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Discussing Affirmative Action: Past, Present & Future Considerations

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Affirmative Action - Some Love It; Some Hate It

"Affirmative action" is a simple phrase that continues to invite controversy and heated argument that is commonly fueled by fiction, myth, and emotion rather than fact and reality. "Affirmative action" often divides lay and professional opinion down distinct lines of political party affiliation and notions of social philosophy and social justice, as well race, gender, and socio-economic status.[1] "Affirmative action" is a phrase that means different things to different people for different reasons. "Affirmative action," some love it; some hate it; some love to hate it; and some hate to love it.[2] In Nebraska, in 2008, we are, for better or for worse, engaged in a battle to preserve it or to end it.[3]

A Conceptual Context for the Discussion about Affirmative Action

The attacks on affirmative action, particularly in higher education settings, have increased significantly. The efforts are well orchestrated, well funded, and designed to dismantle a system that has just started to have an impact. California, Texas, Michigan, Washington and Florida are a few of the states that have served as the battlegrounds in this "war" against affirmative action. The list has grown to include anti-affirmative action initiatives in Nebraska, Missouri, Arizona, Colorado, and Oklahoma, and as the battles are becoming more frequent, the "casualties" are likely to increase. And while the results of these battles have been, and will continue to be, mixed and open to interpretation, the over-arching message is clear… the assault on affirmative action has just begun, and these aggressive efforts to eliminate it as a tool of equal opportunity will not soon cease.

Equally important is that the mood throughout the country, including Nebraska, is such that it seems to support and justify the attacks on affirmative action. Too often, we hear that sufficient progress has been made; that affirmative action is no longer needed; that the social "debt" incurred through years of constitutionally protected discrimination and exclusion against certain groups in our society has been paid. In the minds, words and actions of the increasingly emboldened many, affirmative action as a tool of social equalization has done its job… it's no longer needed. For a number of reasons, many individuals, even some who are on the more liberal end of the political and philosophical spectrums, are saying, "Enough is enough."

A final point that rounds out the context is that judicial, legislative and executive branch scrutiny of affirmative action programs has increased significantly at all levels of government and in increasingly more sectors of our society. For example, our national judiciary has made pronouncements limiting affirmative action as an appropriate remedy for discrimination. And while these pronouncements may only limit affirmative action, too many "supporters" have reacted as if these decisions and initiatives have tolled the death of affirmative action. These court decisions and legislative initiatives have created in addition to negative coverage in the popular media, confusion and wavering support for affirmative action. They have also served to sway the lukewarm and "fair-weather" supporters of affirmative action toward a less aggressive and less controversial posture of mere verbal support.

Meaningful Action Needed

The predictable and observable result is a willingness to talk

of support for affirmative action in principle, and, too often, an unwillingness to take any meaningful action in response to the attacks on affirmative action. This is especially true if the response in support of affirmative action as a tool toward increased inclusion and participation of minorities and women means expending significant political, personal or professional capital.

In our opinion, these musings reflect the social, political, philosophical and legal contexts that must be understood if we are to continue to give life to the existing commitment to affirmative action, equity and diversity in this country. It is a reality that must be acknowledged and that must be countered with a heightened sense of urgency, purpose, resolve, and willingness to contribute to saving affirmative action as a tool of equal opportunity.

If advancement and protection of civil rights continues to be an important part of our institutional commitment, then our civic and business leaders must continue to be vocal and unwavering in promoting and supporting affirmative action, equity and diversity. If redressing social injustices is still deemed a worthy endeavor, something more than a perfunctory "fight" in defense of affirmative action must be mounted. Immediate, meaningful and sustained action is needed, lest these much needed programs fade unceremoniously into history, relegated to a mere footnote in the annals of the civil rights movement.

The choice seems simple: we must either continue to zealously support affirmative action, or we must dispense with the empty rhetoric of social justice as a core principle of our personal and organizational philosophies. We trust the vast majority of us will choose to continue to assiduously support the cause and the work of those who have advanced and benefited from affirmative action. Further, we are hopeful this effort will

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serve to publicly renew a collective commitment to enhancing and ensuring diversity, inclusion, and representation within our organizations.

A Historical Context - Affirmative Action a Response to Discrimination

Exploring the evolution of affirmative action as a social justice principle and equity program is a lesson in U.S. history, both recent and remote. It is, in part, a shameful story of long-standing, systemic, and systematic discrimination, exclusion, and limitation of opportunity based on race, color, and gender. It is also a pride-filled tale of a citizenry that recognized the injustice of legal and social exclusion and set out to remedy past wrongs, improve opportunities for "minorities" and women, and give life to our national credo that "all men (and women) are created equal…."

The progress toward equality and inclusion engendered by the Civil Rights movement in the 1950's, 60's and 70's is legend, and well known to young and old in this country and abroad. Individually and collectively we are rightfully proud of the number of legislative and judicial actions that mandated equality of access and opportunity to all during that era.[4] However, the reality for many, if not most, persons of color and women in this country belied our national rhetoric of equality, inclusion, and equal opportunity. Without some affirmative, deliberate and focused policies to counter entrenched attitudes and practices in hiring, college admissions, and contracting, the status quo of discrimination and exclusion remained, despite the new "law of the land"[5] professing equality for all. It is this historical context, the desire for progress, yet the reality of limited progress, that gave birth and life to "affirmative action" as a tool to "level the playing field."[6]

Executive Orders Establish the Need for Affirmative Action

John F. Kennedy is often cited as one of the first to use the phrase "affirmative action" in his 1961 Executive Order 10925 requiring federal contractors to "take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin."[7] In 1965, Lyndon Johnson used similar language in his Executive Order 11246.[8] Johnson's rationale for affirmative action at that time is worth quoting, as it still rings true for advocates and supporters of affirmative action as a tool to advance opportunity, fairness, and to promote diversity. He stated, "You do not take a person, who for years, has been hobbled by chains and liberate him, bring him up to the starting line of a race and then say 'you are free to compete with all the others,' and still believe that you have been completely fair."[9] In 1967, Johnson expanded his Executive Order to include affirmative action requirements to benefit women.[10]

Affirmative Action - Still Beneficial and Still Supported

Over the ensuing years, affirmative action has been promoted as necessary and timely by some,[11] and pilloried as unnecessary and anachronistic by others. It has been banned by law or policy in certain localities, supported and advanced in others through the defeat of legislative and policy initiatives to eliminate it.[12 13 14] And while the effects and desirability of affirmative action have often been debated, maligned, and are often misrepresented, the fact remains that, used appropriately, affirmative action is legal,[15] and enjoys broad-based support from leaders in the military,[16] executives in the business and industry sector,[17 18] politicians,[19] and leadership within education.[20 21 22]

In fairness, we must, and do, admit that considerable progress has been made over the past 40 years toward attaining more equal opportunities for minorities and women. Affirmative action programs have achieved more fairness regarding employment opportunities for qualified women and minorities. These programs have resulted in attainment of higher wages, advancement opportunities in the workplace, and opening the doors to nontraditional careers for women and minorities. Successful affirmative action initiatives in the employment arena have included:

- Recruitment and outreach efforts to make sure that qualified women and minorities are in the talent pool when hiring decisions are made;
- Training, mentoring, and workforce diversity initiatives to give all employees a fair chance at promotions; and
- Management tools for measuring progress in opening opportunities such as flexible goals and timetables.

However, continued use of affirmative action in employment and contracting is necessary to help break down barriers to opportunity that still exist, and to ensure that all Americans have a fair chance to demonstrate their talents and abilities. Despite our best efforts over the years, inequalities and disparities remain, and, thus, the need to continue our affirmative action efforts.

Diversity in Higher Education is a Compelling State Interest

Similarly, the doors to higher education have been opened to those who historically had been excluded from participating in and benefiting from the college experience. Over the years, affirmative action has ensured that colleges and universities are proactive in identifying and attracting interested and qualified

individuals from groups that have historically been underrepresented, or unrepresented, in our academies. Diversity on our college campuses is critical to the future strength of our increasingly pluralistic society and our inevitably global economy. Affirmative action allows colleges and universities to admit students based on a wide range of criteria that includes test scores, unique talents, extracurricular activities, and life experiences, including elements of diversity. Inclusion and exposure to diversity on our college campuses improves the learning process for all students - male and female, regardless of race or gender. To enrich the academic experience of all students, affirmative action is needed to ensure that full background and life experience of all qualified applicants is a consideration when making admissions decision.[23] So what are the compelling interests in attaining a diverse student body? Noteworthy, in these regards, are the various "substantial, important, and laudable educational benefits that diversity is designed to produce" cited by the Supreme Court in *Grutter*, including the following:

> • Cross-racial understanding and the breaking down of racial stereotypes.
>
> • Diversity promotes learning outcomes and better prepares students for an increasingly diverse workforce, for society, and for the legal profession.
>
> • Major American businesses have made clear that the skills needed in today's increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints.
>
> • High-ranking retired officers and civilian military leaders assert that a highly qualified, racially diverse officer corps is essential to national security.
>
> • Moreover, because universities, and in particular, law schools, represent the training ground for a large number of the Nation's leaders, the path to leadership must be visibly open to talented and qualified individuals of every race and ethnicity.[24]

Nebraska Becomes a Battleground

Early this year Nebraska became one of five states to face a ballot initiative to amend the state constitution to prohibit affirmative action policies in higher education, hiring, and government contracting. The petition drive was sponsored by the Nebraska Civil Rights Initiative (NCRI), an organization that was propped up by Ward Connerly, a California business man, and other out-of-state interests looking for places with simple initiative processes to further their cause of eliminating affirmative action programs across the United States.[25]

While the NCRI had a handful of local supporters, the bulk of the funding for the initiative has come from Michigan and New York.[26] To date, NCRI does not have a single endorsement from a Nebraska organization and cannot point to a local outcry calling for the constitutional amendment they are seeking.[27] When Nebraska became a target a number of community groups, including several legal organizations, came together to protect equal access and equal opportunity in Nebraska. Among these groups are: Nebraska Appleseed, the NAACP, ACLU, and the League of Women Voters, as well as a large, well organized and energized student group, Students United for Nebraska and many concerned members of the community formed a coalition, Nebraskans United.[28]

United to Ensure a Fair Chance

These groups shared the common principle that all Nebraskans should have a fair chance to reach their full potential. The programs that would be eliminated by the proposed constitutional amendment are an integral part of ensuring that qualified and talented women and people of color have a place in our institutions of higher education, in all professions and at the bargaining table for state contracts.

As the coalition expanded its efforts it became clear that these are principles that garner broad support across Nebraska. Before long, the Lincoln and Omaha Chambers of Commerce came on board, as well as the University of Nebraska, Creighton University and many other educational and business and professional organizations. This kind of wide-ranging support reveals that ensuring a diverse and talented community, whether it be in the classroom or the workplace, is important to Nebraskans from a wide variety of perspectives.

The Fight for Opportunity Continues

• NCRI was successful in meeting the signature deadline and for the moment, it appears that the constitutional amendment will appear on the November, 2008, ballot.[29] There will likely be legal challenges surrounding the initiative prior to the elections. At the end of the day, it is critical that we not only understand what this initiative will mean for our state but that we think carefully about the kind of community, classroom, and workplace we want for ourselves, our children and grandchildren. In particular, it is important to consider what this amendment would mean for diversity within the legal community.

A Commitment to a Diverse Legal Profession

• In 2003, the Nebraska Minority Justice Task Force, a joint initiative of the Nebraska Supreme Court and the Nebraska State Bar Association to examine issues of racial and ethnic fairness in the court system and legal profession, released its 18 month study.[30] The study documented the drastic under representation of minorities in the legal profession and examined trends in law school admissions as well as recruitment, hiring, retention and advancement opportunities available in the pro-

Minority Justice Committee Activities to Promote a Diverse Profession

Call to Action Initiative

In an effort to promote diversity in Nebraska's legal profession, the Minority Justice Committee coordinated a Call to Action Initiative. Modeled after successful initiatives in other cities, the Call to Action Initiative encourages law firms and corporations to sign on to a basic statement of diversity principles and agree to participate in Nebraska State Bar Association programs in pursuit of these principles. In essence, the Call to Action Initiative creates a network of firms and corporations that can work collaboratively and innovatively to promote diversity in the legal profession. To date, fifty-seven firms and corporations have joined the initiative.

LSAT Prep Scholarship

The Minority Justice Committee recently established an LSAT Prep Scholarship Program for minority students with economic need. The program provides a scholarship for a Kaplan LSAT Prep Course and covers the costs of registering for the LSAT exam. The Scholarship Program was funded by the generous financial contributions of: Koley Jessen PC LLO (Platinum Level Sponsor); Baird Holm LLP, Berens & Tate PC LLO, and Husch Blackwell Sanders (Gold Level Sponsors); and Legal Aid of Nebraska and McGrath North Mullin & Kratz PC (Silver Level Sponsors). The first round of scholarship recipients are: Elizabeth Baxter, Elisabeth Dority, Jannette Taylor and Stacy Marie Henry.

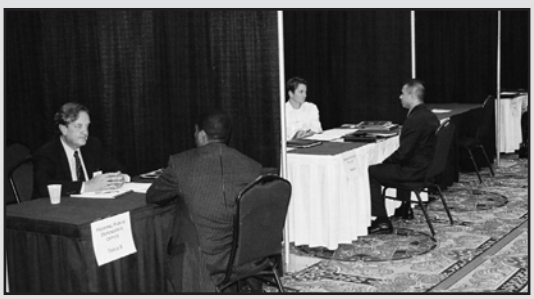
Outreach to the Malone Center

The Minority Justice Committee is involved in outreach to youth. On June 24, 2008, representative from the courts, probation and the legal profession met with a group of 10-14 year olds at the Clyde Malone Community Center to discuss careers in the justice system.

Shirley Mora James talks with a group of 10-14 year olds at the Clyde Malone Community Center.

Diversity Summit

The fourth annual Legal Diversity Summit will be held on September 5, 2008 in Omaha at the Holiday Inn Convention Center. The Summit provides law students of color from the region with new education opportunities, contacts and interviews with Nebraska firms and organizations. The Summit also provides Nebraska's legal employers with new ways of understanding the value of a diverse workforce and strategies and opportunities for recruiting and retaining attorneys of color. Register for the Summit at: www.nelegaldiversity.org



Attendees of the Legal Diversity Summit participate in interviews with Nebraska firms and organizations.

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• Since the release of the study, the Minority Justice Committee, established to address the disparities documented in the Task Force's final report, has been developing numerous initiatives to promote a diverse legal profession. The efforts have been twofold: expand the pipeline of diverse students enrolling in law school and ensure that employment opportunities are available to graduating and existing attorneys.

In the five years since the report, the proportion of minorities in Nebraska's legal profession has increased from 2.4% to 4.1%. Some progress has also been made in law school admissions. There was a marked increase in minority enrollment at the University of Nebraska College of Law following the Task Force Report (2003) but that increase has reached a plateau. The proportion of minorities admitted to Creighton University of School of Law has remained relatively stable since release of the report, which is good news when considering national trends. Recent figures from the Law School Admissions Council indicate that nationally, the number of Black and Hispanics admitted to law school has remained fairly constant since 1992, and therefore the representation of both groups has decreased as a proportion of the population of law school students as a whole. While the small gains in Nebraska are celebrated, minorities remain underrepresented in the legal profession and additional action is needed.

A Threat to a Diverse Legal Profession

Efforts to ban affirmative action pose a threat to a diverse legal profession. Given the fact that over 90% of attorneys in the state of Nebraska graduated from law school in Nebraska, the diversity of our legal profession is inextricably tied to the diversity of our law schools. Law schools in states with affirmative action bans have suffered in terms of minority enrollment. Minority admissions at the University Of Texas School Of Law dropped 50% following an

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affirmative action ban and minority admissions dropped 80% at UC Berkeley School of Law.[31]

Potential Minority Lawyers are Lost at Each Step

In addition to the immediate drop in law school admissions, bans to end affirmative action will also decrease the "pipeline" of potential law school applicants by reducing the diversity of institutions of higher education. The term pipeline refers to the natural progression of students through the schooling and application process necessary to be admitted to law school. Potential minority lawyers are lost at each step in the pipeline. For instance, young minority students do not consider the law. Thus they choose career tracks in high school and college that do not prepare them for law school. Some of those who are prepared do not take the LSAT. Those that take the LSAT may not choose to attend a Nebraska law school. Decreasing the pipeline of minority students for law school is particularly of concern in Nebraska, where the applicant pool is small to begin with. For example, in 2001, only 13 blacks who listed Nebraska as their home state took the LSAT.[32] Any plan to diversify must affect the pipeline and begin in primary and secondary schools, and continue through undergraduate studies in order to increase the number of interested minority Nebraskans in the years prior to seriously pursuing law school admission.

Affirmative action bans in other states have effectively diminished state and community colleges' ability to attract a diverse student body, causing a critical blow to the pipeline. For example, following the affirmative action ban in California, the number of Black students admitted to UC, Berkeley dropped from 562 in the fall of 1997 to 191 in the fall of 1998. Hispanic admission numbers plunged as well, from 1,266 to 600.[33]

Conclusion

"Access to legal education (and thus the legal profession) must be inclusive of talented and qualified individuals of every race and ethnicity, so that all members of our heterogeneous society may participate in the educational institutions that provide the training and education necessary to succeed in America."[34] Our law schools' ability to recruit, admit, and graduate minority students directly affects the likelihood that Nebraska's legal community will be as reflective and inclusive of the growing diversity in the state as we believe it should be. Given the impact affirmative action bans have had in other states on access to law school, and higher education in general, the choice then seems straightforward: we must either zealously support affirmative action in principle and in practice, or we must dispense with the empty rhetoric of social justice as a core tenet of our personal and organizational philosophies. The Nebraska State Bar Association's Executive Council voted to oppose the concept of the petition language to end affirmative action and will continue to participate in and lead initiatives designed to have our profession reflect the rich diversity that is Nebraska. ⚖

Endnotes

[1] The issue of affirmative action is divisive. Opponents like (Ward) Connerly suggest it takes jobs from qualified white people, while proponents, such as civil rights groups, say the programs are necessary to promote ethnic diversity and eliminate inequalities. ("*Connerly gearing up for wider crusade: Affirmative action foe considers launching campaigns in 9 states*," by Leslie Fulbright, San Francisco Chronicle Staff Writer, Thursday, December 14, 2006).

[2] The coalition backing a statewide affirmative-action ban says a new survey shows most Nebraskans support eliminating race and gender preferences in hiring and admissions decisions. ("*Survey: Voters support ending preferences*," by Melissa Lee/ Lincoln Journal Star, Tuesday, Jun 24, 2008.

[3] Lincoln, NE. - A prominent affirmative-action critic is targeting Nebraska as one of five states where he hopes to get voters to decide in November 2008 to end the use of racial, ethnic and gender preferences by public colleges and state and local agencies. ("*Affirmative action critic trying to end policies in state*", by Kevin Abourezk/Lincoln Journal Star, Saturday, Oct 13, 2007).

[4] For example, *Brown v. Board of Education* and the other cases striking down segregation; the Equal Pay Act of 1963; the Civil Rights Act of 1964; the Voting Rights Act of 1965; the Age Discrimination in Employment Act of 1967 (ADEA); the Fair Housing Act of 1968.

[5] "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…" *Review of Federal Affirmative Action Programs, Report to the President*, Washington, DC, 1995.

[6] "…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." R*eview of Federal Affirmative Action Programs, Report to the President*, Washington, DC, 1995.

[7] Executive Order No. 10925 *Establishing the President's Committee on Equal Employment Opportunity* (March 6, 1961).

[8] Executive Order No. 11246, September 28, 1965 (30 F.R. 12319, *EQUAL EMPLOYMENT OPPORTUNITY*) required all government contractors and subcontractors to take affirmative action to expand job opportunities for minorities. This E.O. also established the Office of Federal Contract Compliance (OFCC) in the Department of Labor to administer the order.

[9] In an eloquent speech to the graduating class at Howard University on June 4, 1965, President Johnson framed the concept underlying affirmative action, asserting that civil rights laws alone are not enough to remedy discrimination.

[10] http://www.now.org/nnt/08-95/affirmhs.html; http://www.inmotionmagazine.com/aahist.html

[11] Omaha - An anti-racism activist from Tennessee says Nebraskans should not be duped into supporting a ballot initiative that would ban affirmative action, thinking it will prevent minority applicants from getting jobs they're not qualified for. ("*Activist says Nebraska still needs affirmative action*," by Timberly Ross/The Associated Press, Thursday, May 01, 2008).

[12] Three states - California, Michigan and Washington - already have passed such bans. And in Florida, former Republican Gov.

Jeb Bush curtailed affirmative-action preferences in state government through a 1999 executive order and persuaded the governing board of the state's universities to follow suit. (Lincoln Journal Star, Saturday, Oct 13, 2007, Lincoln, NE)

[13] A state lawmaker has withdrawn a resolution that would have put a constitutional ban on affirmative action before Nebraska voters in November. ("*Senator withdraws affirmative action measure*." By Melissa Lee/Lincoln Journal Star, Monday, Feb 25, 2008).

[14] Allies of the Missouri Civil Rights Initiative, an effort to end race- and gender-based affirmative action similar to the one being waged in Nebraska, failed to gather the petition signatures they needed to get the issue on that state's ballot by the Sunday deadline. ("*Affirmative action ban won't be on Missouri ballots*," by Melissa Lee/Lincoln Journal Star, Monday, May 05, 2008).

[15] In June 2003, the Supreme Court issued a landmark decision on affirmative action [*Grutter v. Bollinger* (2003) and *Gratz v. Bollinger* (2003)] upholding the use of race in admissions decisions. Reiterating America's commitment to affirmative action, the Court concluded that "effective participation by members of all racial and ethnic groups in the civic life of our nation is essential if the dream of one Nation, indivisible, is to be realized."

[16] Consolidated Brief of Lt. Gen. Julius W. Becton, Jr. et al. as Amici Curiae in Support of Respondents in *Gratz v. Bollinger*, et al. No. 02-241, 02-516 February 19, 2003.

[17] Brief of Amici Curiae of Media Companies in Support of Respondents in *Gratz v. Bollinger* Nos. 02-241 and 02-516, February 18, 2003.

[18] 65 Fortune 500 companies filed an amicus brief in favor of affirmative action programs in higher education. The brief states, "The need for diversity in higher education is indeed compelling. Because our population is diverse, and because of the increasingly global reach of American business, the skills and training needed to succeed in business today demand exposure to widely diverse people, cultures, ideas and viewpoints." The brief cites several companies that have increased minority representation, including Microsoft Corporation, whose minority domestic workforce increased from 16.8 percent in 1997 to 25.6 percent in February 2003. (*Brief for Amici Curiae, 65 Leading American Businesses in Support of Respondents, Grutter v. Bollinger*, 2003)

[19] Nebraska Democrats Sunday declared their opposition to the initiative proposal to eliminate affirmative action programs. ("*Democrats oppose initiative attacking affirmative action*." By Don Walton/ Lincoln Journal Star, Monday, Jun 23, 2008).

[20] The Nebraska Board of Education unanimously approved a resolution Thursday supporting racial, ethnic and gender diversity within state public educational institutions. ("*Ed Board approves diversity resolution*," by Kevin Abourezk/ Lincoln Journal Star, Thursday, Apr 03, 2008).

[21] The University Of Nebraska Board Of Regents on Friday gave its unanimous disapproval to a proposed amendment to the state's constitution that would ban affirmative action in public education and employment. ("*Regents oppose affirmative-action ban*," by Melissa Lee/Lincoln Journal Star, Saturday, Jan 19, 2008).

[22] The University of Nebraska Board of Regents issued a re-do Friday on a resolution opposing a proposed constitutional ban on affirmative action, following complaints regents hadn't heard both sides when they first voted in January. NU is committed to diversity, President J.B. Milliken said. ("*Regents re-do affirmative action vote*," by Melissa Lee/Lincoln Journal Star, Friday, Mar 07, 2008).

[23] In fact, the U.S. Supreme Court agrees that student body diversity is a compelling interest in affirmative action programs at colleges and universities, given that it "better prepares students for an increasingly diverse workforce and society, and better prepares them as professionals" (Supreme Court majority opinion, Grutter v. Bollinger, 2003).

[24] *Grutter v. Bollinger* 539 U.S. 306 (2003), the U.S. Supreme Court opined, through Justice Sandra Day O'Connor, that attaining the educational benefits that flow from a diverse student body was a sufficiently compelling interest to warrant taking race into account in making admissions decisions to higher education.

[25] Melissa Lee. (February 26, 3008). "*Crowd Puts Connerly on the Hot Seat at UNL*," Lincoln Journal Star.

[26] The Nebraska Civil Rights Initiative has raised more than $181,000, mostly from the American Civil Rights Initiative's Super Tuesday for Equal Rights Fund. New York businessman Paul Singer has given $50,000 to backers of the measure. ("*Anti-Affirmative Action Ad Targets Ex-Obama Pastor*," by Anna Jo Bratton/Associated Press, Tuesday, June 3, 2008).

[27] People involved in the NECRI: Professor Marc Schniederjans - Proponent; Ward Connerly-Mentor; Founder, American Civil Rights Coalition. (http://www.nebraskacri.org/about.html)

[28] http://www.nebraskansunited.org/supporters.htm.

[29] ("*Petitioners Believe They've Gathered Enough Names*," by The Lincoln Journal Star, Wednesday July 2, 2008).

[30] The Nebraska Minority and Justice Task Force. (2003). Final Report. State Justice Institute.

[31] Marcia Barinaga. (1997). "*Ban has Mixed Impact on Texas, California Grad Schools*," Science (277), 5326: 633-634.

[32] Supra note 30.

[33] David Collburn, Charles Young and Victor Yellen. (2008). "Admissions and Public Higher Education in California, Texas, and Florida: The Post Affirmative Action Era." *Interactions: UCLA Journal of Education and Information Studies*, (4)1.

[34] Grutter v. Bollinger, 539 U.S. 306 332-33 (2003).