Commentary

Unqualified to Be Voiceless: Inaudible Screams Falling on the Deaf Ears of a Not So Color-Blind Society

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America,
When you look at my face
What do you see?
That is what we’re talkin’ ‘bout.

I. CAN YOU HEAR ME?

As a woman who is part Latina, I share one voice that represents two of the targets of the New Right’s attack on affirmative action. As a person who is doubly under siege, today and throughout the history of this country, I speak with a forked tongue, a serpent’s tongue—one that is dangerous.

One side of my tongue can communicate to you about my educational experiences as a double beneficiary of affirmative action policies and tell you that as a result of my undergraduate and legal education, I now know how to think rationally and communicate logically. I have studied American history. I can analyze the law. I’ve developed the ability to articulate my thoughts and relate to you via the medium of writing. I have acquired some valuable tools, and that makes a person like me dangerous.

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From the other side of my tongue, however, I speak to you about a few of the truths I have learned about women and people of color. For a long time, women were prevented from obtaining an education; it was seen as extraneous since our lot in life was thought to be household chores and child rearing. Similarly, no one wanted people of color to get an education or to learn to read. It was also forbidden that we learn how to write. We were kept out of the legal profession for many years and out of the political arena too.

I now have the skills to understand what lay, and still lies, behind these exclusionary practices. If we are uneducated, then we remain on the outside; lack the tools to examine, analyze, and participate fully in the political, economic, and legal systems of our society. If we can't read or write, we remain limited in our ability to respond to the injustices we see and feel. If we can't master words and phrases, then we are unable to decode the ways in which language is used as part of an arsenal against us. Without access to education, we don’t have access to the power structures of society and can’t make ourselves heard. Without a language that is heard, all we can do is scream.

So I see it as no great surprise, especially when put in a historical context, that there is now a burgeoning movement to abolish affirmative action policies. It is a quick and efficient way to support the reversal of the many gains won during, and before, the Civil Rights movement. Many souls before me have left this world hanging from a tree or lying beaten in the street so that I could sit here writing today. Many of them could not read or write, but they all knew one thing: how to identify injustice. That is still the one thing you don’t need an education to understand.

II. PREFERENCES FOR THE UNQUALIFIED: OBJECTIVELY SUBJECTIVE CRITERIA

A. A History of Preference

We are part of a social experiment in this country and that social experiment is failing, for we ourselves have failed to examine the history that brought us to this place. And when you don’t look history in the face, it will come up from behind you and destroy you. That is what is happening to America. We are being destroyed by the forces that propel history into a circular spiral.

Polls show that Americans do not support affirmative action when it is characterized as a system of preference for minorities.1 What is not clear to

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1 Memorandum from Lisa Stulberg to the Project on Equal Opportunity 13-15 (July 31, 1995) (on file with author). “Are you for or against granting preferences in hiring and promotion for Blacks, women, Hispanics, Asians.” Percentage against granting preferences for:
   a. African Americans: 60
   b. women: 57
   c. Latinos: 61
   d. Asians: 61
me, however, is why these same Americans overlook the preference system that laid the groundwork of this very country. A brief lesson in history might help make this point.

If we go back to the point in which the American colonies declared themselves free and independent from the mother country, Great Britain, we are confronted with the familiar language from the Declaration of Independence, "[w]e hold these truths to be self-evident, that all men are created equal; . . .." 2

The five men appointed by Congress on June 10, 1776 to draft the Declaration were John Adams, Benjamin Franklin, Thomas Jefferson, Robert R. Livingston, and Roger Sherman. 3 These men were all immigrants to the Americas from Great Britain. In writing that "all men are created equal," the drafters meant free men, not slaves. They meant European immigrant men, not Native Americans. They meant men, not women. By clearly articulating this preference in the very document that forms the basis of modern society, the values of the founders laid the basis for a constitutionally recognized preference system that may, more accurately, be characterized as a system of inclusion for European immigrant men based on a system of exclusion of anyone else. The reality of our very beginnings as a country must not be overlooked in an analysis of affirmative action policies.

The increasing concern voiced by "angry white men" who feel that they are losing jobs and opportunities because of a preference system that favors minorities is actually an attempt to bring America back to the days when these men were able to rule exclusively, without having to address the issues of people that they considered inferior, both legally and by virtue of natural endowments. So when you hear claims that "preferences are being given to the unqualified," think about what it meant for someone to be qualified in order to receive the benefits of a newly created democracy: in essence one had to be a man and had to have skin color like that of the founding fathers. Those qualifications seem very subjective, despite arguments of racial hegemony, natural law, or Aryan superiority that purport objectivity. The recent attempt to reverse the gains of the past thirty years is a travesty to the notion of justice, but completely predictable when viewed in light of these historical realities.

In examining the effects of the Declaration, one writer states: "Though it did not immediately result in the emancipation of slaves or in universal suffrage, advocates of both abolition of slavery and suffrage extension in later generations effectively used the egalitarian principles of the Declaration to advance their causes. In our own day it is a prod to the consciences of the American people to improve the conditions of minority groups." 4

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3 Id. at 2.
4 Id. at 3 (emphasis added).
That is quite a large “[t]hough.”

Let us be clear. It took ninety-four years from the signing of the Declaration of Independence until the ratification of the Fifteenth Amendment in 1870, in which it was declared that “[t]he right of citizens of the United States to vote shall not be denied . . . on account of race, color or previous condition of servitude.” No, it was not “immediate.” The passage of the Fifteenth Amendment, however, only marked the beginning of a century in which blacks were routinely prevented from exercising the right to vote.

As late as 1965, Dr. Martin Luther King, Jr. lead several civil rights organizations to support the registration drive aimed at increasing, from a paltry two percent, the percentage of blacks registered to vote in Selma, Alabama. Local officials responded with violent attacks “in which marchers were beaten with clubs and whips, kicked by horses and attacked with tear gas.”

In 1965, Congress responded to the long and brutal history of disfranchisement regarding people of color with the 1965 Voting Rights Act which was aimed at addressing substantial voting discrimination practices. The Act, in part, proscribed literacy tests that were being used in many areas as qualifications for voting. These literacy tests were used as ways to prevent citizens who were not proficient in English from voting. New York, for example, used these tests to prevent Puerto Rican Americans from exercising their right to vote. Poll taxes were another means of subverting the Fifteenth Amendment and were therefore declared unconstitutional.

These examples provide an introduction to the history lesson on preference that lay in our recent past and, for some, represent a nostalgia to which it is worth struggling to return. That nostalgia also includes the era when women were confined to the roles of mother and homemaker—stations in life that the New Right is heralding as a component of their family values package.

B. To Men Alone

Our brief examination of the history of the franchise illuminates the particular resistance that exists with regard to granting African Americans
and other people of color the right to vote. It must be carefully noted, however, that the Fifteenth Amendment applied only to the franchise of men.

While the Supreme Court acknowledged in *Minor v. Happersett* that free *white* women were considered citizens as early as 1790, it had no problem denying women the right to vote, as it was clearly not the intention of the Constitution to include them. It was not until 1920, with the passage of the Nineteenth Amendment, that women won their struggle to gain the right to vote. The resistances against people of color, however, that gave rise to legislative reform such as the 1965 Voting Rights Act continued after 1920 to make it very difficult for women of color to exercise their vote. Women of color are noticeably absent from the preceding discussion, primarily because we were the last group to overcome the double barriers erected to bar people of color and women from the political realm.

So we are faced with a history of preference towards free whites and a history in which women, and particularly women of color, were the last in line to gain access to their national voice, namely the vote. It is a history replete with legal challenges and legislative attempts to remedy the real and overt hatred expressed against people whose skin was dark. A “history” of hatred that continues to this day.

**III. CALIFORNIA: NO COINCIDENCE IN NUMBERS**

My understanding is that soon after the millennium, people of color in California will represent a majority. It is, therefore, no coincidence that the attack on affirmative action is beginning here. The movement started with public education at the University of California and is widening its net to include all public education, employment, and contracting.

**A. Education**

**1. Affirmative Action at UC Berkeley: Who Are the Numbers?**

In July 1995, the UC Regents voted to abolish affirmative action in admissions. The vote was fourteen to ten, a two vote margin of defeat with one abstention. Two people made the difference in creating a “majority,” and thereby changed the entire fate of education in the world’s leading public educational institution. Two votes in favor of affirmative action would have made it a tie. Two. This number is floating around in my head.
I want to know who those two people are that were allowed to decide the fate of my children. And, more importantly, who are the fourteen people that, in just one day, sat back and voted away a fifty year history of judicial and legislative struggle that followed 150 years of legalized segregation, selective prosecution, and vigilantism?

This is who they are. The vote was made possible by a dominant number of political appointees. Of the twenty-six regents, seventeen were appointed by Republican governors. The author of the resolution, Regent Ward Connerly, and many of the resolution’s supporters were major financial contributors to California Governor Pete Wilson’s gubernatorial campaign.17

The importance of the relationship between voting and the quality of our daily lives becomes poignantly clear in this instance. Wilson made abolishing affirmative action programs one of the platforms of his presidential campaign—politics. California, as his home state, became his testing ground. Wilson played the pivotal role in persuading the Regents to pass the resolution.18

However, the terms of two of the Regents who voted to abolish affirmative action ended in March 1996. Governor Wilson has the power to appoint the two people to fill these roles.19 This too is politics. We need to pay attention. The California legislature will have to confirm the appointees—another example of why our votes have such an influence and are so important to the future of our children. We need to educate people about the politics of electoral politics, get people to the polling booths, and educate them about how their votes help define the political agenda.

If the issue of affirmative action is presented to the Regents again by the one Regent who abstained from voting, and the two seats are filled by individuals who understand the importance of affirmative action, then we may have a “majority”—small margins, close calls. Why is it all so close? Why is the school that accepted me fifteen years ago as an affirmative action applicant now erasing the program that opened the door, a door that otherwise would have been bolted shut, to the beginning of my higher education?

2. Double Trouble: A Two Time Beneficiary of Affirmative Action

In 1980, the University of California at Berkeley accepted me as an undergraduate. The path that led me there was filled with happenstance. My guidance counselor wanted me to go to an all-female, local college in New Jersey, but having grown up with a radical, feminist, lesbian mother

18 Id.
19 As this piece went to press, Governor Wilson had not made any new appointments.
meant that I had already mastered lessons about the benefits of an all-
female society. I sensed that a co-educational experience might be an ed-
ucation in itself. I told my guidance counselor I wanted to go to school in
California. She said she could not make long distance phone calls.

One of the other guidance counselors in the school decided to "adopt" me. That experience ended up influencing the course of my life. I told Mr.
Acciardi that I wanted to go to school in California, and he picked up one of
his college resource books, looked up a number, and dialed. That simple
phone call lead to an application from UC Berkeley arriving at my home.

My father had not gone to college. My mother returned to a local
college to get her Bachelor's Degree in her thirties, after having three chil-
dren. My grandmother always told me I'd go to college, but not having
gone to one herself, she was not able to guide me on the logistics. Neither
of my parents were able to provide me financial support for college: my
father passed away before I graduated high school, and my mom was work-
ing as a waitress to support the three of us.

No one had any money saved up for me to go to college. I worked all
four years during high school to help support myself. This is the reality for
a lot of students, yet, students of color face an added layer of discourag-
ment when their fate is left to the values of guidance counselors and teach-
ers who may not encourage them, or who outright discourage them, from
pursuing goals in higher education. I had a twist of fate that helped me
reach a higher goal than I ever knew existed.

I filled out my application to UC Berkeley on New Year's Eve 1979
and checked the box that asked if I wanted to be considered as part of the
EOP/AA program (Equal Opportunity Program/Affirmative Action). I felt
qualified because of my racial background as the daughter of a Cuban
immigrant. I was accepted in May 1980. When I told students in my high
school class that Berkeley had accepted me, they assumed I meant Berklee
Secretarial School. That was the expectation. None of my Latino or Latina
friends were going to college. Most of my Caucasian friends were going to
college.

When I found out that I was accepted, I realized that I had no place to
live in California and knew no one there who could assist me. I could not
afford the expense of flying out several months before school started
because I was already working diligently to save money for college. A
series of phone calls by my mother to the Director of the EOP/AA program
afforded me the opportunity to get one of the dormitory housing slots
reserved for EOP/AA students. I thrived at Berkeley, despite having to
work every semester to support myself, and graduated with close to a B
plus average in only four years.

Directly after my undergraduate work, I was accepted to the University
of Pennsylvania School of Law. I was an affirmative action admitee there
too, one of the very few people of color in my class. I felt like an outcast.
Many of my wealthy friends, all of whom were Caucasian, were constantly perplexed about why I had to work while attending law school. Some took it as an affront when I repeatedly turned down invitations to join them for lunch at the cafe across the street. I simply could not afford the extra forty-five dollars a week. Many of their parents were paying for all, or part, of law school. Despite these difficulties, I excelled in law school simply because I was given an opportunity to excel. But now, everything that made it possible for me to get a quality education is being threatened by a small, albeit well-organized, group that feels threatened by my education.

B. The California Civil Rights Initiative: Two Hundred Years Too Late

There are numbers floating around in my head, close calls, small margins of victory or margins of defeat, depending on your perspective. These numbers are playing a crucial role in recent political events both nationally and in California. They're playing a crucial role in my life. Looming over the state of California like a gray cloud is one number in particular: 693,230. This is the number of signatures needed to get the California Civil Rights Initiative ("CCRI") on the ballot in November 1996 or, as Eva Patterson, the Executive Director of the Lawyers Committee for Civil Rights, calls it, the California Civil WRONGS Initiative. Section (a) of the Initiative reads "[t]he state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting."

20 Telephone Interview with Andrew Hinkle, Program Technician, Office of the Secretary of State, Elections Division (Feb. 14, 1996).
21 Eva Patterson credits her friend, Connie Rice, for the invention of this phrase. Telephone Interview with Scott James, Office Assistant to Eva Patterson (Feb. 13, 1996).
22 The remainder of the California Civil Rights Initiative reads:
   (b) This section shall apply only to action taken after the section's effective date.
   (c) Nothing in this section shall be interpreted as prohibiting bona fide qualifications based on sex which are reasonably necessary to the normal operation of public employment, public education, or public contracting.
   (d) Nothing in this section shall be interpreted as invalidating any court order or consent decree which is in force as of the effective date of this section.
   (e) Nothing in this section shall be interpreted as prohibiting action which must be taken to establish or maintain eligibility for any federal program, where ineligibility would result in a loss of federal funds to the state.
   (f) For the purposes of this section, "state" shall include, but not necessarily be limited to, the state itself, any city, county, city and county, public university system, including the University of California, community college district, school district, special district, or any other political subdivision or governmental instrumentality of or within the state.
   (g) The remedies available for violations of this section shall be the same, regardless of the injured party's race, sex, color, ethnicity, or national origin, as are otherwise available for violations of then-existing California anti-discrimination law.
   (h) This section shall be self-executing. If any part or parts of this section are found to be in conflict with federal law or the United States Constitution, the section shall be implemented to the maximum extent that federal law and the United States Constitution permit. Any provision held invalid shall be severable from the remaining portions of this section.
In my view, Messrs. Glynn Custred and Thomas Wood, the authors and principals of the initiative, are 200 years too late and forgot to include things like discrimination in voting, in ownership of property, in access to public eateries, and in access to decent housing. Where was this notion in 1776 when the document that laid the groundwork for this country was written? This purported anti-preference bill is nothing more than an attempt to maintain the preference in favor of free white men that has been operating in America for the past 200 years. The numbers show that it is still in operation. White men are 33% of the population in the United States, yet they are 85% of the tenured professors, 85% of the partners in major law firms, 80% of the U.S. House of Representatives, 90% of the U.S. Senate, 95% of the Fortune 500 CEO’s, 95% of school superintendents, 99.9% of professional athletic team owners, and 100% of U.S. Presidents.

Numerous legislative remedies have been enacted to address this historical preference system, but the New Right is now starting to chop away at these remedies by attacking affirmative action programs as “preference programs.” In fact, affirmative action programs are aimed at eliminating the preference system that is in place and eliminating the discrimination that exists in employment, education, and contracting. Affirmative action programs are “anti-preference” and “anti-discrimination.”

The leaders of the right are pandering to white men who feel that they are under attack simply because they are no longer automatically guaranteed preference in employment, education, and contracting. When these men study history, they look back on the past with nostalgia and wish to return us to the time when there was no legal obligation to acknowledge people of color. It is no coincidence that Newt Gingrich is a history professor. He knows what this country has the capacity to be. We cannot let his interpretation, one that favors the founding fathers, reign across the land. We must vote him away!

C. Counter-Initiatives: Counter-Intuitive

Several of the groups strategizing about how to defeat CCRI were proposing counter initiatives. There were originally three initiatives that sought to modify or keep affirmative action in place. One of them, the California Equal Opportunity and Non-Discrimination Initiative, included a section guaranteeing that “unqualified” persons are not selected in affirmative action programs. That section read, “[t]he state shall not operate any affirmative action program that uses quotas or hires or selects unqualified persons, based on race, sex, age, color, ethnicity, or national origin.” This

Telephone Interview with Andrew Hinkle, Program Technician, Office of the Secretary of State, Elections Division (Feb. 14, 1996).

23 AMERICAN CIVIL LIBERTIES UNION, supra note 17, at 5.

strategy was aimed at dispelling the myth that affirmative action means selecting unqualified people because polls indicated that people are opposed to affirmative action if they think it grants unqualified persons access to employment and educational opportunities over “qualified” persons.  

The wording of this counter-initiative spurned heated debate in many communities because people felt that such wording makes it appear that a vote in favor of the initiative will somehow change the nature of affirmative action programs, when in fact that is not true because affirmative action programs presently require people to meet certain standards before being given consideration. Moreover, there are various types of affirmative action programs and each is designed to meet the needs of the particular school or employer. What an affirmative action program commonly does, in a school’s admission program for example, is allow race to be considered as a factor in determining a person’s qualifications. However, before a person’s race is considered, she must meet certain qualifications. This consideration works much the same as the type of consideration given to veterans, children of alumni, and athletes. Such programs are institutional expressions of values that the school believes are important.

In the employment arena, an applicant has to meet certain requirements in order to be considered for a job. For a given opening, several applicants typically have the desired qualifications in varying degrees. An affirmative action policy commonly would allow a recruitment committee to consider an applicant’s race or gender as an additional factor in determining who should be interviewed and, finally, who should be offered the job. If race were not a factor, a hiring committee comprised of three white men, for example, might opt to go with a candidate that they feel most at ease with and this typically would be another white male. Alternatively, a hiring committee of three white women might want to give the job to another white woman for the same reason. With affirmative action policies, a candidate’s race/gender becomes a factor so that people are consciously viewing the composition of the workplace or the educational institution and working to ensure that it reflects the diversity that is supposed to make this a great country.

Instead of educating people about the numerous kinds of affirmative action programs that exist and the ways in which they actually operate, some people feel that the most successful way to defeat CCRI is with a counter-initiative, like the Non-Discrimination Initiative, that addresses people’s fears instead of trying to challenge their misperceptions. As I understand it, the final decision was not to sponsor a ballot counter-initiative, but to work, instead, to educate the public about the nature of affirmative action policies and the ways in which our society benefits from the

ideal of inclusion. Nonetheless, issues about how to effectuate public political education remains one of our biggest challenges.

IV. THE FACTS OF OUR EXISTENCE: WOMEN OF COLOR

A. Affirmative Actions Gains

Affirmative action programs have helped women of color in terms of employment. In 1991, there were 1.5 million more African-American women employed than in 1980. The increase for Latinas was 1.2 million. In 1991, 3.5 million Latinas were jobholders, but they were concentrated in non-professional positions such as salespersons, secretaries, cashiers, information clerks, bookkeepers, and receptionists. Asian and Pacific Islander women are also concentrated in these same technical, sales, and administrative support positions.

The total median income for Latinas working full time, year round was $16,244—a 68% increase from the 1980 amount of $9,679. Despite this increase, Latinas continue to earn less than their black and white counterparts, who earn 14% more and 22% more respectively.

While the number of employed women of color has increased, the types of jobs being performed by women of color is revealing. Latinas are over represented in the service occupations such as maids, nursing aids, cooks, and child care workers.

The number of African-American women entering high-paying, career-oriented managerial and professional occupations is increasing, yet they only account for 5.3% of all women employed in 1991 in some of the high-paying occupations such as lawyers, engineers, mathematical and computer scientists, teachers in colleges and universities, managers in health and medicine, registered nurses, education administrators, physicians, computer programmers, and educational and vocational counselors.

There were 340,042 employed and 51,377 unemployed American Indian, Eskimo, and Aleut women in 1990. Their unemployment rate of 13.1, however, was higher than that of any other female group and more than twice that of all women.

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26 The strategical approach to educate the voting public about the issues was also used in the fight to defeat Proposition 187 in 1994 and was seen as not successful, by some, because the proposition passed. There is concern that using a similar approach to defeat CCRI will meet a similar fate. Others, however, believe that the lessons learned from the organizing effort around Proposition 187 can be used to successfully defeat CCRI.


28 Id. at 52-53.

29 Id. at 54.

30 Id. at 53.

31 Id.

32 Id.

33 Id. at 50-51.

34 Id. at 56.
B. Just How Far Are We Getting? A Look at California

Insight about how which affirmative action programs are benefiting women of color must be gained by examining the extent to which educational opportunities have combined with employment opportunities to open access to jobs previously dominated by males. One such realm is in the judiciary because a law school education is a prerequisite to holding the post.

In 1995, a report was made on the racial and ethnic composition of the California trial courts.\textsuperscript{35} The report reveals that statewide, 77% of superior and 69% of municipal court judges are white males. White females constitute 12% and 15% of the superior and municipal court judges, respectively. Women of color make up a small portion of the positions held by women. In California there are only four female, African-American superior court judges, 0.5% of the total judges.\textsuperscript{36} There are only two Latina superior court judges and four female, Asian-American superior court judges, equaling 0.5% or less of the total number of superior court judges.\textsuperscript{37}

The number of women holding positions as municipal court judges is higher in comparison to superior court, but their percentages are very small with sixteen female, African-American judges, five Latina judges, and eight female, Asian-American judges, representing 2.7%, 0.9%, and 1.4% respectively.\textsuperscript{38} The number of women, however, holding non-judicial positions and performing clerical and administrative support responsibilities is much higher.\textsuperscript{39}

The private sector shows similar signs of resistance in regards to the experience of women of color. From 1982 to 1992, the overall number of African-American, professional women grew 125%,\textsuperscript{40} but 1991 U.S. Department of Labor statistics show that only 3.4% of all African-American women managers were in the private sector, and the percentages for Latina women, Asian and Pacific Islander women, and American Indian women managers were 2.0%, 1.2%, and 0.2% respectively.\textsuperscript{41} So where are all the African-American women that account for the increase?

Research reveals that almost 75% of women of color are likely to be employed in the service industries and in finance, insurance, real estate, and the wholesale/retail trade industries. There are findings, however, suggesting that male managers in these same areas are reluctant to place

\begin{thebibliography}{9}
\item Id. at 35.
\item Id.
\item Id.
\item Id. at 34-35.
\item American Jewish Congress, \textit{Affirmative Action Fact Sheet}.
\item Federal Glass Ceiling Commission, \textit{Good For Business: Making Full Use of the Nation's Human Capital} 152-153 (March 1995).
\end{thebibliography}
women in line positions because of stereotypes and preconceptions about these women that male managers hold.\textsuperscript{42}

So, while affirmative action programs are improving employment opportunities for women, a large majority of women of color are working in non-professional jobs and are filling positions that do not require advanced degrees. Yet, people working to end affirmative action argue that it was intended only as a temporary and expedient way to speed the entrance of minorities into the social and economic mainstream and that it has outlasted its intended purpose.\textsuperscript{43}

The crucial difference is how you envision purpose. My view is that women and people of color have a very long way to go before they can surpass the continued hurdles that exist with respect to our gaining entry into the world of politics, education, and finance. If affirmative action programs are abolished, the possibilities for women of color to advance educationally and economically become a mirage in an already faint forum of opportunities.

\section*{C. Educated Woman of Color: An Endangered Species}

Now I'm told that people find me intimidating. It is a repeated observation. I wonder why? Is it because I don't fit any of the stereotypes that people want to use to categorize me? I don't fit the stereotype of a Cuban, or of an Ivy League graduate, or of a Latina in her mid-thirties.

I'm the daughter of a Cuban immigrant, but I'm not a Republican and I'm not wealthy. I am part Cubana, but I don't hate Castro. I am Latina and I don't come from a large family. I do want to have a large family, though. I don't have any children, but I want to have them someday. I use birth control. I was raised in a Catholic church, but I don't agree with the Pope. I don't even believe in marriage. I'm a single woman and I hold two degrees; I could become an endangered species.

I travel by myself and I love to read.

I'm a lawyer from an Ivy League school, but I don't come from money. I'm from a working class family, but easily rejected the luxuries that life in a corporate law firm offered.

My education has served me, I haven't served it. I've learned that I don't have to give in, that I don't have to give up. I've learned that I have a choice. Who am I? I don't fit the stereotype of a woman of color, because as a result of my education, I'm choosing to educate society about who I am instead of letting society tell me who I'm supposed to be.

\textsuperscript{42} Id.

\textsuperscript{43} Paul Craig Roberts & Lawrence M. Stratton, \textit{Proliferation of Privilege}, \textit{NAT'L REV.}, Nov. 6, 1995, at 41.
D. Are You Qualified?

So I ask you to go back and delve into history and think about what it means for a person of color in this society to be qualified. Think about what the opponents of affirmative action mean when they say that candidates are “unqualified.”

To me it means that when you study United States History in high school, you don't look too closely at the language or the dates. That you admire our founding fathers and ignore any questions about the founding mothers, that you adopt the view that Columbus discovered America and forget that there were people here when he arrived. If you think about “those” people, you discount them due to their dark skin and their “uncivilized” ways.

You believe that there is only one supreme religion, and you think that anyone who doesn’t believe in your God is either wrong, or a sinner, or both. You forget that the divine power that created you, probably created everyone else around you too.

Most qualified people only speak one language and think that makes them superior.

You forget about humility when you are qualified.

To be qualified you must be rational, not angry and not riotous—you forget that this country was founded by rebels who were fighting another form of oppression. You control your urges to scream out in the face of injustice.

You look down on people who can’t seem to get ahead—you adopt a work ethic and assume that if you work hard you get far. You forget about the people you know who work two jobs a day and are always just getting by.

To be qualified you buy into the belief that money is the most important thing in the world.

To be qualified you deny newcomers the right to health care and education. You tell them that we don’t have enough to go around. To be qualified you laugh at racist jokes—if not you’ll be considered “uptight.” You never think about lynching and you refuse to listen to that song “Strange Fruit” sung by Billie Holiday.

Strange Fruit is a song sung by and written for Billie Holiday by Louis Allen. The lyrics, which follow, refer to visions of African-American people hanging from trees as a result of lynchings in the South. I thank my sister, jazz singer Sandra Rae, for teaching me about this song:

Southern trees bear strange fruit
Blood on the leaves
and blood at the roots
Black bodies swinging
in the southern breeze
Strange Fruit hangin’
from the poplar trees

Master of scenes
To be qualified you embrace the myth that domestic violence only happens in communities of color. You also hit your kids and try to forget what it felt like when you were hit.

To be qualified you believe that people of color in this world constitute a minority and you forget about the people in South America, Africa, China, Japan, the Pacific Islands, Alaska, Mexico, and the Caribbean. You simply forget, unless of course you can figure out a way to use their labor to cut your production costs and increase your profits.

V. Conclusion: Numbers in My Life

A. Fifty-One Percent

It was Angela Davis who first told me that I am not a minority.

She told me that people of color in this world make up a majority. Can you say that? Yes, she told me.

The power of words how they are used to make me feel small voiceless less than fifty-one percent of a democracy

of the gallant south the bulging eyes and twisted mouths scent of magnolias sweet & fresh Then the sudden smell of burning flesh

Here is a fruit For the crows to pluck For the rain to gather For the wind to suck For the sun to rot For the trees to drop Here is a strange and bitter crop Commodore Records (1939).
Because, you see, without a voice
you are not heard
and if you are not heard,
you're nobody
nobody's business
"ain't nobodies business"

And that's what I would have kept on
thinkin'
-about myself
if she hadn't told me

But I know different now
What do you see?

"women and minorities encouraged to apply"
don't we make up a majority?
women and "minorities"

Why, then, do they encourage us?
"there's just not enough qualified mi-nor-I-ties"

There's not enough?
but Angela told me
we make up a majority

how come there's not enough . . .
"they reproduce like rabbits, damnit"

But that's what the Pope says to do
isn't it?

There's just not enough
qualified
voiceless
rabbits

Oh NO what are we gonna do?
qualified
voiceless
rabbits

"they're just lazy. they don't like to work. like handouts"

Desperately Seeking
qualified, voiceless,
lazy . . .
rabbit
who likes handouts.
Please apply within.
But I can't find a job
'Cause there's so many of us
yet they only
want
One
qualified
voiceless
lazy
rabbit

So I won't apply (that) within
since it doesn't apply to me
'cause Angela Davis
told me
that
I am
Unqualified
to be voiceless

and that L A Z Y
is just another four letter word
and
When I reproduce
I make addition real
one plus one
makes lovin' see that majority grow

And that's why I thank her,
you see, It's Angela
who
I thank
for teaching me a thing or two
about the power
of
bein'
unqualified
to be
voiceless

B. Teach & Learn

In this country, only about two out of every three Americans of voting age are registered, with notable absences among the young and the poor.\(^{45}\) The drive to get more voters registered by recruiting at the Department of Motor Vehicles and other government offices known as the National Voter

Registration Act (or the "Motor Voter Law") has registered more than a million voters a month, better than twice the standard rate. This law targets the young and the poor, but many of these new registrants are not showing up at the polls.

I am reminded of the fact that Newt Gingrich won his seat by only 19,000 votes. This saddens me and reminds me that the term "majority" in electoral politics equals only 51% of the people who show up at the voting polls, nothing more, nothing less. So I am forced to rethink the notion of democracy in light of this all.

When people don't vote it is typically because they are disillusioned with politics and/or politicians. It is also because people believe that their vote doesn't count; that they don't have a voice. We must work to change this. Part of the change must be accomplished through mass education about the history of voting rights in the U.S. and about how electoral politics has the potential to work. We must also expose the extent to which political leaders, the legislators, and the judiciary have the power to make policies that can significantly affect the quality of our lives. The current political climate is a good place to start the lesson. We must teach and we must learn. The first lecture must begin with the following truth: that people of color and women are unqualified to be voiceless.

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46 Id.
47 Id.
48 I say "Part," because I know that full participation in the voting process involves more than education. Derrick Bell explains that effective voting has three prerequisites: access to ballot, availability of political power, and motivation to participate in the political process as affected by past and present discrimination. Bell, supra note 5, at 213.
49 If you are interested in getting involved with the fight to preserve affirmative action, please contact one of the following organizations: Lawyers' Committee for Civil Rights in the San Francisco Bay Area, 301 Mission Street, Suite 400, San Francisco, CA 94105, (415)543-9444; Californians for Justice, 1611 Telegraph, Suite #206, Oakland, CA 94612, (510)452-2728.