NEW SUPREME COURT DECISION ON AFFIRMATIVE ACTION

Fullilove v. Kluthzick (formerly Fullilove v. Kreps has been decided finally by the United States Supreme Court and has been hailed as a victory by the civil rights community.

If you recall, the case involved legislation introduced by Congressional Black Caucus member Parren Mitchell (D.-Md.), which called for/ setting aside 10% of government contracts under a particular heading for minorities. Specifically, the Court upheld Congress' right to "set-aside" 10% of a $4 billion public works program for business enterprises at least 50% controlled by minorities; this despite a challenge by a group white contractors alleging that such constituted "reverse discrimination."

There were two "majority" opinions in this 6-3 decision, signifying that the Court still is not firmly behind affirmative action and signalling the need for more mass organizing. Inevitably, Justice Thurgood Marshall authored the most clear-sighted, rational opinion. He said in part:

"It is indisputable that Congress' articulated purpose for enacting the set aside provision was to remedy the present effects of past racial discrimination. Congress had a sound basis for concluding that minority-owned construction enterprises, though capable, qualified, and ready and willing to work, have received a disproportionately small amount of public contracting business because of the continuing effects of past discrimination.

"Today, by upholding this race-conscious remedy, the Court accords Congress the authority to undertake the task of moving our society toward a state of meaningful equality of opportunity, not an abstract version of equality in which the effects of past discrimination would be forever frozen into our social fabric. I applaud this result."

Associate Jusitices Potter Stewart, William H. Rehnquist and John Paul Stevens voted against Congress' right to establish affirmative action clauses into government contracts.

But despite the victory of Fullilove, this is no time to rest on our laurels. "Eternal vigilance is the price of liberty" is trite but true. Already the Court has accepted for review a challenge to an affirmative action program is the California prison system, which presents the "state action" absent in Weber. The program set a goal for the hiring of corrections officers of 38% women and 35% minorities. Two white male officers have sued on the ground that they had lost opportunities for promotion.

Another case accepted by the Court also potentially endangers affirmative action. The Chicago school board, in the name of "Stabilizing" transitional neighborhoods, turned Black students away from two local high schools to preserve a 50-50 racial balance. The Blacks sued, and two federal courts said that the plan was a justified tool for maintaining integration. This case may have widespread impact on the kind of "benign" remedies encompassed by affirmative action.

Affirmative action is being fought for in the streets and the courts with the latter only validating decisions being worked out in the former. Nonetheless the value of having more Thurgood Marshalls and less William Rehnquists on the bench is obvious. This was a theme harped on by Jimmy Carter in his address to the NAACP Convention in Miami. As protesters picketed outside, the President attempted to soothe an organization that helped him to win in 1976 and which he is generally regarded to have abandoned in 1980. He promised to appoint more far-sighted judges to the bench--and, in fact, this is the major if not only reason that many Blacks have given for supporting Carter. Yet, inside word has it that his two potential appointees to the United States Supreme Court will be Griffin Bell-former Attorney General and former advisor to segregationist former governor of Georgia Ernest Vandiver--and Shirley Hufstedier--right-wing head of the Department of Education. If the Black vote is to go to Carter, there has to be a better reason than his ability to appoint judges.

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