

AFFIRMATIVE ACTION

**Who's
REALLY
BENEFITING?**

Part

1

STATE

EMPLOYMENT

Prepared by
**The Washington State
Commission on
African American Affairs**

June 1995

Summary

Answering the key questions facing Affirmative Action

Do blacks gain unfair advantage over whites as a result of state affirmative action efforts?
Do affirmative action programs foster "reverse discrimination" against whites seeking employment, educational opportunities, and contracting opportunities?

This report is the first in a three-part series designed to provide preliminary answers to these questions as they relate to Washington state government. This document addresses the State Affirmative Action Program overseen by the Washington State Department of Personnel and applied in dozens of state agencies. The affirmative action efforts discussed in this report do not apply to higher education institutions or to state agencies with fewer than 50 permanent employees. Findings on higher education and state contracting will be presented in coming months.

Findings

Data provided by the Washington State Department of Personnel clearly show that *whites* are the primary beneficiaries of the state's affirmative action program affecting hiring — this includes large numbers of white men as well as white women. While people of color certainly have benefited from state affirmative action efforts, the data unequivocally show that benefits to people of color are outstripped by those received by whites. In fact, many people of color who are hired into state employment appear to be generally unaffected by affirmative action practices, although they may be helped by broader recruitment outreach.

While this report highlights these findings, the Commission on African American Affairs does not intend to imply that white beneficiaries of affirmative action activities are undeserving. Our only intent is to introduce facts and current information to what has been, until now, an emotionally-driven discussion of affirmative action issues.

Preliminary findings of upcoming reports on higher education and state contracting

- *Whites* are primary beneficiaries of special admissions programs at public institutions of higher learning. At the state's four largest public institutions of higher learning, alternative admissions criteria are more often used to provide opportunities for whites than for blacks or other people of color. While people of color have gained admission through such programs, their numbers are small compared to the numbers of whites benefiting from flexible admissions criteria. Furthermore, in comparison to their state-wide populations, some peoples of color are still statistically underrepresented at several institutions. Detailed information supporting these findings will be presented in coming months.
- *Whites* are the primary beneficiaries of programs designed to assist minority- and women-owned firms seeking to do business with the state. While people of color are operating firms certified for participation in such programs, they are not actually participating at a rate comparable to that for white women. Detailed information supporting these findings will be presented in coming months.

Analysis

Reality versus Perception

Our findings clearly show that a broad schism exists between the public's perceptions of affirmative action and the reality of affirmative action as practiced in state government. Affirmative action is no longer generally viewed by whites as a remedy to discrimination, but as a mechanism of preference benefiting blacks to the detriment of whites. The data show that the opposite is most likely true: that select groups of whites are benefiting most from affirmative action programs while blacks and other people of color continue to be underrepresented in certain areas of state employment, education, and contracting. This report does not speak to the propriety of such benefits for whites, but only seeks to illustrate that such benefits exist and even predominate in the realm of state affirmative action programs.

Anecdotes Versus Specifics

Until now, an exchange of anecdotes has dominated the debate on affirmative action programs in state government. The presentation of this report's limited findings of fact should cast a new light on the subject. If further study proves these findings to be fair and representative of other jurisdictions (and even the private sector), then the discussion of preferential treatment must be refocused accordingly.

If specific affirmative action programs are malfunctioning in any way, only thoughtful review of the factual specifics surrounding those programs can lead to worthy solutions. We are not calling for exhaustive, time consuming studies. We are calling for a swift, measured review of the facts akin to the one we have done, but with a broader scope to include more jurisdictions and a more complete statistical analysis of available data. Only such a review can fairly capture current events and help policy makers anticipate the likely effects of new policies.

Advancing the Public Policy Debate on Affirmative Action

It may indeed be time to reform misdirected affirmative action efforts. New remedies may be needed to redress ongoing discrimination in education, employment, and contracting – discrimination which reputable scholars still blame for much of the earnings gap between white males and all other groups in society. Verifying the effects of discrimination is a vital task which must be undertaken to assess the needs of any group with protected status in Washington state, including white males.

Advocacy groups will certainly pursue legal action to clarify the linkages between evidence of discrimination and the subsequent inclusion of various groups in affirmative action programs. State government would be well served by a thorough review of its own affirmative action programs, rather than relying on hearsay and innuendo as the basis for important and controversial public policy changes affecting such programs.

The Washington State Affirmative Action Program

Data Source: Washington State Department of Personnel

Setting Affirmative Action Goals

State agencies set their own goals for the "equity level" of participation for "protected groups" recognized by the program: women, African Americans, Hispanics, Asians, Native Americans, people with disabilities, Vietnam veterans, and disabled veterans. The goals are established on an agency-by-agency basis using a technique called Multi-Factor Analysis which considers various factors such as population size, numbers of civilians from each protected group in the labor force, availability of people with requisite skills, availability of relevant training, and other factors. None of these goals represents a "quota" of any kind.

State agencies with 50 or more permanent employees are required to prepare and implement an Affirmative Action Plan every three years to reach the equity level goals. Much of the activity referenced in these plans describes efforts to expand recruitment efforts, offer training, and other measures aside from hiring goals.

The State's Affirmative Action Tools and How They Work

The State Affirmative Action Program offers two tools to increase opportunities for individuals in "protected groups" who are underrepresented in certain types of jobs as referenced by an agency affirmative action plan: "exception testing" and "supplemental certification."

Exception testing allows the processing of job applications, under certain circumstances, when job openings are otherwise closed. Supplemental certification, also called "Plus Three" allows up to three candidates from protected groups to be interviewed for job vacancies when agency affirmative action plans indicate that the equity level for that type of job has not been reached.

Supplemental Certification/Plus Three

The Plus Three process appears to be more frequently used by agencies than is exception testing. When all job applicants have been tested and scores are ranked for a particular job, agencies receive the names of the top seven candidates from the Department of Personnel. When a protected group is underrepresented for the job in question, a Plus Three certification allows additional names farther down the list to be provided for interviewing purposes. Up to three names can be added, hence the name "Plus Three."

Agencies may identify any number of protected groups for Plus Three consideration, but a total of only three names will be added and they will be taken in rank order. More than three names can be added when there are tied scores. It is very common for a Plus Three certification to reveal that protected group members are already among the top seven names. In such a case, only two, one, or zero additional names would be added to the top seven contenders, depending on how many protected group members were in the top seven.

The Hiring Decision

After the Plus Three candidates have been identified, all names are forwarded to the agency for interviews. The agency may choose to interview all of the candidates. Customarily, at least three people are interviewed. At this point, agencies also may choose to ignore the Plus Three candidates, but again it is customary to interview a broad range of applicants. All final appointments to jobs are to be made on the basis of qualifications and interview performance. There are no quotas for hiring or promotion and both Plus Three and Special Testing only serve to add more people to the pool of candidates being considered.

Overview of Data on Affirmative Action Participation

Current State Workforce by Protected Group Category April 1995

Includes full-time classified, project, Washington Management Service, and exempt

| | | |
|---|--------|--------|
| Total Workforce | 47,476 | 100.0% |
| Total Workers with Protected Group Status | 33,863 | 71.3% |

| | | |
|--|---------------|--------------|
| Breakout of People with Protected Group Status | 33,863 | 100.0% |
| White Males with Protected Group Status | 6,321 | 18.7% |
| White Females | 20,196 | 59.6% |
| Total Whites with Protected Group Status | 26,517 | 78.3% |
| Total People of Color with Protected Group Status Male and Female | 7,346 | 21.7% |

Available data do not allow us to say how many people with protected group status have actually participated in affirmative action efforts and used that status to attain employment opportunities. Not all protected groups are listed.

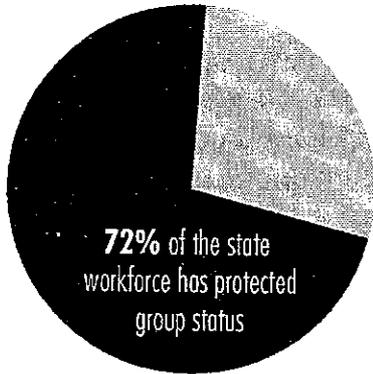
Breakout of White Males with Protected Group Status

| | |
|--------------------------|--------------|
| Vietnam Veterans | 4,335 |
| Disabled Veterans | 481 |
| People with Disabilities | 1,505 |
| Total | 6,321 |

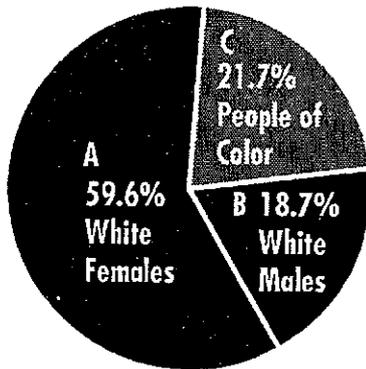
Breakout of People of Color with Protected Group Status/ Male and Female

| | |
|-------------------------|--------------|
| African Americans | 2,234 |
| Asian/Pacific Islanders | 2,291 |
| Hispanics | 1,788 |
| Native Americans | 1,033 |
| Total | 7,346 |

**What share of the state workforce
has protected group status
under state affirmative action guidelines?**



**Who has protected group status
under state affirmative action guidelines?**



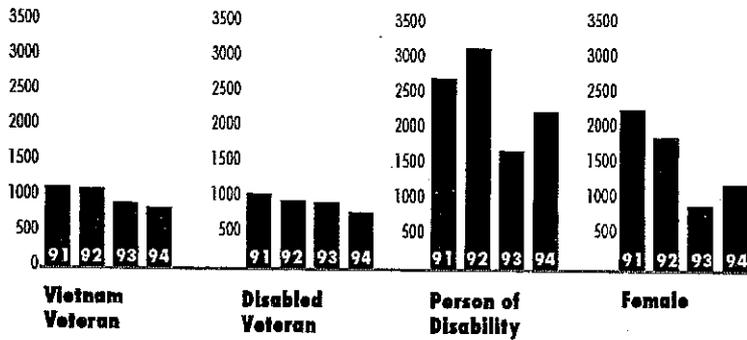
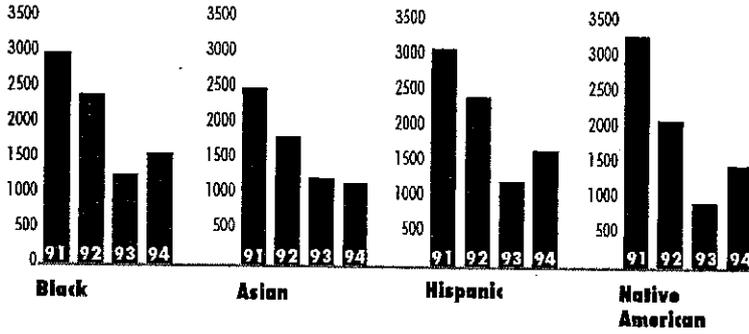
A) White Females
Represent 59.6% of
the workers with
protected group status

B) White Males
Represent 18.7% of
the workers with
protected group status

C) People of Color
Represent 21.7 % of
the workers with
protected group status

Plus Three Referrals Requested By Agencies

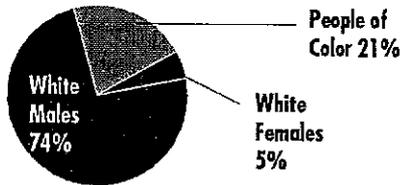
1991-1994 by Protected Group



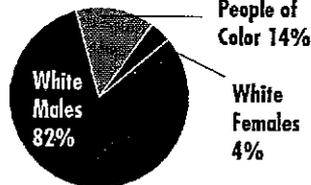
March 19, 1995 Special Data Run

Racial Composition of Protected Groups for People with Disabilities and Veterans

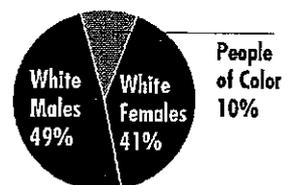
Disabled Veterans



Vietnam Veterans

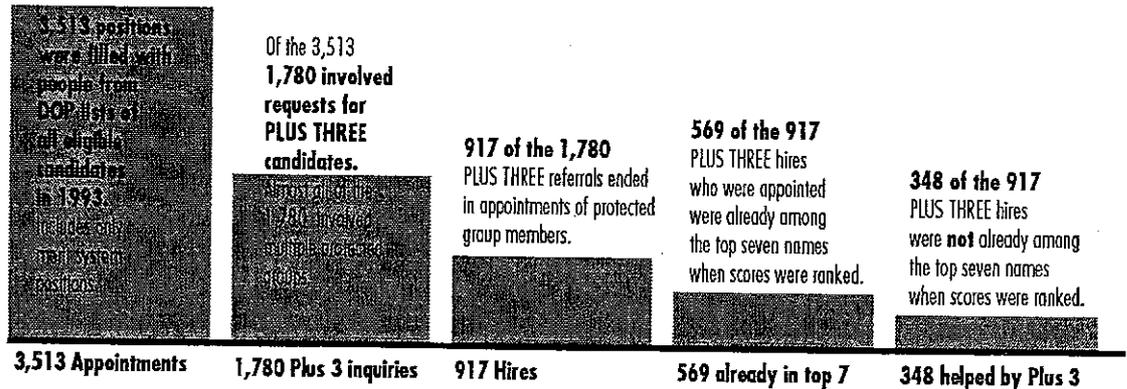


People with Disabilities

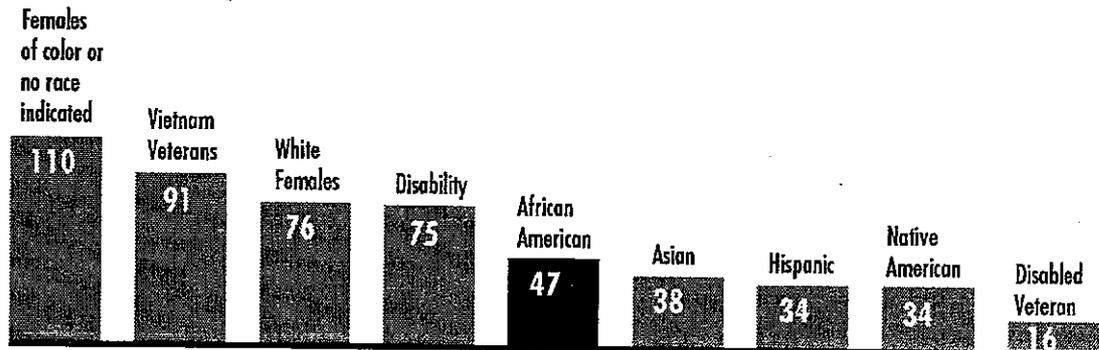


1993 Hiring into the Merit System of State Service

How many people received additional consideration under the Plus Three Process?



Distribution of the 348 protected group members receiving additional consideration under the Plus Three Process

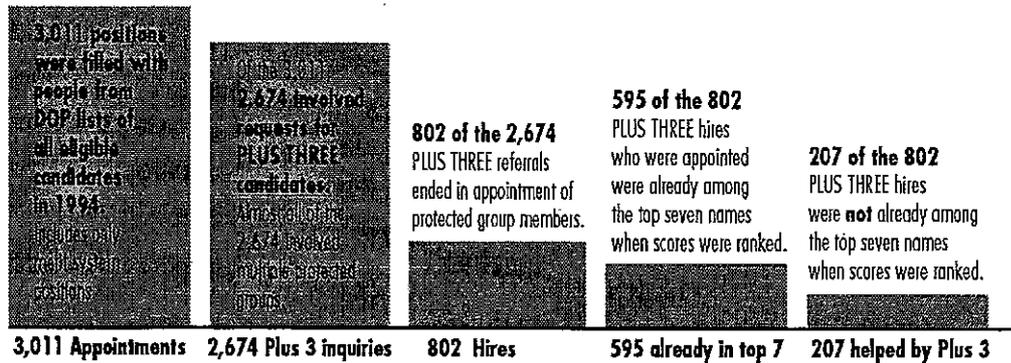


Total adds to 521 since some individuals are counted in more than one category. For example, an African American female with a disability would be counted three times. All categories, except Females and White Females, include both males and females.

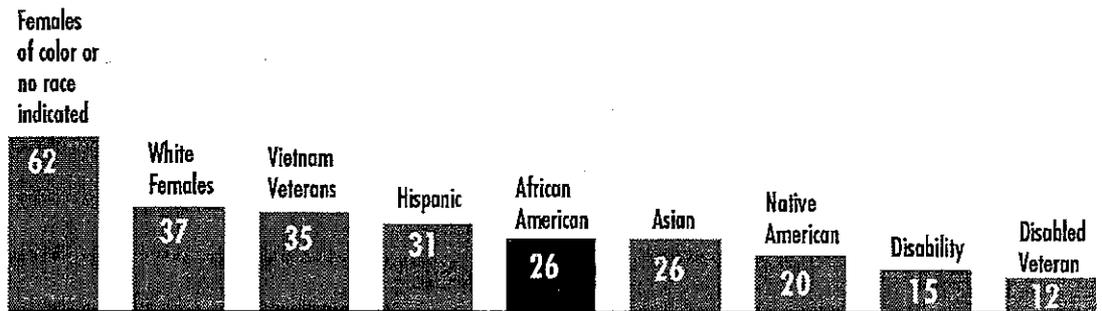
NOTE: "Protected groups" recognized by the Department of Personnel for affirmative action purposes are: female, African American, Asian, Hispanic, Native American, disability, Vietnam veteran, and disabled veteran. Hiring includes appointments which constituted a competitive transfer or promotion of individuals currently in state service.

1994 Hiring into the Merit System of State Service

How many people received additional consideration under the Plus Three Process?



Distribution of the 207 protected group members receiving additional consideration under the Plus Three Process



Total adds to 264 since some individuals are counted in more than one category. For example, an African American female with a disability would be counted three times. All categories, except Females and White Females, include both males and females.

NOTE: "Protected groups" recognized by the Department of Personnel for affirmative action purposes are: female, African American, Asian, Hispanic, Native American, disability, Vietnam veteran, and disabled veteran. Hiring includes appointments which constituted a competitive transfer or promotion of individuals currently in state service.

Conclusions and Recommendations

Conclusions:

Whites dominate those hired in Washington state government, even among affirmative action program participants. Even a partial assessment of readily available state affirmative action data shows that whites represent more than 75 percent of workers with protected group status. In addition, hiring trends show that relatively small numbers of people receive added consideration during recruitment owing to race or ethnicity. In fact, far greater numbers of whites than blacks are benefiting from Plus Three referrals which expand interview pools.

1993-94 recruitment shows whites are key beneficiaries of Plus Three referrals. Whites dominate the protected groups for women, people with disabilities, veterans, and disabled veterans. Ninety percent of people with protected status due to disability are white. Eighty-six percent of those with veteran's status are white. Furthermore, these groups are frequently tapped for Plus Three consideration. In 1993 merit system hiring, white females and Vietnam veterans groups combined received greater consideration under the Plus Three process than did African Americans, Asians, Hispanics, and Native Americans combined. In 1994 merit system hiring, white females and Vietnam veterans groups each received greater consideration under the Plus Three processes than did each of the other protected groups.

These findings do not address each protected group's level of representation in state government relative to state population. They only compare the protected groups to each other in the context of state affirmative action activities.

Recommendations:

Further Study

Further study would determine whether the affirmative action practices, participation profiles, and hiring outcomes described in this report's preliminary findings are representative of those in other areas of state government and/or other jurisdictions.

Data Collection/Disaggregation

Employment data collected by the Department of Personnel, other state agencies, and agencies of other governmental jurisdictions should be compiled in such a way as to allow complete disaggregation of all protected group categories by gender, race, and disability status. This would allow a more complete assessment of how affirmative action is affecting members of various protected groups, including white males. Currently, "double counting" obscures data on people in multiple protected groups.

Data Collection/Local Lists

A number of state agencies are using "local lists" to recruit for selected positions. These local lists function as employment registers from which individuals can be appointed with little or no involvement from the Department of Personnel. Data on these hires is maintained by the agencies and is not currently being incorporated into the statewide affirmative action database. Data on hires from local lists should be uniformly reported to Personnel and incorporated into that database.

Why Americans are Retreating from Affirmative Action

A 22-year debate preceded Congressional action to ban employment discrimination through Title VII of the Civil Rights Act of 1964. In the course of that long debate, supporters of equal employment opportunity presented volumes of research data to substantiate the existence of employment discrimination against black people, other people of color, and women. Affirmative action programs ultimately grew out of the legal battles which ensued as victims of discrimination sought relief under the new law.

Scholars, politicians, and lawyers have wrestled with the intent of the Civil Rights Act for 31 years, yet their basic terms of art still have fluid definitions. Any three individuals will offer different definitions of what "discrimination" means. The same is true of the terms "affirmative action," "merit," "qualifications," and "reverse discrimination." What constitutes "merit" is often subject to dispute. What some have viewed as a de emphasis of merit in hiring and promotion decisions, others might view as reasonable changes in how candidates are sought out, evaluated and selected. However, in terms of public perception among many white Americans, and even some blacks, affirmative action has become synonymous with preferential treatment for blacks.¹

In an ironic corollary to the historical civil rights battle for equal employment opportunity, affirmative action's opponents are taking issue with systemic practices they claim place whites, and white males in particular, at a disadvantage relative to others seeking employment and advancement. In contrast to the historic discrimination debate, a 22-year examination of so-called "reverse" discrimination issues seems unlikely, particularly at the state or local level in Washington state.

Affirmative action's detractors have generally sidestepped time-consuming, substantive research to verify their suppositions about who actually participates in or benefits from such programs.² Even scholarly opponents of affirmative action have resorted to emotionally-charged rhetoric without offering clear evidence of their claims of reverse discrimination.³ Where research on reverse discrimination has been conducted, the findings are mixed, showing that reverse discrimination rarely occurs, and that discrimination against blacks is vastly more prevalent.⁴

Similarly, many of the most vocal combatants focus virtually exclusively on the alleged preferential treatment of blacks, even though white women, Hispanics, the disabled, and

¹ Burstein, Paul (1992) "Affirmative Action, Jobs, and American Democracy: What Has Happened to the Quest for Equal Opportunity?" *26 Law & Society Review* 901.

² _____, pp. 910

³ _____, pp. 907-908

⁴ _____, pp. 907

other groups also benefit from the same policies which appear to favor blacks.⁵ There simply is little or no evidence to justify this focus on race.⁶ In the Washington state government employment arena, whites are the greatest beneficiaries of affirmative action practices.⁷ Nationally, preferential practices affecting women are a far greater threat to traditional business practices because women are more numerous than any other group in the workforce.⁸

A recent study commissioned by the U.S. Department of Labor finds that of more than 3,000 reported federal district- and appellate-court decisions in discrimination cases from mid-1990 to mid-1994, fewer than 100 opinions involved claims of reverse discrimination, and of these, only five involved white men who successfully contended that they'd been discriminated against in favor of minorities or women.⁹ The courts found that many of these reverse discrimination cases were without merit and several had been brought by whites who appeared to be less qualified than the minorities who were hired or promoted.

In cases that more broadly challenged the validity of affirmative action programs, the courts upheld these programs in 12 cases, invalidated or modified them in six cases, and in two cases ruled they had achieved their goals and should be discontinued.

Data on discrimination complaints filed in Washington state indicate a similar pattern: a small number of complaints filed and won by white men and vastly larger numbers of cases filed and won by blacks, women, and other people of color.¹⁰ Some commentators argue that white men hesitate to file reverse discrimination complaints or seek legal relief for fear of being labeled as racist whiners. While this could be a valid concern, it is no less a concern for women and people of color considering legal action.¹¹ Only extensive study could verify how all filings of discrimination complaints are influenced by fear of reprisal and labeling, as well as the reasonable expectation that underlying motives will be questioned.

To the extent opponents of affirmative action base their case on the belief that it has led to widespread reverse discrimination, they have yet to prove their case.¹²

⁵ _____, pp. 918

⁶ _____, pp. 918

⁷ Washington State Department of Personnel, Workforce Diversity Office, special data run, April 11, 1995.

⁸ Burstein, pp. 919

⁹ Blumrosen, Alfred W., (1995) "How the Courts are Handling Reverse Discrimination Claims." 56 *The Daily Labor Report*. (March 23, 1995) The Bureau of National Affairs, Inc.

¹⁰ United States Equal Employment Opportunity Commission. May, 1995. National Database Automatic Reporting Facility: EEOC and FEPA Charge Receipts for Washington State, Fiscal Year 1994. Washington, D.C.

¹² Burstein, pp. 908.

Evaluating affirmative action's effects requires a review of outcomes for all participants, including the significant numbers of whites participating. Such evaluations are rarely conducted, and when they are, they tend to show that blacks' gains from affirmative action have been small and that groups other than blacks also have demanded and benefited from changes in employment practices prompted by affirmative action.

Such reviews also show that -- despite perceptions to the contrary -- affirmative action programs generally conform to what the public views as acceptable practice. In other words, such programs offer remedial action, to which the public is somewhat sympathetic, and they do not promote preferential treatment, to which the public is clearly hostile.¹³ In the largest study using conventional statistical methods to seek evidence of reverse discrimination, Jonathan Leonard cautiously concluded in 1986 that "governmental . . . anti discrimination and affirmative action efforts have helped to reduce discrimination without yet inducing significant and substantial reverse discrimination."¹⁴

As self-avowed advocates of a "color-blind" hiring and promotion environment for all workers, affirmative action's detractors are strangely silent regarding current discrimination against blacks, other people of color, and women.¹⁵ That such ongoing discrimination exists is generally accepted and substantiated by researchers who cite as key evidence the 10-15 percent gap in earnings between white and black males who are equal in terms of education, experience, and other factors believed to effect income.¹⁶

Rather than researching the origins of this income gap, affirmative action's detractors appear to be ignoring its existence. An unspoken subtext here could be the belief that blacks are innately inferior to whites, which would summarily explain the gap and nullify the need for further investigation. As recently as the late 1980s, researchers found that upwards of 20 percent of whites believed that blacks were innately inferior.¹⁷ They also indicated a belief that this inferiority was responsible, to some degree, for the disparate conditions affecting blacks and whites. Again, these beliefs appear to be influencing action against affirmative action, yet thorough research has not been conducted to determine whether either the beliefs themselves (or the subsequent attacks on affirmative action) are justified by the facts. It is impossible to determine how strongly eugenics theory is influencing the opponents of affirmative action, if at all.

¹³ _____, pp. 905 and 917.

¹⁴ _____, pp. 907.

¹⁵ _____, pp. 906.

¹⁶ _____, pp. 906

¹⁷ _____, pp. 914.

Given the lack of evidence to support the theory that affirmative action is fostering reverse discrimination, it is reasonable to ask why affirmative action is under attack, especially as it relates to blacks. A cursory review of economic factors provides some interesting possibilities. It may well be that downward economic mobility is prompting whites, especially white men, to seek answers for the very real decline in their incomes. In the frenzied search for answers, high taxes, high welfare spending, and affirmative action (and reverse discrimination) are frequently cited by politicians and social commentators as the offending triumvirate of evils impeding the economic progress of hard-working whites. While these are legitimate concerns, other factors could offer a better explanation for declining personal incomes.

From 1940-1973, real earning for all Americans improved steadily, but they stagnated and declined after 1973.¹⁸ Similarly, over these periods, there was a clear record of improving average material status of blacks relative to whites, followed by stagnation and decline after 1973. After 1973, inequality increased among ALL Americans as those with the lowest income and fewest skills were hurt by the shift away from high-wage manufacturing economy to a growing lower-wage service sector.¹⁹

Most legal scholars favoring affirmative action agree that in the late 1960s and early 1970s, the U.S. Supreme Court and some appellate courts were supportive of relatively strong equal opportunity enforcement. This surely contributed in some measure to the economic and social advancement of blacks during this period. However, the Supreme Court began to significantly reverse course in the mid-1970s, when it restricted the award of attorneys' fees to victorious plaintiffs in civil rights cases and made it more difficult to challenge the consequences of segregated seniority systems.

Interestingly, this shift in legal orientation coincided with the onset of the middle-class income decline that began in the mid-1970s. This could reflect the historical tendency of American society to more generously allot opportunity for economic advancement to women and "minority" groups during times of strong economic growth and to curb such opportunities during times of scarcity. In this context, affirmative action programs are a likely target for victims of the income decline. Reclaiming economic opportunities from blacks, women, and other minorities may seem to be a more promising stratagem (for improving white male economic prospects) than attacking the growing income inequality in American society that affects everyone.

¹⁸ Jaynes, Gerald David and Robin M. Williams, Jr. (1989) *A Common Destiny: Blacks and American Society*. Washington, D.C: National Academy Press, pp. 7.

¹⁹ _____, pp. 8.

Real weekly earnings (in constant 1984 dollars) of all American men, on average, fell from \$488 in 1969 to \$414 in 1984; real weekly earnings of women fell from \$266 in 1969 to \$230 in 1984. These trends have continued into the 1990s.²⁰ For the first time since the Great Depression of the 1930s, American men born in one year may face lower lifetime real earnings than men born ten years earlier. Where a generation ago, a low-skilled man had relatively abundant opportunity to obtain a blue-collar job with a wage adequate to support a family at a lower middle class level or better. Today the jobs available to such men and women are often below or just barely above the official federal poverty line for a family of four, which was \$14,800 a year in 1994.²¹

In this context, completely dismantling affirmative action would likely provide little or no relief for whites whose incomes have declined. Researchers comparing the 1980s and early 1990s with the late 1960s and 1970s found that the poor are becoming more likely to stay poor and the affluent more likely to stay affluent. They also found the middle class, defined as households with after-tax incomes of \$24,000 to \$72,000, is increasingly bifurcated into the ranks of the "high" and "low." The odds of becoming either affluent or poor are increasing while the odds of staying in the middle class have dwindled.

No amount of tinkering with affirmative action programs is likely to change these harsh realities. Even if the opponents of affirmative action have their way, overall economic prospects for lower- and middle-income white males would probably remain bleak even in a workforce where affirmative action was no longer practiced.

²⁰ Jaynes, pp. 7.

²¹ _____, pp. 8.

The Washington State Commission on African American Affairs was created by Executive Order in 1989 and established in statute in 1992. Mandated by the legislature, the Commission's functions are to improve public policy development for, and government service delivery to the African American community by; (1) examining and defining issues pertaining to the rights and needs of the African American Community; (2) making recommendations to the Governor and state agencies for changes in programs and laws; (3) advising on the development of relevant policies, plans and programs; (4) advising the legislature on issues of concern to the African American Community; and (5) establishing relationships with state agencies, local governments, and the private sector. The mission of the Commission on African American Affairs is to develop and promote public policy which enhances the social, economic, political, and educational health and welfare of African American people in Washington State.

The Commission consists of nine members appointed by the Governor:

| | |
|-------------------------------------|------------------------------|
| T.J. Vassar, Chair, Seattle | Tony Hudson, Tacoma |
| Thelma Jackson, Vice Chair, Olympia | Norman Moore, Tri-Cities |
| Henry Beauchamp, Yakima | Leroy J. Williams, Bremerton |
| Shaunna Weatherby, Tacoma | Joanne R. Harrell, Seattle |
| Jennifer Roseman, Spokane | |

Commission staff are James Kelly, Executive Director; Talibah Chiku, Assistant to the Director; and Pamela Morris, Confidential Secretary.

During the legislative session the Commission convened an affirmative action think tank to advise the Commission on the development of this report. Think tank members are:

Professor Thaddeus Spratlen, U.W. School of Business
Professor Hubert Locke, U. W. Graduate School of Public Affairs
Professor Al Black, U.W. Sociology Department
Jim Medina, Director, Office of Minority and Women's Business Enterprise
David Della, Director, Commission on Asian Affairs
John Little, Washington State Human Rights Commission
Bob Flowers, Vice President, Washington Mutual Bank
Herman McKinney, Seattle Chamber of Commerce
Constance Proctor, attorney-at-law
Constance Herring, NAACP
Dr. Carver Gayton, The Boeing Company
Barbara Moore, student intern
Germaine Covington, Seattle Human Rights Commission
Cedric D. Page, Washington State Higher Education Coordinating Board
Manny Lee, King County Office of Civil Rights
Vivian Caver, community activist

The Commission is especially grateful to Professor Hubert Locke and Professor Paul Burstein for technical assistance and the support of their respective departments in reviewing drafts of this report. A special thanks to the Washington State Departments of Personnel, Office of Women and Minority Business Enterprises, Higher Education Coordinating Board, Four-year Public Institutions, and the Human Rights Commission. Thanks also to Hendley Media Services principal Rosalund Jenkins who wrote the report and white paper and also researched and compiled the state employment data used therein.