

## Michigan Affirmative Action Ban Upheld By U.S. Supreme Court

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April 23, 2014

Michigan's affirmative action ban, a Constitutional amendment enacted through referendum during the 2006 election cycle, was upheld by the U.S. Supreme Court on Tuesday.

The decision means that public entities, including public universities and school districts, may not use gender- and race-based preferences in hiring, contracting or admission processes unless mandated by the federal government as a condition of receiving federal funds. As such, public entities should not alter current admissions and/or hiring policies to include such considerations.

In *Schuette v. BAMN*, a 6-2 Supreme Court majority overruled the 6<sup>th</sup> U.S. Circuit Court of Appeals' invalidation of the amendment, in which the lower court ruled that the ban violated U.S. Supreme Court's precedent in *Washington v. Seattle School Dist. No. 1*, a civil rights era student busing case. The majority wrote that the 6<sup>th</sup> Circuit's principal mistake in relying on *Seattle* was that there was no infliction of a specific injury caused by the affirmative action ban like those in *Seattle* and other cases of that era. Instead, the majority said, the dispute in *Schuette* was "not how to ... prevent injury caused on account of race, but whether voters may determine whether a policy of race-based preferences should be continued. ..."

"Were the Court to rule that the question addressed by Michigan voters is too sensitive or complex to be within the grasp of the electorate; or that the policies at issue remain too delicate to be resolved save by university officials, acting at some remove from immediate public scrutiny and control ... that holding would be an unprecedented restriction on the exercise of a fundamental right held not just by one person but by all in common."