

NATION & WORLD

Reverse Discrimination Case Baffles Black Man

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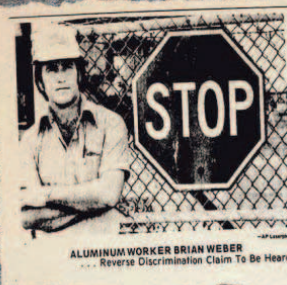
Supreme Court To Decide Reverse Job Bias Case

WASHINGTON (AP) — The Supreme Court said Monday that it will decide whether employers with no proven history of race bias legally discriminate against whites when giving preference to minority workers.

In a case that could dwarf the court's 1979 ruling of last June in its impact and effect on millions of Americans, the Justice agreed to hear three appeals stemming from a Louisiana discrimination lawsuit.

The Justice decision likely will be reached sometime before next July, after arguments are heard.

It's been a long time since the case was argued in court. The case was argued in 1979.



ALUMINUM WORKER BRIAN WEBER Reverse Discrimination Claim To Be Heard



JAMES NAILOR AND SON JAMES JR. ...FRANED through minority program

had not discriminated against blacks and should not be punished because others had. He was growing up in the school system.

I know the arguments about reverse discrimination. I don't see how it can be done. I don't see how it can be done. I don't see how it can be done.

James Nailor, a 40-year-old white man, was denied entry into a training program for a white-dominated field because of his race. He was denied entry into a training program for a white-dominated field because of his race.

Civil Rights Act goes down the drain

By JAMES K. KILPATRICK

WASHINGTON — It was only yesterday, so to speak, that the Supreme Court said the Civil Rights Act of 1964 was not intended to "undo the consequences of past public policy."

The court's decision is a blow to the Civil Rights Act of 1964. It is a blow to the Civil Rights Act of 1964.



NAACP elated by the Weber decision

By VERNON JARRETT

LOUISVILLE, Ky. — The news reverberated through the NAACP. The news reverberated through the NAACP.

High Court to hear case

'Affirmative action' on the line

By The Associated Press

The Supreme Court today agreed to hear whether employers without a history of discrimination can give preference to minority workers.

Jessica Guynn USA TODAY

Brian Weber was born in his family's living room nine months after his dad returned from World War II. His father worked at the sugar mill, one of the many plants lining the Mississippi River above New Orleans, before finally scraping together enough to start a small grocery store.

The Monday after Weber turned 18, having turned down a college scholarship to marry his high school sweetheart, he went to work at a paper mill, then followed his father into the sugar mill.

50 YEARS LATER, AFFIRMATIVE ACTION CASE STILL DIVIDES

In the 1970s, factory workers Brian F. Weber and James Tyrone Nailor Sr. found themselves on opposite ends of the issue of affirmative action. Weber, a white man, believed the law led to him being denied entry into a training program that would have led to higher pay. For Nailor, it was an opportunity to enter a white-dominated field and give his children the promise of a brighter future.

See DIVIDES, Page 19A

KYLE SLAGLE/USA TODAY NETWORK; NEWSPAPERS.COM; JACK THORNELL/AP; COURTESY CHARLES T. NAILOR SR.; GETTY IMAGES

Divides

Continued from Page 13A

In late 1968, a union job opened up at the Kaiser Aluminum and Chemical plant in Gramercy, Louisiana, and Weber jumped at it. He soon had his eye on craft jobs. It was the craftsmen – electricians, mechanics, plumbers – who did skilled work, earned more money and had better working conditions.

There was a hitch: Kaiser Aluminum only hired craft workers with prior experience from union halls in New Orleans and Baton Rouge. So during contract negotiations between Kaiser Aluminum and the United Steelworkers of America in 1974, Weber – a union official – circulated a petition for an on-the-job training program so new workers could get a shot at those better jobs.

Those jobs and the controversy over who deserved them would soon change the direction of the country, shaping the working world in ways America has yet to resolve almost 50 years later.

Weber would become a torchbearer for the new theory of “reverse discrimination.” His case resonates in today’s clashes over diversity, equity and inclusion and the resurgent effort by conservatives to eliminate affirmative action in the private sector.

A question of seniority

At the time, Kaiser Aluminum was under pressure from the federal Labor Department to develop an affirmative action plan to address the scarcity of Black workers in its almost all-white craft ranks.

As a provision of the nationwide steelworkers agreement, the company and the union created training programs at 15 facilities, including Gramercy, and set aside half the spots for Black workers.

Thirteen trainees were selected that year: seven Black and six white. The most senior Black worker had less seniority than several white production workers who were turned down. One of those white workers was Weber, who had more seniority than nearly all of the Black workers chosen.

Weber hadn’t expected to get a spot in the training program – he was pretty far down the seniority list – but he still didn’t think it was right to let Black workers jump the line. After spending hours reading up on Title VII of the Civil Rights Act, which bars racial discrimination in the workplace, he didn’t think it was legal, either. He filed a complaint with the Equal Employment and Opportunity Commission.

At the federal courthouse, Weber was ushered into the chambers of a conservative judge, Jack Gordon, who was intrigued by Weber’s “reverse discrimination” argument. The judge appointed Mike Fontham to represent Weber.

“He predicted the case would reach the Supreme Court,” Fontham said. “He was right.”

In December 1974, Weber sued Kaiser Aluminum and the union, arguing that Congress had explicitly banned racial preferences in training programs. The company and the union countered that they adopted the affirmative action plan to remedy historical discrimination against Black workers.

Weber prevailed in federal district court and on appeal. Soon television cameras were trailing him to work. With the enthusiastic support of his white co-workers, Weber welcomed the spotlight – until David Duke and the Ku Klux Klan showed up in white robes to picket the plant.

“I never did expect to be in that kind of a situation,” Weber told USA TODAY. “And I never wanted to be.”

Some Black co-workers called Weber “a Klansman without a sheet.” The talk show Weber, a Christian who prided himself on treating everyone equally.

The question, of course, was just what it meant to treat people equally.

Only 2% of the skilled craftsmen at the Gramercy plant were Black. If the training programs were based strictly on seniority, Black workers knew what it would mean.

“How could we get into the training programs otherwise?” Kernell Goudia, who got a job in the metal instruments department through the training program, told The Washington Post at the time.

Before the Civil Rights Act of 1964, private-sector employment was mostly segregated. Union halls and hiring managers turned Black people away. Even when Black people landed positions, they were mostly low-skill jobs with no authority or mobility.

Another man at the plant, James Tyrone Nailor Sr., knew all that.

Weber was the face of one side of the argument. Nailor became the face of the other.

Digging a ditch after junior college

Born on a former plantation where



Brian Weber holds an article from one of the many magazines and newspapers that covered his 1970s Supreme Court case. Weber sued his employer and union for reverse discrimination but the decision went against him. DAVID TUCKER/DAYTONA BEACH NEWS-JOURNAL

his parents cut sugar cane, Nailor was an Air Force veteran with a junior college degree when he applied for a job at the aluminum plant in 1958. Turned away at the gate, he ended up doing pick-and-shovel work.

“I tried the telephone company, the power company, nothing. The only thing a Black man could do around here was drive a truck in the sugar cane fields, if you call that skilled, or work as a second-hand mechanic in a filling station,” he told The New York Times in 1979. “I was depressed all the time. ‘Here I am, I thought, ‘digging a ditch, and I’ve completed junior college.’”

“If a company discriminated – and I think companies did – and if the unions discriminated – and the union halls did – they didn’t pay the price. The person who ended up paying for it was the individual like myself.”

Brian Weber

Kaiser Aluminum insisted it did not reject Black applicants on the basis of race, but Black workers disputed that. So did federal investigators. Black workers made up 39% of the available area workforce but just 15% of the workers at the plant, and even then they were relegated to the lowest-paying, most menial jobs.

Nailor, who had studied to be an electrician, picked up work at local plants as a contractor. He finally landed a job at Kaiser Aluminum in 1968 after a white councilman pulled strings. When the company began the training program in 1974, Nailor was one of the first Black workers accepted.

“When Brian Weber was born into this world, the opportunity was there for him right then. This is the first time I have had an opportunity to really try to get somewhere,” Nailor told The Associated Press at the time. “As Black men, we have nothing. I had nothing.”

The high court rules

In March 1979, Weber flew to Washington to watch the oral arguments before the nation’s highest court. An attorney asked him to sign an autograph and a security guard let him slip in through a side door, bypassing the long line of people waiting to get into the packed courtroom.

Listening to the justices that day, Weber said, was heady. But he could tell from the court’s discussion that the justices would not find in his favor. A few months later, the court ruled 5-2 that private employers could give Black workers special preference for jobs that were traditionally all-white to address racial imbalances in the workforce.

Writing for the majority, Justice William Brennan said the lower courts followed the letter of the law but not its spirit. Congress’ primary concern was “the plight of the Negro in our economy” and Title VII should not be used to prohibit “all voluntary, private, race-conscious efforts to abolish traditional patterns” of discrimination, he wrote.

Justice William Rehnquist dissented sharply, writing, “Congress expressly prohibited the discrimination against

Brian Weber the court approves now.”

Thanks to the Weber decision, the private sector has had the flexibility to institute affirmative action programs that thousands of companies have used to hire women and minorities, according to Melvin Urofsky, author of “The Affirmative Action Puzzle.”

Of all the Supreme Court’s affirmative action rulings in the 1970s, “Weber might have had the longest reach,” Urofsky wrote.

“My only intention was to right an obvious wrong,” said Weber, now a 77-year-old retired labor relations manager living in Florida.

seeking plaintiffs to file more claims. His organization America First Legal runs ads on social media platform X, formerly Twitter: “Have you been denied a job or promotion because you are white, Asian or male?”

“The goal of conservative activists ultimately is to get one of these cases to the U.S. Supreme Court,” Pandya said. “Because of that court’s conservative majority, they’re betting that, if they get there, the court will likely use that case to overrule Weber.”

“Though he’s not closely following the issue, Weber’s former attorney believes they will succeed.

“If you are using a racial qualification to advance one race over the other, that violates the Civil Rights Act by its plain wording,” Fontham said. “It’s not even close to justifying it.”

A family legacy

When the Supreme Court decision was handed down, Nailor rushed home to share the news with his wife.

“He told my mom, ‘I’m going to do whatever I can to reach back and help my people move forward.’ He said: ‘It might take just one of us and I could be the one to make a change,’” his son Charles Nailor Sr., now 63, recalled. “And he did.”

The Kaiser Aluminum training program changed the family’s future. For two years, James Tyrone Nailor Sr. took a pay cut and did without overtime. Some of his white co-workers wouldn’t speak to him. His son remembers the strain on his dad’s face during the controversy.

But after that, when Nailor became the Gramercy plant’s only Black electrician out of 37, he had money to buy a boat and to travel with his family.

Charles Nailor Sr. said his father was proud that his children would have the opportunity to do better in life than he had. Charles was the top student in his college electrical class and has been working at a Gulf Oil plant, now AmSty, since he graduated in 1980. His own son works at the same plant.

James Tyrone Nailor Sr.’s life touched the whole community, his son said: “A lot of those guys benefited from my dad standing up and standing firm to open the doors for other Blacks to get into the craft world.”

As for Weber, he never landed a craft job at Kaiser Aluminum. But the way the Nailor family sees it, the system also never held Weber back. Weber got an MBA and went on to a long career in labor relations.

“They were never on the same playing field,” Charles Nailor Sr. said. “Weber was always on a better playing field.”

That pattern was typical in the 1970s. Even as Black employment grew more than at any other point and Black workers moved up into professional and white-collar roles, more white men moved into the managerial ranks.

It remains typical today. Research shows that white men now are even more likely than their grandfathers to be in management despite a diversifying workforce and a growing number of research studies that suggest diverse companies are more likely to outperform those with more homogenous workforces.