Nos. 84-1656 and 84-1999

Supreme Court of the United States

OCTOBER TERM, 1985

LOCAL 28 OF THE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, *et al.*,

Petitioners,

—v.—

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, *et al.*,

Respondents.

LOCAL NUMBER 93, INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, etc.,

Petitioner,

—v.—

CITY OF CLEVELAND, *et al.*,

Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND AND SIXTH CIRCUITS

BRIEF *AMICI CURIAE*

For NOW Legal Defense and Education Fund; California Women Lawyers; Employment Law Center; Equal Rights Advocates; League of Women Voters of the United States; National Women's Law Center; Northwest Women's Law Center; Wider Opportunities for Women; Women Employed; Women's Law Fund; Women's Law Project; National Bar Association, Women Lawyer's Division, Greater Washington Area Chapter; Women's Legal Defense Fund

IN SUPPORT OF RESPONDENTS

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The NOW Legal Defense and Education Fund and other Amici are organizations dedicated to securing equal rights for women before the law.**

STATEMENT OF THE CASES

Amici adopt the two Statements of the Case as set forth by the respondents in the instant cases.

SUMMARY OF ARGUMENT

Title VII permits and contemplates race-conscious relief, which is of vital importance in tackling the dual problems of individual prejudice and systemic discrimination against minorities and women in employment. The language of Title VII read as a whole, the legislative history of the statute, Supreme Court precedent and over

* Letters of the parties reflecting their consent to the filing of this brief are being filed with the Court.

**Descriptions of these organizations appear in the Appendix to this brief.

twenty years of lower court decisions all support this position. Petitioners' argument that race-conscious, class-based relief violates Title VII is based on a faulty reading of selected extracts from the legislative history and from Supreme Court cases.

Nor does race-conscious relief violate the 14th Amendment to the United States Constitution. Analysis of the opinions of the Justices of this Court in University of California Board of Regents v. Bakke, 438 U.S. 265 (1978), Fullilove v. Klutznik; 448 U.S. 448 (1980), and a series of school desegregation cases, reveals that the Constitution permits such relief, and that such relief is crucial for ending discrimination.

The importance of race-conscious relief is highlighted by an examination of the position of women in the

workforce. While women have made substantial gains, they are still overrepresented among the poor and in low-paying jobs. Recent studies show that race and sex-conscious affirmative action has a positive impact on female and minority employment. The fashioning of the most complete relief possible under Title VII, including race and sex-conscious relief, must be continued and encouraged.

ARGUMENT

I. TITLE VII IS A BROAD REMEDIAL STATUTE WHICH PERMITS BOTH MAKE-WHOLE RELIEF TO IDENTIFIED VICTIMS OF DISCRIMINATION AND AFFIRMATIVE RACE-CONSCIOUS RELIEF TO REMEDY CLASS-BASED DISCRIMINATION.

The instant cases present squarely the question whether Title VII permits race-conscious relief. Petitioners and the United States as amicus curiae argue that relief under Title VII may never take race into account; rather, they urge it must be

color-blind and restricted to making whole identified victims of discrimination. This argument is without merit, and conflicts not only with the language and legislative history of Title VII, but also with over twenty years of interpretation of Title VII by this Court and the lower federal courts.

A. Sections 703(j) and 706(g), Read Together, Permit Race-Conscious Relief To Remedy Violations Of Title VII.

Title VII was enacted as a broad remedial statute intended to provide far-reaching relief from discrimination, and to "open employment opportunities for Negroes in occupations which have been traditionally closed to them."[1] The Act tackles the dual problems of individual prejudice and institutionalized systemic

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[1] 110 Cong. Rec. 6548 (1964) (remarks of Sen. Humphrey).

discrimination against minorities and women.[2] As established by this Court in Albemarle Paper Co. v. Moody, 422 U.S. 405 (1975), Title VII was intended to provide both affirmative class-based relief and individual make-whole relief:

> As the Court observed in Griggs v. Duke Power Co., 401 U.S. at

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[2] In 1972, during the debate on the 1972 amendments to Title VII, Senator Moss acknowledged the breadth of discrimination against women, minorities, and other protected clases:

> We have discovered that the promises in the 1964 Civil Rights Act were just a beginning... We have learned since that date that job discrimination is more pervasive and subtle than we supposed; an examination of the discussion in 1964 reveals that we were naive about such discrimination, thinking that voluntary compliance and conciliation would be enough to stop the prejudicial activities of most, and that those who blatantly and defiantly excluded others from the opportunity to work would be stopped by court action. We now know that the problem is much deeper.

Legislative History of the Equal Employment Opportunity Act of 1972, p. 1554.

> 429-430, the primary objective was a prophylactic one: 'It was to achieve equality of opportunities and remove barriers that have operated in the past to favor an identifiable group of white employees over other employees.'..It is also the purpose of Title VII to make persons whole for injuries suffered on account of unlawful employment discrimination.

422 U.S. at 417-18 (emphasis added).

The text of Title VII itself underscores this dual purpose. The statutory sections governing liability and relief, particularly §§ 703(j) and 706(g), contemplate the use of race in fashioning remedies for illegal discrimination.

Section 706(g), the remedial section of the Act, provides in part:

> If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of

> employees, with or without backpay . . . or any other equitable relief as the court deems appropriate. . . .

The section thus leaves the precise method of remedying discrimination largely up to the broad discretion of the district court, which is free to tailor relief to fit the specific discriminatory practice.[3]

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[3] Thus, employment goals have been expressed in terms of specific numbers or ratios, United States v. Wood, Wire and Metal Lathers Int'l Union, Local 46, 471 F. 2d 408, 412-13 (2d Cir.), cert. denied, 412 U.S. 939 (1973) (minimum of 100 work permits to be issued to non-whites; 250 permits to be issued annually on a "one-to--one" basis, black to white, through 1975); Plans may be very detailed, Boston Chapter, N.A.A.C.P., Inc. v. Beecher, 504 F.2d 1017 (1st Cir. 1974), cert. denied, 421 U.S. 910 (1975) (program of race-conscious relief which involved pooling of minorities and non-minorities in four separate groups, with hiring on a one-to-one basis from the first two groups until the minority group was exhausted, followed by hiring from the other two groups until local fire departments attained sufficient minority fire fighters to have a percentage of the force approximately equal to the percentage of minorities in the locality). Alternatively, the precise details may be left very vague, Chisholm v. United States Postal Service, 665 F.2d 482, 498-99 (4th

The only limitation on the power of a court to order relief is articulated in the final sentence of § 706(g) and pertains solely to make-whole relief:

> No order of the court shall require the admission or reinstatement of an individual as a member of a union, or the hiring, reinstatement, or promotion of an individual as an employee... if such individual was refused admission, suspended or expelled, or... discharged for any reason other than discrimination on account of race, color, religion, sex or national origin or in violation of section 704(a) (emphasis added).

42 U.S.C. § 2000e - 5(g) (1978). Petitioners contend that this sentence bars remedial race-conscious relief. However, the language itself of the sentence reflects that the Congress was only imposing a limitation on make-whole relief to individuals, and was not in any way

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Cir. 1981) (U.S.P.S. ordered to make "affirmative efforts" to recruit, appoint and promote qualified black persons, using as its goal the percentage of black persons in the Charlotte U.S.P.S. work force).

circumscribing race-conscious relief which is class based. Firefighters Local Union No. 1784 v. Stotts, 104 S. Ct. 2576 (1984) ("Title VII precludes a district court from displacing a non-minority employee with seniority under the contractually established seniority system absent either a finding that the seniority system was adopted with discriminatory intent or a determination that such a remedy was necessary to make whole a proven victim of discrimination." 81 L.Ed.2d 483, 497 n.9 [emphasis added].)

Moreover, the expansive language of the first sentence of § 706(g), read in conjunction with section 703(j) of the Act, reflects that race-conscious action is contemplated. Section 703(j) provides:

> [n]othing contained in this title shall be interpreted to require any employer...subject to this title to grant preferential treatment to any individual or to any group because of

> the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer .... in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section or other area, or in the available work force in any community, State, section, or other area.

42 U.S.C. § 2000e-2 (1978).

Section 703(j) concerns liability under the Act. It provides that an employer will not be liable under Title VII merely because a racial imbalance, without more, exists among his or her employees.

Petitioners nevertheless erroneously contend that § 703(j) is a limitation upon the remedies which a court may award pursuant to § 706(g). The legislative

history of the section belies that interpretation.[4]

The original version of Title VII passed by the House of Representatives contained no provision like § 703(j). Opponents of the bill argued that, in the absence of a definition of the word "discrimination", federal agencies and courts would equate "discrimination" with "racial imbalance". For example, opponents on the Judiciary Committee produced a Minority Report which noted that the word "discrimination" was nowhere defined and charged that the absence of any reference to "racial imbalance" was a "public relations" ruse and that "the administration intends to rely upon its own construc-

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[4] Amicus Curiae United States, filing on behalf of Petitioners, readily concedes, that 703(j) applies only to liability and not to remedies. Brief of the United States in connection with the Local 93 case at p.13.

tion of 'discrimination' as including the lack of racial balance..." HR Rep. No. 914, 88th Cong. 1st Sess., pt. 1, pp. 67-68 (1963). Those opponents feared that Title VII would be used to force employers to maintain in every job a specific proportion of minorities or women, even in the absence of any past discriminatory practices.

Supporters of Title VII responded that race-conscious action could not be required in the absence of past discrimination. The following colloquy took place between Senators Robertson and Humphrey:

> Senator Robertson: It is contemplated by this title that the percentage of colored and white population in a community shall be in similar percentages in every business establishment that employs over 25 persons...
>
> Sentator Humphrey: The bill does not require that at all... There is no percentage quota.

110 Cong. Rec. 5092 (1964).

Senator Humphrey's remark should not be taken out of context, however. It does not prove, as Petitioners and the United States assert, that race-conscious action was opposed in all circumstances. Rather, it is part of a debate concerning preferential treatment as a remedy for racial imbalance alone.

The dispute was finally resolved by the introduction of a substitute bill, the "Dirksen-Mansfield" amendment, on May 26, 1964. This bill contained § 703(j) which "apparently calmed the fears of most of the opponents; after its introduction, complaints concerning racial balance and preferential treatment died down considerably." United Steelworkers v. Weber, 443 U.S. 193, 247 (1979) (Rehnquist, J. dissenting).

Section 703(j) thus does not prohibit remedial race-conscious affirmative relief;

its focus is on liability rather than permissible remedies. Courts are not, however, precluded from considering racial imbalance as evidence of a Title VII violation,[5] and once a finding is made that certain unlawful employment practices have caused a numerical racial imbalance, a court may order relief pursuant to § 706(g). Thus, to paraphrase § 703(j), while an employer may not be required to grant preferential treatment to any group on the basis of race simply because there is a racial imbalance between workplace and community, if discrimination is established, the broad equitable remedies provided by § 706(g) may be ordered, including the preferential treatment for particular groups to which § 703(j) refers.

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[5] See Teamsters v. United States, 431 U.S. 324, 339-40, n.20 (1977).

Indeed, as this Court pointed out in United Steelworkers v. Weber, 443 U.S. 193, 206 (1979), had Congress meant to prohibit all race-conscious affirmative action, it could easily have changed the wording (and thus the focus) of § 703(j) to "nothing in Title VII shall be interpreted to permit" race-conscious action. In a similar vein, Congress could also have expressly limited § 706(g), instead of furnishing the courts with such broad equitable authority. By the broad wording of § 706(g), courts are empowered to order and approve "appropriate" affirmative action, which "may include, but is not limited to ... hiring of employees ... or any other equitable relief as the court deems appropriate,"[6] as well as make-whole relief

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[6] By 1972 at least four circuits had ruled that Title VII remedies were not restricted to make-whole relief for individual victims of discrimination, and

that a rejection of affirmative action remedies involving goals and timetables "would allow complete nullification of the stated purposes" of the Civil Rights Act of 1964. United States v. IBEW, Local 384, 428 F.2d 144, 149-51 (6th Cir.), cert. denied 400 U.S. 943 (1970). See also, United States v. Ironworkers, Local 86, 443 F.2d 544 (9th Cir.), cert. denied, 404 U.S. 984 (1971); United States v. Sheet Metal Workers, Local 36, 416 F.2d 123 (8th Cir. 1969); Local 53, Asbestos Workers v. Vogler, 407 F.2d 1047 (5th Cir. 1969).

The words "or any other equitable relief" were added to § 706(g) in 1972 with the intention that: " [t]he provisions of this subsection are intended to give the court wide discretion, as has been generally exercised by the courts under existing law, in fashioning the most complete relief possible." (emphasis added). Subcommittee on Labor, 92 Cong., 2d Sess., Legislative History of the Equal Employment Opportunity Act of 1972, 1773-74, 1838-39 (Comm. Print 1972). Congress knew that the courts sanctioned race-conscious class-based prospective relief.

The full text of two cases in which such remedies were approved was placed in the Congressional Record by Senator Javits: United States v. Ironworkers Local No. 86, 428 F. 2d at 144; Contractors Association of Eastern Pennsylvania v. Secretary of Labor 442 F.2d 159 (3rd Cir.), cert. denied, 404 U.S. 854 (1971); 118 Cong. Rec. 1765 (1971).

Moreover, Congress explicitly con-

for individual victims of discrimination such as reinstatement and back pay. The former relief must include race-conscious relief if the goals of the Civil Rights Act - among them "the integration of blacks into the mainstream of American society," Weber, 443 U.S. at 202 - are to be achieved.

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sidered and rejected proposals to alter the prevailing judicial interpretations of Title VII as permitting, and in some circumstances, requiring race-conscious relief.

> In any area where the new law does not address itself, or in any areas where specific contrary intention is not indicated, it was assumed that the present case law as developed by the courts would continue to govern the applicability and construction of Title VII.

Legislative History of the Equal Employment Opportunity Act of 1972, p. 1844. (Comm.-Print 1972). See generally Comment, The Philadelphia Plan: A Study in the Dynamics of Executive Power, 39 Cin. L. Rev. 723, 747-57 (1972).

B. Prior Precedent Of This Court Establishes That Race-Conscious Relief Is Permitted Under Title VII.

In both University of California Regents v. Bakke, 438 U.S. 265 (1978), and United Steelworkers v. Weber, 443 U.S. 193 (1979), a majority of this Court agreed that, to remedy the effects of past discrimination, relief that favored groups previously discriminated against may be appropriate under the Civil Rights Act in general, and Title VII in particular.[7]

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[7] Petitioners' reliance on Los Angeles Dept. of Water & Power v. Manhart, 435 U.S. 702 (1978), Arizona Governing Committee v. Norris, 463 U.S. 1073 (1983), and Connecticut v. Teal, 457 U.S. 440 (1982) for the principle that Title VII does not permit prospective race-conscious relief is misplaced.

In Los Angeles Dept. of Water & Power v. Manhart, 435 U.S. 702 (1978), this Court held that an employer may not discriminate in providing pension benefits to male and female employees on the basis of generalizations about the average woman and the average man. The Court stated that Title VII prohibits employment decisions premised on stereotyped assumptions. 435 U.S. at

707-11. In stating that "[t]he statute's focus on the individual is unambiguous" and that Title VII "precludes treatment of individuals as simply components of a racial, religious, sexual, or national class," this Court in Manhart addressed whether Title VII permits an employer to limit opportunities for employment or employment benefits on the basis of stereotypes about the characteristics of a class. 435 U.S. at 708.

The emphasis in Manhart on protecting the individual from descriptive generalizations about the individual's class is not relevant to a consideration of race-conscious relief, which does not entail any stereotypes of an empirical nature about the qualifications or other factual characteristics of whites or blacks. The only factual assumption underlying prospective race-conscious relief is the finding that the employer has discriminated. Both qualified whites and qualified nonwhites are eligible for employment, promotion, and related benefits under the affirmative action plans challenged in both of the present cases. Race is not used as a proxy for any other characteristic, whereas Manhart concerned the use of sex as a proxy for longevity.

Petitioners also erroneously rely upon Arizona Governing Committee v. Norris, 463 U.S. 1073 (1983). Justice Marshall's opinion in that case drew heavily on the Court's reasoning in Manhart. In Norris, the issue was the permissibility under Title VII of conditioning employee benefits on factual generalizations about the

In Bakke, the Court analyzed the "special admissions program" of the University of California at Davis Medical School which provided that 16 places at the school were to be reserved for qualified black students. Whether this limitation was "described as a quota or a goal", it was "undeniably a classification based on race and ethnic background". 438 U.S. at 289. While four members of the

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characteristics of the class to which an individual belongs. 463 U.S. at 1079-86. Norris, like Manhart, does not control the cases now before the Court.

Connecticut v. Teal, 457 U.S. 440 (1982), is similarly inapposite. That case concerned whether an individual victim of race discrimination was protected by Title VII despite the presence of large numbers of members of that person's race in the work force. This Court answered that question in the affirmative, rejecting the so-called "bottom line" defense. The Court's opinion, written by Justice Brennan, must be read in the context of the question then before the court, and does not apply to a race-conscious plan devised as a remedy for proven prior discrimination.

Court[8] held that "whether race can ever be used as a factor in an admissions decision is not at issue in this case", id. at 411, the other five, Justices Powell, White, Brennan, Marshall and Blackmun (the "majority") held that race could be taken into account in certain circumstances. As the latter four justices stressed in their opinion, the "central meaning" of the Court's different opinions was that:

> [g]overnment may take race into account when it acts not to demean or insult any racial group, but to remedy disadvantages cast on minorities by past racial prejudice, at least where appropriate findings have been made by judicial, legislative, or administrative bodies with competence to act in this area.

Id. at 325. Their opinion, which stressed that Title VI permitted race-conscious action to the extent that it was permitted

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[8] Stevens, Stewart, Rehnquist, J.J., Burger, C.J.

by the Constitution, accepted that "racially neutral remedies for past discrimination were inadequate where consequences of past discriminatory acts influence or control present decisions." Id. at 362. Justice Blackmun restated this principle forcefully in his own separate opinion:

> I suspect that it would be impossible to arrange an affirmative action program in a racially neutral way and have it successful. To ask that this be so is to demand the impossible. In order to get beyond racism, we must first take account of race. There is no other way. And in order to treat some persons equally, we must treat them differently.

Id. at 407.

While the Court's primary focus was on Title VI and the Constitution, references to Title VII in the opinions reflect that the Court recognized that racial preferences were permissible remedies under Title VII. Justice Powell, noting that

"[t]he state certainly has a legitimate and substantial interest in ameliorating, or eliminating where feasible, the disabling effects of identified discrimination", id. at 307, observed that "Title VII principles support the proposition that findings of identified discrimination must precede the fashioning of remedial measures embodying racial classifications." Id. at 308, n. 44. (Emphasis added). Justices White, Brennan, Marshall and Blackmun wrote that:

> [t]his Court has construed Title VII as requiring the use of racial preferences for the purpose of hiring and advancing those who have been adversely affected by past discriminatory employment practices, even at the expense of other employees innocent of discrimination.

Id. at 340-41, n.17. (Emphasis added).

In United Steelworkers v. Weber, the

majority[9] held that Title VII should not be interpreted to condemn a private, voluntary, race-conscious affirmative action plan which reserved for black employees 50% of the openings in a craft-training program until the percentage of black craftworkers in the plant equaled their representation in the local labor force. While the Court stated that the decision did not pertain to what a court might order to remedy a violation of the Act, it did state that:

> an interpretation of [§§ 703(a) and (d)] that forbade all race conscious affirmative action would "bring about an end completely at variance with the purpose of the statute and must be rejected."

443 U.S. at 202 [citation omitted].

The Court stated further:

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[9] The majority included Justices Brennan, Stewart, White, Marshall and Blackmun. Justices Powell and Stevens took no part in the consideration or decision.

> It would be ironic indeed if a law triggered by a nation's concern over centuries of racial injustice and intended to improve the lot of those who had "been excluded from the American dream for so long"... constituted the first legislative prohibition of all voluntary, private, race-conscious efforts to abolish traditional patterns of racial segregation and hierarchy.

Id. at 204 (citation omitted).

Petitioners' and the United States' argument that a race-conscious remedy is not permissible as part of a consent decree or court order under Title VII where there has been a finding of discrimination is logically inconsistent with the Weber ruling. Not only does the argument ignore the plain words of Weber but also it posits a situation in which actual violators of Title VII would be expressly forbidden from fully rectifying the effects of their discriminatory actions, while well-meaning employers who may have committed no Title

VII violation would be encouraged and allowed to engage in race-conscious employment practices. Neither this Court, nor Congress, could have intended such an inconsistent result.

Petitioners erroneously rely on this Court's ruling in Firefighters Local Union No. 1784 v. Stotts, 104 S.Ct. 2576 (1984) to support their position.[10] At issue in Stotts was the legality of an injunction issued by the district court, and upheld by the Court of Appeals, which prevented the firing of employees by the Memphis Fire Department on a "last hired, first fired" basis. The district court found that the proposed layoffs would have a racially discriminatory effect and would undermine the progress made in integrating

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[10] See Brief of Petitioner Local 28 at p. 17, Brief of Petitioner Local Number 93 at p. 19; see also Brief for the United States as Amicus Curiae at p.13.

the fire department by a consent decree which provided for race-conscious hiring policies. In striking down the injunction, this Court purposely confined its decision to the question of make-whole relief for actual discriminatees, and thus to an analysis of the final sentence of § 706(g) which refers only to relief for individuals rather than classes.[11] The majority concluded that the final sentence of § 706(g) authorizes a Court "to provide make whole relief only to those who have been actual victims of illegal discrimination. . ." Stotts, 104 S.Ct. at 2589. (Emphasis added) In the cases sub judice, which do not involve make-whole relief, the statute's limitation of such relief "only to... actual victims of discrimination" is irrelevant.

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[11] See supra, p. 8.

Furthermore, the disagreement between the majority and the dissent in Stotts regarding the proper characterization of the relief awarded by the district court as prospective or make-whole relief underscores the narrow scope of the prohibition contained in § 706(g). The majority viewed the injunction against minority layoffs as individual awards of retroactive seniority and hence make-whole relief to specific members of the class, governed by the final sentence of section 706(g). The dissent viewed the injunction as prospective race-conscious relief, since the city remained free to lay off any individual black as long as a certain overall percentage remained on the force. Id. at 2606.

Moreover had the majority really intended to condemn class-based, race-conscious relief, it would surely have questioned the validity of the underlying

consent decree which included hiring and promotion goals to redress past discrimination in the Fire Department. However, the legality of the decree, which was analyzed extensively and upheld by the Sixth Circuit was not commented on by this Court. See Stotts, 679 F.2d 541 (6th Cir. 1982).[12]

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[12] Stotts must also be distinguished from the instant cases by its narrow focus on the issue of abrogation of seniority rights. Neither of these cases involves any abrogation of seniority rights. See Vanguards of Cleveland v. City of Cleveland, et al. 735 F. 2d 479, 486 (1985); E.E.O.C. v Local 638...Local 28 of Sheetmetal Workers, 735 F. 2d 1172, 1186 (1985). In Stotts, the Court analyzed the relationship of section 703(h) and section 706(g). It concluded that section 703(h) protects bona fide seniority systems which are not adopted with discriminatory intent, even when they have a discriminatory impact on a minority group. Section 703(h) like section 703(j), thus speaks only to substantive liability. The Court went on to say, however, that this protection was not total; on the facts in Stotts non-minority employees with seniority could be displaced by minority employees, where grants of retroactive seniority would be appropriate to make whole individuals who

Petitioners' reliance on Teamsters v. United States, 431 U.S. 324 (1977) is similarly misplaced. Teamsters, like Stotts, involved the interrelation of seniority and make whole relief for individual victims of discrimination. Minority drivers, discriminated against prior to the effective date of Title VII by being excluded from the "line driver" position, found that on transfer to those positions the company's seniority plan limited competitive seniority to the length of time an employee had been a line driver at a particular terminal.

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could prove that there was a discriminatory reason for them personally being the last hired. 104 S. Ct. at, ___, n. 9, ___, 81 L.Ed. 2d 483, 497; O'Connor, J. concurring at ___, 81 L. Ed 2d 483, 505. The Court's discussion of section 706(g) thus concentrated on proof of individual discrimination in the context of a bona fide seniority system.

However, while forbidding retroactive seniority to anyone other than actual discriminatees, the Court noted without disapproval that the company had entered into a consent decree providing that, once the injury to the individual victims of discrimination had been remedied, it would fill future vacancies at its terminals by hiring one Negro or Spanish-surnamed person for every white person until the percentage of minority group workers at the terminal equaled the percentage of minority group members in the population of the metropolitan area surrounding the terminal. 431 U.S. at 330, n. 4. The Court went on to note that "[t]he federal courts have freely exercised their broad equitable discretion to devise prospective relief designed to assure that employers . . . eliminate their discriminatory practices and the effects there-

from . . . . In this case prospective relief was incorporated in the parties' consent decree." Id. at 361, n.47. (emphasis added)[13] The foregoing demonstrates that Title VII both permits and contemplates race-conscious class-based relief.

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[13] For over twenty years, the lower federal courts have also interpreted Title VII as providing the courts with broad equitable authority to design race-conscious action to eliminate the vestiges of past discrimination. See, e.g., Boston Chapter, NAACP, Inc. v. Beecher, 504 F.2d 1017, 1027-1028 (1st Cir. 1974), cert. denied, 421 U.S. 910 (1975); Rios v. Enterprise Ass'n Steamfitters Local 638, 501 F.2d 622, 629 (2d Cir. 1974); E.E.O.C. v. American Tel. & Tel. Co., 556 F.2d 167, 174-77 (3rd Cir. 1984), cert. denied, 438 U.S. 915 (1977); Chisholm v. United States Postal Service, 665 F.2d 482, 499 (4th Cir. 1981); United States v. City of Alexandria, 614 F.2d 1358, 1362-66 (5th Cir. 1980); United States v. City of Chicago, 663 F.2d 1354, 1356 (7th Cir. 1981) (en banc); Firefighters Institute v. City of St. Louis, 616 F.2d 350, 364 (8th Cir. 1980), cert. denied, 452 U.S. 938 (1981); United States v. Lee Way Motor Freight, Inc., 625 F.2d 918, 944 (10th Cir. 1979; Thompson v. Sawyer, 678 F.2d 257, 294 (D.C. 1982).

II. CLASS-BASED RACE CONSCIOUS RELIEF IS CONSTITUTIONAL UNDER THE FOURTEENTH AMENDMENT

Petitioner Sheet Metal Workers Union urges that the class based, race-conscious relief ordered herein to remedy the years of intentional discrimination practiced by the Union violates the equal protection clause of the Fourteenth Amendment. The Union urges, inter alia, that because the remedial plan at issue benefits more than individual identifiable victims of discrimination, it is unconstitutional. (Pet.-brief, p. 30) The Union's view, however, ignores the teachings of this Court and is nothing more than a thinly veiled attempt by the Union to perpetuate the intentional discrimination in which it has continued to engage. As Justice Blackmun stated in University of California Regents v. Bakke, 438 U.S. 265 (1978) [Bakke], "We cannot -- we dare not -- let the Equal Protection

Clause perpetrate racial supremacy." 438 U.S. at 407. An analysis of this Court's opinions in this area reveals not only that race-conscious remedies are constitutional but also that this Court considers them crucial for the purpose of ending discrimination.

In Bakke, as in Fullilove v. Klutznick, 448 U.S. 448 (1980) [Fullilove], this Court examined race-conscious affirmative action plans for their adherence to Fifth and Fourteenth Amendment principles. In Bakke, the University of California's "special admissions program" was scrutinized, while the "Minority Business Enterprise" ("MBE") provision of the Public Works Employment Act (§ 103(f)(2)) was examined in Fullilove. In both cases the programs were introduced in order to remedy what was perceived as significant underrepresentation of minorities in particular

fields of endeavor. Neither plan required that an individual, to qualify for the benefits of the program, demonstrate that he or she had been individually discriminated against by the medical school or the public works project to which application was made.

While this Court was unable to agree on a majority opinion in either case, it did recognize that under certain circumstances remedial race-conscious relief is justified. In separate opinions, the Justices articulated individual standards of scrutiny for determining when race-conscious remedies may be deemed appropriate.[14]

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[14] Justices Stevens, Burger, Stewart and Rehnquist did not reach the constitutional issue in Bakke and decided the case instead by reference to Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d. They did, however, offer some guidance in Fullilove. See discussion infra.

Justice Powell, in his opinions,[15] advocated strict scrutiny toward race-conscious plans. He cautioned that a race-conscious remedy would not be considered "compelling" unless the "appropriate" governmental authority determined that a constitutional or statutory violation had occurred, there existed some illegal discrimination in the past which justified a remedy at present, and the method selected to achieve the legitimate goal of addressing and eradicating identifiable past discrimination be "narrowly drawn" to fulfill the governmental purpose, although the method need not be "limited to the least restrictive means of implementation." Fullilove, 448 U.S. at 498.

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[15] Justice Powell wrote for the Court in Bakke by virtue of his swing vote and offered his own separate opinion applying his Bakke method of analysis in Fullilove.

While Justice Powell had reservations about race-conscious remedies, he clearly appreciated their necessity: "The time cannot come too soon when no governmental decision will be based upon immutable characteristics of pigmentation or origin.- But in our quest to achieve a society free from racial classification, we cannot ignore the claims of those who still suffer from the effects of identifiable discrimination." Id. at 516.

In their joint separate opinions, Justices Brennan, Marshall and Blackmun[16] interpreted the equal protection clause to permit an even wider range of race-conscious relief for the benefit of historic victims of discrimination. They

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[16] Justice White also joined with these justices in their Bakke opinion, but joined with Chief Justice Burger in Fullilove.

employed an "intermediate"[17] rather than "strict" standard of scrutiny to review such action, and readily accepted the proposition that the Constitution need not be color blind. Bakke, 438 U.S. at 336.[18] The Justices held that an articulated purpose of remedying the effects of past discrimination was a sufficiently important interest to justify the use of racial classifications. Id. at 520; Bakke, 438 U.S. at 362.[19]

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[17] This intermediate standard of scrutiny had been used in sex discrimination cases. See e.g. Mississippi University for Women v. Hogan, 458 U.S. 718 (1982).

[18] The Justices noted in Fullilove that their analysis in the Fifth Amendment area was the same as that under the Fourteenth Amendment. 448 U.S. at 517, n.2, quoting Bakke, 438 U.S. at 367, n.43.

[19] The Justices further recognized that the very principles which outlawed the "irrelevant or pernicious use of race were inapposite to racial classifications that provide benefits to minorities for the purpose remedying the present effects of

The legitimacy of race-conscious relief was also acknowledged by Chief Justice Burger and Justice White in their joint opinion in Fullilove.[20] The Justices recognized the need for "careful judicial evaluation" to assure that any program employing racial or ethnic criteria to remedy the present effects of past discrimination is "narrowly tailored to the achievement of that goal." 448 U.S. at 480.[21]

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past discrimination." 448 U.S. at 518.

[20] Justice Powell joined in this opinion in addition to his own separate opinion.

[21] The Justices' analysis proceeded primarily in three steps. At the outset, they determined that the goals of the plan be legitimate. They determined further that the objectives must be within the powers of Congress as the governmental body which drafted the legislation. Their final inquiry concerned whether a limited use of racial and ethnic criteria could be a constitutionally permissible means for achieving legislative objectives in light of the equal protection component of the

In accordance with the views of their colleagues, Justices Burger and White generally accepted the concept that in a "remedial context", a governmental body need not be oblivious to race in fashioning a remedy. Id. at 482. The failure of non-minority firms to receive certain contracts was viewed as an incidental consequence of the program: "such a sharing of the burden" was not considered impermissible. Id. at 484, quoting Franks v. Bowman Transportation, 424 U.S. 747, 777 (1976).

The majority of the members of this Court thus have regarded race-conscious remedial plans as constitutional provided that they meet certain standards. The

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due process clasue of the Fifth Amendment (in the case of Federal legislation). 448 U.S. at 473. The Justices were particularly concerned that the means employed be "narrowly tailored" to achieve those objectives. Id. at 487, 490.

Court, in its various voices, has required: 1) that the body taking the action be competent to articulate and respond to the purpose served by the action; 2) that the governmental interest or objective at stake be important or compelling; 3) that the means adopted be substantially or closely tailored to serve the governmental purpose so as not to trammel unnecessarily the interests of innocent third parties; and 4) that the action stigmatize no one.[22]

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[22] In neither Bakke nor Fullilove were there findings that the specific medical school or a specific public works project had discriminated against minorities. Nonetheless, a majority of this Court sanctioned race-conscious relief as enumerated supra. In Local 28 the facts as found by the district Court are far more egregious. As detailed in respondent's brief, and the brief of Amicus NAACP LDF, Local 28 itself engaged in intentional and systematic discrimination of the most repugnant sort. Thus, the justification for strong remedies in the instant case is particularly compelling.

Petitioner Sheet Metal Workers Union fails to analyze in any detail this Court's decisions which consider the constitutionality of race-conscious plans. Instead, petitioner merely states in a conclusory fashion that "this Court has not approved racial classifications unless (1) Congressional findings have been made that members of one group have suffered discrimination; (2) the legislation is tailored to benefit only the individual victims; and (3) although the statute may confer benefits unavailable to others, it does not trammel their fundamental rights. [Citation omitted; emphasis added.]" (Petitioner's Brief, p. 30).

Petitioner's conclusion that a race-conscious remedy must, inter alia, be tailored to benefit only individual victims is baffling, since the cases which analyze the constitutionality of affirmative relief

specifically say otherwise. Indeed, many of the Justices give strong endorsements to class-based, race-conscious relief which is not at all "victim specific."

The Public Works statute at issue in Fullilove which required that 10% of public works funds be set aside for minority business enterprises, did not require that only minority businesses which had been actual victims of discrimination could qualify for the set-aside. On the contrary, the only statutory limitation imposed on the set-aside was that it be granted to "citizens of the United States who are Negroes, Spanish-speaking, Orientals, Indians, Eskimos and Aliens." § 103(f)(2) of the Public Works Employment Act of 1977. Similarly, the regulations promulgated thereunder did not limit in any way the beneficiaries of the race-conscious plan to actual identifiable victims of

discrimination. The operative fact was membership in one of the protected groups.

Justices Burger, White and Powell, in upholding the constitutionality of the remedial plan in Fullilove, fully recognized that the plan did not contemplate conferring benefits only on identifiable victims of discrimination. They acknowledged that a business enterprise sufficiently composed of members of one of the enumerated ethnic groups qualified that business for remedial benefits. 448 U.S. at 458-59. Nowhere in their opinion did they suggest that the enterprise must have been the victim of discrimination to qualify for relief.

Nor did the Justices limit the relief available to make-whole relief. They specifically found that the set-aside in Fullilove which they approved was prospective in nature, stating that "[o]ur

review of the regulations and guidelines governing administration of the MBE provision reveals that Congress enacted the program as a strictly remedial measure; moreover, it is a remedy that functions prospectively, in the manner of an injunctive decree." 448 U.S. at 481.

Similarly, this Court in Bakke condoned race-conscious class-based relief, and specifically declined to limit such relief to identifiable victims. The majority of this Court in Bakke, inter alia, reversed the California Supreme Court's judgment which precluded the future consideration by the defendant of the race of applicants, holding instead that such consideration could be appropriate. This Court approved giving special consideration to all applicants who were members of a class that had suffered discrimination, regardless of whether or not the indi-

vidual was a specific victim of discrimination.

Justices Brennan, White, Marshall and Blackmun, in their joint opinion, made the race-conscious class-based nature of the relief clear:

> Congress can and has outlawed actions which have a disproportionately adverse and unjustified impact upon members of racial minorities and has required or authorized race-conscious action to put individuals disadvantaged by such impact in the position they otherwise might have enjoyed. [citations omitted]. Such relief does not require as a predicate proof that recipients of preferential advancement have been individually discriminated against; it is enough that each recipient is within a general class of persons likely to have been the victims of discrimination. (emphasis added).

Bakke, 438 U.S. at 363.

In light of the fact that this Court has approved race-conscious remedies, Petitioner's position that remedial plans

which consider race are unconstitutional is untenable. Furthermore, Petioner's argument defies logic. An actual identified victim of discrimination who is granted a remedy is not granted a so-called race-conscious remedy. Rather, that individual is granted relief to remedy a wrong that has been inflicted specifically on him or her. The victim's race is not at issue in determining whether or not some remedy is appropriate. As has already been demonstrated, however, this Court has approved race-conscious remedies. Thus, this Court must necessarily have been sanctioning relief broader in scope than that which has traditionally been available to individual victims.

The school desegregation cases decided by this Court substantiate that class-based race-conscious relief is constitutional. In Green v. County School Board, 391

U.S. 430 (1968), a unanimous Court, rejecting as ineffectual a racially neutral "freedom-of-choice" school desegregation plan, ordered the school board to take immediate action to desegregate its two schools, a task impossible without attention to race. Three years later, in Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971), this Court again unanimously affirmed the power of the lower courts to order race conscious teacher and student assignments to integrate the schools in districts that had defaulted in their duty to build unitary systems. Swann further recognized that school authorities exercise broader powers than courts in devising desegregation plans and that they might legitimately decide "that in order to prepare students to live in a pluralistic society each school should have a prescribed ratio of Negro to White

students reflecting the proportion for the district as a whole." 402 U.S. at 16. This Court went on to hold in McDaniel v. Barresi, 402 U.S. 39 (1971), that school authorities could voluntarily desegregate their schools by drawing attendance zones so as to improve racial balance.

Taken together, these school desegregation cases stand for the proposition that courts, school boards and other arms of the government may, and in some circumstances must, make reference to race in remedying equal protection violations recognized by this Court. They further reflect that race-conscious remedies may not only be class-based but also prospective in nature.

Moreover, the remedial plans sanctioned in the school desegregation cases did not in any way limit the plans' benefits to students who were the indi-

vidual victims of discrimination, or who had previously attended segregated schools. Future as well as current entrants into the school system were beneficiaries of the plans. In every respect these plans conferred benefits upon classes of people, rather than upon individual victims of discrimination.

This Court's prior decisions make it irrefutable that race conscious relief afforded to classes of people, rather than only to individual victims, is constitutional. Thus, the argument of Petitioner Sheet Metal Workers Union must be rejected, and the opinion of the Second Circuit upheld.

III. THE HISTORIC AND CONTINUING LIMITATION OF WOMEN'S EMPLOYMENT OPPORTUNITIES REQUIRES AND JUSTIFIES RESORT TO CLASS-BASED REMEDIES

At issue in the instant cases is the validity of class-based race-conscious

remedies. The discrimination which minorities have historically suffered necessitates and justifies resort to such remedies. Women, particularly women of color, have likewise been denied equal rights and equal employment opportunities. Sex-based remedies have helped to rectify the problems faced by women, but far greater strides must be made. Unless this Court continues to sanction the use of class-based remedies, women, like minorities, will be denied equal employment opportunity. Bearing in mind the broad impact that this Court's decisions in the instant cases will have on women, a review of their economic and employment status will help put the issues presented in broader perspective.

A. Women of All Races Have Sufferred Historic Discrimination in Employment and are Overrepresented in Low Paying Clerical and Semi-professional Jobs.

Discrimination against women in the workplace is not a new phenomenon. It is the product of a society that traditionally limited women to the role of homemaker and a legal system that maintained this exclusion by treating women as little more than appendages to their husbands.

Since the passage of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq., women's present employment opportunities are no longer legally restricted. But the underlying attitude that women do not "belong" in the workplace remains prevalent. Despite dramatic increases in their workforce participation, U.S. Department of Labor, Women's Bureau 20 Facts on Women Workers (1984) [hereinafter cited as 20 Facts] women have been far less successful in gaining entry to male-dominated professions. Thus clerical work

remains the largest occupation for women. U.S. Department of Labor, Women's Bureau, The United Nations Decade for Women, 1976-1985: Employment in the United States (July 1985) [hereinafter cited as Decade for Women]. While women have begun to make inroads into formerly male occupations,[23] they still represent only a tiny fraction of employees in traditionally "male jobs," which are usually better paid then traditionally female jobs.

Job segregation pervades all sectors

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[23] By 1981 there were more than 802,000 women employed in the skilled trades, more than double the number in 1970 and almost four times the number in 1960. 20 Facts. Women have also made gains in other predominantly male professions, such as law, medicine and engineering. The category of bank officers and financial managers is the fastest growing managerial occupation for women. U.S. Department of Labor, Women's Bureau, Time of Change: 1983 Handbook on Women Workers (1983) [hereinafter cited as Time of Change].

of our economy, as is reflected by the following chart:

Jobs	% Female
Nurse	95.8
Kindergarten & Prekindergarten Teacher	98.2
Dental Hygienist	98.6
Secretaries	99.0
Child Care Workers	96.8
Cleaners & Servants	95.8
Receptionists	96.8
Construction Workers	7.0
Mechanical Engineers	2.8
Airplane Pilots & Navigators	2.1
Firefighters	1.0
Tool & Die Makers	1.2
Electricians	1.5
Brickmasons & Stone Masons	.3

Handbook of Labor Statistics, U.S. Dep. of Labor, Bureau of Labor Statistics (June 1985) [herinafter cited as Handbook 1985]

The occupations involved in the instant cases well illustrate the problem. The sheetmetal workers profession ranks among the most sex-segregated industries. In 1972 only 0.7% of the sheetmetal workers and tinsmiths in the United States were women. Time of Change, p. 59. By 1981

that figure had risen only to 3.2%. Time of Change, p. 59. In 1983, women comprised a scant 4.5% of the sheetmetal workers labor force. Handbook 1985, p. 52.

In 1972 only 0.5% of the firefighters in the United States were women. Nine years later, in 1981, women had only made marginal gains, representing only 0.9% of the firefighter force. In 1983 the figure had risen to a mere 1.0%. Handbook 1985

Women will not achieve economic equality until job segregation is eliminated and women have equal access to all employment opportunities. Only with sex and race-conscious remedies will those goals be achieved.

For women of color, who suffer double discrimination based on sex and race or national origin, the problems of job segregation and low pay are especially pronounced. While historically women of

color, particularly black women, were a part of the paid labor force years before white women entered in any numbers, they have not reaped the benefits of their greater labor force participation.

As early as 1890, two out of five black women over the age of 10 were in nonfarm occupations. By 1950 black female participation in the labor market had increased to 46% and this figure rose to 49.5% in 1967 and to 53% in 1978. Julianne Malveaux, Low Wage Black Women: Occupational Descriptions, Strategies for Change, p. 4, January 1984.[24] By 1983 more than 70% of black women between the ages of 25 and 44 were workers. Low Wage Black Women, p. 5.

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[24] Unpublished paper prepared for the NAACP Legal Defense and Education Fund, Inc. [hereinafter cited as Low Wage Black Women].

Notwithstanding their high labor force participation, black women also suffer, from occupational segregation and wage discrimination. Although black women are leaving the private household domestic service in which they have predominated in the past,[25] nearly 60% of all black women are employed in clerical and service occupations. Low Wage Black Women, p. 8. Even in traditionally female occupations, black women hold the lowest paying positions: welfare services aides, child care workers, and food counter workers. Low Wage Black Women, pp. 12-13.

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[25] In 1980, 52% of black women worked in domestic and personal service occupations. By 1930, nearly two-thirds of black women workers performed domestic and personal service jobs. By 1940, 70% of all black women worked in domestic and personal service jobs, with about 60% working in private homes. By 1960 the proportion of black women in domestic jobs declined to 57%. Between 1960 and 1981, the proportion of black women domestic workers decliend further. Low Wage Black Women.

Black women have begun to improve their employment status to some degree. Between 1970 and 1982, they increased their proportions in a number of professional and technical jobs, as accountants, nurses, dieticians and engineering and science technicians. Decade for Women. Black women have, however, made few inroads into traditionally male professional occupations: fewer than 2% of all attorneys are black women, and they are fewer than 3% of all physicians, scientists, computer specialists or architects. Low Wage Black Women, p. 13. Black women's earnings reflect their status in the workplace: they earn about 59 cents for every dollar earned by a man. U.S. Department of Labor Statistics, Employment and Earnings, January, 1985 [hereinafter cited as Employment and Earnings, January, 1985].

The profile of Hispanic women workers is similarly bleak. Hispanic women are also predominantly clustered in low-paid, semiskilled occupations. Although the large percentage of Hispanic women employed as clericals is similar to the situation among all women, they are employed to a greater extent than are other women in operative jobs -- as dressmakers, assemblers and machine operators. Time of Change. Hispanic women earn approximately 55 cents for every dollar earned by a man. Employment and Earnings, January, 1985.[26]

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[26] About 2 million Asians, Pacific Islanders and Native Americans make up the remainder of female workers of color. The leading occupations of Native American women include secretaries, food service workers, teachers, and cleaning and building service workers. Occupations for Asian and Pacific Islander women include work as technicians, secretaries, financial sales, machine operators and teachers. Decade for Women.

Women's employment status translates directly into poverty. Women represented 61% of all persons aged 16 and over who had incomes below the poverty level in 1983. The proportion of poor families maintained by women was 47% in 1983, up from 43 percent. Nearly 72% of black families with incomes below the poverty level were headed by women. Forty six percent of Hispanic families, and 37% of white families were in similar situations. 20 Facts. The over-representation of women -- especially women of color -- among the poor in the country is another indication that the tiny gains that women have achieved in the workplace are simply not enough.

B. Affirmative Action Has Proven To Be An Effective Tool In Ensuring That Women Achieve Equal Employment Opportunity.

Race-conscious relief, rather than a "color-blind" remedial approach to discrimination, is needed to help women achieve equal employment opportunity. Affirmative action, sparked by meaningful enforcement of the anti-discrimination laws, works. The progress achieved by women and minorities males in the workplace has been due in large part to vigorous enforcement of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, et seq., and to enforcement of Executive Order 11246, as amended. Recent studies confirm these observations.

In a 1983 study of the Federal enforcement of Executive Order 11246, as amended, comparing the status of women and minorities in contractor and noncontractor establishments, the author concluded that the contract compliance program has had a positive impact on female and minority employment between 1974 and 1980. Jonathan

Leonard, The Impact of Affirmative Action, University of California, Berkeley, 1983, p. 362. The study also points to litigation under Title VII as a positive factor in improving the employment status of minority males and women.[27]

In late 1984, a study published by the Potomac Institute found that between 1970 and 1980, as a result of affirmative action, women and blacks experienced significant gains in the job market, with most of the increase concentrated in higher paying jobs. Herbert Hammerman, A Decade of New Opportunity...Affirmative Action in

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[27] In 1984 the OFCCP released a study entitled Employment Patterns of Minorities and Women in Federal Contractor and Noncontractor Establishments, 1974-1980, also comparing the status of women and minorities in contractor and noncontractor establishments. The study concluded that "Executive Order establishments posted significantly greater gains in employment in and advancement of women and minorities than those not covered..." Id. p. 37.

the 1970s, the Potomac Institute, October 1984. These studies demonstrate that race-conscious and sex-conscious affirmative action is an effective and necessary tool to achieve equal employment opportunity for workers who historically have suffered discrimination.

CONCLUSION

Based upon the foregoing Amici respectfully urge this Court to affirm the decisions of the Second and Sixth Circuits.

Respectfully submitted,

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APPENDIX

INTEREST AND DESCRIPTION OF AMICI CURIAE

The NOW Legal Defense and Education Fund ("NOW LDEF") is a non-profit civil rights organization that performs a broad range of legal and educational services nationally in support of women's efforts to eliminate sex-based discrimination and secure equal rights. NOW LDEF was established in 1970 by leaders of the National Organization for Women. A major goal of the NOW LDEF is eliminating barriers that deny women economic opportunities. In furtherance of that goal, NOW LDEF has participated in numerous cases to secure full enforcement of laws prohibiting employment discrimination, including cases before this Court involving challenges to the use of affirmative action remedies to achieve equal employment opportunity.

California Women Lawyers is a state-wide association representing the interests of the approximately fifteen thousand women lawyers in the State of California. It has both individual members and twenty-seven local affiliates throughout the state. CWL is dedicated to education and advocacy regarding legal rights of women and equal treatment for women.

Employment Law Center is a project of the Legal Aid Society of San Francisco. The Center is committed to providing legal services to women and minorities in order to vindicate their right to equal employment opportunity.

Equal Rights Advocates, Inc. is a San Francisco-based public interest legal and educational corporation specializing in sex discrimination. It has a long history of interest, activism, and advocacy in all areas of the law which affect equality

between the sexes. ERA, Inc. has been particularly concerned with gender equality in the work force because economic independence is fundamental to women's ability to gain equality in other aspects of society. ERA, Inc. believes that affirmative action is a necessary and appropriate step if women and minorities are to achieve equal opportunity in the workplace.

The League of Women Voters of the United States (LWVUS, or League) is a national, nonpartisan, non-profit membership organization with a current membership of 110,000 in more than 1250 state and local Leagues in all 50 states, the District of Columbia, Puerto Rico and the Virgin Islands. Since being founded in 1920, the LWVUS's purpose has been to promote political responsibility through informed and active participation of citizens in government.

The LWVUS believes that no person or group should suffer legal, economic or administrative discrimination, and that government and private institutions share responsibility to provide equal opportunity in employment. As part of its commitment to the eradication of employment discrimination against minorities and women, the LWVUS has participated as an amicus in support of the use of affirmative action remedies in a number of major cases.

The National Women's Law Center is a non-profit legal advocacy organization dedicated to the advancement and protection of women's rights and to the corresponding elimination of sex discrimination from all facets of American life. Since 1972, the Center has worked to secure equal opportunity in the workplace through full enforcement of Title VII of the Civil Rights Act of 1964, as amended, and other civil rights

statutes, and through the implementation of effective remedies for longstanding employment discrimination against women and minorities.

The Northwest Women's Law Center is a non-profit public interest law organization concerned with securing equal rights for women through the law. It has participated in federal and state litigation and public education efforts directed toward ending unlawful discrimination on the basis of sex. The Law Center has analyzed and commented on local affirmative action plans designed to eliminate past effects of discrimination toward women and minorities. It believes affirmative action is an effective tool toward realizing equality.

Wider Opportunities for Women, Inc. (WOW) is an independent, non-profit, tax-exempt organization which, since 1964, has worked to expand employment opportuni-

ties for women. WOW has provided job counseling, development, referral and training for thousands of women and hundreds of employees. WOW also conducts a national program linking over 80 women's employment organizations throughout the country for increased advocacy on women's employment issues. WOW is strongly supportive of affirmative action as a means of moving women out of poverty toward economic self-sufficiency.

Women Employed is a national organization, based in Chicago, with a membership of 3,000 women workers. Over the past ten years the organization has assisted working women with problems of sex discrimination. Women Employed also monitors the enforcement, actions and policies of the EEOC and Office of Federal Contract Compliance Programs with regard to a broad range of sex discrimination issues.

The Women's Law Fund, Inc. is a non-profit corporation with the primary purpose of bringing women into full participation in all activities of American life by serving them their full legal rights under the law. The Fund is particularly concerned with the problem of achieving equal employment opportunity for women, and, through its funding of litigation, Women's Law Fund, Inc. seeks to assist all women who are discriminated against because of their sex through illegal employment practices.

Millions of American working women are presently being denied equal opportunities in the job market. Despite high economic motivation to work, women, like minorities, continue to be adversely affected by discriminatory hiring, promotion and lay-off systems. Significant progress has been made where employers, employees and

their bargaining representatives are able to work together to further the goal of equal employment opportunity for all. It is timely for the Court, in the instant case, to recognize the constitutionality of voluntary affirmative action plans as one means of preserving and continuing the progress towards reaching this extremely important goal.

The National Bar Association, founded in 1925, is a professional membership organization which represents more than 10,000 black attorneys, judges and law students. Its purposes include protecting the civil and political rights of all citizens. The NBA, through its Women Lawyers Divisions, has been actively involved in issues concerning equal employment opportunity. The Greater Washington Area Chapter of the Women Lawyers Division is particularly dedicated

to addressing the needs of women in the Washington, D.C. metropolitan area.

Women's Law Project is a non-profit law firm dedicated to advancing the status of women through litigation and public education. Founded in 1973, the Women's Law Project has conducted major litigation on behalf of women in the areas of reproductive freedom, family law, discrimination in employment, credit and insurance, and the rights of female prisoners.

The Women's Law Project is especially concerned with the problems of employed women, and challenged through litigation and public education layoff policies which disproportionately affect women or minorities. Women's Law Project believes in the validity and necessity for sex- and race-based preferences to remedy handicaps of past discrimination and to preserve those gains made by women and minorities in

recent years. Therefore, the Women's Law Project joins with other amici in support of the decision of the courts below.

The Women's Legal Defense Fund (WLDF) is a non-profit, tax exempt membership organization, founded in 1971 to provide pro bono legal assistance to women who have been discriminated against on the basis of sex. The Fund devotes a major portion of its resources to combatting sex discrimination in employment, through litigation of significant employment discrimination cases, operation of an employment discrimination counselling program, public education, and agency advocacy before the EEOC and other federal agencies that are charged with enforcement of equal opportunity laws. A major priority for WLDF is its project of Women of Color. In its pursuit of equality for both women and minorities, WLDF is committed to the use of affirmative

action to achieve equal employment opportunity.