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# Affirmative Action

History and Law

# What is Affirmative Action?

- Aclu definition
- <https://www.aclu.org/other/what-affirmative-action>
- Wikipeddia
- [https://en.wikipedia.org/wiki/Affirmative action in the United States](https://en.wikipedia.org/wiki/Affirmative_action_in_the_United_States)
- and a decent overview from the National Conference of State Legislators
- <http://www.ncsl.org/research/education/affirmative-action-overview.aspx>
- This overview includes links to both sides of the argument:
- Read more: American Civil Liberties Union (ACLU), "[Who supports affirmative action?](#)"
- Read more: Stanford Magazine, "[The Case Against Affirmative Action](#)"
- **Resource:** Joe Messerli, BalancedPolitics.org, "[Should affirmative action policies, which give preferential treatment based on minority status, be eliminated?](#)" April 2010.

- “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 justly believe that you have been completely fair.

Lyndon B Johnson, President of the United States, Commencement Address at Howard University; “To Fulfill These Rights.” (June 4<sup>th</sup> 1965)

- The name “affirmative action” comes specifically language in Executive Order 10925. This Order states that government contractors take affirmative action in regards to hiring practices related to race.

United States Department of Labor, Office of Federal Contract Compliance, <https://www.dol.gov/ofccp/about/50thAnniversaryHistory.html>.

# *Regents of the University of California v. Bakke 438 U.S. 265 (1978)*

- First Major Supreme Court case dealing with affirmative action
- Affirmative action Programs are allowed though the use of racial preferences but must be one factor among many. *Bakke, 438 U.S. 265, 316-17*
- Affirmative Action Policies must pass strict Scrutiny. *Bakke, 438 U.S. 265 at 290-91*

***Grutter v. Bollinger* 539 U.S. 306, 316 (2003)**  
***and***

***Gartz v. Bollinger*, 539 U.S. 244, 274-76 (2003)**

- The Supreme Court Confirmed that Affirmative Action policies can be used with Race as a factor among many *Grutter v. Bollinger* 539 U.S. 306, 316 (2003)
- Affirmative Action Policies must pass Strict Scrutiny. *Grutter*, 539 U.S. at 326
- Cannot use quotas or any system with automatic attributions based on racial classifications. *Gartz v. Bollinger*, 539 U.S. 244, 274-76 (2003)



***Fisher v. The University of Texas at Austin I*, 133 S.Ct.  
2411, (2013)**

**and**

***Fisher v. The University of Texas at Austin II*, 136 S.Ct.  
2198 (2016)**

- The Court set three controlling principles for affirmative action policies:
  - strict scrutiny of affirmative action admissions processes
  - judicial deference to reasoned explanations of the decision to pursue student body diversity
  - and no judicial deference for the determination of whether the use of race in admissions processes is narrowly tailored. It then noted that the University of Texas.

*Fisher v. University of Texas at Austin (Fisher II)* 579 U.S. \_\_\_\_, 136 S.Ct. 2198 (2016) [4-3 Scalia seat empty, Kagan recused]

## *Schuette v. Coalition 134 S. ct. 1623 (2014)*

- States Can ban affirmative action in their jurisdictions. *Schuette v. Coalition*, 134 S.Ct. 1623, 1636 (2014)
- Okla. Const. Art. II § 36A was added to the Oklahoma Constitution after being approved by Oklahoma voters as State Question 759. This section bans affirmative action in public employment, education and contracts in Oklahoma.

## Citations list

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  - United States Department of Labor, Office of Federal Contract Compliance, <https://www.dol.gov/ofccp/about/50thAnniversaryHistory.html>.
- *Fisher v. The University of Texas at Austin I*, 133 S.Ct. 2411, 2415 (2013)
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- Lyndon B. Johnson Commencement Speech At Howard University
  - Lyndon B Johnson, President of the United States, Commencement Address at Howard University; "To Fulfill These Rights." (June 4<sup>th</sup> 1965)
- *Regents of the University of California v. Bakke* 438 U.S. 265 (1978)
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