

The Path to Equal Rights in Michigan

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Abstract The litigant in a historic reverse-discrimination case against the University of Michigan, and subsequently the leader of a Michigan ballot initiative that carried the day against long odds, recounts how her simple call for equal treatment under the law persuaded the people of her state that color-conscious preferences are wrong.

Keywords Color-conscious preferences · Discrimination · Equal rights

I find myself addressing the National Association of Scholars about my experiences fighting race preferences, first in the courts and then through a political campaign. Let me look back over the path I took to arrive here.

After 6 years of legal debate, I participated in *Gratz v. Bollinger*, a case before the highest court in the nation, where, with the stroke of a pen, the justices seemingly elevated diversity above equal treatment under the law. Devastated by the ruling, we, who opposed favoritism might easily have walked away or deferred the battle for 25 years. But Center for Individual Rights president Terry Pell and others recognized that we might very well have carried off a public-relations victory. People, not just in Michigan but throughout the nation, were outraged at the Supreme Court decision, and began to demand fair and equal treatment.

I focused on a passage in Justice O'Connor's opinion pointing to California, Washington, Florida, and Texas, where race-neutral policies had been in effect. Justice O'Connor held that all states can and should be moving in that direction. So, although the Court told us that race preferences are acceptable, they also saw them as not necessary. What this meant to me is that the door on the movement had not been shut, so we had to work harder. We had to take this to the people.

Over breakfast in New York City, the day after the Supreme Court decision, Terry Pell suggested I contact Ward Connerly, chief proponent of the California Civil

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Rights Initiative. That afternoon I was on the phone with Ward, and within a few weeks we had launched what initially was the Michigan Civil Rights Initiative. Later it came to be known as Proposal 2, in Michigan.

One of the keys to our success, I think, was that the language is so simple. It is the same language used in California and similar to language used in Washington. “The state shall not discriminate against or grant preferential treatment to any group or individual based on race, sex, color, ethnicity, or national origin in the operation of public employment, public contracting, or public education.” People understood the simplicity of the language, and resisted political efforts to modify it in Michigan.

What amazed me throughout the political battle was the deviations employed by our opponents in couching their legal argument. They had claimed that, to achieve diversity, we have to use race as “one of many factors,”—that there was a logical and straightforward limit to that accommodation. However, when it came to a political debate, “logical endpoints” for ethnic accommodation went out the window. Instead, they promoted doomsday fears; carefully avoiding specific talk about race.

They argued, instead, about gender; telling us that the measure would harm women the most. This fear-mongering ignored the fact that the plaintiffs in four lawsuits against major universities across the country were women: Cheryl Hopwood at the University of Texas, Barbara Grutter and I at the University of Michigan, three women at the University of Georgia, and a woman at the University of Washington. The contention that women would be harmed the most by ending racial preferences didn’t seem plausible.

But they claimed that breast cancer screening centers would be eliminated, and that domestic violence shelters would be challenged. The hyperbole knew no limits. They went so far as to claim that Proposal 2’s passage would equal the tragedy of 9/11. They told us that girls would no longer be able to participate in sports, or in math and science programs. As to the legal argument that race preferences would reach a logical endpoint, Detroit’s mayor stated that affirmative action will be here today, it will be here tomorrow, and it will be in Michigan *forever*.

These scare tactics and doomsday scenarios were their attempt to confuse and manipulate voters. They wanted to incense people so much that voters wouldn’t bother to read the language of the proposal, when they entered the booth. Fear and emotion were supposed to overrule reason—breast cancer screening centers were in jeopardy. In case fear and emotion weren’t enough they claimed consensus. They argued that the *entire* the establishment was on their side, every step of the way. Indeed, over 200 organizations supported our opponents, and Ford, GM, and Chrysler gave them money. Both gubernatorial candidates endorsed them: Dick DeVoss (R) and Jennifer Granholm (D), the governor of the state.

The mainstream media became a virtual arm of their campaign, largely neglecting to question these scare tactics. A few examples should suffice. A report came out by a woman named Susan Kaufmann, the associate director of the Center for the Education of Women at the University of Michigan. The media reported this as a scholarly paper. In it she reiterated concerns that breast cancer screening centers and domestic violence shelters would close. She claimed that women and minority in faculty would plummet, if Proposal 2 passed. They released the report three times, to gain maximum exposure and create the impression of scholarly consensus. The media abetted that strategy.

By comparison, media never reported crucial mistakes in Susan Kaufmann's paper. For instance, her claim that minority faculty at the University of Michigan would decline 14% was based on data from the University of California that compared 5 years prior to passage of the equivalent of the MCRI (Proposition 209) with 4 years after passage. Using the same number of years before and after passage results in rates of minority faculty within the University of California actually going up. Media refused make, or even consider, the correction.

By contrast, the Michigan Association of Scholars—Art White was in charge—put together an open letter to the people of Michigan, outlining some of these absurd statements. They said, whether or not you support passage of Proposal 2, the debate should be fair. The media never covered the letter, *not even once*. Nevertheless that letter became a key part of our campaign. We could talk about it with the media, using the absurdities it exposed in Susan Kaufmann's report to neutralize the opposition.

The intellectual dishonesty within the opposition campaign was hard to believe. Dick DeVoss, the Republican candidate for governor, focused on women, claiming that, in positions that have been historically dominated by men, women may need preferential treatment. Mind you, he was running for governor, an office historically been dominated by men, against a women. Jennifer Granholm, for her part, made it quite clear that she needed no preference to win re-election against a man.

Further emphasizing the hypocrisy and the dishonesty, they actually had college basketball coaches, at the University of Michigan and Michigan State, claim that should Proposal 2 be enacted, their programs would be hurt when measures to promote diversity were eliminated. To counter this, we had one young man of Korean origin, 5'4" and about 105 lbs, go to their press conference. He dressed in a Michigan State jersey and called out: "Coach, I'm ready to play. I'll bring diversity to your team!" The coach, Tom Izzo, didn't take him up on the offer.

On a more serious note, the claim is often made that race preferences are necessary because of socioeconomic conditions that depress the performance of our inner-city public schools. Nevertheless, the opposition's own research (Bowen and Bok in *The Shape of the River*) found that 86% of the preferences go to applicants from upper and middle class backgrounds. And, if the 200 big business, government, and labor organizations supporting preferences, not to mention the similarly inclined politicians, were to join forces toward a solution for K-12 education, we needn't even be talking about preferences in college admissions.

In the heat of the moment my opponents occasionally told the truth. Governor Granholm, during a debate, emphasized the importance of defeating Proposal 2, "because we need to repair the vestiges of slavery, and affirmative action is one way to do it."

Finally, here was a matter of truth for our opponents. These policies are not about genuine diversity, women's health, rights, or anything else. They want to use these policies to "repair the vestiges of slavery." Of course, that argument was never repeated. It isn't popular, so they were not about to bring it vocally into their campaign. But they weren't above with issues that had nothing to do with Proposal 2.

Our message, on the other hand, was simple, straightforward, and self-evident. It's the same message used throughout the lawsuits. Treat people equally! Give everyone an equal chance to compete and let the chips fall where they may. We

asked people: should the government be allowed to guarantee equal outcomes, or should they guarantee an equal opportunity to compete? We reminded the public that women are harmed by unequal treatment just as much as men, that we had faith in the people.

There were several moments when our opponents couldn't avoid the temptation of falling back on their race arguments. My father took part in a radio ad that talked about how his daughter had been harmed by these policies. Though we had limited resources, we spent about \$10,000 on that ad. We put it on two different radio stations, and it was heard twice a day for 5 days. My opponents, however, helped ensure that a lot more people paid attention to it, because they called us liars. They said that even though the U.S. Supreme Court ruled in favor of their race-based legal argument, race wasn't really what kept Jennifer Gratz out of the University of Michigan. Their ham-handed tactics drove our point home.

We ran another television ad, in which Ward Connerly and I stood side by side and talked about the initiative. Our opponents created an ad to counter ours that copied the visual image we had established, placing Ward and Jennifer side by side again. That backfired for them, too, because it reminded the public of our alliance in advocating equal treatment for everybody. Their ad helped our campaign, even if the intent was the opposite.

The polls had huge variation. One week we were up by 15 points, the next down by 10. In a political campaign of this type, polls can be misleading, so one must not place too much stock in them. There were moments when I was worried that the public might surrender to political correctness. When the secretary of state changed the language on the ballot, by describing the proposal as "ending affirmative action policies that give preferences to race" she was attempting to take advantage of such fluctuations in polling. However, we questioned whether adding the phrase "affirmative action" in the language, intended to hurt us, actually had the desired effect.

The weekend before the election our opponents launched new ads, just as new poll results were announced. These ads claimed that a new cervical cancer vaccine would not be implemented in Michigan if Proposal 2 passed, because it only benefits girls. Suddenly we were 10 to 12 points down the weekend before the election. They claimed Proposal 2 was a fraud perpetrated by outsiders, but we remained steadfastly optimistic. We kept our message simple and we stuck to our plan.

And on election night the people of Michigan stood up to the establishment and the U.S Supreme Court by doing what the Supreme Court was afraid to do. They said: "We want no more of this!"

Yes, it's true that this is only a battle won, in a long war. But now we have the opportunity to continue fighting, and will bring this to other states. There's more to be done. Mary Sue Coleman's rant about how they will challenge us every step of the way is not exceptional. But, though I've criticized Justice O'Connor's terrible opinion, she deserves some credit. I have since read that she was asked recently what she thought of the people's passing the Michigan Civil Rights Initiative, and she stated that it was entirely within the right and privilege of voters to do so. That should ring some note of caution for my opponents, as they file their lawsuits.

Again, this really is a victory for the people. They stood up to the politically correct bullies. They confronted the establishment, and did the right thing. They weren't fooled, and that's a great thing.