Affirmative Action in the Educational Environment– Going, Going, Gone?

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For two decades, college of pharmacy officials have believed that they could use race as a factor in admitting students and awarding scholarships. However, since the Supreme Court voted not to review the Fifth Circuit's *Hopwood* v. *Texas* decision (1) last year, pharmacy college officials in Texas, Louisiana, and Mississippi have been preparing for a new world–a world in which they cannot use race in their decision-making processes (2).

This dramatic change in the legal and political tide in the Fifth Circuit (which comprises the states of Texas, Louisiana, and Mississippi) has also

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caused unrest for pharmacy colleges outside of the Fifth Circuit's jurisdiction (3). Pharmacy education officials across the nation recognize that it is unwise to continue passively all existing programs that promote student and faculty diversity. However, many of these officials still believe that a diverse student body adds to the richness of the pharmaceutical education received at a college campus (4). Furthermore, they believe that diversity produces enormous benefits for a democratic society. Hence, a present need exists to clarify how colleges of pharmacy can avoid the legal snares associated with instituting and maintaining impermissible affirmative action programs.

In this article, we will review the history of affirmative action in order to develop an understanding of the legal principles established through recent court decisions. The article will begin by reviewing the legislative history of affirmative action and will proceed to address the executive history and judicial history surrounding affirmative action.

THE LEGISLATIVE HISTORY OF AFFIRMATIVE ACTION

The United States Commission on Civil Rights defines affirmative action as "any measure, beyond simple termination of a discriminatory practice, adopted to correct or compensate for past or present discrimination or to prevent discrimination from recurring in the future" (5). Affirmative action encompasses both mandatory and voluntary efforts to ensure that protected classes are accorded equal opportunity in such areas as employment, government contracting, education, and housing.

Although the concept of affirmative action has been present since the 1940s, affirmative action received its fullest development with the passage of Title VII of the Civil Rights Act of 1964 (6-8). Title VII was a huge endorsement of equal opportunity employment, and with its passage, employers began placing language on their employment application forms saying "equal opportunity employer" (9). The Title specifically prohibits employers from discriminating against job applicants and employees on the basis of race, color, religion, sex, or national origin (6).

Although the principles discerned in Title VII of the Civil Rights Act of 1964 forbade acts of discrimination, Title VII did not reverse the effects of prior discrimination. Hence, the effects of prior discrimination continued to linger following the institution of Title VII. Furthermore, it became apparent that the negative effects from prior discrimination could not be reversed unless people were treated differently based on the same specific criterion that caused the original discrimination, *e.g.*, gender or race (9).

This dilemma subsequently led to a major effort by the executive branch of the federal government to remedy this injustice.

THE EXECUTIVE HISTORY OF AFFIRMATIVE ACTION

Since President Franklin D. Roosevelt, U.S. Presidents have issued Executive Orders designed to eliminate employment discrimination by the federal government as well as private employers contracting with the federal government (7). The most comprehensive of these Orders is Executive Order 11246 (10). This Order is the basis of most affirmative action programs today. President Lyndon Johnson instituted Executive Order 11246 in order to further the promotion of affirmative action. The Order requires federal contractors to agree that they will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Additionally, the Order requires federal contractors to agree to take affirmative action to ensure that applicants are employed–and treated during employment–without regard to race, color, religion, sex, or national origin. Since its inception, the Order has been continued by every President.

Executive Order 11246 requires the Secretary of Labor to administer and enforce the provisions of the Order. The Order also empowers the Secretary of Labor to promulgate regulations to achieve this mandate. On receiving this mandate, the Secretary of Labor delegated its power to the Office of Federal Contract Compliance Programs (OFCCP). OFCCP presently has the responsibility of overseeing federal contractors and ensuring that federal contractors and their subcontractors comply with nondiscrimination and affirmative action policies in their operations. To accomplish their task, OFCCP conducts audits of federal contractors and investigates claims of discrimination by employees or individual applicants. All federal contractors and subcontractors having 50 or more employees and whose contracts exceed $50,000 must file a written affirmative action plan with the federal government. These plans must include specific goals for hiring minorities as well as timetables to which the federal contractor agrees to commit his or her good faith efforts to remedy the underutilization of minorities (7).

When considering these efforts by the executive branch of the federal government to remedy the effects of prior discrimination, it is understandable why employers have perceived participation goals for minorities as a necessity for compliance with the law. Furthermore, the judicial branch of the federal government initially approved of these efforts. However, with the passage of time, some believe that the judicial branch's support of

these earlier efforts has waned (11-13). This reasoning can be attributed to the turbid judicial history of affirmative action.

THE JUDICIAL HISTORY OF AFFIRMATIVE ACTION

Brown v. Board of Education. The judicial roots of affirmative action began with the Supreme Court case of *Brown* v. *Board of Education* (14). Brown (a plaintiff in the case) and other African-American school children had been denied admission to schools attended by Caucasian children because of laws permitting segregation based on race. Brown challenged the law and the case was eventually brought before the United States Supreme Court.

The current law at the time of the *Brown* case was premised on the "separate but equal" doctrine espoused by the Court in the earlier case of *Plessy* v. *Ferguson* (15). In *Plessy,* the plaintiff was seven-eighths white and one-eighth African-American. Plessy (the plaintiff in *Plessy*) refused to comply with a demand that he sit in a section reserved for African-Americans after boarding a railway carriage. Plessy was arrested and subsequently convicted for violating a Louisiana state law. Plessy challenged the law and the case was eventually brought before the United States Supreme Court.

The Supreme Court in *Plessy* upheld the Louisiana law by finding that "separate but equal" treatment did not violate the Equal Protection Clause of the federal Constitution. The Court reasoned that the state law was related only to social equality (and not to political or civil equality) and social equality was not a goal of equal protection.

Despite this prior ruling in *Plessy,* the United States Supreme Court in the *Brown* case reasoned that even where all-African-American and all-Caucasian schools were equal in terms of tangible factors, they were unequal in intangible factors which could prevent African-American children from receiving equal educational opportunities. Furthermore, the Court determined that segregation creates a feeling of inferiority in African-American children as to their status in the community. Hence, the *Brown* Court overruled the previous "separate but equal" doctrine (as espoused in *Plessy*) for public education.

Swann v. Charlotte-Mecklenburg Board of Education and North Carolina State Board of Education v. Swann. Some 15 years following *Brown,* the United States Supreme Court entertained the cases of *Swann* v. *Charlotte-Mecklenburg Board of Education* (16) and *North Carolina State Board of Education* v. *Swann* (17). In the first *Swann* case, the Board of Education was found to have had a long history of maintaining a dual set

of schools in a single system. The lower court held that this action by the Board authorities perpetuated discrimination and the lower court subsequently instituted a court-developed plan to remedy segregation.

On appeal, the United States Supreme Court held that the objective of the federal courts (following *Brown*) was to eliminate all vestiges of segregation in public schools. Thus, judicial action to remedy prior segregation was considered appropriate when intentional violations by local authorities in order to continue segregation were found to exist. Furthermore, the Court stated that any remedial plan (whether court-initiated or school authority-initiated) should be judged by its *effectiveness*. Even the limited use of mathematical ratios (*i.e.*, racial quotas) could be deemed appropriate in certain circumstances as a starting point in the process of shaping a remedy.

In the second *Swann* case, the state of North Carolina had implemented an antibusing law that prohibited student assignments from being made on the basis of race. The Court held that the North Carolina law was unconstitutional because it operated to hinder desegregation. As stated by Justice Burger, "Just as the race of students must be considered in determining whether a constitutional violation has occurred, so also must race be considered in formulating a remedy. To forbid, at this stage, all assignments made on the basis of race would deprive school authorities of the one tool absolutely essential to fulfillment of their [constitutional obligation]" (17), p. 46). Hence, the holding of the Court suggested that the voluntary use of race as a criterion to alleviate prior effects of discrimination was permissible (18).

Regents of the University of California v. Bakke. The next major case following the two *Swann* cases was *Regents of the University of California* v. *Bakke* (19). In *Bakke*, a student applicant was denied admission to the medical school of the University of California for two successive years. The Regents of the University of California had implemented both a regular admissions system and a special admissions program that was intended to assist disadvantaged minorities in being admitted. Bakke (the plaintiff in the case) claimed that because he was Caucasian, he was denied consideration for any seats that were reserved for minorities in the special admissions program; the school had reserved 16 seats in each entering class of 100 for disadvantaged minority students. He contended that his grade-point average and entrance examination scores were higher than those of some individuals accepted for the minority seats. Bakke's claim was eventually heard by the United States Supreme Court.

The Court's ruling in this case has caused extreme confusion for university administrators because no majority opinion clearly emerged from the

Court. The nine justices wrote six separate opinions, and no more than four of them agreed (*in toto*) in their reasoning. However, five justices reached the conclusion that the University's program violated Title VI of the Civil Rights Act of 1964 (20) which prohibits discrimination on the basis of religion, race, and national origin in federally assisted programs. Furthermore, five of the justices reached the conclusion that race may be a factor used by universities to admit students under a properly constituted admissions program.

Concerning the Court's holding that the University's program violated Title VI, Justices Stevens, Burger, Stewart, and Rehnquist believed the University's program violated the express statutory mandates of Title VI. Hence, these four justices never addressed the constitutionality of the University's program. Justice Powell also believed that the University's program violated Title VI. However, Justice Powell's reasoning differed from the other four justices. Justice Powell believed that the University's program violated Title VI on the grounds that the program violated the federal Constitution.

Concerning the Court's holding that race may be a factor to admit students, Justice Powell believed that the constitutional standard to be applied was the strict scrutiny standard. According to Justice Powell, two requirements that must be met to satisfy the strict scrutiny standard were: 1. the University program's objective must be permissible and substantial (*i.e.*, compelling), and 2. the racial classification employed by the University must be necessary to accomplish the program's objective.

Addressing the first requirement, Justice Powell found that the need of a university to obtain an ethnically diverse student body was a constitutionally permissible goal (*i.e.*, satisfied the first requirement). Likewise, Justice Powell determined that considering an applicant's minority status as a plus factor in the admissions process was a necessary racial classification to accomplish the University's goal of obtaining an ethnically diverse student body (*i.e.*, satisfied the second requirement). However, Justice Powell determined that the University's present program of using quotas to establish an ethnically diverse student body did not pass the second requirement.

Justices Brennan, White, Marshall, and Blackmun also believed that the use of a plus factor in the admissions process would pass the constitutional standard. However, they believed that an intermediate level of scrutiny (*i.e.*, a lower level of scrutiny than strict scrutiny) should be used as the constitutional standard. Hence, these four justices believed that both a plus factor in the admissions process and a quota program (*i.e.*, the University's present program) satisfied the constitutional standard.

In summarizing the findings of the Court, an affirmative action program instituted by a university (*e.g.*, a college of pharmacy) for the purpose of advancing the university's compelling interest in diversity is constitutionally permissible, provided that the program is flexible and that race is simply one of many factors employed in the admissions decision process. This reasoning was endorsed by a majority of the court (*i.e.*, five justices). However, the four remaining justices believed that race could never be used as the basis of excluding an applicant from participating in a federally funded program. Their reasoning was based on the statutory mandate of Title VI. Hence, according to these four justices, the use of race as a plus factor is not permissible.

Following *Bakke*, the Court did not address constitutional issues raised by affirmative action until 1986 when it reviewed *Wygant* v. *Jackson Board of Education* (21). Cases decided by the Supreme Court based solely on the statutory mandate of Title VII included *United Steel Workers* v. *Weber* (22) and *Johnson* v. *Transportation Agency* (23). The two statutory-based cases will be considered first, followed by the constitutional-based case.

United Steel Workers v. Weber. In *United Steel Workers* v. *Weber*, an affirmative action plan had been collectively bargained between an employer and a union. The affirmative action plan reserved 50 percent of the openings in an in-plant craft-training program for African-American employees until the percentage of African-American employees in the program equaled the percentage of African-Americans in the local labor force. The plan was instituted because the employer only hired craft workers who had prior craft experience and most African-Americans lacked this experience. As a group, African-Americans had been long excluded from the craft unions.

In reviewing the case, the Supreme Court initially noted that the affirmative action plan did not involve state action. Hence, no constitutional issues were addressed in the case. In deciding whether the plan violated Title VII (*i.e.*, a statutory violation), the Court determined that Title VII had to be read *against* (*i.e.*, contrary to) the background of legislative history (for Title VII) as well as *against* the historical context from which Title VII arose. This reasoning was met with fervent disagreement from Justices Rehnquist and Burger who insisted that the congressional intent underlying Title VII (*i.e.*, that there was to be no racial discrimination in employment) must be upheld.

In its review, the Court utilized a two-prong test: 1. the action by the employer must be undertaken to further an affirmative action program designed to eliminate work force imbalances in traditionally segregated

job categories, and 2. the affirmative action program does not unnecessarily trammel the interests of Caucasian employees. The Court determined that the employer's action of reserving openings in a training program for African-Americans satisfied the first prong of the test. Additionally, the Court found the second prong to be satisfied because the affirmative action program did not require the discharge of Caucasian workers and their replacement with new African-American workers, and the program did not create an absolute bar to the advancement of Caucasian workers.

It should be noted that although the Court decided the case on statutory principles, it may be argued that the two-prong test employed by the Court distinctly resembles the constitutional strict scrutiny standard.

Johnson v. Transportation Agency. In *Johnson* v. *Transportation Agency* (23), a public employer (*i.e.*, the Santa Clara County Transit System) had voluntarily instituted an affirmative action plan designed to increase the number of female employees working in traditionally male positions. The affirmative action plan considered the female gender to be a plus factor when evaluating employee applicants for promotion. The goal of the employer was to attain a work force whose composition reflected the proportion of women in the local work force.

The Supreme Court decided the case solely on the two-prong test elicited in *Weber*. The Court held that the use of a plus factor for females in promotion decisions in order to eliminate a prior work force imbalance in a traditionally segregated job category satisfied the first prong of *Weber*. Furthermore, the Court found that the affirmative action program did not trammel the rights of male employees (*i.e.*, satisfied the second prong of *Weber*) because males were not automatically excluded from consideration for job promotions. Hence, the Court upheld the employer's affirmative action program.

Wygant v. Jackson Board of Education. In *Wygant* v. *Jackson Board of Education* (21), the school board collectively bargained a layoff provision with the teacher's union. The collective bargain agreement (CBA) required the same percentage of African-Americans and Caucasians be laid off (during a layoff period) so that the overall percentage of minorities on the faculty would remain constant. When layoffs became necessary, some Caucasian teachers with more seniority than some African-American teachers were laid off. These Caucasian teachers filed a lawsuit, claiming that the CBA violated their equal protection rights. The case was ultimately appealed to the United States Supreme Court.

Although there was no majority opinion of the Court, the race-based layoff plan was held to be unconstitutional by five of the nine justices. The plurality opinion (written by Justice Powell and joined in part by Justices

Burger, Rehnquist, and O'Connor) stated that the constitutional standard to be applied in this case was strict scrutiny. The layoff plan failed the strict scrutiny standard (via the second prong of the strict scrutiny standard) because it was not sufficiently narrowly tailored (*i.e.*, the plan trammeled the rights of existing employees by causing them to lose their existing jobs). The plurality did not reach a conclusion concerning the first prong of the strict scrutiny standard because the trial court failed to make a factual determination that this basis existed, however, the plurality recognized that in order to remedy the effects of prior discrimination, it may be necessary to take race into account. The four dissenting justices believed the layoff plan was constitutional.

In summary, this case suggests that the Court regards the use of race-conscious plans to redress the effects of prior discrimination as a valid compelling interest (*i.e.*, satisfies the first prong of the strict scrutiny standard). Furthermore, if the means chosen to accomplish this redress of prior discrimination are narrowly tailored (*i.e.*, satisfies the second prong of the strict scrutiny standard), then the plan would be constitutionally permissible. Hence, race-conscious measures may be considered constitutionally permissible in hiring and layoff decisions.

One year following *Wygant*, the Supreme Court extended the concept of race-conscious measures by upholding a lower court's decision requiring the use of numerical quotas to eradicate past proven discrimination. The case was *U.S.* v. *Paradise*, which will be considered next.

U.S. v. Paradise. In 1972, a federal district court determined that the Alabama Public Safety Department had discriminated against African-Americans when hiring for state trooper positions for nearly four decades. Based on this finding, the district court ordered the Department to hire one African-American trooper for each Caucasian trooper hired (as long as qualified candidates were available) until African-Americans comprised approximately 25 percent of the state trooper work force.

In 1983, the Department announced opportunities for promotions to the rank of corporal. A dispute again arose concerning the validity of the Department's promotion policy. The district court ordered that 50 percent of the promotions to the corporal positions were to be awarded to qualified African-American troopers until either African-Americans occupied 25 percent of the corporal positions or until the Department implemented a promotion policy that did not have an adverse impact on African-American troopers. The case was ultimately heard by the United States Supreme Court.

In *U.S.* v. *Paradise* (24), the Court upheld the district court's order by a five-to-four vote. Four justices joined to form the plurality opinion of the

Court. The plurality determined that the one-for-one promotion plan ordered by the lower court satisfied the strict scrutiny standard. Remedying the "pervasive, systematic, and obstinate" discriminatory conduct by the Department was determined to be a valid compelling interest (*i.e.*, satisfied the first prong of the strict scrutiny standard). Also, the plan was narrowly tailored to remedy the prior discriminatory conduct because the plan was designed to terminate either when the Department implemented its own nondiscriminatory procedure or when African-Americans attained 25 percent of the corporal positions (*i.e.*, satisfied the second prong of the strict scrutiny standard).

As suggested previously, the significance of this case is that the Court allowed the limited use of numerical quotas when blatant prior discrimination was found to exist. Two years after *Paradise*, the Court finally reached a majority consensus concerning the standard of review that should be used to evaluate race-conscious affirmative action plans by state and local governments. The case was *City of Richmond* v. *J.A. Croson Co.*

City of Richmond v. J.A. Croson Co. In *City of Richmond* v. *J.A. Croson Co.* (25), the city of Richmond, Virginia had enacted a Minority Business Utilization Plan that required prime contractors on city projects to set aside at least 30 percent of the dollar amount of the contract for minority business subcontractors. The J.A. Croson Company had bid on a city project which required the installation of plumbing fixtures at the city jail. Following receipt of the contract, the Croson Company was unable to find a minority business subcontractor at an acceptable cost. The City of Richmond decided to rebid the project and the Croson Company filed suit claiming that the City's set-aside plan was unconstitutional. The case subsequently was reviewed by the United States Supreme Court.

A majority of the Court agreed that the constitutional standard to apply was the strict scrutiny standard when the governmental action involved was explicitly race-based. The Court determined that the City's set-aside plan did not meet the strict scrutiny standard and therefore was unconstitutional. According to the Court, the City's plan failed both prongs of the strict scrutiny standard. Concerning the first prong, the City presented no evidence that prior discrimination in the City's construction industry had in fact occurred. Hence, the City failed to show that it had a compelling need to redress prior discrimination. For the second prong, the City was unable to show that its plan was narrowly tailored (if the plan had met the first prong). For example, the Court noted that the City had not considered whether or not race-neutral means would adequately increase minority participation in the construction industry.

As stated earlier, the importance of the *Croson* case is that the Supreme

Court finally reached a majority consensus that the Fourteenth Amendment requires strict scrutiny of all race-based action by state and local governments. This holding of the Court was in effect when the Fifth Circuit Court reviewed the case of *Texas* v. *Hopwood* last year. The *Hopwood* case will be considered next.

Hopwood v. Texas. In *Hopwood* v. *Texas* (1), the University of Texas Law School had adopted a race-conscious admissions plan to ameliorate the impact of segregated and inferior elementary and secondary education for minorities. The Law School instituted a separate admissions process for African-Americans and Mexican-Americans (as compared to Caucasians), which used a separate admission committee and lower threshold scores for these applicants. Cheryl Hopwood, along with three other Caucasian plaintiffs, filed suit claiming that the Law School's admissions process violated their equal protection rights.

In reviewing the case, the Appellate Court ruled that colleges may take affirmative action only to make up for continuing effects of past racial discrimination. The Appellate Court stated that the proper constitutional standard under which to evaluate the admissions program was strict scrutiny. The Appellate Court determined that the Law School's admission process failed the strict scrutiny standard (based on the first prong of the strict scrutiny standard) because the Law School presented no compelling justification for its use of racial preferences in admissions. Specifically, the Appellate Court declared that the desire to recruit a diverse group of students was not sufficient justification for race-based preferences. In addition, no evidence of overt officially sanctioned discrimination was found to exist in the recent history at the Law School. Based on these findings, the Appellate Court held it was unnecessary to determine if the Law School's admissions program met the second prong of the strict scrutiny standard.

On appeal, the United States Supreme Court refused to review the case. In the Court's opinion, judicial review was unnecessary because the Texas law school had abandoned the admissions plan (presently being challenged) in 1994. As stated by Justice Ginsburg in *Texas* v. *Hopwood*, "we must await a final judgment on a program genuinely in controversy before addressing the important questions raised in this petition" (26).

CONCLUSION AND COMMENTS

The concept of affirmative action has existed since the 1940s (7). Title VII of the Civil Rights Act of 1964 (6) was the greatest legislative endorsement of equal opportunity employment serving as the base from

which Executive Order 11246 (10) concerning affirmative action for federal contractors emerged. Subsequent to this Order, employer-imposed affirmative action programs began and even colleges of pharmacy as well as other universities ultimately adopted race-conscious admissions programs. These programs were initially supported by the judiciary, but the support has been questionable in recent years.

As we approach a new millennium is affirmative action gone? Probably not, however, evidence necessary to satisfy the first prong of the strict scrutiny standard may be harder to establish. As shown in this article, the Supreme Court continues to support affirmative action programs (as satisfying the first prong of the strict scrutiny standard) when they are used to redress the effects of recent overt discrimination. Examples of overt discrimination include intentional segregation in a school system and antibusing laws. However, establishing an affirmative action program in a college of pharmacy merely to increase diversity may incite a constitutional challenge. This reasoning is especially true for states comprising the Fifth Circuit (*i.e.*, Texas, Louisiana, and Mississippi) following the *Hopwood* decision.

Should universities outside of the Fifth Circuit abandon their race-conscious admissions programs following the *Hopwood* v. *Texas* (1) decision? To answer this question, it should be realized that the Supreme Court's holding in *Bakke* (19) is still the law of the land and is applicable to all colleges of pharmacy. The holding in *Hopwood* v. *Texas*, in these authors' opinion, only made the holding in *Bakke* more restrictive. It did not overrule *Bakke*. Hence, the strict scrutiny standard as applied in *Bakke* continues to remain the constitutional standard in reviewing college of pharmacy admissions programs. The salient issue, however, is what admissions policies will satisfy the strict scrutiny standard. Even following *Bakke*, it could be argued that using minority status as a plus factor in the admission process *merely* to enhance diversity might not satisfy the strict scrutiny standard because only one Justice (Justice Powell) expressly stated that the need of a college to obtain an ethnically diverse student body satisfied the first prong of the strict scrutiny standard. Hence, the Fifth Circuit's decision not to allow the use of minority status as a plus factor merely to enhance diversity becomes more palatable when considered in this light. Colleges of pharmacy outside of the Fifth Circuit should consider these points when reviewing their current admissions policies. They should also work closely with institutional counsel.

What admissions policies have the University of Texas instituted following *Bakke*? Following the *Bakke* decision, the University of Texas regents voted to install new, more comprehensive expectations for under-

graduate admission (26). No longer will "admissions by the numbers" be used. Instead, these new admission policies delete references to race, and call for letters of recommendation, look to performance in challenging course work by applicants, and ask all applicants to describe in three essays their background, leadership, and academic interests.

The greatest lesson to be shared following the *Hopwood* decision may address admissions policies a college of pharmacy can institute that will withstand a constitutional challenge. It would be imprudent to believe any longer that the use of minority status as a plus factor to increase diversity will likely withstand any constitutional challenge. Hence, colleges of pharmacy should act judiciously and use the new admissions policies adopted by the University of Texas as a model templet for their institutions (when recent overt discrimination does not exist).

REFERENCES

1. *Hopwood* v. *Texas*, 78 F.3d 932 (1996).
2. Lederman D. Court rulings force colleges to consider ending use of race in admissions process. Chron Higher Educ. 1996; 42(45): 27-8.
3. Michaelson M. A time to increase public understanding of affirmative action. Chron Higher Educ. 1996; 42(45): 48.
4. Hair PD. Color-blind–or just blind? The race to end affirmative action. The Nation. 1996; 263(11): 12-3.
5. Affirmative action: redistribution or equal opportunity? Cong Digest. 1996; 75(6-7): 162.
6. Title VII of the Civil Rights Act of 1964 (1964), 42 U.S.C.A. §2000e.
7. Friedman JW, Strickler GM Jr. Cases and materials on the law of employment discrimination. 3rd ed. Westbury, NY: Foundation Press; 1993.
8. Player MA. Employment discrimination law. St. Paul, MN: West Publishing; 1988.
9. Banta W. Affirmative action in employment: promoting public policy or illegal discrimination? Paper presented at CLE By The Hour, Tulane Law School. New Orleans, LA. 1995 Dec 27.
10. Executive Order 11246 (1965), 3 C.F.R. 339.
11. Edley C Jr. Affirmative action angst: contemplating campus policy after Hopwood v. Texas. Change. 1996; 28(5): 12-5.
12. Greve MS. Ruling out race: a bold step to make colleges colorblind. Chron Higher Educ. 1996; 42(29): B2.
13. Jaschik S. Appeals court bars racial preference in college admissions. Chron Higher Educ. 1996; 42(29): A26-A27.
14. *Brown* v. *Board of Education*, 347 U.S. 483 (1954).
15. *Plessy* v. *Ferguson*, 163 U.S. 537 (1896).
16. *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971).

17. *North Carolina State Board of Education* v. *Swann*, 402 U.S. 43 (1971).
18. Gunther G. Constitutional Law. 12th ed. Westbury, NY: Foundation Press; 1991.
19. *California* v. *Bakke*, 438 U.S. 265 (1978).
20. Title VI of the Civil Rights Act of 1964 (1964), 42 U.S.C.A. §2000d.
21. *Wygant* v. *Jackson Board of Education*, 476 U.S. 267 (1986).
22. *United Steel Workers* v. *Weber*, 443 U.S. 193 (1979).
23. *Johnson* v. *Transportation Agency*, 480 U.S. 616 (1987).
24. *United States* v. *Paradise*, 480 U.S. 149 (1987).
25. *City of Richmond* v. *J.A. Croson Co.*, 488 U.S. 469 (1989).
26. *Texas* v. *Hopwood*, 116 S.Ct. 2581 (1996).
27. Marchese T. After Hopwood. Change. 1996; 28(5): 4.