

# Virtual Mentor

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## OP-ED

### In Defense of Affirmative Action—By Any Means Necessary

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In April 2014, the Supreme Court ruled that Michigan voters' amendment to the state constitution, an amendment that bans affirmative action, does not violate the Fourteenth Amendment to the US Constitution. The Court's decision in *Schuette v. Coalition to Defend Affirmative Action, Integration, Immigrant Rights and Fight for Equality By Any Means Necessary* (BAMN) [1] will have a profound effect on race relations and this nation's continuing battle for racial equality. The decision robs the Fourteenth Amendment of one of its core intents—securing the “right of all citizens to participate meaningfully and equally in the process through which laws are created” [2].

*Schuette v. Coalition* was filed by BAMN in November 2006, the day after Michigan's largely white electorate voted to institute a state constitutional ban on affirmative action policies through a ballot initiative called Proposition 2. Michigan's electorate is 85 percent white [3]. Two out of three white voters voted for the ban. Nine out of ten black voters opposed the ban [3]. If every minority voter in the state had voted against Proposition 2, it still would have passed because of the large majority of white voters.

The campaign to get Proposition 2 passed in Michigan began less than two weeks after the Supreme Court ruled in *Grutter v. Bollinger* that the use of race-based affirmative action at the University of Michigan's Law School was not only constitutionally permissible, but essential to maintaining a critical mass of students from underrepresented groups at the UM Law School.

### Anti-Equality Propositions, Educational Opportunities, and Health Care

Proposition 2 was modeled on Proposition 209, which was passed in California in 1996 [4]. The impact that Proposition 2 would have on enrollment of underrepresented minority group members was known before the vote in Michigan occurred. In California, Proposition 209 cut enrollment of students from underrepresented minority groups at the University of California, Berkeley and at UCLA by 40 percent or more [5, 6]. Despite extensive outreach, mentoring, and recruitment efforts and the implementation of socioeconomic affirmative action, the proportion of students from underrepresented groups at California's highest ranked and most selective public universities remains 30-40 percent lower than it was when affirmative action was legally permissible [5]. Enrollment of students from underrepresented minority groups at the University of Michigan has also plummeted. Black student enrollment has dropped by 45 percent since 1998 [7], when the

University of Michigan (UM) was sued for their use of affirmative action in undergraduate admissions.

Proposition 209 and Proposition 2 have a particularly bad effect on the admission of students from underrepresented minority groups in medical and law schools. The percentage of such students in University of California medical schools declined by 43 percent in 1995-1996, the first year that the ban on affirmative action was implemented. That percentage remained the same five years later [8]. Proposition 2 had the same disastrous effect on black, Latina/o, and Native American student enrollment at Michigan's medical and law schools [9, 10].

Any decline in doctors from minority groups will have a direct, immediate, and harmful effect on the care that members of minority populations receive. Doctors from minority groups serve 54 percent of patients from minority groups, 70 percent of non-English-speaking patients, and a disproportionate number of poor and uninsured patients [11, 12]. In California, where 36 percent of the population is Latina/o, only 5.2 percent of the doctors are Latina/o [13]. Only 4 percent of the doctors in Michigan are black [14]. If national trends are anything to go by, these doctors are concentrated in Detroit, Flint, and other overwhelmingly poverty-ridden cities with majority-black populations, serving patients with high rates of acute health problems [11].

Minority communities are already underserved. The loss of affirmative action will only make the marked disparity in access to health care between minority-group and white Americans more acute. The Supreme Court's allowing these bans to stand, opens the door to the enactment of laws akin to the voter registration laws that, without explicitly prohibiting black citizens from voting, swiftly disenfranchised them in the Reconstruction-era South—in effect, Jim Crow laws. This means the growing inequality in educational opportunity, the disparities in health care, and the rising segregation of neighborhoods and schools will continue unabated.

### **The Meaning of *Schuette***

State constitutional bans on affirmative action have reified and reinforced unfair and insurmountable burdens on minority communities. As Supreme Court Justice Sonia Sotomayor wrote in her dissenting opinion on *Schuette*,

the majority of Michigan voters changed the rules in the middle of the game, reconfiguring the existing political process in Michigan in a manner that burdened racial minorities. They did so in the 2006 election by amending the Michigan Constitution to enact Art. I, §26, which provides in relevant part that Michigan's public universities “shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.”

As a result of §26, there are now two very different processes through which a Michigan citizen is permitted to influence the admissions policies of the State's universities: one for persons interested in race-sensitive admissions policies and one for everyone else. A citizen who is a University of Michigan alumnus, for instance, can advocate for an admissions policy that considers an applicant's legacy status by meeting individually with members of the Board of Regents to convince them of her views, by joining with other legacy parents to lobby the Board, or by voting for and supporting Board candidates who share her position. The same options are available to a citizen who wants the Board to adopt admissions policies that consider athleticism, geography, area of study, and so on. *The one and only policy a Michigan citizen may not seek through this long-established process is a race-sensitive admissions policy that considers race in an individualized manner when it is clear that race-neutral alternatives are not adequate to achieve diversity.* For that policy alone, the citizens of Michigan must undertake the daunting task of amending the State Constitution (emphasis added) [2].

Campaigning for a second statewide constitutional referendum is an extremely difficult and costly endeavor. In Michigan, even if minority communities and other pro-equality citizens were able to gather the signatures needed to get a new initiative on the ballot, I see no way that such a measure would pass. At a moment when only one out of every seven applicants is accepted by the University of Michigan [15], white voters would be very unlikely to give up any advantage that benefits their children, no matter how unfair or unjust.

The Supreme Court's decision holding that a majority-white state electorate can ban measures to level the playing field means that we will have what amounts to legally sanctioned Jim Crow. The promise of equal opportunity for all will be rendered obsolete. At the very moment that America's population is poised to become no longer majority-white [16], inequalities that negatively affect Americans of other races will be protected by law.

### **The Meaning of Affirmative Action**

Affirmative action was an acknowledgement by the government and the society at large that the only way to end institutional racism was through taking positive, conscious action. Affirmative action policies were won through the mass protests of the powerful civil rights movement of the 1960s led by Dr. Reverend Martin Luther King Jr. In 1965, when Dr. King brought the movement to the North to tackle de facto segregation, affirmative action policies provided the conscious action needed to redress the institutional racism and segregation that was as pervasive in the North as it had been in the old Jim Crow South. Winning affirmative action was the highest achievement of Dr. King's movement because it established that institutional racism had been created by conscious political and social governmental policies and decisions and should be ended through legal action. The winning of affirmative

action measures showed that the growing power of the civil rights movement could win both equality under the law and equality in results.

The assertion of black equality by Dr. King and the movement he led had a profound effect on the black ghettos of the North and on college campuses. It took the urban uprisings of the 1960s—the riots in Watts, Detroit, Newark, and so on—to win the adoption of the first government-sponsored affirmative action policies [17]. Student strikes united the mass, powerful campus antiwar movement and the black student struggles to open up the universities to black, Latina/o, other minority-group, and white working-class and poor students and forced university administrations to adopt affirmative action policies. By the early 1970s, affirmative action policies were extended to include students who were Latina/o, Asian, Native American, and members of other minority groups, and female, poor, and working class students of all races became beneficiaries of affirmative action. The loss of affirmative action in just a few states is rapidly reversing these gains.

### **Conclusion**

America is changing. We are on the cusp of becoming a truly diverse nation. This phenomenon puts this nation at the crossroads of two very different paths. If we follow one path, we can bow to the fears of the many white Americans who see the increasing plurality of our society as a threat to their privilege and power. In my opinion, the right-wing attack on affirmative action, fuelled by desperate attempts to preserve white privilege, can only lead to the kind of social convulsions that gave birth to affirmative action in the mid-1960s, except this time on a greater scale.

Or we can choose the other path and continue the difficult but inspiring struggle to win equality, freedom, and democracy for everyone who calls America home. If we recognize and pledge to struggle against the poisonous and distorting effects of racism and the growing disparity between rich and poor, we can lift society from the cynicism, pessimism, and racial and political polarization that is keeping us divided and suspicious. We need the new, youth-led integrated civil rights and immigrant rights movement to grow and exert influence on this society. There is a place in the movement for every person who welcomes the opportunity to live in a multicultural America true to our core values. BAMN invites all who believe in the limitless potential of humanity and who are eager to shed their sense of alienation to join us in this historic march to save our nation. We promise you that you will not regret it.

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