“Affirmative Action” Supreme Court Ruling: An Effort to Preserve the Status of a Tiny Elite

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The Supreme Court today struck a devastating blow against one of the most important tools available to combat the intense segregation felt in nearly every area of society: affirmative action. Today’s ruling in lawsuits brought against Harvard and the University of North Carolina effectively ends this practice in higher education based on the deeply ironic rationale that it violates the Equal Protection Clause of the 14th Amendment. The majority opinion’s assurance that “nothing prohibits universities from considering an applicant’s discussion of how race affected the applicant’s life” – meaning that it is not banning an applicant from, for instance, mentioning the fact that they are Black in a personal essay – is meaningless in the face of the historic attack on racial equality that the rest of the ruling constitutes.

In an outrageous distortion of history, the six right-wing justices who voted for this ruling presented it as part of a long legacy of decisions that removed racial discrimination from the law, like *Brown v. Board of Education* and *Loving v. Virginia*. The policies adopted by educational institutions, or any other powerful institution, cannot be understood outside of their social and historical context.

Decisions like *Brown* and *Loving* helped overturn the explicitly white supremacist political system that had been in place since the foundation of the country. In those cases, of course the demand was to strike down the explicit references to race in the law. But formal legal equality does not on its own translate into social equality. Black, Latino and other oppressed communities remain overrepresented in the lowest-paying jobs, the most neglected neighborhoods and the most underfunded schools. It was to address this reality that affirmative action programs began to be implemented in the 1960s and 70s, aiming to guarantee representation especially at educational institutions.

Opponents of affirmative action pretend to be standing up for poor and middle class white

students who these right wingers claim are victims of “reverse racism.” But the six millionaire judges who ruled on this case don’t give a damn about working class students of any race – and neither do the ultra-wealthy donors who bankroll the falsely-named “Students for Fair Admissions” organization that is the plaintiff in the case. What this ruling is really about is retaining the privileges of a tiny elite.

The court did not say anything about Harvard’s practice of “legacy admissions,” for example. Between 2014 and 2019, the overall acceptance rate for Harvard was six percent. But for legacy applicants whose family members also attended Harvard, the acceptance rate was 33 percent. To the tiny handful of overwhelmingly white, ultra-rich families that have ruled this country for centuries, prestigious institutions of higher education are only for them. Their children get every advantage in the world from the moment they’re born. The admission of Black and Latino students as well as the admission of poor white students is an affront to the unequal social order that they view as natural and god-given. They are also horrified at proposals to make higher education free and forgive student debt.

How affirmative action was won – and came under attack

Jim Crow apartheid in the United States came to an end because of the heroic struggle of the Black liberation movement in the 1950s and 60s that shook the ruling class to the core and forced them to adopt a more democratic form of government. Oftentimes, it was the struggle of existing students that forced universities to adopt affirmative action policies. For instance, the Third World Student Strikes at UC Berkeley and San Francisco State University in 1968 and 1969 — led by an organization of revolutionary students called the Third World Liberation Front — led to some of the first affirmative action programs in the country and the creation of the first Ethnic Studies programs.

As legal segregation was uprooted with the passage of the Civil Rights Act of 1964 and the Voting Rights Act of 1965, the Black liberation struggle began to focus on demands for even more sweeping social transformation. Latino, Native, Asian and progressive white people came into the struggle in huge numbers as well, and threatened the capitalist system itself. Many institutions felt compelled to accept demands that they institute affirmative action policies.

But what happened next illustrates a fundamental truth about concessions secured under the existing system: Any progressive gain that is won can be taken away. In 1978, the Supreme Court issued the *Bakke* decision, which weakened affirmative action by banning the use of quotas. The inclusion of race as one factor of many in admissions processes was upheld in subsequent decisions, but on an increasingly narrow basis. The 2003 *Grutter* decision arbitrarily suggested that in 25 years affirmative action programs will no longer be necessary, and the 2016 *Fisher* ruling imposed the legal standard of “strict scrutiny” to existing programs.

What is needed in this moment is in fact a massive expansion of affirmative action, not its de-facto prohibition. A comprehensive, national program of affirmative action truly capable of uprooting racial inequality would ensure that Black, Latino and Native students who are subjected to the worst poverty under this system are the principal beneficiaries, as opposed to class strata that are subjected to less extreme material deprivation. And it should be applied not just in education, but in housing, the job market and other key areas of society as well.

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