

Institutional Discrimination and Racism: US Supreme Court Delivers Blow to Civil Rights. Upholds Michigan Ban on Affirmative Action

Sixty Years After Brown v. Topeka

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Michigan vote to ban consideration of race was based on deception

A 6-2 decision by the United States Supreme Court on April 23 upheld a 2006 vote in the state of Michigan which placed a ban on affirmative action. The so-called "Michigan Civil Rights Initiative" was in actuality a reversal of the very legal and political principles which guided the movement for equality from the 1950s through the 1970s.

This court decided that it possessed no jurisdiction to overturn a vote of the majority of people in Michigan which placed a ban on considering race and the history of national discrimination as factors in admissions to higher educational institutions. The impact of the Michigan vote in 2006 and other similar initiatives have resulted in drastic declines in the number of African American and Latino students at universities and colleges around in the state and the country.

Not only did the majority opinion uphold the anti-affirmative action vote in Michigan, it rejected a federal appeals court decision that the adoption of such a state law violates the 14th Amendment of the U.S. Constitution which ostensibly guaranteed equal protection under the law. Justice Anthony Kennedy, a conservative jurist, summed up the majority view saying in essence that such considerations of racism and past discrimination was not needed and was unconstitutional.

Kennedy said

"In a society in which those lines are becoming more blurred, the attempt to define race based categories also raises serious questions of its own. Government action that classifies individuals on the basis of race is inherently suspect and carries the danger of perpetuating the very racial divisions the polity seeks to transcend."

In a dissenting minority opinion, the only Puerto Rican jurist, Sonia Sotomayor, abhorred the decision. Justice Sotomayor, who recognizes that her career path is directly related to the affirmative action programs that helped Latinas from the Bronx get into Princeton University and Yale's law school, said the majority opinion represented the refusal "to accept the stark reality that race matters is regrettable. We ought not to sit back and wish away, rather than confront the racial inequality that exists in our society."

Michigan Vote to Ban Affirmative Action Was Based on Deception and Racism

The placing of the anti-Affirmative Action referendum on the Michigan ballot was based on massive deception through a well-financed political program. A petition campaign was launched to place the initiative on the ballot where canvassers were paid for collecting signatures.

Many of the people circulating the petitions were instructed to lie and say that this initiative would advance equal opportunity by changing the Michigan state constitution to bar discrimination. Once the necessary signatures were collected, a challenge to the placing of the initiative on the ballot was mounted.

Challengers claimed that it was not the intent of most people who signed the petition to ban affirmative action. However, the state elections commission and the courts upheld the initiative and it passed during the 2006 statewide elections.

Most whites still do not recognize the historic national oppression of African Americans, Latinos and other groups. Due to racism many believe that any advancement made by the oppressed nations is the result of “reverse discrimination” against the dominant oppressor nation.

The decision represents the efforts to in fact reverse the political and social gains of the Civil Rights, Black Power and Women’s movements that emerged during the post-World War II period. In 1954, the infamous Brown v. Topeka Supreme Court decision ruled that “separate but equal” facilities for students in public education were inherently unconstitutional.

Brown v. Topeka represented a reversal of the Plessy v. Ferguson case of 1896, which during the era of Jim Crow and lynching, provided a legal rationale for the notion of “second class citizenship for African Americans. Through a series of political and legal campaigns led by the NAACP Legal Defense Fund and others, institutional discrimination was eventually outlawed in both higher education and K-12.

Civil Rights Legislation and Affirmative Action Were Products of Mass Struggle

Nonetheless, it would take a mass Civil Rights and Black Power movement beginning in 1955 and continuing through the early 1970s to bring real affirmative action programs into existence. The Johnson administration in response to the militancy of the African American struggle shepherded the Civil Rights Act of 1964 and the Voting Rights Act of 1965 through the U.S. Congress.

Johnson noted in a commencement address at Howard University in 1965 that simply passing laws would not be enough to make a dent in historical institutional discrimination. He utilized the term Affirmative Action which later became of source of a right-wing push back against the changing social character of race relations in the country that was built on the genocide of indigenous Americans, the enslavement of Africans and the colonization of large sections of the Mexican population in the southwest.

Johnson said specifically that “You do not take a person who, for years, has been hobbled by chains and liberate him, bring him up to the starting line of a race and then say you are free to compete with all the others, and still just believe that you have been completely fair.” In September of 1965 Johnson issued Executive Order 11246 along with the Office Federal

Contract Compliance to enforce a policy of non-discrimination. In 1967, the Order was amended to bar discrimination against women in hiring.

Earlier the Kennedy administration had issued Executive Order 10925 mandating that federal contractors not only end discrimination but to take "affirmative action to ensure" compliance. Kennedy's Order also mandated penalties for non-compliance with non-discriminatory policies.

With the advent of urban rebellions during 1963-1970, the impetus for the implementation of affirmative action was accelerated. However, in the late 1970s, the Bakke Case which challenged quotas and timetables for the implementation of non-discriminatory policies, resulted in the Supreme Court lessening the impact of previous executive orders and legislation in 1978.

With additional anti-affirmative action campaigns in California, Texas, Florida as well as Michigan, these efforts have largely eliminated the institutional commitment to non-discrimination. A recent series of demonstrations by African American students at the University of Michigan in Ann Arbor is calling for the elite institution to institute programs to recruit more people from this oppressed community.

What is needed to make these demands a political force is to initiate a national movement against institutional racism that would encompass the declining social status of the nationally oppressed, who today are still suffering from disproportionate rates of unemployment and poverty. As the gains of the 20th century were the result of the mass struggles of African Americans, Latinos and their allies, the reversal of these setbacks will also require the mobilization and organization of the masses in a militant program of resistance and fight back.

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