

# Race-based Affirmative Action Is Still Needed

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It's not time for income-based affirmative action; race-based preference is still vital in the United States given the country's history of slavery and its continuing, pervasive racial discrimination. To think otherwise is selective memory loss.

*This country's continuing failure to significantly reduce de facto discrimination prevents many from receiving equal protection today.*

The Schuette decision upheld the right of Michigan voters to prohibit affirmative action in admissions to state colleges and universities. But that reasoning is flawed in two ways. First, affirmative action is characterized as an unfair preference rather than a justified remedy. And second, the decision whether to ban affirmative action is left to the electoral process.

To understand this flawed reasoning, one must go back to the beginning of the affirmative action debate during Reconstruction. In the civil rights cases of 1883, the Supreme Court held that the 14th Amendment did not empower Congress to prohibit owners of public accommodations from discriminating against black patrons. The owners were free to decide themselves. In his opinion for the court, Justice Joseph Bradley [wondered](#) when black Americans would stop being given special treatment under the law and become mere citizens.

Unfortunately, Schuette seems to embrace this same characterization of affirmative action as preferential treatment that may be prohibited by majority vote. Justice Anthony Kennedy, writing for a plurality, [said](#) that voters in Michigan chose to eliminate racial preferences because nothing in the Constitution gives judges the authority to undermine the election results.

Yet, erroneously characterizing affirmative action as an unfair preference allows the court to defer to the electoral process just as it deferred to property owners in the 1880s. Justice Harold Blackmun recognized this error before he retired in 1994. Speaking about a seemingly consistent majority of five Supreme Court Justices on the key civil rights and race relations cases of the 1980s, [Blackmun said](#): "One wonders whether the majority still believes that race discrimination -- or, more accurately, race discrimination against non-whites -- is a problem in our society, or even remembers that it ever was."

While 20 years have passed and several new justices have been appointed, [racial disparities](#) remain alarmingly wide. Black [unemployment](#), [poverty](#) and [homelessness](#) are twice that of whites. [Wealth accumulation](#) for blacks is one twentieth of what it is for whites. Similar disparities exist for Hispanics. [Racial profiling](#) in the criminal justice system is rampant.

Affirmative action raises difficult questions of access and fairness. This country's continuing failure to significantly reduce de facto discrimination prevents many from receiving equal protection today. Affirmative action helps off set this imbalance.