

MYTHS AND FACTS ABOUT AFFIRMATIVE ACTION

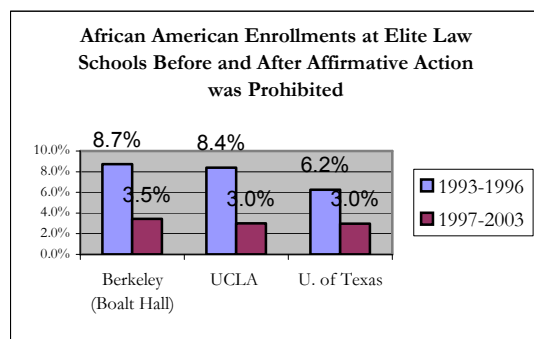
Myth: Don't Worry, Ending Affirmative Action Won't Cause Resegregation

In *Grutter v. Bollinger* and *Gratz v. Bollinger*, the challenges to the law school and undergraduate affirmative action programs at the University of Michigan, Ward Connerly's American Civil Rights Institute (ACRI) filed a brief with the U.S. Supreme Court arguing:

"A ruling on behalf of Ms. Grutter and Ms. Gratz will not close doors to higher education for African Americans..."¹

Facts: Resegregation in Legal Education

When affirmative action was banned at the law schools at Berkeley, UCLA, and the University of Texas in 1997, African American enrollments plummeted to levels not seen since the 1960s. As this chart indicates, in 1997-2003 African American enrollments at Berkeley, UCLA and UT were three-fifths lower than in 1993-1996, when affirmative action was practiced.²



Graphic: Equal Justice Society, 2004

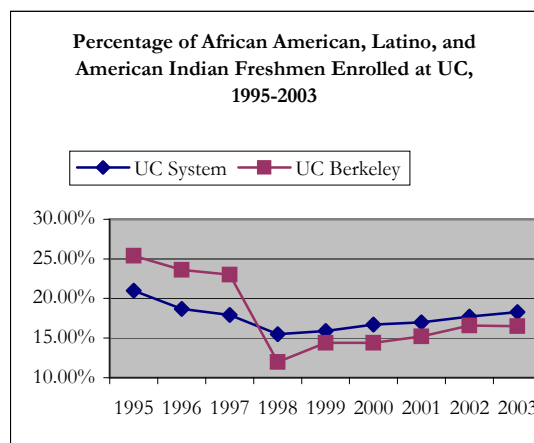
Myth: Proposition 209 -- Try It, You'll Like It

Connerly chaired the Yes-on-209 campaign in California, and led anti-affirmative action ballot efforts in Washington, Florida, Michigan, and other states. In *Grutter* and *Gratz*, Connerly's ACRI assured the Supreme Court that diversity improved under Proposition 209:

"In California, minority enrollment in the University of California system increased from 18.8 percent in 1997, the last year in which preferences were used, to 19.1 percent in 2002."³

Facts: Declining Undergraduate Opportunities at the Univ. of California

Ironically, ACRI's statistic is misleading because of Connerly's success in getting the UC Regents to vote against affirmative action in July 1995, which had a chilling effect even before the affirmative action ban was implemented. As the chart indicates, African Americans, Latinos, and American Indians were 21% of UC freshmen in 1995.⁴ However, in 1998-2003, without affirmative action, the figures ranged from 15.1%-18.3%, still well below 1995. And that is despite the fact that California's public high school graduates include an increasing proportion of underrepresented minorities (42% in 2003).



Graphic: Equal Justice Society, 2004

EQUAL JUSTICE SOCIETY

Myth: Diversity Disguises Quotas and Threatens Merit

Ward Connerly recently argued in the *National Review*:

The ‘diversity’ rationale is one of the biggest threats to the fabric of our nation. ‘Diversity’ is an excuse to discriminate; it is at war with the principle of merit; and it is the functional equivalent of ‘quotas.’⁵

Facts: Diversity and Fairness

In *Grutter*, the Supreme Court distinguished quotas from the University of Michigan Law School’s flexible program, which seeks a critical mass of underrepresented minorities. The Court explained that a quota “is a program in which a certain fixed number or proportion of opportunities are reserved exclusively for certain minority groups.” Moreover, the Court declared, “some attention to numbers, without more, does not transform a flexible admissions system into a rigid quota.”⁶

In *Grutter* the Court was presented with a large body of social science research confirming the benefits of a diverse student body.⁷ Accordingly, the Court found that the educational benefits of diversity are “substantial” and “are not theoretical but real.”⁸ A comprehensive study of 1970-1996 alumni at the University of Michigan Law School found that despite lower average test scores, minority graduates were equally successful in the legal profession and had higher levels of civic service compared to their white classmates.⁹

Incisive guidance on the *Grutter* ruling is available in *Preserving Diversity in Higher Education*, a manual for admissions policymakers. This publication was authored as a public service by the law firms of Bingham McCutchen LLP, Morrison & Foerster LLP, and Heller Ehrman White & McAuliffe LLP, and may be downloaded from the EJS website:

<http://www.equaljusticesociety.org/compliancemanual/index.html>

¹ Brief Amici Curiae Center for Equal Opportunity, Independent Women’s Forum, and American Civil Rights Institute in Support of Petitioner in *Grutter v. Bollinger* and *Gratz v. Bollinger*, pp.29-30 (Jan. 2003), available at http://www.umich.edu/~urel/admissions/legal/gru_amicus-ussc/ceo-both.pdf.

² William C. Kidder, *The Struggle for Access from Sweatt to Grutter: A History of African American, Latino, and American Indian Law School Admissions, 1950-2000*, 19 HARVARD BLACKLETTER LAW JOURNAL 1, 31-35 (2003); UC Office of the President, Statistics on University of California’s Law Schools (2004); MALDEF, Americans for a Fair Chance, Equal Justice Society, and SALT, *Blend It, Don’t End It: Affirmative Action and the Texas Ten Percent Plan After Grutter and Gratz* (June 2004), available at http://www.equaljusticesociety.org/MALDEF_Post_Grutter_Report_June_24_2004.pdf.

³ Brief Amici Curiae, *supra* note i, at 28.

⁴ UC Office of the President, Application, Admission and Enrollment of California Resident Freshmen for Fall 1995 through 2003 (2004), available at <http://www.ucop.edu/news/factsheets/flowfrc9503.pdf>. Affirmative action was banned at UC law schools one year earlier than at the undergraduate level.

⁵ Ward Connerly, *The Diversity Elephant*, NATIONAL REVIEW ONLINE, Sept. 1, 2004, available at <http://www.nationalreview.com/comment/connerly200409010056.asp>.

⁶ *Grutter v. Bollinger*, 123 S.Ct. 2325, 2342-43 (2003).

⁷ See e.g., Brief for the American Educational Research Ass’n et al. as Amici Curiae (Feb. 15, 2003), available at <http://www.umich.edu/~urel/admissions/legal/grutter/>; DIVERSITY CHALLENGED: EVIDENCE ON THE IMPACT OF AFFIRMATIVE ACTION (Gary Orfield & M. Kurlaender eds., 2001); Expert Report of Patricia Gurin, reprinted at 5 MICH. J. RACE & L. 363 (1999); WILLIAM G. BOWEN & DEREK BOK, THE SHAPE OF THE RIVER: LONG-TERM CONSEQUENCES OF CONSIDERING RACE IN COLLEGE AND UNIVERSITY ADMISSIONS (1998).

⁸ 123 S.Ct. at 2339-40.

⁹ Richard O. Lempert et al., *Michigan’s Minority Graduates in Practice: The River Runs Through Law School*, 25 LAW & SOCIAL INQUIRY 395 (2000).