UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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

Plaintiffs,

Case No. 06-15024
Hon. David Lawson

vs.

JENNIFER GRANHOLM, in her official capacity as Governor of the State of Michigan, REGENTS OF THE UNIVERSITY OF MICHIGAN, BOARD OF TRUSTEES OF MICHIGAN STATE UNIVERSITY, BOARD OF GOVERNORS OF WAYNE STATE UNIVERSITY, MARY SUE COLEMAN, in her official capacity as President of the University of Michigan, LOU ANNA K. SIMON, in her official capacity as President of Michigan State University, IRVIN D. REID, in his official capacity as President of Wayne State University, MICHAEL COX, in his official capacity as Attorney General of the State of Michigan, and ERIC RUSSELL

Defendants.

And

CONSOLIDATED CASES

CHASE CANTRELL, et. al.

Plaintiffs

Case No. 06-15637

Vs.

Hon. David Lawson

JENNIFER GRANHOLM, and MICHAEL COX,

Defendants.

PLAINTIFF COALITION TO DEFEND AFFIRMATIVE ACTION ET.AL.'S (BAMN'S) SECOND AMENDED CLASS-ACTION COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

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PLAINTIFF COALITION TO DEFEND AFFIRMATIVE ACTION ET.AL.'S (BAMN'S) SECOND AMENDED CLASS-ACTION COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

Pursuant to the Federal Rules of Civil Procedure, the plaintiffs, by and through their attorneys, Scheff & Washington, P.C., state as follows:

INTRODUCTION

1. The plaintiffs assert that Proposal 2 was intended to and will result in the resegregation of the most selective universities in the State.

2. The plaintiffs further assert that Proposal 2 was intended to and will result in the maintenance of a segregated system of higher education into the indefinite future.

3. In particular, Proposal 2 will deny blacks, Latino/as and other minorities of the right to petition the governing boards or faculties of the defendant universities to maintain or adopt affirmative action plans that have been found lawful by the United States Supreme Court at the same time that every other group will have the right to petition the faculty or governing board for any change, modification or preference that it believes will further the interests of its members.

4. The creation of a separate and unequal political procedure is a violation of the Equal Protection of the laws in the most literal sense.

5. From the beginning, Proposal 2 has run roughshod over the rights of Michigan's citizens, including in particular its minority citizens.

6. As Judge Arthur Tarnow found, Proposal 2 was submitted to a vote of Michigan's electorate on the basis of signatures that its sponsors obtained by systematically defrauding voters as to the true intent of the Proposal.

7. As Judge Tarnow also found, the relevant election officials were forced to place this Proposal on the ballot despite the fact that the Michigan Civil Rights Commission, the state agency charged with enforcing civil rights, found that the fraud that the sponsors of Proposal 2 had perpetrated was systematically targeted at black and Latino/a voters.

8. In the election campaign itself, the sponsors of Proposal 2 used deceit, prejudice, and fear to mobilize a two-to-one majority of white voters in favor of the proposal. Because minority voters constituted only 17 percent of the electorate, the white majority overrode the No votes cast by 85 percent of Michigan's black, Latino/a and Native American communities.

9. If allowed to stand, Proposal 2 will exclude black and other minority students from the most selective schools in the state, will relegate them to a separate and distinctly more onerous political procedure, will exclude racial minorities from an equal role in the future leadership of the state, and will, as a result, deepen and perpetuate the segregation of a state that is already one of the most segregated in the Nation.

10. Under the Fourteenth Amendment and under the Civil Rights Acts of 1866 and 1964, the state may not use an initiative, including in particular one adopted as this one was adopted, to deepen and perpetuate segregation in its universities and in the political procedures that govern its universities.

11. The plaintiffs, who are students, applicants, and prospective applicants at the defendant universities, as well as citizens and organizations of citizens who have fought for the racial integration of those universities, assert that Proposal 2, both on its face and as applied, violates the following federal laws:

A. Proposal 2 violates the Equal Protection Clause of the Fourteenth Amendment by intentionally discriminating against racial minorities and women and by explicitly attempting to outlaw the programs that have proved essential to the effort to integrate the state's public universities by race and gender.

B. Proposal 2 further violates the Equal Protection Clause of the Fourteenth Amendment by requiring blacks, Latino/as, and Native Americans to follow a separate and distinctly unequal political procedure in order to secure the adoption of admission and other policies that will facilitate the admission and education of significant numbers of minority citizens.

C. Proposal 2 violates Title VI of the Civil Rights Act of 1964 because it imposes a standard that blocks efforts to eliminate racial discrimination in higher education and to open higher education to all races.

D. Proposal 2 violates the Equal Protection Clause of the Fourteenth Amendment by requiring women to follow a separate and distinctly unequal political procedure in order to secure the adoption of admission and other policies that will facilitate the admission and education of significant numbers of women into programs in engineering, some of the sciences, and other areas where affirmative action by gender is still needed.

E. Proposal 2 violates Title IX of the Education Amendments of 1972 because it imposes a standard that blocks efforts to eliminate gender discrimination in higher education and to open all aspects of higher education to both men and women students.

F. Proposal 2 violates the First Amendment right of the defendant universities and the First Amendment rights of the students who attend those universities by sharply

limiting the universities' ability to achieve diversity in the race, national origin and gender of its students.

12. The plaintiffs assert that both on its face and as applied Proposal 2 deprives them of rights, privileges and immunities arising under the laws of the United States in violation of 42 USC s. 1983.

13. The plaintiffs seek declaratory and injunctive relief, attorneys' fees and costs, and such further relief as is just and equitable.

JURISDICTION AND VENUE

14. This Court has jurisdiction over this matter pursuant to 28 USC s. 1331 and 28 USC s. 1343(3).

15. The United States District Court for the Eastern District of Michigan is a proper venue for this action, as a substantial part of the events or omissions giving rise to this action occurred in the Eastern District of Michigan.

PARTIES

16. The plaintiff Coalition to Defend Affirmative Action, Integration, and Immigrant Rights and Fight for Equality by Any Means Necessary (BAMN) is a voluntary unincorporated association organized for the purpose of building a new civil rights movement. BAMN's members include black, Latino/a, Native American, Asian, other minority and white students and citizens across the country. For the last 12 years, BAMN and its members have filed lawsuits, circulated petitions, sponsored teach-ins, rallies, and marches, won the passage of pro-affirmative action resolutions by student senates, faculties, universities, city councils, school boards and public officials. In 2001, BAMN successfully led the effort to have the University of California Board of Regents vote to

repeal SP-1 and SP-2, which had been the official resolutions banning the use of affirmative action in admissions, financial aid and employment at the University of California.

17. The plaintiff United for Equality and Affirmative Action Legal Defense Fund (UEAALDF) is a non-profit corporation organized to provide legal defense and education. It was established by BAMN to conduct the legal defense of our nation's civil rights.

18. The plaintiff Rainbow PUSH Coalition, led by the Reverend Jesse Jackson, is a voluntary unincorporated association organized for the purpose of defending civil rights. Rainbow PUSH was instrumental in creating and defending affirmative action programs across the country and has long been a leading spokesperson for the democratic rights of minorities and women.

19. The plaintiffs Beautie Mitchell and Christopher Sutton are black high school seniors in Detroit who are applying for admission to the defendant University of Michigan.

20. The plaintiff Stasia Brown is a black high school senior at Oak Park High School who is an applicant for admission to the defendant University of Michigan.

21. The plaintiff Josie Hyman is a black resident of Detroit and one of the few black graduates from the University of California at Berkeley in 2005. Ms. Hyman has applied to law school at the defendant Wayne State University.

22. The plaintiff Alejandra Cruz is a Latina resident of Detroit and one of the few Latino/a graduates from the University of California at Berkeley in 2006. Ms. Cruz has applied to law school at the defendant University of Michigan.

23. The plaintiffs Turquoise Wise-King and Shanae Tatum are currently black students at Henry Ford Community College and Wayne Community College, respectively, and are planning to apply to the defendant universities.

24. The plaintiffs Calvin Jevon Cochran, Lashelle Benjamin, Deneshea Richey, Michael Gibson, Laquay Johnson, Brandon Flannigan, Kahleif Henry, Kevin Smith, Kyle Smith, Paris Butler, Touissant King, Aiana Scott, Allen Vonou, Randiah Green, Brittany Jones, Courtney Drake, Matthew Griffith, Lacrissa Beverly, D'shawn Featherstone, Danielle Nelson, Julius Carter, Williams Frazier, and Dante Dixon are black high school students in Michigan who plan to apply to the defendant universities and to attend college and to work and live in Michigan in the future.

25. The plaintiffs Candice Young, Tristan Taylor, and Jerell Erves have substantial college credits and plan to apply to the graduate or professional schools of the defendant universities.

26. The plaintiff Maricruz Lopez is a Latina student at the University of Michigan and the chair of the Defend Affirmative Action Party. She plans to apply for admission to the graduate or professional programs of the defendant universities.

27. The plaintiff Issamar Camacho is a Latina high school student from Los Angeles California who intends to apply for admission at the defendant universities.

28. The plaintiff Adarene Hoag is a white graduate of the University of California at Berkeley who plans to apply to the graduate and professional schools of the defendant universities.

29. The plaintiff Joseph Henry Reed was a petition circulator for Proposal 2.

30. The plaintiffs AFSCME Local 207, AFSCME Local 214, AFSCME Local 312, AFSCME Local 836, AFSCME Local 1642, AFSCME Local 2920, are labor organizations with large minority memberships who have long fought for policies that will allow their members and the children of their members to attend the defendant universities.

31. The plaintiff Defend Affirmative Action Party (DAAP) is a voluntary unincorporated association composed of students at the University of Michigan who have run candidates for student government at the University of Michigan and engaged in other political activities in defense of affirmative action.

32. The defendant Jennifer Granholm is the Governor of Michigan and is sued in her official capacity.

33. The defendant Regents of the University of Michigan is the duly elected governing board of the University of Michigan.

34. The defendant Board of Trustees of Michigan State University is the duly elected governing board of Michigan State University.

35. The defendant Board of Governors of Wayne State University is the duly elected governing board of Wayne State University.

36. The defendant Mary Sue Coleman is the President of the University of Michigan and is sued in her official capacity.

37. The defendant Lou Anna K. Simon is the President of Michigan State University and is sued in her official capacity.

38. The defendant Irvin D. Reid is the President of Wayne State University and is sued in his official capacity.

39. The intervening defendant Michael Cox is the Attorney General of the State of Michigan and is sued in his official capacity.

CLASS ACTION

40. Pursuant to Rule 23(b)(2), the plaintiffs may maintain this action as a class action because the defendants are acting on the basis of Proposal 2, which is common to all members of the class.

41. The plaintiffs represent the following three classes or subclasses:

(A) The class of all black, Latino/a and Native American applicants to and students at any school at the University of Michigan, Michigan State University, and Wayne State University;

(B) The class of all women applicants to and students at any school at the University of Michigan, Michigan State University, and Wayne State University;

(C) The class of all black, Latino/a, and Native American citizens who want to lobby for or vote for changes in the admission and other policies of the defendant universities that benefit black, Latino/a and Native American citizens.

42. Each of the classes set forth above are so numerous that joinder is impracticable.

43. There are questions of law and fact common to the claims of the class, including the validity of Proposal 2 under federal law.

44. The claims of the black, Latino/a, and Native American students and applicants are typical of the claims of the class of such students.

45. The claims of the women students are typical of the class of such students.

46. The claims of the organizations and the individual citizens are typical of the class of citizens seeking change in admission and other policies that are beneficial to minorities.

47. The representative plaintiffs will fairly and adequately represent the interests of the class they represent.

STATEMENT OF FACTS

A. The effects of racial segregation and inequality upon the applicants to the defendant universities from primary and secondary schools.

48. Michigan is and has been for many years one of the five most racially segregated states in the Nation.

49. More than eighty-three percent of black students in Michigan's primary and secondary schools are in schools where over 50 percent of the students are black ("segregated schools"). Sixty-four percent of black students are in schools where 90 to 100 percent of the students are black ("intensely segregated schools").

50. Michigan's Latino/a, and Native American students are also largely educated in segregated or intensely segregated schools.

51. In other states, as well, black, Latino/a, and Native American students overwhelmingly attend segregated or intensely segregated schools. In fact, segregated education for Latino/a students is increasing in most sections of the Nation.

52. The plaintiff Issamar Camacho, for example, attends Roosevelt High School in Los Angeles, which is one of the largest high schools in the nation and whose students are 99 percent Latino/a.

53. Segregated schools and, even more so, intensely segregated schools have more concentrated poverty than poor white schools. There are therefore more educational challenges for black, Latino/a, and other minority than there are for poor white students.

54. However, segregated schools and, even more so, intensely segregated schools are overcrowded, under-resourced, offer less advanced placement courses, and are increasingly being deprived of music, art, athletic, and afterschool programs.

55. Almost all of the black, Latino/a and Native American plaintiffs from Michigan who apply to the defendant universities have thus attended schools that can not provide them with educational opportunities equal to those of white students, including white students from equivalent economic backgrounds.

56. Even the few black, Latino/a, and Native American students who attend integrated schools have been tracked, confronted by racially hostile environments, and otherwise deprived of the benefits of an equal elementary and secondary education.

57. As a direct and proximate result of the facts set forth in the preceding paragraphs, almost all black, Latino/a and Native American students who apply to the defendant universities have on average lower median grade point averages and less advanced placement courses than the average of the white students who apply to the same universities.

B. The effect of segregation on standardized test scores.

58. The standardized tests used by the defendant universities to measure applicants for admission—including especially the SAT and the ACT tests—both capture and magnify the educational inequality by culturally-biased questions and by discrimination in test-taking conditions, access to test preparation courses, the process for selecting questions, stereotype threat, and similar factors.

59. As a direct and proximate result of the facts set forth in the preceding paragraph, the black, Latino/a and Native American plaintiffs score, on average, lower on standardized tests than do their white counterparts.

60. The lower test scores for black, Latino/a and Native American applicants exist across all economic classes. The average test scores of high-income black and Latina/o students are lower than those of low-income white students.

C. The compounding effects of segregation and inequality on applicants for graduate and professional schools.

61. Josie Hyman, Alejandra Cruz, Maricruz Lopez and other black, Latino/a, and Native American students have overcome those difficulties by securing admission to universities, including the defendant universities.

62. Even after being admitted, however, black, Latina/o, and Native American students face disproportionate financial and other pressures at majority-white campuses.

63. With only small numbers of minority students present on those campuses, black, Latino/a, and Native American students face racial isolation and hostility and are not able to perform as well as they could if the campuses were more integrated.

64. Even when black, Latino/a and Native American students have performed outstandingly at such universities, their grades have therefore suffered due to the special pressures and discrimination they have suffered and that they have continued to suffer at the universities.

65. Like the SAT and ACT, the LSAT, GRE, MCAT and similar tests used to decide admissions into graduate and professional schools both capture and magnify the educational inequalities that black, Latino and Native American students face.

66. As a direct and proximate result of the facts set forth in the preceding paragraphs, the black, Latino/a and Native American students who apply to the graduate and professional schools of the defendant universities have lower grade point averages and test scores than the white students who apply.

D. De facto segregation at the defendant universities before affirmative action.

67. From the Michigan Constitution of 1850 forward, the faculties and administrations of the various schools and colleges in the defendant universities have had total control over the criteria for selecting applicants for admission.

68. The defendant universities have at all times maintained a formal policy of accepting applications from students of all races.

69. Before the late 1960s, however, the defendant universities had, with only a few exceptions, essentially no black students in their undergraduate, graduate, or professional schools.

70. Moreover, as applications increased, and as the universities increasingly relied on standardized test scores whose discriminatory impacts were well-known, the number of black and other minority students in the defendant universities remained at negligible levels.

71. During the decade of the 1960s, for example, the University of Michigan Law School graduated 3,032 white students and eight black students.

72. From the founding of the defendant universities until the adoption of affirmative action programs, the defendant universities excluded or essentially excluded women from many of their graduate, professional, and other schools.

E. Affirmative action desegregated the defendant universities.

73. The growth of the Civil Rights Movement and the Northern urban uprisings of the 1960s, including the Detroit rebellion in 1967, created a national political crisis which sparked debate within the universities on how to make the long-deferred promise of equality real.

74. The governing boards of the defendant universities recognized the need to take action and implemented their first affirmative action policies. The stated purpose of these policies was to give black citizens a greater role in the state's political process and more access to its institutions of learning.

75. By the late 1960s, the small number of black and Latino/a students who had been admitted to the defendant universities began organizing for greater inclusion of minority students on the campuses.

76. In 1970, a massive integrated student strike led by the Black Action Movement (BAM) resulted in a new round of debate, discussions, negotiations and finally action by the Board of Regents at the University of Michigan and by the governing boards of the other two defendant universities.

77. Because the governing boards and faculties of the defendant universities had the power to change admission policies, they were able to respond positively to some of the demands for increased minority admissions.

78. Affirmative action policies desegregated the defendant universities and, for the first time, gave minority and, in some instances, women students not only access to a university, professional or graduate education, but also to the process of shaping the educational institutions themselves.

79. The affirmative action plans differed in details, but in general they recognized the need for a critical mass of black and other minority students as part of the fundamental mission of the university. The admission system of the universities were adjusted to become less discriminatory by placing a less rigid reliance on criteria that encapsulated discrimination like grade point averages and tests, by considering the race or national origin of the student in evaluating his or her qualifications, including test scores and grades, and by placing more reliance on essays, recommendations and similar factors that were used to evaluate the abilities of the applicants, including especially the applicants from racial and national minorities.

80. From the beginning, the opponents of these plans, including many open segregationists, claimed that affirmative action policies discriminated against white people by giving alleged "preferences" to minority or women students. In reality, affirmative action programs provided only modest compensation for the overwhelming preferences to white students incorporated in the other admission criteria.

81. As a direct and proximate result of the affirmative action plans, the number of black, Latino/a, and Native American students rose dramatically at each of the defendant universities, including in the graduate and professional schools at those universities.

F. Proposition 209 attacks the desegregation of California's universities.

82. In a 1996 vote that was as racially polarized as that for Proposal 2, the white majority of California's voters overrode the opposition of black, Latino/a, Native American and Asian voters and passed Proposition 209.

83. Using the racial code word of banning "preferences," Proposition 209 had as its primary purpose the elimination of the programs that desegregated the University of California and that had resulted in a dramatic increase in the admission of black, Latino/a, Native American and women students in the University of California system.

84. As a result of Proposition 209, the enrollment of black, Latino/a and Native American students has fallen dramatically at the flagship universities in California, including, in particular at the University of California at Berkeley and the University of California at Los Angeles, and at the graduate and professional schools of the University of California as a whole.

85. Tens years of attempts to compensate for the loss of affirmative action programs have failed to reverse the huge losses in the enrollment of black, Latino/a, and Native American students.

86. The inability of the University of California to consider race in evaluating applicants' grade point averages, test scores and other admission criteria that are used by all selective public universities, has led to not only a decline in the number of underrepresented minority students, but has also led to the creation of a hostile environment for those underrepresented minority students who remain at the University of California.

87. The number of black, Latino/a, and Native American high-school and college graduates choosing to enroll at the campuses of the University of California has declined significantly.

88. Black, Latino/a and Native American students have been forced out of the flagship campuses of the University of California system and have been forced into the less selective schools in the University of California and California State systems.

89. Ten years after the passage of Proposition 209, higher education in California is becoming a two-tier and resegregated system.

90. At the same time that the Latino/a population of California is growing dramatically, blacks, Latino/as and Native Americans are thus being excluded from the schools from which the future leaders of California will be selected.

91. Political action by students, faculty and the black and Latino/a communities resulted in the Regents rescinding their 1996 ban on affirmative action in 2001.

92. Nonetheless, efforts by the administrations and faculties within the University of California system have failed to reverse the drop in the enrollment of underrepresented minority students. Proposition 209 has precluded the universities from taking any meaningful steps to stop the process of the resegregation of higher education in California and has accelerated the creation of separate and unequal K-12 education in that state.

G. Proposal 2 eliminates the desegregation programs at the defendant universities and establishes second-class political rights for black, Latino/a and Native American students.

93. In *Grutter v Bollinger*, 539 US 306 (2003), the United States Supreme Court approved the affirmative action plan at the University of Michigan Law School.

94. The University of Michigan Law School plan considered the race of applicants as a means to assure racial diversity. It specifically did not require a rigid application of grade point averages, test scores and similar criteria in admitting students

and it was designed to secure the admission of a critical mass of underrepresented minority students.

95. Immediately after the *Grutter* decision, Ward Connerly, who had sponsored Proposition 209 in California, announced a petition drive to amend the Constitution of the State of Michigan as a means to overrule the *Grutter* decision.

96. Again using the same racist code word of banning supposed "racial preferences," Connerly's proposal had as its primary objective the elimination of the affirmative action plan at the University of Michigan Law School and the elimination of all of the other plans that had desegregated the defendant universities by making possible the admission of substantial numbers of black, Latino/a or Native American students.

97. Proposal 2, as Connerly's proposal came to be known, was a word-for-word copy of Proposition 209. It specifically intended to reduce the number of black, Latino/a, and Native American students at the defendant universities and to ban any measures that could protect black, Latino/a, and Native American students from discrimination in the admissions systems at the defendant universities.

98. Proposal 2 also intended to take from women the protections against discrimination and to eliminate all programs designed to facilitate women securing admission to schools that have traditionally excluded them.

99. Proposal 2 further intended to prevent racial minorities from fighting for--and the faculties and governing boards of the defendant universities from ever again adopting--any program to secure the admission of substantial numbers of black, Latino/a, or Native American students at the defendant universities.

100. Proposal 2 departed from 150 years of precedent in Michigan by subjecting programs to integrate the universities to judicial review and by requiring proponents of plans to integrate the universities to secure a constitutional amendment before any effective plan could again be adopted.

101. As in California, the adoption of Proposal 2 in Michigan will result in a dramatic drop in the enrollment of black, Latino/a, and Native American students in the defendant universities, will prevent the defendant universities from adopting any meaningful program to halt that drop, and will lead to an increase in racial isolation and in the racial hostility against those few minority students who secure admission to the defendant universities despite the adoption of Proposal 2.

H. Conclusion.

102. As written and as applied, Proposal 2, like Proposition 209 in California, will result in the creation of a two-tier system of higher education Michigan in which the most selective undergraduate schools and almost all of the graduate and professional schools will be almost all white and in which black, Latino/a and Native American students will be forced to attend public institutions with less resources, less connections, and less possibility of providing an equal future for their students.

103. As written and as applied, Proposal 2 will prevent black, Latino/a, and Native American citizens from being an equal part of the leadership of this State.

104. As written and as applied, Proposal 2 will thus deepen the segregation of a state that is already among the most segregated in the Nation.

COUNT ONE
RACIAL AND GENDER DISCRIMINATION
IN VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT

105. The allegations set forth above are repeated as if fully set forth herein.

106. Insofar as the defendant universities are concerned, Proposal 2 has as its primary purpose the elimination of the desegregation plans that have resulted in the admission of significant numbers of black, Latino/a, and Native American students and of women students into the defendant universities.

107. Proposal 2 thus has as its primary aim reducing the admission of black, Latino, and Native American students and of women students into some programs.

108. To accomplish that unlawful purpose, Proposal 2 includes explicit racial and gender criteria in the state Constitution by providing that programs that opponents say grant "preferential treatment" to applicants on account of race, national origin, or gender are subject to judicial review and may be banned if a state court subscribes to the opponents' ideological assertion that desegregation programs discriminate against white people and grant "preferential treatment" to blacks, Latino/as, and Native Americans.

109. In sharp contrast, programs that actually grant preferential treatment on any other basis are not subject to a judicial veto--and indeed are not even subject to judicial review.

110. There is neither a compelling nor a substantial state interest that supports the racial and gender criteria in Proposal 2 or that justifies its attempt to reduce drastically the numbers of black, Latino/a, and Native American students at the defendant universities.

111. In its history, in its evident purpose, in its defiance of the state tradition of control of the universities by the governing boards, and in its adoption of explicit race and

gender classifications, Proposal 2 violates the Equal Protection Clause of the Fourteenth Amendment by intentionally discriminating against black, Latino/a, Native American and women students.

Wherefore, the plaintiffs ask this Court to grant preliminary and permanent injunctive and declaratory relief restraining the defendants from enforcing Proposal 2 insofar as it applies to the admission, education and graduation of students at the defendant universities and by ordering such further relief as is just and equitable, including the attorneys' fees and costs of this action.

COUNT TWO
RACIAL DISCRIMINATION
IN THE STRUCTURE OF GOVERNMENT

112. The allegations of the preceding paragraphs are repeated as if fully set forth herein.

113. For 150 years in the case of the University of Michigan and for over a half century in the case of Michigan State and Wayne State, every group has been able to petition the governing boards and faculties of the defendant universities for changes in the existing admission systems that would open up the university to its members.

114. For similar periods, the governing boards of the defendant universities have been able to adopt proposals that opened up the universities to a wide variety of different groups, including veterans, immigrants, working-class and poor students, the residents of particular areas of the state, and the sons and daughters of farmers. Each of these changes has changed the character of the universities.

115. As described above, underrepresented minorities and women first gained significant access to the universities by these democratic means.

116. Under the regime established by Proposal 2, however, the door will now be closed to racial and national minorities. They will no longer be able to petition the faculty, the administration, or the governing boards of the defendant universities for admission policies that will sustain or increase the number of underrepresented minorities admitted to the university.

117. Under the regime established by Proposal 2, racial and national minorities can only defend existing desegregation programs or secure the adoption of any new programs to protect them from discrimination in the admission system by mounting an extremely costly effort to amend the state constitution.

118. Even if a minority could finance such an effort, it could only be successful in the unlikely event that the racial or national minority persuaded the majority (i.e. white people) to support its proposal.

119. Racial and national minorities may not even petition the faculties and administrations to maintain or adopt affirmative action programs in admissions that are lawful under the governing decision of the United States Supreme Court.

120. Every other group, however, retains the right to petition for any lawful action that will benefit its members.

121. By eliminating an equal political means for black, Latino/a, and Native American citizens to fight for policies that will actually secure the admission of their children to the public universities of this State, Proposal 2 has denied those citizens Equal Protection of the laws, in violation of the Fourteenth Amendment to Constitution of the United States.

Wherefore, the plaintiffs ask this Court to grant preliminary and permanent injunctive and declaratory relief restraining the defendants from enforcing Proposal 2 insofar as it applies to the admission, education and graduation of students at the defendant universities and by ordering such further relief as is just and equitable, including the attorneys' fees and costs of this action.

COUNT THREE
VIOLATION OF TITLE VI
OF THE CIVIL RIGHTS ACT OF 1964

122. The allegations set forth above are repeated as if fully set forth herein.

123. The defendant universities receive massive amounts of federal aid to support students, faculties, facilities and virtually every aspect of the university.

124. In an effort to end racial and national origin segregation in public schools, colleges, universities and other public services, Congress prohibited discrimination on account of race or national origin in any program or activity that received federal financial assistance:

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

42 USC 2000d.

125. To enforce that mandate, Congress provided that each federal department and agency that extended financial assistance should issue rules, that were not effective until approved by the President of the United States, to assure that the recipients of federal assistance follow policies that are consistent with the federal mandate of non-discrimination. 42 USC 2000d-1.

126. Acting pursuant to that Congressional authorization, the Department of Education has promulgated rules that prohibit the defendant universities from utilizing criteria that have the effect of subjecting individuals to discrimination or that have the effect of substantially impairing accomplishment of the program's objectives as respects individuals of a particular race, color or national origin:

> A recipient, in determining the types of services, financial aid, or other benefits or facilities that will be provided under any such program, or the class of individuals to whom....such services, financial aid, other benefits, or facilities will be provided under any such program, may not, directly or through contractual arrangements, utilize criteria or methods of administration that have the effect of subjecting individuals to discrimination because of their race, color or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color or national origin.

34 CFR 100.3(b)(2).

127. As demonstrated by the experience in California and by the facts set forth above, Proposal 2's requirement that universities use grade point averages, test scores and similar criteria in a rigid manner without the consideration of race or national origin has resulted and will result in a devastating decline in the number of black, Latino/a and Native American students, in direct violation of the purpose of Title VI and of the specific prohibitions of the regulations that implement Title VI.

128. In requiring the defendant universities to use test scores, grade point averages and similar criteria in a manner that discriminates against minority students and grants unearned privileges to white students, Proposal 2 stands as an obstacle to the accomplishment of the purposes of Title VI of the Civil Rights Act of 1964.

129. Title VI preempts Proposal 2 under the Supremacy Clause of the Constitution of the United States.

Wherefore, the plaintiffs ask this Court to grant preliminary and permanent injunctive and declaratory relief restraining the defendants from enforcing Proposal 2 insofar as it applies to the admission, education and graduation of students at the defendant universities and by ordering such further relief as is just and equitable, including the attorneys' fees and costs of this action.

COUNT FOUR
GENDER DISCRIMINATION
IN THE STRUCTURE OF GOVERNMENT

130. The allegations set forth above are repeated as if fully set forth herein.

131. As a result of the rise of the women's movement, the defendant universities adopted affirmative action programs to facilitate the admission of women into law schools, medical schools and numerous other educational programs where women had traditionally been excluded.

132. In many areas, those programs have been successful and there is no longer a need for special affirmative action programs to facilitate the admission of women.

133. In some areas, however, including engineering and some of the sciences, gender discrimination has been so strong that affirmative action was still used and is still needed in order to secure equal access to those fields for women.

134. Under the regime established by Proposal 2, however, women may not petition the faculty and administration at the defendant universities for changes in admission policies if a state court labeled those changes a "preference."

135. Under the regime established by Proposal 2, women could only secure a meaningful change by mounting an extremely burdensome effort to amend the state constitution.

136. In requiring women to mount such a campaign to further their interests while allowing all other groups except racial minorities to further their interests by petitioning the faculty or the governing boards, Proposal 2 has denied women of Equal Protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States.

Wherefore, the plaintiffs ask this Court to grant preliminary and permanent injunctive and declaratory relief restraining the defendants from enforcing Proposal 2 insofar as it applies to the admission, education and graduation of students at the defendant universities and by ordering such further relief as is just and equitable, including the attorneys' fees and costs of this action.

COUNT FIVE
PREEMPTION BY TITLE IX
OF THE EDUCATION AMENDMENTS OF 1972

137. The allegations set forth above are repeated as if fully set forth herein.

138. With certain exceptions not here relevant, Title IX of the Education Amendments of 1972 prevented discrimination on account of sex by any recipient of federal financial assistance:

> No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance...
>
> 20 USC 1681(a).

139. Like Title VI, Title IX authorized the federal agencies disbursing financial assistance to promulgate regulations to carry out its mandate. 20 USC 1682.

140. The regulations promulgated under Title VI prohibit recipients of federal assistance from administering any test or using any criterion for admission which has the

effect of discriminating against persons on account of their sex, 34 CFR 106.21, and require in some circumstances and authorize in all circumstances special recruitment and other efforts to encourage participation of women in colleges, graduate and professional schools from which women have traditionally been excluded. 34 CFR 106.23.

141. In requiring the defendant universities to abandon any methods that offset the gender discrimination and bias in test scores, grade point averages or any similar criteria, Proposal 2 stands as an obstacle to ending discrimination on account of sex as is required by Title IX and its implementing regulations.

142. Title VI therefore preempts Proposal 2 under the Supremacy Clause of the Constitution of the United States.

Wherefore, the plaintiffs ask this Court to grant preliminary and permanent injunctive and declaratory relief restraining the defendants from enforcing Proposal 2 insofar as it applies to the admission, education and graduation of students at the defendant universities and by ordering such further relief as is just and equitable, including the attorneys' fees and costs of this action.

COUNT SIX
VIOLATION OF THE FIRST AMENDMENT

143. The allegations set forth above are repeated as if fully set forth herein.

144. In *Grutter*, the United States Supreme Court affirmed the defendant universities' First Amendment right to select their students and teaching staff and to determine their academic standards.

145. The individual plaintiffs who are students at the defendant universities are beneficiaries of these First Amendment rights because of the academic freedom and the

educational benefits of the integrated and diverse student body produced by the admission policies of the defendant universities.

146. The individual plaintiffs who are prospective students at the defendant universities are potential beneficiaries of the same First Amendment rights.

147. For the first time in the history of the State of Michigan Proposal 2 invades the First Amendment rights of the defendant universities to select their student bodies and their teaching staff in ways that the educational authorities have deemed most appropriate.

148. Moreover, Proposal 2 invades the First Amendment rights of the defendant universities in one area alone: their right to seek diversity through the admission of a critical mass of students of diverse races and national origins and from both genders.

149. In invading the First Amendment rights of the universities on those matters alone, Proposal 2 violates the First Amendment rights of the universities and of the students who attend those universities.

Wherefore, the plaintiffs ask this Court to grant preliminary and permanent injunctive and declaratory relief restraining the defendants from enforcing Proposal 2 insofar as it applies to the admission, education and graduation of students at the defendant universities and by ordering such further relief as is just and equitable, including the attorneys' fees and costs of this action.

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CERTIFICATE OF SERVICE

I hereby certify that on March 23, 2007, I electronically filed the Plaintiffs' First Amended Complaint which will automatically send notification of filing to:

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I hereby certify that on March 23, 2007, I electronically filed the Plaintiff Coalition to Defend Affirmative Action's Second Amended Class-Action Complaint with the Clerk of the Court using the ECF system which will automatically send notification of filing to:

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