



## En Banc Sixth Circuit Strikes Down Portions Of Michigan's Constitutional Amendment On Affirmative Action

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Yesterday (Nov. 15, 2012), the United States Court of Appeals for the Sixth Circuit, sitting *en banc*, voted 8 to 7 to strike down portions of the amendment to Michigan's constitution that barred the use of affirmative action in the admissions to public colleges and universities.

In 2006, Michigan voters passed a referendum known as Proposal 2, which amended the Michigan Constitution to bar discrimination, as well as preferential treatment, toward "any individual or group on the basis of race, sex, color, ethnicity or national origin in the operation of public employment, public education, or public contracting." The majority of the Sixth Circuit found that the ban on affirmative action violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. However, the majority specifically limited its decision to the question of public education—it did not decide whether the ban on affirmative action in public employment and public contracting violated the Equal Protection Clause.

Michigan's Attorney General has indicated that he plans to seek Supreme Court review of this decision.

While [this decision](#) does not immediately affect Michigan employers, the Court's reasoning will likely be used in challenges to the bar on affirmative

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action in public employment and public contracting. Further, if the Supreme Court reviews this case, its decision could impact affirmative action plans across the country, both inside and outside public education.