



Written by [R. Cort Kirkwood](#) on January 31, 2022

Biden's Excluding of Men, Non-blacks From SCOTUS List Violates Spirit of Federal Civil Rights Law

So President Biden [has said](#) he will openly and purposely discriminate against all men and all whites, Asians, and Hispanics in choosing a replacement for retiring U.S. Supreme Court Justice Stephen Breyer. Well, at least we know how seriously he takes sex and racial discrimination — not seriously at all.

Yet, more importantly, here is something Biden wants Americans to forget:

Were a federal agency or private employer to announce what Biden announced, applicants denied a job would have a complaint with the federal Equal Employment Opportunity Commission (EEOC) and the chance to file a discrimination lawsuit.



AP Images
Rep. James Clyburn

Want the Black Vote?

The occasion of Biden's violating the spirit of the Civil Rights Act of 1964 and other federal civil rights statutes was last week's announcement he would keep the campaign promise extracted by Rep. James Clyburn, the South Carolina Democrat.

During the Democratic presidential primary debate in February 2020 in South Carolina, Clyburn cornered Biden backstage during a break.

"I told you that I wanted you to say that you were going to name a Black woman to the Supreme Court," Clyburn told what must have been a frightened if not disoriented Biden. "You haven't done it yet. You've had a bunch of opportunities. Don't you dare leave this stage without doing it."

Biden didn't. He heard Clyburn loud and clear. If you want the black vote, pay up. Put a black woman on the court.

Biden repeated the promise during the campaign, and again last week. SCOTUS needs a black woman, and, by golly, I'm going to appoint one. Biden didn't think much, by the way, about a black woman judge President George W. Bush appointed to the D.C. Circuit Court of Appeals in 2003. The man [who tried](#) to destroy the reputation of Associate Justice Clarence Thomas filibustered Judge Janice Rogers Brown's nomination.

Biden's top choice for the new justice is U.S. District Court Judge [J. Michelle Childs](#), a jurist of little renown. Her main qualification seems to be that Clyburn supports her.



The Law

Childs aside, as discrimination goes, federal law is clear: It [can invite](#) EEOC fines of \$50,000 to \$300,000, depending on the size of the employer. It might also invite a lawsuit.

The law applies not only to hiring, but also to recruiting and advertising, the [EEOC website says](#):

It is illegal for an employer to publish a job advertisement that shows a preference for or discourages someone from applying for a job because of his or her race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older), disability or genetic information....

It is also illegal for an employer to recruit new employees in a way that discriminates against them because of their race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older), disability or genetic information....

It is illegal for an employer to discriminate against a job applicant because of his or her race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older), disability or genetic information.

The law governing employment in the federal bureaucracy is also clear — discrimination based on race is absolutely forbidden:

No person employed in the executive branch of the Federal Government who has authority to take or recommend any personnel action with respect to any person who is an employee in the competitive service or any eligible or applicant for a position in the competitive service shall make any inquiry concerning the race, political affiliation, or religious beliefs of any such employee, eligible, or applicant.

And,

No discrimination shall be exercised, threatened, or promised by any person in the executive branch of the Federal Government against or in favor of any employee in the competitive service, or any eligible or applicant for a position in the competitive service because of his race, political affiliation, or religious beliefs, except as may be authorized or required by law.

White Men Only?

Employment discrimination laws [do not apply](#) to SCOTUS or other presidential appointments that require approval by the U.S. Senate. But that truth is irrelevant to the precedent Biden will set.

A president needn't select the best qualified candidate for the court, only the one whose sex and skin color will get him the most votes. Buying political power with racial discrimination is acceptable.

If that is the standard, the question is whether 2024's GOP presidential candidate should promise to appoint a white man to the court to ensure the party's base votes accordingly.



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