

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CHASE CANTRELL; MELINDA NESTOR, by and through her Mother and Next Friend, KAREN NESTOR; CHIDIMMA UCHE, by and through her Mother and Next Friend, PAULA UCHE; JOSHUA KAY; SHELDON JOHNSON; MATTHEW COUNTRYMAN; BRYON MAXEY; RACHEL QUINN; KEVIN GAINES; DANA CHRISTENSEN; TONIESHA JONES, by and through her Guardian and Next Friend, CATHY ALFARO; SEGER WEISBERG, by and through his Father and Next Friend, MICHAEL WEISBERG; JAY ROBINSON, by and through his Father and Next Friend, MATTHEW ROBINSON; CASEY R. KASPER; SERGIO EDUARDO MUNOZ; ROSARIO CEBALLO; KATHLEEN CANNING; EDWARD KIM; and MARK C. CARTER II. by and through his Mother and Next Friend, CARC

Plaintiffs,

vs.

Case: 2:06-cv-15637
Assigned To: Lawson, David M
Referral Judge: Pepe, Steven D
Filed: 12-19-2006 At 09:46 AM
CMP CANTRELL ET AL V. GRANHOLM (JTC
)

JENNIFER GRANHOLM, in her Official Capacity
as Governor of the State of Michigan,

Defendant.

I. INTRODUCTORY STATEMENT

1. On Tuesday, November 7, 2006, Michigan voters passed Proposal 2, amending the state Constitution to “[b]an public institutions from using affirmative action programs that give preferential treatment to groups or individuals based on their race.” Proposal 2 does not ban programs that use race as part of the decision-making process in any manner whatsoever. Such a construction of the language of Proposal 2 places an unconstitutional burden on protected groups’ ability to protect their rights and would cause immediate and lasting harm.

2. Upon information and belief, the universities – University of Michigan, Michigan State University and Wayne State University – that submitted a cross-complaint in *Coalition to Defend Affirmative Action, et al. v. Granholm, et al.*, (Case No. 2:06-cv-15024, E.D.Mich.) are currently reviewing their admissions practices and policies in an effort to determine whether they need to alter those practices in light of the passage of Proposal 2. To ensure that university officials and others give Proposal 2 the proper construction, this Court must resolve the issue of what Proposal 2 does and does not prohibit so that state universities may appropriately admit their next class of students.

3. Plaintiffs, who include applicants to the University of Michigan (“University”) for its next admissions cycle, students currently attending the University, and current faculty employed by the University, seek a declaratory ruling by this Court that Proposal 2 does not bar the consideration of race as one among many factors in admissions decisions by public universities, as consistent with the Equal Protection Clause of the United States Constitution. Any other construction would single out specific categories – race, sex, color, ethnicity, and national origin – and place on actions related to those categories greater burdens than exist on government actions unrelated to race, sex, color, ethnicity, or national origin. Such disparate treatment on the basis of race, sex, color, ethnicity, or national origin is, and for nearly three decades has been, a textbook violation of Equal Protection principles.

4. As the United States Supreme Court has explained, a state law violates the Equal Protection Clause when it “mak[es] it more difficult for certain racial . . . minorities [than for other members of the community] to achieve legislation that is in their interest.” *Hunter v. Erickson*, 393 U.S. 385, 395 (1969) (invalidating referendum adopted by majority of Akron,

Ohio voters amending city charter to require popular approval of any ordinance regulating real estate transaction ‘on the basis of color, religion, national origin or ancestry’); *see also* *Washington v. Seattle School District No. 1*, 458 U.S. 457, 467 (1982) (Equal Protection Clause prohibits any law that “subtly distorts governmental processes in such a way as to place special burdens on the ability of minority groups to achieve beneficial legislation”). In *Seattle*, the Court invalidated a statewide measure that, in facially neutral fashion, had the practical effect of barring race-conscious busing to redress *de facto* segregation, while permitting busing for any other reason.

5. Construing Proposal 2 to bar any use of race by an institution of higher education would work precisely the same sort of fundamental change in the rules of political engagement that the United States Supreme Court condemned in *Seattle*. Here, just as in *Seattle*, that prior political discretion included the power to enact constitutionally permissible measures to promote racial integration and the benefits of a diverse student body. In *Grutter v. Bollinger*, 539 U.S. 306 (2003), the U.S. Supreme Court held that the consideration of race as a factor in admissions is such a constitutionally permissible measure. Moreover, as in *Seattle*, were the initiative read to proscribe this constitutionally permissible consideration of race as a factor in admissions decisions, and allow for the consideration of other factors (e.g. geography, legacy, athletic ability), it would place a “substantial and unique burden on racial minorities.” *Seattle*, 458 U.S. at 470.

6. In addition to the constitutional violations Plaintiffs raise here, the University has also raised, in a separate motion for preliminary injunctive relief in *Coalition to Defend Affirmative Action v. Granholm*, a First Amendment challenge to Proposal 2. The University’s

argument, that Proposal 2 violates the University's right to academic freedom including the freedom to admit the student body of its choosing, identifies constitutional flaws of equal significance.

7. Traditional judicial restraint principles therefore reinforce that Proposal 2 should be interpreted not to reach public university programs that consider race as one among many factors when making admissions decisions. Plaintiffs – faculty and students at the University of Michigan and prospective students/applicants to the University – bring this civil rights class action for declaratory relief, seeking a declaration that Article I, Section 26 of the Michigan Constitution, passed by the voters as Proposal 2, does not bar existing University admissions policies and practices in compliance with the Fourteenth Amendment as construed in *Grutter*. This construction of Proposal 2 is consistent with a published statement by its proponents regarding its intent, and the plain language of its text and, most importantly, it avoids serious constitutional problems that would result pursuant to an interpretation that precluded use of race altogether in a higher education admissions program or policy. By any such reading, Proposal 2 would run afoul of core Fourteenth Amendment principles.

8. In the event that this Court does not issue a declaration construing Proposal 2 to permit existing University admission policies and practices consistent with *Grutter*, Plaintiffs alternatively seek injunctive relief under the Equal Protection Clause enjoining the application of Proposal 2 to university admission programs that consider race as one among many factors.

II. JURISDICTION AND VENUE

9. This Court has jurisdiction over Plaintiffs' federal civil rights claims under 28

U.S.C. §§ 1331 and 1343 because the matters in controversy arise under the Constitution and laws of the United States and the plaintiffs and defendants are citizens of different states.

Declaratory relief is authorized under 28 U.S.C. §§ 2201 and 2202.

10. Venue is proper in this Court under 28 U.S.C. § 1391(b) because all incidents, events, and occurrences giving rise to this action occurred in the Eastern District of Michigan.

III. PARTIES

A. Plaintiffs

11. **Plaintiff Chase Cantrell** is an African American man from Detroit who is a second year student at the University of Michigan Law School. He also graduated from the University of Michigan's College of Literature, Sciences and the Arts. Mr. Cantrell has benefited, and continues to benefit, from diversity at the University of Michigan. During high school his peers were predominantly African American. At the University of Michigan he is also surrounded by, and learns from, students from around the globe and from many different racial backgrounds and experiences. During class and afterwards he has exchanged views with Latino, Asian and Arab students and has learned to understand the unique challenges they face. Likewise, on several occasions in class he felt compelled to speak out and correct misperceptions about African Americans. He believes that diversity is one of the university's greatest strengths and fears that Proposal 2, if interpreted to ban affirmative action admissions, would destroy the University of Michigan's rich learning environment.

12. **Plaintiff Melinda Nestor** is a white resident of Ann Arbor, Michigan. She is also a minor who brings this case through her mother and next friend, Karen Nestor. Melinda Nestor is currently a senior at Pioneer High School, and she has applied for admission to the University

of Michigan. She has excelled academically and she has held positions of leadership while participating in a variety of extracurricular activities. Her activities have included, among others: Amnesty International, American Civil Liberties Union, the Building Bridges social justice program, Students Educating Each other on Discrimination (SEED), and the Invisible Children (child soldiers in Uganda) program. Ms. Nestor's volunteer activities are evidence of her commitment to social and racial justice. She regards participation in an ongoing interracial dialogue about race as an indispensable aspect of her educational experience, and she refuses to attend a university that does not have an ethnically and racially diverse student and faculty population that would allow for such an exchange of views. If a diverse academic environment is not available at the University of Michigan, she will refuse to enroll.

13. **Plaintiff Chidimma Uche** is a resident of Ann Arbor, Michigan who is the daughter of a Nigerian father and a white mother. She is also a minor who brings this case through her mother and next friend, Paula Uche. Chidimma Uche is currently a senior at Pioneer High School, and she plans to apply for admission to the University of Michigan. She has excelled academically and otherwise distinguished herself in a variety of arenas. Her honors and positions of leadership include, among others: captain of the track team; two-time state track champion; All-American athletic honors; NAACP Freedom Fund Scholar; summer day camp counselor; student/athlete mentor; and assistant coach for an elementary school girl's track team. Ms. Uche regards diversity as an essential element of her educational experience because of her mixed racial heritage and her life experiences. Her early childhood years were spent in a university community that was very ethnically and racially diverse. There, she developed an in-depth knowledge of various cultures. This knowledge was enhanced by international travel. She

lived in her father's village in Nigeria. She was an exchange student in Hikone, Japan. She worked on a service project in rural Mexico, and she spent summers in her mother's maternal homes in Germany and France. Given her current and ongoing efforts to gain knowledge about different cultures from throughout the world Ms. Uche would regard an education in an environment that lacks a diverse student and faculty population as detrimental to her intellectual and social growth and development.

14. **Plaintiff Joshua Kay** is a white second year student at the University of Michigan Law School who resides in Ann Arbor, Michigan. Before attending law school, Dr. Kay was a professor in the University of Michigan's Clinical Psychology graduate program. He conducted class discussions about the long-term, consistent pattern within the psychology field to diagnose African Americans as having poorer psychological testing results and more frequent diagnoses of psychopathology than whites. Dr. Kay's students were racially diverse, and he found that they contributed to a more complete, nuanced and productive discussion about this topic than a less diverse class. This occurred because of the students' various cultural backgrounds and their capacity and willingness to examine racial bias and culture as factors that might account for the racially skewed psychological testing results and diagnoses. As a law student he has likewise participated in discussions where the experiences and insights of students of color have made a significant difference in the ability of white students to appreciate the subtle ways in which racial discrimination has become institutionalized. This was particularly true in discussions about the foster care system and the frequency of removal of children of color from the households of their families. Dr. Kay has valued these classroom discussions, and he believes his educational experience will be negatively impacted if the law school loses its diversity.

15. **Plaintiff Sheldon Johnson** is an African American resident of Columbus, Ohio. He is a junior at the University of Michigan majoring in political science and African American Studies. He is a leader on campus and currently serves as the Vice-Speaker of the Black Student Union. Mr. Johnson had considered going to a historically black college or university, but he decided to attend the University of Michigan because of its reputation for diversity. He has benefited from a diverse student body at the University of Michigan both in and out of class. Although he had never met anyone from Taiwan before coming to college, Mr. Johnson's roommate during his freshman year was Taiwanese. As a result, he became friends with numerous Taiwanese and Korean students and gained a greater understanding of their cultures and customs. Mr. Johnson believes that his political science and African American Studies classes also benefit from a diverse student body because individuals from different races and backgrounds share their varying perspectives in class. If affirmative action admissions had been abolished in Michigan when Mr. Johnson was a senior in high school, he would not have applied to the University of Michigan because he had no desire to go to a school that lacked a critical mass of students of color.

16. **Plaintiff Matthew Countryman** is an Associate Professor of History and American Culture at the University of Michigan. He is African American and resides in Ann Arbor. For the past ten years, Professor Countryman has taught a wide range of classes at the University of Michigan about race relations in the United States and about the Civil Rights Movement. It is his experience that having a racially diverse student-body is essential to the quality of the education experience in courses that address racial and ethnic themes. Without the perspective of people of color in the classroom, Professor Countryman believes that his students

will be unable to truly grasp the ongoing realities of racial inequality and stigma in American society. If diversity plummets in his classes due to Proposal 2, the quality of the learning experience will suffer. As a consequence, Professor Countryman would seriously consider leaving the University of Michigan if offered a teaching position at a more diverse university.

17. **Plaintiff Bryon Maxey** is an African American resident of Holly, Michigan. He is currently a sophomore at the University of Michigan where he majors in History and African American Studies. He is a student leader whose positions include: Second Vice-President of the University of Michigan's NAACP chapter; Political Action Co-Chair of the Black Student Union; and Minority Peer Advisor. He is also a member of the Telluride Association. A diverse university community is important to Mr. Maxey because his primary and secondary education was obtained in schools where the student body was almost completely white. He chose to attend the University of Michigan for the specific purpose of interacting with students who are of diverse ethnic and racial backgrounds, and thereby gaining a greater sense of the world and its various cultures. Mr. Maxey would not have chosen to attend the University of Michigan if he had believed that a diverse university community would not have been part of his educational experience.

18. **Plaintiff Rachel Quinn** grew up in North Carolina but has resided in San Francisco, California for the last 5 years. Her mother is white and Jewish and her father is West African. Having worked for many years as an educator with students of color, she is now in her first year of a Ph.D. program in American Culture at the University of Michigan where she is studying the social constructions of race. Ms. Quinn chose to attend the University of Michigan instead of other schools because of the institution's commitment to diversity. She believes a

racially diverse faculty and student body is critical to her education, not only because it enhances cross-cultural learning but because it is essential to creating a safe and equitable learning environment.

19. **Plaintiff Kevin Gaines** is a Professor of History and the Director of the Center for Afroamerican and African Studies (CAAS) at the University of Michigan. He is African American and he resides in Ann Arbor. Professor Gaines teaches classes on race and gender politics in U.S. history and African American studies. Professor Gaines believes that the quality of his classes and academic freedom for programs such as CAAS will be irreparably harmed if there is a drastic reduction of students of color at the University of Michigan that is comparable to that which occurred at California's flagship public universities after passage of a measure that is comparable to Proposal 2. He believes that students learn best about race and gender in diverse environments where there is input from individuals with the greatest possible variety of backgrounds.

20. **Plaintiff Dana Christensen** is a white resident of Valley City, Ohio, a small farming/suburban community with very few people of color. She is a junior at the University of Michigan majoring in political science and religious studies. She was attracted to the University of Michigan because of its diversity. She believes that she has benefited tremendously from diversity at the school. She has friends and colleagues who are people of color, and these relationships have enhanced her understanding of race and discrimination in this country. She also believes that the learning environment in class is much more vibrant due to the different perspectives of people with varying backgrounds.

21. **Plaintiff Toniesha Jones** is an African American resident of Ann Arbor, Michigan. She is a minor and brings this case through her guardian and next friend, Cathy Alfaro. Ms. Jones is currently a senior at Pioneer High School and she has applied to the University of Michigan. She is a talented, well-known slam poet, having won numerous competitions. She has performed her poetry at the Apollo Theater in New York City and several other states. Although still a high school student, she is on the Board of the Neutral Zone, a teen center in Ann Arbor dedicated to promoting artistic expression, community leadership and the exchange of ideas. She is also the Program Chair for the Neutral Zone and facilitates the Young Women of Color group. Ms. Jones understands the value of diversity at school and how critical it is to shaping the attitudes of young people in and out of class. She has seen negative racial stereotypes break down in discussions about race in high school in classes made up of diverse students. If the University of Michigan were forced to abandon affirmative action, she would most likely decline to attend the University of Michigan in favor of an out-of-state school with a diverse student body.

22. **Plaintiff Seger Weisberg** is a white high school senior from Birmingham, Michigan, a wealthy suburb of Detroit. He is 17 years old and he brings this action through his father and next friend, Michael Weisberg. Seger Weisberg attends Seaholm High School, a very well-respected public high school in Birmingham with very few students of color. According to the 2000 census, over 96.1% of the residents of Birmingham are white, 1.5% are Asian, 0.9% are black, 0.2% are of "other races" and 1.1% consider themselves as members of two or more races. Mr. Weisberg is a leader at Seaholm High School. He was a co-captain of the varsity football team and is part of the mentoring program for freshmen. He has applied to the

University of Michigan and is very much attracted to its diversity. He believes that people are more likely to develop negative stereotypes and discriminatory attitudes about people of color in non-diverse environments such as his high school. Mr. Weisberg believes that attending a racially diverse university will expose him to different perspectives and experiences that will enrich his learning experience. He also believes that it will prepare him better to succeed in an increasingly diverse society.

23. **Plaintiff Jay Robinson** is a white high school senior who resides in Ann Arbor, Michigan. He is 17 years old and he brings this action through his father and next friend, Matthew Robinson. Jay Robinson has applied to the University of Michigan in part because of its commitment to diversity. In fact, he wrote his college application essay about the importance of learning in a diverse environment. He participates in an organization called Students Educating Each Other about Diversity (SEED) in which high school students visit middle school classes in Ann Arbor to lead exercises to educate younger students about discrimination. Mr. Robinson has benefited from attending high school classes and participating in SEED meetings where there are students from different races and backgrounds. Participation in discussions in these classes and meetings has led him to not only question his previous assumptions about race, but also to change his viewpoint and increase his desire to work to advance racial justice.

24. **Plaintiff Casey R. Kasper** is a Native American resident of Dowagiac, Michigan. She is a junior at the University of Michigan's College of Literature, Arts and Sciences. She majors in political science with a focus on gender, race and ethics in American politics. Ms. Kasper is a student leader, having served as the Co-Chair of the Native American Students Association. She believes that affirmative action is necessary to enable people who have

suffered injustice to break out of the cycle of oppression and poverty in this country. She is also a strong believer in the value of learning in a diverse community. Given the precipitous decline of students of color at the flagship universities in California after the passage of Proposition 209, Ms. Kasper would not even have applied to the University of Michigan had affirmative action been banned in Michigan when she was a senior in high school. Rather, she would have sought out another school where there was a critical mass of students of color and where she would feel comfortable expressing herself.

25. **Plaintiff Sergio Eduardo Munoz** is a Latino resident of New York, New York. He is currently a second year student at the University of Michigan Law School. He chose to go to the University of Michigan Law School over other law schools due, in large part, to the University of Michigan's demonstrated commitment to diversity. Mr. Munoz learns more in a forum that presents a variety of perspectives and experiences. Further, he is reluctant to participate in class or share his life experiences with others in an environment where there is not a critical mass of people of color. Knowing of the drastic plunge in minority enrollment at UCLA Law School after Proposition 209, Mr. Munoz would likely not have accepted an offer to attend the University of Michigan Law School had affirmative action been abolished in Michigan before the offer was made.

26. **Plaintiff Rosario Ceballo** is an Associate Professor of Psychology and Women's Studies at the University of Michigan. She is Latina and resides in Ann Arbor. Professor Ceballo teaches classes on women, race, poverty and racism in the United States as well as classes in clinical psychology, such as child therapy. She believes that racial diversity is vital for the education of her students. Without diversity and the ability of students who have suffered

discrimination to share their personal experiences and perspectives, class discussions about race and poverty would be much less rich and meaningful. Racial diversity is so essential to the success of Professor Ceballo's classes that if there is a drastic reduction of the number of students of color at the University of Michigan, she believes that her ability to teach effectively would be impaired. As a result, she believes that she would become unhappy professionally and would consider an appointment at a university in another state where there is greater diversity.

27. **Plaintiff Kathleen Canning** is the Arthur F. Thurnau Professor of History, Women's Studies and German at the University of Michigan. She is white and resides in Ann Arbor. Among the courses that she teaches is a very popular class on the origins of Nazism in Germany. Each year lively discussions take place in the lecture hall and in discussion sections about how the racism perpetrated upon the Jews by the Nazis compares to other types of racism in the United States including slavery, the destruction of Native American lands and peoples, and the internment of Japanese Americans during World War II. The debate is greatly enriched by the racial and religious diversity in the classroom and the personal stories of racism and discrimination that students of different backgrounds are able to share. Professor Canning believes that without diversity in her class, the pedagogical goals of the class would greatly suffer because the discussion would be more abstract and take place largely among students who have not been victims of discrimination.

28. **Plaintiff Edward Kim** is an Asian American resident of Los Angeles, California. He is a sophomore in the University of Michigan College of Literature, Arts and Science. Mr. Kim was attracted to the University of Michigan because of its commitment to racial diversity. He turned down an offer of admission with a full scholarship at another excellent liberal arts

college because the other school lacked the racial and ethnic diversity of the University of Michigan. Mr. Kim believes that racial and ethnic diversity is vital to a college campus because it promotes cross-cultural understanding and it improves the learning environment for him and for others.

29. **Plaintiff Mark C. Carter II** is an African American resident of Detroit, Michigan. He is also a minor who brings this case through his mother and next friend, Carolyn Carter. Mr. Carter is currently a senior at Cass Technical High School, and he plans to apply for admission to the University of Michigan. He actively participates in the Wayne County Youth Council, the Student Council, Jack & Jill of America, and in school athletics. When selecting a university, diversity will be a major factor considered by Mr. Carter. Mr. Carter believes that the quality of education is considerably enhanced by a diverse university community, and he would find unacceptable a student body that lacks a critical mass of African American students. If the University of Michigan is not allowed to take measures to ensure diversity, Mr. Carter will decline to attend the University of Michigan.

DEFENDANT

30. **Defendant, Governor Jennifer Granholm**, in her Official Capacity as Governor of the State of Michigan, is legally and politically charged with defending and implementing Proposal 2.

IV. CLASS ACTION

31. This action is maintainable as a class action pursuant to Federal Rule of Civil Procedure 23(b)(2).

32. Plaintiffs represent a class of all present and future students and faculty at the University of Michigan who applied to, matriculated at, or continue to be enrolled at or employed by the University of Michigan in reliance upon the Supreme Court's ruling in the *Grutter* litigation and upon the University's representation that it would continue to admit and enroll a diverse group of students at the school. The class wants the University to continue the consideration of race as one of many factors in admissions decisions, consistent with the Fourteenth Amendment.

33. This case raises questions of law or fact that are common to the entire class. Common questions of fact include, without limitation, whether the University's admissions officers' consideration of race, ethnicity, and national origin when evaluating applications to the University constitutes action that falls within the ambit of Proposal 2. Common questions of law, applicable to all members of the class, include whether Proposal 2 affects the constitutionality of the University's existing admissions policy.

34. The plaintiff class, which includes the thousands of current and future students at the University, is so numerous that joinder of all members is impracticable.

35. Each member of the class has claims that are typical of the claims of the class. All named Plaintiffs are members of the class they seek to represent and will benefit from the declaratory judgment this action seeks.

36. The named Plaintiffs will fairly and adequately protect the interests of the class. Plaintiffs are represented by experienced counsel who will adequately represent the interests of the class.

37. Defendants have acted and refused to act on grounds generally applicable to the

class, thereby making appropriate final injunctive relief or corresponding declarative relief with respect to the class as a whole.

V. FACTUAL ALLEGATIONS

A. Proposal 2

38. On Tuesday, November 7, 2006, Michigan voters passed a constitutional amendment through a ballot referendum to amend the state Constitution. The ballot language stated:

- (1) 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.
- (2) The proposed constitutional amendment would:
- (3) 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.
- (4) 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.)
- (5) Should this proposal be adopted? Yes or no.

39. The page “Big Myths about MCRI” appearing throughout this past election on the website of the Michigan Civil Rights Initiative, principal proponents for Proposal 2, provided the

following information to Michigan voters:

- (1) Myth: MCRI 'ends all affirmative action.'
- (2) Fact: MCRI makes it unconstitutional to pick winners and losers based **solely** on race and sex

(See www.michigancivilrights.org) (emphasis added). The language of Proposal 2 accordingly states that the amendment would “[b]an public institutions from using affirmative action programs that give preferential treatment to groups or individuals **based on their race**,” not programs that use race as part of the decision-making process in any manner whatsoever.

(Emphasis added.)

40. Effective December 22, 2006, the amended language reads:

- (1) Article 1, Section 26:
- (2) Civil Rights.
- (3) 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.
- (4) 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.
- (5) 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.
- (6) 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.

- (7) 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.
- (8) 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.
- (9) 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.
- (10) This section applies only to action taken after the effective date of this section.
- (11) This section does not invalidate any court order or consent decreed that is in force as of the effective date of this section.

A. Use of Race in Higher Education Admissions Process

41. As the Supreme Court explained in *Grutter v. Bollinger*, the benefits from the use of race, not by fixed quotas or racial balancing, are substantial as relating to the core objectives of universities. Narrowly tailored admissions programs and policies utilizing race promote “cross-racial understanding, help to break down racial stereotypes and enable students to better understand persons of different races.” *Grutter*, 539 U.S. at 330. As a consequence, “classroom discussion is livelier, more spirited, ... more enlightening, and interesting’ when ... students have ‘the greatest possible variety of backgrounds.’” *Id.* Further, “numerous studies show that student body diversity promotes learning outcomes, and better prepares students for an increasingly

diverse workforce and society and better prepares them as professionals.” *Id.*

42. Moreover, as the Court also explained, “[t]hese benefits are not theoretical but real, as major businesses have made clear that the skills needed in today’s increasingly global marketplace can only be developed through exposure to widely diverse, people, cultures, ideas, and viewpoints.” *Id.* And “high-ranking retired officers and civilian leaders of the United States military assert that, ‘based on [their] decades of experience,’ a ‘highly qualified, racially diverse officer corps ... is essential to the military’s ability to fulfill its principal mission to provide national security.’” *Id.* at 331. To achieve this end, our country’s “most selective institutions must remain both [racially] diverse and selective.” *Id.*

43. The Court cited *Brown v. Board of Education*, noting that it “ha[d] long recognized that ‘education ... is the very foundation of good citizenship’ and that therefore “the diffusion of knowledge and opportunity through public institutions of higher education must be accessible to all institutions regardless of race or ethnicity.” The court further cited the affirmation by the United States that “[e]nsuring that public institutions are open and available to all segments of American society, including people of all races and ethnicities, represents a paramount government objective.” 539 U.S. at 331-32.

B. Admissions Programs and Policies at the University of Michigan

44. As stated by the President of the University, Mary Sue Coleman, and posted on the University website under “OUR ASPIRATIONS,” “Future Directions: Defining the Great Public University in the Knowledge Age,”

- (1) We personified the commitment to the principle of diversity in higher education as we defended our use of affirmative action. Now we have to turn inward to enhance our efforts in recruiting and

retaining a campus community—students, faculty, and the staff—that reflects the full diversity of our nation, and creates a campus that is truly and completely supportive of that diversity. We are not there yet.

45. Programs and policies at the University of Michigan by which applicants for enrollment are evaluated and granted or denied admissions do not violate the Fourteenth Amendment.

VI. CAUSES OF ACTION

FIRST CLAIM FOR RELIEF

(42 U.S.C. § 1983; Equal Protection Under U.S. Constitution Amend. XIV)

[All Plaintiffs against all Defendants]

46. Plaintiffs re-allege and re-plead all the allegations of the preceding paragraphs of this Complaint and incorporate them herein by reference.

47. Proposal 2 unconstitutionally burdens protected groups' ability to exercise their rights. If Proposal 2 is construed to prohibit the consideration of race as one of among many factors, then Proposal 2 would unconstitutionally place greater restrictions on the categories of race, sex, color, ethnicity, and national origin than on any other categorical group. Plaintiffs seek an injunction resolving the constitutional conflict that would arise if Proposal 2 were so construed, such that no additional burden is placed on protected groups.

SECOND CLAIM FOR RELIEF

(28 U.S.C. §§ 2201, 2202)

[All Plaintiffs against all Defendants]

48. Plaintiffs re-allege and re-plead all the allegations of the preceding paragraphs of this Complaint and incorporate them herein by reference.

49. This Court could, and should, obviate the constitutional conflict Proposal 2 creates by issuing a declaratory judgment that the University of Michigan's current admissions policy, using race among many factors to enhance student diversity as approved in *Grutter v. Bollinger*, is permissible under Proposal 2. Proposal 2, by its explicit terms, prohibits only discrimination or grants of preferential treatment "on the basis of race, sex, color, ethnicity, or national origin." Plaintiffs seek a declaration that Proposal 2 does not prohibit the consideration of race among other factors in the University of Michigan admissions policy, such that the University of Michigan may continue to admit students based on that policy – and students may continue to be admitted on that basis – after the effective date of Proposal 2.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment as stated below:

1. Injunctive relief to ensure compliance with the United States Constitution;
2. Issue a judgment declaring that the University of Michigan may continue to use race among many factors in the admissions process so as to enhance the diversity of its student body, as approved in *Grutter v. Bollinger*;
3. For costs of suit and attorneys' fees; and
4. For such other and further relief as the court may deem just, proper and appropriate.

Respectfully submitted,

Melvin Butch Hollowell, Jr.

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Dated: December 19, 2006