

Supremely indifferent to historic injustice

BY GENE NICHOL

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CHAPEL HILL -- I've spent much time of late in Eastern North Carolina - where the linkage between history, poverty and race astounds. In much of the region, over half of all black, Hispanic and Native American children live in poverty; numbers so vast, so humiliating, they're hard to admit to ourselves.

Ten counties between here and the coast - Bertie, Bladen, Columbus, Halifax, Martin, Northampton, Pitt, Robeson, Tyrrell and Washington - meet the federal definition of persistent poverty: over 20 percent of their citizens have lived in poverty for each of the last 30 years. Of course, one could have as easily said a hundred - in a story of marginalization and exclusion that dates, unbroken, back to slavery. Our work to achieve effective, broad-based integration and equality of dignity and opportunity is, to understate, radically incomplete.

So it was with a twinge of horror that I read of the U.S. Supreme Court's recent decision to review Fisher v. University of Texas. The case challenges the affirmative action program used to admit the freshman class in Austin.

Abigail Fisher, who subsequently attended and graduated from LSU, claims that some minority students with lower scores gained admission to UT under the plan. Her lawyers asked that the 9-year-old Grutter case, upholding the use of race as a factor to achieve a diverse student body, be overruled. There can be little doubt that the bold, usurping, destructive Roberts Court intends to do exactly that.

Justices Thomas, Scalia, Roberts and Alito have expressed a powerful, unyielding objection to the use of race to maintain a diverse student body. Justice Kennedy, ever the anxious fifth, employs a more garbled and incomprehensible approach. But, in his decades on the bench, he's never met an affirmative action program he could stomach. He'll ditch the Texas plan as well.

And he'll reject it though the program borrows standards developed by the U.S. Supreme Court itself almost 40 years ago. This outing, the split won't even be the traditional 5-4. Justice Kagan has recused herself. About this time next year, the court will announce the death of affirmative action.

(Oddly, neither Fisher nor the five justices are troubled by the massive use of alumni preferences by public universities like Texas and UNC, though they likely exclude more candidates than any racial standard. These preferences dramatically privilege wealthy, white applicants. Thus they're thought to be mere cornerstones of the natural order.)

University admissions directors are already alarmed. Amherst College's Tom Parker fretted: "[I]f the court says

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any consideration of race is prohibited, we're in a real pickle. Bright kids have no interest in homogeneity. They find it creepy."

Barmak Nassirian, spokesman for the national registrars association, predicted "significant instances of segregation at ... our finest institutions."

These realities matter little to the Roberts crew. Their ideology tells them the hard work of equality - of successfully becoming one nation despite our brutal history - is long ago accomplished. Perhaps it was never important in the first place. We can now rest, relieved, that the homeless black kid in Roper - without access to sufficient food, much less a competitive school or the Internet - enjoys a steely equality with the tutor-laden, Ivy league-bound high school senior from Myers Park in Charlotte. May they both eat cake; or, perhaps, sip lattes.

Fisher will become yet another entry in the Roberts Court's near-annual campaign to do heroic battle, on its patrons' behalf, in our raging social and ideological wars. Three years ago, these same five activists overturned a century of settled law, in *Heller v. D.C.*, to invalidate much of the nation's regulation of handguns. Next came *Citizens United v. FEC* - literally destroying restrictions on campaign finance. So we're treated to corporate and billionaire super PAC campaigns. None can run, apparently, without sponsoring patron. Pretense is permitted to fade.

And now, despite the intense, continuing challenges of race - the greatest problem of our national history - five unelected, unconnected, uninformed and uninterested judges will invalidate one of the most effective tools in our arsenal to achieve actual integration.

As with unfettered guns in *Heller*, and unfettered dollars in *Citizens United*, these are not results that could be achieved at the ballot box. They are the intended political gifts of the most ideologically activist and patently partisan court in American history. If we're to govern ourselves, it's past time to fight back. I'm guessing the battle won't be a pretty one.

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