

Case Summary

Schuette, Attorney General of Michigan v Coalition to Defend Affirmative Action, Integration and Immigration Rights and Fight for Equality by Any Means Necessary (Bamn) et al.

1. Reference Details

Jurisdiction: Supreme Court of the United States

Date of Decision: 22 April 2014

Link to the Full Judgement: http://www.supremecourt.gov/opinions/13pdf/12-682_j4ek.pdf

2. Facts

The case concerns a Michigan State law, which prohibited affirmative action policies that favour people from a minority background. It applies to a wide range of actions and decisions by the state authorities, including admission to universities. In this case, the Court had to determine whether the amendment to the Constitution of the State of Michigan is invalid under the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. The Michigan Law originated in a ballot initiative narrowly passed by Michigan voters in 2006. It has been widely criticised by racial equality campaigners, who claim that the ban on affirmative action is unconstitutional.

3. Law

State Law

§26 of the Constitution of the State of Michigan

Federal Law

Constitution of the United States, Equal Protection Clause of the Fourteenth Amendment

4. Legal Arguments

The opponents of the impugned amendment argued that majority of white voters should not be allowed to prevent authorities from seeking to overcome social and economic factors, which are putting minorities at a disadvantage. Taking into account the historical facts, the issue should not be left to the political will of the majority, as the majority does not need protection against discrimination like a minority does. A facially neutral law may deny equal protection on the basis that it has a disparate racial impact.

The state of Michigan argued that race-sensitive admissions policies cannot be employed primarily to the benefit of the minority, as the Court has previously upheld such policies only insofar as they further the educational benefits flowing from a diverse student body.

5. Decision

The Court by a six to two majority upheld the Michigan Law, albeit the majority reached their conclusions for different reasons. Justice Kennedy, whose judgment was joined by two other justices, stated in his opinion that by adopting the amendment Michigan voters exercised their

democratic power to enact laws, and that the Court may not disempower the voters from choosing which path they want to follow in relation to affirmative action policies.

Justice Kennedy emphasised that the case in question was actually not about the constitutionality, or the merits, of race-conscious admissions policies, but rather about whether states should be left to democratically decide on the issue, which was seen as of political nature. Justice Kennedy further stated that if it were to rule that the issue was too sensitive or complex to be left to the electorate, it would restrict the fundamental political rights of everyone to debate and act through a lawful electoral process. In addition, it was held to be demeaning to the democratic process to presume that the voters are not capable of deciding an issue of this sensitivity on decent and rational grounds.

The Equal Protection Clause allows affirmative action, but does not require it. The decision to uphold the Michigan ban should not be taken as a rejection of affirmative action in general.

In a separate but concurring judgment, Justice Scalia held that in the light of previous case law of the Court, the Equal Protection Clause requires that a state action has to be motivated by discriminatory intent, or at least it has a serious risk of causing specific injuries on account of race, to amount to a violation. This is to say that a racially separate impact alone does not necessarily breach the Clause.

Dissent

Justice Sotomayor and Justice Ginsburg joined to express their dissenting views in a separate opinion. While they fully respected the principle of democracy, they also emphasised that without checks the democratic process may oppress minority groups. Due to this, the Constitution sets limits on the extent to which the majority's will can be realised, and one of these limits is ensuring equal protection of the law.

They further elaborated on the need to protect minorities from discrimination perpetuated by the political will of the majority – regardless of whether the discrimination was intended or not. As the majority can always overrule the minority's will in a political process, it is the Court's duty to guarantee protection of the minority. Against the historical backdrop of the nation, protecting minority is in essence protecting democracy itself by ensuring that all groups have equal possibility to take part in the society. Equal protection means that the government will apply the law in an equal manner. However, the protection does not end here – it also secures the right of all citizens to participate meaningfully and equally in the process through which laws are created.

The dissenting opinion concluded that by permitting a majority of the voters in Michigan to go against the Constitution, the Court ends the debate over race-sensitive admissions policies in Michigan in a manner that contravenes constitutional protections recognised in the Court's previous jurisprudence.