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RULE OF LAW

Michigan Prefers Equality

By ABIGAIL THERNSTROM

Ward Connerly has done it again: A striking 58% of Michigan voters gave the Michigan Civil Rights Initiative a thumbs up; only three counties voted against it.

The language of the MCRI closely tracks California's 1996 Proposition 209, also led by Mr. Connerly. It amends the Michigan Constitution to "ban 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." The political and business establishments, pressure groups like the AARP, labor-union leaders, religious spokesmen, the professoriat, the major Detroit newspapers -- all were opposed to MCRI. But a substantial majority of ordinary voters were thinking for themselves.

Patty Alspach was perhaps a typical supporter. A Democrat, she signed the petition putting the proposition on the ballot. Meanwhile, opponents loudly claimed that the measure was misleading, that voters were being duped, that it should be tossed off the ballot. "I read it," replied Ms. Alspach. "I understood it. I signed it. Now let me vote on it."

While Mr. Connerly is the father of the civil-rights initiatives, in Michigan his role was that of mentor and fund-raiser; Jennifer Gratz, MCRI's executive director, was in charge. She'd been the lead plaintiff in *Gratz v. Bollinger*, one of the University of Michigan cases decided by the U.S. Supreme Court in June 2003. The Court agreed that race-driven admissions policies were okay as long as they remained a bit subtle -- but no naked point system for the color of an applicant's skin. The drive for the MCRI was launched immediately after the *Gratz* and *Grutter* decisions were announced.

The initiative's opponents enjoyed a five-fold funding advantage, which they used to broadcast a series of scary messages. The MCRI would be a tragedy on the scale of 9/11; it would perpetuate a "culture of inequity," and "endanger access to life-saving health-care services that apply only to women" -- the language of the initiative to the contrary notwithstanding. Opponents even found basketball coaches to tout the importance of seeking "diversity." In response to that last stunt, the tiny band of full-time, young MCRI workers (five on the payroll) sent a staffer -- a *very* short Korean immigrant, carrying a basketball and dressed for the court -- to the coaches' press conference where he stated his eagerness to add "diversity" to the game.

Such episodes reveal the youthful idealism and commitment of Ms. Gratz, 24, and her staff, so reminiscent of the civil-rights movement in its heyday. They were all 20-somethings, ready to sleep under their desks and work nonstop. Despite the provocative

ugliness of the MCRI's opposition, they stuck with an unwavering, positive message -- leavened with wit.

The ban on preferences will affect the state and local government, but the University of Michigan will feel its impact most keenly. In the closing pages of "The Shape of the River," William Bowen and Derrick Bok's celebrated book on preferential admissions, the authors warn that, if barred from using racial double-standards, institutions of higher education will find another way to achieve the desired racial mix on campuses. Straight out of the Bowen and Bok playbook, University of Michigan president Mary Sue Coleman issued a statement on Tuesday night (even before the final results were in): "Regardless of what happens with Proposal 2, the University of Michigan will remain fully and completely committed to diversity. I am determined to do whatever it takes to sustain our excellence by recruiting and retaining a diverse community of students, faculty and staff."

Brave words in the face of utter defeat. To be sure, Supreme Court opinions can often be circumvented behind closed admissions-office doors; that was certainly the story after the 1978 decision in *University of California v. Bakke*, which (on paper) sanctioned the use of racial identity only as a "plus" factor, one consideration among many in admitting students. But state constitutional amendments are seriously constraining, as the experience in California in the years since the passage of 209 suggests. Racial double-standards in college admissions has been markedly curtailed at the state's flagship schools.

Buried in a lengthy speech to University of Michigan students on Wednesday, Ms. Coleman did say, "of course the University of Michigan will comply with the laws of the state." It was far from her first thought, however, and she has asked the school's attorneys "for their full and undivided support in defending diversity." They'll waste their time. As George Mason University law professor David Bernstein notes, "the chances that the university would ultimately win such litigation approach zero."

Ms. Coleman's other problem is that the much-vaunted "diversity" of the university is something of a sham, as an editorial writer for the very liberal Daily Michigan newspaper has suggested. The campus "is starkly segregated . . . We live in different student neighborhoods. We go to different bars on different nights. We join in different student groups. There are even separate Greek systems." While Ms. Coleman has made the usual noises about building a "community" and "creating a diverse, welcoming campus" -- whom was she kidding? Apparently no one.

Dishonesty has always been the coin of the realm in this country when it comes to race -- from the days of the Declaration of Independence to "separate but equal" and beyond. The use of race as a decisive factor in admissions at selective colleges and universities is no exception.

The modern-day survival of racial preferences depends on sympathetic judges willing to spin dubious arguments and ignore widely available data on the pernicious impact of

such preferences. But, this time, the University of Michigan may find itself without judicial recourse. The Supreme Court has never said that universities are constitutionally obligated to institute "diversity" policies. Public universities are funded by taxpayers. And those taxpayers have spoken.

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