

# A whiter workforce? Unlikely, experts say

Despite conservatives' assault on affirmative action, other factors are seen as making the hiring of minorities and women just plain good business.

By Robert A. Rankin  
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**W**ASHINGTON — The movement to roll back affirmative action is sending shock waves through American politics, but even if successful, it probably will have far less impact on the American workplace than most people assume.

The movement aims to eliminate racial and gender preferences enshrined in law, such as those that set aside portions of government-contract work for firms owned by women or minorities. The movement also aims to limit federal pressure on private employers to grant such preferences in hiring and promotions.

But voluntary corporate hiring and promotion programs aimed at increasing workforce diversity — a euphemism for giving women and minorities more and better jobs — are unlikely to be scaled back much even if preference laws are killed, most experts say. And those are the programs most effective at expanding job opportunities.

"If all they did was eliminate mandated affirmative-action programs, the impact, from an employee point of view, probably would not be that significant," said Charles B. Craver, a law professor specializing in this field at George Washington University.

"I would say it would have no impact on what we're all about," said Rex Adams, who runs an aggressive diversity-recruitment and -promotion program for Mobil Oil Corp. "We believe that we, as a company, have moved beyond affirmative action to embrace diversity as a business strength."

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Many experts in business and labor law reach similar conclusions, for several reasons. Perhaps the most important is this: Basic civil-rights laws that prohibit discrimination on the basis of race or sex do not grant explicit preferences.

These laws thus are not targeted for repeal — and conservatives know that they would face an uphill political battle should they ever target them.

These basic civil-rights laws, particularly Title VII of the 1964 Civil Rights Act, provide the main legal force that prods private employers to diversify their workforces.

That pressure, mounted primarily through the Equal Employment Opportunity Commission, is unlikely to end — though it could be curbed by a Republican-majority Congress subjecting the EEOC to rigorously challenging oversight.

Even beyond the force of law, many experts say business leaders will be pushed to maintain workforce-diversity programs by pressures such as these: the changes in the nation's demographics as minority populations grow, sheer cultural momentum in a multicultural society, and common-sense business strategies.

Companies that market consumer products to women and minorities, companies that value their image in diverse communities, and companies whose leaders appreciate creative ferment in their workforces all have learned to prize diversity programs, said Audrey Freedman, a leading New York City consultant to big business on these questions.

"The change in regulations won't have any effect on them because [their diversity pro-  
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grams] are not regulation-driven; they are driven by good business practices," Freedman said.

Other business- and labor-law experts echoed her points, though most acknowledged that a successful drive to roll back preferences would penalize some who benefit from them.

"I think there would be a deterioration in the level of hiring of minorities and women. People would not be as alert to it," said Jack Greenberg, a professor at Columbia University Law School long active in civil-rights litigation.

"I think market pressure is not going to be enough. Market pressure didn't reduce discrimination against blacks before," said Peter Cappelli, co-director of the Center for Human Resources at the University of Pennsylvania's Wharton School.

The key to how far the rollback goes, experts agree, is how it affects EEOC power to file antidiscrimination lawsuits under Title VII.

That empowers the EEOC to pressure employers of 15 workers or more to draft "voluntary" plans setting goals and timetables to diversify their workforces rather than endure costly lawsuits. The mere possibility of such lawsuits prods many employers to set up diversity programs in self-defense.

Clint Bolick, who spearheads the conservatives' crusade to end racial preferences, says Title VII is safe, at least for now.

"A lot of people confuse affirmative action with antidiscrimination, and they are emphatically not the same," said Bolick, vice president of the Institute for Justice, a conservative group helping Republican lawmakers develop a strategy to roll back affirmative action.

"We believe that the direction of civil-rights legislation ought to be toward curbing government preferences and government pressure on the private sector to engage in preferences.

"But we think it would be a mistake to amend any of the civil-rights laws. We think that, properly construed, they are exactly as they should be. So we are recommending that Title VII not be changed. Anyone discriminated against will still have the same remedies they have now."

For now, conservatives are targeting for extermination about 160 explicit grants of preference in law — most of them contract

set-asides.

Some minority- and female-owned businesses would lose out, but experts say that the economic impact would not be widespread and that the number of skilled women and minority workers shut out would not be large.

Yet Bolick admits that conservatives are split on whether this approach goes far enough — as a matter of tactics, not ultimate goals. They share the hope of eventually outlawing race- and gender-based programs, even those mounted voluntarily by private companies.

A minority of conservatives wants to push that approach now, confronting the EEOC and Title VII powers head on. But more recognize that that would open a divisive political battle that they might lose.

"We would think that's a retrograde step, would be bad public policy and harmful to social cohesion in this country," said Adams of Mobil Oil.

Linda Chavez, who ran the U.S. Commission on Civil Rights under Ronald Reagan, advises fellow conservatives to postpone sweeping legislative reform and "focus first on regulatory abuses" through rigorous oversight hearings of agencies, including the EEOC.

"I'm for going slow," Chavez said. "... Let's take it one step at a time."

"Where you may see a lot of this fought out is over these voluntary plans," said EEOC general counsel Ellen Vargyas.

Will companies with workforces composed largely of white males be allowed to mount voluntary efforts to recruit women and minorities? Or would such efforts be ruled discriminatory? Litigation may have to settle such questions, Vargyas said.

Meanwhile, both the U.S. Chamber of Commerce and the National Association of Manufacturers — two of the most powerful business lobbies in Washington — have recently decided to "rethink" their policies on these questions.

But Sharon Canner, vice president for human-resources policy for the manufacturers' association, noted that civil-rights activists had commended her organization in the past for defending race- and gender-based employment policies. And she said most association members would retain their programs.

"It's really basic economics," she said. "... I don't think they are going to turn around and close the doors."



**Linda Chavez**, former head of the U.S. Commission on Civil Rights, advises keeping close tabs on the EEOC.