

COMMENT

Keep faculty hiring free of race

UD policy is vulnerable on intellectual and legal grounds

The University of Delaware administration has announced a policy of race-based hiring of university faculty. As reported in *The News Journal*, if a department's first choice for a position is not a minority, the department may make an offer to both its first choice and a minority — but only a minority — on its list of finalists.

The *News Journal* not only endorsed this policy of hiring by race in an editorial, but it attacked the policy's critics, particularly members of the Delaware Association of Scholars. Both the endorsement and the attack are filled with misunderstanding and distortion.

The association of scholars, which believes in the principle of nondiscrimination, objects to UD's policy on two grounds. Race-based hiring is illegal and unwise.

Under this policy, the university will treat members of different races differently in employment. Some candidates will be hired who would not have been if they were of a different race. This is intentional discrimination based solely on race and a clear violation of federal and state civil rights laws.

For example, the 1991 U.S. Civil Rights Act expressly states that "an unlawful employment practice is established when the complaining party demonstrates that race ... was a contributing factor for any employment practice, even though other factors also contributed to such practice."

And the U.S. Third Circuit Court of Appeals, whose authority includes Delaware, has ruled in the current precedent case: "It is clear that the language of Title VII [of the 1964 Civil Rights Act] is violated when an employer makes an employ-

Rebuttal

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ment decision based on an employee's race."

As to the argument that UD's percentage of minority faculty is too low, the U.S. Third Circuit Court of Appeals explicitly reaffirmed Title VII's prohibition that "preferential treatment [is] not to be granted on account of existing number or percentage imbalance."

Supporters of UD's plan also should realize that treating people differently on account of race entitles a plaintiff not only to legal relief but to punitive damages against the particular individuals who have discriminated. There is personal as well as institutional liability for punitive damages where there is intentional discrimination.

Ironically, the administration's announcement only increases UD's vulnerability to such a lawsuit by frankly acknowledging its practice.

The Delaware Association of Scholars also wonders whether supporters of the plan have thought through its professional consequences. Does anyone really want UD to hire members of any minority group on the declared grounds that the candidates in question were not good enough to compete successfully with all candidates, but only with those of their own racial group? Supporters should realize that the plan would establish an explicit two-class system, with a new class of faculty who would not have been hired except for their race.

We think that such patronizing treatment, however well-intentioned, is a travesty of equality and an insult to those supporters say they want to

help. UD's plan could have the unfortunate effect of chasing away the very candidates the university claims to want to attract, by tainting all minorities who are hired.

The *News Journal* accuses the association of scholars of having ugly, selfish motives, of being hostile to and afraid of minorities, and of being defenders of academic freedom only when it serves our interests. This is pure nonsense. I myself am an old civil rights worker, and others in DAS have worked in behalf of the disadvantaged. The *News Journal* evidently thinks that no one could have a legitimate disagreement with race-based hiring and that only racists would object. This is untrue and unfair.

The Delaware Association of Scholars is not alone at UD in opposing racial preferences in hiring. According to a 1998 survey of UD faculty, 71 percent of the faculty who responded opposed racial preferences in employment, while 26 percent approved. (A national Roper poll found 60 percent of faculty nationwide opposed such hiring, and 29 percent approved.)

As for academic freedom, the association of scholars has never attempted to stifle discussion of racial preferences. On the contrary, it has encouraged discussion and has objected only to the university's violation of state and federal law. It is *The News Journal's* charge of racism that chills discussion.

It is disappointing that *The News Journal* cannot disagree with the principle of nondiscrimination without personally attacking the people who defend it. Delaware deserves better.

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