SCOTUS Decision on Affirmative Action Corrects for Race Bias but Not for Others.

By Richard Norman Rickey

July 3, 2023

Many of us are celebrating the Supreme Court decision to declare affirmative-action ("AA") policies at American public universities to be unconstitutional and an affront to the 14th Amendments Equal Protection Clause. We've always held that race and ethnicity should never have been a consideration in public college admissions in keeping with our color blind Constitution, our Bill of Rights, and the principles espoused in our Declaration of Independence. This decision also corrects for the indignity, stigmatizing and doubt that creeps in when one wonders if the beneficiary of AA is truly deserving and on par with other professionals in their field based on merit alone. And finally it corrects the systematic mismatching of many AA admitted students into universities they were not well suited to attend.

We live in highly diversified and amalgamated country that is more accepting, open and non-racist than it is given credit for. Today, according to a recent Pew Research Center study, the share of newlyweds with a spouse with a different race and ethnicity is 29% of Asians, 27% of Hispanics, 18% of Blacks and 11% of Whites, and demographers point out that these percentages will continue to go up. In our middle class neighborhoods, we see all kinds of accepted and celebrated diversity going on all around us; a growing number of mixed race neighbors, people of one race fostering and adopting children of other races, school and youth sports teams with a wide mixture of races, and church and temple congregations filled with racial, ethnic and denominational heritage diversity as well. So our SCOTUS also corrected an error that was codified by our federal government in 1977 with the check off labels it instituted such as "Black", "White", "Asian", "Hispanic", "Pacific Islander", "Native American", etc. Forcing all of us into these blunt categories that are arbitrary, and lacking in fluidity to be useful, had only created further divisions and resentments in our country.

It's only in the gated communities of the elites; the wealthy, academics, popular entertainers and government bureaucrats, who still think we have a mostly racist society. We don't, so its' more than about time we ended policies and practices that pretend to correct for something that doesn't exist anymore. In fact, the affirmative-action policies (and college legacy preference policies) that have now been in place for decades have been used by the powers that be to protect their own status and prestige to the detriment of those with lessor means and more challenges to overcome, including and especially those of the working class. AA has never benefitted the working class kids to any significant degree. Instead AA has been used by our institutions of higher learning to promote and grow their own reverse racism, cloaked in a woke indoctrination called diversity, equity and inclusion ("DEI") programming such as gender studies, critical race studies, ethnic studies, feminism studies, etc. Our American colleges and universities, funded by the tax payers, are rightfully being called out and exposed for the sordid practice of divvying up by race and political correctness.

But while the SCOTUS decision ends the race discrimination that AA empowered (holding down Asian-American admission numbers for example), it may have the unintended (or intended) consequence of further strengthening the power of the federal government to the detriment of individuality, and voluntary association. Those of us who espouse a very limited federal government, free markets and strong private property rights should remain vigilant. Remember, the Bill of Rights contained in the first ten amendments to our Constitution was written to protect the individual citizen from the federal government, and Title VI of the Civil Rights Act of 1964 protects all citizens from federal discrimination. However, this recent SCOTUS decision was based on the 14th Amendment Equal Protection Clause, not on Title VI or the Bill of Rights. So what? Well, the Equal Protection Clause contained in the 14th amendment has been interpreted by the courts, and acted on in such a way as to strengthen the powers of the federal government, not to contain them. In other words, we are no longer a confederacy of states, but more of a unitary state with the federal government constantly meddling in our lives and businesses. Here's just one example. In the 1970's Hillsdale College in Michigan, a private religious university, was told by the Federal Department of Health, Education and Welfare to begin counting their students by race. The department claimed the power to make this demand based on the Equal Protection Clause because Hillsdale accepted students who were using taxpayer-funded aid to pay for their education. An applicant's race was never a consideration in the admission decision process at Hillsdale, and the college did not count or categorize their students by race. In order to avoid this ridiculous demand, and legal consequences, the college decided it would no longer accept any state or federal money, including tuition payments backed by government grants or loans.

The Hillsdale College approach is the model we should aim to replicate throughout our higher education system here in America. We need to get the federal government out of the student loan, grant and oversite business, separating our federal government from education entirely. For the past several decades we have seen the negative impact that our government meddling is having on our educational systems, both in higher education and in K-12. In a free society, private individuals, groups, businesses, educational institutions, private K-12 schools, etc. would be free to exercise their natural rights, protected in our Bill of Rights, to freely associate with and run their own operations the way they wish. If the educational consumer doesn't like a set policy or practice of the private educational entity, including their affirmative action practices, they can go elsewhere, and their dollars (which they will have more of when the Feds get their hands out of our pockets), follow them. We've all become so accustomed to state-owned and state and federally supported universities and colleges that we just accept the status quo. The recent SCOTUS decision on AA is another warning that our freedoms are most at risk when our government acts like they have more rights and privileges than we do, forgetting that "government" is no more than a voluntary association among individuals who should decide what they want, or don't want, from their government.