

Affirmative Action and Beyond



BLACKS IN GOVERNMENT

A Report on Affirmative Action

AFFIRMATIVE ACTION AND BEYOND

August 1995



**A Report to the White House and
the Congress of the United States
by Blacks in Government (BIG)**

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CHAPTER 1

FOUNDATION OF AFFIRMATIVE ACTION

by
Art Fletcher

Art Fletcher is a member of the United States Commission on Civil Rights and former member of the Nixon administration. He pioneered affirmative action employment programs. This chapter presents major excerpts from his Open Letter (dated 10 Feb 95) to Senate Majority Leader Bob Dole, House Speaker Newt Gingrich, and republican members of the 104th United States Congress.

Senator Dole knows me well. Our friendship goes back to the days when I served as the vice chairman of the Kansas State Republican Party, January 1955 to January 1957. I don't recall having the pleasure of meeting speaker of the House Newt Gingrich, but I hope to soon. However, Senator Dole knows that I participated in a successful lobbying effort that resulted in having the Kansas State Legislature pass and the governor sign the law establishing the Kansas Fair Employment Practice Commission (FEPC) in 1952.

At the time, the state young republican membership was (and probably still is) 94 percent to 96 percent White Americans. Not only that, but they were conservative to the core. Nevertheless, they supported our efforts to establish the above-mentioned commission: a full 12 years before the United States Congress passed the 1964 Civil Rights Act and the president signed it as the law of the land. They realized that several thousand Kansas African-American citizens fought for the country in World War II, returned home and entered college as GI Bill of Rights students. They were aware that the latter had secured undergraduate, graduate, and professional degrees. Nevertheless, they were unable to find employment compatible with their education qualifications. Thus, in spite of their contribution to the national security, plus their education and qualifications, they were victims of the *present effect of past discrimination*. That's why the Young Republicans supported our lobbying efforts that resulted in creating the Kansas Fair Employment Practices Commission. In fact, the Kansas 12-year experience with the state FEPC Act was provided as input for guiding the United States Congress in drafting the legislation that established the federal government's Equal Employment Opportunity Commission. It was also used to write the Commission's initial rules, regulations, and guidelines.

I won't supply a detailed account of my republican credentials at state levels, Kansas, California, and Washington state, but I will cite a few of the high points

at the national level. I served in the first Nixon administration. I was the first Assistant Secretary for Employment Standards at the United States Department of Labor, 1969-1971. I believe I made my most significant contribution to the nation's future security, stability, prosperity, and future promise while serving in that capacity. Among other important assignments as the Assistant Secretary for Employment Standards, I was responsible for overseeing the drafting of the revised Philadelphia Plan. I was also the only official in the federal government to sign that document. Why was it called the revised Philadelphia Plan? Because the word *revise* was the operative term, it was used because the original Philadelphia Plan was based on a volunteer approach. Thus, it was flawed and doomed to fail as an instrument of equity from the start. Why? Because neither the employers nor construction labor unions in this case would commit and thus attempt to volunteer to comply with a mandate that did not define discrimination nor set standards that proved and/or disproved compliance.

The original volunteer plan was further flawed because it did not establish or spell out processes approving a good faith effort to comply. The revised Philadelphia Plan set such standards. Therefore, I signed it and flew to Philadelphia and issued it as the federal government's new EEO enforcement policy on June 27, 1969. The Eastern Pennsylvania Contractor's Association immediately filed a lawsuit two days later to test its constitutionality in the federal courts. However, within a two-year period, the Federal District Court and the Federal Appellate Court ruled the plan legal. The US Supreme Court refused to review the lower court's decision. From that time to the present, affirmative action has been the federal government's policy wherever and whenever federal dollars, federal loan guarantees, or federal insurance is involved. Therefore, since I was the only one in the Nixon administration, as well as in the history of the federal government willing to sign the first-ever Equal Employment Enforcement Order, I consider it my personal footnote in history.

Additional Significant Appointments

In addition to serving in the labor department, President Nixon selected me to serve on the United States delegation to the 25th Session of the United Nations General Assembly. In January 1975, I joined the Ford administration and served as President Ford's Deputy Assistant for Urban Affairs. In March 1983, President Reagan named me vice chairman of the Pennsylvania Avenue Development Corporation. I served in that capacity until February 1990, at which time President Bush appointed me to be the chairman of the United States Commission on Civil Rights. President Clinton named his administration's chairperson in November 1993 and I relinquished the chair to her at that time. However, I am still one of the republican appointees to the Commission. My term ends in November 1995.

There is more, much, much more to my involvement, performance and contribution to the GOP, as well as national causes during the five decades, 1946 to 1995 that I have been a member of the republican party. However, my reason for providing this information is, as the saying goes, to set the record straight, and in doing so, inform the 30ish and 40ish energetic members to the party of my background and hands-on experience. It is also provided to reintroduce and/or remind some of the older members of my involvement over the past five decades.

The point I am trying to make is this: I am not a newcomer to the national scene; not a naive political novice where public policy development is concerned; nor am I a hustler, an opportunist, or a Johnny-Come-Lately to the republican fold. I provided the above information to first establish my honesty, integrity, and credibility for pleading with each republican member of the Congress to not *rush to judgment* in your decision to repeal legislation authorizing affirmative action. Secondly, I want to extend an offer to inform and educate those who are willing to listen and learn and thus come to know the truth—the whole truth—all the facts about this super controversial issue called affirmative action and women and minority contract set aside programs.

Few Know the Facts

For your information, neither GOP nor democratic members of the Congress are well informed as to the mission, goals, and objectives of affirmative action. Not only that, but they know less yet about its actual impact in the nation's workplaces and the contract business arena. This is true, although it has been in effect for 25 years. Therefore, making a firm decision and casting their votes up or down to either reform or abandon the policy altogether would be premature, to say the least. Before deciding, they should hear from experts and knowledgeable practitioners in the private and public sector. In addition, they should hear the facts from a member of their party who has given most his life and professional career to the causes of economic and educational equity for women, nonwhite citizens in general, and African Americans in particular.

I'll try to stress this point differently. Although I am an African American, I am just as committed to achieve a secure, stable, prosperous America with a promising future as any other citizen. In fact, in these areas, I not only want America to be a world class superpower, that is first among its equals, but unchallenged in each of these areas. Why? Because the future is happening now and my living children, grandchildren, and great-grandchildren will inherit either the posterity or the chaos we leave them to manage.

It's the Culture, Stupid

The point I want to stress now is this: the country has only now arrived at the most difficult area of the struggle for full equality, which is economic equity. Nevertheless, the light at the end of the tunnel is not only clearly visible but reachable. However, to reach it we must concede *that the present effects of past discrimination against women and minorities are alive and well and as debilitating as ever*. This is true in spite of the fact that young White male adults and others who reached maturity during the last quarter of a century know nothing about the Civil Rights revolution, riding in the back of the bus, desegregating lunch counters, and public schools. Whether they perceive it or not, know it or not, and/or experience it or not, they are nevertheless the beneficiaries of the present effect of past discrimination.

To use a political metaphor from the 1992 presidential campaign; "*It's the Culture, Stupid*," We have yet to purge the *present effects of past discrimination* from our national lifestyles. However, it can be purged from the system; and if not that, then diminished to a level of insignificance within the next 30 years, a generation and a half, the year 2024. This can be done if we have the vision, the political courage, and the will to do so. In other words, if staying the course for another generation or more would lead to gender and racial harmony; which in turn would produce a secure, stable, prosperous America with a bright and shiny future; surely it's worth the price of a continuing and organized effort to achieve it.

To say it another way, surely that's not too much to ask or expect of our political leaders, republican and democratic; at all levels of government, legislative, executive, and judicial. Nor is it too much to expect or ask of our citizens either. To say it one more way, surely the *reasonable hope* of eradicating a debilitating problem that has held this nation's democracy and free enterprise culture in handcuffs and leg irons, throughout its 200 plus year history as a sovereign nation, is worth the effort.

The Reasonable Person's Doctrine: The Primary Standard

I am certain that it is clear to the reader by now that the writer is committed to affirmative action or a reasonable facsimile thereof. I will be the first to admit that the affirmative action policies that the writer helped to establish, and that have been the guiding process for the past quarter of a century, needs to be revised, reformed, upgraded, etc. For me to insist that the old is compatible with the high-tech new, is like contending that a 1929 model-A Ford can out perform a 1995 Lincoln Continental.

There has been significant, if not considerable change in the human rights, civil rights, equal opportunity arena during the past 30 years. Nevertheless, for the current and foreseeable future, the present effect of past discrimination will continue to have a debilitating impact on our national agenda. So let me quickly add that whatever the approach toward equity in the economic and educational arena for women and minorities turns out to be, it should be based on current and future economic expectations. Thus, they should be workable policies that are consistent with the economy of the 90s and as far into the first quarter of the 21st century that competent futurists can perceive. But of equal, if not of more importance, they should be policies that are clearly and firmly grounded in the legal principle known as the reasonable person's doctrine.

If the doctrine is applied, the policy will be grounded on reasonable standards, reasonable expectations, and be based on achievable, individual, reasonable, organized effort. Thus, in pursuing that course, not only will the policy be on the middle ground, but the moral high ground, too.

Anecdotes Won't Do

In applying the reasonable person's doctrine, members of the Congress on both sides of the isle are well aware that we neither establish nor abandon a public policy program on allegations and anecdotes alone. The same should apply with respect to the civil rights legislation as a whole, and affirmative action equity programs as well. For those of you who might not know, not a single civil rights act, rule, regulation or guideline was authorized, mandated, etc., on mere allegations and anecdotes alone. Over the last 30 years, when we sought and succeeded in securing the passage of the civil rights legislation, we used a scientific process to gather the facts. The purpose was to prove a pattern and practice of continued discrimination. Once that was achieved, the reasonable person's doctrine dictated that the United States Congress, the legislatures of several states, and local governing entities as well, do something to either eradicate the problem altogether or reduce it to a level of insignificance.

The importance of the paragraph immediately above is this: as of this writing, I have read about and heard about preferential treatment and discrimination in reverse galore, perpetrated against White males. However, I have yet to see documented evidence, facts, etc., that will prove conclusively that a pattern against White males for a number of reasons, including the fact that prejudice against the latter has never been a part of our culture and it never will be. This is true regardless of their education, economic, and social status.

Until White males can present irrefutable evidence, facts, etc., that they are victims of discrimination, then not a word, sentence, or paragraph in any existing affirmative action program should be changed or rewritten. To do so without

irrefutable evidence would result in being hoodwinked into solving a problem that does not exist. For an example, republican members of Congress should be aware of the following: the techniques used by civil rights professionals to determine the extent to which discrimination is still being practiced is to employ the use of testers. My point is; I have yet to read about, hear about, or learn about a proven pattern of discrimination against White males that is the result of a scientific testing program. Therefore, members of Congress on both sides of the isle should do the following: insist that opponents of affirmative action prove their case before rushing to judgment. If they don't, they run the risk of being tricked into delaying the day when discrimination against women and minorities will be reduced to a level of insignificance.

Experience from the Trenches

Now comes my offer to assist members of Congress in solving your dilemma. This offer extends to any and all members of the Congress who would like to be educated, informed, etc., on the employment affirmative action and minority business set-aside program process; I am willing to do the following: arrange to conduct a series of affirmative action teach-ins for any member of the Congress, staff personnel, etc. My objective would be to expose you to the facts, the good news and the bad news; the excesses and the shortfalls involving affirmative action. Once having done that, leave you to decide for yourselves how to do the following: achieve economic and education equity for minorities and women, on or by the end of the first quarter of the 21st century, with or without affirmative action enforcement policy. If you accept my offer, you will be getting the facts from the original source, as well as a team of expert practitioners, who administer the process everyday. As far as the writer is concerned, you will be getting the facts from the individual who created the process, a former Assistant Secretary of Labor who implemented the process and administered it for two years, and who instructed over a thousand employers, including some of the top Fortune 100 companies. I instructed them on designing, training employees, and implementing their own affirmative action programs.

My experience from the trenches is a result of the following: (1) the writer owned and managed his own contract food service company; (2) the firm had 300-plus employees in its work force that could be classified as a rainbow coalition, (3) it consisted of White males and females, Hispanic males and females, Asian males and females, and African-American males and females. As the owner/manager, I hired and promoted employees strictly on the basis of qualifications: education, experience, performance, and post-employment achievements. The firm was a Connelly Cup competitor in the nationwide Army food service competition. There were 40 companies invited to enter the competition each year; ten were included in the runoff. We ranked in the top ten each of the six years that we had the contract. Consequently, our company became a farm club, or feeder system for some of the larger hotel and restaurant

chains in the area. My point is that we could not have done that well if I had abandoned my standards in order to comply with our agreed-upon affirmative action commitment. We had to make the commitment in order to get the contract. Thus, an employer can do it if he is committed.

Change is Painful

During the 80s, the company faced five charges of discrimination. Four of the charges were thrown out at the Human Rights Commission review level and a fifth went to trial. My firm won on all occasions. My point is that besides initiating affirmative action when I was an employer, I had to live by and comply with the policies that I established and set in motion as a private employer. Thus, I know of whereof I speak. Therefore, if you want the facts as opposed to rumors, allegations, and anecdotes; I'll be more than happy to inform you. My final word is this: the present effects of past discrimination is a social cancer on the American fabric, and like applying chemotherapy to the human body, if one endures the pain, they do get well and enjoy a healthy, productive, prosperous life.

The same applies with enduring the wrenching experience of eradicating the present effect of past discrimination out of the American culture. However, we can do it if we are committed and have the political courage to try.

In closing, I would say to my republican friends in Congress, to those in the several state legislatures, plus local governing bodies: whether is fair or not, justified or not, provable or not, the perception among 90 percent to 95 percent of the nation's African-American voters is this: African Americans are neither wanted nor welcome to participate in the republican party that your so-called national inclusive campaigns are a charade and that in your heart of hearts you are not interested in having a considerable increase in African-American participation.

Some go as far to suggest that your organized drive to repeal affirmative action and destroy the impact of the civil rights legislation revolution and court-ordered desegregation is clearly aimed at breaking the spirit and destroying the will of the African-American community to become full fledged citizens and enjoy all that being an American implies. I must tell each of you that after having spent five decades carrying a brief for the republican party in the African-American community and doing my level best to prove otherwise, it is painful to hear such charges at this stage in my political journey. However, as difficult as it is, I must admit that there is significant if not considerable validity to the charge. Therefore, I offer this advice to each of you. During the rest of this century and throughout the first quarter of the next century that I can envision, the goal throughout the African-American community is neither integration, desegregation

nor segregation. *It's freedom of choice.* That is what African Americans want today more than anything.

They want freedom to choose, to live, work, play, worship, etc., in environments, neighborhoods, etc., that are compatible and consistent with their economic means. That, in a nutshell, is why economic and education equity are the focal points, the centerpiece, etc., of the drive for the immediate, short and long term future. If republican party politics are designed to enable them to experience their personal objectives, discrimination will be reduced to a level of insignificance or disappear from the nation's political, economic, and social agenda radar altogether. I sincerely hope that Senate Majority Leader Dole, Speaker of the House Gingrich, and all of the republican recipients of this letter understand what I am trying to accomplish. Its tone might seem harsh in some paragraphs. If so, I apologize. You should know that it is the result of five decades of high profile efforts on behalf of the republican party and my extreme frustration over the fact that it seems like I have been running in place.

I have used this method to speak out in an attempt to prevent the party and its leadership from making a horrible mistake that could take another 100 years to correct. I would welcome a response from the leadership and any of the party's members. I can be reached at the US Commission on Civil Rights, telephone (202) 376-7572. My fax number is (202) 488-9123.