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# United States Supreme Court Upholds Michigan's Constitutional Ban Against Affirmative Action

By Marshall W. Grate / Apr 24, 2014

In a six to two decision, the United States Supreme Court upheld Michigan's constitutional prohibition against affirmative action. *SCHUETTE v. BAMN*, 572 U. S. \_\_\_\_ (2014). Article I, § 26 of Michigan's Constitution prohibits public universities, colleges, and school districts from discriminating against or granting preferential treatment to any individual or group on the basis of race, sex, color, ethnicity, or national origin. The Supreme Court reversed the United States Sixth Circuit Court of Appeals eight to seven *en banc* decision, which invalidated § 26 as violating the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, which guarantees individuals with equal protection of the laws.

In passing § 26, the voters of Michigan prohibited consideration of race in public decision-making, which arguably embraced the principle of equal protection. Justices Scalia and Thomas captured the fundamental dilemma presented by this case in their concurring opinion, "Does the Equal Protection Clause of the Fourteenth Amendment *forbid* what its text plainly *requires*?"

In writing for the majority, Justice Kennedy stated that the case was not about the merits of affirmative action. Instead, it was about whether issues involving affirmative action are reserved solely for judicial determination or whether they are subject to the democratic process. The majority, including Justice Breyer who crossed the ideological divide, favored the democratic process. Justice Sotomayor wrote a dissent in defense of affirmative action in which Justice Ginsburg joined.

The Supreme Court's decision removes any legal doubt as to the validity of Michigan's Constitutional Ban against affirmative action. Please contact your Clark Hill Education School Law attorney if you have questions or want more information regarding the *Schuette* decision.