Minority Job Fairs for Law Students

*By Roger Clegg**

"Minority job fairs" are prevalent at our nation's law schools. As this article discusses, minority job fairs violate Title VII of the Civil Rights Act of 1964 because they discriminate against job applicants based upon the applicant's race or ethnicity. Law students discriminated against by these job fairs can complain to their law schools, those hosting or participating in the job fairs, and/or to the Equal Employment Opportunity Commission ("EEOC") or Department of Education.

I. Overview: Minority Job Fairs Violate Title VII of the Civil Rights Act of 1964

Title VII provides that it is unlawful for employers "to fail or refuse to hire … because of an individual's race, color, religion, sex, or national origin." 42 U.S.C. section 2000e-2(a)(1). Title VII further provides that it is unlawful for employers "to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities … because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. section 2000e-2(a)(2). Minority job fairs segregate applicants by race and by doing so tend to deprive applicants who are not members of the specified racial or ethnic group of employment opportunities. See also 42 U.S.C. section 2000e-2(m) (race may not be a "motivating factor for any employment practice").

Entities involved in minority job fairs also violate 42 U.S.C. section 2000e-3(b) by publicizing and advertising them. This provision of Title VII makes it unlawful for employers and employment agencies "to print or cause to be printed or published any notice or advertisement relating to employment … indicating any preference, limitation, specification, or discrimination, based on race, color, religion, sex, or national origin."

II. Why Law Schools, Employers, and Other Entities Involved in Minority Job Fairs Are in Violation of Title VII

Minority job fairs take on various forms. Some are hosted by law schools, others by employers, and still others by bar associations or other similar organizations. Regardless of which entity is identified as host of such an event, law schools and employers are usually involved integrally in minority job fairs. Law schools, through their career services offices, supply applicants through advertising, résumé forwarding, and other means. Employers review résumés, select applicants to interview at the job fairs, and make job offers based upon those interviews. By participating in minority job fairs, law schools, employers, and other entities involved violate Title VII.

A. Employer Liability

Employers participating in job fairs are typically law firms or corporations. Government agencies and offices are also potential participants. As private employers, law firms and corporations are subject to Title VII. Specifically, law firm partnerships are employers for the purposes of Title VII. *See Hishon v. King & Spalding*, 467 U.S. 69 (1984). To use racial preferences in hiring, a private employer must demonstrate the "existence of a 'manifest imbalance' … in 'traditionally segregated job categories," *Johnson v. Transportation Agency*, 480 U.S. 616 (1987). In my view, the "traditionally segregated" element of this test requires the employer to trace the imbalance to relatively recent past discrimination, which will be difficult for law firms to do, since they have been banned from such employment discrimination for nearly forty years now. Furthermore, the "manifest imbalance" part of the test requires that "the comparison should be with those in the labor force who possess the relevant qualifications." *Id*. It is unlikely that private legal employers could meet this burden either.

Even if private legal employers could demonstrate the "existence of a 'manifest imbalance' … in 'traditionally segregated job categories,'" minority job fairs would violate Title VII because they categorically exclude non-minority law students. In approving an affirmative action plan by a private employer in *Steelworkers v. Weber*, 443 U.S. 193 (1979), the Supreme Court took note that the plan did "not unnecessarily trammel the interests of the white employees." It also noted the plan was "a temporary measure." *Id.* Similarly, in *Johnson*, the Court approved a plan which did not "create 'an absolute bar to the advancement of white employees.'" 480 U.S. 616. Because minority job fairs categorically exclude non-minority students, they do "unnecessarily trammel the interests" of non-minority applicants and present an "absolute bar" to taking advantage of this interview opportunity.

Government employers must meet an even higher standard. In addition to complying with Title VII, they must comply with the Equal Protection Clause. The entities involved cannot claim a remedial justification unless they are willing to admit that they themselves have discriminated against minority groups in the recent past. In *Wygant v. Jackson Bd. of Educ*., 476 U.S. 267 (1986), Justice Powell noted that the Supreme Court "never has held that societal discrimination alone is sufficient to justify a racial classification." If government employers were to claim a diversity justification, which has never been accepted in the realm of employment, *id*.—two courts of appeals have rejected it in the Title VII context—the Supreme Court's recent decisions in *Grutter v. Bollinger* and *Gratz v. Bollinger* have made it clear that "individualized consideration" would be necessary to satisfy the "narrow tailoring" prong of strict scrutiny. A job fair which excludes certain applicants because of the color of their skin does not provide "individualized consideration." (It also appears that even private entities must now meet this higher standard, since the Court's *Grutter* and *Gratz*

decisions say that the prohibitions against intentional discrimination in the Fourteenth Amendment, Title VI, *and* 42 U.S.C. section 1981—which applies to public and private employment-related matters—are coextensive.)

B. Law School Liability

Law schools that host, participate in, or in any way assist minority job fairs are violating Title VII. Law schools, specifically the career services office within law schools, act as employment agencies and, therefore, are subject to Title VII. Title VII defines an employment agency as "any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer." 42 U.S.C. section 2000e(c). The career services office within any law school satisfies this definition because its purpose is to assist law students in finding jobs both while they are in school and after they graduate. Career services offices post job opportunities, collect résumés for employers, and host on-campus interviews. 42 U.S.C. section 2000e-2(b) makes clear that they may not do so in a way that discriminates on the basis of race or ethnicity. Moreover, minority job fairs are made possible by the advertising conducted by career services offices, and such advertisement also directly violates 42 U.S.C. section 2000e-3(b).

Law schools cannot rely upon the "existence of a 'manifest imbalance'" in "traditionally segregated job categories." Nothing in the Civil Rights Act of 1964 indicates that the law school could rely upon a showing that the employers for whom they are recruiting have discriminated in the past. Even if they could do this, the law school would need to demonstrate that they screened each legal employer and determined that each employer had a "manifest imbalance"—and a recent history of discrimination. Considering legal employers tend to be well-versed in the law, it is unlikely that forty years after the passage of the Civil Rights Act such a showing could be made.

By violating Title VII, law schools also violate Title VI. Because universities receive federal money, law schools must satisfy Title VI. Title VI provides that "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. section 2000d. By participating in minority job fairs, law schools discriminate. For law schools to justify this violation of Title VI, they must meet the higher standard of showing that they themselves have discriminated in assisting their minority students with finding jobs.

The law school could not rely on *Grutter v. Bollinger* to claim a diversity justification. *Grutter* addresses diversity in the classroom setting only. To the extent that a law school presented a diversity justification, which again has never been accepted in the realm of employment—see *Wygant, supra*—they would still need to provide "individualized consideration." See *Grutter v. Bollinger*. A job fair which categorically excludes applicants due to race or ethnicity does not provide "individualized consideration."

C. Bar Associations and Other Hosts of Minority Job Fairs

Many minority job fairs are hosted by bar associations. As with the law schools, bar associations and other hosts of minority job fairs are acting as employment agencies. They are undertaking "to procure employees for an employer or to procure for employees opportunities to work for an employer." 42 U.S.C. section 2000e(c). As stated above, there is nothing in Title VII which suggests that an entity acting as an employment agency can rely on the past discrimination of the employer for which they are providing employees. Even if they could, the bar association would have to screen each employer to ensure that the employer had a history of discrimination and "manifest imbalance." Once again, such a showing would be highly unlikely in regard to legal employers.

III. Conclusion

By excluding participants on the basis of race and ethnicity, minority job fairs violate Title VII. Some organizers of minority job fairs may claim that their "*minority* job fair" is merely called that, but is actually open to all students. Even if this were true, such a practice would be equivalent to posting a sign stating, "No blacks need apply," and then claiming blacks would be considered if they did apply. This latter practice would not be tolerated and neither should the former. The practice of advertising a job fair as a "minority job fair" would also violate 42 U.S.C. section 2000e-3(b) by publishing a "preference."

Because minority job fairs violate Title VII, they should be opened to all students and it should be clearly advertised that they are now open to all students regardless of race or ethnicity. Until this occurs, law schools, participating employers, hosting bar associations, and other entities involved with minority job fairs are violating Title VII and other civil rights laws.

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