

No. 12-682

IN THE
Supreme Court of the United States

BILL SCHUETTE, ATTORNEY GENERAL OF MICHIGAN,
Petitioner,

v.

COALITION TO DEFEND AFFIRMATIVE ACTION,
INTEGRATION AND IMMIGRANT RIGHTS AND FIGHT FOR
EQUALITY BY ANY MEANS NECESSARY, *et al.*,
Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF OF AMICI CURIAE POLITICAL SCIENTISTS
DONALD R. KINDER, ET AL. IN SUPPORT OF
RESPONDENTS

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INTEREST OF AMICI CURIAE¹

Donald R. Kinder is the Philip E. Converse Collegiate Professor of Political Science and Professor of Psychology at the University of Michigan and Research Scientist in the Center for Political Studies at the University of Michigan Institute for Social Research. Professor Kinder has held fellowships from the Guggenheim Foundation and from the Center for Advanced Study in the Behavioral Sciences and is a member of the American Academy of Arts and Sciences. His books include *News That Matters* (1987), *Divided by Color* (1996), *Us Against Them* (2010), and *The End of Race?* (2011). Professor Kinder was on the Design Committee for the 2006 Cooperative Congressional Election Study, which is the source of the data analyzed in this brief.

The other amici are also political scientists who have conducted empirical research regarding and written extensively on issues of race and political participation. They are:

¹ Letters consenting to the filing of amicus briefs have been filed with the Clerk of the Court. No counsel for a party authored this brief in whole or in part, and no person other than amici or their counsel made a monetary contribution to the preparation or submission of this brief. The university affiliations of amici curiae are provided for identification purposes only. As noted below, some of the amici are members of the faculty of the University of Michigan, a respondent in this case. Any use by those amici of university resources (such as its computer or library facilities) in performing the analysis presented in this brief was limited to resources generally available to amici due to their positions on the faculty and did not constitute a “monetary contribution intended to fund the preparation or submission of th[is] brief.” S. Ct. R. 37.6.

- Nancy Burns, Warren E. Miller Professor of Political Science at the University of Michigan
- Vincent L. Hutchings, Professor of Political Science at the University of Michigan
- David O. Sears, Professor of Psychology and Political Science, former Dean of Social Sciences, and current Director of the Institute for Social Science Research at the University of California, Los Angeles.

INTRODUCTION AND SUMMARY OF ARGUMENT

After a highly publicized campaign, the Michigan Civil Rights Initiative—commonly known as Proposal 2—passed into law in the November 7, 2006 election. Petitioner and respondents dispute whether Proposal 2 is an enactment about race, and if it is, whether it has the effect of aggravating or healing racial division. Petitioner contends that Proposal 2 “does not classify on the basis of race” (*e.g.*, Pet. Br. 14, *see also id.* at 29), but rather promotes the laudable goal “to eliminate, not foster discrimination” (*id.* at 36). Respondents counter that Proposal 2 is “unquestionably about race” (Cantrell Resp. Br. 2), and that race was the predominant factor behind Proposal 2’s enactment (*e.g.*, *id.* at 37-40). Further, notwithstanding any purpose to reduce the salience of race, respondents assert that Proposal 2 had the opposite, deleterious effect of “balkaniz[ing] the political process.” *Id.* at 57-58.

This Court has recognized that legislation that has a tendency to “balkanize us into competing racial factions” may be particularly likely to violate the Fourteenth Amendment. *Shaw v. Reno*, 509 U.S. 630, 657 (1993). Such legislation “threatens to carry us further

from the goal of a political system in which race no longer matters.” *Id.*; see also *Bush v. Vera*, 517 U.S. 952, 980-981 (1996) (plurality) (racially gerrymandered districts “cause constitutional harm insofar as they convey the message that political identity is, or should be, predominantly racial” and “intensif[y] the emphasis on race”). Thus, the question whether Proposal 2 and the surrounding campaign divided the races into opposing political coalitions and stoked racial tensions may bear relevance to the measure’s constitutionality.

To evaluate whether Proposal 2 ameliorated or activated racial tensions, the Court need not rely on the parties’ assertions alone. A survey of support for Proposal 2 and race and racial attitudes was conducted during the initiative’s campaign. This survey, which included extensive sampling of Michigan voters and a comparison group drawn from voters outside Michigan, was conducted in conjunction with the 2006 Cooperative Congressional Election Study, a highly regarded study frequently relied upon by social scientists. The purpose of this brief is to present an original analysis of that survey data as it bears on this dispute.

In short, an analysis of the 2006 survey data shows to a high degree of statistical certainty that Proposal 2 and the surrounding campaign balkanized voters in Michigan along racial lines. The degree of racial polarization regarding Proposal 2 far exceeded the degree of polarization concerning even the most racially contentious issues of the past several decades. Moreover, the gap between white and black support for the measure far outstripped the racial disparities generally observed in views on affirmative action.

It also appears likely that the unexpectedly high degree of racial polarization regarding Proposal 2 stems, at least in part, from the campaigns conducted by the Proposal's supporters and opponents. Proposal 2 was pervasively framed as a racial conflict, with one side arguing that it was time to put an end to a racial entitlement or spoils system, while the other classified the Proposal as a direct attack on Michigan's black community.

The 2006 survey data corroborate that the campaign surrounding Proposal 2 transformed the measure into a far cruder racial question than whether Michigan universities should continue to consider racial factors to a permissible degree in the context of holistic consideration of applicants. Among both whites and blacks, racial attitudes strongly predicted support for Proposal 2, even accounting for other factors normally correlated with views about affirmative action. Moreover, the degree to which racial views correlated with support for Proposal 2 was higher for both whites and blacks in Michigan—who were exposed to the campaign surrounding Proposal 2—than was true of a comparison sample of voters from elsewhere in the United States who were asked their views of a measure worded identically to Proposal 2. This suggests that Proposal 2 and its surrounding campaign heightened the salience of racial considerations in Michigan and transformed the vote on Proposal 2 into something akin to a referendum on race.

BACKGROUND AND DESCRIPTION OF METHODOLOGY

To assess the effects of the Proposal 2 campaign, a pair of coordinated and simultaneous surveys were designed, one carried out in Michigan (the primary sam-

ple), the other carried out in the country as a whole (the comparison sample). Interviews were conducted online with samples of the Michigan and national electorates, both before the November 2006 election and then again (with the same respondents) immediately afterwards. Both surveys included a deliberate oversampling of African Americans to ensure a sufficient sample to support statistically valid analysis of African-American opinion.²

Both surveys were carried out as part of the 2006 Cooperative Congressional Election Study (CCES), a cooperative venture of research teams from 38 leading universities.³ CCES makes its data available

² For purposes of analysis, Hispanics, Asians and other ethnic and racial groups are excluded. The analysis focuses exclusively on (non-Hispanic) whites and African Americans.

³ The Principal Investigator for the 2006 CCES was Steve Ansolabehere (MIT); the Study Director was Lynn Vavreck (UCLA); and the Design Committee was made up of Ansolabehere, Vavreck, Robert Erickson (Columbia), Elizabeth Gerber (Michigan), Donald Kinder (Michigan), Jeremy Pope (Brigham Young), Wendy Rahn (Minnesota), Douglas Rivers (Polimetrix and Stanford), and John Sides (George Washington). Respondents were selected by sample matching. See Rivers, *Sampling for Web Surveys*, Joint Statistical Meetings (Aug. 1, 2007). Sample weights are applied throughout the analysis. On the relative advantages and disadvantages of Internet-based surveys, see Ansolabehere & Rivers, *Cooperative Survey Research*, 16 *Ann. Rev. Pol. Sci.* 307 (2013); Ansolabehere & Schaffner, *Does Survey Mode Still Matter?* (2013); Chang & Krosnick, *National Surveys Via RDD Telephone Interviewing Versus the Internet: Comparing Sample Representativeness and Response Quality*, 73 *Pub. Op. Q.* 641 (2009); Hill, et al., *The Opt-In Internet Panel: Survey Mode, Sampling Methodology and the Implications for Political Research* (2007); Malhotra & Krosnick, *The Effect of Survey Mode and Sampling On Inferences*

online.⁴ Data from the 2006 CCES have been relied upon in numerous peer reviewed articles, including several published in highly regarded social science journals and law reviews.⁵

In the pre-election phase of the CCES, respondents in both the Michigan and national samples were asked a standard battery of questions probative of their racial sentiments. Two batteries of questions were included, one for use with white respondents and the other for use with black respondents. In both populations, the responses to these questions were averaged to compute a racial sentiment score for each participant.

White respondents were asked to rate their reactions to each of six statements on a scale from “strongly agree” to “strongly disagree.” In general, the six questions were designed to elicit the respondent’s views as to the continuing prevalence of racial discrimination and the extent to which blacks should bear responsibility for overcoming any remaining prejudice. Questions of this type are a standard tool for measuring white ra-

about Political Attitudes and Behavior, 15 *Pol. Analysis* 286 (2007); and Rivers & Baily, *Inference from Matched Samples in the 2008 U.S. National Elections*, Proceedings of the Joint Statistical Meetings (2009).

⁴ See <http://projects.iq.harvard.edu/cces/pages/welcome-cooperative-congressional-election-study>.

⁵ See, e.g., Ansolabehere & Persily, *Vote Fraud In The Eye Of The Beholder: The Role of Public Opinion In The Challenge To Voter Identification Requirements*, 121 *Harv. L. Rev.* 1737 (2008); Gerber & Huber, *Partisanship, Political Control, and Economic Assessments*, 54 *Am. J. of Pol. Sci.* 153 (2010); Neblo, et al., *Who Wants To Deliberate—And Why?*, 104 *Am. Pol. Sci. Rev.* 566 (2010).

cial sentiment and have been used in many peer-reviewed studies. See, e.g., Pasek, et al., *Determinants of Turnout and Candidate Choice in the 2008 U.S. Presidential Election*, 73 *Pub. Op. Q.* 943, 983-984 (2009); Kinder & Winter, *Exploring the Racial Divide*, 45 *Am. J. of Pol. Sci.* 439, 442-443 (2001). For purposes of the analysis described in this brief, respondents who were more skeptical that racial discrimination continues and/or believed that blacks bear responsibility for overcoming any remaining discrimination are assigned higher racial sentiment scores, whereas whites who perceived a higher degree of continued racial discrimination and/or believed that blacks are not solely responsible for overcoming discrimination are assigned lower racial sentiment scores.⁶

To measure racial sentiment among African Americans, black respondents were asked three questions designed to elicit the degree of solidarity or identification they felt toward their racial group. Like the questions asked of white respondents, questions of this type are a standard tool for measuring racial sentiment among blacks and have been used in peer-reviewed studies. See, e.g., Tate, *Black Political Participation in the 1984 and 1988 Presidential Elections*, 85 *Am. Pol. Sci. Rev.* 1159, 1166 (1991); Kinder & Winter, 45 *Am. J. of Pol. Sci.* at 442. For purposes of the Proposal 2 study, black respondents who expressed a high degree of solidarity or identification with their racial group were assigned

⁶ A standard measure of reliability is given by Cronbach's *alpha*, which is used to measure consistency across respondents, and which ranges in principle from 0 to 1. In this case, *alpha* = .868, a very respectable figure.

higher racial sentiment scores, while respondents who viewed themselves as comparatively independent from their group were assigned lower racial sentiment scores.⁷

In the post-election stage of the surveys, respondents in Michigan were asked whether they had voted in support of Proposal 2.⁸ For the analysis presented here, this information was used to calculate the extent to which whites and blacks in Michigan supported Proposal 2 and to calculate the degree of difference in support between the races. Respondents in the national survey were asked whether they would have supported

⁷ Cronbach's *alpha* for the 3-item racial sentiment scale used with black respondents is a modest .450, which limits the capacity to detect whatever impact racial sentiment might have had on voting against Proposal 2 for black respondents.

⁸ The exact question was:

This November's ballot contained a proposition called the Michigan Civil Rights Initiative. This initiative would make it illegal for state and local governments to give preferential treatment to any individual or group on the grounds of race, sex, color, ethnicity, or national origin. This would affect hiring and promotion, college admissions, and the selection of government contractors. Did you vote on this ballot measure—the Michigan Civil Rights Initiative?

Yes

No

If YES:

How did you vote on the Michigan Civil Rights Initiative?

Favor

Oppose

or opposed a hypothetical ballot initiative that mimicked Proposal 2.⁹ Similar calculations were done with respect to the national sample. In addition, respondents were tracked by their racial sentiment scores, enabling calculation of the relationship between racial sentiment and support for Proposal 2 and comparison of this correlation between voters in Michigan and the sample drawn from the national population.

ARGUMENT

I. EMPIRICAL EVIDENCE ESTABLISHES THAT PROPOSAL 2 POLARIZED THE ELECTORATE ALONG RACIAL LINES AND WIDENED THE DIVIDE BETWEEN THE RACES

A. Proposal 2 Polarized Michigan Voters Along Racial Lines

An empirical analysis of data collected in the 2006 CCES survey supports the conclusion that Proposal 2 sharply divided white and black Michigan voters. Whites in Michigan voted decisively in favor of Pro-

⁹ The question posed to the national sample was:

Some states have recently proposed ballot initiatives that would make it illegal for state and local governments to give preferential treatment to any individual or group on the grounds of race, sex, color, ethnicity, or national origin. This would affect hiring and promotion, college admissions, and the selection of government contractors. If such a proposition had appeared on the election ballot in your state this November, how do you think you would have voted?

Favor
 Oppose
 Not sure
 Wouldn't have voted

posal 2, while blacks voted overwhelmingly against it. The racial difference over Proposal 2 in Michigan in 2006 is exceptional—greater than differences associated with other divisive issues in 2006, and greater than the differences observed between blacks and whites over the most contentious racial issues of the last 50 years.

Of those Michigan voters who said they had participated in the election, 65.2 percent of whites, but only 13.8 percent of blacks, reported that they had voted for Proposal 2. The gap between white and black support for Proposal 2 was thus 51.4 percentage points. This difference far outstrips the difference between other pairs of groups that had differing views towards Proposal 2, including men and women, Catholics and Protestants, and those with relatively little formal education and those with relatively extensive formal education.¹⁰ No other social factor comes close to race in dividing the Michigan electorate over Proposal 2.

The 51.4 percentage-point gap in racial views regarding Proposal 2 exceeds that of even the most con-

¹⁰ Specifically, 56.4 percent of men voted for Proposal 2 compared to 40.4 percent of women (a difference of 16.0 percentage points); 64.0 percent of Catholics voted for Proposal 2 compared to 55.2 percent of Protestants (a difference of 8.8 percentage points); and 62.1 percent of those whose formal education ended with a high school diploma or less voted for Proposal 2 compared to 39.2 percent of those whose formal education included post-graduate work (a difference of 22.9 percentage points).

tentious racial issues of the last 50 years. The National Election Studies¹¹ series provides these examples:

- In 1956, shortly after the decision in *Brown v. Board of Education*, 46 percent of whites and 66 percent of blacks reported support for the idea that the federal government should take steps to ensure that black and white children could attend school together (a racial difference of 20 percentage points).
- In the fall of 1964, shortly after passage of the Civil Rights Act, 49 percent of whites and 92 percent of blacks endorsed the policy of ensuring equal access to hotels and restaurants (a racial difference of 43 percentage points).
- In 1968, following race riots in Los Angeles, Detroit, and other cities, 52 percent of whites and 80 percent of blacks said that riots should be addressed by working on underlying problems of poverty and unemployment (a racial difference of 28 percentage points).
- At the conclusion of the contentious 1972 Nixon-McGovern presidential campaign, 13 percent of whites and 43 percent of blacks supported the use of busing to achieve school desegregation (a racial difference of 30 percentage points).

¹¹ Data from the National Election Studies are available at http://www.electionstudies.org/studypages/download/datacenter_all_NoData.php.

In each example, the racial differences, though large, are smaller—and in most instances much smaller—than the racial difference provoked by Proposal 2.¹²

B. The Campaign Surrounding Proposal 2 Exacerbated The Degree Of Racial Division

Evidence suggests that the campaign surrounding Proposal 2 exacerbated the degree of racial division. In particular, the 51.4 percentage-point gap between the races exceeds to a statistically significant degree both the gap that would be predicted by background politics of affirmative action and the division observed in the national sample.

The racial divide over Proposal 2 significantly exceeded the racial divide that would have been predicted by general views on affirmative action, as observed in national surveys carried out at about the same time. Opinions on affirmative action—for whites and blacks alike—depends on the exact variety of affirmative action under discussion, and on what justification is offered for the policy. But whatever variety of affirmative action is considered and however it is justified, the racial divide over affirmative action falls short of the racial divide provoked by Proposal 2. This is shown in Table 1, which summarizes results on public opinion on

¹² The only racial division that amici are aware of that compared in magnitude to the division associated with Proposal 2 was the racial difference in voting generated by the 2008 presidential election. See Kinder & Dale-Riddle, *The End of Race? Obama, 2008, and Racial Politics in America* 87-88 & n.30 (2011).

affirmative action taken from leading surveys conducted in and around 2006.¹³

Table 1
Racial Differences On Affirmative Action
National Samples (*circa* 2006)

	Whites	Blacks
Government should make special efforts to help blacks (NES)		
2004	35.4	61.0
2008	30.8	61.2
Support for racial preferences in hiring and promotion (GSS)		
2002	17.5	49.8
2004	18.7	51.2
2006	17.1	46.4
2008	19.1	50.8
2010	19.3	49.3
Support for affirmative action in employment (NES)		
2004	15.9	56.7
2008	14.2	56.3

¹³ As noted in the table, these data come either from the National Election Studies (NES), carried out by the Institute for Social Research at the University of Michigan (data available at http://www.electionstudies.org/studypages/download/datacenter_all_NoData.php) or by the General Social Survey (GSS), carried out by the National Opinion Research Center at the University of Chicago (data available at <http://www3.norc.org/GSS+Website/>).

Government has special obligation
to improve blacks' standard of living
(GSS)

2002	30.8	61.5
2004	29.5	61.9
2006	31.6	63.7
2008	31.0	63.8
2010	30.7	56.7

The racial differences displayed in Table 1 are considerable, averaging 32.1 percentage points, and ranging from a low of 26.0 percentage points to a high of 42.1 percentage points. The racial differences provoked by Proposal 2 in Michigan, however, were far greater—nearly 20 percentage points greater than the average reflected in these studies.

That Proposal 2 divided the races to an extent beyond what would be predicted by general views on affirmative action is corroborated by comparing the gap measured in Michigan against the gap found in the national comparison group. Respondents in the national sample were asked their opinion of legislation worded identically to Proposal 2. *See supra* note 9. In the national sample, 83.2 percent of whites said they would have supported Proposal 2, compared to 40.6 percent of blacks—a racial difference of 42.6 percentage points. While this is a large difference, it is smaller to a statistically significant degree ($p < .01$) than the 51.4 percentage-point gap generated by Proposal 2 in Michigan. And the difference remains significant and undiminished after accounting for a variety of variables including employment status, union membership, and party affiliation.

This does not, of course, by itself establish that the campaign surrounding Proposal 2 caused increased polarization. Michigan is not the same as the nation. It could be that racial differences in opinion over matters of race in Michigan are generally greater than in the country as a whole and that the campaign surrounding Proposal 2 did not exacerbate racial division over the measure.

This possibility, however, is not supported by the data. The 2006 CCES (which included a sample of 36,000 respondents nationwide who were representative of their respective States) included a question regarding affirmative action. Using response data for that question in conjunction with other information, it is possible to predict an expected racial divide over affirmative action in Michigan based on its economic and social characteristics.¹⁴ Variation across States¹⁵ in black and white opinion regarding affirmative action was analyzed as a consequence of differences across States in racial makeup (percentage African American), education, unemployment (percentage unemployed), income (median family annual income in 2006 inflation-adjusted dollars), poverty (percentage of families with

¹⁴ The pertinent question from CCES read:

Some people think that if a company has a history of discriminating against blacks when making hiring decisions, then they should be required to have an affirmative action program that gives blacks preferences in hiring. What do you think? Should companies that have discriminated against blacks have to have an affirmative action program?

¹⁵ The analysis excluded Michigan, as well as States with very small black populations.

income below poverty level), region, and unionization (percentage of employed who are members of a union). As Table 2 shows, the magnitude of the racial divide over affirmative action in a given State does indeed correlate with these characteristics.¹⁶

Table 2
Social And Economic Characteristics Of States As Predictors Of The Magnitude Of The Racial Divide Over Affirmative Action

Characteristics of States	White Opinion	Black Opinion
Income	0.004** (0.002)	0.001 (0.003)
Unionization	-0.235 (0.157)	0.001 (0.310)
Education	-0.844** (0.329)	-1.055 (0.652)
Deep South	0.002 (0.036)	-0.056 (0.071)

¹⁶ Whites living in States where education is relatively high and unionization is relatively strong tend to be more supportive of affirmative action than whites in other States; and whites living in States that are relatively affluent and contain a relatively large percentage of blacks tend to be less supportive of affirmative action than whites in other States. Meanwhile, blacks living in States characterized by relatively high levels of education and relatively high levels of unemployment tend to be more supportive of affirmative action than blacks in other States. The information on States is taken from the Bureau of Labor Statistics, Current Population Survey, and the American Community Survey conducted by the Census Bureau, all as of 2006.

Rim South	0.001 (0.025)	-0.017 (0.049)
Border	0.012 (0.020)	-0.060 (0.039)
Northeast	-0.016 (0.017)	-0.015 (0.034)
West	0.014 (0.018)	0.047 (0.035)
Unemployment	-0.352 (0.954)	-2.900 (1.890)
Poverty Rate	0.612 (0.506)	-0.030 (1.003)
Percentage Black	0.210* (0.111)	0.022 (0.220)
Constant	0.732*** (0.143)	0.802** (0.284)
Observations	31	31
R-squared	0.831	0.505

*** p<0.01, ** p<0.05,
* p<0.1

Based on the relationships shown in Table 2, it is possible to predict the expected magnitude of the racial divide over affirmative action in Michigan given its economic and social characteristics (or more precisely, the magnitude of the racial divide over affirmative action in a State with the same economic and social characteristics as Michigan). That predicted value is 47.7 percentage points (with a standard error of 6.1). The racial difference over affirmative action as actually observed in Michigan in the 2006 CCES, however, was 55.3 percentage points—well above the value predicted for Michigan based on its social and economic charac-

teristics. These results lend additional support to the claim that the campaign surrounding Proposal 2 polarized the Michigan electorate along racial lines.

In sum, Proposal 2 divided the Michigan electorate along racial lines to an extraordinary degree—more than school desegregation or the Civil Rights Act, more than a hypothetical version of Proposal 2 divided the national electorate, more than what is generally observed in opinion on affirmative action, and more than would be expected from Michigan’s social and economic characteristics. While the data themselves cannot provide any conclusive explanation for why this was the case, the results certainly suggest that Proposal 2 was about something more fundamental than whether affirmative action at Michigan universities should be repealed.

II. PROPOSAL 2 SIGNIFICANTLY EXACERBATED THE IMPORTANCE OF RACIAL CONSIDERATIONS AMONG BLACK AND WHITE VOTERS

It appears that the stark racial polarization in support for Proposal 2 was not happenstance. The campaigns supporting and opposing Proposal 2 were framed as racial appeals that played to racial sentiments. The evidence corroborates that the campaign surrounding Proposal 2 exacerbated the degree to which Michigan voters—white and black—relied on considerations of race in forming their views on Proposal 2. Among both white and black voters, the relationship between racial sentiment and the vote on Proposal 2 was strong and remained strong after accounting for other political considerations. Indeed, the evidence shows that racial sentiment was a stronger determinant of vote on Proposal 2 than any other factor.

And the relationship between racial sentiment and vote on Proposal 2 was stronger than the relationship in the national survey between racial sentiment and vote on a hypothetical ballot initiative worded identically to Proposal 2 (for whites, to a statistically significant degree), suggesting that the link between support or opposition to Proposal 2 and racial sentiment was exacerbated by Proposal 2 itself.

A. Framing And The Proposal 2 Campaign

1. The phenomenon of framing

Based on established social science literature, it is plausible to expect Proposal 2 to have exacerbated the importance of racial considerations among black and white voters.¹⁷ Presidents, members of Congress, cor-

¹⁷ This analysis draws on the work of Kahneman and Tversky. In a series of experiments that transformed cognitive science, Kahneman and Tversky established (among other things) that the judgments people reach and the decisions they make are subject to systematic and pervasive framing effects. See Kahneman, *Maps of Bounded Rationality: Psychology for Behavioral Economics*, 93 *Am. Econ. Rev.* 1449 (2003); Tversky & Kahneman, *The Framing of Decisions and the Psychology of Choice*, 211 *Sci.* 453 (1981). The Kahneman and Tversky experiments gave rise to an industry of research; spawned an entire new field (“behavioral economics”); and in time, delivered to Kahneman the Nobel Prize in Economic Science. (Kahneman was awarded the Nobel Prize in 2002 for the work he did with Tversky, who died in 1996.) For summaries and reviews of this work, see Gilovich, et al., *Heuristics and Biases: The Psychology of Intuitive Judgment* (2002); Kahneman & Frederick, *Representativeness Revisited: Attribute Substitution in Intuitive Judgment*, in *Heuristics and Biases: The Psychology of Intuitive Judgment* 49 (Gilvich, et al., eds. 2002); and Kahneman, et al., *Judgment Under Uncertainty: Heuristics and Biases* (1982). For applications of the principle of framing to political communication

porate publicists, activists, policy analysts, reporters, and editors, among others, all perpetually engage in efforts to “frame” current events. Frames “bring order to events by making them something that can be told about; they have power because they make the world make sense.” Manoff, *Writing the News (By Telling the “Story”)*, in *Reading the News: A Pantheon Guide to Popular Culture* 228 (Manoff & Schudson eds., 1986). Frames supply “a central organizing idea or story line that provides meaning to an unfolding strip of events, weaving a connection among them.” Gamson & Modigliani, *The Changing Culture of Affirmative Action, in Equal Employment Opportunity* 376 (Braungart ed., 1994).

The issues taken up by government are always complex; they are always subject to alternative interpretations. Many citizens, preoccupied with the vicissitudes of private life, ordinarily pay little notice to these issues. But at special junctures, especially at the climax of intensive campaigns, they seek out guidance about how to think and how to vote. Under such circumstances, framing can have powerful effects because frames reduce complex policies to simpler, easier, more manageable questions.

Frames influence voters’ judgments and decisions by altering the relative salience of different aspects of the issue. Frames highlight some features and ignore others. Highlighted features are psychologically accessible, thereby contributing to decisions and judgments;

and public opinion, see Chong & Druckman, *Framing Theory*, 10 *Ann. Rev. Pol. Sci.* 103 (2007).

ignored features are less-readily accessible and therefore less likely to be influential. Which frames prevail can affect how citizens understand issues, and, in the end, what their opinions turn out to be.

Opinion on policy in the domain of race is no different. For example, support for a government policy requiring companies to allocate a certain number of jobs to blacks increases when the issue is framed to include the information that the companies in question engaged in discrimination in the past. Stoker, *Political Value Judgments, in Citizens and Politics: Perspectives from Political Psychology* 445-447 (Kuklinski ed., 2001). Opposition to affirmative action in university admissions diminishes when presented as a policy to ensure that all qualified black applicants are “considered,” versus a policy to give qualified blacks a “preference.” Stoker, *Understanding Whites’ Resistance to Affirmative Action: The Role of Principled Commitments and Racial Prejudice, in Perception and Prejudice: Race and Politics in the United States* 144-145 (Hurwitz & Peffley eds., 1998). These results and others like them establish that frames matter for opinion on matters of race.

Thus, depending on how the issue was framed, the campaign surrounding Proposal 2 could have had the effect of activating racial divisions and hostility.

2. Anecdotal evidence shows the campaign surrounding Proposal 2 was framed in a way that appealed to racial sentiment

The Proposal 2 campaign generated extensive media coverage within Michigan leading up to the November 2006 election. A review of contemporaneous news articles reflects that proponents of Proposal 2 framed

the measure as seeking to eliminate racial “preference” and to promote individualism. They characterized affirmative action as an unfair and obsolete “racial spoils system.” See, e.g., Editorial, *In Michigan Rights Fray, Foes’ Tactic Is to Block the Vote*, Grand Rapids Press, Sept. 24, 2006, at F2; Bray, *Beware Using ‘Racist’ Label in Racial Preferences Battle*, Detroit News, Aug. 17, 2005, at 13A.

For example, as echoed in many accounts endorsing Proposal 2, one supporter argued that “Michiganders ... despise preference by race,” and cautioned that those opposed to Proposal 2 “wish to retain racial preferences ... [o]r they hope to introduce new preferences for some ethnic groups.” See Cohen, *Aim for True Equality by Ending Preferences*, Detroit Free Press, July 17, 2005. Another proponent urged voters to support Proposal 2 if they “agree with the principle of equal opportunity for individuals, instead of equal outcome for groups.” White & White, *November Vote for MCRI Supports Equal Opportunity for Individuals*, Kalamazoo Gazette, Apr. 23, 2006; see also Littmann, *Vote Yes: Affirmative Action Is Bad for State’s Business Climate, True Equality*, Detroit Free Press, Oct. 2, 2006, at 6 (arguing “special preferences” and “special privileges to a chosen few at the expense of many” hamper the economy, and that “[t]hrough MCRI, individual effort and excellence are rewarded,” which will make markets thrive).

The campaign against Proposal 2 also had the effect of appealing to racial sentiment, as opponents warned that strides made by women and racial minorities would be lost if the initiative passed. For example, one editorial argued that enacting Proposal 2 “would send the wrong message about Michigan as a place of oppor-

tunity,” that Proposal 2 would “end[] opportunities for minorities and women,” and that “[a]ffirmative action is about equalizing opportunities” and “helping to create opportunities for segments of the population that have historically been denied them.” Editorial, *No Steps Back on Opportunity; MCRI, State Proposal 06-2, Would Push Back Progress on Hiring and Access to College for Minorities*, Detroit Free Press, Oct. 8, 2006, at 1.

Opponents also warned of the balkanization created by the Proposal 2 campaign. In an interview, Linda Parker, director of the Michigan Department of Civil Rights, called the initiative “divisive” and one that exacerbated Michiganders’ “continued failure to live together” as evident by Michigan’s place as “No. 2 in the country in terms of residential segregation.” She termed the initiative’s campaign as one “capitalizing on ... fears” based on negative assumptions about race. *Face It: Realities Demand Better Balance*, Detroit Free Press, Mar. 23, 2004, at 7A.

B. Empirical Evidence Regarding Racial Sentiment Corroborates That Proposal 2 Activated Racial Considerations

Analysis of the 2006 CCES survey data supports the conclusion that the campaign surrounding Proposal 2 exacerbated the degree to which Michigan voters—white and black alike—relied on considerations of race in deciding how to vote. Racial sentiments correlated more strongly than any other factor with voters’ support for or opposition to Proposal 2. Moreover, the extent of this correlation between racial sentiment and support for or opposition to Proposal 2 was stronger for Michigan voters than for the national sample, suggest-

ing that the campaign surrounding Proposal 2 activated racial sentiments. As a result, racial sentiments dominated racially neutral factors in voters' choices.

1. Racial sentiment strongly predicts support for Proposal 2 among Michigan voters, after controlling for confounding variables

As noted, racial sentiment scores were calculated for all survey participants. *See supra* pp. 6-7. These scores were very strongly associated with how respondents voted on Proposal 2. Whites with low racial sentiment scores (*i.e.*, those who were less skeptical of ongoing discrimination or who questioned whether blacks should be responsible for overcoming that discrimination) voted against Proposal 2 overwhelmingly (85.0 percent to 15.0 percent), while whites with high racial sentiment scores voted for Proposal 2 to an even more lopsided extent (90.7 percent versus 9.3 percent). Similarly, blacks with high racial sentiment scores (*i.e.*, those whose survey responses suggested the highest level of racial group solidarity or identification) were overwhelmingly opposed to Proposal 2 (92.8 percent), while those with low scores were more divided (only 79.1 percent opposed Proposal 2).

The correlations between racial sentiment and views regarding Proposal 2 are robust, and remain strong after controlling for other factors. The independent strength of the link between racial sentiment and views on Proposal 2 can be assessed by controlling for other known important factors in explaining opinion on affirmative action. Three such factors are party identification, belief in limited government, and belief

in equal opportunity.¹⁸ The pre-election CCES survey included questions to measure each of these factors, making it possible to estimate and compare the effect of each of these factors against the effects of racial sentiment using multivariate and probit regression.¹⁹

The results for white and black voters respectively are presented in Table 3.

Table 3
The Effect Of Racial Sentiment On
Voting For Proposal 2 In Michigan

	Whites	Blacks
Racial Sentiment	2.785*** (0.427)	-1.134* (0.678)
Party Identification	0.597* (0.308)	-0.669 (0.786)
Limited Govern- ment	0.556** (0.231)	1.378*** (0.331)
Equal Opportunity	0.085 (0.406)	-0.415 (0.865)

¹⁸ On partisanship, see Campbell, et al., *The American Voter* (1960), and Bartels, *Partisanship and Voting Behavior*, 44 Am. J. Pol. Sci. 35 (2000); on limited government, see Markus, *American Individualism Reconsidered, in Citizens and Politics* (2001); and on equal opportunity, see Feldman, *Structure and Consistency in Public Opinion: The Role of Core Beliefs and Values*, 32 Am J. Pol. Sci. 416 (1988).

¹⁹ The analysis uses multivariate regression because voting on Proposal 2 is a product of more than one factor, and probit regression because voting on Proposal 2 is a binary variable (scored 1 if the person votes for Proposal 2 and scored 0 if the person votes against Proposal 2).

Constant	-1.658*** (0.452)	-0.316 (0.718)
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Observations	498	253
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Standard errors in parentheses

*** p<0.01, ** p<0.05, *p<0.1

The results indicate a statistically significant and substantively sizable effect of racial sentiment on support for Proposal 2, after controlling for other factors. Whites with high racial sentiment scores were much more likely to vote for Proposal 2 than were whites with low scores. And blacks with high racial sentiment scores were more likely to vote against Proposal 2 than were blacks with low scores.

Racial sentiment was not the only factor at work. Table 3 also reveals that Republicans were somewhat more likely to vote for Proposal 2 than were Democrats (among white voters), and that those voters concerned about the scope and size of the federal government were somewhat more likely to vote for Proposal 2 than those who said they believed in the necessity of a strong central government (among both white and black voters).

The magnitude of the effect due to racial sentiment on the vote can be seen in Figures 1 and 2, which translate the coefficient results presented in Table 3 into graphical form. Figure 1 presents the predicted vote among whites for Proposal 2 as a consequence of variation in racial sentiment, holding constant the effects of

partisanship, limited government, and equal opportunity.²⁰

Figure 1
Racial Sentiment And White Support For Proposal 2

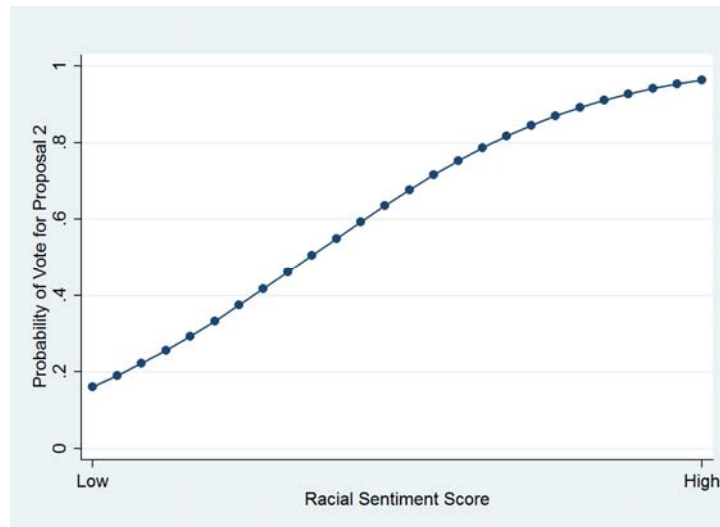


Figure 1 reveals how quickly support for Proposal 2 gathered strength with increasing racial sentiment scores. White voters with a comparatively low score (a score of .25 on the 0-1.0 racial sentiment scale) voted decisively against Proposal 2 (by a margin of 63-37); white voters with relatively high scores (a score of .75 on the 0-1.0 scale) voted decisively for Proposal 2 (83-17).

The magnitude of the effect due to racial sentiment on black voters can be seen in Figure 2. Figure 2 like-

²⁰ The predictions displayed in Figure 1 assume a white voter who is a political Independent, with average views on limited government and equal opportunity.

wise shows the predicted vote for Proposal 2 as a consequence of variation in racial sentiment, holding constant the effects due to partisanship, limited government, and equal opportunity.²¹

Figure 2
Racial Sentiment And Black Support For Proposal 2

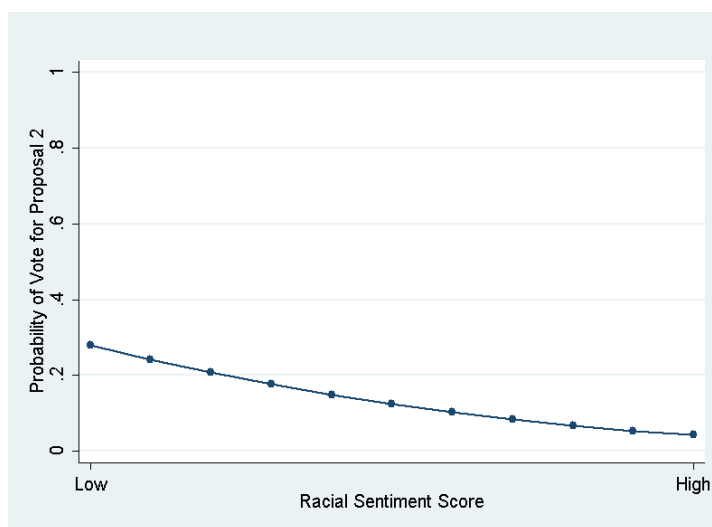


Figure 2 foremost reflects just how overwhelmingly black voters opposed Proposal 2. Disapproval was strong even among those with low racial sentiment scores. That said, racial sentiment did make a difference to the vote. As Figure 2 reveals, predicted vote for Proposal 2 falls, gently but perceptibly, as racial sentiment scores increase.

²¹ The predictions displayed in Figure 2 assume a black voter who is a political Independent, with average views on limited government and equal opportunity.

2. Michigan voters were influenced more by racial sentiment than were voters in the national sample

The data reveal not only that racial sentiment had a large independent correlation with voting on Proposal 2 for both black and white Michigan voters, but also that the effect was larger for Michigan voters than for survey respondents in the national comparison sample (who, as noted, were also asked the battery of questions used to measure racial sentiment and who were asked their opinion of a hypothetical initiative worded identically to Proposal 2).

Table 4 presents the data for white Michigan voters alongside the corresponding results for white voters from the national comparison sample:

Table 4
The Effect Of Racial Sentiment On
White Voting For Proposal 2

	Michigan (Proposal 2)	Nation (Hypothetical)
Racial Sentiment	2.785*** (0.427)	2.107*** (0.448)
Party Identification	0.597* (0.308)	0.061 (0.261)
Limited Government	0.556** (0.231)	0.048 (0.226)
Equal Opportunity	0.085 (0.406)	-1.107*** (0.390)

Constant	-1.658*** (0.452)	0.575 (0.414)
Observations	498	478

Standard errors in parentheses
*** p<0.01, ** p<0.05, *p<0.1

As shown in Table 4, the effect of racial sentiment on white support for eliminating affirmative action is positive and statistically significant in the national sample, as it was in Michigan. But the magnitude of the effect was greater among Michigan voters than in the national sample. And the difference between the effect of racial sentiment in Michigan and the effect of racial sentiment nationally is statistically significant.²² Proposal 2 and the surrounding campaign thus appear to have exacerbated the importance of racial considerations in the white vote in Michigan.²³

²² p < .05, one-tailed test. The result holds under alternative model specifications: adding employment status and union membership to the analysis, or comparing the results for Michigan voters only to voters living in States that resemble Michigan (Illinois, Ohio, Indiana, Pennsylvania, New Jersey and New York).

²³ In addition to augmenting the effect of racial sentiment, Proposal 2 also enhanced the effects of partisanship and limited government (both of which are associated with the vote in Michigan, but not elsewhere), and overrode the effect of views on equality of opportunity.

Table 5 presents the results for black Michigan voters alongside the corresponding results for black voters from the national comparison sample:

Table 5
The Effect Of Racial Sentiment On
Black Voting For Proposal 2

	Michigan (Proposal 2)	Nation (Hypothetical)
Racial Sentiment	-1.134* (0.678)	-.980** (0.410)
Party Identifica- tion	-0.669 (0.786)	0.495 (0.338)
Limited Govern- ment	1.378*** (0.331)	0.543** (0.268)
Equal Opportunity	-0.415 (0.865)	-0.675 (0.424)
Constant	-0.316 (0.718)	0.627 (0.466)
Observations	253	439

Standard errors in parentheses

*** p<0.01, ** p<0.05, * p<0.1

As shown in Table 5, the effect of racial sentiment on black opposition to Proposal 2 is positive and statistically significant in the national sample, just as it was in the Michigan sample. Table 5 also shows that, as was true for white voters, the effect of racial sentiment on opposition to affirmative action was stronger among Michigan voters than in the national sample, though

(unlike with whites) the difference between the effect of racial sentiment on black Michigan voters and the effect of racial sentiment on black voters in the national sample does not rise to the level of statistical significance. It thus cannot confidently be said to reflect a meaningful difference between Michigan respondents and the rest of the country.²⁴

* * *

In sum, for both white and black voters, racial sentiment served as a dominant factor in explaining how a person voted. And for both white and black voters in Michigan (to a statistically significant degree, for whites), racial sentiment played a stronger role than in the national sample. The evidence thus strongly suggests that Proposal 2 activated racial sentiments and led voters to see their ultimate choice on Proposal 2 largely in racial terms.

²⁴ Parallel with the analysis of white voters, the effect of racial sentiment on opposition to affirmative action remains greater among black voters in Michigan than in the national comparison sample under alternative model specifications: adding employment status and union membership to the analysis, or comparing the results for Michigan voters to voters living in States that resemble Michigan (Illinois, Ohio, Indiana, Pennsylvania, New Jersey and New York).

CONCLUSION

The court of appeals' judgment should be affirmed.

Respectfully submitted.

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