US Supreme Court upholds affirmative action

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On Monday the United States Supreme Court decided the constitutionality of affirmative action, upholding 5-4 the use of race as a factor to achieve "diversity" in college admissions. In a companion case, the High Court struck down 6-3 an admissions process that automatically granted a preference to applicants from certain minority groups, claiming the specific method employed was too broad and mechanical and consequently violated the equal protection clause of the US Constitution.

In the more important of the two cases, *Grutter v. Bollinger*, Associate Justice Sandra Day O'Connor wrote the majority opinion—joined by Associate Justices John Paul Stevens, David Souter, Ruth Bader Ginsburg and Stephen Breyer—upholding the University of Michigan Law School's practice of considering the race of applicants to insure a "critical mass" of minority students.

"The Equal Protection Clause does not prohibit the Law School's narrowly tailored use of race in admissions decisions to further a compelling interest in obtaining the educational benefits that flow from a diverse student body," O'Connor wrote. Chief Justice William Rehnquist and Associate Justices Anthony Kennedy, Antonin Scalia and Clarence Thomas dissented.

In the other ruling, *Gratz v. Bollinger*, Rehnquist wrote the majority opinion, striking down the University of Michigan's undergraduate admissions policy, which assigned "points" to African-American, Hispanic and Native American applicants. Stevens, Souter and Ginsburg dissented.

The rulings appear to resolve, at least for the time being, the intense legal dispute that has simmered in the lower courts for the 25 years that have passed since the Supreme Court issued six conflicting opinions—none commanding a majority—in *Regents of the University of California v. Bakke*. While *Bakke* banned the use of outright racial quotas, the opinion of former Associate Justice Lewis Powell—which was not binding precedent because it received only a plurality of votes—left the door open for "narrowly tailored" policies using race to achieve diversity. The majority decision in *Grutter* effectively makes Powell's earlier opinion in *Bakke* the law of the land.

The ruling is the product of an intense struggle within the political and corporate establishment. Elimination of all vestiges of affirmative action has been among the major goals of the extreme right wing for many years. Thus it was not surprising when Bush announced he was directing the US solicitor general, Theodore Olson, to file an *amicus curiae* "friend of the court" brief to oppose both University of Michigan admissions policies.

However, powerful forces within the ruling elite, including the military and major corporations, intervened in the case to support the principle of affirmative action. There were divisions within the Bush administration itself, which emerged publicly when Secretary of State Colin Powell and Bush's national security adviser, Condoleezza Rice, voiced their support for affirmative action.

The University of Michigan Law School's admissions policy considered in *Grutter* allowed reviewers to take into account the overall "diversity" of its student body when considering whether to accept individual students, "with special reference to the inclusion of students from groups which have been historically discriminated against, like African-Americans, Hispanics and Native Americans, who without this commitment might not be represented in our student body in meaningful numbers."

The undergraduate admissions policy in dispute in *Gratz* was more rigid. The school used a 150-point system, in which applicants with more than 100 points were generally accepted. Applicants from an underrepresented minority group, defined as African-American, Hispanic or Native American, automatically received 20 points.

This policy significantly impacted applicants in the mid-range of academic achievement at both the law school and the undergraduate program. At the law school, of students with a grade-point average in the 2.75-2.99 range in 1995, all four black applicants were accepted, while none of fourteen white applicants was accepted. Of those in the 3.0-3.24 range, seven of eight black applicants, compared to two of forty-two white applicants, were accepted.

Under the undergraduate admissions procedure, a large majority of academically qualified "underrepresented minorities" were accepted to the university. In contrast, many academically qualified students who were white or Asian had a more difficult time gaining acceptance.

Solicitor General Olson directly participated in the oral arguments before the Supreme Court, appearing alongside his former colleague Kirk Kolbo from the Center for Individual Rights (CIR), a right-wing outfit funded by multimillionaire

Richard Mellon Scaife. CIR represented the plaintiffs, two rejected white applicants.

Kolbo contended that any consideration of race would violate the equal protection clause of the Fourteenth Amendment to the Constitution, as well as the Civil Rights Acts of 1870 and 1964. Olson adopted a somewhat more reserved position, arguing that "race neutral" criteria could be developed which would create racial diversity without formal consideration of race as a factor in admissions.

Each of the two cases attracted over a hundred *amicus curiae* briefs, an extraordinary number. Briefs were filed in support of affirmative action by 3M Corporation (on behalf of itself "and other leading businesses"), as well as by Exxon Mobil and General Motors. In addition, a group of retired military officials led by Lt. Gen. Julius W. Becton, Jr. filed a brief in support of racial preferences. Lobbying by these corporate giants and the military establishment clearly influenced the decision to retain affirmative action.

"Major American businesses," O'Connor wrote in *Grutter*, "have made clear that the skills needed in today's increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints. High-ranking retired officers and civilian military leaders assert that a highly qualified, racially diverse officer corps is essential to national security."

In all, forty of the Fortune 500 largest US corporations registered their support in the Supreme Court for the University of Michigan's policies. Clearly, there is trepidation within the ruling elite that the elimination of racial preferences would have damaging effects, from both a political and business standpoint. O'Connor reflected that fear, writing that "In order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity."

Justice Breyer, appointed by Clinton in 1994 and considered to be one of the court's more liberal justices, was even more explicit when, during oral argument last April, he summed up the argument of proponents of affirmative action as follows: "[W]e think from the point of view of business, the armed forces, law, etc., that this is an extraordinary need, to have diversity among elites throughout the country, that without it, the country will be much worse off."

Affirmative action was first systematically promoted by the Nixon administration, following the urban rioting of the 1960s and the Vietnam War, in which large numbers of minority soldiers were commanded by a predominantly white officer corps. Since then, the ruling elite in the US has made an enormous political and social investment in the practice of racial preferences. Over the past 30 years they have become ingrained in the operations of major corporations, the military and civilian government, cultivating a small section of minority business owners, politicians and professionals. Monday's decisions mark the Supreme Court's recognition of affirmative action's established role in the existing social order.

There is no more convincing evidence of the failure of affirmative action as a progressive social policy than the fact that over its three decades of existence the social position of the vast majority of working people of all races and nationalities has declined. Social inequality has grown enormously, including within the African-American population, while the corporate elite and its two political parties have gutted social programs and overseen the decay of public education, health care and other basic needs.

Among the most exploited sections of the working class, including black and Hispanic workers, unemployment and poverty remain chronic scourges. The policy of racial preferences has largely benefited a small layer within the minority populations, while fostering divisions within the working class and diverting attention from the basic source of exploitation and racial discrimination, the profit system itself.

That affirmative action poses no threat to the status quo is underscored by the reaction to Monday's rulings, which were hailed not only by big businesses from coast to coast, but by George W. Bush himself, who, despite having directed Olson to oppose the University of Michigan programs, issued a statement praising the decisions as setting "a careful balance between the goal of campus diversity and the fundamental principle of equal treatment under the law."

It is understandable that many minority youth fear that an end to affirmative action would mean a return to the days when blacks and other minorities were all but excluded from higher education, especially the more prestigious colleges and universities. There is, moreover, no doubt that right-wing groups that oppose racial preferences would like to purge the campuses of not only minority youth, but working class youth in general.

However, the only basis for opposing social and political reaction, and reversing the ongoing decay in education for all working class youth, is to unite across all racial and ethnic lines and develop an independent political movement that will fight for a vast expansion of higher education and the principle of equal access for all.

Such a program requires a struggle against the financial oligarchy and a socialist policy of reorganizing economic life for the benefit of the broad masses of people, rather than the further enrichment of the ruling class. Affirmative action cuts across the development of such a movement by pitting one section of the working class against another for a share in the dwindling resources made available by the ruling elite.