

EDITORIALS • COMMENTS • OPINIONS

Supreme Court Rejects Challenge To Affirmative Action



By **George E. Curry**
George Curry Media Columnist

In many instances, the Supreme Court's recent affirmative action ruling upholding the University of Texas's affirmative action program was overshadowed by a same-day order overturning President Obama's executive order to ease illegal immigrants' path to U.S. citizenship. *World News Tonight With David Muir*, while leading its broadcast with the immigration decision, didn't even mention the affirmative action ruling in that day's national broadcast.

Even so, affirming the University of Texas admission plan was notable because it squelched an ongoing challenge to affirmative action by well-financed conservative groups. Even more remarkable, the conservative-leaning court rendered the decision shy of its full 9-member participation, with no successor confirmed following the death of conservative Antonin Scalia's and liberal Elena Kagan recusing herself from deliberation because of her previous involvement in the case as U.S. Solicitor General.

The biggest surprise was that Justice Anthony Kennedy, a Ronald Reagan appointee, joined the other liberals on the court - Stephen G. Breyer, Ruth Bader Ginsburg, and Sonia Sotomayor - to form the 4-3 majority that said race may be used as one factor among many in building a diverse student body. Dissenting were Chief Justice John G. Roberts, Jr., Samuel A. Alito, Jr., and Clarence Thomas.

"A university is in large part defined by those intangible 'qualities which are incapable of objective measurement but which make for greatness,'" Kennedy wrote, quoting from *Sweatt v. Painter*, a landmark 1950 Supreme Court ruling outlawing the University of Texas' exclusion of African Americans from its law school. "Considerable deference is owed to a university in defining those intangible characteristics, like student body diversity, that are central to its identity and educational mission."

To conform to earlier Supreme Court rulings, the Texas legislature passed a new plan in 1997 for the University of Texas to admit all high school seniors who ranked in the top 10 percent of their graduating class. But the plan failed to sufficiently diversify the main campus at Austin.

Texas is about 38 percent Latino and 12 percent African American. Under the 10 Percent Plan, 26 percent of the students admitted were Latino and 6 percent Black.

Under challenge was the part of the program that allowed race and ethnicity to be considered along with other factors to fill the slots not taken by the Top 10 Percent, which usually came to about 25 percent of each incoming class. No specific points were given for race.

Abigail Fisher, a White female from Sugar Land, Texas, applied for admission to UT in 2008. She did not rank in the top 10 percent of her class and university officials said even if no affirmative action program had been in place, she still would not have been accepted. Still, she sued saying that race should never be used under any circumstances.

A lower court ruled against her, a ruling that was affirmed upon reaching the appeals court. Her case was appealed to the Supreme Court, remanded to the Fifth Circuit Court of Appeals, and accepted a second time, with the court's recently ruling against her.

Conservatives were clearly disappointed in Kennedy.

Elizabeth Slattery, a legal fellow at The Heritage Foundation's Edwin Meese III Center for Legal and Judicial Studies, wrote, "Yesterday's ruling in *Fisher v. University of Texas at Austin* was disappointing, to say the least. Justice Anthony Kennedy's majority opinion, allowing UT to continue using a race-conscious admissions program without sufficiently articulating its 'diversity goal' or providing proof that it was meeting that goal, betrays his previous equal protection jurisprudence and the belief that we have a colorblind Constitution."

But the decision was cheered by University of Texas supporters.

"No decision since *Brown v. Board of Education* has been as important as *Fisher* will prove to be in the long history of racial inclusion and educational diversity," Laurence H. Tribe, a law professor at Harvard, told the *New York Times*.

Clarence Thomas, a staunch opponent of affirmative action, declared, "I write

separately to reaffirm that 'a State's use of race in higher education admissions decisions is categorically prohibited by the Equal Protection Clause.' The Constitution abhors classifications based on race because every time the government places citizens on racial registers and makes race relevant to the provision of burdens or benefits, it demeans us all."

He added, "That constitutional imperative does not change in the face of a 'faddish theor[y]' that racial discrimination may produce educational benefits."

This is not likely to be the final word on affirmative from the Supreme Court.

Lawsuits against Harvard University and the University of North Carolina, each prepared by Project on Fair Representation, the same conservative outfit that represented Abigail Fisher in her suit against the University of Texas, are making their way through lower courts and could end up before the Supreme Court.

If those cases reach the High Court, they could well be decided by the results of the November presidential election.

Writing on *Scotusblog.com*, Lyle Denniston observed: "Depending upon who wins the presidential election in November, a Scalia successor could hold the balance of power on affirmative action in the future, even if Kennedy were to return to his prior skepticism about such uses of race in public policy decisions. Justices Breyer, Ginsburg, and Sotomayor might well have Justice Kagan with them in the future and might form a definite majority when a ninth Justice is on board - depending on presidential politics."

Congressman John Lewis Is One Of A Kind



By **Julianne Malveaux**
NNPA Columnist

I have always had enormous admiration for Congressman John Lewis (D-Ga.) and that admiration increased exponentially when I watched him led dozens of his congressional colleagues to sit-in on the floor of Congress to force a vote on gun control. As the supercilious Paul Ryan called for "decorum" (where is the decorum in a man walking into a nightclub with an automatic weapon and gunning 49 people down), determined

Democrats disrupted proceedings in the House of Representatives. I say, "Right on!"

Congressman Lewis tweeted, "Sometimes you have to get in the way. You have to make some noise by speaking up and speaking out against injustice & inaction." He is frustrated, as are many voters, about the fact that Congress has failed to take a position on background checks and the availability of assault weapons. House Minority Leader Nancy Pelosi (D-Calif.) is equally frustrated, saying, "Moments of silence aren't substitute for the action needed on gun violence." Republicans have attempted to deflect, suggesting that the focus should be on ISIS and terrorism, not gun violence. But the Newtown, Conn., shooter was not a terrorist connected to ISIS. Indeed, troubled White men have perpetrated many of our recent mass shootings with access to guns, not ISIS loyal terrorists. No matter. Can't Congress walk and chew gum at the same time? Can't they focus both on ISIS and on our out-of-control gun culture?

Nobody is talking about repealing the Second Amendment (though that might not be a bad idea). Still, the "right to bear arms" does not mean the unfettered right to

bear all kinds of arms. Nobody needs an automatic weapon. And anyone deemed dangerous or mentally ill should never be allowed to purchase a gun. The National Rifle Association (NRA) is an irresponsible organization that elevates the right for any random citizen to own and bear arms over the right of other citizens to survive. Members of Congress need to cut the cord from that organization. Voters need to back them up.

One might think the congressional sit-in has yielded few results. House Speaker Paul Ryan pulled the plug on C-SPAN coverage and dismissed the sit-in as a "stunt." Still, responding to the fact that 90 percent of Americans support background checks those who sat in showed enormous courage. Taking advantage of social media, they broadcast their sit-in using Periscope, reminding Ryan that he might control C-SPAN, but he doesn't control all broadcast.

Ryan was insulting and condescending in calling the sit-in a "stunt," and he reminded me of the many reasons I so admire Congressman John Lewis. Was the Atlanta Congressman's skull fractured in a "stunt" in 1965 on Bloody Sunday, when his civil rights activity caused rabid Whites to attack him? Lewis pulled no stunt, he

stood for what he believed in then. He is standing, firmly in his belief now, and using the time-honored tactic of protest to bring attention to the important cause of gun control.

Congressman Lewis and his colleagues were not successful in forcing votes on gun control. But they were successful in shutting the House down. Speaker Ryan was forced to adjourn Congress before he planned to, and Republicans sulked off like thieves in the night. Democrats held the floor hours after the Republicans scurried away, like hungry rats. No vote was forced, but a point was made.

Congress goes back to work on July 5. People should urge their representatives to take an appropriate vote to reduce access to guns, especially for those on a "no fly" list. People should also give Congressman John Lewis a "shout out" and appreciation for his leadership. He has taken the tactics of the 60s and taken them into the 21st century. He has reminded us that "stunts" have their purpose. His unassailable moral courage is admirable. Thank you, Congressman Lewis, for your activism in the 1960s and now. You are much appreciated!

Blackonomics

The Growing Black Trade Deficit



By **James Clingman**
via George Curry Media

The more I see the statistics relating to the so-called Black Economy and Black Buying Power, the more desperate my message becomes and the more insulted I feel. How can we get so excited about having an annual aggregate income of more than \$1 trillion while we are at the bottom of every economic category in this country? We create vast wealth for others at the expense of creating and retaining wealth for ourselves? Black America is operating at a huge trade deficit. We must change that.

Just as the government is concerned about the national trade deficit, Black folks should feel the same about ours, and we should finally do something about it. Our

trade deficit is horrendously out of kilter, and it's getting worse every day. Oh yes, I almost forgot; we are currently enthralled with who will be our next president, and it's difficult to draw our attention away from that circus, isn't it? But can't we walk and chew gum at the same time?

We cannot afford to neglect our trade deficit while we discuss politics as usual and prepare to cast our votes for folks who either don't care about us or take us for granted. What a choice, huh?

Well, we have other choices. We can choose to redirect more of our \$1 trillion toward our own businesses; we can choose to start and grow more businesses; we can choose to create more jobs for our children; we can choose to teach our children how to be entrepreneurs; we can choose to pool our dollars and leverage them to our own benefit; we can choose to use our dollars to create more conscious Black millionaires; and we can choose economic freedom over economic enslavement and modern-day sharecropping.

Several years ago, I read an article by the so-called Black conservative, Larry Elder, in which he stated, "...despite slavery, Jim Crow and racism, the progress of American blacks is simply astounding. If black America were a country, it would be the 15th 'wealthiest' country in the world. He was using Gross Domestic Product (GDP) to prove his case.

A little Economics lesson is in order here. First of all, GDP and wealth are not the same as annual income. GDP is a collective measure of income produced per capita by a nation's citizens. "Black America would be ranked 34th in per capita GDP at 23,000 each. (The entire U.S. per capita amount is more than \$53,000.) Add to the equation the cost of living in this country, and Blacks would rank 44th in the world." (Source: Pundit Fact, By Derek Tsang, September 2014)

The components of GDP are consumption, investment, net exports, government purchases, and inventories. Consumption is by far the largest component, totaling roughly two-thirds of GDP.

Blacks save and invest very little. Exports? Not much going on there either, although our brothers and sisters in Africa and the Caribbean eagerly await the day when get our act together and start taking care of business. Government purchases? Well, we have a lot of government jobs, if that counts. And finally, our inventories are not much to speak of either. Consumption? Black folks really make the grade in that category. Our consumption is as high as 95 percent, and most of what we buy is from businesses other than our own.

Using aggregate income to say we would be the 15th "wealthiest" nation in the world is absurd. Currently, Blacks hold

about 2 percent of this nation's \$85 trillion wealth, which is mostly tied up in home ownership, much of which was lost during the housing crisis of 2008.

We must stop being mesmerized and lulled into complacency and false pride regarding our aggregate \$1.2 trillion income. We have a dangerously high trade deficit, and we should be working to reduce that deficit by producing and selling more.

Yes, that line about Blacks being the 15th richest "country" in the world sounds good. It's balm for our injuries, consolation for our wounded psyches, and ammunition for those who say, "We've come a long way, baby!" But what good is it doing us if we consume everything someone else makes, fail to save a minimum of 10 percent of what we earn, have no import/export relationships with Africa, the richest land in the world, and fail to control the distribution of our products? What good does it do us to have a \$1.2 trillion income if we are in a constant trade deficit with other groups in this country?

The Black trade deficit is way out of balance, and we had better get busy fixing it before we become totally dependent on "foreigners" to supply our sustenance. No one can take care of us better than we can take care of ourselves. We proved it once upon a time; we can do it once again.