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ARTICLE

Identity Politics within Kentucky's Civil Service and the Growth of the Bureaucratic State

James Larry Hood

Midway University
Email: jhood188@windstream.net

Abstract

For five decades now the various levels of government in the United States, through the use of affirmative action and diversity policies, have sought a more racially and gender-wise equitable society with respect to equal employment opportunity. Governments established hiring goals for women and racial minorities. Goals became quotas as state and local governments (and private employers) that were dependent on federal money made certain that goals produced desired results by preferring people based on their race or gender. This article is a case study of how the Commonwealth's welfare cabinet over two decades ago used long-standing civil service regulations and policies to pursue preferential employment practices while conterminously pursuing greater societal equity by reducing governmental oversight of welfare programs. All this foreshadowed President Biden's iteration of affirmative action—federal equity directives regarding employment preferences and greater conditions of equality. After the events described herein, Democratic Kentucky transformed itself into a Republican state.

Keywords: affirmative action; preferential employment; Kentucky state government policies; Civil Rights Act of 1964; hiring goals; identity politics

Long before the concept of affirmative action had been completely transformed from a governmental pursuit of equal employment opportunity to a pursuit of equity—equal outcomes—Kentucky state government had already taken bold action to redress what it understood to be an intolerable unequal distribution of jobs and pay. The state's welfare agency, the Cabinet for Families and Children, directed this effort. The cabinet refashioned affirmative action policies into clear preferences based on gender and race. It restructured the state's civil service with new or redefined regulations to benefit women and minority employees. The cabinet ignored court and administrative orders that countered its efforts and hid information that illustrated its preferential policies and actions from the public. Operating unchecked in its exercise of power, the cabinet further pursued its understanding of justice and equity in its administration of public welfare

programs, ignoring federal policies and directives in its expansion of welfare and in its reduction of welfare recipients' accountability for welfare overpayments.

In the 1960s, an American cultural war broke out that has raged until the present. One theater of that war has been the pursuit of greater well-being and the assertion of rights and prerogatives based on one's group identity as female, racial minority, gay, or some combination of same.

Such persons sought to break away from what United States President Joe Biden, in his 2020 election campaign, had called the "White man's culture" and all the values tied to or associated with that patriarchy. Such persons wanted the government to produce not just equal opportunity but, as Biden's vice-presidential nominee Kamala Harris stated, equal outcomes in all endeavors for all people identifying with an interest group defined by gender/racial/ethnic categories.[1]

Two decades earlier, Kentucky state government had already laid out a blueprint for how this could be done inside the halls of government. The implementation of public affirmative action policies (making equal opportunity a reality) at the federal level created an environment that encouraged the Commonwealth of Kentucky's state government to use its own affirmative action policies to pursue preferences in civil service employment while at the same time seeking greater amelioration of the hardships faced by welfare recipients.

In 1969, President Richard Nixon got Congress to acquiesce in the federal executive branch's use of affirmative action policies and regulations to better ensure equal employment opportunities for racial minorities and women through the use of goals to pursue, not quotas to meet, a distinction Nixon's administration was careful to make. Immediately some legal scholars said that such policies were actually preferences and as such were a clear danger to a democratic society, a glaring example of presidential overreach, actions above, beyond, and in contradiction to the law, the1964 Civil Rights Act. Others thought affirmative action was absolutely necessary, a color-sensitive policy that would produce a color-blind, equitable society. These latter commentators seemed not to care about the possibility of an executive abuse of power, even in contradiction to the 1964 law's wording, so long as the cause was just. Racial and gender consciousness was a necessity.[2] Still others, as noted by Thomas and Mary Edsall in *Chain Reaction*, wanted to go beyond equal opportunity and use the federal government to apportion political representation, college acceptances, and jobs.[3]

In the 1970s, law school professors Derrick Bell, Kimberle Crenshaw, and Richard Delgado, dismayed that civil rights law premised on individual equal rights had not brought about a significant improvement in minority economic and professional advancement, posited what became known as critical race theory (CRT): the nation would have to look at systemic racism (not individual actions) that perpetuated discrimination. According to Stephen Sawchuk, assistant editor of *Education Week*, "CRT" "puts an emphasis on *outcomes* [emphasis added], not merely on individuals' own beliefs, and it calls on these outcomes to be examined and rectified." Sawchuk further states, "Critical race theory emerged out of postmodernist thought, which tends to be skeptical of the idea of universal values, objective knowledge, individual merit, Enlightened rationalism, and liberalism."[4] Critical race theory rejects law that rests on concepts of

individual rights and responsibilities, such as civil rights law in the United States, and seeks a conscious redistribution of wealth, jobs, education, and governmental benefits to compensate for past wrongs.

Ten years after President Nixon initiated affirmative action programs, the United States Supreme Court (in its Weber decision) seemed to be opening the door to job favoritism based on race. In the 1979 ruling for *United Steelworkers of America v. Weber*, reflecting the CRT that had been taught in some law schools, the United States Supreme Court ruled that it was constitutional for the government to ignore Congress's intent at the time of the law's passage, to not interpret literally the words of the 1964 Civil Rights Act, which forbids hiring practices based on race, and to violate the words of the law so as to pursue the law's overarching moral purpose, that of achieving equality.[5] In his dissent, Associate Justice William Rehnquist underscored how difficult it had been and would be to distinguish between lawful and unlawful behavior: "With today's holding the Court introduces into Title VII a tolerance for the very evil that the law was intended to eradicate.... By going not merely beyond, but directly against Title VII's language and history, the Court has sown the wind."[6] The justices' contrasting opinions in Weber were a mirror of the by-then 10-year-old enveloping cultural war over polar-opposite value sets.

Despite Justice Rehnquist's warnings, David Robertson and Ronald Johnson, writing in *Labor Law Review*, argued that had the Court ruled on the literal meaning of the law or on Congressional intent all necessary affirmative action would have ended.[7] Such an understanding explains the willingness and ease with which people and governments could and would continue to pursue racial- and gender-preferential employment practices after the US Supreme Court had strongly circumscribed such when it reversed itself on the meaning of the 1964 Civil Rights Act and the constitutional authorization of affirmative action policies.

With its decisions regarding *Richmond v. Croson* in 1989 and *Adarand v. Pena* in 1995, the Court significantly narrowed the import of Weber. Any state or federal government employment plan of racial preference had to be very narrowly tailored, could only be used after race-neutral strategies had been considered to correct past wrongs, and was subject to strict court scrutiny.[8] Both the cultural war and the values/beliefs of both sides had only grown in intensity.

After the *Adarand* decision of 1995, President Bill Clinton ordered a review of all federal affirmative action policies to ensure compliance with the Court's interpretation of the Constitution and civil rights laws. In July 1995, President Clinton announced he would keep all affirmative action policies but would have them modified to comply with the Court's decision regarding narrow tailoring, race-neutrality when possible, and strict court scrutiny.[9]

In reality, the president and the federal bureaucracy ignored the Court. In 2005, the United States Civil Rights Commission issued a report, *Federal Procurement after Adarand*, which, according to affirmative action historians William and Sam Leiter, found that the federal contracting offices had widely failed to comply with the Court's latest rulings.[10]

Illustrating how powerful the government's bureaucracy had become, federal contracting offices had already made certain that "Employment affirmative action was institutionalized in corporate America, in the apparatus of the

government, including the military, and the educational establishment." Federal contracts were worth $300 billion and covered one-third of the American workforce. The federal bureaucracy had been insisting (with federal dollars backing up the insistence) and would continue to insist on results, not just effort, on behalf of what it defined as a good, moral cause.[11]

Actually, though, much of the bureaucracy that enforces federal law and policies lies under the control of state executives, as most federal programs are state administered and implemented (with a federal overview). State governments, themselves, do much of the work for the Equal Employment Opportunity Commission and set up their own affirmative action plans. Had, then, the implementation of public affirmative action policies at the federal level set a precedent for state executives and encouraged them to pursue a greater redistribution of wealth in terms of jobs and governmental benefits?

This case study is an examination of that question. It is an examination of the actions (1995–2002) of Kentucky's Cabinet for Families and Children (the welfare and social work cabinet) during the gubernatorial administration of Paul Patton, who began his term in the same year as the *Adarand* decision and President Clinton's circumvention of that decision.

The study also reveals profound disregard for the actual words of Title VII of the 1964 civil rights law and the law's restrictions on executive prerogative, a disregard that then carried over to the state's administration of its welfare programs, which in the 1990s had been handed over to the states as part of the federal government's reform of such programs.

Section 703(a)(1)(2) of the 1964 law forbids employers to engage in unfair employment practices that include

> to fail or refuse to hire or to discharge ... or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of race, color, religion, or national origin.
>
> [And] to limit, segregate, or classify ... employees in any way which would deprive ... any individual of employment opportunities or otherwise adversely affect his status as an employee because of race, color, religion, sex, or national origin.

Section 703 (j) states that

> Nothing in this title shall be interpreted to require any employer ... [or] labor organization ... to grant preferential treatment to any individual or to any 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 an employer ... [or] admitted to membership ... by any labor organization ... 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 areas.[12]

The study shows a concerted effort in Kentucky to improve the lives of many by adhering, like the Clinton administration, to the philosophy of the Weber decision. It would practice preferential employment and expand the availability of welfare benefits.

Kentucky's citizenry elected Democrat Paul Patton to the governor's office in November 1995. Patton's predecessors had not focused strongly on voters' identification with interest groups defined by race and gender. One-time state legislator, Lieutenant Governor, Governor, and US Senator Wendell Ford once described his job as a public servant this way, "Kentucky is ... fast horses, bourbon whiskey, cigarettes [tobacco] and coal. I represent Kentucky and that's what I represent."[13] And so did an almost unbroken line of Democratic governors after World War II up to Governor Patton's time in office. They saw their job as protecting and enhancing the big industries that created livelihoods and incomes for Kentuckians. They did so through the enforcement of state and federal laws and the expenditure of federal money in the state that benefitted Kentucky's major industries. Though it had had strong African American support since the New Deal, the Kentucky Democratic Party had been very much a white man's party never having nominated an African American to statewide office.[14]

The new governor owed his election to the strength of the traditional Democratic coalition that President Clinton had revitalized and to a stronger emphasis on identity politics: old Southern Democrats, sometimes referred to in Kentucky as Yellow Dog Democrats; racial minorities; some segments of women voters, especially those who might consider themselves strong feminists; gay rights advocates; and organized labor. Before his election, the welfare cabinet's commissioner for food stamps and public assistance and the cabinet's Equal Employment Opportunity Officer, allies of the candidate, had already informed their civil service employees that henceforth the cabinet would be giving preference in appointments and promotions to two of candidate Patton's most loyal constituencies, first to minorities and then to females.[15]

Governor Patton appointed Dr. Viola Miller as secretary of the Cabinet for Human Resources that would soon be split into two, creating a Cabinet for Families and Children and a Cabinet for Health, effectively doubling the number of political and civil service managerial positions that could be filled. Dr. Miller continued as secretary of the Families and Children Cabinet. The Governor appointed Dr. Tim Jackson as the Families and Children Deputy Secretary. Both appointees came out of academia, and both held education doctorates.

In the beginning of her term as secretary, Dr. Miller praised her cabinet for being a leader in state government regarding the pursuit of civil rights and an equal employment work force. The acknowledged employment goals were those of the state affirmative action plan based on statewide work force population statistics: 7.4% minorities and 52.0% females.[16]

But very early in Dr. Miller's tenure, the cabinet followed the federal government's lead in ignoring the Supreme Court's latest rulings restricting favoritism and decided to reconfigure the racial/gender look of its civil service employees. It took actions to insure that employees would more closely resemble the welfare clients they served in terms of gender and race (20% minority and 75% female). The cabinet at that time had a 72% female and 11% minority workforce.[17] In the

first half of 1997, the cabinet hired 448 people, 16.52% of whom were minorities and 72.44% of whom were female.[18] It quit filing state civil rights compliance reports. Early in 1997 the State Auditor, who is an elected official, not a gubernatorial appointee, had already found that the cabinet was not in compliance with procedures and reports required by Kentucky Revised Statute 344 as part of the state's conformity with Title VI of the 1964 Civil Rights Act.[19]

The new administration of Governor Patton took specific steps to favor females and minorities in hiring and salary improvement. The Cabinet for Families and Children established new policies specifically for its minority employees or would-be employees. It required that all managers considering appointments or promotions interview all minority applicants whenever possible—no other applicants need be interviewed—and explain in writing in every instance why a minority was not hired.[20]

The cabinet participated in the state's Minority Training Program (created in the first year of the Patton administration) to help minority employees become better qualified and eligible for management positions. All state employees, regardless of race or gender, were eligible to participate in the state's nationally accredited Certified Public Manager program, but the minority program was set up exclusively for minorities. The certified program consisted of 300 hours of structured learning. Participants in the minority program received 87.5 hours of training and received credit for on-the-job training (that is, one received credit toward receiving manager certification for working whatever job s/he had held).[21]

Regarding the Minority Training program, in one instance the cabinet moved an African American male trainee to Frankfort, Kentucky, from Somerset, Kentucky, but kept his official workstation in Somerset, telling him that "he would be given special privileges." By keeping his official workstation elsewhere, he was officially on temporary assignment (as the welfare department's Equal Employment Opportunity Officer), and thus the cabinet was able to justify (until a subsequent investigation referenced later herein) paying him for meals, reimbursing him for vicinity mileage, and paying part of his house rent, allowing the employee to collect, in addition to his salary, over $900.00 in nontaxed funds each full month he was in Frankfort. The cabinet later detailed him to duty as the assistant director (the highest level of the state's civil service excluding political positions) of the Division for Field Service and, once he had the required minimum of five years' work experience, appointed him permanently to the position over nonminority applicants with 20-years-plus experience.[22]

In another instance, Stephen Jones, the cabinet's Equal Employment Opportunity Officer (a successor to the one referenced above), now the newly appointed commissioner of the newly created Department for Disability Determinations, as one of his first acts as commissioner, reversed the promotion of a white male and gave the position to an African American male with far less training and experience. The white man, according to the commissioner, did not have the "global perspective" that the Black man had.[23]

In October 1998, the cabinet distributed a new policy to managerial staff that stated that although state law required that the cabinet consider "the applicant's qualifications, record of performance, conduct, and seniority" when hiring or promoting, the cabinet *only had to consider* that which was spelled out in the law

and it did not have to give any weight to such criteria and could make hiring and promotion decisions based on whatever other criteria it decided was best—thus explaining the "global perspective" criterion referenced earlier. It did so despite the state circuit court's ordering its predecessor, the Cabinet for Human Resources (welfare and health combined), to give the law's criteria at least a 50% weight in making hiring and promotion decisions.[24]

The cabinet further pursued its diversity objective by providing women with job-grade-level increases accompanied by salary increases. By the end of 1998, the number of women in clerical positions in the cabinet dropped from 1,481 to 396 (men 91 to 49) while the number in paraprofessional positions went up from 578 to 1,443 (men 344 to 302) and the number of women in skilled positions went up from 6 to 863 (men 107 to 93).[25]

In addition to the mass up-gradings for women, the cabinet found other quick means for increasing female and minority personnel salaries. State regulations and the cabinet's own policy manual provided for detailing employees to emergency duty and for temporary assignments, both of which carried financial advantages for those so detailed or assigned temporarily to other locations.

Under state regulation, a cabinet had the authority to detail a person to another position when a person in that position is needed and the person so detailed receives an extra 5% increase in salary. The cabinet's own already-existing personnel policy manual, however, made clear that details could be abused. Such an action was only to be allowed when there was no one in an office who qualified for the position under civil service guidelines (i.e. training, education, and years of experience). Detailing was only to be done in a true emergency and to last only while the emergency conditions continued. The cabinet ignored its own policy and detailed people across the state and kept them detailed. At one point, the cabinet had 242 people detailed to emergency duty (85% of them females).[26]

Under state regulation, a cabinet, when necessary, could temporarily assign an employee to a different workstation for no more than 60 days. For example, employees living by choice in Louisville and commuting to a workstation in Frankfort receive no compensation for the time or cost while on the commute. But employees who are temporarily assigned to Frankfort from Louisville or some other location receive pay from the time they leave home to the time that they return, and they receive reimbursement for all per diem travel and food costs. The Cabinet for Families and Children temporarily assigned people (mostly females and minorities) indefinitely, in some instances for years, thus substantially increasing their compensation.[27]

The extraordinary power given to the cabinet under its own self-generated civil service affirmative action policies to pursue preferences was further enhanced by a new Patton administration personnel regulation that changed the amount of compensation for promotions. Previously, a promotion had meant a 5% raise followed by another 5% raise at the end of a probationary period regardless of how many grades or levels one advanced, provided that the raises brought the employee to at least the beginning salary of the higher position. Now a promotion meant a 5% raise up front for every grade one advanced followed by another 5% raise at the end of probation. Advancing from a grade 10 to a 15 would

now result in a 30% raise instead of 10%. Furthermore, under state personnel regulations, a person outside state government would have to have one of the top five scores on a merit examination to be eligible for a position, but once in the civil service at any level, an employee need only pass the exam to be in competition for a promotion. The cabinet could now hire a less-qualified applicant into a lesser job, allow that job's probationary period to pass, and then promote that person to the more responsible position with a substantial raise, ignoring higher-scoring applicants and those with greater seniority.[28]

In 1999, during Governor Patton's reelection campaign, the cabinet drafted a new affirmative action policy that it would have in print by November, putting into writing what had been its policy all along under the Patton administration. It issued a draft of a new affirmative action plan that required employee diversity, defined diversity as a workforce that looked like its clientele, and, accordingly, set a goal of having a workforce made up of 20% minorities and 75% women.[29]

Historian Peter Wood in his *Diversity: The Invention of a Concept* finds that affirmative action by itself was becoming unpopular among Americans and that the strongest supporters of affirmative action, usually located in government and academia (and newspapers), began to subsume affirmative action into a broader, more elusive, evolving, but nicer-sounding concept called diversity. Diversity equates group affiliation by birth with worldview, says, Wood. Diversity justifies preferences. But, says Wood, artificially created diversity is systemic injustice and hides this injustice behind nondisclosure of information (to be further addressed later herein) and effusive language.[30] The very affirmative action plan of the cabinet that called for 20% and 75% goals (quotas) begins with words of commitment to ensure that all employees are treated the same and equally under the law.[31]

After Governor Patton's reelection, Kentucky's Cabinet for Families and Children would reverse itself, or so it seemed for a moment, in October 2000. Grievances had been filed concerning the cabinet's definition of diversity and the employment goals being violations of the US Supreme Court's *Croson* decision. There had also been a filing with the Kentucky Commission on Human Rights of a broad charge of systemic gender/race discrimination. The cabinet still used diversity as a goal but now defined that word in the same way as did the state's governmentwide affirmative action plan; now diversity meant having the goal of reaching the same percentage of minorities and females as in the state's general workforce, a goal the cabinet had far exceeded all along.[32]

Two months later, Deputy Secretary Jackson would issue an email memorandum to all staff members of the cabinet making it quite clear that it had not abandoned its first definition of diversity. Jackson took credit for great strides in changing the makeup of the staff and promising to do more to specifically change mid-level managers (many of whom were white males) to look more like the clients they served.[33]

Long before the deputy's memorandum, the total number of employees in the two Human Resources successor cabinets had dropped by 10.0%, females by 6.0 %, and males 22.3%. Six months into the Patton administration, the original cabinet had had a 26% male workforce. By the end of 1998, Families and Children had 19%.

When, after several years, the cabinet reverted to the legal workforce percentage goals, it stated that the higher goals had only been drafted thoughts.[34]

In 2002, Governor Patton and Kentucky's Commission on Women, appointed by and reporting to the governor, replaced state government's "Take Your Child to Work Day," designed to encourage and inspire youth toward governmental careers, with "Take Your Daughter to Work Day." This was the idea of the commission and the governor's Executive Director, Charlotte Hurley, who specifically rejected a non-gender-specific day, even after it was pointed out that it was sons (not daughters) with increasingly higher high school dropout rates and declining college entrance rates. The Governor's Office issued a memorandum reading in part, "[w]hile we recognize that boys also need to expand their views about what is possible for their futures, treating boys and girls as if they face the same constraints and opportunities simply fails to address either boys' or girls' realities." The particular realities justifying excluding boys altogether or merely diverting them were not defined.[35]

Later, in mid-2003, the Governor's Commission on Women (a totally tax-funded organization) would hold a multiday political conference in Frankfort, calling before it that year's gubernatorial candidates of the two major political parties and demanding that the next administration give 52% of all its political positions to women. The Democratic candidate agreed to the commission's demand.[36]

Tiring of generating programming in response to open-records requests concerning its preferential personnel actions, the Cabinet for Families and Children turned over all responsibility for such responses to the Cabinet for Personnel. That cabinet, in turn, reversed what had been and began charging those requesting information for the hours spent in pulling together data. Kentucky's attorney general, whose open-record opinions carry the force of law in Kentucky, had years in the past ruled that a cabinet could not charge for pulling together papers in response to open-records requests even if it meant hiring people to do it. The Attorney General's Office did rule, however, that the open-records law did not require any office to sort or list information. That was the loophole used by the Personnel Cabinet to deter requests. Most personnel data were on computer, and creating software to generate reports, such as those referencing numbers by gender and race, was "sorting." Even listing what software was already available to produce desired statistics was sorting. Therefore, Kentucky's Personnel Cabinet was not compelled to release such information. If the Personnel Cabinet agreed to an open-record request, it would have to generate software to comply with a request and then charge a substantial hourly rate for such work. The fact that a large amount of software had already been created to do such sorting, negating the necessity of creating any significant amounts of new software, was ignored. The Personnel Cabinet also argued that it was not compelled to provide to the public a listing (another form of sorting) of the software it did have. This in turn meant that most people would be hesitant to pay hundreds of dollars for a single request.[37]

Further shutting down public inquiry, the Families and Children Cabinet continued to ignore state and federal laws requiring it to provide regular reports to other governmental agencies concerning its hiring practices. It did not

provide Title VI (of the 1964 Civil Rights Act) reports noting complaints by clients of discrimination to the Kentucky Commission on Human Rights. In January 1998, it quit forwarding Equal Employment Opportunity reports illustrating the disparate impact, if any, of its hiring/promotional practices. In 2000, such a report showed a disparate impact on one group, males. It refused to release an investigative report concerning an internal grievance filed with the cabinet alleging numerous violations of civil rights law.[38]

In 1999 and 2000, the cabinet supported its Commissioner of Disability Determinations in his claim that he had not violated the civil and employment rights of a white man (Don Bell, whose promotion the commissioner had reversed) forcing that man to seek a ruling from the state's civil service Personnel Board. In response to an internal grievance challenging the October 1998 policy of considering but giving no weight to the law's criteria for appointments and promotions, the cabinet stated that it was abiding by the law. However, it did go on to state that it did not have to abide by a court order that set no precedent because it was not printed in the court journals, ignoring the fact that the order was specifically to and against its predecessor, the Human Resources Cabinet, and its illegal hiring practices.[39]

In one instance, the cabinet apparently could not get around, hide, or deny or maintain one program of preferential hiring. That instance was the reimbursements provided to chosen employees by the extemporaneous Bridge the Gap operation, the one that imported detailed-to-duty employees into Frankfort. The cabinet asked the state's Attorney General's Office to investigate.

The attorney general, who is an elected official not a gubernatorial appointee, found that the long-term "temporary" transfers that produced extraordinary amounts of overtime and travel reimbursements were, indeed, illegal and had to stop. Still, the attorney general accepted the cabinet's ignorance-of-the-law defense that it was operating under a decade-old internal memo from its own budget officer (not an attorney for the cabinet or a representative of the Personnel Cabinet) now long dead that said such an operation was legal.[40]

In several instances, outside agencies ordered reversals of the Cabinet for Families and Children's policies. In the latter part of 2002, the state's court of appeals rejected the cabinet's argument (accepted by the lower district court) of sovereign immunity and reinstated a lawsuit by a University of Louisville professor who had sued the cabinet after it had told the University to remove him from the study he was conducting under contract with the cabinet and to squash the study itself because it showed the cabinet's welfare programs actually having a negative effect on Black and Appalachian families. The cabinet had moved against the professor when he made known his intention to inform the legislature of his findings.[41]

The attorney general also reversed the cabinet's position on not releasing its findings in a civil rights grievance investigation, writing,

> In closing, we reiterate that this Office, acting in a quasi-adjudicative role in open records disputes, relies on the truthfulness and accuracy of representations made to us by a public agency. We hold the agency to these representations in resolving an appeal. We therefore frown on an agency's

> attempt to breach its commitment to disclose records, particularly where the legal position it takes to support a new course of action is untenable. We urge the Cabinet for Families and Children to bear these observations in mind in future open records matters.[42]

In this last instance, the cabinet sued in circuit court to overturn the attorney general's order. The court upheld the Office of the Attorney General's ruling and fined the cabinet for not releasing the information covered by the Open Records Law. Kentucky's Personnel Board agreed with the white man, Don Bell, who appealed the reversal of his appointment by the cabinet's commissioner of disability determinations, saying the cabinet's arguments were pretextual and that Commissioner "Jones' consideration of the area of 'global perspective' was arbitrary and capricious." The Board ordered that the employee receive his appointment.[43]

In all its hiring and promotion actions, the administration was restructuring its workforce to administer the state's welfare programs. Congress's reform of public welfare (aid to families with dependent children) ended welfare as a federal entitlement program with federal oversight in the states, giving Kentucky's Cabinet for Families and Children and its staff the opportunity to significantly redesign welfare in the Commonwealth.[44]

Free to create its own welfare system, the cabinet created new categories of benefits for what had been a basic program providing a subsistence check, the basic program now called KTAP. It created the Family Alternative Diversion program to provide money for short-term crises and the Employment Retention Assistance program (eventually replaced by Work Incentive) to provide cash bonuses for obtaining and keeping a job. To encourage relatives to care for children who would otherwise have to be placed in foster care or orphanages, it provided monetary assistance under the Kinship Care program to those caring for related children.[45]

Normally, governmental programs have internal safeguards to preserve program integrity and to ensure that public funds are spent as the public intended. Guidelines describing public intentions are written, and checks and audits are made to verify compliance with these guidelines. Where governmental beneficiaries act (intentionally—fraud, or not) outside those guidelines or where the government, itself, does so, then efforts are made to recover the public money that has been spent incorrectly. This is especially so for welfare programs. Otherwise, public assistance programs have the very strong potential of becoming an unregulated, unchecked sieve for pouring out public funds at the will of executive bureaucrats, in defiance of the public authorizing the programs and the guidelines covering the expenditure of tax monies through law.

Early on, the cabinet promulgated its own official state regulations forbidding the identification of any of its own errors in the provision of welfare benefits and it forbade any effort to recover any such losses. It erroneously sent out duplicate welfare checks, doubling the legal welfare payments, and then ruled that because the extra money provided was due to its own error, it would not pursue recovery. Secretary Miller also issued regulations forbidding the forwarding of suspected client fraud in the Family Alternative Diversion and Employment Retention

Assistance programs to its own Inspector General's Office for investigation. Further, the cabinet slowed down the establishment and recovery of all welfare overpayments due to client error or fraud that it did identify.[46]

In 1999, the federal government's food stamp program gave Kentucky's Cabinet for Families and Children another big opportunity to transform welfare. Washington proposed new food stamp regulations (the one part of welfare still under federal oversight) and called for comments from the states. The regulations that finally went into effect in August 2001 allowed Kentucky more leeway in not pursuing food stamp benefits given out illegally. Once a state found an improper payment, the federal government required the state to check back 12 months for additional overpayments and encouraged states to go back 60 months in search of overpayments. Kentucky' Cabinet for Families and Children refused to go beyond the required minimum. The state sought not to establish fraud claims or collect on same if a client used food stamp benefits to purchase food and then sold the food for cash to be used for purposes other than that allowed by the program (i.e., food) but was countermanded by the federal government. All states had to retain on the US Treasury's Tax Refund Offset Program for a minimum of 36 months all debts owed the public by clients no longer drawing welfare (and presumably earning taxable income). However, states could keep the claims there for 10 years. Kentucky opted for the minimum. With food stamps, like the state's other welfare programs, the cabinet continued not identifying debts owed in any timely manner. The federal government allowed 10% of claims to be processed—that is, identified, established, and forwarded for collection—late. Kentucky was late 79% of the time. Under Governor Patton, the state had begun making a substantial number of errors in determining who was eligible for food stamps, just as in KTAP (state welfare), and in determining what amount one was legally entitled to. Until the Patton administration, Kentucky was one of the few states getting substantial amounts of enhanced food stamp funding from the federal government as a reward for maintaining a low error rate, the award averaging over three million dollars a year that, unlike other federal food stamp funds, required no match-by-state dollars as a condition for receiving the money. Under Patton's Cabinet for Families and Children, this amount started dropping immediately as the error rate went up until the state received no money in 1998 and 1999, a half million dollars in 2000, and nothing in 2001.[47]

In late 2001, despite admonishments from the federal food stamp office that it had failed in all its recent goals to improve its recovery of erroneous benefits, the cabinet directed its programmers to remove all its claims that were 36 months old from the federal Treasury Offset Program. The cabinet told the public that it cost too much to pursue the debts. Actually, it cost nothing, for the federal recovery program operated at no cost whatever to the state.[48]

Next, in January 2002 the cabinet disbanded its own office that tracked and collected all welfare overpayments owed by people who were no longer drawing some form of assistance. The cabinet said that the office was redundant and folded its operations into those of another office that recouped from people still on welfare by automatically reducing future benefits. The abolished office had made more money for the state and for the welfare programs than at any time in

its history, achieving a 7.4:1 return on investment. Just one month earlier, the performance of its debt recovery operations had helped save the cabinet from the budget cuts imposed on the rest of state government. The abolished office had staff with 18 years' work experience, whereas the new office, located within the Division of Field Services with its detailed-to-duty assistant director, had no one with a year's experience in its own work (the entire original staff had retired, save one who retired three months later) and no experience in the new work given to it and no knowledge of the operations, software, and reports of the old office. The abolished office had three who had completed the state's three-year Certified Public Manager program—the new none. All this, except for the certified managers, was noted by the federal program auditors, who initiated an investigation soon after the disbanding of the old office. In their report of their findings, the same auditors also noted that the cabinet had rearranged the only part of its entire claims process that actually worked correctly. After the reorganization, the new office provided no new claims to the Treasury Offset Program for another year. The food stamp federal auditors did insist on a plan of corrective action to clear up the cabinet's "systemic" problems, to include the restoration of the 1,300 thirty-six-month-old claims that had been removed to the Treasury Offset Program, a better identification of claims, and a consequent faster recovery of funds improperly spent.[49]

Over several years, Kentucky's Auditor of Public Accounts had repeatedly found the Cabinet for Families and Children stubborn in its inefficiency concerning the protection of public funds dedicated to welfare.[50] In December 2002, the Auditor's Office presented its past several years' findings to a legislative subcommittee on families and children. No immediate action was taken, but the next legislative session did seek to improve the efficiency debt collections across state government.[51]

None of this really affected the cabinet in its provision of welfare benefits. The federal government always hesitates to take punitive actions because that normally means reducing the amount of welfare money available to a state, which only punishes the people most in need of assistance.

After the federal program audit, the cabinet offered to move food stamp fraud claims more quickly through the system by raising the amount (from $1,000.00 to $3,000.00) of a claim that would initiate an investigation by the cabinet's inspector general and a consequent possible forwarding to criminal court. Now, unless the fraud amount was over $3,000.00 (and most were not), the cabinet would hold its own administrative hearing (presumably faster than actual court proceedings) and order repayment. Unlike court, the cabinet has no enforcement power behind its hearings' rulings for people who are no longer drawing assistance and the client has no compelling reason (i.e., jail) to repay the amount stolen. Furthermore, responding to the federal auditors' request that cabinet expand its program for investigating suspicious welfare applications for possible fraud *before the provision of benefits*—thus saving substantial sums of public funds—the cabinet instead did just the opposite, calling its own program "discriminatory" and abolishing the whole program. The federal auditors, having no authority to insist otherwise, said nothing.[52]

In Kentucky, the governor's Cabinet for Families and Children, following the example set by the Clinton administration's disregard of the US Supreme Court's strict scrutiny rulings tightly circumscribing preferential hiring, vigorously pursued what it defined as affirmative action, creating greater opportunities for women and minorities. It meshed this pursuit with its drive to establish its own widespread job patronage network within the state's civil service and to be as expansive as possible with the provisions of welfare benefits. Regarding matters of legal requirements or obligations, it practiced obfuscation.

In pursuit of its goal, the cabinet ignored its personnel policies regarding hiring, promotion, detail to duty, and temporary appointments. It implemented new state personnel policies that made it much easier to circumvent civil service merit considerations when promoting employees and advancing salaries.

As part of its obfuscation, the cabinet did not file state and federally required civil rights reports. It made it very difficult to obtain open records regarding public employment statistics. It defied a state court order regarding the law's requirements in making hiring decisions. Though eventually rebuffed by Kentucky's attorney general, the state's circuit court, and the state's Personnel Board, the cabinet was very successful in its pursuit of its hiring goals. The cabinet made clear in its communications with staff that it was pursuing a just cause.

Pursuing a just cause—ameliorating conditions or situations of Kentuckians in need of welfare assistance—the Cabinet for Families and Children worked very hard to not comply with federal oversight regulations concerning the provision of food stamps. It ended the identification and recovery of all food stamp assistance made due to its own errors. It significantly slowed the identification of overpayments made due to client error or fraud. It greatly reduced the number of claims sent for fraud investigation. It abolished the office that had been successful in recovering overpayments, a success that in turn had resulted in millions of dollars being given to Kentucky for food stamp administration. It abolished the office that investigated welfare applications for fraud. In this area, too, it was rebuffed by the Kentucky State Auditor and federal food stamp program auditors who found that the cabinet had abolished the one part of its food stamp recovery program that had functioned well.

This use of affirmative action/identity politics/patronage policies spread. Governor Patton's Budget Director Dr. James Ramsey left his post in the administration to become the president of the University of Louisville, where identity politics led to universitywide policies advertising and rewarding jobs according to race, ethnicity, national origin, and gender. Under President Ramsey's tenure, the university asserted that its nursing department had too few women professors, even though 41 of the 44 teachers were female. The school went so far as to advertise in HigherEdJobs that "The Department of Physics and Astronomy announces a tenure-track assistant professor position that ***will be filled*** [emphasis added] by an African-American, Hispanic American or a Native American Indian." Like Governor Patton's Cabinet for Families and Children, the job advertisement asserted that the university was a nondiscriminating, equal opportunity employer.[53]

In the years that followed, at the federal level pursuing equality eventually resulted in the government redefining words such as discrimination and equity so that those words became their own anonyms. In the last several years, CRT has reached far beyond law schools and has become a hot, very divisive topic of political and moral debate at all levels of government and society. Critical race theory has posited that pervasive, systemic racism has debilitated and/or blocked non-whites and most females in their pursuit of well-being. So much so that any differences in outcomes, wealth, jobs, and education are prima facie evidence of the disparate impact of prejudice. So much so that severe measures must be taken. Historian and antiracist scholar Ibram X. Kendi has put it this way: "The only remedy to racist discrimination is antiracist discrimination. The only remedy to past discrimination is present discrimination. The only remedy to present discrimination is future discrimination."[54] Kentucky's Cabinet for Families and Children had been following Kendi's prescription long before he wrote it.

Many universities, some state governments, local K–12 school boards, and the federal executive (including the military) have introduced instruction on CRT either as a basis for employment policy and/or school instruction in social sciences on the realities of American culture. On September 22, 2020, President Donald Trump issued an executive order combatting race and sex stereotyping, banning the teaching and promotion of CRT within the federal government. On his first day in office, January 20, 2021, President Joe Biden issued an executive order rescinding Trump's order.[55]

Biden's recension was part of his Executive Order on Advancing Racial Equity. In this order, the president directed the federal executive branch at all levels to identify all those groups the government deemed historically discriminated against or victims of systemic racism in hiring or in the provision of federal services and to take remedial action. Shortly thereafter, the federal government forbade white men from applying for federal COVID-19 assistance to their businesses until those historically discriminated against had applied. The United States Department of Agriculture's Farm Service Agency created a program to help farmers hurt by COVID-19 but completely excluded white men.[56]

President Biden's 2021 order and the new programs under that order claimed authorization under federal civil rights law that forbade racial and gender discrimination. Equity, a word that had meant all treated the same, now by government decree and action meant conscious preference/discrimination across the country until all were the same in some definition of well-being. Kentucky in the late twentieth and early twenty-first centuries had followed the path already being blazed back then by the federal government in enforcing preferential affirmative action policies. In 2021, the federal government, in adopting Ibram X. Kendi's definition of antidiscrimination reality, was emulating the turn-of-the-century Kentucky state government's adoption of identity politics.

Kentucky's adoption of identity politics highlights the necessary ever-present tension between having a government strong enough to rule and administer justice but not so strong as to destroy liberty and democracy. The United States Constitution created a framework of government with enough power to rule that had its own internal checks and balances thwarting overweening power. This

framework, except for the civil war, has worked well—that is, until the onset of an American cultural war about 50 years ago. In that war, the old definitions of fundamental values such as liberty, equality, and self-government have been aggressively challenged by an ever-growing, powerful, often unchecked bureaucracy seeking a redistribution of wealth and a redefinition of rights in the name of equality and justice, often in opposition to the sentiments and older values of much of the electorate. Indeed, in the ensuing years, Kentucky, after the events recounted herein, would transform itself from a reliable Democratic state to a Republican commonwealth. Kentucky's experiment with identity politics was yet another test of whether a nation can exist divided by conflicting fundamental values and whether democracy itself can endure.

Notes

[1] At the time of the events described in the article the author worked for Kentucky's Cabinet for Families and Children. Consequently, he received and saved all emails and documents/reports referenced in the end notes and has personal possession of all sources referenced in end notes. A. Saenz, "Biden Criticizes 'White Man's Culture' as He Talks Violence against Women," CNN, March 27, 2019, https://www.cnn.com/2019/03/27/politics/joe-biden-white-mans-culture/index.html; Mike Gonzalez, "Biden's Embrace of 'Equity' Means He's Abandoned the Quest for Equality," https://www.heritage.org/progressivism/commentqry/bidens-embrac.

[2] J. Hood, "The Nixon Administration and the Revised Philadelphia Plan for Affirmative Action: A Study in Expanding Presidential Power and Divided Government," *Presidential Studies Quarterly* 23, no. 1 (winter 1993): 145–67, 166.

[3] T. Edsall and M. Edsall, *Chain Reaction: The Impact of Race, Rights, and Taxes on American Politics* (New York: W. W. Norton, 1991), 4.

[4] Stephen Sawchuk, "What is Critical Race Theory, and Why Is It under Attack?" *Education Week*, May 18, 2021, https://www.edweek.org/leadership/what-is-critical-race-theory-and-why-is-itunder-attack/2021/05.

[5] Steelworkers v. Weber, 443 U.S. 193 (1979); W. Leiter and S. Leiter, *Affirmative Action in Antidiscrimination Law and Policy* (2nd ed., New York: State University of New York Press, 2011), 44–46.

[6] Leiter, 46.

[7] David Robertson and Ronald Johnson, "Reverse Discrimination: Did Weber Decide the Issue?" *Labor Law Review* 31, no. 11 (November 1980): 693–99.

[8] Leiter, 43.

[9] Leiter, 62.

[10] Leiter, 71; United States Commission on Civil Rights, *Federal Procurement after* Adarand (Transmittal letter, 2005), https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjk0vHZ8_OEAxU_AzQIHbS2ACwQFnoECBcQAQ&url=https%3A%2F%2Fwww.usccr.gov%2Ffiles%2Fpubs%2Fdocs%2F080505_fedprocadarand.pdf&usg=AOvVaw0emluQ9JUMqiBArUj_9Okd&opi=89978449.

[11] Leiter, 51, 64, 68.

[12] Civil Rights Act of 1964, Title VII, Section 703(a)(1)(2) and Section 703(j), as cited by Leiter, 30.

[13] J. Gerth, "Wendell Ford was Kentucky," *Courier-Journal* (Louisville), January 23, 2015, http://www.courieer-journal.com/story/news.2015.01/23/ket-documentary-wendell-ford/22225753.

[14] J. Hood, "The American Cultural War and the Restructuring of Kentucky Politics," *Sageopen* 9, no. 3 (July–September 2019), https://doi.org/10.1177/458244010871054.

[15] Personal interview with Robert Overberg, July 28, 2003. Also, it was later alleged before a grand jury that before the election of a new governor someone working for the cabinet had illegally taken a listing of all the state's welfare recipients' addresses and telephone numbers and provided same to the Democratic Party. The party supposedly had used the information to call residents of west

Louisville ("Black Louisville") to warn them that if the Republican candidate won, he would get rid of all their welfare benefits. Lexington *Herald-Leader*, December 23, 1997 and March 4, 1998.

[16] Viola Miller and John Morse, memorandum to Commissioners and Executive Directors, January 31, 1996; John Combs, memorandum to Viola Miller, 22, 1996.

[17] Cabinet for Human Resources, *Utilization Analysis for Human Resources, January 1, 1996–June 30, 1996.*

[18] Cabinet for Families and Children, *Report on Hires, January 1, 1997–June 30,1997.*

[19] Teresa Suter and Marcia Morgan, memorandum to Commissioners and Office Heads, February 6, 1997.

[20] Cabinet for Families and Children, *Gender/Minority Employment data*; Robert Overberg, personal interview, July 28, 2003.

[21] Kentucky Personnel Cabinet, Governor's Minority Management Trainee Program; N. Jackson, email to Cabinet Secretaries re: Certified Public Managers Program, April 4, 2008.

[22] Office of the Attorney General, *Travel Reimbursement Review of the Cabinet for Families and Children.*

[23] Kentucky Personnel Board Appeal, 99–581.

[24] KRS18A.0751(4)(f); Mark A. Rosen, Director of Personnel, memorandum to all Office Heads, October 26, 1998; Commonwealth of Kentucky, Franklin Circuit Court, Civil Action, No. 90-CI-01320.

[25] Cabinet for Human Resources, *Ethnic & Gender Personnel Report January 1, 1996 through June 30, 1996*; Cabinet for Families and Children, *Ethnic & Gender Personnel Report July1, 1998 through December 31, 1998*; Cabinet for Health, *Ethnic & Gender Personnel Report July 1, 1998–December 31, 1998.*

[26] 101KAR2:076; Cabinet for Human Resources *Personnel Manual*, Section on Detail to Special Duty; Cabinet for Families and Children, *DSI Employees on Detail to Special Duty.*

[27] Cabinet for Human Resources, *Personnel Procedures Manual*, Section on Temporary Assignments; Office of the Attorney General, *Travel Reimbursement Review of CFC.*

[28] 101KAR2:034 Section 3(1); 101KAR2:066 Section 2(1)(a).

[29] Cabinet for Families and Children, *Affirmative Action Program for the Cabinet for Families and Children*, revised November 1999 (DRAFT).

[30] Peter Wood, *Diversity: The Invention of a Concept* (San Francisco: Encounter Books, 2003), 43, 123.

[31] *Affirmative Action Program for the Cabinet for Families and Children*, revised November 1999 (DRAFT).

[32] Cabinet for Families and Children, Grievance, December 3, 1997; Teresa Suter, email to Stephen Jones, July 19, 2000.

[33] Deputy Secretary Tim Jackson, "CFC's Number 1 Reason for a Diverse Work Force: It's the Right Thing to Do!" *CFC Online* 1, no. 7 (December, 2000).

[34] Cabinet for Human Resources, *Ethnic & Gender Personnel Report January 1, 1996 through June 30, 1996*; Cabinet for Families and Children, *Ethnic & Gender Personnel Report July1, 1998 through December 31, 1998*; Cabinet for Health, *Ethnic & Gender Personnel Report July 1, 1998–December 31, 1998.*

[35] Charlotte M. Harley, email to all state employees dated May 2, 2002; for a full discussion of this issue nationally, see Christina Hoff Sommers, *The War against Boys: How Misguided Feminism is Harming Our Young Boys* (New York: Touchstone, 2000).

[36] Kentucky Commission on Women, *A New Vision for Kentucky: Final Report of the Governor's Task Force on the Economic Status of Women* (n.p.: 2003).

[37] Daniel Egbers to James L. Hood, August 21, 2001; Office of the Attorney General, Opinions 77-151, 84-278, 89-81, 98-ORD-45.

[38] KRS344.015; Morgan Ransdell, Kentucky Commission on Human Rights Attorney to James Hood, December 21, 2001; Daniel Egbers to B. C. Brummett dated July 23, 1999; 29CFR1607.15A(2)(a) and (b); Attorney General's Opinion 98-ORD-45 and 98-ORD-81; Cabinet for Families and Children, *Disparate Impact Analysis: Report, 2000.*

[39] Kentucky Personnel Board appeal No. 99-581; Suter memorandum dated October 12, 2000, concerning Cabinet's October 26, 1998, memorandum on appointments and promotions; an unpublished circuit court order cannot be cited as precedent.

[40] Office of the Attorney General, *Travel Reimbursement Review of CFC.*

[41] Mark Chellgren, "Agencies Ruled Liable in Whistle-Blower Cases," *Herald-Leader* (Lexington), May 20, 2005, B4.

[42] *Herald-Leader* (Lexington), August 24, 2002; AG 98-ORD-45; AG 98-ORD-81; Commonwealth of Kentucky Franklin Circuit Court Division 1, Case No. 98CI-00550; Personnel Board Appeal 99-581; Legislative Subcommittee on Families and Children Minutes, December 18, 2002.
[43] *Herald-Leader* (Lexington), August 24, 2002; AG 98-ORD-45; AG 98-ORD-81; Commonwealth of Kentucky Franklin Circuit Court Division 1, Case No. 98CI-00550; Personnel Board Appeal 99-581.
[44] Personal Responsibility and Work Opportunity Reconciliation Act (PROWRA) (P.L.106-193).
[45] Cabinet for Families and Children, Department for Community Based Services, *Operations Manual*, Sections 1523, 1880, 1885, 5110, and 99589.
[46] Robert Overberg, email to Esther Wilhoyte, February 15, 2002, subject: Duplicate MARS checks; Secretary Viola Miller, letters to State Senator Katie Stine, March 11, 2002, and September 23, 2002; *Operations Manual*, Section 1880; Robert R. Damron and Katie Stine to Edward B. Hatchett, October 23, 2002; *Kentucky State Auditor's Report to Subcommittee on Families and Children December 18, 2002*; Teresa Suter deposition, April 19, 2004.
[47] 7CFR273; *Operations Manual*, Volume 1, Section 1660; Overberg interview; Cathy Mobley, email to Elaine Butler, November 6, 2001; *Enhanced Food Stamp Funding for Kentucky, per FISCAL YEAR:* USDA, Division of Family Support, Claims Review, February 25–March 2002.
[48] Mobley memorandum to Jeanne Baldwin, August 27, 2001; *Herald-Leader* (Lexington), December 18, 2001; *Enhanced Food Stamp Funding for Kentucky per Fiscal Year*; United States Department of Agriculture, Division of Family Support, *Claims Review, February 25–March 1, 2002.*
[49] Cabinet for Families and Children, *Accounts Management Reports of Collections by Program for State Fiscal Years 2000 and 2001*; United States Department of Agriculture, Division of Family Support, *Claims Review, February 25–March 1, 2002*; Legislative Subcommittee; *Herald-Leader* (Lexington), December 18, 2001.
[50] Edward Hatchett to Katie Stine and Robert Damron, November 12, 2002.
[51] *Kentucky State Auditor's Report to Subcommittee on Families and Children*, December 18, 2002.
[52] USDA, Claims; *CFC Operations Manual*, Section 1521; Dietra Paris to Gilbert Camacho, June 20, 2002.
[53] Collen Flaherty, "White and Asian Professors Need Not Apply," http://www.slate/articles/life/inside_higher-ed/2015/University_of_Louisville_job Ben Foster, "Affirmative Action and the University of Louisville: A Case Study," https://www.org/articles/affirmative_action_at_the_university_of_Louisville_a_case_st.
[54] Ibram X. Kendi Justifies His 'The Only Remedy to Past Discrimination is Present Discrimination,'" https://news.grabien.com/story-ibram-kendi-justifes-his-only-remedy.
[55] Horatius, "The End of the Long March," *The American Mind*, August 4, 2021, https://amerianmind.org/salvo/the-end-of-the-long-march-; Joel Kotkin, "Critical Race Theory Ignores Anti-Semitism," *Unherd*, August 10, 2021, https://unherd.com/2021/08/critcal-race-theory-rewrites-history/; Masoma Haq, "Over 5,000 Sign Pledge to Continue Teaching Critical Race Theory Even If Outlawed," *The Epoch Times*, July 14, 2021, https://www.theepochtimes.com/mkt_morningbrief/over-5000-teache; Steve Miller, "Colleges Learning Costly Woke Math in the Courtroom School of Hard Knocks," *RealClearInvestigations*, October 7, 2021, https://www.realclearinvestigations.com/articfles/2021/10/07/coleges-; Executive Order on Advancing Racial Equity and Support for Underserved Communities through the Federal Government, January 20, 2021.
[56] Executive Order on Advancing Racial Equity and Support for Underserved Communities through the Federal Government, January 20, 2021; Rebecca Reynolds, "Court Rules against Using Race, Sex to Allocate Federal Aid, https://apnews.com/article/tn-state-wire-and-ethnicity-racial-unj; United States Department of Agriculture, *Minority and Women Farmers and Ranchers*, https://www.fsa.usda.gov/programs-and-services/farm-loanprogram.

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