The Center for Equal Opportunity keeps an eye on this, and there is no doubt that it occurs all over the country and all too frequently. The proposed legislation recognizes this problem and addresses it squarely.

Last year, a federal judge declared that the Army's promotion process unconstitutionally discriminated against white males and in favor of minorities and women. In this case, *Saunders v. White*, No. 99-2807 (RCL) (D.D.C. Mar. 4, 2002), the judge quoted from an earlier court of appeals decision (*Lutheran Church–Missouri Synod v. F.C.C.*, 141 F.3d 344, 351 (D.C. Cir. 1998)):

> [W]e do not think it matters whether a government hiring program imposes hard quotas, soft quotas, or goals. Any of these techniques induces an employer to hire with an eye toward meeting the numerical target. As such, they can and surely will result in individuals being granted a preference because of their race [or gender].

This is surely correct, not only as a matter of law but also as a matter of common sense. Goals and timetables inevitably become quotas, and quotas inevitably entail preferences and discrimination.

It is useful to put the shoe on the other foot. Suppose that someone wanted to *decrease* the number of women and minorities working for them, and so they established goals and timetables to bring this about. There is no one who would deny that this action would be illegal discrimination.

Accordingly, the bill spells out that "there shall be no preferential treatment or discrimination in recruiting, hiring, or promotion based on race, sex ...." It covers employment in the state classified service; faculty and student admissions in the state college and university system (including regional community-technical colleges); and hiring and promotion on the state's Postsecondary Education Commission.

Answering the Arguments against the Legislation

The opponents to this legislation are, as I understand it, offering three principal arguments against it.

The initial argument offered by opponents of the bill is that the federal government requires the use of goals in order to get federal money. Not only is this argument an insult to Yankee independence, but it is an unpersuasive argument for several other reasons as well.

In the first place, the amendment says explicitly that nothing in it prohibits "actions necessary to establishing or maintaining eligibility for any federal program where ineligibility would result in a loss of federal funds to the state." Thus, if a state program had a legitimate fear that the amendment would prevent it from doing something that participation in some government program required, then it is excepted from the statute. But the statute would make certain that those running the state program really did have a legitimate fear that they could document. That is a reasonable requirement if the state wishes to engage in discrimination.

Second, most federal programs do not require the use of quotas, goals or preferential treatment. They are aimed at prohibiting discrimination, not authorizing it. Nor should this come as a surprise. The law is clear that such discrimination is presumptively unconstitutional, and can be justified only in narrow circumstances. The only time this sort of preference for a group would clearly be justified would be in the case of stubborn discrimination against that group. This is an unlikely scenario since those adopting the preferences generally have a record of discriminating not against the group, but in its favor.

And, third, even those federal agencies that do use goals require there first to be evidence of significant disparities—and, in any event, also explicitly ban the use of preferential treatment to close such disparities. For instance, the Office of Federal Contract Compliance Programs with the U.S. Department of Labor has a regulation (41 C.F.R. sec. 60-2.16(e)(2)) that states:

> In all employment decisions, the contractor must make selections in a nondiscriminatory manner. Placement goals do not provide the contractor with a justification to extend a preference to any individual, select an individual, or adversely affect an individual's employment status, on the basis of that person's race, color, religion, sex, or national origin.

California and Washington have passed ballot initiatives banning the use of preferences, and there has been no sudden ineligibility for federal funding there. I am aware of no instance in which the federal government has refused to make money available because a state has passed a law forbidding unequal treatment.

The second argument offered by the legislation's opponents is that they are not in fact using preferential treatment, particularly in university admissions. There are two brief and persuasive counters to that argument.

The first is that, in all likelihood, this assertion is not true. The Center for Equal Opportunity has, over the past several years, analyzed the admissions data we have obtained under freedom-of-information laws from state colleges and universities all over the country, and without exception we have found each state to engage in significant discrimination. The states we have studied are California, Colorado, Michigan, North Carolina, Washington, Virginia, Minnesota, Maryland, New York, Georgia, and Oklahoma, as well as the service academies at West Point and Annapolis. These studies are available on our website, www.ceousa.org. It would be very surprising if this discrimination were not also occurring in New Hampshire, especially since UNH has announced very specific goals, which inevitably entail preferences.

Second, if a particular school is not discriminating, then it has nothing to fear from the bill.

The final argument being offered by opponents of the legislation is that the means of discrimination is justified because the end of "diversity" is so important and desirable. Of course, the first point to make here is that this argument is inconsistent with the preceding argument: A school, for instance, cannot simultaneously argue that it is not discriminating *and* that its discrimination is somehow justified.

In any event, the diversity argument is unpersuasive in terms of what federal law allows and as a matter of what sound policy dictates.

Let me address federal law first. State institutions are subject to the Equal Protection Clause of the U.S. Constitution's Fourteenth Amendment. The U.S. Supreme Court has made clear that the use of racial and ethnic classifications by state institutions is presumptively unconstitutional and can be justified only in certain limited circumstances. *See, e.g., Adarand Constructors, Inc. v. Pena*, 515 U.S. 200 (1995); *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989). The only such justification recognized by the Court in recent years is "remedial"—that is, remedying past discrimination in the institution's actions.

Frequently universities seek to justify racial and ethnic discrimination, not as remedial, but as serving "diversity." As noted, the Supreme Court has never recognized such a justification. Moreover, the U.S. Court of Appeals for the First Circuit, which has jurisdiction over New Hampshire, held in *Wessman v. Gittens*, 160 F.3d 790 (1st Cir. 1998), that racial and ethnic discrimination by a state school "must be both justified by a compelling governmental interest and narrowly tailored to serve that interest in order to stand." The court there struck down Boston Latin School's use of race and ethnicity to ensure greater diversity among its admittees. Other federal courts of appeals in constitutional cases have also rejected "diversity" arguments in academic contexts (see *Hopwood v. Texas*, 78 F.3d 932 (5th Cir. 1996), *cert. denied*, 116 S. Ct. 2581 (1997)) and in employment contexts (*Lutheran Church–Missouri Synod v. FCC*, 141 F.3d 344 (D.C. Cir. 1998); *Messer v. Meno*, 130 F.3d 131 (5th Cir. 1997)). Two other federal courts of appeals have stated in dicta that the only sufficient rationale for racial classifications is the remedial one. *Podberesky v. Kirwan*, 956 F.2d 52, 55 (4th Cir. 1992); *Milwaukee County Pavers v. Fiedler*, 922 F.2d 419, 422 (7th Cir.), *cert. denied*, 500 U.S. 954 (1991). (While the Sixth and Ninth Circuits have recently allowed admissions discrimination to be constitutionally justified in the name of "diversity," the Supreme Court last month granted review in a pair of Sixth Circuit cases that raise this issue.)

Furthermore, state employers are also subject to Title VII of the Civil Rights Act of 1964, 42 U.S.C. sec. 2000e et seq., which bars racial and ethnic discrimination in employment. Thus, even if a "diversity" exception were to be recognized by the courts for constitutional claims, the Title VII violation would remain. I am aware of no court that has recognized a "diversity" exception to Title VII, and at least two federal courts of appeals have rejected it. *See Piscataway Township Board of Education v. Taxman*, 91 F.3d 1547 (3d Cir. 1996) (en banc); *Messer v. Meno*, 130 F.3d 131 (5th Cir. 1997). As noted above, the Fifth and District of Columbia Circuits have rejected the diversity rationale in employment cases raising constitutional claims and are likely, *a fortiori*, to do so in Title VII cases. Finally, even if a diversity exception for student admissions is accepted, it would not necessarily be accepted for faculty hiring even for constitutional claims. *See Wygant v. Jackson Board of Education*, 476 U.S. 267 (1986) (Supreme Court plurality rejects "role model" justification for school teachers on constitutional grounds in employment context).

The foregoing discussion should make clear that the diversity justification is very shaky as a matter of federal law. But even if it were perfectly legal under federal law, it would still be unpersuasive as a policy matter, and therefore it would be properly rejected by this legislature.

In the debate over "affirmative action," it is important to give that term a precise definition. It means different things to different people, and its proponents frequently use this confusion to their advantage.

Much affirmative action is no longer controversial. For instance, when the term was first used in the civil rights context—in an executive order signed by President Kennedy in 1961—it meant taking positive steps, *affirmative action*, to make sure that racial and ethnic minorities were not being discriminated against. Today, almost no one has any objection to this sort of affirmative action. The amendment we are discussing would not prohibit it in any way.

Another early meaning of the term was "casting a wide net." One should not recruit only from pools that were predominately white and male; one should advertise far and wide to ensure applications from all the best candidates possible. This kind of affirmative action is no longer controversial either, and the amendment we are discussing today would not prohibit it either, so long as the net is not cast with an eye toward favoring a particular racial group or disfavoring another.

In fact, the only kind of affirmative action that is objectionable and that is addressed by today's legislation is discrimination—granting preferences to some groups on the basis of race, ethnicity, and so forth, and necessarily discriminating against everyone else on those bases.

As discussed, this sort of discrimination is legally very problematic, but even if the Supreme Court ruled tomorrow that it is lawful, it would still be bad educational policy, highly unfair, and morally wrong.

Leaders in higher education must be intellectually honest and acknowledge that, when they look at candidates differently because of their skin color or ancestry, they are engaged in racial and ethnic discrimination. They then must ask themselves, is this discrimination justified? That is, what are the purported benefits—and then, most critically, do those benefits outweigh the costs?

In other contexts, preferences are sometimes justified as necessary either to prevent discrimination or to correct it. But these justifications do not work well in university admissions or other academic contexts, and in fact are generally no longer relied on.

It is not plausible to assert that, unless they deliberately discriminate in favor of certain minorities, university officials will discriminate against them. Like it or not, these are the most politically correct people in the world.

Similarly, it is hard to point to slavery and the Jim Crow era as justifying discrimination in favor of 17-year-old college applicants. These young people were, after all, born in the mid-1980s, twenty years after passage of the Civil Rights Act of 1964. This is not to say that discrimination no longer exists, just that it is no longer systemic and can, therefore, no longer justify systemic discrimination in the other direction.

Thus, the rationale the proponents of preferences are now forced to rely on is "diversity." The claim is that students learn more if they are exposed to other students from a variety of backgrounds and with a variety of outlooks.

There may be some truth to this, but not a lot. Certainly the data supporting it are weak. Common sense dictates that learning is a function of the professor and what is read rather than whom one is sitting next to.

But the fundamental problem with the diversity rationale is that it makes no sense to equate race and ethnicity with background and outlook. If you want diversity of the latter, fine, but there is no need to use race or ethnicity as a proxy for them. This kind of equation, in fact, used to be called stereotyping.

There are plenty of whites and Asians who went to impoverished public schools, or who are the first in their family to go to college, or who have working class parents—and plenty of black and Hispanic kids who come from solid middle class or upper middle class backgrounds.

With respect to New Hampshire in particular, it is argued that students need to attend campuses that "look like" the workplaces they may encounter elsewhere in the country, because otherwise they won't learn how to work with people from other racial and ethnic groups. The immediate problem with this argument is that it is empirically shaky whether there are any educational benefits to such superficial diversity in the first place, as demonstrated in studies published by Thomas Wood and Malcolm Sherman of the National Academy of Scholars (*Is Campus Racial Diversity Correlated with Educational Benefits?*) [http://www.nas.org/print/pressreleases/hqnas/releas_04apr01.htm] and by Robert Lerner and Althea Nagai (*A Critique of the Expert Report of Patricia Gurin in* Gratz v. Bollinger) [www.ceousa.org].

But the problems with the argument go deeper than this. It rests on a whole series of very dubious premises: (1) that black people tend to be quite different from white people, and that therefore the way one works with a black person is very different from the way one works with a white person; (2) that these differences cannot be learned on the job quickly; (3) that they also cannot be learned directly, but are instead learned best by going to a campus that happens to have a particular racial and ethnic mix, where they will magically seep into the student's mind, as by a sort of osmosis; and (4) that it is so important to learn these differences that it justifies deliberate racial and ethnic discrimination in order to ensure this racial and ethnic mix on campus. If any of these premises are false, then the argument collapses; in fact, they all are.

Suppose that you still believe that, all things being equal, it's better to have racial and ethnic diversity. The trouble is that all things aren't equal: Using racial and ethnic preferences to achieve diversity entails considerable and undeniable costs.

For starters, at a human level it is unfair to refuse to admit someone because of their melanin content or ancestry. Institutionally and societally, it also sets a terrible and dangerous precedent if discrimination is allowed so long as it is for a good cause (the cause will always be good). And it creates resentment among white and Asian applicants and their friends and families.

When schools have one set of admission standards for some races and another, lower one for others—as inevitably happens when a school is trying to admit more from some groups and, therefore, fewer from others—a host of problems necessarily follow. Racist stereotypes about some groups' lack of intellectual ability are unfortunately reinforced among their classmates and professors. This stigmatization hurts not only those who are given preferences but also blacks and Latinos who are not, and it plants the seeds of doubt not only in the minds of other groups but in their own as well. It not only reinforces a victim mentality among the supposed beneficiaries, it removes an incentive for academic excellence. It results in a mismatching of students and institutions:

Students who would be on par with their classmates at a different school now won't be. The academic mission of the school is compromised. If there is a double standard in admissions, then great pressure is created to lower grading and graduation standards, or to apply them discriminatorily. The institution gets used to lies, hypocrisy, and breaking the law. So the price of double standards is very high indeed.

Finally, the real problems are papered over and left unaddressed. The reason preferences are "needed" is that a disproportionate number of some racial and ethnic minorities reach college age and are not academically competitive. The reasons for this are obvious: poor public schools, lack of support at home (particularly for teenage boys growing up in fatherless homes, with seven out of ten African Americans now being born out of wedlock), and peers who too often denigrate studying hard as "acting white." The use of preferences allows politicians and society generally to ignore these problems. Ending preferences forces us to address them, as in fact California has started to do in the wake of Proposition 209.

So the costs of admissions discrimination are numerous and heavy and, if one is intellectually honest, it is impossible to conclude that they are outweighed by the flimsy "diversity" justification. The longer that universities use preferences, the more entrenched they will become even as they become less justified with every tick of the clock. The time to begin following the principle of nondiscrimination is now.

Conclusion

The fact of the matter is that there is no reason to oppose HB 55 unless you favor the use of preferences based on skin color and ancestry. There are such people in the United States, and even in New Hampshire, but they are out of step with the overwhelming majority of Americans.

This body can do itself proud by refusing to rank New Hampshirites according to the color of their skin or the country of their ancestors. And while this bill have been drafted and sponsored by Rep. Harrington, a distinguished nuclear engineer, you don't have to be a nuclear engineer to figure out that such discrimination is wrong.

Thank you very much, Mr. Chairman and committee members, for taking the time to read my statement

Affidavit From Ward Connerly

1. My name is Ward Connerly and I am chairman of the American Civil Rights Institute, a 501 (c) (3), non-partisan, think tank based in Sacramento California whose mission is to educate the public about the injustices of racial classifications and preferences by the government.

2. I also serve as a member of the University of California board of regents, having been appointed by the governor of California in 1993 to serve a 12-year term.

3. In 1995, the regents passed SP-1 and SP-2, which eliminated racial and ethnic preferences in student admissions, and university hiring and contracting, respectively.

4. In 1996, I led the efforts to pass California's Proposition 209, a statewide, voter initiative that prohibited discrimination and preferences on the basis of race, color, sex, ethnicity, and national origin in public education, public employment and public contracting.

5. The successful passage of Prop 209 and the implementation of SP-1 and SP-2 at the Univ. of California returned the state to the true ideals of the civil rights movement in which an individual's race and ethnicity are not used to *harm* his or her chance in college admissions, or used to *help* his or her chances as well.

6. Other than a drop in Hispanic and black enrollment at UCLA and Berkeley---UC's most competitive campuses--- enrollment of "minority" students at all UC institutions has increased since the implementation of Prop 209, *even though UC's administration predicted just the opposite outcome*. Today, every student admitted to any UC campus knows that it was through hard work, tenacity, and scholastic merit that they were admitted, not skin color or ethnic origin.

7. Other states such as Texas and Washington have nearly identical policies in place and have experienced nearly identical outcomes. In fact, Hispanic and black enrollment at the Univ. of Texas at Austin---the state's most competitive campus---is greater today than when the federal courts struck

down racial preferences, classifications, goals and guidelines as unconstitutional in 1996.

8. The people of New Hampshire do not need to grant or withhold preferences to any citizen because of their race, ethnicity, gender, religion, or sexual preference. The vigorous application of state and federal anti-discrimination laws should be the foundation on which the state seeks equal opportunity. Granting a racial preference instead of rooting out vestiges of bigotry does not improve the lives of anyone.

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Statement of Nondiscrimination

The University of New Hampshire is a public institution with a long-standing commitment to equal opportunity for all. The University does not discriminate on the basis of race, color, religion, sex, age, national origin, sexual orientation, disability, veterans status, or marital status, in admission or access to, or treatment or employment in, its programs or activities. Inquiries regarding discrimination should be directed to: Pat Gormley, Special Assistant to the President for Affirmative Action, 603-862-2930 V/TTY; or to the Regional Director, Office for Civil Rights, U.S. Department of Education, J.W. McCormack Post Office and Court House, Room 707, Boston, Mass. 02110-4557. Telephone: (617) 223-9662 Voice; (617) 223-9669 Fax; (617) 223-9695 TDD.

As used in this publication, "(as)" denotes the rules within the jurisdiction of the Academic Senate and "(ad)" denotes administrative rules. Those rules denoted with "(ad/ss)" are within the jurisdiction of the administration and the Student Senate.

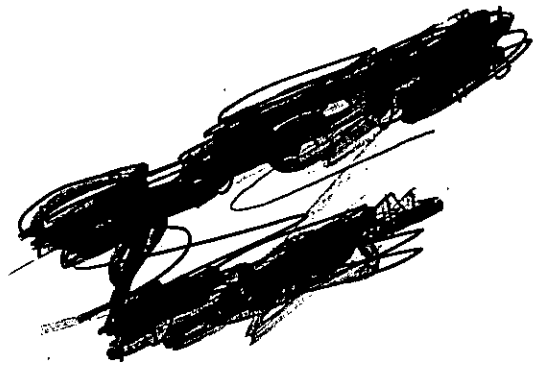
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VIII. SUMMARY STATEMENT

In developing and implementing this Affirmative Action Plan, the University System has been guided by its established policy of providing equal employment opportunity. Further, in using the above-mentioned workforce analysis and utilization study for instructional and non-instructional staff, any goals which the University System has established herein are not intended as rigid, inflexible quotas that must be met, but rather as targets reasonably attainable by applying every good faith effort in implementing this Affirmative Action Plan. Neither the use of goals in this Affirmative Action Plan nor the effect of such goals is intended to discriminate in employment against any individual or group of individuals who are not themselves the beneficiaries of affirmative action. This Affirmative Action Plan is not intended to sanction the discriminatory treatment of any person. It has been developed in strict reliance upon the Guidelines on Affirmative Action issued by the Equal Employment Opportunity Commission ("EEOC") (29 C.F.R. Part 1608).

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November 13, 1998

TO: The Black Student Union and Concerned Members of the UNH Community

FROM: Joan R. Leitzel, President

SUBJECT: Diversity Agreements

I am pleased to attach the goals which the Black Student Union and the University of New Hampshire have agreed to after discussions on November 10, 1998 (Attachment 1). These goals, together with those of the 1994 document, *Building a New University Community*, describe the University's commitment to building an effective diverse community and curriculum.

We believe that diversity in our student body, faculty, and staff is important to providing quality education because people from different backgrounds with different beliefs learn from one another and because our students are likely to live and work in pluralistic societies when they graduate. The statement issued last year by the leading higher education organizations in the United States speaks clearly about the need for racial and ethnic diversity on the nation's campuses (Attachment 2). Our commitment extends to all racial and ethnic groups, and we seek a community that is diverse with respect to gender, geographic origin, class, religion, sexual orientation, and age.

When I came to UNH in the fall of 1996, I asked Elizabeth Lewis, who was at that time the Affirmative Action Director, to do an audit on the University's diversity plan, *Building a New University Community* (Attachment 3). What was clear from her report was that the University had

made progress toward its goals in some areas but in several areas there had been little progress. I observed then--as regrettably I must say now--that the University has not met its own goals in the area of diversity. My judgment was that the University lacked an organizational structure to move effectively in this area. For this reason, I hired a full-time Affirmative Action Director, created the position of Vice Provost for Enrollment Management, and appointed the President's Commission on the Status of People of Color.

UNH's Affirmative Action Director, Patricia Gormley, has held the position now for more than one year and has put in place policies and programs appropriate to the diversity goals. The Vice Provost for Enrollment Management, Mark Rubinstein, assumed his position in August, 1998, and has quickly begun to reshape recruitment and retention efforts through the offices of Admissions, Financial Aid, Registration, and Academic Support. Last spring I received the recommendations from the President's Commission on the Status of People of Color and responded to these recommendations on behalf of the University program (Attachment 4); most of these recommendations are now being implemented. I believe we are now much better positioned to meet the University's challenging diversity goals.

The responsibility for oversight and coordination of the commitments the University has made are the President's, and I welcome that opportunity those commitments provide to UNH.

E-mail President Leitzel

If you have questions or comments on this site, please e-mail University Publications



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UNIVERSITY OF NEW HAMPSHIRE

OFFICE OF THE PRESIDENT / BLACK STUDENT UNION

NOVEMBER 10, 1998

The University of New Hampshire and the Black Student Union agree to the following goals:

1. A Black student population of 300 students by the year 2004, adding approximately 50 students each year starting in the year 2000.

2. The creation of a six-year university plan for the recruitment and retention of Black students by April 15, 1999, including the involvement of Black students in the development and communication of the plan.

3. There will be no fewer than a total of 10 Black tenure track faculty by the year 2003; as well as no fewer than two Black visiting scholars per year through 2003.

4. A fulltime minority student recruiting team, under the leadership of the Vice Provost for Enrollment Management, by spring, 1999.

5. The creation of a diversity and multicultural presentation offered at freshman orientation in June, 1999; outside consultation on the content of the program will be sought. The presentation will be previewed by the Black Student Union in the spring.

6. A prejudice reduction workshop will be developed and delivered to faculty, staff and administrators, including the President's staff and college deans, by fall 1999. University Police will

participate in prejudice reduction training offered by outside experts. Proper channels of reporting incidents of insensitivity and prejudice will be put in place so that the Director of Affirmative Action is made aware of such incidents.

7. The university is committed to support curricula that address the fields of race, culture, power, and African American Studies. In addition, the history department will be asked to submit entry -level African American history courses for review by the General Education Committee.

8. The hiring of a fulltime counselor at the Counseling Center, who has practical experience in dealing with African American issues. Vice President for Student Affairs Leila Moore will work within the student fee process to secure the funding for this new position.

9. Black Student Union members will be included in the selection committee for the counselor and will have input on the writing of the job description for this position.

10. A written admission of the university's failure to fulfill the committment to a diverse campus and curriculum.

11. A signed commitment from President Leitzel to assume responsibility to coordinate the agreements above.

E-mail President Leitzel

If you have questions or comments on this site, please e-mail University Publications

VII. WORKFORCE ANALYSIS AND UTILIZATION

A workforce analysis and utilization study are required by federal regulations and provide the basis for goal-setting that is a primary focus of an Affirmative Action Plan. For each campus a workforce analyses has been produced by EEO-6 employment categories (Exhibit C) using each institution as a whole, then the major administrative units, and finally by individual department.

1. **Instructional Staff**

The Spring of FY 1999 employment of full-time tenure track instructional staff in each department, program or area in each college/school within each institution has been studied. The workforce analysis of this group included a breakdown of the faculty by rank, tenure, salary, gender and ethnic background.

The USNH utilization study was based on the results of the workforce analyses and includes a thorough examination of the applicable labor market that is used to determine whether or not women and/or minorities were significantly underutilized in the Spring of FY 1999. If either of these groups were found to be underutilized, that situation was stated, and goals were set for women and minorities as a means of correcting such underutilization. The following discussion expresses the general approach used in conducting the availability and utilization study as well as the procedure for establishing subsequent goals.

Availability of women or minorities is determined through an analysis of the total applicable labor market by using data concerning their proportion of relevant degrees awarded, as well as their participation in the enrollment and employment aspects of the particular discipline and/or sub-field. The following sources of information were used to determine the availability of women and minorities:

- Affirmative Action Plan - 1998
  University System of New Hampshire.

- Affirmative Action Table #1: Adjusted Number of Ph.D.'s, by Fine Field of Doctorate, Race/Ethnicity, and Gender, 1994. (paper copy)

- NH Affirmative Action Data, 1994, 1996, Employment Security Division, State of New Hampshire.

- Professional Women and Minorities, Eleventh Edition, Vetter, Babco and Fisher, Scientific Manpower January, 1994, 1996.

Underutilization results when the availability of women and/or minorities in the total applicable labor market is not equitably represented in the unit being studied. Underutilization is considered to be significant whenever the increase in the number of persons in a job group necessary to eliminate underutilization is .5 persons or greater; in other words, the calculations for annual goals to rectify this underutilization are rounded off to the nearest whole number.

Goals are necessary to rectify the underutilization of a particular group(s). When a member of a protected group (Women, African Americans, Hispanics, Asian-Americans or Pacific Islanders, or

Native Americans) and a non-protected person are viewed as having "equal" standing for a position, an established goal would indicate that strong consideration should be given to the protected class, in order to fulfill our commitment to affirmative action and rectify the underutilization that formerly existed. Vacant faculty and staff positions will be advertised according to equal employment opportunity procedures as outlined in Section V.1 Recruitment Process. All qualified persons are encouraged to apply for such positions and their application will be judged according to merit and qualifications.

To illustrate the above process, suppose that a department has 20 full-time, tenure-track instructional positions and that the availability factor of women and minorities is 20% and 15%, respectively. The expected utilization of women in this department would be as follows:

20 (# of positions) x .20 (availability factor or proportion of women in the total applicable labor market) = 4 (the number of positions that women should occupy in that department).

Thus, if that department had only 3 women faculty members, a case of underutilization would exist. After stating such a situation, a goal to hire another female faculty member when a position becomes open would be established, to rectify past underutilization.

To continue the example, the determination of the number of positions that should be held by minorities in this department is as follows:

$$20 \times .15 = 3$$

If the department has 2 minority faculty, underutilization would still be present, as the number of positions that should be held by a minority member is 3. A formal goal would then be established to hire a minority member to fill the next vacant position. In summary, the goals of that department would then be to hire 1 woman and 1 minority member. Successful fulfillment of such goals would ensure the appropriate reflection of the availability of these groups in that department.

2. **Non-Instructional Staff**

The workforce analysis for this area includes all non-instructional personnel who held status, benefits-eligible positions in the Spring of FY 99 on each campus/unit in the University System of New Hampshire. This employment, internally classified as Principal Administrators, Academic Administrators, Professional/Administrative/Technical Staff, and Operating Staff, includes the following six EEO-6 occupational employment categories:

1. Executive, Administrative, and Managerial
2. Professional Non-Faculty
3. Technical/Paraprofessional
4. Secretarial/Clerical
5. Skilled Crafts
6. Service/Maintenance

Each institutional workforce analysis includes a breakdown on the gender, ethnic background, and salary ranges for the incumbents in each particular category or employment.

In accordance with OFCCP (Office of Federal Contractor Compliance Programs) regulations, these 6 employment categories were further sub-divided into 45 relevant job groups on the basis of 3 criteria: (1) similarity of work content, (2) similarity of pay, and (3) similarity of promotional opportunities. (*See Exhibit C*) A utilization analysis was conducted for each job group by institution.

Availability of women and minorities was determined by using the following 4 factors:

1. *The percentage of minorities and women in the civilian labor force in the immediate labor areas.*

2. *The percentage of minorities and women with requisite skills in the immediate labor area.*

3. *The percentage of minorities and women with relevant skills in the relevant recruitment area.*

4. *The percentage of minorities and women among those promotable or transferable within the contractor's establishment.*

The factors were weighted, with the weights adding up to 100% for each job group.

The other 4 factors of the 8-factor analysis required under Revised Order #4 were weighted zero because they were not relevant to any of our job groups and therefore not included in the availability estimates.

The following sources of information were used to determine the availability of women and minorities for non-instructional positions:

- 1990 Census, EEO Special File: ME, NH, VT Counties, Occup. (25) by race, by sex, Personnel Resear Incorporated, Durham, North Carolina.

- 1990 Census, EEO Special File: CT, MA, RI Counties, Occup.(25) by race, by sex, Personnel Researcl Durham North Carolina.

- 1990 Census, EEO Special File Detailed Occupations for NH Personnel Research Incorporated, Durha Carolina.

- 1990 Census, EEO Special File United States Summary, Occup.(514) by race, by sex, Personnel Resea Incorporated, Durham, North Carolina.

- Prof. Women and Minorities, Eleventh Edition, Vetter, Babco and Fisher, Scientific Manpower Commi January, 1994, 1996.

- NH Affirmative Action Data, 1994, 1996, Employment Security Division, State of New Hampshire.

The determination of expected utilization of women and minorities in these job groups follows a

USNH Affirmative Action Plan
Chart Legend

UNH

(Non-Instructional Staff)

	Current Workforce			Utilization Analysis 06/30/98		Availability Data				Goals	
Job Groups	All	# F	# Min	F%	Min %	F%	Min. %	F. Calc.	Min. Calc.	F	Min.
10 - Principal Administrators	6	3	0	50%	0%	35.49%	10.29%	2.13	0.62	0	1
11 - Academic Administrators	16	6	0	38%	0%	36.29%	7.57%	5.68	1.21	0	1
13 - Executive Management	41	8	1	20%	2%	54.70%	9.75%	22.43	4.00	14	3
15 - Supervisory Management	107	51	3	48%	3%	45.86%	6.95%	49.07	7.44	0	4
36 - Extension Educators	69	41	0	59%	0%	37.83%	3.14%	26.10	2.17	0	2
37 - Admin Support Services	42	37	0	88%	0%	73.75%	5.57%	30.98	2.34	0	2
38 - Mgmt Support Services	34	27	1	79%	3%	70.31%	3.21%	23.91	1.09	0	0
39 - Media/Communication Svc	81	55	1	68%	1%	71.34%	5.06%	57.79	4.10	3	3
40 - Data Processing/Compilation	41	22	1	54%	2%	47.01%	6.01%	19.27	2.46	0	1
41 - Computer Specist/Mgrs	102	45	0	44%	0%	40.96%	3.36%	41.78	3.43	0	3
42 - Educational Advising Svc.	32	26	2	81%	6%	67.92%	7.71%	21.73	2.47	0	0
43 - Educational Program Coord.	38	30	0	79%	0%	73.76%	5.83%	28.03	2.22	0	2
44 - Instructional Services	23	20	0	87%	0%	72.97%	2.61%	16.78	0.60	0	1
45 - Financial Services	36	32	0	89%	0%	59.03%	5.85%	21.25	2.11	0	2
46 - Financial Mgmt Services	46	35	1	76%	2%	58.10%	3.19%	26.73	1.47	0	0
47 - Food & Beverage Mgmt.	22	9	1	41%	5%	45.60%	4.54%	10.03	1.00	1	0
48 - Housing Services	29	15	1	52%	3%	59.34%	4.81%	17.21	1.39	2	0
49 - Construction /Architect Svc	12	2	0	17%	0%	22.40%	2.80%	2.69	0.34	1	0
51 - Recreation Services	40	13	1	33%	3%	59.47%	3.24%	23.79	1.30	11	0
53 - Med/Health Counselor Svc.	18	17	0	94%	0%	80.56%	3.94%	14.50	0.71	0	1
54 - Sr. Med/Health Counselor Svc	6	4	0	67%	0%	53.52%	5.17%	3.21	0.31	0	0
55 - Professional Engineering Svc.	15	1	0	7%	0%	3.58%	2.04%	0.54	0.31	0	0
56 - Scientists	25	8	2	32%	8%	39.39%	3.47%	9.85	0.87	2	0
57 - Sr. Scientists	25	6	1	24%	4%	41.73%	13.00%	10.43	3.25	4	2
62 - Data Analysis/Programming	41	32	1	78%	2%	83.77%	1.52%	34.35	0.62	2	0
63 - Extension/Teaching Svc.	21	20	2	95%	10%	13.91%	1.53%	2.92	0.32	0	0
64 - Media/Graphics Svc	15	6	0	40%	0%	30.88%	0.00%	4.63	0.00	0	0
65 - Technicians	12	9	1	75%	8%	41.02%	2.70%	4.92	0.32	0	0
66 - Sr. Technicians	75	30	1	40%	1%	39.99%	2.97%	29.99	2.23	0	1
72 - Bookkeeping/Records	72	68	2	94%	3%	91.65%	1.27%	65.99	0.91	0	0
73 - Store Services	12	2	1	17%	8%	3.48%	0.50%	0.42	0.06	0	0
74 - Clerical/Typist Svc.	11	10	1	91%	9%	80.74%	2.18%	8.88	0.24	0	0
75 - Clerical Services	57	38	1	67%	2%	81.80%	1.21%	46.63	0.69	9	0
76 - Sr. Clerical/Secretarial Svc	231	227	4	98%	2%	90.06%	1.71%	208.04	3.95	0	0
77 - Secretarial Services	28	26	2	93%	7%	91.88%	1.78%	25.73	0.50	0	0
82 - Crafts & Trades - Non-Support	64	1	3	2%	5%	3.66%	1.28%	2.34	0.82	1	0
83 - Crafts & Trades - Supvsy	22	1	2	5%	9%	0.39%	0.14%	0.09	0.03	0	0
84 - Printing Services	12	4	1	33%	8%	18.93%	1.38%	2.27	0.17	0	0
92 - Agricultural Svcs.	7	2	0	29%	0%	26.48%	1.74%	1.85	0.12	0	0

Forced Diversity Does NOT Yield Educational Benefits!

Last Updated April 23, 2001

Adversity.Net (tm)
For Victims of Reverse Discrimination

Site Index:

The National Association of Scholars (NAS) Disproves Michigan's Assertion that Forced Diversity (quotas) Improves Academic Performance!



Use your Browser's BACK Button to Return.

PRINCETON, NJ -- The National Association of Scholars released a detailed study on April 4, 2001 titled ***Is Campus Racial Diversity Correlated with Educational Benefits?*** The NAS study proves that the University of Michigan has misrepresented critical research findings in order to defend its racially discriminatory admissions policies.

The University of Michigan is attempting to defend race-based student admissions -- racial quotas -- in Gratz v. Bollinger and Grutter v. Bollinger, two high-profile cases challenging the constitutionality of racial preferences in public university admissions. The University contends that its database shows a positive connection between a racially diverse student body and positive educational outcomes. In fact, as the National Association of Scholars' study reveals, the higher education database Michigan used actually demonstrates the contrary -- there is no connection between campus racial diversity and the supposed educational benefits.

"The University's analysis is simply based on a sleight of hand," said Thomas Wood, coauthor of the NAS report. "Unable to show a connection between the racial diversity of a student body and alleged educational benefits, the University resorts to a methodological confusion, arguing first that racial diversity is positively related to four intermediate "campus experience variables" (i.e., enrollment in ethnic studies courses, attendance at a racial/intercultural workshop, discussion of racial issues, and interracial socialization) and, next, that these are in turn, (though rather weakly and inconsistently), related to the claimed educational benefits."

U Michigan Case Index:

1.1 Undergrad Summary: Gratz v. Bollinger
1.2 Law School Summary: Grutter v. Bollinger
2 News Coverage and Analysis
3 Older Coverage and News Archives
4 Special Section: Anti-Quota Analysis and Editorials
- **Undergrad:** Download Court Opinion - Gratz v. Bollinger (PDF Format)
- **Law School:** Download Court Opinion - Grutter v. Bollinger (PDF Format)
- (This Page) Forced Diversity Has NO Educational Benefit (NAS Study)

"The University falsely concludes from this that a positive relationship has been established between racial diversity and supposedly beneficial educational outcomes," said Mr. Wood, "but because the Cooperative Institutional Research Program database (CIRP) on which the University relies took account of the four intermediate variables and still found no relationship between racial diversity and educational outcomes, the inference is patently false, as the University and its spokesmen should know."

"It is unfortunate," said Malcolm Sherman, Professor of Mathematics at the State University of New York/Albany and the report's other author, "that a world-class university like the University of Michigan would twist data that refute its own claims about the educational value of diversity."

Among the other points made in the NAS study are:

- The failure of the CIRP database to be made available to critics of racial preferences and quotas
- The trivial nature of the correlations Gurin does report, and...
- The inadequacy of her measures of educational outcomes.

NAS President Stephen H. Balch observed that "the consequence of this issue for America's future is so great that anything short of a fully candid treatment of the relevant facts is a profound disservice to the public interest. Our report clarifies the terms of debate."

This National Association of Scholars' study enlarges on the methodological critique of the University of Michigan's case first made in the brief filed by the NAS in July 2000 in Gratz v. Bollinger.

Additional Reading

NAS Refutation of University of Michigan Diversity Theory (Is Campus Racial Diversity Correlated with Educational Benefits?)

Download The Full CAS/NAS Diversity Report (in PDF format)

Download The CAS/NAS Executive Summary (in PDF format)

For Further Info:

Contact Stephen H. Balch, President, National

Association of Scholars at:

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Web: http://www.nas.org

The National Association of Scholars is America's foremost higher education reform group. Located in Princeton, it has forty-five state affiliates and more than four thousand professors, graduate students, college and university administrators and trustees as members.

News Articles

"Diversity" doesn't improve education. Not even a little bit. (04/04/01)

National Review: "The recent split decision on the University of Michigan's race-based admissions - one judge allowed them for undergraduates, another barred them for the law school - is another example of racial preferences standing on their last leg. And today the National Association of Scholars gave it a good, hard kick to the shin.

"There appears to be a single argument for racial preferences in admissions that the courts will now consider: The argument that a diverse student body improves education for all students because it is diverse.

"Except that the evidence isn't at all solid."

The National Association of Scholars (NAS) analyzed the same data that Michigan used. Thomas E. Wood, director of the California Association of Scholars, and SUNY-Albany statistician Malcolm J. Sherman revealed how Michigan selectively ignored information devastating to their "diversity" cause. Wood and Sherman get right to the point in describing what Michigan did:

> "It is quite possible that the University of Michigan has been deliberately misrepresenting the data. The alternative hypothesis, of course, is that the University's own researchers are misrepresenting the data out of simple methodological confusion and error. Neither hypothesis does credit to the University."

"Wood and Sherman conclude that there is no correlation between racial diversity and educational outcomes."

(Based on the 04/04/01 National Review article by John J. Miller & Ramesh Ponnuru)

[Last known link: http://www.nationalreview.com/daily/nrprint040401.html]

END: Forced Diversity Does NOT Yield Educational Benefits!

Use your Browser's BACK button, or make another U Mich Quota selection:

Main: Education Index	(1) U of Michigan Law Suits VICTORY!	(2) U of Michigan Law Suits NEWS	(3) U of Michigan Law Suits ARCHIVES	(4) UM Anti-Quota Analysis and Commentary	Download Undergrad Ruling: Gratz v. Bollinger	Download Law School Ruling: Grutter v. Bollinger	NAS Study: Forced Diversity Has NO Educational Benefit!

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Home	Page Index URL's and page names for site	Favorite EDITORIALS National opinion	DIRTY RACIAL POLITICS How Quotas are Enforced	DISPARATE IMPACT 2+2=?	RACIAL PROFILING D.O.J. Requires It!	EDUCATIONAL TESTING News Analysis	CENSUS 2000 Racism	ABOUT US

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*** We use the term *reverse discrimination* reluctantly and only because it is so widely understood. In our opinion there really is only one kind of discrimination.**

COMMENTS OF REPRESENTATIVE DENNIS VACHON BEFORE THE HOUSE COMMITTEE ON EXECUTIVE DEPARTMENTS AND ADMINISTRAION IN OPPOSITION TO HOUSE BILL 55 on JANUARY 23, 2003

Good morning Mr. Chairman, members of the committee. I appear before you today to voice my strong opposition to House Bill 55.

The sponsors of this legislation would no doubt argue that the bill seeks to eliminate the problem of so-called "reverse discrimination" where members of a majority population are displaced from their position as a result of efforts to ensure participation by members of one or more minority groups. In California, for example, we saw a state with significant minority populations get into trouble for using quotas while trying to make their public institutions reflect the diversity of their citizenry. But the United States Supreme Court outlawed the use of race based quotas decades ago and even the sponsors of House Bill 55 must recognize that quotas are not being used in New Hampshire today.

In fact, House Bill 55 goes far beyond outlawing the use of quotas to achieve diversity and outright prohibits any preferential treatment in recruiting, hiring, promotion, or admission by state agencies, the university system, the regional community-technical colleges, and the postsecondary education commission based on race, sex, national origin, religion, or sexual orientation. The bill is silent, however, on other, more common forms of preference afforded by employers and school admissions such as the prior association of a parent or relative with the institution, the fact that someone plays a particular sport or hails from a certain locale. It also ignores all of the ways in which public institutions benefit from having the varied viewpoints and perspectives which come from having a "mix" of participants, the same way our country has benefitted from having a diverse population.

Affirmative action is important for the difference it makes in the lives of people like me. Growing up in humble circumstances, I went to work full-time in a factory while still in high school. I have no doubt that my admission to the University of New Hampshire was not based on my grades alone and that my French Canadian heritage helped to get me in. I likewise have no doubt that my ethnicity played a role in my subsequent employment by the Federal Government and admission to law school. All of these institutions have long sought to ensure the participation of a diverse, cross section of the communities they serve. I am thankful for that preferential treatment and grateful for the opportunities that I have been afforded. As a result, I strongly support a public policy which would make similar opportunities available to others whose circumstances might otherwise prevent them from the full enjoyment of the benefits of our society.

Affirmative action is important for what it gives, not for what it takes away. A valuable tool for breaking the cycles which foster inequality and poverty, affirmative action promotes the full, productive participation of people from all backgrounds and circumstances. It is this sharing of opportunities by every sector of our society that is the hallmark of this great nation. Our success as a democracy depends upon everyone continuing to have a stake in it.

HB 55 File

January 29, 2003

Thank you Mr. Chairman:

My name is Harvey Keye, a former State Representative and a person of color, a resident of New Hampshire for 28-years.

I was born in Birmingham, Alabama 70- years ago. I grew up under the feet of Governor George Wallace, and Police Chief "Bull" Connor. Civil rights did not exist and human rights were far and few between, as I look back these were the saddest time of my life . New Hampshire gave me a chance to exercise my manhood.

As you know it took beatings, killings, marching, the federal government and President Kennedy to force some stated to recognize people of color as true American Citizens who deserve all the rights and privileges guaranteed by the constitution that any other American Citizen deserves.

Colin Powell says "the notion that affirmative action should be completely stripped away is ridiculous, and anyone who would suggest racism is a thing of the past is wrong".

I don't believe affirmative action is in itself the answer to our racist problem, I do believe we must look at the language that is used to identify (blacks & whites) as these two words connote specific meanings in American Society.

Quotas have become a divisive issue, not only in employment, but in college and professional school admissions. In large part, the animosity of white persons of whatever class or ethnic group toward affirmative action was and is based on fear, not fact. No white person in our state has actually lost or failed to get a job or has been excluded from educational opportunities because of

affirmative action. Our population consists of 84% whites, 8% African Americans, 6% Hispanics, and 2% Asians. Is there a threat that others may be educated or get a decent job?

If African Americans, other marginalized minorities, and women were 10% of our community's population, would it be unfair or un-American to have something like 10% of public –tax financed jobs or jobs controlled by unions that work on public projects?

UNH has approximately 10,000 students. Approximately, 450 of the UNH student body are people of color, roughly 5%, is this our fear?

The Wealth Gap and the Educational Gap is a threat to the American Way of Life.

You and I are in this "racist hole' together, with hands handcuffed behind our backs and our feet bound with ropes. You cannot get out of this "hole" without me, so we can live together in peace or we will die together very ignorant. More importantly my grandkids and your grandkids will remember what you did here!

Please vote "NO" on HB 55

Thank you,

Harvey Keye – Former House representative

HB 1304 – AS INTRODUCED

2001 SESSION

01-2129
05/10

HOUSE BILL *1304*

AN ACT prohibiting preferences in hiring, promotion, or admission by state agencies, the university system, the regional community-technical colleges, and the postsecondary education commission.

SPONSORS: Rep. Harrington, Straf 4; Rep. Twombly, Straf 16; Rep. Mirski, Graf 12; Rep. Itse, Rock 11; Rep. Marshall Quandt, Rock 20; Sen. Boyce, Dist 4

COMMITTEE: Executive Departments and Administration

ANALYSIS

This bill prohibits preferences in hiring, promotion, or admission by state agencies, the university system, the regional community-technical colleges, and the postsecondary education commission. The bill also prohibits any of these institutions from establishing quotas, goals, or guidelines for hiring, promotion, or admission based on race, sex, national origin, religion, or sexual orientation.

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

01-2129
05/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand One

AN ACT prohibiting preferences in hiring, promotion, or admission by state agencies, the university system, the regional community-technical colleges, and the postsecondary education commission.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Department of Administrative Services; Classified Employees; Quotas, Goals, or Guidelines Based on Race, Sex, National Origin, Religion, or Sexual Orientation Prohibited. Amend RSA 21-I:52, I to read as follows:

I. No person shall be appointed or promoted to, or demoted or dismissed from, any position in the classified service, or in any way favored or discriminated against with respect to employment in the classified service because of the person's political opinions, religious beliefs or affiliations, age, sex, or race. In addition, no person shall have any such employment action taken on account of such person's sexual orientation. ***No quotas, goals, or guidelines for hiring or promotion based on race, sex, national origin, religion, or sexual orientation may be established.*** Nothing in this section shall require the appointment or prevent the dismissal of any person who advocates the overthrow of the government by unconstitutional and violent means. No person shall use, or promise to use directly or indirectly, any official authority or influence, whether possessed or anticipated, to secure or attempt to secure for any person an appointment or advantage in appointment to a position in the classified service, or an increase in pay or other advantage in employment in any such position, for the purpose of influencing the vote or political action of any person, or for any consideration. No employee in the state classified service shall hold any remunerative elective public office, or have other employment, either of which creates an actual, direct and substantial conflict of interest with the employee's employment, which conflict cannot be alleviated by said employee abstaining from actions directly affecting such classified employment. Determination of such conflict shall be made by the personnel appeals board after the parties are afforded rights to a hearing pursuant to RSA 21-I:58. The burden of proof in establishing such a conflict shall be upon the party alleging it. No action affecting said employee shall be taken by the appointing authority because of such public office or other employment until after a full hearing before and approval of such action by the personnel appeals board. If an actual, direct and substantial conflict of interest, which cannot be alleviated by abstention by the employee, is found by the personnel appeals board, the board must approve any action proposed by the appointing authority; and the employee shall be given a reasonable amount of time to leave the employee's public office or other employment or otherwise end the conflict before the appointing authority initiates that action.

2 New Section; State College and University System; Anti-Discrimination Policy. Amend RSA 187-A by inserting after section 16 the following new section:

187-A:16-a Anti-Discrimination Policy. The trustees of the university system shall not use race, sex, national origin, religion, or sexual orientation as a consideration for hiring, promotion, or admission to the

university system; nor shall the university system establish any quotas, goals, or guidelines for hiring, promotion, or admission based on race, sex, national origin, religion, or sexual orientation.

3 New Section; Regional Community-Technical Colleges; Anti-Discrimination Policy. Amend RSA 188-F by inserting after section 2-a the following new section:

188-F:2-b Anti-Discrimination Policy. The regional community-technical colleges shall not use race, sex, national origin, religion, or sexual orientation as a consideration for hiring, promotion, or admission; nor shall any of these institutions establish any quotas, goals, or guidelines for hiring, promotion, or admission based on race, sex, national origin, religion, or sexual orientation.

4 Postsecondary Education Commission; Staff; Anti-Discrimination Policy. Amend RSA 188-D:4 to read as follows:

188-D:4 Staff. The commission is hereby authorized to employ such staff as may be necessary to carry out its work within the limits of its appropriation. ***The commission shall not use race, sex, national origin, religion, or sexual orientation as a consideration in the hiring or promotion of staff; nor shall the commission establish any quotas, goals, or guidelines for the hiring or promotion of staff based on race, sex, national origin, religion, or sexual orientation.***

5 Repeal. RSA 188-D:3, relative to criteria for appointments to the postsecondary education commission, is repealed.

6 Effective Date. This act shall take effect 60 days after its passage.

HOUSE COMMITTEE ON EXECUTIVE DEPARTMENTS AND ADMINISTRATION

PUBLIC HEARING ON HB 1304

BILL TITLE: prohibiting preferences in hiring, promotion, or admission by state agencies, the university system, the regional community-technical colleges, and the postsecondary education commission.

DATE: February 5, 2002

LOB ROOM: 100 SH **Time Public Hearing Called to Order:** 1:38 PM

Time Adjourned: 4:14 PM

(please circle if present)

Committee Members: Reps. Peterson, Dyer, Langer, Goulet, Hamel, Zolla, Allan, Cummings, Dexter, C. Hall, Robertson, O'Neil, Lent, Landers, Andosca, Clayton, Pawlek, Schulze and Drabinowicz.

Bill Sponsors: Rep. Harrington, Straf 4; Rep. Twombly, Straf 16; Rep. Mirski, Graf 12; Rep. Itse, Rock 11; Rep. Marshall Quandt, Rock 20; Sen. Boyce, Dist 4

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

* Rep. Harrington, sponsor. Bill refers to article 2 in New Hampshire Constitution. Does not believe any of the items should be used when picking persons but the rights of the individual are first! Doesn't want to hear any laws that points out you have to pick one over the other. Does not affect veterans' preferences.
Rep. Mirski, co-sponsors. Supports bill. Message from UNH to the effect that discrimination is okay. Comes from a family that had a different language and was discriminated against because they spoke a language that was not taught there.
Rep. Pratt.Supports bill. Everybody should be able to do anything they want. Affirmative action is telling someone that "you're not as good as others, we have to treat you better to get in on your own merits."
*Rep. Itse, co-sponsor. Supports bill. An argument against the bill was that UNH is too white. But that is the way NH is proportioned. In order to achieve the ratio that exists at UNH, they have to solicit students from out of state.
Rep. D. Corbin. Supports bill. Teaches all students the same without any definition for color, race or creed. All that is accomplished by bill is to codify in RSA's what is in the NH Bill of Rights. Gives everyone the same rights.
Rep. DeChane. Opposes bill. Thinks that as a woman, things aren't what they seem to be as we see through rose colored glasses. Not a constitutional scholar.
*Chancellor Reno, representing UNH. Opposes bill. All students have a right to apply for entrance into UNH. Society is becoming more diverse – talked about minorities, blacks and 35% whites to 2 ½%. Diversity and differences is a part of system. Must make opportunity equal to all.
*President Leitzel, representing UNH. Opposes bill. Opposition comes from the use of "term goals and guidelines".Read written testimony.

*Joan Tambling, representing University System of NH. Opposes bill. Read testimony. Federal executive orders control how and why UNH does work under goals. Looking for a faculty that looks like the United States.
Nathaniel Rand, 15 Groton Dr., Concord, 228-6791. Opposes bill. This bill does not save the groups that it is intended to. Minorities in NH are so small, there is no support for them.
Tamiko P. Franklin, 65 Rumford St., Concord, Opposes bill. Has benefited by the existence of affirmative action. Quotas are illegal but we should have goals.
*Patricia Yosha, representing Commission on the Status of Women. 24 String Bridge, Exeter, 772-3782. Opposes bill. Read testimony. Basis of her talk was to show how women and minority women compared to men. Tried to compare that a small percent of women at UNH were enrolled in the College of Engineering and Physical Science while over half of the liberal arts graduates were women. (But isn't the course to be taken at UNH decided by the students?)
Lucy Gagnon, representing NH Women's Lobby. PO Box 1072, Concord, 224-9105. Opposes bill. There is discrimination (but others say there is none) Is determined that gender is an element that exists today and that the problem of equality exists. Why is it that all the minorities are on the bottom?
Claire Ebel, representing NH Civil Liberties Union. 18 Low Ave., Concord, 225-3080. Opposes bill. Affirmative action is "possibility"---------

Respectfully submitted,

Ray F. Langer

Rep. Ray Langer, Clerk

HOUSE COMMITTEE RESEARCH OFFICE
New Hampshire House of Representatives
4th Floor, Legislative Office Building
Concord, New Hampshire 03301
TDD Access: Relay NH
1-800-735-2964

603-271-3600

To: Rep. Michael O'Neil, Chairman, House Executive Departments and Administration Committee

From: Pam Smarling, Committee Researcher
House Committee Research

Date: January 9, 2003

RE: HB 1304, prohibiting preferences in hiring, promotion, or admission by state agencies, the university system, the regional community-technical colleges, and the postsecondary education commission

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You asked for the contents of the committee file on HB 1304 (2002).

Attached are the minutes of the public hearing conducted by the House Executive Departments and Administration Committee on February 5, 2002. The testimony and materials submitted at the public hearing are also included.

This memorandum includes additional information relative to the disposition of the bill (docket, committee report, floor amendment)

HB 1304 Docket

Date	Body	Description
6/26/2001	H	Introduced and ref to Exec Depts & Admin; HJ78, p1997
12/14/2001	H	Copy to Chairman on 12/18/2001 Report due on 2/21/2002
12/14/2001	H	Hearing Feb 5 1:30 RM100, State House
2/6/2002	H	Subcom Work Session Feb 12 9:00 RM100, State House
2/13/2002	H	Maj Report ITL for Mar 6 (vote 15-0;CC)
2/28/2002	H	Rep Harrington Prop Fl Am{2857}; HC17, p670-672
3/6/2002	H	Removed from Cons Cal, req Rep Harrington; HJ25, p944
3/6/2002	H	Spec Order to March 7, without objection; HJ25, p1035
3/7/2002	H	ITL Report Adopted VV; HJ26, p1085

House ED&A Committee Report

Inexpedient to Legislate, vote 15-0

Rep. Donald R. Lent for Executive Departments and Administration: The bill states, "No quotas, goals, or guidelines for hiring or promotion (or college or university admission) based on race, sex, national origin, religion or sexual orientation may be established." However, none of the state entities referred to in this bill have quotas. Indeed quotas are not allowed as a result of the 1978 U.S. Supreme Court Decision in the Bakke case. Goals and guidelines are necessary to assure equal opportunity without superseding the concept of merit. Having heard lengthy testimony from officials of the University System and many concerned citizens, the committee believes the present state hiring practices and the university admissions policy are fair and dedicated to making known to diverse populations that opportunities are available. Vote 15-0.

Harrington Floor Amendment

Rep. Harrington had the following floor amendment drafted and printed in the House Calendar. It was not voted on because the committee report of inexpedient to legislate was adopted before Rep. Harrington could formally propose this amendment. HB 55 (2003) as introduced is very similar in language to this floor amendment.

Amend the bill by replacing all after the enacting clause with the following:

1 Department of Administrative Services; Classified Employees; Quotas, Goals, or Guidelines Based on Race, Sex, National Origin, Religion, or Sexual Orientation Prohibited. Amend RSA 21-I:52, I to read as follows:

I. No person shall be appointed or promoted to, or demoted or dismissed from, any position in the classified service, or in any way favored or discriminated against with respect to employment in the classified service because of the person's political opinions, religious beliefs or affiliations, age, sex, or race. In addition, no person shall have any such employment action taken on account of such person's sexual orientation. ***Additionally, except as provided in paragraph I-a, there shall be no preferential treatment or discrimination in hiring or promotion based on race, sex, national origin, religion, or sexual orientation; this shall include but is not limited to the use of any quotas, goals, guidelines, or timetables that permit, encourage, or require preferential treatment or discrimination based on race, sex, national origin, religion, or sexual orientation.*** Nothing in this section shall require the appointment or prevent the dismissal of any person who advocates the overthrow of the government by unconstitutional and violent means. No person shall use, or promise to use directly or indirectly, any official authority or influence, whether possessed or anticipated, to secure or attempt to secure for any person an appointment or advantage in appointment to a position in the classified service, or an increase in pay or other advantage in employment in any such position, for the purpose of influencing the vote or political action of any person, or for any consideration. No employee in the state classified service shall hold any remunerative elective public office, or have other employment, either of which creates an actual, direct and substantial conflict of interest with the employee's employment, which conflict cannot be alleviated by said employee abstaining from actions directly affecting such classified employment. Determination of such conflict shall be made by the personnel appeals board after the parties are afforded rights to a hearing pursuant to RSA 21-I:58.

The burden of proof in establishing such a conflict shall be upon the party alleging it. No action affecting said employee shall be taken by the appointing authority because of such public office or other employment until after a full hearing before and approval of such action by the personnel appeals board. If an actual, direct and substantial conflict of interest, which cannot be alleviated by abstention by the employee, is found by the personnel appeals board, the board must approve any action proposed by the appointing authority; and the employee shall be given a reasonable amount of time to leave the employee's public office or other employment or otherwise end the conflict before the appointing authority initiates that action.

I-a. Notwithstanding the prohibition on preferential treatment or discrimination in paragraph I:

(a) Nothing in this section shall be interpreted as prohibiting bonafide qualifications based on sex which are reasonably necessary to the normal operation of public employment, public education, or public contracting.

(b) Nothing in this section shall be interpreted as invalidating any court order or consent decree which is in force as of the effective date of this section.

(c) Nothing in this section shall be interpreted as prohibiting actions necessary to establishing or maintaining eligibility for any federal program where ineligibility would result in a loss of federal funds to the state.

2 New Section; State College and University System; Prohibition on Preferential Treatment and Discrimination. Amend RSA 187-A by inserting after section 16 the following new section:

187-A:16-a Prohibition on Preferential Treatment and Discrimination.

I. Within the state college and university system, there shall be no preferential treatment or discrimination in hiring, promotion, or admission based on race, sex, national origin, religion, or sexual orientation. This shall include but is not limited to the use of any quotas, goals, guidelines, or timetables that permit, encourage, or require preferential treatment or discrimination based on race, sex, national origin, religion, or sexual orientation.

II. Notwithstanding paragraph I:

(a) Nothing in this section shall be interpreted as prohibiting bonafide qualifications based on sex which are reasonably necessary to the normal operation of public employment, public education, or public contracting.

(b) Nothing in this section shall be interpreted as invalidating any court order or consent decree which is in force as of the effective date of this section.

(c) Nothing in this section shall be interpreted as prohibiting actions necessary to establishing or maintaining eligibility for any federal program where ineligibility would result in a loss of federal funds to the state.

3 New Section; Regional Community-Technical Colleges; Prohibition on Preferential Treatment and Discrimination. Amend RSA 188-F by inserting after section 2-a the following new section:

188-F:2-b Prohibition on Preferential Treatment and Discrimination.

I. Within the state's regional community-technical colleges, there shall be no preferential treatment or discrimination in hiring, promotion, or admission based on race, sex, national origin, religion, or sexual orientation. This shall include but is not limited to the use of any quotas, goals, guidelines, or timetables that permit, encourage, or require preferential treatment or discrimination based on race, sex, national origin, religion, or sexual orientation.

II. Notwithstanding paragraph I:

(a) Nothing in this section shall be interpreted as prohibiting bonafide qualifications based on sex which are reasonably necessary to the normal operation of public employment, public education, or public contracting.

(b) Nothing in this section shall be interpreted as invalidating any court order or consent decree which is in force as of the effective date of this section.

(c) Nothing in this section shall be interpreted as prohibiting actions necessary to establishing or maintaining eligibility for any federal program where ineligibility would result in a loss of federal funds to the state.

4 Postsecondary Education Commission; Staff; Prohibition on Preferential Treatment and Discrimination. Amend RSA 188-D:4 to read as follows:

188-D:4 Staff.

I. The commission is hereby authorized to employ such staff as may be necessary to carry out its work within the limits of its appropriation.

II. There shall be no preferential treatment or discrimination in hiring or promotion based on race, sex, national origin, religion, or sexual orientation. This shall include but is not limited to the use of any quotas, goals, guidelines, or timetables that permit, encourage, or require preferential treatment or discrimination based on race, sex, national origin, religion, or sexual orientation.

III. Notwithstanding paragraph II:

(a) Nothing in this section shall be interpreted as prohibiting bonafide qualifications based on sex which are reasonably necessary to the normal operation of public employment, public education, or public contracting.

(b) Nothing in this section shall be interpreted as invalidating any court order or consent decree which is in force as of the effective date of this section.

(c) Nothing in this section shall be interpreted as prohibiting actions necessary to establishing or maintaining eligibility for any federal program where ineligibility would result in a loss of federal funds to the state.

5 Repeal. RSA 188-D:3, relative to criteria for appointments to the postsecondary education commission, is repealed.

6 Effective Date. This act shall take effect 60 days after its passage.

Both HB 1304 (2002) and HB 55 (2003) include a repeal of RSA 188-D:3. The provisions of this statute are as follows:

188-D:3 Guidelines Established.

Appointments must be made in such a way as to preserve broad and equitable representation on the basis of sex, and significant racial, ethnic, and economic groups in the state.

If I can provide further information on this, please let me know.

The Honorable Andrew R Peterson
Chairman, Executive Departments and Administration
New Hampshire House of Representatives

Mr. Chairman,

I am here today to speak in favor of HB 1304, "an act prohibiting preferences in hiring, promotion, or admission by state agencies, the university system, the regional community-technical colleges, and the postsecondary education system", of which I am the prime sponsor.

The purpose of this bill is to codify portions of Article 2 of the Bill of Rights of the Constitution of New Hampshire. Article 2 states in part "**Equality of rights under the law shall not be denied or abridged by this state on account of race, creed, color, sex or national origin.**" This bill would help move us towards a society where characteristics and believes that have no bearing on a persons abilities, are not used to determine their opportunities.

Base on articles in the newspapers and calls I have received, this bill has become controversial. Apparently there are those who object to the portions of the bill that would ban quotas, goals or guidelines for hiring, promotion or admission based on sex, national origin, religion, or sexual orientation. I do not believe any of these attributes should be used to determine whether a person should be hired, promoted or admitted to college. In fact, I believe they should not even be considered.

The establishment of quotas, goals or guidelines based on these attributes fly in the face of a basic American concept, individual rights. Neither our federal or state constitution contains rights for groups but only for individuals. They contain the rights of persons and individuals not groups. We are told however, that in the name of "diversity" we must sacrifice the rights of the individual for the good of the group. That attainment of "diversity" is and end that justifies the means.

The president of UNH tells us we must work towards a goal of a more diverse student body and that "race does matter" I find it ironic that this statement was made on Martin Luther King Day. Dr King often stated his goal was to have a society where race or color did not matter.

So how do we reach this goal of "diversity"? As long as there is a finite number of seats at the university and colleges, a finite numbers of jobs and promotions, there is only one way; we must give special privileges to members of the selected groups at the expense of those not in these groups. Tell the high school student from Derry or Berlin, Manchester or Grafton that they were not admitted to UNH because they are not members of the groups needed to attain "diversity". Somehow I do not think they will believe goal of "diversity" justifies them being denied an opportunity to attend college.

The time has come to stop using race, sex, national origin, religion or sexual orientation as a basis for hiring, promotions or admissions. It is time to make New Hampshire a state where there is equal opportunity for all but special treatment for none. Please vote "Ought to Pass on BH1304"

Sincerely

Representative Michael D Harrington, Strafford, 4th District

REPRESENTATIVE PAUL MIRSKI, Grafton District 12
POB 190, Enfield Center, New Hampshire 03749 ☆ Telephone: (603) 632-5555 ☆ Fax: (603) 632-4747

February 5, 2002

Hon. Andrew Peterson, Chairman
House ED & A Committee
Room 100, State House
107 North Main Street
Concord, New Hampshire 03301

RE: HB 1304 *Prohibiting preferences in hiring , promotion, or admission by state agencies, the univertsity system, the regional community-technical colleges, and the post-secondary education commission.*

Dear Chairman Peterson and members of the ED&A Committee,

Rarely have I found myself becoming so emotional over an issue as I was this afternoon when I appeared before you at the hearing on the above mentioned Bill.

I find discrimination against individuals for characteristics beyond their choice utterly repugnant. I've worked in many places over the years and have worked, in my own way to expunge prejudice where I've had to confront it. To have discrimination defended by the leaders of our university system and by state functionaries as a good thing - because 'educators' and others of 'good will' are doing it and therefore, the ends are pure - is sophistry of the worst sort. Why would discrimination by literatti be any better than discrimination by the guy who wrenches on my car. One can, after all rationalize most anything as 'good'.

In fact, many years ago when the eugenics movement was sweeping the country, its roots were at colleges and universities. Eugenics you will remember was the movement which advocated sterilization and racial separation in order to promote a more perfect strain of human beings. Woodrow Wilson deconstructed the south in favor of Jim Crow. So much for the beneficial value of discrimination by educators.

Regarding the value of diversity, I've found that sending students to work in the inner city and in impoverished places is a much more efficatious way to introduce young minds to the travails of others. Bringing minorities to universities as curios really, insults both student and pawn..

I hope the Committee votes HB 1304 out as ought to pass. Discrimination of the sort practiced at UNH and other publicly funded institututions has no place in New Hampshire in this day and age.

Sincerely,

Representative Paul Mirski
cc. Rep. Harrington

Testimony on HB 1304
House Executive Departments and Administration Committee
5th February, 2002, Room 100

Stephen J. Reno
Chancellor, University System of New Hampshire

Mr. Chairman, Members of the Committee:

For the record, I am Stephen Reno, Chancellor of the University System of New Hampshire. I welcome the opportunity to speak briefly with you this afternoon regarding HB 1304.

From the outset, may I assure you and the sponsors of this bill that we share an interest in ensuring that our University System serves all qualified students and that it employs only the best qualified faculty and staff. Ultimately, the value of what we do in the University System depends on this commitment to the highest standards both in student admission and retention and in employee hiring and promotion.

Moreover, we also share with you a commitment to anti-discrimination. We believe that all our citizens have the right to be considered for admission to or employment with our University System without regard for race, sex, national origin, religion, or sexual orientation. We base our actions on the US Bill of Rights as well as on the New Hampshire Constitution and Bill of Rights.

In a few moments, Dr. Joan Leitzel, President of the University of New Hampshire, will talk about how her institution deals with student admission and retention. She will be followed by Ms Joan Tambling, Director of Human Resources for the University System of New Hampshire, who will talk about system-wide employment policies and practices.

In my brief remarks, however, I would like to make just three points:

First: Our society is becoming more diverse and is becoming so at a faster rate that ever before.

The 2000 Census shows not only that the population of this country has grown more in the last decade than at any other time in its history, but also that our minority population has grown by 35% while the non-Hispanic white population has grown by just 3.4%. In short, our country is rapidly becoming more diverse. I believe this poses special challenges to us as educators.

If colleges and universities are to prepare well-educated and highly skilled graduates to take their places in today's and tomorrow's workplace, we must

ensure that the rising number of minorities in our society have an opportunity to go on to higher education. And if the current student enrollment of the University System or our own workforce does not more closely reflect the demographic changes in society as a whole, we should do what is appropriate to raise aspirations and to make higher education and employment in higher education more widely available.

Second: Diversity and difference are at the heart of the educational process.

In short, we learn by experiencing difference. If we stay simply with what we know, we never grow. Whenever we pick up a new book, watch a new film, travel to a new place, eat a new food, listen to a new idea, or meet a new person, we are presented with both an opportunity to learn about something different from what we already know as well as to see ourselves and what we know in a new way.

As American society itself, and the global society of which it is a part, become more closely interconnected, we need citizens and leaders who understand difference. We need look no further than our recent national experience since the tragic events of last September to appreciate the importance of understanding the outlook, values, and positions of other nations in our global society.

As educators and employers, we have an obligation to prepare our graduates for meaningful and productive lives in an increasingly diverse and interconnected world.

In the end, we are both enriched and empowered by our experience of diversity, whether it be in the classroom, on the playing field, or in the workplace.

And third: We must make opportunity equally available to all.

While we recognize that, as Americans, we are guaranteed "life, liberty, and the pursuit of happiness," we also know that as individuals we are born into very different family, cultural, and socio-economic circumstances. For some of us, the road through education, into the workforce, and on to lives of material and personal fulfillment is a difficult one. For others, more fortunate in their circumstances, it is easier. Any steps that might be taken to ensure that students or employees applying to the University System of New Hampshire are considered solely on the basis of their qualifications would seek to minimize any discrimination attributable to a person's individual circumstances. Whatever we do to encourage students and would-be employees to apply to the University System of New Hampshire, we do to make ourselves more open and accessible to all, regardless of their personal circumstances.

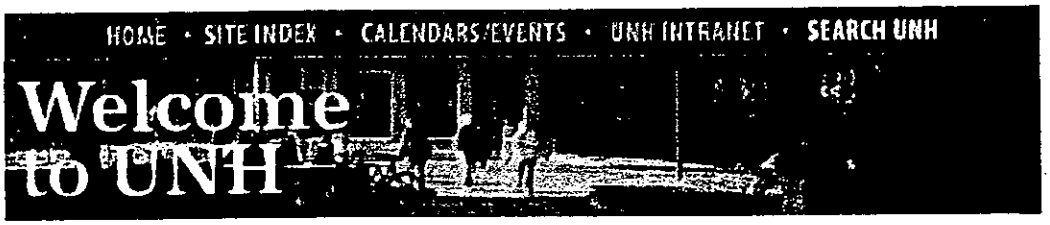
Just this month, the Business-Higher Education Forum, a national group made up of major business leaders and educators, issued a report titled, "Investing in People: Developing All of America's Talent on Campus and in the

Workplace." Their message is no less urgent for its being stated simply and plainly:

"The Forum believes that it is crucial for America to build on current momentum to open opportunity, improve quality, and create the diverse, talented workforce that our nation needs for the 20th century."

While this economic argument is the major thrust of their report, I would respectfully add my belief that the expansion of opportunity, especially in the fight against discrimination, is more fundamentally simply the right thing to do.

We in the University System of New Hampshire welcome the opportunity to work with you, as we have so profitably done so as recently as last session, to find a way to expand opportunity as well as affirm the value of diversity for all of our fellow citizens.



UNH Mission
Profile
News from the President
Speeches and Commentaries

UNIVERSITY OF NEW HAMPSHIRE

OFFICE OF THE PRESIDENT / BLACK STUDENT UNION

NOVEMBER 10, 1998

The University of New Hampshire and the Black Student Union agree to the following goals:

1. A Black student population of 300 students by the year 2004, adding approximately 50 students each year starting in the year 2000.

2. The creation of a six-year university plan for the recruitment and retention of Black students by April 15, 1999, including the involvement of Black students in the development and communication of the plan.

3. There will be no fewer than a total of 10 Black tenure track faculty by the year 2003; as well as no fewer than two Black visiting scholars per year through 2003.

4. A fulltime minority student recruiting team, under the leadership of the Vice Provost for Enrollment Management, by spring, 1999.

5. The creation of a diversity and multicultural presentation offered at freshman orientation in June, 1999; outside consultation on the content of the program will be sought. The presentation will be previewed by the Black Student Union in the spring.

6. A prejudice reduction workshop will be developed and delivered to faculty, staff and administrators, including the President's staff and college deans, by fall 1999. University Police will

participate in prejudice reduction training offered by outside experts. Proper channels of reporting incidents of insensitivity and prejudice will be put in place so that the Director of Affirmative Action is made aware of such incidents.

7. The university is committed to support curricula that address the fields of race, culture, power, and African American Studies. In addition, the history department will be asked to submit entry -level African American history courses for review by the General Education Committee.

8. The hiring of a fulltime counselor at the Counseling Center, who has practical experience in dealing with African American issues. Vice President for Student Affairs Leila Moore will work within the student fee process to secure the funding for this new position.

9. Black Student Union members will be included in the selection committee for the counselor and will have input on the writing of the job description for this position.

10. A written admission of the university's failure to fulfill the committment to a diverse campus and curriculum.

11. A signed commitment from President Leitzel to assume responsibility to coordinate the agreements above.

E-mail President Leitzel

If you have questions or comments on this site, please e-mail University Publications

USNH Affirmative Action Plan

I. PREFACE

The University System of New Hampshire (hereinafter, "University System") consists of four institutions that constitute the public higher education system of the State of New Hampshire. Those institutions include the University of New Hampshire at Durham (founded in 1866) and Manchester (founded in 1985); Keene State College in Keene (founded in 1909); Plymouth State College in Plymouth (founded in 1871); and the state-wide College for Lifelong Learning (founded in 1972).

Statutory authority and responsibility for all aspects of the policies, programs and operations of these institutions are vested in a single Board of Trustees, with the Chancellor as the Board's Chief Executive Officer, responsible for recommending and carrying out all policies and procedures and the effective coordination of inner-campus programs and operations.

Continuing the University of New Hampshire's heritage as a land-grant college, the institutions carry on programs which broadly encompass post-secondary education, research and service. In a typical year, the faculty and staff of these institutions provide educational opportunities for approximately 30,000 students; extend educational services that benefit--directly or indirectly--more than a third of the State's people; and support teaching, research and service activities of importance to public and private institutions and to business, industry and government throughout this State, the region, the nation, and in many instances, the world.

The University System has established this Affirmative Action Plan (AAP) in compliance with Executive Order 11246 and the implementing regulations of the Office of Federal Contract Compliance Programs ("OFCCP"), 41 C. F. R. Part 60-1, including Revised Order No. 4, as amended, 41 C.F.R. Part 60-2. Through the publication and sharing of this Plan, the University System identifies the processes and procedures through which it intends, deliberately and consciously, to carry on positive actions which support that commitment. The USNH and each component institution have issued official policy statements of commitment, signed by its Chief Executive Officer, attached as Exhibit D.

Efforts to formally record this commitment began in 1971 with an institution-wide study of policies, procedures and programs supporting or affected by equal opportunity objectives and the development of the preliminary proposal for a formal Affirmative Action Program.

This Affirmative Action Plan should not be construed as a contract between the University System of New Hampshire and any government agency or contract for the benefit of any third parties, including current or former employees or applicants for employment.

II. USNH EEO POLICY STATEMENTS

1. **Equal Employment Opportunity**

   It is the policy of the University System of New Hampshire and each of its component institutions to provide equal employment opportunities to all qualified persons regardless of gender, race, color, religion, age, national origin, sexual orientation, physical or mental disability, or veteran's status pursuant to, but not limited to, Federal Executive Orders 11246 and 11375 and RSA 345A (1965) of the General Laws of New Hampshire, and Section 503 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990.

2. **Affirmative Action**

   The component institutions of the University System will take affirmative action to provide equal employment opportunity (EEO) to all qualified persons regardless of gender, race, color, religion, age, national origin, sexual orientation, physical or mental disability, or veteran's status. All employment and personnel policies and practices-recruiting, hiring, promotions, demotions, reassignments, transfers, selection for training, compensation, benefits, layoffs and recalls, terminations-will be administered according to EEO principles.

3. **Equal Educational Opportunity**

   The University System of New Hampshire reaffirms its policy of administering educational programs and related supporting services and benefits in a manner that does not discriminate because of a student's or prospective student's race, color, religion, gender, age, national origin, sexual orientation, veteran's status, physical or mental disability, or other characteristic that cannot be lawfully the basis for provision of such programs or services.

   Further, each institution within the University System will continue to encourage the application of minority and other protected groups, and establish organizational structures and procedures that will provide equal treatment and equal access to the facilities and educational benefits of each institution to all students, as required by law. The institutions within the University System have all filed Title IX Assurance Statements and have been found in compliance by the Office of Civil Rights, U.S. Department of Education.

4. **Employment of the Disabled**

   As a federal Contractor, the University System of New Hampshire is subject to the Rehabilitation Act of 1973 (Section 503 and 504) and The Americans with Disabilities Act of 1990 and shall not discriminate against qualified physically or mentally disabled persons on the basis of their disabilities in employment, compensation, promotability, or other programs or activities sponsored by our

institutions. Reasonable accommodations shall be made to ensure equal opportunity for the disabled, as specified by the regulations governing these laws. *(Section V.1 - Recruitment Process)*

5. **Employment of Veterans**

In compliance with the Vietnam Era Veterans' Readjustment Act of 1974, the University System of New Hampshire shall take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam Era at all levels of employment. Such a policy shall apply to our employment practices and procedures, and shall be implemented according to the regulations governing this law. *(Section V.1 - Recruitment Process.)*

6. **Gender Discrimination Guidelines**

The University System shall comply with the gender discrimination guidelines issued by OFCCP and set forth at 41 C.F.R. Part 60-20 and shall not discriminate against qualified applicants on the basis of gender in employment opportunities, wages, hours, or other conditions of employment.

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III. DISSEMINATION OF POLICY

In response to the OFCCP's regulations requiring internal and external dissemination of EEO policies, the following sets forth the means the University System undertakes to ensure effective communication mechanisms.

1. **Internal Dissemination**

After approval by the Administrative Board, copies of this Affirmative Action Plan will be distributed to each institution. All Faculty, PAT and Operating Staff will be informed of the existence of this Plan through orientations, handbooks, search processes and other mediums such as policy councils and committees. Students will be informed on all campuses through various student newspapers and other relevant methods.

Furthermore, the University System will publicize its EEO policy to its employees. To disseminate the policy, each component institution will take the following specific steps:

- Post USNH's EEO Policy and the Equal Employment Opportunity Commission's equal employment poster on bulletin boards where they are visible to all employees and potential applicants;

- Periodically include the policy statement (*see Exhibit A*), or abbreviated versions thereof, in manuals, publications, newsletters, annual reports, web sites, and appropriate employee orientation materials;

- As appropriate, special meetings and/or orientation sessions will be conducted for all supervisory personnel regarding provisions of this plan, the recruitment packet, and the federal regulations regarding equal employment opportunity. Academic Deans will be responsible for transmitting goals and timetables to their faculty departments/disciplines, and special informational sessions regarding the materials included in the recruitment packet will continue to be conducted for faculty during their search and screening process;

- Make available to employees, on request, those portions of the written AAP that will enable them to know and avail themselves of its provisions (See Exhibit B), as well as make the plan provisions available electronically;

- Discuss the policy and individual responsibility for the policy with all new employees;

- Inform employees that the USNH may impose disciplinary action, up to and including discharge, on employees who impede implementation of the policy and program; and

- Include non-discrimination clauses in all collective bargaining agreements, and review all contractual provisions.

Additional steps to disseminate this Affirmative Action Plan as well as to promote knowledge of our intent and purpose insuring equal opportunity for all persons will be undertaken as deemed necessary.

2. **External Dissemination**

The University System continues to promote its community posture as an equal opportunity employer. Specific external activities include:

- Stating in solicitations or advertisements, placed by or on behalf of the University System, that applicants will receive consideration for employment without regard to race, color, religion, gender, national origin, sexual orientation, veteran's status, physical or mental disability, and state that the institution is an Equal Opportunity/Affirmative Action Employer;

- Established policies and practices that encourage recruitment of minorities and women through the use of professional associations, graduate schools, and personal and professional networks;

- Written campus policies that establish search and selection processes to encourage qualified candidates to be identified and to apply;

- A requirement that contractors, prospective contractors, and/or subcontractors agree to USNH's non-discrimination requirements as incorporated into purchase orders and vendor applications;

Upon request, the University System will make available such portions of its written Affirmative Action Plan as will enable prospective employees to know and avail themselves of its provisions. (*See Exhibit B*)

IV. RESPONSIBILITY FOR IMPLEMENTATION

1. **University System Board of Trustees and the Chancellor**

   Ultimate responsibility for equal employment opportunity and its full achievement through the University System's Affirmative Action Plan rests with the Board of Trustees. The Board of Trustees has delegated to the Chancellor the responsibility for compliance with the laws, regulations and requirements. The Chancellor, in turn, has delegated immediate responsibility for the overall planning, coordination, and reporting of the Plan to the University System Director of Human Resources, who is under administrative review by the Chancellor. The Chief Executive Officer of each institution is responsible for implementation of the Plan at his/her institution.

2. **Administrative Board**

   The success of the Affirmative Action Plan depends upon the understanding and full cooperation of every member to the University System community. Because implementing equal opportunity is a shared task, the impetus and direction for the institutions within the University System must come from the Chief Executive Officers. Their individual commitment and leadership roles are addressed and attached as *Exhibit D*. The ultimate successful implementation of equal employment opportunity and affirmative action is the responsibility of these officers and will be an integral part of their performance evaluations.

3. **University System Director of Human Resources**

   Because of the importance of this person's role in coordinating Affirmative Action policies and programs, in cooperation with the institutions in the University System, the major functions of the position are included below:

   - Coordinating of Affirmative Action programs throughout the University System to seek compliance with the requirements of E.O. 11246, as amended, and its implementing regulations;

   - Providing guidance and counsel to the component institutions' Affirmative Action Officers in matters relating to complaints of discrimination;

   - Keeping informed of new federal/state laws and developments in non-discrimination and AA/EEO areas and of all such matters at each University System institution by regular meetings with appropriate administrators;

   - Coordinating the University System's compliance with Section 503 and 504 of the Rehabilitation Act of 1973, the Vietnam Era Veteran's Rehabilitation Act of 1974 and the American with Disabilities Act of 1990;

   - Monitoring internal audit and reporting systems to measure the program's

effectiveness;

- Reporting of required data to federal and state agencies as well as representing (upon request) the University System institutions in compliance reviews or complaint investigations conducted by federal or state agencies; and

- Serving as a liaison among the Trustees, Chancellor, University System Officers and/or all institutions of the University System and all minority organizations, women's organizations, and community agencies concerned with opportunities for minorities and women, the disabled, and Vietnam Era Veterans.

4. **University of New Hampshire Special Assistant to the President**

The University of New Hampshire has an office responsible for Affirmative Action, Diversity, and Non-Discrimination programs/compliance. Because of the specialized expertise of its staff, this office also serves as a system-wide consultant for the Chancellor's office and the other institutions of the University System.

5. **Institutional Liaison Officers**

For the purpose of coordinating the implementation of the Affirmative Action Plan, each component institution's Affirmative Action Office works jointly with the University System Director of Human Resources to ensure compliance with federal and state regulations regarding nondiscrimination.

6. **Vice-Presidents, Deans, Directors, Department Heads**

Each Vice-President, Dean, Director, and/or Department Head are responsible for the successful implementation of equal employment opportunity and affirmative action within his/her own area of responsibility as it affects all Faculty, and/or Staff, and such implementation will be reviewed during each administrator's performance evaluation.

7. **Other Administrators and Supervisors**

Every administrator and supervisor is responsible for conducting his or her activities in such a way as to ensure full compliance with the University System's equal employment opportunity/affirmative action policy and programs, and such conduct will be part of their regular performance evaluation.

V. DEVELOPMENT AND EXECUTION OF ACTION-ORIENTED PROGRAMS AND POLICIES

Within the University System, Affirmative Action Committees have been established for the purpose of reviewing employment procedures, policies, and practices. Members of the Committee may be asked to serve in a variety of capacities, i.e., serving on a screening committee, serving on an appeals board, assisting an employee in preparation of a written grievance, or accompanying an employee at a hearing and so forth.

1. **Recruitment Process**

Job specification and/or classifications are periodically reviewed and evaluated in order that all required criteria are job-related. Those job specifications that are utilized are made available to those members of management significantly involved in recruiting, screening, selection, and promotion, and thus are able to recruit qualified persons on a nondiscriminatory basis.

The University System's EEO policy is reflected in the recruiting and advertising procedures utilized by each institution. A general recruitment packet was designed with specific procedures for each campus, and includes position-vacancy and position-filled forms, along with an explanation sheet on anti-discrimination laws, guidelines for interviewing, suggestions for search committees, and tips on identifying minorities.

The general recruitment process is designed to promote equal opportunity and access to vacant positions within the University System. All full-time tenure track faculty, principal administrators, and upper-level PAT positions will be advertised nationally, regionally, and locally as appropriate. Operating Staff positions are normally advertised locally. In accordance with the Internal Promotion and Hiring Guidelines, staff positions may be advertised System-wide to provide promotion and transfer opportunities for employees. Such recruiting efforts may include use of a local campus posting system; tabloid newspapers (UNH's Campus Journal); appropriate professional registries and journals; local, regional or national newspapers; female and minority caucuses and job referral groups; the State Employment Security Office; the Veterans Administration Regional Office or local veterans groups and service centers; and state vocational rehabilitation agencies and other groups providing employment referrals for qualified disabled individuals.

Further, to ensure conveying the University System's intent to promote open and unprejudiced recruitment, the phrase "An Affirmative Action/Equal Opportunity Employer" is included on recruitment advertisements and formal notices distributed by each institution and its department.

Screening committees will be required for Principal Administrative positions only; use of such committees will be optional for all other vacancies. These committees

should normally be limited in size from 5 to 7 members and will serve to screen applications and nominations received and to make recommendations on finalists. The committee may, at the option of the hiring authority, be responsible for writing the job description, setting time-frames, and so forth. Determining the scheduling of on-campus visits of finalists will be a joint decision of the hiring authority and the committee. In addition, as an alternative to the use of on-campus screening committees of Principal Administrative positions, outside services or recruitment agencies may be utilized, provided that such organizations follow guidelines established by the USNH Director of Human Resources to ensure that proper AA/EEO procedures have been utilized.

The hiring for all Principal Administrative positions involves the USNH Director of Human Resources in the following ways:

- Consulting with the hiring authority on the job qualifications whenever authorization has been given to fill a vacancy or a new position is created;
- Endorsing the advertisement before release;
- Advising on the breadth of recruitment;
- Determining the appropriateness of the applicant pool before finalizing the hiring process. This will be done in cooperation with the institution's Affirmative Action officer; and
- Checking on the accuracy of the position-filled form before the hiring is reported to the Board of Trustees or Board approval is requested.

The recruitment, search and screening process, and filling of all faculty and PAT positions is carefully monitored at each institution through the use of the position-filled form. A record of all Operating Staff vacancies and the filling of such through new hires, promotions, or transfers is maintained as well. The Affirmative Action Plan is updated annually.

2. **Upward Mobility**

Upward mobility for personnel within the University System is fostered by an equitable wage and salary administration plan; a job classification system; employee knowledge of opportunities for PAT and Operating Staff promotion and transfer within the System; employee performance evaluations which foster personal and professional effectiveness and productivity; and staff development opportunities enhanced through job-related training, workshops, courses, and seminars.

The recruiting and job-vacancy posting procedures also help to facilitate employee knowledge of promotional opportunities. The component institutions Personnel/Human Resources Departments encourage employees to update their personnel files concerning educational accomplishments, skills, and other competencies; and our revised performance evaluation procedures foster the recording of such personal and professional growth.

Apprentice, trainee, and learner programs are all possible avenues for enhancing upward mobility. The University System OLPM (On-line Policy Manual) describes these approaches to staff development in detail.

Promotional opportunities for faculty are based on promotion and tenure policies and procedures and are conducted without regard to a person's race, religion, color, gender, age, sexual orientation, national origin, or disability. Performance evaluation procedures for faculty including assessment of teaching performance, involvement and growth in their field of expertise, as well as service and outreach are described within the promotion and tenure criteria included in each institution's *Faculty Handbook* or manual, and where applicable a collective bargaining contract.

3. **Personnel Policies and Procedures**

Non-discrimination policies apply not only to the hiring practice but also to employment conditions such as compensation, promotion, and termination.

The System-wide personnel policies provide for prompt and impartial consideration of all complaints of discrimination or other grievances. The University System OLPM, as well as faculty and staff handbooks, and labor agreements where applicable, contain the standard procedures for presenting and resolving complaints.

All of these policies are designed to seek equal opportunity and fair treatment of all personnel on a non-discriminatory basis.

a. **Faculty and Staff Handbooks**

University System PAT and Operating Staff Handbooks describe, in general terms, USNH personnel policies. These handbooks are distributed to each employee, and are available upon request in each campus library and in various campus administrative offices. More detailed policies are found in the University System OLPM, as well as changes in such policies that occurred after publication of these handbooks.

Definite policies regarding faculty personnel, covering such subjects as faculty appointments, ranks and assignments, and promotion and tenure, are found in the Plymouth State College *Faculty Handbook*, and in the collective bargaining agreement for Keene State College (KSCEA) and University of New Hampshire (AAUP) faculty members. The Wheelock School faculty (not part of KSCEA) has its own handbook approved by the University Board of Trustees on March 20, 1980.

b. **Benefits, Leave, and Insurance Programs**

The University System OLPM and *Flexible Benefits Information Booklet* describe retirement programs, educational benefits, interim and long-term disability and life insurance options as well as other leave policies. The University System offers a wide variety of medical insurance options for members of the faculty and staff and their dependents. The USNH benefits package is progressive and responsive to the needs of all faculty and staff

employed in at least a 50%-time status position.

Of particular interest to affirmative action and Title IX concerns is the general pregnancy-related leave which is:

> *Pregnancy and childbirth are considered to be disabling conditions, not for any fixed period of time. The University System encourages pregnant women to continue working as long as they are able to perform the job satisfactorily. The faculty or staff member and her supervisor or department chairperson are expected to give consideration to safe working conditions and practices during pregnancy.*
>
> *When, in the opinion of a physician, a member of the faculty or staff is unable to perform her duties and responsibilities because of medical complications related to pregnancy and childbirth, the woman who plans to return to work may apply for FMLA leave and relevant sick or vacation leave. When there are no complications involved, faculty and staff members are encouraged to return to work as soon as they have recovered from childbirth.*
>
> *The period of leave is determined on a case by case basis by the appropriate personnel officer following receipt of the physician's medical substantiation for the leave. Normally, such leaves extend for a period of six weeks following childbirth; however, in certain cases where a woman's physician indicated that more time is necessary for recovery from childbirth, leave for interim disability would apply.*
>
> *If a member of the faculty or staff indicated that she plans to return to work in that department after childbirth, her job will be held open for the period of her leave. Leave for pregnancy or childbirth will not affect professional advancement, longevity or seniority benefits.*

c. **Family Medical Leave Act (FMLA)**

A faculty/staff member may request time off for a 12-week period with job protection and no loss of accumulated service provided the faculty/staff member returns to work. In cases of leave for the faculty/staff member's own illness the faculty/staff member will be required to use established paid leave policies (i.e., accrued sick leave/interim disability leave or earned time/sick pool time). Leaves taken to care for family members will require that the faculty/staff member use accrued earned time/vacation days; however, the faculty/staff member has the option to retain up to 10 earned time/vacation days.

To be eligible for leave under this policy an employee (status or non-status) must have been employed within USNH for at least 12 months in total, and must have worked at least 1,250 hours during the 12-month period preceding

the commencement of the leave.

d. **Grievance Procedure**

USNH has grievance and complaint procedures available for the resolution of defined employment-related disputes.

> *The University System is committed in policy, principle, and practice to maintain an environment which is free of illegal discriminatory behavior and which provides equal opportunity for all persons regardless of race, color, religion, gender, age, national origin, sexual orientation, or physical or mental disability. This commitment is consistent with federal and state laws. A major responsibility originating from this commitment is the provision of an effective and efficient mechanism to rectify or eliminate practice and actions that are discriminatory, lack provision for due process, or mitigate against the University System's affirmative action efforts.*

A grievance may be filed when a member of the faculty or staff believes that the terms and conditions of employment, as outlined in the University System Policy Manual, have been violated.

System Policy USY-V-D-12 outlines in detail employee complaint and grievance procedures to be used in filing a grievance alleging discrimination and a violation of Board of Trustees, University System, or institutional policies prohibiting such behavior.

Each component institution may establish a mechanism for considering employee complaints (excluding termination of employment, classification decisions, or judgment of merit). The employee grievance procedure adopted by any component institution provides for:

- Status faculty and staff, excluding principal administrators and members of a certified collective bargaining unit, to file grievances under an institutional grievance procedure.

  Each institution's Faculty Handbook or Collective Bargaining Contract includes review and appeal processes in cases of dissatisfaction over promotion, tenure, termination, and other items regarding faculty concerns, as well as alleged discrimination complaints;

- A grievant to bring an advocate to any meeting or hearing held pursuant to a grievance procedure. The advocate may act in an advisory capacity to the grievant or, at the grievant's request, may speak on the grievant's behalf. The third party must be a status USNH employee and shall not be an attorney;

- The remedies available under a grievance procedure to be limited to those necessary to bring the grieved action into conformance with policy

or policies which were violated.

The filing of a grievance shall not affect the rights of an employee to seek any remedy which may be available in an external forum. However, the filing of a grievance does not postpone any deadlines for pursuing remedies in any external forum.

e. **Resolving Sexual Harassment Complaints**

The University System of New Hampshire will not condone any behavior, verbal or physical conduct by any administrator, supervisor, faculty or staff member that constitutes sexual harassment.

If an employee decides to file a sexual harassment complaint, the following procedure will be adhered to:

> *Every effort will be made to resolve the complaint within thirty (30) days using an informal process. The objective of this process will be to provide appropriate relief to the aggrieved party, sensitize the alleged harasser to the effects of such behavior and resolve the complaint to the mutual satisfaction of both parties. If the informal proceedings are deemed inappropriate, or if the matter is unresolved, the aggrieved party may initiate a formal grievance procedure. The action to file such a grievance must be taken within ten (10) working days after the informal resolution has failed or within sixty (60) calendar days of the incident of sexual harassment. The complaint will be heard by a five-member Hearing Panel. The Hearing Panel will hear testimony to make findings of fact to determine if the University System policy on sexual harassment has been violated and, if so, recommend appropriate relief and disciplinary action. An appeal mechanism is available in the event that either party wants to appeal the decision.*

f. **University System Personnel Policies Councils**

By Board of Trustees' action on January 17, 1974, the University System established two Personnel Policies Councils, one for faculty and PAT staff and the other for Operating Staff, to serve in an advisory capacity to the Administrative Board. At a later date, Extension Educators and the Wheelock School Faculty were added to the faculty and PAT staff council. Both Councils have the responsibility to review and recommend, from a System perspective, on aspects of personnel policies and programs that affect the employment conditions of the faculty and staff. Each institution has also established its own campus committees concerned with the welfare and employment conditions of the faculty and staff. These committees or councils serve in the governance structure (college and/or university senate) or in advisory capacity to the Chief Executive Officer of each institution.

The membership of the SPPC (Faculty/PAT/EE/WSF) is composed of 1 faculty

member and 1 PAT staff member from PSC; 1 PAT staff member from UNH, KSC, CLL and the USNH Central Office; 1 Extension Educator; and 1 member of the Wheelock School faculty at KSC. UNH, KSC, and PSC have the option of designating 1 additional administrator to serve on this council. The membership of the SPPC (Operating Staff) includes 1 Operating Staff member from UNH, KSC, PSC, CLL and the USNH Central Office as well as an administrator from each campus or school who has significant supervisory responsibilities. The USNH Director of Human Resources is a non-voting ex-officio member of both councils.

Through such councils and committees, the University System encourages faculty and staff members to evaluate realistically the policies and practices that affect their employment. Their constructive criticism has resulted in revised policies and in a continuously improved benefits program for all.

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VI. INTERNAL AUDIT AND REPORTING REQUIREMENTS

The University System believes that one of the most important elements in effectively implementing a written Affirmative Action Plan is an adequate internal audit and reporting system. Through this system, progress can be monitored and management kept continuously informed. For this purpose, recruiting efforts are closely monitored through the position-vacancy and position-filled forms for Faculty and PAT staff positions. A hiring action is not complete until the position-filled forms and supporting documentation are reviewed by the institution's Affirmative Action or Personnel Officer, or other designated principal administrator.

Records of applicant flow, hires, transfers, promotions, separations, are monitored to make every good faith effort to comply with the University System's EEO policy.

Progress toward meeting goals is measured periodically through discussions with appropriate management personnel.

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VII. WORKFORCE ANALYSIS AND UTILIZATION

A workforce analysis and utilization study are required by federal regulations and provide the basis for goal-setting that is a primary focus of an Affirmative Action Plan. For each campus a workforce analyses has been produced by EEO-6 employment categories (Exhibit C) using each institution as a whole, then the major administrative units, and finally by individual department.

1. Instructional Staff

The Spring of FY 1998 employment of full-time tenure track instructional staff in each department, program or area in each college/school within each institution has been studied. The workforce analysis of this group included a breakdown of the faculty by rank, tenure, salary, gender and ethnic background.

The USNH utilization study was based on the results of the workforce analyses and includes a thorough examination of the applicable labor market that is used to determine whether or not women and/or minorities were significantly underutilized in the Spring of FY 1998. If either of these groups were found to be underutilized, that situation was stated, and goals were set for women and minorities as a means of correcting such underutilization. The following discussion expresses the general approach used in conducting the availability and utilization study as well as the procedure for establishing subsequent goals.

Availability of women or minorities is determined through an analysis of the total applicable labor market by using data concerning their proportion of relevant degrees awarded, as well as their participation in the enrollment and employment aspects of the particular discipline and/or sub-field. The following sources of information were used to determine the availability of women and minorities:

- Affirmative Action Plan - 1997
  University System of New Hampshire.
- Affirmative Action Table #1: Adjusted Number of Ph.D.'s, by Fine Field of Doctorate, Race/Ethnicity, Citizenship, and Gender, 1994. (paper copy)
- NH Affirmative Action Data, 1994, 1996, Employment Security Division, State of New Hampshire.
- Professional Women and Minorities, Eleventh Edition, Vetter, Babco and Fisher, Scientific Manpower Commission, January, 1994, 1996.

Underutilization results when the availability of women and/or minorities in the total applicable labor market is not equitably represented in the unit being studied. Underutilization is considered to be significant whenever the increase in the number of persons in a job group necessary to eliminate underutilization is .5 persons or

greater; in other words, the calculations for annual goals to rectify this underutilization are rounded off to the nearest whole number.

Goals are necessary to rectify the underutilization of a particular group(s). When a member of a protected group (Women, African Americans, Hispanics, Asian-Americans or Pacific Islanders, or Native Americans) and a non-protected person are viewed as having "equal" standing for a position, an established goal would indicate that strong consideration should be given to the protected class, in order to fulfill our commitment to affirmative action and rectify the underutilization that formerly existed. Vacant faculty and staff positions will be advertised according to equal employment opportunity procedures as outlined in Section V.1 Recruitment Process. All qualified persons are encouraged to apply for such positions and their application will be judged according to merit and qualifications.

To illustrate the above process, suppose that a department has 20 full-time, tenure-track instructional positions and that the availability factor of women and minorities is 20% and 15%, respectively. The expected utilization of women in this department would be as follows:

> *20 (# of positions) x .20 (availability factor or proportion of women in the total applicable labor market) = 4 (the number of positions that women should occupy in that department).*

Thus, if that department had only 3 women faculty members, a case of underutilization would exist. After stating such a situation, a goal to hire another female faculty member when a position becomes open would be established, to rectify past underutilization.

To continue the example, the determination of the number of positions that should be held by minorities in this department is as follows:

$$20 \times .15 = 3$$

If the department has 2 minority faculty, underutilization would still be present, as the number of positions that should be held by a minority member is 3. A formal goal would then be established to hire a minority member to fill the next vacant position. In summary, the goals of that department would then be to hire 1 woman and 1 minority member. Successful fulfillment of such goals would ensure the appropriate reflection of the availability of these groups in that department.

2. **Non-Instructional Staff**

The workforce analysis for this area includes all non-instructional personnel who held status, benefits-eligible positions in the Spring of FY 98 on each campus/unit in the University System of New Hampshire. This employment, internally classified as Principal Administrators, Academic Administrators, Professional/Administrative/Technical Staff, and Operating Staff, includes the following six EEO-6 occupational employment categories:

1. Executive, Administrative, and Managerial
2. Professional Non-Faculty

3. Technical/Paraprofessional
4. Secretarial/Clerical
5. Skilled Crafts
6. Service/Maintenance

Each institutional workforce analysis includes a breakdown on the sex, ethnic background, and salary ranges for the incumbents in each particular category or employment.

In accordance with OFCCP (Office of Federal Contractor Compliance Programs) regulations, these 6 employment categories were further sub-divided into 45 relevant job groups on the basis of 3 criteria: (1) similarity of work content, (2) similarity of pay, and (3) similarity of promotional opportunities. (*See Exhibit C*) A utilization analysis was conducted for each job group by institution.

Availability of women and minorities was determined by using the following 4 factors:

1. *The percentage of minorities and women in the civilian labor force in the immediate labor areas.*

2. *The percentage of minorities and women with requisite skills in the immediate labor area.*

3. *The percentage of minorities and women with relevant skills in the relevant recruitment area.*

4. *The percentage of minorities and women among those promotable or transferable within the contractor's establishment.*

The factors were weighted, with the weights adding up to 100% for each job group.

The other 4 factors of the 8-factor analysis required under Revised Order #4 were weighted zero because they were not relevant to any of our job groups and therefore not included in the availability estimates.

The following sources of information were used to determine the availability of women and minorities for non-instructional positions:

- 1990 Census, EEO Special File: ME, NH, VT Counties, Occup. (25) by race, by sex, Personnel Research Incorporated, Durham, North Carolina.

- 1990 Census, EEO Special File: CT, MA, RI Counties, Occup.(25) by race, by sex, Personnel Research Incorporated, Durham North Carolina.

- 1990 Census, EEO Special File Detailed Occupations for NH Personnel Research Incorporated, Durham, North Carolina.

- 1990 Census, EEO Special File United States Summary, Occup.(514) by race, by sex, Personnel Research Incorporated, Durham, North Carolina.

- Prof. Women and Minorities, Eleventh Edition, Vetter, Babco and Fisher, Scientific Manpower Commission, January, 1994, 1996.

- NH Affirmative Action Data, 1994, 1996, Employment Security Division, State of New Hampshire.

The determination of expected utilization of women and minorities in these job groups follows a similar procedure as outlined in the previous discussion for instructional staff.

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VIII. SUMMARY STATEMENT

In developing and implementing this Affirmative Action Plan, the University System has been guided by its established policy of providing equal employment opportunity. Further, in using the above-mentioned workforce analysis and utilization study for instructional and non-instructional staff, any goals which the University System has established herein are not intended as rigid, inflexible quotas that must be met, but rather as targets reasonably attainable by applying every good faith effort in implementing this Affirmative Action Plan. Neither the use of goals in this Affirmative Action Plan nor the effect of such goals is intended to discriminate in employment against any individual or group of individuals who are not themselves the beneficiaries of affirmative action. This Affirmative Action Plan is not intended to sanction the discriminatory treatment of any person. It has been developed in strict reliance upon the Guidelines on Affirmative Action issued by the Equal Employment Opportunity Commission ("EEOC") (29 C.F.R. Part 1608).

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Testimony on HB1304
February 5, 2002, 1:30 PM
House Executive Departments and Administration Committee
by
Joan R. Leitzel, President, University of New Hampshire

I appreciate the opportunity to talk with you about the impact this bill (HB1304) would have on the University of New Hampshire and to explain why the University must oppose the bill.

To give a context for my remarks, I want you to know that at this time UNH is admitting all qualified applicants and that all students are admitted under the same academic admissions standards. Academic standards are not differentiated on the basis of race, sex, national origin, religion, or sexual orientation. Admission decisions at UNH are not made on the basis of one or two numerical scales alone. Rather, the University reviews all indicators in an applicant's background in order to judge the student's potential to be successful at UNH.

Having said that, the University of New Hampshire recognizes that diversity in the student body, faculty, and staff is essential to fulfill the University's primary mission: providing a quality education. Let me explain why diversity is a quality of education issue.

- Students learn a great deal from one another, especially from others who have different backgrounds, cultures, beliefs, and values. The college years are years of intense learning and values acquisition. This learning takes place best in a richly diverse intellectual and social environment.

- Students at a university like UNH are likely to live and work in more diverse communities when they leave the University than they have experienced before they came. The demographic changes in New Hampshire recorded in the last census give evidence that our graduates who stay in New Hampshire will live in an increasingly pluralistic society. This is also true for graduates who locate outside New Hampshire.

- Public higher education has the responsibility to teach all of the nation's populations. Developing the talents and abilities of all our citizens is critical to America's economic competitiveness. Last month I received a letter signed by many of the CEOs of the nation's leading companies which states, **"As corporate leaders, we recognize the growing importance of the global economy and the imperative of preparing all Americans to play a role in that economy."**

As a consequence, the University of New Hampshire has a strong commitment to building a diverse student body, faculty, and staff. In order to do this, we must be sure that opportunities at UNH are known to diverse populations. The goal is to attract qualified individuals into our student, faculty, and staff applicant pools from all parts of our pluralistic society.

The bill under discussion today, HB1304, would prevent the University System from setting quotas, goals, or guidelines for the admission of students and the recruitment of faculty and staff based on race, sex, national origin, religion, or sexual orientation. We are not concerned with quotas. We don't have them, and we don't want them. But we do care about goals and guidelines. The University must have goals in order to continue to strengthen its programs. We must have guidelines to indicate how the University will meet its goals, what we will do and what we will not do.

At UNH we're working hard to develop a successful diverse community in which each person is able to meet his or her full potential. We do this because of our commitment to provide all students with the highest possible quality of education and to meet the needs of New Hampshire's knowledge-based economy. Success requires strong effort, and it requires goals and guidelines. For these reasons I ask the Committee not to support HB1304 which would restrict our ability to continue the progress we have made.

Testimony regarding HB 1304
House Executive Dept and Administration Committee
February 5, 2002
University System of New Hampshire – Joan Tambling

Introduction

USNH would like to speak in favor of the positive employment effects of establishing and supporting employment goals for the hiring, promotion and retention of women and minorities in the workplace.

Goals and Quotas are Different

In an employment context, goals and quotas have very different meanings. Quotas are specific formulas for hiring of women or minorities. Quotas are typically the result of court order or a government sponsored settlement of a discrimination claim. USNH has not and would not voluntary engage in setting quotas, and has not ever been subject to a court-order quota for hiring.

The institutions of USNH, as well as every other NH employer who complies with federal mandates, do set goals, both voluntarily and in order to qualify for federally funded student aid and research grants. We have done so successfully since the mid-70's. To establish a "goal", an organization collects data on the availability of women and minorities for a particular position or group of positions. Availability is based on the population in the recruiting areas, and the statistics regarding the appropriate skills. The statistics come from Division of Employment Security, from the US Census data and from some select databases regarding credentials.

For example, USNH aggregates together all of its skilled crafts positions. Our current data for Plymouth State College indicates that 17% of the workforce with the appropriate credentials for skilled crafts (Carpenters, Plumbers Electricians etc) are women. PSC has 22 positions in skilled crafts. If women occupied 17% of those positions there would be approximately 4 women (17% of 22 is 3.7) among those 22 positions. Plymouth actually has 3 women in among those 22 and thus has a goal to hire one woman. The goal is a means to measure what a workforce free of discrimination would look like. It is not a hiring quota nor is it a rigid target for selection decisions.

Goals are a means to measure and achieve discrimination – free hiring.

Having established a goal of one woman for the Skills craft group. USNH would work to insure that its advertising and recruiting efforts were reaching the full applicant pool. USNH institutions use the existence of goal as a means to tell a search committee that they should be not only "screening" candidates, but searching for candidates if the applicant pool profile does not reasonably match the availability statistics. Using the same sample as above, if a job opening for a Carpenter received 30 applicants, we would

expect to see from 2 to 7 women in the pool. If we didn't see any women, we might consider another advertising source. In any case, whether regardless of the number of women or minorities in the applicant pool, we would ultimately offer the job to the person with the best match of credentials to job requirements, regardless of gender, race, age, or existence of a goal.

The use of goals has increased objectivity in describing job qualifications and in making hiring decisions.

The rise of the use of goals means that organizations have the ability to estimate what the profile of their organization would look like if no discrimination based on gender or national origin or color were a factor.

If it does not look like that profile, an organization wants to scrutinize why.

There can be valid reasons. In the above example, it could be that the general availability of skilled crafts personnel is 17%. But in actuality the job opening is for a Crafts supervisor with multiple skill requirements. Actually availability of women may be more like 5% for such a job. USNH does not do this analysis on every opening. However, over time, the impact of reviewing applicant pool and hiring results has increased the clarity of job needs and the emphasis on communicating direct job related needs and qualifications. The impact of such scrutiny over the last 25 years has been an increased emphasis on articulating job related reasons both before recruiting and in making the ultimate selection. This is an advantage to all qualified candidates.

Establishment of employment goals is required for USNH to receive federal funds.

USNH is subject to the Federal Executive Order 11246. This federal mandate applies to all NH employers who sell goods and services to the federal government or who receive federal funds. This executive branch directive requires the establishment of goals with documentation of availability and utilization of women and minorities. In general, it requires the establishment of a goal if "utilization" (the number of women or minorities in the organization) is less than 80% of availability (the number of appropriately credentialed women and minorities in the recruiting area). USNH is required to have a Plan (available at our web site www.usnh.edu) and to submit reports (every 2 years) to the Federal government. If we do not, the Federal government can withdraw any Federal funding for USNH. In fiscal year 2000, our institutions receive approximately $60 million dollars in federally funded research, as well as approximately $85 million in student aid and loans. Loss of these funds would be devastating to our ability to carry out the University's research mission, and to our ability to provide affordable education to middle and lower income students.

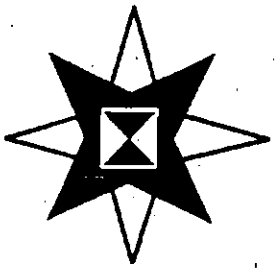
The 25 year impact of using employment goals has been good for USNH, good for NH business, and good for the citizens of New Hampshire

Since beginning the use of goals, USNH institutions have dramatically changed the face of its employee profile. Women have come to be part of all levels of the organization. Minority employees have not increased dramatically but have nevertheless increased to more closely match New Hampshire population. Male employees have reaped the benefits of open, well-articulated job searches so that those with the strongest qualifications are more likely to be selected.

In 1975, the faculty was composed of approximately 15% women and 1% minorities. In 2001, women made up approximately 35% of the tenured faculty; 4% of faculty members were minorities. In 1975, there were no women Presidents or Vice Presidents in U.S.N.H institutions. Today, 32% of USNH principal administrators are women.

Though more difficult to document, we believe that the increase in objectivity and commitment to diversity has also meant an increase in quality. Some worried that the establishment of goals would mean accepting a lesser qualifier candidate for a job because of gender or race. In fact, we believe the opposite has been the result. Larger, open applicant pools have produced greater opportunities for the University System to employ well-qualified candidates.

We believe commitment to diversity is a means to a commitment to excellence. We hope to continue this approach in the future.



American Friends Service Committee
New Hampshire Program
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Testimony in Opposition to HB 1304

My name is Martha Yager. I work for the American Friends Service Committee New Hampshire Program. I am hear to urge you to oppose HB1304.

The American Friends Service Committee was established over 80 years ago as a Quaker organization. During its life it has served both as a service instrument for the Religious Society of Friends (Quaker) and as a way for like-minded people to unite both in service and in opposition to violence and injustice as they are manifested in various ways within the United States and throughout the world.

As a Friends organization, AFSC is rooted in a commitment to service, to social justice, to non-violence and to respect for all human beings. As an organization we have been deeply committed to affirmative action as a policy that helps us to apply those principles both within our own organization and in the larger society.

Affirmative action differs from non-discrimination in that it is active rather than passive. A non-discrimination policy means that the organization (state, college, etc.) will consider people on their merits and for their capacities to do what is expected of them. Affirmative action means that that organization/institution will reach out for greater inclusiveness of a wide variety of people.

The need for affirmative action derives from the fact that discrimination is embedded in our societal patterns of education, housing, employment, social interaction and political participation. These patterns are so pervasive that frequently those involved do not even

realize that discrimination is occurring. In the current environment policies of non-discrimination alone are inadequate to achieve inclusiveness and full participation. Special efforts and procedures to reach out to previously excluded groups are necessary.

This situation may be especially true in New Hampshire. Just a few years ago the state marketed the New Hampshire Advantage – which included the affirmation that we are a homogenous community. That very homogeneity has allowed us to settle into patterns that we often are not even aware of that make it very difficult for people who are different in some capacity to feel at home here. As our demographics shift, and they are shifting, it is critical that we affirmatively seek out and welcome increasing diversity. It does not happen well without conscious care and commitment to these goals. We will be the richer as a community for that.

We applaud the University's efforts to broaden its outreach, to be more actively inclusive. We encourage state agencies to do likewise. And we urge you to vote to oppose HB1304.

Thank you.

STATE OF NEW HAMPSHIRE
COMMISSION ON THE STATUS OF WOMEN

February 5, 2002

TO: **Rep. Andrew Peterson, Chair**
Executive Departments and Administration

FROM: **Patricia Yosha, Commissioner**
New Hampshire Commission on the Status of Women

RE: **House Bill 1304: An Act prohibiting preferences in hiring, promotion, or admission by state agencies, the university system, the regional community-technical colleges and the postsecondary education commission.**

Good afternoon Chairman Peterson and members of the Committee.

My name is Pat Yosha and I am the appointed Commissioner from Exeter on the New Hampshire Commission on the Status of Women. The Commission is a non-partisan state agency that is legislatively mandated under RSA 19-B to "recommend methods of overcoming discrimination against women in public and private employment and civil and political rights."

It is in this context that I testify today in opposition to HB 1304. This bill, if passed, which would effectively dismantle equal employment opportunities and affirmative action programs in the state's governmental and educational institutions.

We oppose this bill in both its parts. First, the act would "prohibit preferences in hiring, promotion, and admissions" in state agencies and the university system. The practice of preference is already prohibited. It is called "discrimination," and it is deemed illegal under equal opportunity and affirmative action regulations.

The use of "preference" in the wording of HB 1304 reveals a common misunderstanding about affirmative action. Affirmative action is not about preference; rather, its purpose is to eliminate discriminatory policies and practices that have historically excluded women and minorities from access to education and employment. It is best defined as an inclusive recruitment tool that actively and affirmatively promotes equal opportunity. Indeed, when properly understood as an employer's "genuine effort to broaden the applicant pools to include more qualified women and minorities," 70 percent of white people support affirmative action programs. Affirmative action does not guarantee jobs through preferential hiring; rather, it safeguards the opportunity for all qualified persons to apply for and to advance in employment and education.

Second, HB 1304 would prohibit the establishment of "quotas, goals, or guidelines for hiring, promotion, or admission based on race, sex, national origin,

Room 334, State House Annex, Concord, N.H. 03301
(603) 271-2660 www.state.nh.us/csw TDD Access: Relay NH 1-800-735-2964

religion, or sexual orientation." Except in the most extreme court-ordered cases, quotas are already illegal and so do not apply to the state government or university system of New Hampshire. Yet, state governmental and educational agencies are required, under federal equal opportunity legislation to create precisely what HB 1304 would prohibit: guidelines and goals to promote fair admissions, hiring and promotion practices. The state would jeopardize access to billions of federal dollars if it prohibited affirmative action guidelines and goals.

The purpose of affirmative action is to eliminate discriminatory practices. It should be dismantled only when discrimination itself is obsolete. Yet, despite enormous gains made in this country, women and minorities continue to face obstacles in the labor force and in education. An astonishing 70 percent of schools, for example, are not in compliance with Title IX—the federal education equal opportunity law passed in 1972. At the national level, for every dollar earned by men, women on average earn 74 cents, African American women earn 63 cents, and Latina women earn 57 cents. Here in New Hampshire, there is evidence of continuing inequities, too. According to the Institute for Women's Policy Research, New Hampshire ranks 34th in the country for the pay gap between men's and women's annual wages. The average income for single women in New Hampshire, in 1998 dollars, was $16,229; for men, it was $23,723. It should come as no surprise, therefore, that 19.3% of New Hampshire women live in poverty, as compared to 13.5% of men.

These figures are the result of persistent historical discrimination in access to education and in recruitment, hiring and promotion practices by employers. The federal government purposefully included both government employers and higher education institutions under equal opportunity legislation. The federal law makes explicit the link between educational attainment and life-long earning potential. Indeed, let me give you a snapshot in time to make my point. In the 1998-99 academic year, women represented 58 percent of the Bachelor's Degree candidates at the University of New Hampshire. Yet, women comprised only 22 percent of the student body in the College of Engineering and Physical Sciences. That percentage is quite alarming when we consider that UNH is one of only two schools in New Hampshire with an accredited engineering program—the other being Dartmouth College. In 1999, when UNH's engineering graduates entered the job market, only 12.4 percent of the 1,888 applicants for engineers, architects, surveying, and related technicians were women.

At the same time, the state is suffering from a shortage of engineers—so much so that it must import its labor force in the high-tech fields. Indeed, the New Hampshire Employment Security has become concerned enough by the increasing demand for engineers in the state that it published in October 2001 a report "Engineers in New Hampshire." The report states that "engineers have starting salaries significantly higher than those of other college graduates. . . . Across the wage spectrum in New Hampshire, engineering disciplines were about $10.00 per hour higher than wages for the total of all occupations." In fact, in 1999, when UNH graduates entered the labor force, civil engineers in New Hampshire made $25.09 an hour.

One of the single largest employers of engineers in New Hampshire is a state agency—the Department of Transportation. Presently, the department employs 144 engineers. Of these, 10 are women. At the same time, more than 50 of the

positions in the department are currently unfilled because of lack of applicants. The department has created a comprehensive and model affirmative action plan to fill this gap. Inclusive recruitment and equal opportunity that makes best use of the state's labor pool is good business.

The employment figures from the Department of Transportation illustrate that, rather than too aggressively pursuing affirmative action as HB 1304 would suggest, the state of New Hampshire does not do enough. In comparison to our neighboring New England states, New Hampshire has no state-mandated affirmative action plan. Maine State Government, in contrast, is an Equal Employment Opportunity/Affirmative Action employer—by official state policy. Rhode Island, by executive order, requires affirmative action programs for state agencies. Governor Rowland of Connecticut has stated that "Affirmative Action is a program of positive action . . . to overcome the present effects of past practices, policies, or barriers to Equal Opportunity, and to achieve the full and fair participation of women, blacks, Hispanics, and any other protected group found to be underutilized in the work force."

Affirmative Action programs acknowledge that hundreds of years of discrimination cannot be erased in a few decades. Equal opportunity legislation is a bridge between changing laws and deeply engrained cultural attitudes. If passed, HB 1304 would make punitive the positive goal of actively including as applicants those groups previously excluded in the inner circles of governmental positions and higher educational institutions. The Commission on the Status of Women urges the Committee to vote HB 1304 as inexpedient to legislate.

Respectfully submitted,

Patricia Yosha
Commissioner
24 String Bridge
Exeter, New Hampshire 03833

Sources

"Engineers in New Hampshire." Economic and Labor Market Information Bureau of New Hampshire Employment Security. October 2001.

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New Hampshire Commission on the Status of Women

FAST FACTS: AFFIRMATIVE ACTION

In the 1960s and 1970s, the federal government passed Equal Employment Opportunity (EEO) legislation to prohibit discrimination in hiring and promotion, thus protecting many individuals deemed to be of minority status. As with so many well-intentioned policies, EEO legislation could not affect change without a strong plan of implementation and policy review. So was born Affirmative Action. Affirmative Action is best understood as a recruitment tool designed to increase opportunities for qualified individuals of minority status to apply for jobs. The basis of Affirmative Action is to implement goals and guidelines that actively promote the aims of EEO legislation.

Under EEO and Affirmative Action regulations, establishing quotas or giving preferential treatment in hiring or promotion is explicitly illegal.

There are four basic types of Affirmative Action.

- Federal Contractors. Instituted by President Nixon, the law requires all firms with more than $50,000 in federal contracts and at least 50 employees to produce a written Affirmative Action plan. For an agency or business to successfully bid for federal contracts, they must produce a set of goals and written steps to promote fair hiring and promotion practices. The agencies and businesses are not evaluated on the number or percentage of minorities they employ but instead the effort they put forth.

- Government Agencies. Governmental agencies are required at the federal level to implement goals and steps to encourage employment opportunities. Some of these goals are recruitment methods that reach the entire pool of qualified candidates; developing and fully utilizing an employee's skills; training lower level employees to enhance promotion opportunities; and identifying target positions for which lower level employees may be eligible.

- Court Ordered. When a private business has been found guilty of discriminatory practices in employment, the court can order the adoption of an Affirmative Action program. In cases of gross discriminatory practices, the court can choose to institute quotas as part of their affirmative action plan. This type of situation is strictly the only instance where quotas are allowed under federal law.

- Voluntary Implementation. Employers may voluntarily implement affirmative action programs because they deem them to be ethical, cost effective, and good business practice. While voluntary, employers must adhere to EEOC guidelines so as to prevent any type of reverse discrimination.

Affirmative Action is a necessary tool in holding employers accountable to Equal Employment Opportunity legislation. Supported by the majority of the workforce, when Affirmative Action is appropriately defined as an employer's "genuine effort to broaden the applicant pools to include more qualified women and minorities," approximately 70% of white persons endorsed it.

For more information, contact the Commission at cmsw@admin.state.nh.us.

NEW HAMPSHIRE WOMEN'S LOBBY

PO BOX 1072 • CONCORD, NH 03302-1072 • PHONE 603-224-9105 • FAX 603-224-0033

02-05-02

To: Representative Andrew Peterson, Chair , and Committee members
Executive Dept. & Administration Committee

Re:HB1304 prohibiting preferences in hiring, promotion or admission by state agencies,the university system, the regional community technical colleges and the post-secondary education commission.

From: Lucy Gagnon, Intern, NHWL

FROM: THE NATIONAL COMMITTEE ON PAY EQUITY

The Wage Gap By Education: 2000

The following are wage figures reflecting the median earnings in 2000 for full-time, year-round workers, 25 years and older:

	H.S. Grad.	Bachelor's	Master's
ALL MEN	$32,493	$53,505	$65,052
White	$34,583	$55,269	$65,096
Non-Hispanic Whites	$35,601	$55,895	$65,306
Black	$27,454	$45,079	$50,642
Hispanic	$27,355	$42,834	$51,082

	H.S. Grad.	Bachelor's	Master's
ALL WOMEN	$23,719	$38,208	$47,049
White	$24,578	$38,501	$47,138
Non-Hisp. Whites	$25,127	$39,115	$47,292
Black	$21,080	$38,021	$45,074
Hispanic	$20,860	$32,097	$45,768

Overall this table shows:

- The median earnings for a Hispanic woman with a college degree are $3,504 less than the median earnings for a non-Hispanic white man with just a high school education.
- On average, a woman who has a Masters' Degree makes $6,456 less than a man with a college degree.
- The median wages of female college graduates fall behind those of male college graduates by $15,297.
- On average, a Hispanic male with a Master's degree makes $4,813 less than his white non-Hispanic counterpart who just has a Bachelor's degree.

Updated October 2001

A New Look Through the Glass Ceiling:

Where are the Women?

The Status of Women in Management in Ten Selected Industries

January 2002

Data for this report were compiled by the U.S. General Accounting Office, and analyzed by the staffs of Representatives John D. Dingell (D-MI) and Carolyn B. Maloney (D-NY).

Executive Summary

This report provides a review of the status of women in management positions in ten selected industries. Representatives Dingell and Maloney asked the General Accounting Office to compile data from the Current Population Survey (CPS) to determine how women in management are faring today as compared with five years ago and to further understand the continuing impact of the glass ceiling on women's advancement to the top. While not an academic-level study, the CPS data give a point-in-time snapshot of women's status in management positions relative to men's.

Recently, a number of different organizations have issued reports on the status of women in specific career areas ranging from media to law to the financial services industry. However, this is the first such review that evaluates a large number of industries across a wide variety of areas in an effort to understand where women are progressing and where they are falling behind their male counterparts. While more study is needed, the data suggest possible trends that are cause for concern and merit more research.

Despite a sense of continued progress toward gender equality in the workplace, in ten industries employing 71 percent of U.S. women workers and 73 percent of U.S. women managers, the data show that women managers continue to lag behind their male counterparts in both advancement and pay.

The majority of women managers were worse off, relative to men, in 2000 than they were in 1995.

Perhaps even more startling, the data show that in 7 of the 10 industries, the wage gap between male and female managers actually widened between 1995 and 2000. In other words, the majority of women managers actually did better, relative to men, in 1995 than they did in 2000. Occurring as it did during a time of economic prosperity, this increased wage gap is particularly troubling.

The GAO data also show that women continue to be underrepresented in management. In *only* 5 of the 10 industries reviewed do women hold a share of management jobs proportionate to their share of the industry workforce. Thus, women's record presence in the work force is not matched by their presence in the more influential and economically advantageous positions.

In response to this continuing problem, Representatives Dingell and Maloney intend to continue to address the status of women in the workforce and the challenges they face in advancing their careers. In an effort to bring attention to this issue, the Representatives plan to work together in Congress to produce an annual review studying the status of women in management positions. It is imperative that a message be sent to American workers and employers alike that women deserve equality in the workplace.

The Offices of Representatives Dingell and Maloney would like to thank Dr. Martha Farnsworth Riche, former Director of the U.S. Census Bureau, for her assistance on this project.

Key Findings

Despite a sense of continued progress toward gender equality in the workplace, in ten industries employing 71 percent of U.S. women workers and 73 percent of U.S. women managers:

- Full-time women managers earned less than their male counter parts in both 1995 and 2000.
- In seven of the ten industries, the earnings gap between full-time women and men managers actually widened between 1995 and 2000.
- Only five of the industries had women managers in the same proportion as women in the industry's work force in 2000.

Purpose

Over the past year, a number of different organizations, including the Annenberg Public Policy Center, Catalyst, and the American Bar Association Commission on Women in the Profession, have published reports revealing the status of women in specific career areas ranging from media to law to the financial services industry. (For an annotated list, please see page 15 of this report.) The statistics are particularly concerning. For example, one of the reports found that while women make up 46.5% of the workforce,[1] they represent only 12% of all corporate officers.[2] The implication of this disparity is important to all women, at every job level, as evidence of equality must occur across the spectrum of job levels. Further, women entering the workforce should have every assurance that the same opportunities for compensation and advancement available to their male counterparts are equally open to them.

While women make up 46.5 percent of the workforce, they represent only 12 percent of all corporate officers.

Acting on their concerns about the disparity of women's status relative to men's in the workplace, Representatives John D. Dingell (D-MI) and Carolyn B. Maloney (D-NY) requested the General Accounting Office (GAO) to analyze the Current Population Survey (CPS) for the years 1995 and 2000 to assess the situation of women managers in ten industries that employ over 70 percent of women workers. Though not an academic-level study, this point-in-time snapshot of women's status in management positions is the first of a series of reviews that evaluates a large number of industries in an effort to understand where women are progressing and where they are falling behind their male counterparts.

While more study is needed, the data suggest possible trends that are cause for concern and merit more research. Representatives Dingell and Maloney's goal is to further understanding of the position of women managers in the workforce, and to facilitate an ongoing dialogue in an effort to shatter the "glass ceiling."

THE GLASS CEILING

The "glass ceiling" has come to mean an invisible, but virtually impenetrable, barrier between women and the executive suite, preventing them from reaching the highest levels of the corporate world regardless of their accomplishments and merits. The term refers to specific attitudinal and organizational barriers that severely limit opportunities for the upward mobility of qualified women candidates.[3]

The goal of the Glass Ceiling Commission was to identify glass ceiling barriers and expand practices and policies which promote employment opportunities for the advancement of minorities and women in positions of responsibility.

In response to this problem, the Civil Rights Act of 1991 established the Glass Ceiling Commission. The 21-member body was appointed by former President Bush and Congressional leaders and chaired by the Secretary of Labor. "Its goal was to identify glass ceiling barriers and expand practices and policies which promote employment opportunities for the advancement of minorities and women in positions of responsibility."[4] While the efforts of the Commission may have been felt and enjoyed by some, this report reveals that women are still struggling to jump the hurdles toward advancement.

SCOPE AND METHODOLOGY OF GAO STUDY

Representatives Dingell and Maloney asked GAO to analyze data from the Current Population Survey (CPS)[5] for ten industries[6] that account for an overwhelming share of U.S. women employees (71.3 percent in 2000). Specifically, they requested information about:

- Key demographic characteristics of women and men in management positions.
- Representation of women in management positions.
- Salary differentials between women and men in full-time manage ment positions.

The CPS has two important limitations for assessing women's progress into management. First, it lacks two important factors for determining salary levels: years of experience, and level of managerial responsibility. Second, since the data are self-reported by respondents, rather than by employers, there is an inherent degree of error. However, the value of the CPS for monitoring women's advancement is that it contains demographic data that previous research has found correlated with management status for women, including age, race, educational attainment, and family and living arrangements.

ANALYSIS

Recent government data reports have found continued progress for women in the work place.[7]

Important gains include:

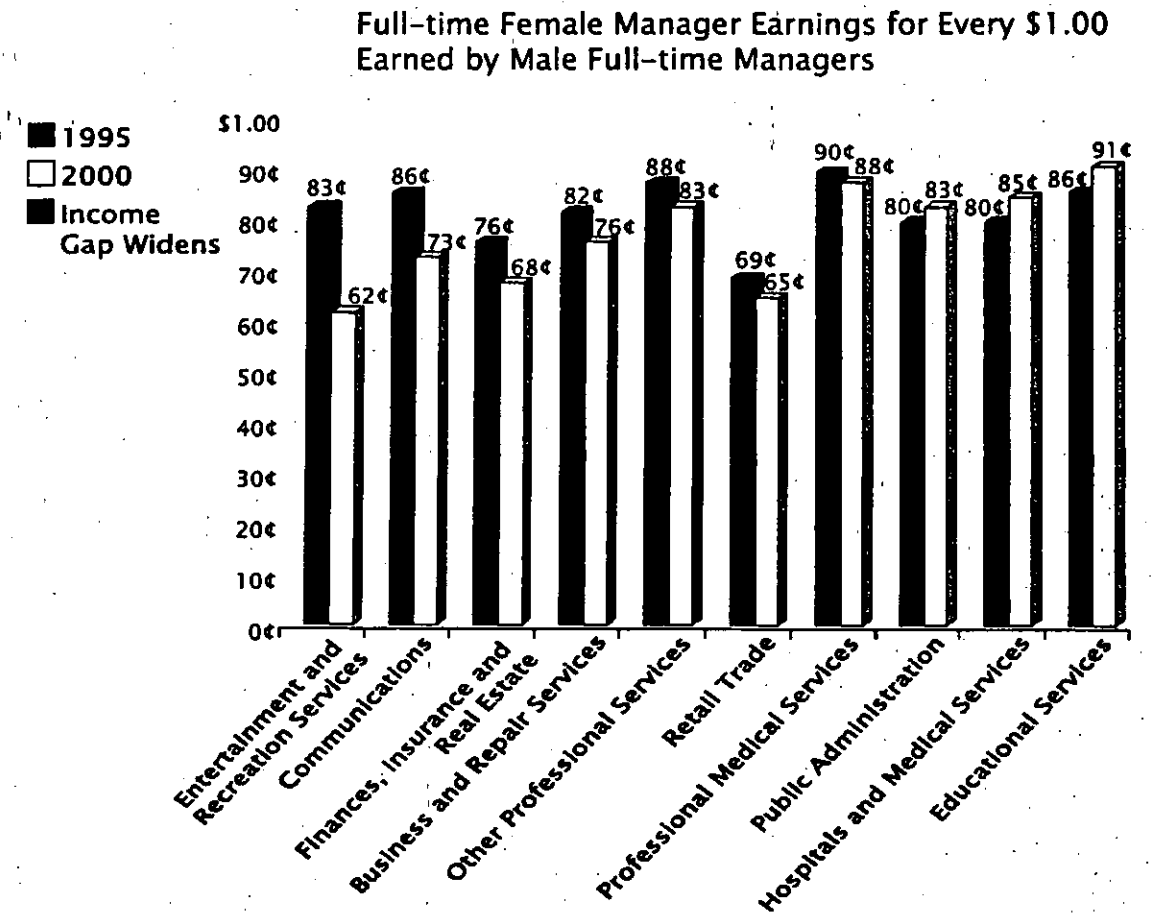
- The wage gap between women and men full-time wage and salary workers declined to 76 percent in 2000 from 63 percent in 1979, the first year that comparable data became available.
- Women's earnings now peak at ages 45-54, just as men's do, as women are now common in the work force at all ages. (Still, the wage gap for older women is much greater than it is for younger women.)

However, the data also show that women managers are not gaining to the same extent as women workers.

Were Women Managers Better Off in 1995 Than in 2000?

In both 1995 and 2000, women managers earned less than their male counterparts in all ten industries studied. In seven of the ten industries, women managers' salaries actually declined relative to men managers' between 1995 and 2000. For example, in 1995 a full-time female manager in the communications industry earned $.86 for every $1.00 earned by a full-time male manager. Five years later, a full-time female manager in the same industry earned $.73 for every $1.00 earned by a full-time male manager.

Salary Differentials, Full-Time Managers



These seven industries are largely private sector industries. In contrast, the three industries where the salary gap narrowed are in the public sector, or are heavily regulated: education, hospitals and medical services, and public administration.

This persistent and, in the private sector, widening pay gap is not due to factors commonly associated with managerial capabilities, interest, or simple discrimination: i.e., education, age, marital status, or race. The GAO analysis controlled for these factors.[8] Moreover, the proportion of management positions in these industries filled by women was the same—48 percent—in both years.

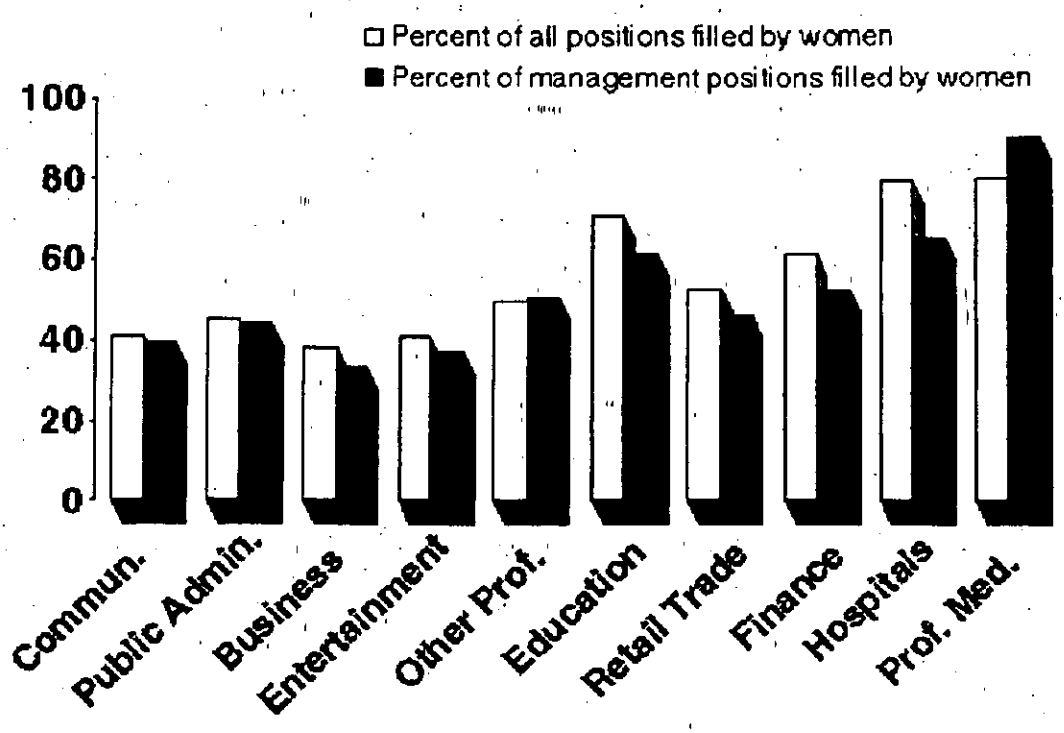
In *only* five of the ten industries studied do women hold a share of management jobs proportionate to their share of the industry work force.

Clearly, more detailed research is called for to understand whether and how women's advancement is stalled. For instance, has an influx of new, younger women managers obscured gains for older, experienced women managers? Did the broad definition of managers used by the GAO obscure shifts to lower-paid, lower status managerial and administrative positions? Did restructuring within or across industries eliminate managerial positions that women tend to hold at the expense of positions men tend to hold? Certainly research elsewhere suggests that when jobs in a given industry become more technical, the work force, including low-level managers, tends to shift from women to men.

"His" and "Her" Jobs

The GAO data show that in *only* five of the ten industries studied do women hold a share of management jobs proportionate to their share of the industry work force. These were the five industries in which women make up 50 percent or less of the industry work force.

Representation of Women in Management, 2000



Women and men managers tend to work in different occupations and industries, according to the Bureau of Labor Statistics. For example, personnel or human relations managers are more likely to be women, while purchasing managers are more likely to be men. Managers in marketing, advertising, and public relations are more likely to be men; administrators in education and related fields are more likely to be women.

The Bureau of Labor Statistics found that in 2000 the pay gap among all working women and men was widest among parents.

Studies show that women often select industries and occupations that enable them to combine work and family responsibilities, and that jobs where women predominate generally pay less than jobs where men predominate. And in some industries, while women may hold "management" titles, their positions are "often [in] less strategic, lower-paying areas of the company's operations."[9]

For example, the GAO analysis found that female managers in finance are 50 percent less likely to have a college degree than male managers in the same industry. They also make only $.76 for every male manager dollar. Even though these women are labeled "managers," the data suggest that they are in positions that require less education and are lower paying.

The GAO also found that the only one of the industries studied where women account for a greater number of managers than men is one in which management jobs have relatively lower status: professional medical services. In this industry, status and pay are highest for professional occupations, not for managers and administrators, more than three-fourths of whom are women. (This is also the only one of the ten industries in which women's representation in management exceeds their representation in the industry as a whole.) The educational disadvantage of female managers relative to male managers in this industry is particularly great, suggesting that here, too, the nature of women managers' jobs is different.

The only one of the industries studied where women account for a greater number of managers than men is one in which management jobs have relatively lower status: professional medical services.

Moreover, occupational segregation produces different levels of management and different management tracks, including tracks that lead nowhere. Even women who are on the "right" track must be monitored to reveal how long it takes to get to senior management positions, if at all. As we note in the next section, advancement is often constrained by the time women (rarely men) take out of the workforce to raise their family.

The Balancing Game: Career and Family

Overall, the Bureau of Labor Statistics found that in 2000 the pay gap among all working women and men was widest among parents.[10] And although both men and women managers need to reconcile work with family, the CPS data suggest that combining parenthood with advancement into management is particularly difficult for women. Just looking at married managers (those most likely to be sharing their parenting responsibilities), nearly 60 percent of male managers in these ten industries have children in the home, compared to little more than 40 percent of female managers (working full- or part-time). Over all industries, over two-thirds of married male managers are raising children, compared to less than a third of married women managers. This discrepancy suggests that difficulties in combining family and work are a significant constraint on women's attack on the glass ceiling.

Combining work with parenting is a challenge for all women...across all industries, nearly 60 percent of women managers do not currently have children in the home.

The Census Bureau reports that women have become less likely to interrupt their work schedules when their first child is born, and that "women today are making longer-term commitments to the labor force."[11] Yet combining work with parenting is a challenge for all women, given their disproportionate responsibilities at home, particularly in relation to children. Not surprisingly, there are considerably fewer women managers with parenting responsibilities than without, regardless of marital status. According to the CPS data, across all industries, nearly 60 percent of women managers do not currently have children in the home. Among the 10 industries covered by this report, the proportion ranges from 55 percent (in professional medical services) to 69 percent (in entertainment). It requires further research to identify the extent to which women enter management *after* they have raised a family—and therefore at older ages—or the extent to which some delay having a family to advance their careers, so long that they forego children altogether.

Time-use data consistently show that women work longer hours (paid plus unpaid) than men work and perform the majority of the unpaid household work.[12] Part-time employment can reduce this load, and the GAO found that women managers are more likely to work part-time than their male counterparts. But working part-time can also make a women's advancement more difficult. Part-time workers tend to be seen as secondary employees and therefore not as important or crucial to a company's worth or growth. They are also more likely to be cut off from "networking" as they are not in the office as often as their full-time colleagues. Yet a separate tabulation of the 2000 CPS found that women with children under age 18 in the home (married, or with a partner) have the highest rates of part-time employment by far.

Time-use data consistently show that women work longer hours (paid plus unpaid) than men work and perform the majority of the unpaid household work.

While many women have successfully pushed for the opportunity of working part-time to balance work and family, this schedule has many potential negative implications for women. These include: ineligibility for healthcare, continued need to pay for childcare (often equaling the salary of a part-time employee), and a reduction in their eventual Social Security benefits. A more comprehensive study is needed to better understand the "penalties" associated with working part-time, along with other strategies women use to maintain a career while simultaneously bearing the brunt of family care.

Conclusion

While there is some indication that women managers are doing better than they were in the past, the glass ceiling seems to be firmly in place. Though not an academic-level study, this point-in-time snapshot of women's status in management positions is the first of a series of reviews that evaluates a large number of industries in an effort to understand where women are progressing and where they are falling behind their male counterparts. Our next step is to analyze the more detailed data from the 2000 Census, which will be released later this year. GAO's tabulations of this data will allow us to look at women manager's progress (or lack thereof) more closely and precisely. We are hopeful that this new, proposed study will help us determine ways in which we can prompt better practices, remove attitudinal barriers, and help women shatter the glass ceiling.

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[1] http://www.bls.gov/cps/cpsaat9.pdf

[2] http://www.catalystwomen.org/Press_Room/press_releases/1999_cote.htm

[3] For a description of these barriers, see "The Unfinished Agenda: Women and the Legal Profession," American Bar Association, 2001, 6-8.

[4] See: http://www.ilr.cornell.edu/library/e_archive/gov_reports/GlassCeiling/default.html

[5] Current Population Survey (CPS) refers to the "monthly nationwide survey of a scientifically selected sample representing the noninstitutional civilian population." U.S. Census Bureau, "Statistical Abstract of the United States: The National Data Book" (1), 120th edition, 2000.

[6] The ten industries included: 1. Communications; 2. Public Administration; 3. Business and Repair Services; 4. Entertainment and Recreation Services; 5. Other Professional Services; 6. Educational Services; 7. Retail Trade; 8. Finance, Insurance, and Real Estate; 9. Hospitals and Medical Services; and 10. Professional Medical Services (see Appendix p.5).

[7] U.S. Department of Labor, Bureau of Labor Statistics. "Highlights of Women's Earnings in 2000." Report 952, August 2001.

[8] See Appendix, GAO Report, 6.

[9] See Wirth, *Breaking Through the Glass Ceiling*, 57.

[10] U.S. Bureau of Labor Statistics. "Highlights of Women's Earnings in 2000." Report 952, August 2001.

[11] U.S. Census Bureau. "Maternity Leave and Employment Patterns, 1961-1995."

[12] See Crittenden, *The Price of Motherhood*, 22.

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1. INTRODUCTION

1.1 Purposes of the Review

On March 7, 1995, President Clinton directed that a review be conducted of the Federal government's affirmative action programs. The President asked the following questions:

Descriptions. What kinds of Federal programs and initiatives are now in place, and how are they designed?

Performance. What is known about their effects -- benefits and costs, direct and indirect, intended and unintended -- both to the specified beneficiaries and to others? In short, how are they run? Do they work? Are they fair?

In preparing this report, we analyzed federal programs that might be categorized as affirmative action. (1) These programs range from outreach efforts that encourage grantmakers to seek out members of disadvantaged groups, to procurement regulations that set aside particular contracts for competitive bidding limited largely to minority-owned, economically disadvantaged small businesses.

The report first sets forth the framework we used to analyze these programs. It then describes the evolution of affirmative action, as policymakers sought to make real the promise of the civil rights legal breakthroughs. It then summarizes the evidence of discrimination and exclusion today, followed by a brief review of the overall effectiveness of affirmative action and anti-discrimination measures. All of this provides the context for considering current affirmative action programs in more detail. Several sections describe the government's major affirmative action programs, and applies to those programs the policy test set forth by the President.

We conclude that these programs have worked to advance equal opportunity by helping redress problems of discrimination and by fostering the inclusion needed to strengthen critical institutions, professions and the economy. In addition, we have examined concerns about fairness. The evidence shows that, on the whole, the federal programs are fair and do not unduly burden nonbeneficiaries. Finally, we conclude that some reforms would make the programs work better and guarantee their fairness.

The discussion of these programs is necessarily a preliminary analysis. The Supreme Court's decision in *Adarand Constructors, Inc. v. Peña* (2) changed the standard of legal analysis required to determine the constitutionality of affirmative action programs that apply to race and ethnicity. The first and most fundamental question in any policy test must concern the constitutionality of the program. Accordingly, on June 28, 1995 the Department of Justice issued guidance to federal agencies for use in reviewing existing programs under the new, stricter *Adarand* standards. (3) This document is not intended to bear on the legal determination of whether any particular program satisfies the constitutional standard advanced in *Adarand*.

1.2. Analytical Framework

Affirmative action produces deep feelings on all sides. A clearheaded analysis of this subject must begin with basic questions: What is the purpose of affirmative action? Is it the same in all circumstances? How does that purpose intersect with other goals of our governmental and legal system? This section outlines the framework for analyzing affirmative action that was followed in the course of this review. The framework provides a basis for analyzing the success and fairness of the government's existing programs -- and for concluding whether a particular program should be retained, reformed or replaced.

1.2.1. Basic premise: equal opportunity

The tests that we apply are based on a fundamental premise: the goal of any affirmative action program must be to promote equal opportunity. Offering every American a fair chance to achieve success is a central tenet of our constitutional and political system, and is a bedrock value in our culture. It is the fundamental goal of the civil rights

statutes -- and of affirmative action as well. More particularly, affirmative action is only one of several tools used in the public and private sectors to move us away from a world of lingering biases and the poisons of prejudice, toward one in which opportunity is equal. Affirmative action measures recognize that existing patterns of discrimination, disadvantage and exclusion may require race- or gender-conscious measures to achieve that equality of opportunity.

Because our ultimate goal is to perfect and realize this American ideal of opportunity, affirmative action cannot supersede the concept of merit -- because to do so would unfairly deprive others of opportunity that is their due. In other words, we believe it is wrong if an unqualified person receives a preference and is thereby, chosen for a job, a scholarship, or a federal contract over a qualified person in the name of affirmative action. However, the review of federal programs and broader practices demonstrates that affirmative action, when used properly, is consistent with merit. It also demonstrates that "merit" must be properly defined in terms of the needs of each organization, and not in arbitrary ways that are, in their effect, exclusionary. A demonstrated or predicted ability to get the job done *is* a merit test; "old-boy" connections and cronyism are not.

1.2.2 The First Test: Does It Work?

More specifically, the President's first charge was to determine whether the federal government's affirmative action programs work.

Whether a program "works" depends on what goal it seeks to achieve. Above all else, the overriding goal of affirmative action must be to provide equal opportunity for all citizens. In pursuit of that goal, affirmative action has two general justifications -- remediation of discrimination, and promoting inclusion -- both of which are consistent with the traditional American values of opportunity, merit and fairness.

Expanding opportunity by fighting and preventing discrimination. The primary justification for the use of race- and gender-conscious measures is to eradicate discrimination, root and branch. Affirmative action, therefore, is used first and foremost to remedy specific past and current discrimination or the lingering effects of past discrimination -- used sometimes by court order or settlement, but more often used *voluntarily* by private parties or by governments. Affirmative action is also used to *prevent* future discrimination or exclusion from occurring. It does so by ensuring that organizations and decisionmakers end and avoid hiring or other practices that effectively erect barriers. In undertaking such efforts, however, two wrongs don't make a right. Illegal discrimination includes reverse discrimination; reverse discrimination is discrimination, and it is wrong. Affirmative action, when done right, is not reverse discrimination.

Expanding opportunity through inclusion. Vigorous prosecution of proven instances of discrimination will not by itself close the opportunity gap; bias and prejudice have proven too varied and subtle for that. Therefore, to genuinely extend opportunity to all, we must take affirmative steps to bring underrepresented minorities and women into the economic mainstream. The consequences of years of officially sanctioned exclusion and deprivation are powerfully evident in the social and economic ills we observe today. In some circumstances, therefore, race-and gender-conscious measures can also be justified by the compelling importance of inclusion. Affirmative action is sometimes used simply to open institutions and opportunities because doing so will move minorities and women into the economic mainstream, with benefits to them, to those institutions, and to our society as a whole. For example:

- Virtually all educators acknowledge that a college is a better academic enterprise if the student body and faculty are diverse.
- A police department will be more effective in protecting and serving its community if its officers are somewhat reflective of that community.
- The military recognized years ago that sharp imbalances in the representation of minorities and women in the leadership grades of enlisted and commissioned personnel undermined the cohesion and effectiveness of military units, and effectively deprived the armed forces of full use of a portion of our nation's pool of talent. Most major corporations recognize this same challenge.

- Judges and government policymakers must be able to reflect the concerns, aspirations and experiences of the public they serve in order to do their jobs well and enjoy legitimacy.

Ultimately, therefore, the test of whether an affirmative action program works is whether it hastens the eradication of discrimination, and promotes inclusion of everyone in the opportunities America promises us all. As a general matter, increases in the numbers of employees, or students or entrepreneurs from historically underrepresented groups are a measure of increased opportunity. It is very difficult, however, to separate the contribution of affirmative action from the contribution of antidiscrimination enforcement, decreasing prejudice, rising incomes and other forces. At the same time, the fact that we observe so much continuing socioeconomic division and inequality of opportunity does not imply that affirmative action is a failure. It is merely one tool among many that must play a part in creating opportunity.

1.2.3. The Second Test: Is the Program Fair?

For each federal program, at the President's direction, the Review team asked the agency head to apply the following test of essential fairness, stated here with regard to race:

(1) **Not quotas.** Quotas are intrinsically rigid, and intrinsically relegate qualifications and other factors to secondary status. Does the program effectively avoid quotas for inclusion of racial minorities ?

(2) **Race-Neutral Options.** In a program's design or reconsideration, have options for using various *race-neutral decision factors* been analyzed? Were options reasonably rejected, given the available information and experience, because those alternatives are unlikely to be acceptably effective in advancing the program objectives?

(3) **Flexible.** If race-neutral measures will not work, is the measure applied in a flexible manner, and were *less extensive or intrusive uses of race* analyzed and rejected based on a determination that they would not have been acceptably effective?

(4) **Transitional.** Is the measure *limited in duration*, and does the administering agency periodically review the continuing need for the measure?

(5) **Balanced.** Is the *effect on nonbeneficiaries* sufficiently small and diffuse so as not to unduly burden their opportunities? In other words, are other jobs or other similar benefits available, or is the result of the program to close off an irreplaceable benefit?

1.2.4. Affirmative Action: The Right Way and The Wrong Way

In short, we believe that there is a right way to do affirmative action, and a wrong way. This review conducts a preliminary policy analysis of many of the existing programs to assess whether they represent the "right way." This means two things: they must actually work to effectuate the goals of fighting discrimination and encouraging inclusion; and they must be fair -- i.e., no unqualified person can be preferred over another qualified person in the name of affirmative action, decisions will not be made on the basis of race or gender except when there is a special justification for doing so, and these measures will be transitional. Only by applying these principles can we *aggressively and simultaneously* pursue remedies to discrimination, the inclusion we need in order to strengthen our institutions and our economy, *and* essential fairness to all.

1.3 The *Adarand* review

On June 12, 1995, in the case of *Adarand Constructors, Inc. v. Peña*, the United States Supreme Court held that many federal affirmative action programs, under the equal protection component of the Fifth Amendment's Due Process Clause, must be reviewed by the courts using "strict scrutiny." To surmount this hurdle, the program must be shown to meet a "compelling governmental interest," and must be "narrowly tailored to meet that interest." This is a more demanding legal test than had previously been applied to federal affirmative action programs, and as a practical matter it will require a searching analysis of many federal programs. The specific dimensions of that inquiry, as best can be

discerned from federal caselaw, are described in Appendix B to this Report, which is the memorandum to agency general counsels from Assistant Attorney General Walter Dellinger, Office of Legal Counsel, Department of Justice.

The Court's decision concerned what is constitutionally permissible, which is a necessary but not sufficient consideration in judging whether a measure is wise public policy. We have recommended, therefore, that the President, issue a directive to agency heads which not only instructs them to conduct the thorough analysis required by *Adarand* as a matter of constitutional law, but also instructs them to apply a set of basic policy principles. Specifically, after emphasizing the President's commitment to affirmative action, the President instructs agency heads:

In all programs for which you are responsible that use race, ethnicity or gender as a consideration in order to expand opportunity or provide benefits to members of groups that have suffered discrimination, I ask you to take steps to ensure adherence to the following policy principles. Any program must be eliminated or reformed if it:

-- creates a quota;

-- creates preferences for unqualified individuals;

-- creates reverse discrimination; or

-- continues even after its purposes have been achieved.

2. AFFIRMATIVE ACTION: HISTORY AND RATIONALE

Neither this review nor the current debate over affirmative action occur in a historical vacuum. This and the following two sections provide the context for this review, and, indeed, for federal affirmative action programs. First, we examine the history of the creation of modern affirmative action programs. Then, in section 3, we review the general evidence on the effectiveness of affirmative action. Finally, section 4 examines the extent to which discrimination and exclusion persist today, suggesting that it is too soon to abandon the affirmative action tool.

2.1 Background

The current scope of affirmative action programs is best understood as an outgrowth and continuation of our national effort to remedy subjugation of racial and ethnic minorities and of women -- subjugation in place at our nation's founding and still the law of the land within the lifetime of "baby-boomers." Some affirmative action efforts began before the great burst of civil rights statutes in the 1950s and 1960s. But affirmative efforts did not truly take hold until it became clear that anti-discrimination statutes alone were not enough to break longstanding patterns of discrimination.

For much of this century, racial and ethnic minorities and women have confronted legal and social exclusion. African Americans and Hispanic Americans were segregated into low wage jobs, usually agricultural. Asian Americans, who were forbidden by law from owning land, worked fields to which they could not hold title. Women were barred by laws in many states from entering entire occupations, such as mining, fire fighting, bartending, law, and medicine.

The first significant wave of progress in enhancing employment opportunities for African Americans and women came during the labor shortages of World War II and immediately afterwards, before the use of affirmative action. Nonetheless, racial separation continued, and African Americans were still segregated for the most part into low wage jobs into the 1960s. For Hispanic Americans, employment opportunity remained seriously restricted into the 1970s. Whole industries and categories of employment were, in effect, all-white, all-male. In thousands of towns and cities, police departments and fire departments remained all white and male; Women and minorities were forbidden to even apply. In grocery and department stores, clerks were white and janitors and elevator operators were black. Generations of African Americans swept the floors in factories while denied the opportunity to become higher paid operatives on the machines. In businesses such as the canning industry, Asian Americans were not only precluded from becoming managers, but were housed in physically segregated living quarters. Stereotypical assumptions that women would be only parttime or temporary workers resulted in their exclusion from a full range of job opportunities. Newspaper job listings were segregated by gender. Women also confronted other barriers to full inclusion: lower pay and fewer benefits than men, even when performing similar jobs; losing their jobs if they married or became pregnant; and sexual harassment on the job.

African Americans, even if they were college-educated, worked as bellboys, porters and domestics, unless they could manage to get a scarce teaching position in the all-black school -- which was usually the only alternative to preaching, or perhaps working in the post office. In higher education most African Americans attended predominantly black colleges, many established by states as segregated institutions. Most concentrated on teacher training to the exclusion of professional education. Students who were interested in business had to take business education instead of administration. A few went to predominantly white institutions, in which by 1954, about one percent of entering freshman were black.

Asian Americans and Hispanic Americans, were legally barred from attending some public schools. And women were systematically excluded from some private and state funded colleges, universities, and professional schools well into the 1970s. In general, it is clear that separation of the races and relegation of women to the sidelines remained the norm for most of this century.

The civil rights movement had its dramatic victories -- *Brown v. Board of Education* and the other cases striking down segregation, the Civil Rights Act of 1964, the Voting Rights Act of 1965 -- which helped advance the Constitution's promise of equal opportunity to all minorities and women. Even after passage of the civil rights laws beginning in the

1960s, however, the road to equal opportunity for minorities and women was difficult, and programs often very slow.

These judicial and legislative victories were not enough to overcome long-entrenched discrimination, for several reasons. In part, these measures frequently focused only on issues of formal rights (such as the right to vote) that were particularly susceptible to judicial or statutory resolution. In part, the difficulty was that formal litigation-related strategies are inevitably resource-intensive and often dependent upon clear "smoking gun" evidence of overt bias or bigotry, whereas prejudice can take on myriad subtle, yet effective, forms. Thus, private and public institutions alike too often seemed impervious to the winds of change, remaining all-white or all-male long after court decisions or statutes formally ended discrimination.

As a result, both the courts and Republican and Democratic administrations turned to race- and gender-conscious remedies as a way to end entrenched discrimination. These remedies were developed after periods of experimentation had shown that other means too often failed to correct the problems. here are some typical examples:

- In July 1970, a federal district court enjoined the State of Alabama from continuing to discriminate against blacks in the hiring of state troopers. The court found that "in the thirty-seven year history of the patrol there has never been a black trooper." The order included detailed, non-numerical provisions for assuring an end to discrimination, such as stringent controls on the civil service certification procedure and an extensive program of recruitment of minority job applicants. Eighteen months later, not a single black had been hired as a state trooper or into a civilian position connected with the troopers. The district court then entered a further order requiring the hiring of one *qualified* black trooper or support person applicant for each white hired until 25 percent of the force was comprised of blacks. By the time the case reached the Court of Appeals in 1974, 25 black troopers and 80 black support personnel had been hired. (4) The U.S. Supreme Court ultimately affirmed the orders.

- In 1979, women represented only 4 percent of the entry-level officers in the San Francisco police department. By 1985, under an affirmative action plan ordered in a case in which the DOJ sued the City for discrimination, the number of women in the entry class had risen to 175, or 14.5 percent.

- Similarly, a federal district court review of the San Francisco Fire Department in 1987 led to a consent decree which increased the number of blacks in officer positions from 7 to 31, Hispanics from 12 to 55, and Asians from 0 to 10; women were admitted as firefighters for the very first time.

- In 1975, a federal district court found that Local 28 of the Sheet Metal Workers' International Association had discriminated against non-white workers in recruitment, training and admission to the union. The court found that the union had (1) adopted discriminatory admission criteria, (2) restricted the size of its membership to deny access to minorities, (3) selectively organized shops with few minority workers and (4) discriminated in favor of white applicants seeking to transfer from sister locals. The court found that the record was replete with instances of bad faith efforts to prevent or delay the admission of minorities. The court established a 29 percent membership goal, reflecting the percentage of minorities in the relevant labor pool. The Supreme Court affirmed the relief.

- Prior to 1974, Kaiser Aluminum hired only persons with prior craft experience as craft workers at its Gramercy, Louisiana plant. Because blacks traditionally had been excluded from the craft unions, only 5 of 273 skilled craft workers at the plant were black. In response, Kaiser together with the union, established its own training program to fill craft jobs with the proviso that 50 percent of new trainees were to be black until the percentage of black craft workers in the plant matched the percentage of blacks in the local labor pool. The Supreme Court held this program to be lawful.

- On March 23, 1973, the Nixon administration's Department of Justice, Department of Labor, Equal Employment Opportunity Commission and the Civil Service Commission issued a joint memorandum titled "State and Local Employment Practices Guide." The guide points out that the Nixon Administration... since September of 1969, recognized that goals and timetables... are a proper means for helping to implement the nation's commitment to equal employment opportunity." The memorandum stressed that strict quotas are unacceptable but that goals and

timetables' are entirely different and reasonable tools. (Attorney General John Mitchell led the legal defense of the distinction between goals and quotas.)In July of 1986, Justice O'Connor referred to this document, and the merits of fair and effective affirmative action goals, in the concurring portion of her opinion in *Local 28, Sheet Metal Workers v. EEOC*. In doing so, she joined the Court majority's support for numerical guidelines in affirmative action programs.

2.2 Fair Employment – The Executive Order

The longest-standing federal affirmative action program has its roots in World War II. The Executive Order barring discrimination in the federal government and by war industries was issued by President Franklin Roosevelt. The action was taken to forestall a planned march on Washington organized by A. Philip Randolph, the President of the Brotherhood of Sleeping Car Porters. Roosevelt's order barred discrimination against blacks by defense contractors, and established the first Fair Employment Practices Committee. However, federal compliance programs were routinely understaffed, underfunded and lacked enforcement authority.

After World War II, gains that had been made by women and blacks receded as returning GIs reclaimed their jobs. By 1960, the 10 million workers on the payrolls of the 100 largest defense contractors included few blacks. The $7.5 billion in federal grants-in-aid to the states and cities for highway, school, airport, school and public housing construction went almost exclusively to whites. The U.S. Employment Service, which provided funds for state-operated employment bureaus, encouraged skilled blacks to register for unskilled jobs, accepted requests from white employers and made no efforts to get employers to accept African American workers. The President's Committee on Government Contracts, chaired by Vice-President Nixon in 1959, blamed "the indifference of employers to establishing a positive policy of nondiscrimination," stated that such indifference was more prevalent than over discrimination, and called for remedial steps.

In response to the civil rights movement, President John F. Kennedy created a Committee on Equal Employment Opportunity in 1961 and issued Executive Order 10925, which used the term "affirmative action" to refer to measures designed to achieve non-discrimination. In 1965, President Johnson issued Executive Order 11246 requiring federal contractors to take affirmative action to ensure equality of employment opportunity without regard to race, religion and national origin. In 1968, gender was added to the protected categories.

In the Johnson Administration, the Labor Department Office of Federal Contract Compliance (OFCCP) started pre-award compliance for federal contracts over $1 million. The Office began with construction contractors, who were required to set goals and timetables under a regulation issued to implement the Order in 1968. However, under pressure from unions and the General Accounting Office, which found the process too vague, OFCCP discontinued the effort.

But in the most far-reaching federal expansion of affirmative action, the "goals and timetables" plan was revived by President Nixon and Labor Secretary George Shultz in 1969. In issuing the so-called "Philadelphia Order," Assistant Secretary Arthur Fletcher said:

Equal employment opportunity in these [construction] trades in the Philadelphia area is still far from a reality. The unions in these trades still have only about 1.6 percent minority group membership and they continue to engage in practices, including the granting of referral priorities to union members and to persons who have work experience under union contracts, which result in few negroes being referred for employment. We find, therefore, that special measures are required to provide equal employment opportunity in these seven trades. (5)

President Nixon later remembered, "A good job is as basic and important a civil right as a good education . . . I felt that the plan Shultz devised, which would require such [affirmative] action by law, was both necessary and right. We would not impose quotas, but would require federal contractors to show affirmative action' to meet the goals of increasing minority employment." (6)

Order No. 4 in 1970 extended the plan to non-construction federal contractors.

2.3 Fair Employment – Enforcement of Title VII

In July, 1963, in the midst of the civil rights campaign in Birmingham, Alabama, President John F. Kennedy appeared on national television to propose a civil rights bill. The measure proposed outlawing discrimination in public accommodations, permitting a cut-off of federal funds from discriminating institutions, and expanding the equal employment opportunity committee he had established. After President Kennedy's assassination, Title VII was enacted as part of the Civil Rights Act of 1964, seeking to end discrimination by large private employers whether or not they had government contracts. The Equal Employment Opportunity Commission, established by the Act, is charged with enforcing the anti-discrimination laws through prevention of employment discrimination and resolution of complaints. The Act is designed to make employees whole for illegal discrimination and to encourage employers to end discrimination. Title VII was substantially strengthened in 1972 amendments, signed by President Nixon. As Supreme Court holdings concluded, the legislative history to the 1972 amendments made clear that Congress approved of race- and gender-conscious remedies that had been developed by the courts in enforcing the 1964 Act.

Court-ordered affirmative action to remedy violations of Title VII developed on a parallel track with the Executive Order program, as another remedial effort to stop existing discrimination and prevent its recurrence. The Supreme Court's most comprehensive review of affirmative action has occurred in the employment area.

2.4 Education

Discrimination in education was the target of the original breakthrough civil rights cases. Indeed, because education is the gateway to opportunity, education has consistently been a central focus of civil rights efforts. But for nearly two decades following the original court decisions, educational institutions -- particularly colleges and graduate schools -- remained predominantly white and male. In 1955, only 4.9 percent of college students ages 18-24 were black. This figure rose to 6.5 percent during the next five years, but by 1965 had slumped back to 4.9 percent. Only in the wake of affirmative action measures in the late 1960s and early 1970s did the percentage of black college students begin to climb steadily (in 1970, 7.8 percent of college students were black; in 1980, 9.1 percent; and in 1990, 11.3 percent).

The 1978 *Bakke* case set the parameters of educational affirmative action. (7) The University of California at Davis medical school had reserved 16 available places for qualified minorities . In a splintered decision, with Justice Powell casting the deciding vote, the Supreme Court essentially decided that setting aside a specific number of places in the absence of proof of past discrimination was illegal, but that minority status could be used as a factor in admissions . The desire to obtain a "diverse" student body was found to be a compelling goal in the educational context in Justice Powell's controlling opinion..

Increased educational opportunity has, in fact, revolutionized education, although some gaps persist. While the enrollment of women in higher education has risen steadily, with women now earning nearly fifty percent of all bachelor's and masters degrees, they earn only one third of doctorate and first professional degrees, and continue to lag in math, engineering, and the physical sciences at both the undergraduate and the doctoral levels.

Through the availability of student aid programs and aggressive recruitment and retention programs, the college-going rate for blacks and whites who graduated from high school was about equal by 1977. Since 1977, however, the proportion of black 18-24 year old high school graduates enrolled in college has not kept pace with that of white students. While the percentage of black students who have graduated from high school has increased approximately 20 percent in the past 25 years, the portion of black high school student graduates attending college is now 25 percent less than that of white students. (8)

The story is similar for the Hispanic enrollment rate. In 1976, the college-going rate for 16-24 year old Hispanics who had recently graduated from high school (53 percent) actually exceeded the white rate (49 percent). Since then, the Hispanic college-going rate has stagnated while the white rate has increased signficantly. By 1994, the white college-going rate had risen to 64 percent, whereas the Hispanic rate had fallen to 49 percent. (9)

3. EMPIRICAL RESEARCH ON AFFIRMATIVE ACTION AND ANTI-DISCRIMINATION

Modern affirmative action, then, was established as policymakers groped for a way to address continuing problems of discrimination. Has it worked to help eradicate or prevent such discrimination? In a fundamental sense the question must be posed for the broader society-wide effort of which federal programs are only an element and, ideally, a model.

3.1 Review of the Empirical Literature, in Summary

Over the past three decades, minorities and women have made real, undisputable economic progress. Before the Civil Rights Act of 1964, the median black male worker earned only about 60 percent as much as the median white male worker; (10) by 1993, the median black male earned 74 percent as much as the median white male. (11) The male-female wage gap has also narrowed since the 1960s: median female earnings relative to median male earnings rose from about 60 percent during the 1960s to 72 percent in 1993. (12)

This section of the Report addresses three issues: (1) Why has there been an earnings gap between black and white workers, and what role did anti-discrimination legislation and affirmative action play in the reduction of that gap? (Earnings gaps for Hispanics and Asians also exist which have been linked to discrimination. The wage gaps for African Americans and women are examined here in detail in order to illustrate the relationship between the problems and historic solutions.) (2) Why has there also been an earnings gap between men and women, and what role did government policies play in the reduction of that gap? (3) Is there any evidence that affirmative action boosted minority or female employment?

3.2 Effect on Earnings

3.2.1 Anti-Discrimination Policy, the Minority-White Earnings Gap

- The ratio of the average black workers' earnings to the average white workers' earnings increased significantly in the 1940s, increased slightly if at all in the 1950s, increased significantly between 1960 and the mid 1970s, and declined somewhat since the late 1970s. (13)

- Hispanic men earn 81 percent of the wages earned by white men at the same education level. Hispanic women earn less than 65 percent of the income earned by white men with the same education level. (14)

- There has not been an improvement in the employment-population rate of black workers relative to whites since the 1960s. If anything, there has been a deterioration in the relative employment-population rate. (15)

- Education and work experience are the two most reliable predictors of a worker's earnings. Black workers historically have had much lower education than white workers. Adjusting for racial differences in education and work experience can account for about half of the wage gap between black men and white men, and about one-third of the gap between black women and white women. Additionally, holding constant differences in individuals' test scores leads to a further reduction in the black-white earnings gap. For example, in one study, in 1991, black males earned 29 percent less than white males without any adjustments, 15 percent less after adjusting for education and experience, and 9 percent less after additionally adjusting for test scores. For women, the gap declines from 14 percent to almost zero after making these adjustments. (16) There is some controversy as to how to interpret the black-white wage gap after holding constant differences in education, test scores, and other variables. In particular, differences in education or test scores may themselves represent the discrimination. Thus, the reduction in the racial gap after controlling for these factors may not mean that discrimination is any less, but it may mean that attention should also focus on discrimination prior to entry into the labor market.

- Historically there have been great differences in the quality of education between black and white students. In South Carolina in 1920, for example, black students attended schools with class sizes twice those of white

schools. Partly as a result of the Civil Rights Act of 1964, the Elementary and Secondary Education Act of 1965, and the *Green* decision, schools became increasingly integrated in the late 1960s. The improvement in the quality and quantity of education of black workers since the 1960s accounts for about 20 percent of the gain in black workers' relative earnings. (17)

- There is near-unanimous consensus among economists that the government anti-discrimination programs beginning in 1964 contributed to the improved income of African Americans. Nevertheless, it is difficult to draw conclusions about which specific anti-discrimination programs were most effective. And it may well be that the programs collectively helped even though no single program was overwhelmingly effective. (18)

3.2.2 Anti-Discrimination Policy and the Male-Female Earnings Gap

- The female-to-male ratio of earnings of full-time, year-round workers was roughly stable at around 60 percent from the early 1900s until the mid 1970s. In 1993, earnings of women who worked full-time, year-round had risen to 72 percent as much as men. After adjusting for differences in education, experience, and other factors, the wage gap is reduced by about half (i.e., the adjusted ratio is approximately 85 percent). (19)

- An increase in women's work experience and a shift into higher-wage occupations are the major causes of their improved economic position relative to men. The decline in higher-paying manufacturing jobs, which is partly responsible for the decline in the earnings of less-skilled men, has also contributed to the narrowing of the male-female wage gap. Nevertheless, a substantial part of the improved earnings of women cannot be explained by these factors, and probably reflects a decline in discrimination. (20)

- The relative roles in this story of anti-discrimination laws and affirmative action, in education and the workplace, are unclear. The major equal opportunity laws covering women were passed in the mid-1960s, and the most rapid growth in women's earnings and occupational status did not begin for another decade. The lag between the change in law and the increase in earnings may be due to time it took for women to acquire education and training for traditionally male-dominated occupations. The rapid growth in the number of female graduates from professional schools coincided with increased anti-discrimination efforts. (21)

3.3 Effect on Employment

- The Labor Department's Office of Federal Contract Compliance Programs (OFCCP) administers Executive Order 11246, which imposes nondiscrimination and affirmative action obligations on most firms that contract to do business with the Federal government. According to five academic studies, active enforcement by OFCCP during the 1970s caused government contractors to moderately increase their hiring of minority workers. (22) According to one study, for example, the employment share of black males in contractor firms increased from 5.8 percent in 1974 to 6.7 percent in 1980. In non-contractor firms, the black male share increased more modestly, from 5.3 percent to 5.9 percent. For white males, the employment share fell from 58.3 percent to 53.3 percent in contractor firms, and from 44.8 percent to 41.3 percent in non-contractor firms. (23)

- The literature also finds that contractor establishments that underwent an OFCCP review in the 1970s subsequently had faster rates of white female and of black employment growth than contracting firms that did not have a review. (24)

- Other than studies comparing employment records of government contractors with non-government contractors, it is hard to separate the effects of affirmative action from broader civil rights enforcement. Non-government contractors often took active steps to ensure diversity and compliance with equal opportunity laws, even though they were not covered by the OFCCP. Some, or perhaps much, of this behavior may be attributable to government anti-discrimination efforts. Also, the recruitment efforts of both contractors *and* non-contractors may have bid up the wages of minorities and women, reducing wage disparities regardless of the effect on occupational disparities.

- OFCCP enforcement was greatly scaled back during the 1980s. For example, the real budget and staffing for affirmative action programs was reduced after 1980. Over the same period, fewer administrative complaints were filed and back-pay awards were phased out. Perhaps not surprisingly, available evidence suggests that OFCCP did not have a noticeable impact on the hiring of minority workers by contractor firms in the early and mid 1980s. (25)

- Although the literature clearly shows that, when actively enforced, affirmative action can lead to an increase in minority employment in contractor firms, some have questioned whether this employment represents a net gain or merely a shift of minority employees from non-contractors to contractors.

- The extent to which affirmative action has expanded minority employment in skilled positions is unclear. The academic literature suggests that before 1974, minority employment growth in contractor firms was predominately in unskilled positions. Since 1974, there is evidence of modest occupational advance in contractor firms. But some researchers think this may be the result of biased reporting. (26)

- There is no systematic qualitative evidence that productivity is lower in contracting firms as a result of OFCCP. The one systematic study found that contractors do not appear to have lower productivity, suggesting that OFCCP has not caused firms to hire or promote less qualified workers. (27)

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29 January 2002

Dear Executive Departments and Administration Committee Members,

I address you in the name of the New Hampshire chapter of the National Organization for Women and its approximately 1000 members in New Hampshire, to ask you to oppose House Bill 1304, prohibiting preferences in hiring, promotion, or admission by state agencies, the university system, the regional community-technical colleges, and the postsecondary education commission.

House Bill 1304 uses the code words "preferences" and "quotas" to eliminate Affirmative Action programs in NH. This bill actually spells out its purpose, to "prohibit[s] any of these institutions from establishing quotas, goals, or guidelines for hiring, promotion, or admission based on race, sex, national origin, religion, or sexual orientation." The notion and the intention of this bill is that Affirmative Action is "reverse discrimination" and should therefore be eliminated. Those who are truly familiar with the goals and purposes of Affirmative Action programs know that this is not the case.

Affirmative Action levels the playing field so that people who traditionally have less privilege, such as people of color and women, have the chance to compete in education and in business. Despite the enormous gains made by the civil rights and women's rights movements, women and people of color still face unfair obstacles in business and education. An astonishing 70% of schools are not in compliance with Title IX, the federal equal education opportunity law. For every dollar earned by men, women on a whole earn 74 cents, African American women earn 63 cents and Latina women earn 57 cents. According to the Census Bureau, only 25% of all doctors and lawyers are women. Less than 1% of auto mechanics are women. And women are only 8.4% of engineers. The engineering statistic is very real to me. I am an electrical engineer who designs integrated circuits (sometimes called computer chips,) and since the day I graduated from college in 1981, I still have not worked with another woman chip designer. Should we take positive steps to change that? I say yes.

Affirmative Action is an investment in the future. Affirmative Action helps to insure that everyone gets a chance to contribute, and it opens doors to those who follow. Affirmative Action is a well conceived bridge between changing the laws and changing the culture. As we work toward ending all forms of discrimination, we need the tools that get us closer to that goal. And all people benefit when discrimination is eliminated.

House Bill 1304 will not eliminate "preferences." House Bill 1304 will eliminate opportunity, and it will help to perpetuate subtle and not-so-subtle forms of discrimination that keep doors closed and keep the playing field far from level. As New Hampshire strives to become a model for the future, let us do everything we can to make that future full of possibility and promise for everyone

Please vote in opposition to House Bill 1304.

Thank you,

Kris Moody
President, New Hampshire National Organization for Women (NH NOW)

Sources:
The Shape of the River, Bok, Derek and Bowen, William G., September, 1998
The Federal Glass Ceiling Commission Report, December, 1995
The Census Bureau, Statistical Abstract of the United States, 1996
The U.S. Department of Labor, Women's Bureau, September, 1996
The Department of Transportation, 1995
The National Council of Women's Organizations, "Women Speak on Affirmative Action," 1998

Voting Sheets

HOUSE COMMITTEE ON EXECUTIVE DEPARTMENTS AND ADMINISTRATION

EXECUTIVE SESSION on HB 55

BILL TITLE: **prohibiting preferences in recruiting, hiring, promotion, or admission by state agencies, the university system, the regional community-technical colleges, and the postsecondary education commission**

DATE: February 11, 2003

LOB ROOM: 100 SH

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Bergin

Seconded by Rep. Dexter

Vote: 17-2 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: NO

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Ray F. Langer, Clerk

OFFICE OF THE HOUSE CLERK

2003 SESSION

EXECUTIVE DEPARTMENTS AND ADMINISTRATION

Bill #: HB 55 **Title:**

PH Date: 1/23/03 Exec Session Date: 2/11/03

Motion: ITL Amendment #:

MEMBER	YEAS	NAYS
O'Neil. Michael. Chairman	17	
Hamel. Albert W. V Chairman	1	
Langer. Ray F	2	
Goulet. Maurice E	3	
Zolla. William R	4	
Allan. Nelson S	5	
Dexter. Judson K	6	
Hall. Charles Q	7	
Robertson. Carl G	8	
Bergin. Peter F	9	
LaFlamme. Paul G	10	
Milligan. Robert H	11	
Field. William D		
Fitzgerald. James M		1
Mayhew. Margie		2
Clayton. William K		
Schulze. Joan H	12	
DeJoie. John	13	
Irwin. Anne-Marie	14	
Pilotte. Maurice L	15	
Sullivan. Francis B	16	
	17	2

TOTAL VOTE:
Printed: 1/6/2003

Committee Report

MAJORITY
COMMITTEE REPORT

COMMITTEE: **Executive Departments and Administration**

BILL NUMBER: **HB 55**

TITLE: prohibiting preferences in recruiting, hiring, promotion, or admission by state agencies, the university system, the regional community-technical colleges, and the postsecondary education commission.

DATE: February 11, 2003 CONSENT CALENDAR YES ☐ NO ☒

☐ OUGHT TO PASS

☐ OUGHT TO PASS WITH AMENDMENT

☒ INEXPEDIENT TO LEGISLATE

☐ REFER TO COMMITTEE FOR INTERIM STUDY
(Available only in second year of biennium.)

STATEMENT OF INTENT
(Include Committee Vote)

This bill claims that the university system, the regional community-technical colleges, and the postsecondary education commission are giving preferential treatment to the recruiting, hiring, promotion and admission based on race, creed, color, sex or national origin. In 1974 the New Hampshire Constitution was amended to include the following wording in Part I Article 2 {Natural Right} "Equality of rights under the law shall not be denied or abridged by this state on account of race, creed, color, sex or national origin." It was put into the Constitution to make sure that any citizen of New Hampshire was not discriminated against. If a person was discriminated against based on Part I, Article 2, they could go to court under this article and be given legal due process. The sponsor of this bill claims that HB 55 would codify Part I, Article 2. We disagree as the Constitution already protects these - inherent rights. Since 1974, there has not been one complaint or court case filed against the university system. In addition, during testimony and during subcommittee work, no evidence was given that showed preferential treatment was being given to admission of students in the state's university system, nor in the hiring and promotion of personnel in state agencies based on race, creed, color sex or national origin. Under the current federal executive order 11246 all public and private companies, institutions and university systems receiving federal funds must have an affirmative action plan. Currently, the University of New Hampshire has a diversity goal to recruit people of color in order to make its environment reflect society as a whole. It is not a quota system nor is it similar to the University of Michigan Law School weighted point system. It is a goal similar to the one currently being used by the Military Academy at West Point. HB 55 is trying to interrupt Part I, Article 2 by using the words prohibiting preference. The Court could say that this is not the intention of Part II, Article 2 and declare HB 55 as unconstitutional. In addition, the words prohibiting preference could be applied to athletic scholarships, academic scholarships, legacies, financial aid, and in state versus out of state admissions. Presently, the US Supreme Court has the University of Michigan Law School case before it. When the decision is handed down in June it will clarify the equal protection clause. If at this time the legislature deems it necessary to clarify this decision, then legislation could be introduced. Over the last ten years New Hampshire has become a more diverse state and this will continue in the future. It would be unfortunate to deny students in the university system the opportunity to be prepared for the

diverse world that they will enter into upon graduation. After reviewing the above, the committee voted inexpedient to legislate.

Vote 17-2.

Rep. Peter E. Bergin

FOR THE MAJORITY

Original: House Clerk
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT

Executive Departments and Administration

HB 55, prohibiting preferences in recruiting, hiring, promotion, or admission by state agencies, the university system, the regional community-technical colleges, and the postsecondary education commission. INEXPEDIENT TO LEGISLATE

Rep. Peter E. Bergin for **Executive Departments and Administration:** This bill claims that the university system, the regional community-technical colleges, and the postsecondary education commission are giving preferential treatment to the recruiting, hiring, promotion and admission based on race, creed, color, sex or national origin. In 1974 the New Hampshire Constitution was amended to include the following wording in Part I Article 2 {Natural Right} "Equality of rights under the law shall not be denied or abridged by this state on account of race, creed, color, sex or national origin." It was put into the Constitution to make sure that any citizen of New Hampshire was not discriminated against. If a person was discriminated against based on Part I, Article 2, they could go to court under this article and be given legal due process. The sponsor of this bill claims that HB 55 would codify Part I, Article 2. We disagree as the Constitution already protects these - inherent rights. Since 1974, there has not been one complaint or court case filed against the university system. In addition, during testimony and during subcommittee work, no evidence was given that showed preferential treatment was being given to admission of students in the state's university system, nor in the hiring and promotion of personnel in state agencies based on race, creed, color sex or national origin. Under the current federal executive order 11246 all public and private companies, institutions and university systems receiving federal funds must have an affirmative action plan. Currently, the University of New Hampshire has a diversity goal to recruit people of color in order to make its environment reflect society as a whole. It is not a quota system nor is it similar to the University of Michigan Law School weighted point system. It is a goal similar to the one currently being used by the Military Academy at West Point. HB 55 is trying to interrupt Part I, Article 2 by using the words prohibiting preference. The Court could say that this is not the intention of Part II, Article 2 and declare HB 55 as unconstitutional. In addition, the words prohibiting preference could be applied to athletic scholarships, academic scholarships, legacies, financial aid, and in state versus out of state admissions. Presently, the US Supreme Court has the University of Michigan Law School case before it. When the decision is handed down in June it will clarify the equal protection clause. If at this time the legislature deems it necessary to clarify this decision, then legislation could be introduced. Over the last ten years New Hampshire has become a more diverse state and this will continue in the future. It would be unfortunate to deny students in the university system the opportunity to be prepared for the diverse world that they will enter into upon graduation. After reviewing the above, the committee voted inexpedient to legislate. Vote 17-2.

MINORITY
COMMITTEE REPORT

COMMITTEE: **Executive Departments and Administration**

BILL NUMBER: **HB 55**

TITLE: prohibiting preferences in recruiting, hiring, promotion, or admission by state agencies, the university system, the regional community-technical colleges, and the postsecondary education commission.

DATE: February 12, 2003 CONSENT CALENDAR YES ☐ NO ☒

☒ OUGHT TO PASS

☐ OUGHT TO PASS WITH AMENDMENT

☐ INEXPEDIENT TO LEGISLATE

☐ REFER TO COMMITTEE FOR INTERIM STUDY
(Available only in second year of biennium.)

STATEMENT OF INTENT
(Include Committee Vote)

This bill would codify Article 2 of the New Hampshire State Constitution, which states in part "Equality of rights under the law shall not be denied or abridged by this state on account of race, creed, color, sex or national origin." This article was passed by the house, senate and the voters in 1974. The bill also will expand existing law RSA 21-I:52 states "No person shall be appointed or promoted to, or demoted or dismissed from, any position in the classified service, or in any way favored or discriminated against with respect to employment in the classified service because of the person's political opinions, religious beliefs or affiliations, age, sex, or race. In addition, no person shall have any such employment action taken on account of such person's sexual orientation." This bill would extend the law to ensure these constitutional rights were also applied to other state agencies, the university system, the regional community-technical colleges, and the postsecondary education commission. It simply extends the law to ensure these groups receive the constitutional rights to which they are entitled.

Vote 2-17.

Rep. Margie Maybeck
FOR THE MINORITY

Original: House Clerk
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT

Executive Departments and Administration

HB 55, prohibiting preferences in recruiting, hiring, promotion, or admission by state agencies, the university system, the regional community-technical colleges, and the postsecondary education commission. **OUGHT TO PASS**

Rep. Margie Maybeck for Executive Departments and Administration: This bill would codify Article 2 of the New Hampshire State Constitution, which states in part "Equality of rights under the law shall not be denied or abridged by this state on account of race, creed, color, sex or national origin." This article was passed by the house, senate and the voters in 1974. The bill also will expand existing law RSA 21-I:52 states "No person shall be appointed or promoted to, or demoted or dismissed from, any position in the classified service, or in any way favored or discriminated against with respect to employment in the classified service because of the person's political opinions, religious beliefs or affiliations, age, sex, or race. In addition, no person shall have any such employment action taken on account of such person's sexual orientation." This bill would extend the law to ensure these constitutional rights were also applied to other state agencies, the university system, the regional community-technical colleges, and the postsecondary education commission. It simply extends the law to ensure these groups receive the constitutional rights to which they are entitled. **Vote 2-17.**

From Margie Maybeck
Executive Departments and Administration

Re: HB 55.

This Bill is to clarify that section of the already existing law with regards to the prohibition of bias and/or preferences in hiring and admission by state agencies. The mantle of diversity has clouded the honest hiring and admission in the State University System. The hiring of well educated, exceedingly knowledgeable faculty from foreign countries has increased diversity. It has also brought into the classroom a group of educators with such *diverse* language accents, that it is a definite detriment to the American student. Too many students have to rely on tutoring outside the classroom, just because they couldn't understand the accent of a foreign teacher. Student admissions are not by SAT scores alone. Many highly intelligent applicants to the State University System are passed over for applicants with lower SAT scores in the name of *diversity*. Regardless of the outcome of the University of Michigan case now before the U.S. Supreme Court, the State of New Hampshire should stand firm in declaring that this State will not stand for "technical" violation of the Federal standards on "Equal Opportunity Employment" and "Affirmative Action".