

## Race & Ethnicity in America

### *Issue Brief:* Minority Religion and Affirmative Action in the United States

*Key Words:* Affirmative Action, Native American Church, Religious Exemption, Unemployment Compensation, Minority Religion, Seventh-day Adventist Church

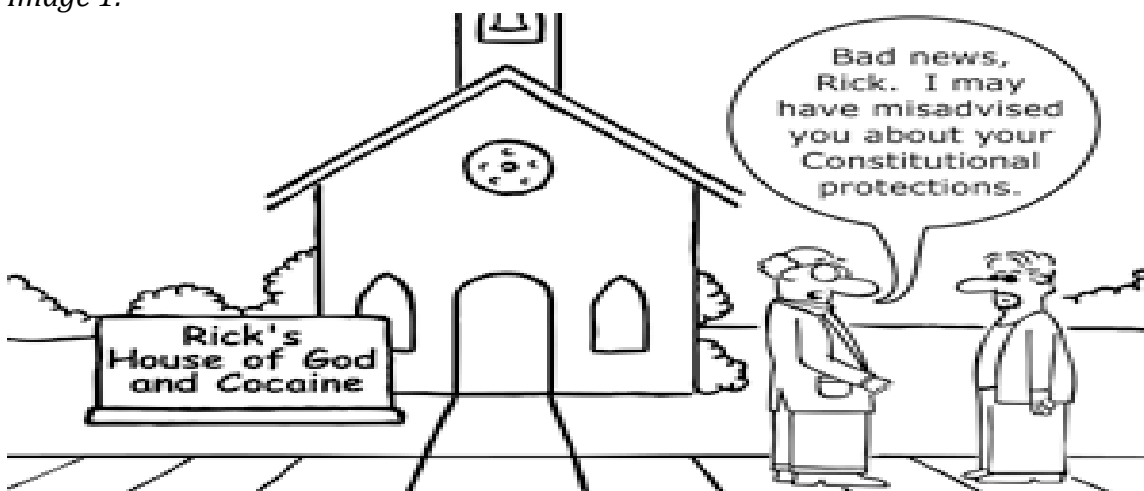
*Description:* This brief will highlight the inconsistencies with which the court system within the United States has handled cases pertaining to minority religion within the context of Affirmative Action. Those individuals are treated unfairly, and though Affirmative Action may benefit many individuals, it has yet to aid those discriminated due to their minority religion.

#### *Key Points:*

- Affirmative Action prohibits employers “discrimination against any employee or applicant for employment in the Federal Government because of race, color, religion, or national origin.” The order also ensures that the applicants employed are treated “without regard to their race, creed, color, or national origin.”
- Court and legal inconsistencies are seen in Adell Sherbert’s case as well as Alfred Smith and Galen Black’s case. Although both cases dealt with employers that refused to pay unemployment compensation after the employee was fired because of their religious belief, the outcome for each case was different.
- Affirmative Action addresses the needs of individuals who suffer discrimination due to their race, color, and national origin more thoroughly than it does address to the needs of individuals of a minority religion.
- There is no set rule to discuss who is exempted from benefits of jobs if religion interferes with it.

#### *Images:*

##### *Image 1:*



##### *Image 2:*



Drawn by John Di Gesare © Copyright James J. Carroll 1997

*Brief:*

In 1961, former president John F. Kennedy signed the order of Affirmative Action. Affirmative Action establishes that no applicant in any given workplace will be discriminated on the grounds of "race, color, religion, or national origin." Affirmative Action also ensures that individuals "are treated during employment, without regard to their race, creed, color, or national origin." Although Affirmative Action aspires to lessen discrimination, citizens have mostly heard of Affirmative Actions in relations to race, gender and origin of an individual but rarely does an individual ever hear about Affirmative Action actively protecting individuals discriminated for their minority religion.

The reality of Affirmative Action in relation to protecting those discriminated because of their minority beliefs seem to abide by a set of inconsistent rules. Although Title VII of the Civil Rights Act of 1964 explicitly frowns upon employment discrimination and essentially states that an employer must "reasonably accommodate the religious practices of an employee or prospective employee (The U.S. Equal Employment Opportunity Commission)" and establishes that an employer is most likely subject to accept "leave for religious observances, time and/or place to

pray, and ability to wear religious garb (The U.S. Equal Employment Opportunity Commission).” This very Civil Rights Act has been compromised several times in the history of the United States and each time it has been presented in the court systems, a different inconsistent outcome was given to each similar case. This is seen in two cases where a member of Seventh-day Adventist Church is given unemployment compensation while two members of the Native American Church were denied such compensation because of their religious duties.

In *Sherbert v. Verner*, a woman named Adell Sherbert was fired because she was no longer able to work on Saturdays after she became a member of the Seventh-day Adventist Church due to her newfound religious duties. As soon as she was fired, her employer attempted to find her a job to no avail until the ex-employee decided to apply for an unemployment compensation to which she was denied. Once taken to the court, the court decided that it was against the constitution to not give her an unemployment compensation. Had Sherbert not gotten unemployment compensation, such action would have been discriminatory against her because of her religion and such act would have been against Affirmative Action.

The lawful outcome that Adell Sherbert received was sadly not the outcome Alfred Smith and Galen Black obtained from the court even though both cases have great similarities. In *Employment Division v. Smith*, two members of the Native American Church were fired and denied unemployment compensation due to their religious use of peyote for an official church ceremony. This issue was taken to the Supreme Court where it was ruled that the two members of the Native American Church, belonging to a minority religious institution, were denied unemployment compensation because they had broken the law.

Under Affirmative Action, these two Native American individuals should not have lost their jobs since Affirmative Action protects those against discrimination based on religion. It would be hard to imagine a workplace that would not discriminate against Adell Sherbert based on the fact that she would not be able to work Saturday due to religious reasons. One is able to see the inconsistencies within the rights of those that are religiously affiliated and how the criteria of who is or isn't compensated based on religious duty is skewed and has no outline or set of rules established under Affirmative Action.

A potential solution to diminish the inconsistencies of court rulings and discrimination against individuals with minority religious views in the work force is to extend the religious exemption that allows a parent who believes that US education violates their religion to remove their children from schooling to the workforce. By including religious exemptions as part of our Affirmative Action program, the USA would be addressing a long overdue neglected sector, which is minority religion. In the context of Affirmative action, a religious exemption would be not just applicable to “Amish children” that “the Supreme court has exempted...from compulsory high school attendance (Steinberg),” but would also be applicable to the workforce in the United States too as a permanent feature in the constitution and not just heavily influenced by court rulings.

*Works Cited and Other General References:*

"Discrimination Based on Religion, Ethnicity, or Country of Origin." *US EEOC Home Page*. Web. 30 Nov. 2010. <[http://www.eeoc.gov/facts/fs-relig\\_ethnic.html](http://www.eeoc.gov/facts/fs-relig_ethnic.html)>.

"SHERBERT V. VERNER, 374 U. S. 398 :: Volume 374 :: 1963 :: Full Text." *US Supreme Court Cases from Justia & Oyez*. Web. 20 Oct. 2010. <<http://supreme.justia.com/us/374/398/case.html>>.

"EMPLOYMENT DIV. V. SMITH., 494 U. S. 872 :: Volume 494 :: 1990 :: Full Text." *US Supreme Court Cases from Justia & Oyez*. Web. 20 Oct. 2010. <<http://supreme.justia.com/us/494/872/case.html>>.

Steinberg, Dave. "Religious Exemptions As Affirmative Action" *HeinOnline - Fully Image Based Legal Resource*. Web. 20 Oct. 2010. <[http://heinonline.org/HOL/Page?handle=hein.journals/emlj40&div=9&g\\_sent=1&collection=journals#89](http://heinonline.org/HOL/Page?handle=hein.journals/emlj40&div=9&g_sent=1&collection=journals#89)>.

*Relevant Websites:*

<http://www.gval.com/exempt.htm>

<http://www.eeoc.gov/eeoc/history/35th/thelaw/eo-10925.html>

<http://plato.stanford.edu/entries/affirmative-action/>

Images:

(1) <http://www.stus.com/stus-cartoon.php?name=Employment+Division+Department+of+Human+Resources+v.+Smith&cartoon=con0067>

(2) <http://www2.maxwell.syr.edu/plegal/scales/sherbert.gif>