

California Shaped Legal Path for Michigan Ban

By Paul Egan
and Marisa Schultz
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LANSING, Mich. — Friends and foes are gearing up for a contentious legal battle, but ultimately Michigan's new amendment to ban government affirmative action will prevail in court, legal experts say.

One pro-affirmative action group has already filed a lawsuit alleging the law violates the U.S. Civil Rights Act and the equal protection clause of the U.S. Constitution and the University of Michigan is expected to file another.

"Although I was personally against the passage of Proposal 2, the odds of this lawsuit being successful seem remote," said Lawrence A. Dubin, a law professor at the University of Detroit Mercy School of Law.

In 1996, California voters passed Proposition 209, a nearly identical ballot initiative to Proposal 2, which 58 percent of Michigan voters approved on Tuesday.

At first a lower court deemed the California measure unconstitutional, but in 1997 the 9th U.S. Circuit Court of Appeals unanimously declared the measure lawful and allowed it to take effect.

Nearly a decade later, Proposition 209 lawsuits are still ongoing. However, they tend to be narrow in scope, such as anti-affirmative action groups challenging a particular school district or city's outreach or contracting programs.

The Coalition to Defend Affirmative Action, Integration and

Immigrant Rights and Fight for Equality By Any Means Necessary, which has challenged Proposal 2 in Michigan, is not deterred. It alleges that the amendment would prevent the state from following the Civil Rights Act of 1964, which mandates

the elimination of policies that have the intent or effect of discriminating against people on account of their race, gender and ethnicity.

Jamin Raskin, a law professor at American University Washington College of Law in Washington, D.C., said the case most helpful to By Any Means Necessary is the 1996 U.S. Supreme Court decision in *Romer v. Evans*.

That case involved a 1992 referendum in Colorado that amended the state constitution to ban laws and ordinances that prohibited discrimination on the basis of sexual orientation.

The Supreme Court ruled that Colorado's laws put gays in the position of not being able to get protections that others could. By Any Means Necessary argues that the Michigan constitutional

amendment, though of an entirely different nature, similarly singles out blacks and women.

"It's tough to argue that affirmative action is constitutionally compelled," said Raskin.

Roger Clegg, president of the Center for Equal Opportunity, disagreed.

"Challenges like this were thrown around in California and they were all rejected," said Clegg, whose group opposes affirmative action. "I would expect them to be

rejected here."

No doubt, Michigan's political and legal climates are different from California's. Then-California Gov. Pete Wilson was an ardent supporter of Proposition 209, unlike Michigan Gov. Jennifer Granholm, who opposed Proposal 2.

When Proposition 209 emerged victorious from federal court, Wilson urged California's Legislature to repeal some 30 state programs he believed violated the law.

Among them were pre-college outreach programs, such as SAT preparation for low-income and minority students, the California Summer Science and Technology Academy, designed to help high school

students, particularly females and minorities, to participate in university-based research programs; minority- and women-owned business contracting requirements and scholarships to college students that take race, ethnicity or gender into account.

Now it is up to Granholm and Attorney Mike Cox to enforce the law of the state.

On Thursday, Granholm signed an executive order directing the Civil Rights Commission to investigate the impact of Proposal 2 on the state, said Liz Boyd, Granholm's spokeswoman. The review, which would identify state programs that could be affected, will be complete before 90 days.

Barring a court injunction, Proposal 2 will take effect Dec. 22. It bans discrimination or use of racial preferences in government hiring, contracting and university admis-



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