

A DECISION-MAKING GUIDE
TO THE
MICHIGAN CIVIL
RIGHTS INITIATIVE

PREPARED BY

SCOTT E. PAGE AND ELIZABETH SUHAY

ACKNOWLEDGMENTS

In writing this guide, we sought input from various individuals. We would like to especially thank Carol Allen, William Allen, Jenna Bednar, Carl Cohen, Mita Gibson, Deborah Greene, Maya Kobersy, Julie Peterson, Barbara Suhay, and David Waymire.

This guide was produced with funds from Project Diversity at the Center for the Study of Complex Systems at the University of Michigan, Ann Arbor. Core funding for Project Diversity was provided by the James D. McDonnell Foundation of St. Louis, Missouri. This guide represents an attempt on the part of its authors to present a balanced account of issues related to the MCRI. None of the arguments for or against the MCRI represent the official views of the University of Michigan or any affiliate.

ABOUT THE AUTHORS

Scott E. Page is a professor of Complex Systems, Political Science, and Economics at the University of Michigan and the author of *The Difference: A Logic of Diversity* due out January 2007. For more of his writings on diversity see his web page: www.cscs.umich.edu/~spage/.

Elizabeth Suhay is a doctoral candidate in the Department of Political Science at the University of Michigan. She specializes in American politics and political psychology and is currently writing a dissertation on the roles emotion and social identity play in shaping Americans' political values.

THE PURPOSE OF THIS GUIDE

This November, Michigan residents will vote on the Michigan Civil Rights Initiative (MCRI). This initiative would bar state and local agencies and state-funded educational institutions from implementing policies that give special consideration to individuals based on their race, gender, ethnicity, or national origin.¹

The language of the MCRI is simple, but its implications are complex. And, the stakes—whether the initiative passes or fails—are potentially large. Thus, voters need relevant, comprehensive, and unbiased information regarding the MCRI and its potential effects. Unfortunately, political campaigns often fail to deliver such information; bumper stickers, billboards, and thirty-second television advertisements paid for by special interests often contain little more than slogans and scare tactics. This is where this guide comes in.

In this guide, we present logic and evidence relevant to the MCRI. We do not take a particular side. We make a concerted effort to present the strongest arguments from both proponents and opponents of the MCRI. Our interest is not to sway the outcome in one direction or the other but to educate voters and springboard further thinking and conversation.

What follows consists of four parts. In the first part, we present the language that will appear on the November ballot and discuss what will—and will not—change if the MCRI passes. In the second part, we discuss concepts at the heart of the debate: “discrimination” as well as “equal protection under the law.” In the third part, we present arguments in support of, and in opposition to, the MCRI. In the final part, we offer advice on how to approach decisions such as this one that require balancing conflicting evidence, values, and interests. Along the way, we footnote references for the interested reader.

I. The MCRI

To begin our analysis of the proposed Michigan Civil Rights Initiative, we present the official ballot language and the proposed change to the Michigan State Constitution. The language of the MCRI is mostly free of legal jargon, so we can understand most of what it says, though we, and ultimately the courts, might disagree on what programs would be affected if the MCRI were to pass. The paragraph in the box below is what will appear on the November ballot.

A PROPOSAL TO AMEND THE STATE CONSTITUTION TO BAN 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 proposed amendment would:

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. Public institutions affected by the proposal include state government, local governments, public colleges and universities, community colleges and school districts.

Prohibit public institutions from discriminating against groups or individuals due to their gender, ethnicity, race, color or national origin. (A separate provision of the state constitution already prohibits discrimination on the basis of race, color or national origin.)

Should this proposal be adopted?

The initiative, if passed, would formally be written into the Michigan Constitution as follows:

ARTICLE I, SECTION 26: Civil Rights.

- 1.** The University of Michigan, Michigan State University, Wayne State University, and any other public college or university, community college, or school district shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.
- 2.** The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.
- 3.** For the purposes of this section “state” includes, but is not necessarily limited to, the state itself, any city, county, any public college, university, or community college, school district, or other political subdivision or governmental instrumentality of or within the State of Michigan not included in sub-section 1.
- 4.** This section does not prohibit action that must be taken to establish or maintain eligibility for any federal program, if ineligibility would result in a loss of federal funds to the state.
- 5.** Nothing in this section shall be interpreted as prohibiting bona fide qualifications based on sex that are reasonably necessary to the normal operation of public employment, public education, or public contracting.
- 6.** The remedies available for violations of this section shall be the same, regardless of the injured party’s race, sex, color, ethnicity, or national origin, as are otherwise available for violations of Michigan anti-discrimination law.
- 7.** This section shall be self-executing. If any part or parts of this section are found to be in conflict with the United States Constitution or federal law, the section shall be implemented to the maximum extent that the United States Constitution and federal law permit. Any provision held invalid shall be severable from the remaining portions of this section.
- 8.** This section applies only to action taken after the effective date of this section.
- 9.** This section does not invalidate any court order or consent decree that is in force as of the effective date of this section.

EFFECTS IF THE MCRI PASSES...

Existing federal and state law guarantees equal protection to all citizens, so the primary effect of the MCRI would be to end the consideration of race, gender, etc. by state government agencies and public educational institutions. In other words, the state government at all levels (including counties and cities) and public schools would no longer be allowed to implement what are commonly referred to as “affirmative action” policies.

What the effects of the MCRI would be in practice are harder to discern, however. We cannot predict how the courts would interpret the new constitutional provisions if the MCRI were to pass in November. Based on the language of the MCRI and on the effects of an almost identical proposal that became law in California, we can, however, make some educated guesses.

If the MCRI passes, a number of existing state programs would likely become illegal under the amended state Constitution. For example, public university programs that explicitly consider race, gender, ethnicity, national origin, or color in admissions and that seek to help more underrepresented minority students graduate through special tutoring programs and targeted scholarships would likely be ended. State programs and scholarships that encourage individuals to enter fields in which they are underrepresented (e.g., females in math and the sciences; males in nursing) would probably no longer be legal. State or local government programs that help women- and minority-owned businesses secure government contracts would likely be halted. Gender-specific public health and welfare programs could also be challenged.²

If the MCRI passes, it will *not* directly affect private sector affirmative action programs or impose any new limitations on private discrimination. The MCRI applies only to public schools and state and local government agencies.

...AND IF THE MCRI DOESN'T PASS?

If the MCRI does not pass, state and local governments and public schools and universities would be able to continue to consider a person's race, ethnicity, color, national origin, or gender in hiring, contracting, admissions, outreach, and other areas.

That said, it is important to note that this does not mean that we would find ourselves in a situation in which "anything goes." Current Supreme Court interpretation of the U.S. Constitution places limits on affirmative action policies that the state of Michigan (including its public schools and colleges), and all other states, must abide by.

Generally speaking, any state or public school policy that considers gender, race, ethnicity, national origin, or color must pursue an important or compelling goal (for example, remedying discrimination or improving education). Furthermore, affirmative action is legal only if consideration of race, gender, etc. clearly help to advance that goal, and if the state has determined that race-neutral or gender-neutral alternatives won't work. Finally, the Supreme Court requires public affirmative action programs to be flexible and to take into account individuals as a whole; in other words, the government and public schools cannot award jobs, contracts, admissions placements, or other benefits *solely* on the basis of a person's gender, race, or ethnicity (etc.).

II. THINKING OUTSIDE OF BOXES

Political campaigns tend to characterize their own positions and those of their adversaries using simplistic and emotionally evocative language so as to make the “right” decision seem obvious. The campaigns in support of, and opposition to, the MCRI will be no exception. Both sides will argue that they are committed to fairness and to equality. Supporters of the MCRI will likely argue that our society should treat all individuals the same regardless of race or ethnicity or gender. Opponents of the MCRI will likely argue that affirmative action policies are necessary to even the playing field for women and minorities.

If we unquestioningly accept these two framings of the MCRI, then we find ourselves in a quandary. If we want to end discrimination and ensure equality, both sides appear to be right. To make sense of these competing claims, some perspective helps, so let’s begin by taking a deep breath in (don’t forget to exhale!) and a step back.

The approach that we take here is to unpack boxes. These aren’t boxes in our attics, but boxes in our minds. Some of us have the MCRI in a box with the words “the MCRI will ensure equality” written on the side, and others have it in a box with the words “the MCRI will prevent equality” written on it. To make a good decision, we have to open these boxes, pull the MCRI out, and study it with open minds.

Once we know what the MCRI is about, we can make an informed decision. We won’t all reach the same conclusion. That’s a good thing. Healthy democracies thrive on informed disagreement—diverse points of view result in new policies and ideas. On the other hand, uninformed disagreement is not very helpful—responding to shouts of “is not” with chants of “is so” makes good television but brings few other benefits.

Our unpacking of these boxes requires that we start with two questions at the core of the public debate over the MCRI: What does it mean to discriminate? And, does our legal system currently protect equality? We’ll see that reasonable people can (and do) disagree.

WHAT DOES IT MEAN TO DISCRIMINATE?

Supporters of the MCRI argue that affirmative action is discriminatory. Opponents of the MCRI argue that affirmative action is *not* discriminatory. Who one believes depends on one's definition of "discrimination." According to the *Concise Oxford English Dictionary*,³ "discrimination" means to "make an unjust distinction in the treatment of different categories of people, especially on the grounds of race, sex, or age."

One understanding of "discrimination" is that "an unjust distinction" is one that follows from prejudice against minorities, women, and others who have been systematically denied opportunities based on their identities. According to this view, distinctions made according to race, gender, etc. that *do not* follow from prejudice and that are in fact intended to help members of typically disadvantaged groups, e.g., affirmative action policies, are not discriminatory (against men or the racial majority).

But others believe that *any* distinction according to race, gender, etc. is unjust because, whatever the merits of one's intentions, such distinctions go against the principle of equality. According to this view, affirmative action programs that try to help women or underrepresented minorities are just as discriminatory as programs that are biased against minorities and women. The popular terminology for this kind of discrimination is "reverse discrimination."

DOES OUR LEGAL SYSTEM PROTECT EQUALITY?

Ensuring equality under the law is a complicated endeavor. Supporters of the MCRI argue that the initiative is needed to ensure equality before the law. Opponents of the MCRI argue that existing law already protects equality. Who is right?

Let's look at two important protections for equal rights: the Equal Protection Clause of the U.S. Constitution and Title VI of the 1964 Civil Rights Act.

14th Amendment, Equal Protection Clause:

No state shall... deny to any person within its jurisdiction the equal protection of the laws.

United States Civil Rights Act (1964), Title VI:

No person in the United States shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving federal financial assistance.

Drawing on the 14th Amendment, the Civil Rights Act, and other federal laws, the Supreme Court has ruled that policies that, on their face or in their administration, treat individuals differently because of their race, ethnicity, national origin, or gender are unconstitutional in most circumstances.

However, the Supreme Court has made certain exceptions to the "equal protection" rule, allowing policies that take such characteristics into account, i.e., affirmative action policies, in specific circumstances. The legal language is roughly as follows: if distinguishing between races is "necessary to pursue a compelling interest," or if distinguishing between genders is "substantially related to the pursuit of an important objective,"⁴ then a law or policy that does so may be constitutional.⁵

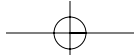
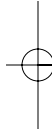
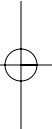
Opinions of the U.S. Supreme Court in the two recent affirmative action cases involving the University of Michigan (*Gratz and Hamacher v. Bollinger, et al.*, and *Grutter v. Bollinger, et al.*) demonstrate the fine line that the Court is attempting to walk between maintaining strict equality and allowing some differences to be taken into account in the pursuit of societal goals.

In both Michigan affirmative action cases, the Court was swayed by the University's argument that the goal of diversity in education was a "compelling interest." But the Court approved of the *methods* used to pursue that interest in one instance, and disapproved of them in the other. In *Gratz*, the majority held racial diversity could be pursued, but that the point system used in the University's undergraduate admissions—which assigned minority applicants a set number of points based on race—was not constitutionally defensible. In *Grutter*, the majority held that university admissions procedures—like those used by UM's Law School—could consider minority status as one of many factors in a flexible and holistic review of an applicant.

The MCRI would go beyond the Supreme Court rulings by making it unconstitutional for the state and its schools to give any consideration to race or gender (etc.), even if these characteristics are "necessary to pursue a compelling interest" and the policy otherwise meets federal constitutional requirements.



Blank Page



III. REASONS TO SUPPORT OR REJECT THE MCRI

We now present some of the logic and evidence that a person might use in choosing to support or oppose the MCRI. We consider six dimensions:

equality, the quality of education, benefits to women and minorities, social cohesion and order, rewarding merit, and academic freedom versus citizen control.

On each dimension, we present arguments for and against the MCRI. You can then use these arguments to help make an informed decision.

A note of caution: though this guide may be only one-fifth the thickness of a typical college football game program, it contains far too much information to hold in your head at one time. We suggest that you read the arguments for and against the MCRI dimension by dimension. You can then decide which side (if either) has the stronger argument. After that, you might want to determine how important you think the dimension is. Is it **very important (V)**, **moderately important (M)**, **unimportant (U)**, or is it **irrelevant (I)**? We've provided space for you to do this on the pages that follow. You might also want to write some notes to yourself as you read and reflect.

Before we begin, one last point is in order:

While we cite evidence to support both sides of the issue, how an individual weighs that evidence and incorporates his or her values into the decision will vary from person to person.

No right or wrong answer exists.

DIMENSION 1

WOULD THE MCRI MAKE OUR SOCIETY MORE OR LESS EQUAL?

PRO MCRI POSITION:

THE MCRI WOULD HELP ENSURE EQUALITY

First and foremost, government policies that take race, gender, ethnicity, or national origin into account are wrong, whatever their purposes, because they go against the principle of equality before the law. Some may argue that we must make exceptions to the principle of legal equality because of continuing prejudice and discrimination, but this is not true. Thanks to the 1964 Civil Rights Act and other legal reforms, women and minorities now are ensured equal protection under the law. Racial prejudice is largely a thing of the past.⁶ The college enrollment rate of young women now exceeds that of young men,⁷ and, in recent decades, African Americans have made considerable gains in the areas of education, income, homeownership, and government.⁸ This said, it is true that past discrimination is part of the reason why some racial and ethnic groups have higher rates of poverty. With this in mind, note that the MCRI would *not* make it unconstitutional for state agencies to take economic status into account, whether in hiring or admissions or other decisions.

DIMENSION 1

WOULD THE MCRI MAKE OUR SOCIETY MORE OR LESS EQUAL?

ANTI MCRI POSITION:

THE MCRI WOULD MAKE SOCIETY LESS EQUAL

Minorities and women remain unfairly disadvantaged; thus, the state and its schools should be allowed to give them a “leg up” to level the playing field. First, making discrimination illegal does not end discrimination any more than posting a speed limit of 70 miles per hour prevents speeding. Abundant evidence shows that employers continue to be biased—preferring to hire applicants who are white and male over minority group members and women with the *exact same* qualifications.⁹ Second, past discrimination has shaped society in such a way that many “neutral” behaviors hurt women and minorities. Employers often hire people they know; because employers are more likely to be white men and friendship circles are segregated, “people they know” are usually...white males. Colleges give preference to “legacies”; because whites have attended college at higher rates than minorities, they are more likely to be “legacies.” Finally, due to housing discrimination and residential segregation, African Americans, whether poor or middle class, are much more likely than others to live in or near areas of concentrated poverty where jobs are few and school environments poor.¹⁰

	SUPPORT MCRI	REJECT MCRI
EQUAL OPPORTUNITY		
IMPORTANCE OF THIS DIMENSION		

DIMENSION 2

WOULD THE MCRI HELP OR HARM THE QUALITY OF EDUCATION?

PRO MCRI POSITION:

THE MCRI WOULD IMPROVE EDUCATION

Affirmative action policies harm education. In fields such as mathematics and the “hard” sciences, where discussion plays a minimal role in classroom learning, teachers may have to slow down and cover less material in order to accommodate students with lesser-developed skills and steeper learning curves. Also, some researchers have concluded that knowledge of affirmative action policies on college campuses often increases tension between whites and minorities, inhibiting the development of mutual respect and understanding¹¹ and, no doubt, distracting students from their studies. Diversity may be beneficial to education in some instances, but race and ethnicity—with which the bulk of affirmative action policies are concerned—have become inappropriately synonymous with “diversity.” Many black and Hispanic beneficiaries of affirmative action programs are otherwise typical, whereas students with unusual characteristics, such as unique hobbies, political ideologies, or religious backgrounds, are often overlooked. For example, U of M’s undergraduate admissions point system at issue in *Gratz v. Bollinger* awarded 20 points to applicants of an underrepresented race or ethnicity¹² but none to students with one of the aforementioned unusual characteristics. (The U.S. Supreme Court ruled that this point system was unconstitutional; however, that decision was based *not* on the type of diversity pursued but on the impermissible rigidity of the point system.)

DIMENSION 2

WOULD THE MCRI HELP OR HARM THE QUALITY OF EDUCATION?

ANTI MCRI POSITION:

THE MCRI WOULD HARM EDUCATION

Racially, ethnically, and gender-diverse student bodies help educational institutions meet a variety of educational goals. First, diversity improves education by sharpening students’ critical thinking skills and exposing them to new ideas and perspectives. One study showed that students at the University of Michigan who experienced the most racial and ethnic diversity showed the greatest growth in intellectual engagement, motivation, and skills.¹³ Second, diversity helps educational institutions equip students for participation in our heterogeneous society; students educated in diverse settings are better able to consider multiple perspectives and deal with the conflicts that different perspectives often create.¹⁴ Businesses are particularly interested in hiring graduates with these skills. So interested, in fact, that 65 Fortune 500 companies, including the Kellogg Company, Microsoft, Nike, Steelcase, and Xerox, filed a “friend of the court” brief in support of U of M’s affirmative action policies in the recent Supreme Court cases.¹⁵ Third, and finally, diversity improves education directly by bringing new voices into a field.¹⁶ For example, not until women and minorities began obtaining Ph.D.’s in significant numbers did the health care field recognize that its research efforts were falling short with respect to diseases such as breast cancer and sickle cell anemia, which affect women and African Americans, respectively, in higher numbers.

	SUPPORT MCRI	REJECT MCRI
QUALITY OF EDUCATION		
IMPORTANCE OF THIS DIMENSION		

DIMENSION 3

WOULD THE MCRI HELP OR HARM WOMEN AND MINORITIES?

PRO MCRI POSITION:

THE MCRI WOULD HELP WOMEN AND MINORITIES

Affirmative action policies often harm those individuals whom they are intended to help. First, there is evidence that affirmative action hurts the careers of underrepresented minorities. A recent study found that affirmative action in law schools created a “mismatch effect” (students consistently attending schools for which they were not academically qualified) that lowered black students’ grades and bar passage rates and resulted in worse jobs after graduation.¹⁷ Another study suggested that, because talented minority students at highly selective universities suffered from lower academic self-esteem than their counterparts at less selective schools, they were less likely to pursue Ph.D.’s.¹⁸ Second, many believe that affirmative action at the college level distracts us from the real reason for disparities between minority and white students: an educational crisis among blacks and Hispanics in the K-12 educational system.¹⁹ If such gaps in K-12 education were addressed, affirmative action at the college level and beyond would prove unnecessary. Third, affirmative action programs perpetuate the stereotype that women and minorities need help in order to succeed and diminish the credentials of every high-achieving woman and minority because of the suspicion that he or she “made it” because of preferential treatment rather than skill.

DIMENSION 3

WOULD THE MCRI HELP OR HARM WOMEN AND MINORITIES?

ANTI MCRI POSITION:

THE MCRI WOULD HARM WOMEN AND MINORITIES

Affirmative action policies bring substantial benefits to women and underrepresented minorities in education and employment. A recent large study showed that affirmative action policies at selective universities resulted in higher graduation rates, more professional degrees, and greater earnings among minority graduates. Further, far from being demoralized, black college students from these schools were the most satisfied with their college experiences.²⁰ An example closer to home is the ADVANCE Project, sponsored by the National Science Foundation, which has improved the recruitment and retention of women faculty in science and engineering at the University of Michigan. Affirmative action's benefits are indirect as well. For example, African American and Hispanic physicians, many of whom benefit from programs and scholarships for minority health professionals, are significantly more likely to practice medicine in underserved areas with large minority and poor populations and to research these populations' often severe medical needs.²¹ These benefits, and many others, would likely be eliminated should the MCRI pass. In California, the adoption of a similar proposal resulted in fewer female and minority professors being hired at state universities, and substantially fewer government contracts for minority- and women-owned businesses.²²

	<u>SUPPORT MCRI</u>	<u>REJECT MCRI</u>
<u>BENEFITS TO WOMEN AND MINORITIES</u>		
<u>IMPORTANCE OF THIS DIMENSION</u>		

DIMENSION 4

WOULD THE MCRI HELP OR HARM SOCIAL COHESION AND ORDER?

PRO MCRI POSITION:

THE MCRI WOULD IMPROVE SOCIAL COHESION AND ORDER

With respect to social cohesion and law and order, affirmative action policies do more harm than good. First, affirmative action policies can diminish the respect and authority, and therefore effectiveness, of minorities and women in positions of power, particularly when an affirmative action policy is known or suspected to have played a direct role in a leader's promotion. For example, officers under a police chief will likely respect, and obey, that chief less if they suspect that he was promoted over more-qualified candidates because of his race. Second, affirmative action programs may increase racial and ethnic tensions in society. One academic study showed that just mentioning the existence of affirmative action policies to white survey respondents made them more likely to attribute negative stereotypes, such as "lazy" and "irresponsible," to African Americans. The authors of the study conclude that race preferences anger those who are committed to equality.²³ Third, affirmative action programs may sometimes be abused. Members of the U.S. Supreme Court have worried that elected officials may try to use such programs to award "spoils" to members of racial or ethnic groups who have voted for them, or that groups with more political muscle may be able to achieve status as "preferred" groups under affirmative action programs. Such events, undesirable in and of themselves, could lead to increased racial competition and strife.²⁴

DIMENSION 4

WOULD THE MCRI HELP OR HARM SOCIAL COHESION AND ORDER?

ANTI MCRI POSITION:

THE MCRI WOULD DECREASE COHESION AND DISRUPT SOCIAL ORDER

It is essential to the perceived legitimacy of various government agencies, and, therefore, to law and order, that people in positions of power reflect the diversity of our population. For example, many police departments in cities with large minority populations use affirmative action policies because citizens are more likely to cooperate with officers whose race or ethnicity reflects their own.²⁵ The U.S. military, as Generals Norman Schwarzkopf, Anthony Zinni, and Wesley Clark and others recently argued, believes affirmative action is vital to its ability to recruit a diverse officer corps and, thereby, function effectively in defending the nation.²⁶ By not allowing Michigan universities and colleges to practice affirmative action, the MCRI would reduce the diversity of ROTC programs in Michigan, with corresponding detrimental effects on national security. These lessons apply more generally. Learning in a racially diverse setting appears to break up patterns of segregation in the long run—students who attend racially diverse colleges are more likely to live in integrated neighborhoods, work in integrated firms, and choose racially diverse friends later in life.²⁷ Finally, affirmative action ensures that institutions of higher learning will remain open to future leaders of all races. Attending college and, in particular, law school are important steppingstones to political leadership in the U.S.²⁸

	SUPPORT MCRI	REJECT MCRI
SOCIAL COHESION/ORDER		
IMPORTANCE OF THIS DIMENSION		

DIMENSION 5

WOULD THE MCRI ENSURE THAT MERIT IS MORE OFTEN, OR LESS OFTEN, REWARDED?

PRO MCRI POSITION:

THE MCRI WOULD HELP ENSURE MERIT IS REWARDED

The MCRI would ensure that university applicants and job seekers are rewarded on merit alone. Merit need not be narrowly defined, but it should not be defined so broadly that it incorporates irrelevant characteristics such as race and gender. At present, some university admissions policies reward race even *more* than grades and test scores. For example, the University of Michigan's Law School's admissions policies, which the Supreme Court upheld, allows the University to accept, for diversity purposes, underrepresented minorities with lower grades and lower test scores than others. For applicants with certain combinations of test scores and grades, *all* of the minority applicants may be accepted, but only a small fraction of the non-minority applicants may be. Affirmative action policies in city, county, and state hiring similarly value characteristics a person is born with at the expense of those he or she acquires. Rewarding those who, according to reasonable standards of achievement, do not deserve it, and *failing* to reward those who, according to those same standards, do deserve it, communicates to society and to young people, in particular, that hard work and the acquisition of skills do not pay off. The MCRI would help correct this.

DIMENSION 5

WOULD THE MCRI ENSURE THAT MERIT IS MORE OFTEN, OR LESS OFTEN, REWARDED?

ANTI MCRI POSITION:

THE MCRI WOULD MAKE IT HARDER TO REWARD MERIT

Affirmative action policies do not disregard merit as some maintain; rather, they ensure that merit (i.e., excellence or worth) is rewarded. Affirmative action in college admissions makes up for the fact that many bright minority teenagers are disadvantaged by their environment and have overcome significant obstacles in order to succeed academically.²⁹ Minority outreach programs extend a welcome mat to students who are less likely to know people who have attended college and who may feel as though they are not wanted. Programs designed to interest females in math, sciences, and technology are a countervailing force against a culture that has arbitrarily designated these fields as “male.” With regard to the claim that affirmative action policies in education hurt “the deserving,” note that Michigan colleges have never based admission just on grades and test scores; each college each year tries to put together a freshman class that will enrich the educational experience of all and contribute to society upon graduation. Finally, it is important to note that affirmative action programs only affect a small number of students and have almost no effect on the admissions probabilities of the tens of thousands of students who apply to competitive schools each year.

	SUPPORT MCRI	REJECT MCRI
REWARDING MERIT		
IMPORTANCE OF THIS DIMENSION		

DIMENSION 6

WOULD THE MCRI APPROPRIATELY LIMIT OR INAPPROPRIATELY RESTRICT SCHOOLS?

PRO MCRI POSITION:

THE MCRI WOULD PLACE AN APPROPRIATE LIMIT ON SCHOOLS

State-funded universities, colleges, and public schools are just that: state-funded. Therefore, the people of Michigan should have a say in how they are run. Although the day-to-day oversight of school operations by the general public is not appropriate or necessary, it is appropriate for citizens to have some measure of control over the general rules under which state universities, colleges, and school districts operate. Some control is exercised through school board elections and the like; however, most of the controlling boards of state universities and colleges are not elected.³⁰ Changing the state Constitution via a ballot proposal, such as the MCRI, is in the spirit of our democratic system. Michigan's current Constitution, ratified in 1963, mandates that the state fund K-12 and higher education; voters who approved of that Constitution likely assumed that these educational institutions, particularly those of higher learning, would benefit the state citizenry generally. Should citizens later come to the conclusion that public educational institutions are no longer being operated to their benefit, they have every right to use a constitutional amendment to change the way these institutions operate.

DIMENSION 6

WOULD THE MCRI APPROPRIATELY LIMIT OR INAPPROPRIATELY RESTRICT SCHOOLS?

ANTI MCRI POSITION:

THE MCRI WOULD PLACE AN INAPPROPRIATE RESTRICTION ON SCHOOLS

Academic freedom is an important principle in our society, yet the MCRI would keep public universities and colleges from admitting students according to criteria of their own choosing. Local control is also an important principle in our society, but the MCRI would prevent local school districts from implementing certain policies they think are necessary for the education of female and minority students. While it is important that Michigan citizens exercise some level of control over state educational institutions, they *already* have such control.

Important decisions at the college level must be approved by controlling boards (i.e., trustees or regents); the boards of Michigan’s three flagship universities—the University of Michigan, Michigan State University, and Wayne State University—are directly elected.³¹

Important decisions in K-12 public education must be approved by members of the local school board and the State Board of Education, all of whom are elected officials. Finally, it is inappropriate that some taxpayers are demanding more control over the state’s colleges and universities at the same time that taxes are contributing less and less to those colleges’ budgets. In 1980, about 75% of a Michigan college student’s education was funded by the state; today, that figure is closer to 40%.³²

	<u>SUPPORT MCRI</u>	<u>REJECT MCRI</u>
<u>APPROPRIATE LIMIT v. INAPPROPRIATE RESTRICTION</u>		
<u>IMPORTANCE OF THIS DIMENSION</u>		

IV HOW TO REACH A DECISION ON A COMPLEX ISSUE

This fourth part consists of a “decision support” tool, a worksheet really, to help you pull together your reactions to the separate arguments. The worksheet does not produce a final answer—it won’t tell you how to vote, nor should it. Instead, it helps you to gather and organize your thoughts prior to making your own decision. The approach that we’re going to take is similar to what is taught in graduate business schools and public policy schools. It’s also how many CEOs, university presidents, and community leaders inform their decision-making.

We’ve just read arguments on both sides of the issue and on several different dimensions. For most of us, some arguments favor one position while other arguments favor the other. Decision support helps us make good choices by creating an accounting system. Accounting may be dull, but it’s very useful. We don’t keep track of the money in our bank accounts in our heads, nor do we memorize the geographic coordinates of our property lines. We keep checkbooks and deeds. Decision support tools, such as the worksheet we describe here, help us to keep track of ideas and arguments.

To show you how to use the decision support worksheet, we present an example of a person deciding which of two houses to purchase. You can skip this if you want, but if you plan to purchase a house anytime soon, the example is worth reading for that reason alone. We give a description of each house below:

AN EXAMPLE: CHOOSING A HOUSE



409 LAKE AVENUE

Year built: 1965. 2100 square foot Cape Cod on 60 ft. by 100 ft. lot, adjacent to a two hundred acre lake. Three bedrooms, one bath. \$170,000



800 PARK ROAD

Year built: 1985. 2300 square foot ranch on two acre wooded lot. Four bedrooms, one bath. \$190,000

These quick summaries reveal that each house has advantages. To help decide which to buy, we construct a chart with a column for each house and a row for each attribute of the house that matters to us—price, square footage, lot size, etc. This is our accounting worksheet. We can then put a check in the column of the house that we believe has the “advantage” on that dimension. We need not agree. Some of us may prefer living on a lake to living near woods, and others may not.

	409 LAKE AVE	800 PARK RD
AGE		X
SQ FT		X
LOT		X
LAKE	X	
BEDROOMS		X
BATHROOMS	X	
PRICE	X	

Right away we see an advantage of decision support tools. Given our crude accounting, the house at 800 Park Road gets four checks whereas the house at 409 Lake Avenue gets only three. This doesn't mean that we should choose the house on Park Road, necessarily. But at least we're now more aware of the tradeoffs.

To create a more powerful tool, we can differentiate among attributes by their importance. We can use the same letters we used in characterizing the arguments for and against the MCRI: **very important (V)**, **moderately important (M)**, **unimportant (U)**, or **irrelevant (I)**. An attribute, such as price, might be very important, but if the difference in price between the two houses is relatively small, we may mark it as unimportant or even irrelevant.

When we weigh the attributes, we might get something like the following:

	409 LAKE AVE	800 PARK RD
AGE		I
SQ FT		U
LOT		M
LAKE	V	
BEDROOMS		M
BATHROOMS	V	
PRICE	U	

By our accounting, 409 Lake Avenue now appears to be a better choice than 800 Park Road. We need not follow this recommendation. We might decide to add some other dimension, say distance from work or even the color of house, which could tilt our preferences in favor of the house on Park Road. Whatever our decision, the accounting process helps us to make a more informed and considered choice.

DECISION SUPPORT FOR REAL: THE MCRI

We now want to use this same decision support worksheet to help you make a decision on the MCRI. Below, you'll see a list of the six dimensions we discussed. On each of these dimensions, fill in your personal responses—which side has the stronger argument and how important each dimension is to you—that you've already written in this booklet. When finished, you'll have a table like the one above that you can use to help you make an informed and considered decision. We've even included space for additional arguments if, in thinking through this issue, you have come up with new dimensions of your own. We hope that you have.

	SUPPORT MCRI	REJECT MCRI
EQUALITY		
QUALITY OF EDUCATION		
HELP/HARM WOMEN & MINORITIES		
SOCIAL COHESION/ ORDER		
REWARDING MERIT		
APPROPRIATE LIMIT V. INAPPROPRIATE RESTRICTION		

We want to make clear that this chart has no correct set of answers.

There are many, many different ways in which you could fill it out. We also want to make clear that there is no formula to calculate the best decision based on the particular way in which you filled out your chart. Clearly if one side has carried the day on all the dimensions, then that side has won. Or, if one side has three “Vs” and the other side has three “Ms,” then it seems appropriate to say that the Vs have it. But what if one side has two Vs and the other four Ms? Or if one side has only one V and the other five Ms, but the V dimension is very *very* important to you? That is for you to decide.

Now that you’ve filled out the chart, think about it, but don’t dwell on it. In fact, relax a bit. Get some sleep. Letting organized knowledge sit in your head for a few days leads to better decisions. After you’ve given your brain some time to sort through these ideas, reexamine your chart. You may want to make some changes; you may not.

Your final chart won’t tell you how to vote. It’s food for thought. It will help you make an informed decision—one that combines what you’ve learned from this guide with your own intuitions and ideals.

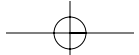
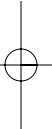
REFERENCES

- 1 The referendum also contains language barring *discrimination* against the aforementioned groups, but existing state and federal law already bars such discrimination.
- 2 Susan W. Kaufmann and Anne K. Davis (Revised April 2006) "The Gender Impact of the Proposed Michigan Civil Rights Initiative." The Center for the Education of Women. The University of Michigan.
- 3 *Revised Tenth Edition* (2002) Oxford: Oxford University Press.
- 4 Under the federal Constitution, laws that include racial classification schemes receive greater scrutiny than laws that include gender classification schemes.
- 5 Steven L. Emanuel (2001) *Constitutional Law, Nineteenth Edition*. New York: Aspen Law & Business.
- 6 Howard Schuman, Charlotte Steeh, and Lawrence Bobo (1997) *Racial Attitudes in America: Trends and Interpretations*. Cambridge, MA: Harvard University Press.
- 7 "College Enrollment and Work Activity of 2005 High School Graduates." Bureau of Labor Statistics, United States Department of Labor.
- 8 Stephan Thernstrom and Abigail Thernstrom (1997) *America in Black and White: One Nation, Indivisible*. New York: Simon & Schuster.
- 9 In one study, white applicants received 50% more callbacks than black ones; in another study, potential employers were twice as likely to recommend hiring a male applicant as a female one. See Bertrand & Mullainathan (2004) "Are Emily and Greg More Employable Than Lakisha and Jamal? A Field Experiment on Labor Market Discrimination," *American Economic Review*, 94. See also Steinpreis, Anders, & Ritzke (1999) "The Impact of Gender on the Review of the Curricula Vitae of Job Applicants and Tenure Candidates: A National Empirical Study," *Sex Roles: A Journal of Research*, 41.
- 10 Douglas S. Massey & Nancy A. Denton (1993) *American Apartheid: Segregation and the Making of the Underclass*. Cambridge, MA: Harvard University Press.
- 11 See separate studies conducted by Thomas Sowell and Douglas Massey. Cited in Marie Gryphon (April 6, 2005) "The Affirmative Action Myth." Policy Analysis, No. 540. Washington, DC: Cato Institute.
- 12 The same 20 points were available to athletes and the educationally or economically underprivileged, regardless of race or ethnicity.
- 13 Expert report of Patricia Gurin. *Gratz* and *Grutter* cases.
- 14 Ibid.
- 15 The companies argued: "Because the population is diverse and because of the increasingly global reach of American business, the skills and training needed to succeed in business today demand exposure to widely diverse people, cultures, ideas and viewpoints." See Brief for *Amici Curiae* 65 Leading Businesses in Support of Respondents. *Grutter* and *Gratz* cases.
- 16 Scott Page (2006) *The Difference: A Logic of Diversity*. Princeton, NJ: Princeton University Press.
- 17 Richard Sander (2004) "A Systematic Analysis of Affirmative Action in American Law Schools." *Stanford Law Review*, 57.

- 18 Stephen Cole and Elinor Barber (2003) *Increasing Faculty Diversity: The Occupational Choices of High-Achieving Minority Students*. Cambridge, MA: Harvard University Press.
- 19 *Amicus Curiae* brief of the Center for New Black Leadership in support of petitioners. *Grutter* and *Gratz* cases.
- 20 Expert Report of Derek Bok. *Grutter* case. Empirical evidence is from Bok and Bowen's book, *The Shape of the River*.
- 21 *Amici Curiae* brief of The Association of American Medical Colleges, et al. in support of respondents. *Grutter* case.
- 22 Susan W. Kaufmann and Anne K. Davis (Revised April 2006) "The Gender Impact of the Proposed Michigan Civil Rights Initiative." The Center for the Education of Women. The University of Michigan.
- 23 Paul M. Sniderman and Edward G. Carmines (1997) *Reaching Beyond Race*. Cambridge, MA: Harvard University Press.
- 24 Steven L. Emanuel (2001) *Constitutional Law, Nineteenth Edition*. New York: Aspen Law & Business.
- 25 "A Joint Statement of Constitutional Law Scholars" (2003) *Reaffirming Diversity: A Legal Analysis of the University of Michigan Affirmative Action Cases*. Cambridge, MA: The Civil Rights Project at Harvard University.
- 26 *Amici Curiae* brief of Lt. Gen. Julius W. Becton, Jr., et al. in support of respondents. *Grutter* and *Gratz* cases.
- 27 Expert testimony of Patricia Gurin, *Gratz* case.
- 28 *Amicus Curiae* brief of Association of American Law Schools in support of respondents. *Grutter* case.
- 29 Not only are many minority students stuck in poor educational environments, but they also often underperform on standardized tests because they internalize negative stereotypes. Expert report of Claude M. Steele. *Gratz* and *Grutter* cases.
- 30 Constitution of the State of Michigan, 1963.
- 31 *Ibid.*
- 32 Central Michigan University Government Relations Office.

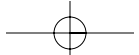
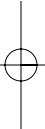


Blank Page





Blank Page





Blank Page

