Written by **Selwyn Duke** on November 16, 2012

Shameless Judges Strike Down Michigan Affirmative-action Ban

Hundreds of years ago, satirist Jonathan Swift described lawyers as "a society of men … bred up from their youth in the art of proving, by words multiplied for the purpose, that white is black, and black is white…." And evidencing that some things never change is the 6th U.S. Circuit Court of Appeals.

In an 8-to-7 decision, the court just declared Michigan's constitutional amendment banning affirmative action (AA) unconstitutional, with multiplied words that molest reasonable minds. Fox10Tv.com writes:

> The court said the 2006 amendment to the Michigan Constitution is illegal because it presents an extraordinary burden to opponents who would have to mount their own long, expensive campaign through the ballot box to protect affirmative action.
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> That burden "undermines the Equal Protection Clause's guarantee that all citizens ought to have equal access to the tools of political change," said Judge R. Guy Cole Jr., writing for the majority….

However bad AA may be, the "reasoning" of these judges is more troubling still. For their argument could be used to strike down any law. ObamaCare? Overturn it "because it presents an extraordinary burden to opponents who would have to mount their own long, expensive campaign through the ballot box to protect" healthcare choice. The Americans with Disabilities Act? Ditto — with respect to freedom of association. And how about the 14th Amendment itself? After all, we'd have to mount a "long, expensive campaign through the ballot box to protect" states rights. Imagine that: the 14th Amendment could be used to strike down the 14th Amendment!

That is, if you were a rationalizing judge willing to impose your own agenda from the bench.

Obviously, the passage of laws often requires years of lobbying, advertising, arguing, and other efforts; and winning their repeal is even more difficult. But that's part of living in a republic. The opponents of the Michigan AA ban had their chance to scuttle it during that process — and they tried.

And they failed.

Now the "referees," instead of doing their jobs and just calling balls and strikes, have decided to overturn the result because their team lost.

Of course, the judges would say that a constitutional amendment is particularly difficult to repeal. But so what? Should we never institute another amendment because repealing it would be such a burden? Following this logic, our Constitution itself should be scrapped. Yet it goes without saying that if the AA ban had been effected through regular legislation, the judges would have overturned it using a different rationalization.

Note also that the Equal Protection Clause says nothing about citizens having "equal access to the tools of political change." What are these "tools," anyway? Sure, no adult can be denied the right to vote, peaceably assemble, lobby legislators, and mount campaigns, but equality of capacity and effectiveness aren't guaranteed. Can you get the president's ear as Mark Zuckerberg or Jeffrey Immelt can? Do you have billions of dollars with which you can create a foundation and influence policy as George Soros does?

The 6th U.S. Circuit is engaging in judicial activism, which is born of the same mentality that gives us Barack Obama's flouting of the law. Obama circumvents the people's will as expressed through their representatives by ruling through executive fiat; the judges circumvent it through judicial fiat. Obama trumps marketplace competition by picking winners and losers; the judges trump marketplace-of-ideas competition by picking winners and losers. And the real loser is freedom.

The federal judges' reasoning is so ridiculous that one could be tempted to call them idiots, but they aren't idiotic. They're corrupt, delusional, and dishonorable. They haven't proved that "white is black"; beyond the reach of the people, they're beyond caring about offering proof. They will simply rule that white is black even if citizens can plainly see that only their robes and hearts are so. These judges rule the way they do for a simply reason.

Because they can.

Were I the governor of Michigan, I'd simply keep the AA ban in place and, paraphrasing Andrew Jackson, say "The judges have made their decision; now let them enforce it." Note that there's nothing in the Constitution granting judges the power of judicial review or dictating that a chief executive must abide by it. It's simply a power the John Marshall Supreme Court declared for itself in the 1803 *Marbury v. Madison* decision.

And what if the 6th U.S. Circuit Court of Appeals was aghast that I would defy 8 "your honors"? I'd simply respond, "You made your ruling because you can, and I'm going to enforce the law because I can. Think about that the next time you want to operate based on 'might makes right.'"

If judges will not abide by the rule of law, there is no reason for us to abide by the rule of lawyers.