

Is the United States Supreme Court the Guardian of Individual Rights and Liberties?

The United States Supreme Court has addressed some of the most contentious issues of the day. It found that abortion is not a right found in the United States Constitution. Rulings have held that state anti-discrimination laws cannot force an individual to sell cakes on a website to same sex couples. More recently the High Court ruled that affirmative action plans permitting colleges and universities to accept students on the basis of skin color violate the United States Constitution's Equal Protection Clause. Other cases have struck down President Biden's Loan Forgiveness Program, indicating that it represented a rewrite of Congressional legislation, but what the Court really meant to say is that it was a violation of our tripartite system whereby it is Congress that legislates, not the executive. On the other hand, the Court has determined that same sex couples must be permitted to marry under state law lest the Equal Protection Clause be transgressed.

These decisions will make the United States Supreme Court a major issue in the next presidential election. So what else is new? When John Marshall wrote the opinion in *Marbury vs. Madison*, giving a Federalist court the right to strike down Congressional legislation, there were many of the Founding Generation who were apoplectic. Jefferson thought that the Supreme Court had become tyrannical and that nothing less than a French Revolution was needed on American shores.

I recall driving through the south with my father and seeing billboards that said, "Impeach Earl Warren." Warren was the Republican former Governor of California nominated for the United States Supreme Court by Dwight Eisenhower. The Warren court became activist in supporting the nascent civil rights movement.

President Roosevelt attempted to expand the United States Supreme Court legislatively because he did not like its New Deal decisions.

In many instances, too numerous to mention, the United States Supreme Court has become part of the political battle over who should become President of the United States and the proper role of the courts in our governmental system. It seems rather odd and almost funny that President Biden has been threatening to the State of Israel because it is considering how much power its own Supreme Court should have *vis-a-vis* the Knesset, the legislature. Imagine that we would presume to lecture another country as to how much power its courts should have, when the President himself has excoriated the United States Supreme Court for decisions that he does not approve of.

If one reads the recent United States Supreme Court decisions, it would be difficult to be quite as angry with the Court as its critics seem to be. Perhaps one of the most interesting reads of modern times is the University of North Carolina Harvard case striking down affirmative action programs based upon skin color. The colleges and universities

had the laudable goal of trying to provide opportunity to the African American community. However, in so doing who pays the price? The Court noted that less Asians and presumably other minorities will be excluded from these so-called "elite" universities, if one particular group is selected for preference. Does such discrimination satisfy the Equal Protection Clause of the United States Constitution? Clearly, it cannot.

The absurdity of our current national debate on affirmative action is that there are many colleges and universities, which provide every bit as good an education as Harvard, that do not subscribe to affirmative action programs. Let us look at the issue in a different light. Many of the so-called elite colleges and universities have enormous endowments. Do those universities go to failing high schools throughout the country, regardless of race, color, and creed, and work to uplift those students through a better educational program and approaches to home life which create an inducement to educational excellence? The answer is generally speaking "no." Some colleges and universities tout their liberality by discriminating in favor of some groups and degrading others.

In 1911, New York University, my alma mater, imposed a quota against Jews. This quota system spread throughout the college and university system. When eventually in the 1960s formal quotas against Jews were dropped, many higher educational institutions adopted zip code quotas. In other words, it was easier to get into top rated colleges from zip codes that were less likely to have Jewish residents.

An evolutionary process began whereby certain groups were selected for admission, and others were denied. This is no way to build a country or to improve race relations. The preference system has created a huge amount of resentment, anger, and not any better a student body.

The alternatives to affirmative action are many. Colleges and universities can assist the economically disadvantaged, work with minority groups in developing educational standards, and can encourage the values that create success.

I recall my father telling me a story when I was growing up. He was raised in Harlem, New York City. He used to say to me: "In our apartment you could eat off the floors, but just across the street people were tearing the plumbing out of the walls. What was the difference? The values that we were taught at home about how to succeed even with all the discrimination we faced as Jews were the difference." When my father was denied a job at the New York Telephone Company because he answered honestly the question as to, "What religion are you" by saying "a Jew," he simply worked harder to succeed. A friend of his told him he should become a Communist. He interviewed for the Communist Party. He was rejected and told, "you need more discipline." He went on to become a Republican.

These family stories were not legends but in fact represented the difference in values that have led to educational success for some and failure for others. We can change the direction of our culture by an approach which encourages a work ethic and

adherence to civilized value which are consistent with America's history and potential for greatness.

*Clifford A. Rieders, Esquire
Rieders, Travis, Dohrmann, Mowrey
Humphrey & Waters
161 West Third Street
Williamsport, PA 17701
(570) 323-8711 (telephone)
(570) 323-4192 (facsimile)*

Cliff Rieders is a Board-Certified Trial Advocate in Williamsport, is Past President of the Pennsylvania Trial Lawyers Association and a past member of the Pennsylvania Patient Safety Authority. None of the opinions expressed necessarily represent the views of these organizations.