

RECOMMENDED FOR FULL-TEXT PUBLICATION  
Pursuant to Sixth Circuit Rule 206

File Name: 09a0367p.06

**UNITED STATES COURT OF APPEALS**

FOR THE SIXTH CIRCUIT

SCHOOL DISTRICT OF THE CITY OF PONTIAC,  
et al.,

*Plaintiffs-Appellants,*

v.

SECRETARY OF THE UNITED STATES  
DEPARTMENT OF EDUCATION,

*Defendant-Appellee.*

No. 05-2708

Decided and Filed: October 16, 2009

Before: BATCHELDER, Chief Judge; MARTIN, BOGGS, DAUGHTREY, MOORE,  
COLE, CLAY, GILMAN, GIBBONS, ROGERS, SUTTON, COOK, McKEAGUE,  
GRIFFIN, KETHLEDGE, and WHITE, Circuit Judges.

**ORDER**

This case was heard by the *en banc* court on December 10, 2008. The court, for the reasons more fully set forth in the opinions issued herewith, divided evenly, with eight judges voting to affirm the judgment of the district court and eight voting to reverse that judgment. Consequently, the judgment of the district court is AFFIRMED. *See Goodwin v. Ghee*, 330 F.3d 446 (6th Cir. 2003), and *Stupak-Thrall v. United States*, 89 F.3d 1269 (6th Cir. 1996).

IT IS SO ORDERED.

ENTERED BY ORDER OF THE COURT

/s/ Leonard Green

Clerk