

Michigan Doves Will Live But Affirmative Action Is Rejected

November 9, 2006

MICHIGAN VOTERS HAVE SPOKEN ... the hunting of mourning doves has been expressly prohibited, but the hotly debated affirmative action proposal which bans the consideration of race and gender by state government, public colleges and K-12 schools has been approved!

Proposal 2, which should now be referred to as the newly enacted constitutional amendment, prohibits public institutions from using affirmative action programs that give "preferential treatment" to groups or individuals based on their race, gender, color, ethnicity or national origin for public employment, education or contracting purposes. Public institutions that will be affected by this amendment include state and local entities involved in education, public employment and contracting. The amendment does not affect the activities of private, non-governmental entities.

The amendment does not become effective immediately. In accordance with the Michigan Constitution, Article XII, Section 2, amendments adopted by the voters at a general election go into effect "at the end of 45 days after the date of the election at which it was approved." Thus, the effective date of the amendment will be December 23, 2006 (i.e., the 46th day following the November 7th election).

Will all affirmative action plans be banned? NO. The only programs that will be affected are those that discriminate or give "preferential treatment" on the basis of race, sex, color, ethnicity or national origin in the areas of public employment, contracting and education. Existing affirmative action programs that are mandated by the federal government as a condition of receiving federal funds are excepted from the amendment's prohibitions. The new constitutional amendment also exempts reasonable qualifications based on gender.

Since the term "preferential treatment" is not clearly defined in the new amendment, it is open to interpretation. As a result, Michigan courts will likely be left with the job of defining and clarifying the actual application of this new amendment. It is likely that there will be numerous lawsuits filed in the near future which will ultimately test the breadth of the amendment and its impact in Michigan.

In an effort to address the many grey areas that exist as a result of the passage of Proposal 2, Miller Canfield will be hosting a series of seminars beginning the week of November 27th and continuing through the week of December 11th. These seminars will be held in our Detroit, Troy, Ann Arbor, Lansing and Grand Rapids offices. They will also be available for viewing via the internet. Specific dates and additional details will be forwarded by no later than November 14th.

If you have any questions about this issue, feel free to contact:

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