Federal Appeals Court Strikes Down Michigan's Constitutional Amendment Banning Affirmative Action in University Admissions

July 21, 2011

By Lisa McGarrity and Amy K. Dickerson

In 2006, voters in Michigan approved an amendment to the state constitution known as "Proposal 2" which prohibited public universities from considering race, sex, color, ethnicity, or national origin in university student admissions and government hiring. Earlier this month in ***Coalition to Defend Affirmative Action v. Regents of the University of Michigan***, the Sixth Circuit Court of Appeals held that this ban on affirmative action violates the guarantee of equal protection contained in the Fourteenth Amendment to the United States Constitution because it alters Michigan's political structure in such a way that impermissibly burdens racial minorities.

Because Proposal 2 amended the state's constitution, only another statewide vote could change it, creating a significant obstacle for minorities seeking to have race be considered in a university's admissions process. In comparison, an individual seeking a non-race-related change to a university's admissions policies (such as the consideration of parental-alumni status) could use any number of avenues to effectuate that change, such as lobbying the admissions committee, petitioning the higher education authorities, or voting or campaigning to affect the election of a board member whom the individual believes might champion his cause. Accordingly, the Appellate Court found Proposal 2 unconstitutionally reordered the political process in Michigan to place special burdens on minority interests.

Under the Appellate Court's ruling, universities in Michigan are now free to adopt admissions policies that consider a student's race. At the same time, universities are also free to remove the consideration of race from their admissions policies. Indeed, the Appellate Court acknowledged that a university seeking to change its admissions policies to remove the consideration of race would not present an equal protection problem because, unlike Proposal 2, such an action would not alter the decision-making authority over the question of whether race may be considered in a university's admissions policies.

While the Appellate Court's decision is only binding in the Sixth Circuit (i.e., Michigan, Kentucky, Ohio, and Tennessee), the court's decision provides insight into how other courts might analyze similar restrictions on university admissions policies.

More Information

Amy Kosanovich Dickerson
akd@franczek.com
312.786.6108

Lisa A. McGarrity
lam@franczek.com
312.786.6136

Related Practices

Education Law
Higher Education