THE DAMAGING CONSEQUENCES OF THE REHNQUIST COURT'S COMMITMENT TO COLOR-BLINDNESS VERSUS RACIAL JUSTICE

FRANK R. PARKER*

INTRODUCTION

Andrew Hacker, Professor of Political Science at Queens College in New York, asks white students how much financial compensation they would request if they were suddenly required to be black.[1] White students do not think it is unreasonable to demand anything from $1 million to $50 million for each year in which they would have all the outward physical characteristics of a black person, even though inside they would be the same.[2] The Rehnquist Court, by further limiting the steps government can take to mitigate the gross racial inequities that exist in American society, is now greatly increasing the cost and disadvantage of being a minority in America today.

This Essay demonstrates that the Supreme Court's anti-minority decisions of the past two Terms represent what *The New York Times* has called a "tide of fundamental change that . . . battered or overturned precedents"[3] and which has marked "the emergence of an emboldened conservative majority that seems ready, indeed anxious, to re-

* Frank R. Parker is Visiting Professor of Law, *Washington College of Law, American University* and Professor of Law, *District of Columbia School of Law.* He is the author of BLACK VOTES COUNT: POLITICAL EMPOWERMENT IN MISSISSIPPI AFTER 1965 (1990) and is currently working on a book on affirmative action. LL.B. *Harvard Law School,* 1966; A.B., *Oberlin College,* 1962.

1. *See* ANDREW HACKER, TWO NATIONS: BLACK AND WHITE, SEPARATE, HOSTILE, UNEQUAL 31-32 (1992).

2. *Id.*

3. Linda Greenhouse, *New Issues as Supreme Court Returns,* N.Y. TIMES, Oct. 1, 1995, at 22 (previewing upcoming voting rights case in wake of Court's decision last Term to invalidate minority-black districts).

examine basic constitutional principles."[4] These decisions have extremely harmful consequences on efforts to improve the educational achievement of minority students at the elementary and secondary levels, on attempts to achieve greater school desegregation for both public schools and universities, and on endeavors to reverse the alarming decline in college attendance by black high school graduates. These decisions also adversely affect efforts to improve opportunities for minority business development[5] and to gain greater equity in electoral representation by increasing the number of majority-minority legislative districts.[6]

I. DEPARTURES FROM PRIOR PRECEDENTS

The Supreme Court's decisions of the past two Terms represent striking departures from its prior constitutional jurisprudence and an enormous setback to minority efforts to achieve equal opportunity. Previously, in *Swann v. Charlotte-Mecklenburg Board of Education*[7] and similar school desegregation cases,[8] the Court allowed district courts broad discretion to formulate flexible remedies to eradicate the effects of purposeful school segregation.[9] Further, in cases such as *Milliken v. Bradley*,[10] where desegregation could not be accomplished without busing across district lines, the Court approved increased spending for additional, supplemental programs to improve educational opportunities for concentrated minority students.[11] In 1995

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4. *High Court Anxiety*, N.Y. TIMES, Oct. 2, 1995, at A16 (editorial) (arguing that Supreme Court, in upcoming Term, will undermine constitutional principles that promote racial equality).

5. *See* Peter Behr, *A Rush to the Defense of Affirmative Action, Ruling Galvanizes Minority Business Leaders*, WASH. POST, June 14, 1995, at A1 (quoting Robert Johnson, founder of Black Entertainment Television Cable Network, as stating that Adarand Constructors, Inc. v. Pena, 115 S. Ct. 2097 (1994), "'sounds the death-knell for affirmative action and minority set-asides'" which he credits for providing him with educational and career opportunities).

6. *See* Frank R. Parker, *The Constitutionality of Racial Redistricting: A Critique of* Shaw v. Reno, 3 D.C. L. REV. 1, 1 (1995) (arguing that *Shaw v. Reno* could reduce minority representation in state legislatures and Congress if interpreted as limitation on creation of majority-minority districts).

7. 402 U.S. 1 (1971).

8. *See* Green v. County Sch. Bd., 391 U.S. 430, 441-42 (1968) (holding that "freedom of choice" policy did not meet state's affirmative duty to eliminate school segregation); Griffin v. County Sch. Bd., 377 U.S. 218, 229-32 (1964) (finding that school board's closing of public schools, and providing grants and tax credits to white children to attend private schools violated equal protection).

9. *See* Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 31-32 (1971) ("Once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies."); *Green*, 391 U.S. at 439 (holding that courts are not confined to one discrimination plan, but rather must remedy discrimination "in light of circumstances available and options present").

10. 433 U.S. 267 (1977).

11. Milliken v. Bradley, 433 U.S. 267, 283 (1977) (finding that federal courts may provide remedies beyond pupil assignment to deal with effects of past segregation).

in *Missouri v. Jenkins*,[12] however, the Rehnquist Court limited the remedial relief available to minority students by striking down district court efforts to improve student achievement and to attract white students back into the public schools.[13]

Similarly, in *Regents of University of California v. Bakke*,[14] decided in 1978, the Court approved the attainment of a diverse student body as a justification for race-based university decisionmaking.[15] More recently, in *United States v. Fordice*,[16] the Court stressed the need for affirmative state action to desegregate formerly segregated public universities.[17] But this past Term, the Rehnquist Court refused to review the Fourth Circuit's decision in *Podberesky v. Kirwan*,[18] striking down the University of Maryland's black student scholarship program which was adopted as part of a desegregation plan and which was designed to increase black enrollment at a formerly all-white institution.[19]

Previously, in *Metro Broadcasting, Inc. v. FCC*[20] and *Fullilove v. Klutznick*[21] the Court upheld the constitutionality of minority set-aside programs adopted by Congress to foster racial diversity and overcome discrimination.[22] But recently in *Adarand Constructors, Inc. v. Pena*,[23] the Court expressly overruled *Metro Broadcasting* and, in effect, overruled *Fullilove* to hold that congressionally mandated affirmative action programs, like state programs, cannot be sustained unless they pass the strict scrutiny standard of review.[24]

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12. 115 S. Ct. 2038 (1995).

13. Missouri v. Jenkins, 115 S. Ct. 2038, 2043, 2050-55 (1995) (finding that district court's order to increase salaries and interdistrict funding of quality education programs to attract transfer students from outside school district were beyond remedial powers of Court).

14. 438 U.S. 265 (1978).

15. *See* Regents of Univ. of Cal. v. Bakke, 438 U.S. 265, 311-15 (1978) (stating that diverse student body allows "robust exchange of ideas" essential to academic freedom and discovery of truth).

16. 112 S. Ct. 2727 (1992).

17. *See* United States v. Fordice, 112 S. Ct. 2727, 2735-36 (1992) (holding that adoption of race-neutral policies alone does not fulfill states' affirmative duty to eradicate effects of prior *de jure* discrimination).

18. 38 F.3d 147 (4th Cir. 1994).

19. Podberesky v. Kirwan, 38 F.3d 147, 151-52 (4th Cir. 1994) (finding that inadequate evidence of present discriminatory effects resulting from past discrimination existed to justify black scholarship program), *cert. denied*, 115 S. Ct. 2001 (1995).

20. 497 U.S. 547 (1990).

21. 448 U.S. 448 (1980).

22. Metro Broadcasting, Inc. v. FCC, 497 U.S. 547, 566 (1990) (upholding FCC preferences for minority owners in broadcast licensing proceedings in order to promote programming diversity); Fullilove v. Klutznick, 448 U.S. 448, 480 (1980) (finding that congressional use of race and ethnic criteria when awarding federal construction contracts was constitutional).

23. 115 S. Ct. 2097 (1995).

24. Adarand Constructors, Inc. v. Pena, 115 S. Ct. 2097, 2105-12 (1995).

In 1977, in *United Jewish Organizations v. Carey*,[25] the Court held state legislative action creating majority-minority election districts to comply with the Voting Rights Act immune from constitutional challenge so long as white voting strength was not diluted.[26] Then three years ago in *Shaw v. Reno*,[27] the Court reversed course and ruled that newly-created majority-minority districts that were highly irregular in shape were presumptively unconstitutional and subject to strict scrutiny despite the absence of any claim of unfair discrimination against whites.[28] This past Term, the Supreme Court extended the *Shaw* standard even further in *Miller v. Johnson*,[29] to subject to strict scrutiny any majority-minority district in which race was a predominant factor in creating the district.[30]

The Court's most recent actions in *Jenkins*, *Podberesky*, *Adarand Constructors*, *Shaw*, and *Miller* represent the emerging dominance of the Court's hard-core conservative members. With the critical support of the swingvotes of Justices O'Connor and Kennedy, this far-right faction, made up of Chief Justice Rehnquist and Justices Scalia and Thomas, has the five votes it needs in the Court's most critical race cases to change the course of constitutional jurisprudence, reverse and undermine prior precedents, and redefine the constitutional limits on judicial and governmental remedies designed to overcome racial discrimination and promote racial equality. The rulings of this new conservative majority mark a major shift away from the Court's traditional concern for fairness and justice for racial minorities and have enormously harmful implications for the efforts of racial minorities to gain equal opportunity in America today.

II. EDUCATION

Minorities continue to suffer the damaging effects of past and present racial discrimination in education. The National Research Council in its survey of the status of black Americans concluded that despite school desegregation and increased federal financial assistance, "there remain persistent and large gaps in the schooling quality

25. 430 U.S. 144 (1977).

26. United Jewish Org. v. Carey, 430 U.S. 144, 165-68 (1977) (holding that voter redistricting is permissible means of achieving fair minority representation in state legislature).

27. 113 S. Ct. 2816 (1993).

28. Shaw v. Reno, 113 S. Ct. 2816, 2824-27 (1993).

29. 115 S. Ct. 2475 (1995).

30. Miller v. Johnson, 115 S. Ct. 2475, 2481-82 (1995) (applying strict scrutiny analysis to redistricting plan to find plan unconstitutional because legislature, in developing plan to comply with Voting Rights Act, took race into account).

and achievement outcomes of education for blacks and whites."[31] The council found that "separation and differential treatment of blacks continue to be widespread in elementary and secondary schools and, in different forms, in institutions of higher learning."[32] The Council also found that "[a]fter the 1970s, the college-going chances of black high school graduates have declined, and the proportion of advanced degrees awarded to blacks has decreased."[33]

Students in racially-segregated public schools with high concentrations of poor minority students typically have low achievement test scores, high drop-out rates, and limited opportunities for jobs and college admission after graduation.[34] Studies have demonstrated that school desegregation provides academic gains for minority students with little harm to whites.[35] Many contemporary school desegregation plans, particularly for urban areas, incorporate the features challenged by the State of Missouri in *Missouri v. Jenkins.* These include increased expenditures, frequently from state funds, for supplemental educational programs to improve minority student achievement, and magnet schools that provide specialized programs of study to attract white and minority students from throughout the district. These programs are designed to accomplish desegregation without mandatory reassignments and to attract white students back to desegregated public schools.[36]

In *Missouri v. Jenkins,* the Supreme Court held that the district court's efforts to improve student achievement in the Kansas City schools and to enhance desegregation by inducing white students back into the public schools exceeded its remedial authority, despite the district court's specific findings—unchallenged on appeal—that segregation had caused a system-wide reduction in student achievement and that magnet schools would assist in desegregating the district.[37] The Supreme Court's decision thus throws into question remedies, some of which have been in place for a decade or more,

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n 31. COMMITTEE ON THE STATUS OF BLACK AMERICANS, NATIONAL RESEARCH COUNCIL, A COMMON DESTINY: BLACKS AND AMERICAN SOCIETY 377-78 (Gerald David Jaynes & Robin M. Williams, Jr. eds., 1989).

32. *Id.* at 378.

33. *Id.*

34. *Id.*; *see also* Gary Orfield, *School Desegregation After Two Generations: Race, Schools, and Opportunity in Urban Society, in* RACE IN AMERICA: THE STRUGGLE FOR EQUALITY 253-60 (Herbert Hill & James E. Jones, Jr. eds., 1993) (contending that courts no longer lead in combatting effects of past and continuing segregation and exploring issues society must address for multiracial society to succeed).

35. Orfield, *supra* note 34, at 254.

36. Orfield, *supra* note 34, at 247-48.

37. Missouri v. Jenkins, 115 S. Ct. 2038, 2074-75 (1995) (Souter, J., dissenting).

typically employed in desegregation plans for large urban school districts.

Denial to minorities of equal access to a college education is a pressing public policy issue.[38] As job growth in the industrial sector declines, there is a growing demand for highly skilled and highly educated workers, while those workers with fewer skills and less education are consigned to a declining standard of living.[39] Although college education has become increasingly important for success in the job market, college enrollment among black high school graduates has declined since the mid-1970s, when college enrollment rates for whites and blacks were approximately equal.[40] The Southern Education Foundation recently reported that while blacks account for twenty-five percent of the college-age population in twelve southern and border states (states bordering on the old confederate states) that formerly maintained *de jure* racially segregated colleges and universities, blacks make up only sixteen percent of full-time university freshmen and ten percent of Bachelor of Arts or Bachelor of Science recipients.[41] In addition, the formerly all-white colleges and universities in these states remain largely segregated; in eight of the twelve states, fewer than ten percent of all black first-year students are enrolled in the most prestigious, predominantly white universities.[42]

One of the principal causes of the decline in college attendance by black students is the steep increase in the expense of a college education, coupled with a decline in the availability of financial aid.[43] High college expenses, which have increased 138% since 1980,[44] both deny minorities an equal opportunity to gain a college education and impede the desegregation of formerly segregated state universities. The Banneker Scholarship Program successfully challenged in

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38. *See* COMMITTEE ON THE STATUS OF BLACK AMERICANS, *supra* note 31, at 378-79 (documenting that minorities are underrepresented at colleges and universities).

39. *See* ROBERT B. REICH, THE WORK OF NATIONS: PREPARING OURSELVES FOR 21ST-CENTURY CAPITALISM 3, 301-15 (1991) (reflecting on emergence of global economy and fate of American citizens and discussing widening gap between poor and wealthy).

40. PANEL ON EDUCATIONAL OPPORTUNITY AND POST SECONDARY DESEGREGATION, SOUTHERN EDUCATION FOUNDATION, REDEEMING THE AMERICAN PROMISE 26 (1995).

41. *Id.* at 3.

42. *Id.*

43. *Id.* at 31-33; *see* COMMITTEE ON THE STATUS OF BLACK AMERICANS, *supra* note 31, at 343-44 (stating that blacks are less willing to borrow money to pay for education than whites because blacks do not expect same economic rewards as whites due to long history of economic discrimination).

44. PANEL ON EDUCATIONAL OPPORTUNITY AND POST SECONDARY EDUCATION, *supra* note 40, at 33 (explaining that many minority students help to financially support families and cannot use all financial aid for education).

Podberesky, providing merit-based scholarships for qualified black students, was adopted as part of a desegregation plan mandated by the U.S. Department of Health, Education, and Welfare to increase the number of black students at the University of Maryland.[45] It accounted for only about one percent of the university's total financial aid budget.[46]

The Fourth Circuit's decision, and the Supreme Court's refusal to review and reverse it, establish an adverse precedent that may jeopardize targeted minority student aid that is critical to increasing minority university enrollment. Neither color-blind merit-based scholarships nor color-blind need-based scholarships are adequate substitutes for race-based student aid. In *Podberesky*, the University of Maryland had extensive experience with both forms of color-blind scholarship assistance, and neither one had worked to significantly increase black student enrollment.[47] This ruling threatens to undermine efforts both to counter the alarming decline in black college enrollment and to achieve meaningful desegregation of formerly all-white universities in the southern and border states.

III. MINORITY BUSINESSES

Affirmative action programs have had a positive effect in overcoming barriers to the creation of minority-owned businesses. From 1982 to 1992, the number of black-owned businesses increased from one percent of all U.S. businesses to 3.6 percent, largely because of federal, state, and local minority set-aside programs.[48] The latest Census Bureau data show that between 1987 and 1992 the number of black-owned businesses increased forty-six percent, and black business receipts grew by sixty-three percent, from $19.8 billion to $32.2 billion.[49] The number of black businesses with paid employees also has increased, by 1992 constituting ten percent of all black-owned businesses and generating receipts of $22.6 billion.[50]

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45. Podberesky v. Kirwan, 838 F. Supp. 1075, 1079 (D. Md. 1993), *vacated*, 38 F.3d 147 (4th Cir. 1994), *cert. denied*, 115 S. Ct. 2001 (1995).

46. *Id.* at 1077.

47. *Id.* at 1081-82.

48. Joyce E. Allen, *The Growth and Diversification of Black Businesses*, 18 FOCUS 5-6 (1990).

49. *Black-Owned Business Firms Up 46 Percent Over Five Years*, U.S. DEP'T OF COMMERCE NEWS (Bureau of the Census, Washington, D.C.), Dec. 12, 1995, at 1 (on file with *The American University Law Review*).

50. *1992 Survey of Minority-Owned Business, Excerpts: Black-Owned Businesses*, (Bureau of the Census, Washington, D.C.), Dec. 11, 1995, at 10 (1995) (on file with *The American University Law Review*).

Government encouragement of minority businesses is critical because of the many barriers minorities face in starting a successful business:

> There is the difficulty of getting start-up loans and capital from banks and investors stemming from biased attitudes about blacks' business abilities. Nor is it easy for blacks to get experience in corporate management as a prelude to branching out on their own. Some blacks have done well providing products and services to their own community. Still, the real challenge is to build a wider clientele.[51]

The Supreme Court first applied the strict scrutiny standard of review to locally adopted minority business set-aside programs in *City of Richmond v. J.A. Croson Co.*[52] in 1989, although subsequently, in *Fullilove* and *Metro Broadcasting*, the Court sustained congressionally adopted set-asides under an intermediate level standard of review.[53] In *Adarand Constructors, Inc. v. Pena*, the Court mandated strict scrutiny across-the-board for federal, state, and local minority set-aside programs for the first time, jeopardizing the substantial progress that has been achieved in the development of minority businesses.[54] By holding that such programs "are constitutional only if they are narrowly tailored measures that further compelling governmental interests,"[55] the Court is encouraging further challenges to a wide range of programs designed to encourage minority business development, greatly increasing the costs of justifying such programs, and raising the risk that many such programs will be abandoned, with harmful consequences to minority business development.

IV. REDISTRICTING

Since 1965, when Congress passed the Voting Rights Act,[56] minorities have been severely underrepresented in Congress.[57] Prior to the latest round of redistricting after the 1990 Census, black and

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51. HACKER, *supra* note 1, at 108.

52. 488 U.S. 469 (1989).

53. *See* Metro Broadcasting, Inc. v. FCC, 497 U.S. 547, 566 (1990) (finding that FCC preferences for minority owners in broadcast licensing proceedings were "substantially related" to "important governmental objective" of promoting programming diversity); Fullilove v. Klutznick, 448 U.S. 448, 450 (1990) (holding that congressional use of racial and ethnic criteria as condition for federal grant was legitimate means of achieving remedial objective of combatting effects of past discrimination).

54. Adarand Constructors, Inc. v. Pena, 115 S. Ct. 2097, 2105-12 (1995).

55. *Id.* at 2113.

56. Pub. L. No. 89-110, 79 Stat. 437 (1965) (codified as amended at 42 U.S.C. §§ 1971, 1973 to 1973bb-1 (1988)).

57. *See* Parker, *supra* note 6, at 2 (comparing percentage of minorities at voting age to minority representation in Congress and state legislatures).

Hispanic representation in Congress was less than half their percentages in the voting-age population.[58] Blacks, who constitute 11.1% of the nation's voting age population, made up only 4.9% of the members of Congress.[59] Hispanics, with 7.3% of the country's voting age population, had only 2.5% of the representation in Congress.[60]

In the latest round of redrawing congressional district lines, minorities made substantial advances in gaining more equitable representation. Congressional redistricting plans drawn by state legislatures, sometimes to satisfy Justice Department objections under the Voting Rights Act, and by federal and state courts doubled the number of majority black and Hispanic districts, from twenty-six to fifty-two.[61] This produced a fifty percent increase in the number of black members of Congress and a thirty-eight percent increase in Hispanic members of Congress, in absolute numbers the greatest increase in minority representation in Congress in American history but still less than proportional representation.[62] As a result of the creation of new majority-black districts, black voters in North Carolina, which is twenty percent black, elected the first two black members of Congress from that state since 1901, and black voters in Georgia, which is twenty-seven percent black, for the first time elected three black members of Congress (they had only had one since 1986).[63]

In states with strong patterns of racially polarized voting (whites voting predominantly for white candidates, and blacks voting for black candidates) such as North Carolina and Georgia,[64] minority voters are denied an equal opportunity to elect candidates of their choice unless majority-minority districts are created. In North Carolina and Georgia, the Justice Department had objected to the state legislatures' first redistricting plans because they unnecessarily minimized the number of majority-black districts.[65] The Justice Department's objections required the state legislatures then to increase the number of majority-black districts to comply with the Voting Rights Act.[66]

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58. *See* Parker, *supra* note 6, at 2.
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61. *See* Parker, *supra* note 6, at 2.
62. *See* Parker, *supra* note 6, at 2.
63. *See* Parker, *supra* note 6, at 7.
64. *See* Thornburgh v. Gingles, 478 U.S. 30, 53-54, 61-70 (1986) (concluding that racially polarized voting contributed to impairment of geographically cohesive black voters' fair participation in North Carolina's political process); Busbee v. Smith, 549 F. Supp. 494, 499 (D.D.C.) (finding that Georgia's reapportionment statute was effort to split geographically cohesive black population in order to avoid black polarized voting and thus was unconstitutional), *aff'd mem.*, 459 U.S. 1166 (1982).
65. *Thornburgh*, 478 U.S. at 61-70; *Busbee*, 549 F. Supp. at 499, 518.
66. *Thornburgh*, 478 U.S. at 46.

The Supreme Court in *Shaw v. Reno* held that the North Carolina plan was subject to strict scrutiny because of its irregularly shaped majority-black districts[67] and in *Miller v. Johnson* ruled that the majority-black Eleventh Congressional District in Georgia was unconstitutional because race was a predominant factor in drawing the district.[68] The *Miller* case represents the first time the Supreme Court has struck down a districting scheme under the Fourteenth Amendment without any claim or proof of racially discriminatory purpose or effect.[69] These decisions raise the most serious questions concerning the future of minority political participation. If, because of white bloc voting, minorities are unable to elect representatives of their choice except in majority-minority districts—as the record in both cases clearly showed—then the elimination of these majority-minority districts is sure to negate the voting strength of minority voters, reduce minority representation in Congress, and increase white political power in Congress.

There is a disturbing parallel with what happened in Mississippi after the Voting Rights Act was passed. Prior to 1965, Mississippi had a majority-black congressional district in the heavily black, Delta portion of the state. Then the Voting Rights Act eliminated discriminatory barriers to black voting and allowed large numbers of black citizens to register and vote for the first time in this century. In what has come to be regarded as a classic case of racial gerrymandering, the state legislature responded by carving the majority-black district up among three white-majority districts, thus eliminating the majority-black district.[70] The state legislature's action deprived Mississippi's black voters of any opportunity to elect a black member of Congress until the Delta district was restored by court order in the 1980s.[71]

The question then becomes: Does the new color-blind equal protection standard now require the purposeful elimination of these newly created majority-black and majority-Hispanic districts?

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67. Shaw v. Reno, 113 S. Ct. 2816, 2824-27 (1993).
68. Miller v. Johnson, 115 S. Ct. 2475, 2482-83 (1995).
69. *Id.* at 2481-82.
70. FRANK R. PARKER, BLACK VOTES COUNT: POLITICAL EMPOWERMENT IN MISSISSIPPI AFTER 1965, at 41-51 (1990) (discussing fragmentation of majority black district among three, new majority white districts).
71. *See* Jordan v. Winter, 604 F. Supp. 807, 812-15 (N.D. Miss.) (ordering state legislature to redistrict Delta area without dividing cohesive black population), *aff'd mem. sub nom.* Mississippi Republican Executive Comm. v. Brooks, 469 U.S. 1002 (1984).

CONCLUSION

The Supreme Court's equal protection decisions of the past two Terms are extremely damaging to minorities' efforts to overcome past and present discrimination and to participate in the mainstream economic and political life of this country. The decisions are likely to limit efforts to improve educational achievement of minority students in school desegregation plans, make it more difficult to provide financial aid for minority college students to offset declines in college enrollment and improve desegregation levels of formerly segregated colleges and universities, reduce the modest growth in minority business development that has occurred with the assistance of minority set-aside programs, and roll back the progress that was made after the 1990 Census in overcoming minority under-representation in Congress.

The Court's goal may not be to resegregate American society, but resegregation surely may be the effect of its decisions. By limiting the remedies available to minorities to overcome discrimination and gain equal opportunity, the Court's new constitutional jurisprudence foreshadows increased divisions of society along racial lines between the better educated, richer, politically empowered white "haves" and the uneducated, poorer, unrepresented minority "have-nots." Thus, instead of reducing racial polarization, these decisions may contribute to heightened racial tensions and polarization.

The Supreme Court has declared war on minority efforts to achieve equal opportunity. Color-blindness is a pathology, a disease of the eye. In striving for a color-blind society, the Supreme Court is turning a blind eye to the gross racial inequities that pervade American society and which, unless alleviated, deprive this country of any claim to racial justice.