

STATE OF MICHIGAN LAW DAY 2004 ESSAY CONTEST

“To Win Equality by Law”

8th Grade – 1ST Place - By Christopher Copple

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Suppose that a male job candidate is slightly better qualified than a female candidate for a particular job. Should an employer be allowed to hire a lesser-qualified female candidate on the basis that the company has an under-representation of female employees?

I strongly believe that the hiring of a job candidate should be based on merit rather than on correcting a perceived under representation. Anything less would be a violation of the fundamental beliefs of justice and equality, as well as, an infringement of the individual rights of both the employer and the candidate.

When it comes to United States history, there is a pattern of discrimination against racial minorities and women. The judicial and legislative victories of Brown v. Board of Education, 347 U.S. 483(1954) which struck down segregation and Title VII of the Civil Rights Act of 1964 which was the most powerful of the federal laws prohibiting sex discrimination in employment were, in many instances, not enough to overcome discrimination. Thus, cases such as Philips v. Martin Marietta Corp., 400 U.S. 542 (1971) which struck down height and weight requirements that prevented many women from becoming firefighters, prison guards and police officers, helped to level the playing field between male and female applicants. Yet, in attempting to level the playing field, legislature, courts and employers have to be careful not to create a situation of reverse discrimination.

When my father graduated from college in 1980 with a double major in Computer Science and Business Management and a minor in Accounting, the first company that he interviewed with wanted to hire him; however, the company had not met their female hiring quota and until the quota was met, they could not hire according to merit. Due to the quota, the company was denied its individual right to choose the best candidate and my father was denied his individual right to be considered on merit.

In Johnson v. Transportation Agency, 480 U.S. 616(1987), the court acknowledged that the affirmative action policy can be used to achieve racial and gender balance in the work force using proof of statistical imbalance rather than prior discrimination. However, for the purpose of justice, establishing the cause of the imbalance is important. For the fiscal year of Summer 2002- Spring 2003 at Michigan State University, more women than men chose to earn baccalaureate and master's degrees. Engineering was the one field where men still outnumbered women 3 to 1; however, a lesser qualified female engineer should not receive preferential treatment over a male engineer simply because other women may not be making the same career choice.

Hiring a lesser qualified candidate would not be in the company's best interest and forcing an employer to do so would be denying the employer's individual right to economic freedom. John Hunter, an industrial psychologist from Michigan State University, estimates a productivity increase of about \$150 billion if every employer were to hire on the basis of merit. That figure is about two and a half percent of the Gross National Product.

Giving preferential treatment on the basis of under representation, when no clear discrimination exists, leads to resentment. True equality means equal treatment under the law, not privilege. Justice requires that all people receive what they individually merit.

