EDUCATION WEEK

VOL. 33, NO. 6 • OCTOBER 2, 2013

AMERICAN EDUCATION'S NEWSPAPER OF RECORD • © 2013 Editorial Projects in Education • $4

edweek.org: BREAKING NEWS DAILY

Nathan W. Armes for Education Week

Students at the Challenge School in Denver work together to construct Lego robots. The school's class and club were created in response to coordinated advocacy efforts by a diverse group of parents that demanded more gifted education services and programs for their children.

High Court To Tackle Race Case

Issue: Mich. Preference Ban

By Mark Walsh

Combatants in the long-running war over affirmative action in education are lined up again in the U.S. Supreme Court. But the coming battle is a little different from those that produced well-known high court landmarks involving race and admissions.

Early in the new court term that opens next week, the justices will weigh a case about a 2006 Michigan ballot measure that prohibited racial preferences in education and other areas of state and local government. Last year, a federal appeals court struck down the measure as it applies to admissions policies at state colleges and universities.

The measure violated the 14th Amendment equal-protection rights of racial minorities in the state by making it harder for them to achieve a political goal, namely, a race-conscious admissions policy, the full U.S. Court of Appeals for the 6th Circuit, in Cincinnati, said in an 8-7 ruling.

Many people were poised for a land-

PAGE 22>

Parents Press For Attention to Programs for Gifted

Advocacy Efforts Gain Urgency Amid Worry of Being Overlooked

By Nora Fleming

From court cases and legislative lobbying to their own fundraising campaigns, parents are putting pressure on states and school districts to boost services for gifted children, whose needs and abilities, they say, often aren't met inside a traditional classroom.

While parents of the gifted have long faced challenges in proving the worth in providing "extras" for highly capable students, the fight has become even harder now in many districts where dollars are tight and other needs are deemed more pressing.

And, according to some advocates, the stakes can be even higher for low-income and minority parents who view gifted and talented programs as a means of providing their children with greater opportunity in cash-strapped school systems.

"In a low-resourced district, the concerns of parents of gifted students who can't access gifted education services are often heightened," said Natalie Jansorn, the director of those programs at the Jack Kent Cooke Foundation, which provides scholarships and other funding to help gifted students. "They have no assurance their child will be challenged in the regular classroom that is focused on meeting minimum test requirements, and they don't know where else to turn."

Currently, there is no federal requirement that schools offer gifted services for students and no dollars allocated to states to provide them. The Jacob K. Javits federal grant pro-

PAGE 14>

Data Demands Spark Outcry In California

By Andrew Ujifusa

To satisfy demands of California's state K-12 database and a brand-new system for education finance, the state has asked many schools for data on each individual student, including a count of those who qualify as low-income based on their eligibility for federally subsidized meals.

But this fundamental shift in how California handles student information has caused consternation and confusion among many districts serving large populations of needy students. It also highlights the disparities that can emerge between the high-profile components of new laws and the regulations governing those laws.

A stronger focus on student data has arisen in a wide variety of state policies. Colorado, for example, passed a $950 million increase for schools this year (pending voter approval in November) that requires more frequent, accurate counts of school attendance, as well as more transparent information about

PAGE 25>

Ed. Testing Industry Sees Rising Demand

By Sean Cavanagh

The market for testing products and services is booming and could continue to surge over the next few years, according to industry analysts and company officials, who say that growth is being fueled by the shift toward common-core tests across states and the use of new classroom assessments designed to provide timely and precise feedback for teachers and students.

Demand for testing resources tends to be driven by major changes in state or federal policy affecting schools, and the current environment is reflective of that connection.

Changes in testing policy with nationwide implications are invariably "good for any provider of testing materials," said Scott Marion, the associate director of the National Center for the Improvement of Educational Assessment, a Dover, N.H.-based nonprofit organization that consults with states on assessments. "You knew the common core was going to be a big change from what [we] had before."

Mr. Marion also echoed a concern expressed by others familiar with the testing world: that many companies are exaggerating their products' alignment to the common core and their ability to improve achievement.

Still, he predicted that demand for an array of assessment materials is likely to continue to grow "for the foreseeable future, as people figure out what [tests] they want."

This new growth in the testing industry bears some similarities to past periods of expansion. The passage of the No Child Left Behind Act more than a decade ago presaged a wave of spending on assessments and tools connected

PAGE 16>

Managing The Digital District

This special report examines the complex and sometimes daunting challenges of running today's technology-oriented school districts. It shows how schools are developing and maintaining more sophisticated 1-to-1 computing programs, what education leaders are doing to build a culture of innovation, and how superintendents and chief technology officers are collaborating to improve digital teaching and learning.

See the pullout section opposite Page 16.

Mich. Case Spotlights Race Issue

CONTINUED FROM PAGE 1

mark decision last term on the use of race in admissions in the case known as *Fisher* v. *University of Texas at Austin*. But after months of deliberation, the Supreme Court issued a modest 7-1 decision that a lower court had failed to hold the university's race-conscious admissions plan to the demanding burden of "strict scrutiny." The high court sent the case back to the U.S. Court of Appeals for the 5th Circuit, in New Orleans, which has asked for new legal briefs.

"After a huge buildup, the court in *Fisher* delivered a dud," Irving L. Gornstein, the director of the Supreme Court Institute at Georgetown University Law Center, in Washington, said at a panel discussion last week.

The case from Michigan, *Schuette* v. *Coalition to Defend Affirmative Action* (No. 12-682), is the top education case in the Supreme Court's new term. Other cases of interest to educators involve age discrimination, campaign finance, and prayers at public meetings of government boards.

Carlos Osorio/AP-File

Lobbying for Admissions

The justices could yet add more education cases to the docket this term, including appeals on special education, dog sniffs of student backpacks, and the proper role of school resource officers.

The Michigan case has attracted a total of 30 friend-of-the-court briefs on both sides. Some of those are still fighting the last battle, stressing arguments about the constitutionality of race-conscious admissions plans. Indeed, in practical terms the justices' ruling could affect the future of affirmative action in Michigan and elsewhere.

But the 6th circuit court's ruling was based on a legal theory known as the "political process" or "political restructuring" doctrine.

The theory works like this: Under Michigan law, the state's colleges and universities have plenary, or unqualified, power to supervise themselves through their governing boards. Those boards generally delegate admissions policies to faculty and administrative committees. (In other words, state lawmakers generally may not interfere.)

A student who wants to lobby a university's board of regents or the admissions committee for a policy favoring, for example, legacy preferences (being the son or daughter of an alumnus) or a preference to residents of the state's Upper Peninsula, may do so unencumbered.

But because of Proposal 2, which amended the state constitution, a member of a minority group may not simply go to the regents or admission committee to lobby for a racial preference that is permissible even under the Supreme Court's complex rulings on affirmative action. That person would face the heavier political burden of trying to remove the state constitutional limitation.

The 6th Circuit court majority said Michigan's Proposal 2 violated the equal-protection clause as interpreted by two Supreme Court decisions about ballot initiatives. In *Hunter* v. *Erickson*, the high court in 1969 invalidated an Akron, Ohio, ballot measure that had overturned a local fair-housing ordinance. In *Washington* v. *Seattle School District No. 1*, the court in 1982 struck down a ballot-initiated state law that prohibited busing for school desegregation.

Fails 'Strict Scrutiny'

The appeals court said race-conscious admissions policies mainly benefit racial minorities. It said that Proposal 2 brought about a significant change in the ordinary political process and that it was a racial classification that did not survive strict scrutiny, or the highest level justification needed to uphold a government policy.

Michigan Attorney General Bill Schuette, a Republican who is defending Proposal 2, argues the 6th Circuit turned logic on its head.

"It is curious to say that a law that bars a state from discriminating on the basis of race or sex violates the equal-protection clause by discriminating on the basis of race and sex," Mr. Schuette argues in his brief. "The people of Michigan concluded that not having affirmative action in higher education was the best policy for the state. Nothing in the [U.S.] Constitution bars the people of Michigan from making that choice."

Michael E. Rosman, the general counsel for the Center for Individual Rights, a Washington group op-

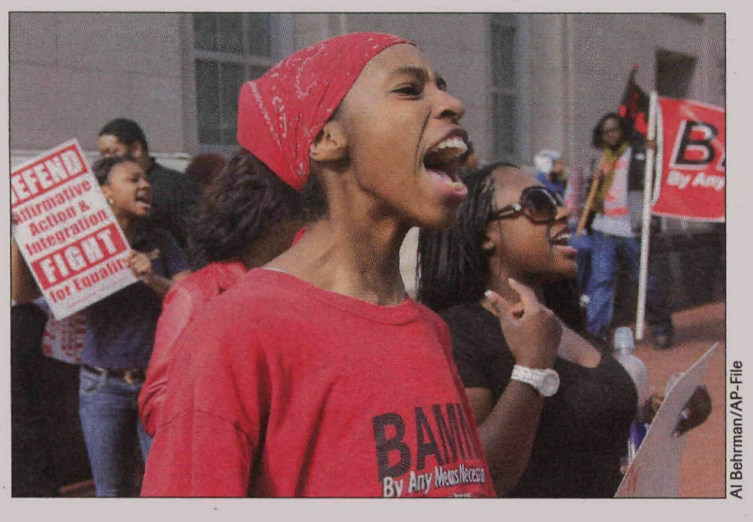
ON THE DOCKET

The U.S. Supreme Court's 2013-14 term opens Oct. 7, with the justices set to hear arguments on several cases with significance for education at the ballot box, at school board meetings, and in employment.

The SCHOOL LAW BLOG tracks news and trends on this issue
www.edweek.org/go/schoollawblog

RACE DISCRIMINATION	AGE DISCRIMINATION	CAMPAIGN FINANCE	GOVERNMENT PRAYERS
Schuette v. *Coalition to Defend Affirmative Action* (Case No. 12-682)	*Madigan* v. *Levin* (No. 12-872)	*McCutcheon* v. *Federal Election Commission* (No. 12-536)	*Town of Greece* v. *Galloway* (No. 12-696)
The high court will look at a 2006 Michigan ballot initiative which barred the use of racial preferences in education and the rest of government in the state. A federal appeals court held that the measure violated the 14th Amendment's equal-protection clause by removing the ability of college administrators to consider race to the extent they are allowed to do so by Supreme Court opinions. Oral arguments are set for Oct. 15. (See story, Page 1.)	This case concerns whether state and local government employees, including teachers and other school workers, may bring age-discrimination claims under the 14th Amendment's equal-protection clause rather than the federal Age Discrimination in Employment Act of 1967, which has more comprehensive rules and procedures designed in part to limit lawsuits. The case has attracted competing friend-of-the-court briefs. The National School Boards Association argues that the ADEA provides all the protection that workers need from age bias. The National Education Association argues that the statute was aimed at protecting a distinct age class of older workers with specific remedies, while Congress did not mean to preclude a broader class of workers from also being able to turn to the equal-protection clause for age-discrimination claims. Arguments are Oct. 7.	Both the American Federation of Teachers and the National Education Association have chimed in as the court returns to the issue of campaign finance with a case that some have called a sequel to the controversial 2010 Citizens United decision. It upheld unlimited independent political expenditures by corporations, labor unions and so-called super political action committees. At issue in the new case is the aggregate limit that an individual may contribute to all federal candidates and parties in a two-year election cycle. The NEA, citing its interest in "fair elections and clean government," filed a friend-of-the-court brief in favor of upholding the limits. The union says they help combat the appearance of corruption without impinging on the free expression rights of political donors. The AFT has joined a brief making similar points. Oral arguments are Oct. 8.	The justices will consider whether prayers delivered at the beginning of town board meetings violate the First Amendment's prohibition against government establishment of religion. The New York town, with the support of the Obama administration, argues that its prayers are in the tradition of the state legislative prayers upheld by the Supreme Court. The challengers contend that the prayers are overwhelmingly delivered by Christian ministers who typically invoke Jesus Christ. They say that a decision upholding the town's prayers would allow school boards to engage in similar practices, despite two federal appeals court rulings that have barred the practice under the establishment clause. Arguments are Nov. 6.

SOURCE: *Education Week*



Al Behrman/AP-File

FROM LEFT:
Supporters and opponents of Proposal 2, Michigan's ballot measure barring racial preferences in education and other areas of state and local government, gather during a rally at the University of Michigan in Ann Arbor in 2006.

University of Michigan students Shandria Vaughn, center, and Margaret McKinney, right, demonstrate outside the federal courthouse in Cincinnati in 2012, as U.S. Court of Appeals for the 6th Circuit hears arguments on Proposal 2. The appeals court struck down the measure, in a ruling now before the U.S. Supreme Court.

The Michigan case has drawn dozens of friend-of-the-court briefs and reignited arguments about race-conscious admissions plans.

posed to race-conscious admissions plans, helped write a brief calling on the high court to overrule its political-restructuring precedents.

"This is about whether the people of a state have the authority to change the admissions system of a state university if they disagree with it," he said in an interview. "That's kind of like democracy."

Fostering Diversity

On the other side is a complicated lineup of parties fighting Proposal 2. They include a group of prospective applicants to Michigan colleges, a separate group known as By Any Means Necessary, and the University of Michigan and other state higher education institutions.

"What Michigan did ... was to create a distinct political process for constitutionally permissible race-conscious admissions policies," said Mark Rosenbaum, a lawyer with the American Civil Liberties Union and a professor at the University of Michigan Law School, who will argue the case on behalf of one of the groups of challengers.

"Michigan universities grant [admissions] preferences all the time," he said, and while children of alumni, athletes, or Upper Peninsula residents could seek such preferences, "if you have a racialized identity, you go to a different political process—you have to repeal a state constitutional amendment."

"By making race the fissure in the political process, that in fact ... increases the salience of race," Mr. Rosenbaum said.

He added that the "stakes are extremely high" because the Michigan ballot initiative has reduced the enrollment of minority students for all groups except for Asians and Asian-Americans. For example, African-American undergraduate enrollment at the University of Michigan in Ann Arbor has dipped from 7 percent in fall 2006 to 4.7 percent in the fall of 2012.

Mr. Schuette gets into some of the nitty-gritty of the merits of affirmative action by arguing in his brief that universities can attract a diverse student body without racial preferences. He says California has successfully used socioeconomic factors to boost diversity since that state's Proposition 209 outlawed racial and ethnic preferences in education in 1996.

In a section covering much of the current debate over racial preferences, socioeconomic alternatives in California and Texas, and theories about some minority students' lack of preparation for elite institutions, Mr. Schuette writes: "In sum, sociological and academic reasons justified voters' decision to end race-conscious admissions, and that is precisely the path that Michigan's citizens chose for their own public universities."

View From California

The challengers have also received friend-of-the-court briefs from K-12 groups such as the National Education Association and the National School Boards Association. Although Michigan school districts come under Proposal 2, their advocates have mostly stayed out of the legal battle that has focused on higher education in the state.

But the Michigan case is being watched closely in California, where a decision for the challengers would likely bring a renewed case against Proposition 209.

The Los Angeles and San Francisco districts, in a friend-of-the-court brief on the side of the Michigan challengers, take issue with the Michigan attorney general's views about the long-term effects of the California ballot initiative.

"Because the [districts] have now lived under Proposition 209 for 13 years, they have experienced firsthand the toll that prohibiting race as a consideration in public school assignment and admissions to the University of California has taken on public education for the youth in [their] communities," the brief says.

However, while they cite statistics such as admission rates and "yield" rates for minority students in California's flagship university system, the school districts don't refute Michigan's argument that proportions of minority-student enrollment have largely recovered in the University of California system after an initial decline for several years.

The case is set for oral arguments on Oct. 15.