

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

COALITION TO DEFEND AFFIRMATIVE ACTION, *et al.*,

Plaintiffs,

v.

JENNIFER GRANHOLM, REGENTS OF THE
UNIVERSITY OF MICHIGAN, BOARD OF
TRUSTEES OF MICHIGAN STATE UNIVERSITY,
BOARD OF GOVERNORS OF WAYNE STATE
UNIVERSITY, MICHAEL COX, ERIC RUSSELL,
and the TRUSTEES OF any other public college or
university, community college or school district,

Defendants.

Case No. 06-15024
Hon. David M. Lawson

CONSOLIDATED CASES

This filing pertains to:
Cantrell v. Granholm,
Case No. 06-15637

- and -

CHASE CANTRELL, *et al.*,

Plaintiffs,

v.

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

Defendant.

Case No. 06-15637
Hon. David M. Lawson

FIRST AMENDED COMPLAINT

I. INTRODUCTORY STATEMENT

1. Until recently, the University of Michigan's admissions policies allowed for the consideration of race among the factors it considered in making admissions decisions.

2. In 2003, such a policy was expressly approved by the United States Supreme Court in *Grutter v. Bollinger*, 539 U.S. 306 (2003). In upholding the University of Michigan Law School admissions policy that used race as one factor in admissions decisions, the Supreme Court recognized the important educational, social and political benefits of achieving a diverse student body. Following *Grutter*, the University of Michigan maintained admission policies that allowed for the consideration of race among many other factors in order to achieve diversity.

3. On Tuesday, November 7, 2006, Michigan voters passed Proposal 06-2 (“Proposal 2”), amending the Michigan Constitution to provide that public universities may not “grant preferential treatment to . . . any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation . . . of public education.” Art. I, § 26 of the Michigan Constitution. Proposal 2 took effect on December 23, 2006.

4. In response to the enactment of Proposal 2, the University of Michigan recently announced that it has changed its admissions and financial aid policies so that its “admissions and financial aid processes will not discriminate, nor grant preferential treatment to, any individual on the basis of race, sex, color, ethnicity or national origin,” apparently by altering its admissions procedures “such that race and gender will have no effect on the decision-making process” except to “recognize exceptions provided in [Proposal 2] including one for programs that receive federal funds.” Press Release, University of Michigan, Proposal 2 Next Steps (January 10, 2007) *available at* <http://www.umich.edu/pres/speeches/070110prop2.html>. On information and belief, to the extent that other public universities considered such factors in admissions prior to Proposal 2, they likely will make similar changes to their policies.

5. Plaintiffs, who are students, faculty members, and prospective students at the University of Michigan, support the admissions policies that the University of Michigan

maintained after *Grutter*. Under the reading of Proposal 2 that has apparently been implemented by the University of Michigan, Plaintiffs' only means of achieving the reimplementation of admissions policies that allow the consideration of race among many factors is now an amendment to the Michigan Constitution. Such an amendment is very difficult, time consuming, and costly to achieve. By contrast, persons seeking beneficial admissions policies based on other factors (*e.g.*, residence, legacy status, athletic ability, etc.) need only to appeal to the University admissions directors and individual schools within the University, and need not seek a constitutional amendment to obtain their goals.

6. Because of these different burdens, Proposal 2, as implemented by the University of Michigan, violates the Equal Protection clause of the Fourteenth Amendment to the United States Constitution. Proposal 2 requires those seeking the benefit of legislation related to race to overcome political obstacles that do not apply to those seeking legislation based on other personal characteristics. The Constitution does not tolerate "a political structure that treats all individuals as equals, yet more subtly distorts governmental processes in such a way as to place special burdens on the ability of minority groups to achieve beneficial legislation." *Washington v. Seattle School Dist. No. 1*, 458 U.S. 457, 467 (1982) (internal citations omitted). As the Supreme Court has held, "the state may no more disadvantage a particular group by making it more difficult to enact legislation on its behalf than it may dilute any person's vote or give any group a smaller representation than another of comparable size," *Hunter v. Erickson*, 393 U.S. 385, 392-93 (1969). Accordingly, Plaintiffs seek an injunction preventing this application of Proposal 2 to public universities such as the University of Michigan.

II. JURISDICTION AND VENUE

7. 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.

8. 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

9. Each of the Plaintiffs listed below benefited from the diversity achieved by the former admissions policies that were altered by the University of Michigan in response to Proposal 2, and each supports policies that include race as one among many factors taken into account in making admissions decisions. Plaintiffs' ability to obtain reinstatement of those former admissions policies is unconstitutionally and unequally burdened by the difficulty of seeking an amendment to the Michigan Constitution.

10. **Plaintiff Chase Cantrell** is an African-American man from Detroit, Michigan who is a second-year student at the University of Michigan Law School. Mr. Cantrell was attracted to Michigan because of its diversity, and has benefited, and continues to benefit, from that diversity. At the University of Michigan Law School he is surrounded by, and learns from, students from around the globe and from many different racial backgrounds and experiences. During and after class, he has exchanged views with a diverse collection of students and has learned to understand the unique challenges they face. He attributes much of the University of Michigan's current diversity to the former admissions policies that have been altered in response to Proposal 2.

11. **Plaintiff Melinda Nestor** is a white resident of Ann Arbor, Michigan 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 held positions of leadership while participating in a variety of extracurricular activities that demonstrate 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 believes that the University of Michigan's changes in its admissions policies in response to Proposal 2 threaten to eliminate, if not destroy, that dialogue.

12. **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. She is currently a senior at Pioneer High School, and she plans to apply for admission to the University of Michigan. Chidimma Uche regards diversity as an essential element of her educational experience because of her mixed racial heritage and her life experiences. Given her current and ongoing efforts to gain knowledge about different cultures from throughout the world, she would consider an education in an environment that lacks a diverse student and faculty population to be detrimental to her intellectual and social growth and development. She considers the University of Michigan's changes to its admission policies to be detrimental to diversity at the school.

13. **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. Dr. Kay's students were racially diverse. He found that this diversity contributed to a more complete, nuanced and productive discussion about the consistent and long-term pattern of racial

and cultural differences in psychological diagnoses and testing than occurred in less diverse classes. As a law student at Michigan, he has likewise participated in discussions in which the experiences and insights of students of color have made a significant difference in the ability of all students to appreciate the subtle ways in which racial discrimination has become institutionalized. Dr. Kay believes that his educational experience will be negatively impacted by the University of Michigan's changes to its admissions policies in response to Proposal 2.

14. **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. Mr. Johnson 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, and he believes that such diversity is threatened by the University of Michigan's changes to its admissions policies in response to Proposal 2.

15. **Plaintiff Matthew Countryman** is an Associate Professor of History and American Culture at the University of Michigan. He is an African-American resident of Ann Arbor, Michigan. 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 educational experience in courses that address race and ethnicity. 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. Because of the University of Michigan's changes to its admissions policies in response to Proposal 2, Professor Countryman would seriously consider leaving the University of Michigan if offered a teaching position at a more diverse university.

16. **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 chose to attend the University of Michigan for the specific purpose of interacting with students who are of diverse ethnic and racial backgrounds so that he might gain a greater insight into 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 be part of his educational experience, and he believes that the University of Michigan's changes to its admissions policies in response to Proposal 2 threatens diversity.

17. **Plaintiff Rachel Quinn** is 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. Having worked for many years as an educator with students of color, Ms. Quinn chose to attend the University of Michigan instead of other schools because of the institution's commitment to diversity. She believes that a racially diverse faculty and student body is critical to her education, not only because it enhances cross-cultural learning but also because it is essential to creating a safe and equitable learning environment. She believes that diversity at the University of Michigan is threatened by the changes to its admissions policies in response to Proposal 2.

18. **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 an African-American resident of Ann Arbor. 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. Professor Gaines believes that the quality of his classes and programs such as CAAS will be irreparably harmed by the University of Michigan's changes to its admissions policies in response to Proposal 2.

19. **Plaintiff Dana Christensen** is a white third-year student at the University of Michigan majoring in political science and religious studies. She grew up in Valley City, Ohio, a small farming/suburban community with very few people of color. She was attracted to the University of Michigan because of its diversity, and she believes that she has benefited tremendously from diversity at the school. She believes that all of these benefits are threatened by the University of Michigan's changes to its admissions policies in response to Proposal 2.

20. **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 currently is a senior at Pioneer High School and she has applied to the University of Michigan. She has seen negative racial stereotypes break down in discussions about race in high school classes comprised of racially and ethnically diverse students. She believes that diversity is threatened by the University of Michigan's changes to its admissions policies in response to Proposal 2, and may decline to attend if these changes remain in place.

21. **Plaintiff Seger Weisberg** is a white high school senior who resides in Birmingham, Michigan. 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 well-respected public high school in Birmingham with very few students of color. He has applied to the University of Michigan and is very much attracted to its diversity. Mr. Weisberg believes that attending a racially diverse university will expose him to different perspectives and experiences that will enrich his learning experience, and that diversity is threatened by the University of Michigan's changes to its admissions policies in response to Proposal 2.

22. **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. He has benefited from attending high school classes with students of different races and from different backgrounds. He believes that the University of Michigan's changes to its admissions policies in response to Proposal 2 threaten to eliminate diversity on campus.

23. **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 would not even have applied to the University of Michigan had the University of Michigan already made the changes described above to its admissions policies in response to Proposal 2.

24. **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 believes that he learns best in a forum in which a variety of perspectives and experiences are presented. 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. He believes that diversity is threatened by the University of Michigan's changes to its admissions policies in response to Proposal 2.

25. **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, Michigan. 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 to the education of her students. Professor Ceballo believes that racial diversity is so essential to the success of her classes that if there were a drastic reduction of the number of students of color at the University of Michigan, her ability to teach effectively would be impaired. As a result, she believes that the University of Michigan's changes to its admissions policies in response to Proposal 2 threaten her ability to teach in accordance with her professional beliefs, and she would consider leaving for an appointment at a university in another state that allows for greater diversity in its student body.

26. **Plaintiff Kathleen Canning** is the Arthur F. Thurnau Professor of History, Women's Studies and German at the University of Michigan. Debate in her courses is greatly enriched by the racial and religious diversity in the classroom and the personal stories of racism and discrimination that students from different backgrounds share. Professor Canning believes that the University of Michigan's changes to its admissions policies in response to Proposal 2 will make the discussions in her classroom more abstract, and thereby damage the learning process.

27. **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 currently is a senior at Cass Technical High School, and he plans to apply for admission to the University of Michigan. Diversity will be a major factor that Mr. Carter considers when choosing a university. 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. Mr. Carter may decline to attend the University of Michigan as a result of the University of Michigan's changes to its admissions policies in response to Proposal 2.

B. Defendants

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

29. Defendant Intervener Michael Cox, in his Official Capacity as Attorney General of the State of Michigan, who has intervened in this case pursuant to his authority under the Michigan Constitution.

IV. CLASS ACTION

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

31. 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 University's representation that it would continue to admit and enroll a diverse group of students at the school consistent with its former policies, which took race into account among other factors. Plaintiffs deeply value and seek to maintain the racial and ethnic diversity of the student body at the University of Michigan, and seek the re-implementation of the former admissions policies altered in response to Proposal 2. However, because of Proposal 2, Plaintiffs lack equal political footing with those who would seek adoption of admissions policies that include consideration of characteristics other than race or gender, such as legacy status, geographic origin, or athletic promise. Plaintiffs and the class members are substantially and uniquely burdened by Proposal 2's reservation of certain issues regarding race for modification only through a state constitutional amendment.

32. This case raises questions of law and fact that are common to the entire class. Common questions, applicable to all members of the class, include whether Proposal 2

disadvantages Plaintiffs in violation of the Equal Protection Clause by making it more difficult for them than for any other members of the university community to achieve admissions policies that are in their interest.

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

34. Each Plaintiff has claims that are typical of the claims of the class and its members. All named Plaintiffs are members of the class they seek to represent and will benefit from the relief this action seeks.

35. 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.

36. Defendants have acted and refused to act on grounds generally applicable to the class, thereby making appropriate final relief with respect to the class as a whole.

V. FACTUAL ALLEGATIONS

A. Proposal 2

37. On Tuesday, November 7, 2006, Michigan voters passed a ballot initiative to amend the state Constitution.

38. 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. Effective December 23, 2006, as a result of Proposal 2's adoption, the Michigan Constitution now reads, in relevant part:

- (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.

B. The Use of Race in Higher Education

40. Prior to the adoption of Proposal 2, the University of Michigan's admissions policies allowed for the consideration of race among many other factors when making admissions decisions.

41. As the Supreme Court found in *Grutter*, the consideration of race among many other factors in making admissions decisions is constitutionally permissible. The maintenance of a diverse student body is a compelling state interest for federal constitutional purposes because it relates to the core educational objectives of universities and contributes to the realization of those

objectives. Such policies are narrowly tailored, provided that the university considers race or ethnicity only as “one of many factors” in admissions decisions. *Grutter*, 539 U.S. at 339.

42. The Supreme Court in *Grutter* found that narrowly-tailored admissions programs and policies considering race, such as the University of Michigan Law School’s former policies, promote “‘cross-racial understanding,’ help to break down racial stereotypes ‘and enable students to better understand persons of different races.’” *Id.* 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.*

43. 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.* Moreover, “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.*

44. In *Grutter*, the Court cited *Brown v. Board of Education*, 537 U.S. 483 (1954), noting that it “ha[d] long recognized that ‘education . . . is the very foundation of good citizenship’ and therefore that “the diffusion of knowledge and opportunity through public institutions of higher education must be accessible to all individuals regardless of race or ethnicity.” 347 U.S. 483, 493. 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 (*quoting* Brief for the United States as *Amicus Curiae* Supporting Petitioner at 13, *Grutter*, 539 U.S. 306 (No. 02-241)) (internal quotation marks omitted).

45. Present and future students and faculty, and others at the University of Michigan, derive substantial benefits from the diversity provided by the University of Michigan’s former admissions policies in all of the ways recognized by the Supreme Court, and in many other ways.

46. Although some controversy remains as to the full scope and effect of Proposal 2, the University of Michigan has responded to its passage by changing its admissions policies “such that race and gender will have no effect on the decision-making process” (as more fully described in ¶ 4 above). Press Release, University of Michigan, Proposal 2 Next Steps (January 10, 2007) *available at* <http://www.umich.edu/pres/speeches/070110prop2.html>.

C. Political Burdens Under Proposal 2

47. Article 8, Section 5 of the Michigan Constitution vests the Regents of the University of Michigan, the Board of Trustees of Michigan State University and the Board of Governors of Wayne State University with general supervisory power over the University of Michigan, Michigan State University and Wayne State University, respectively. This power includes the authority to determine the standards for admission to each university.

48. Prior to Proposal 2, the University of Michigan’s admissions policies allowed for the consideration of a wide variety of applicant characteristics in making university admissions decisions, including, but not limited to, geographic origin, socio-economic background, alumni or legacy status, high school quality, athletic participation, artistic talent, participation in extra-curricular activities, race, and gender.

49. The Regents of the University of Michigan in turn delegate their authority to the President of the University of Michigan, who in turn delegates her authority to the individual schools and colleges to determine their own admissions policies.

50. Since the University of Michigan changed its policies in response to Proposal 2, the University has announced that it has continued to consider many characteristics in making admissions decisions, except that “race and gender will have no effect on the decision-making process.”

51. Any individual or group who believes that the University of Michigan should amend its admissions policies to benefit applicants with characteristics other than race or gender, or to weigh differently one or more characteristics other than race or gender, may seek a change in the admissions policies by appealing to the individual colleges or schools, in whom decision-making authority has been vested by the Board of Regents and the President of the University. This avenue is foreclosed, however, to those seeking beneficial admissions policies that include consideration of race or gender in the decision-making process.

52. Instead, those who, like Plaintiffs, benefited from the diversity that was achieved by the University’s former admissions policies face a substantially more burdensome political process than do all other political participants seeking to secure the benefits of the University’s decision-making process. Instead of being able to go directly to the individual colleges and schools, their sole means of achieving beneficial admissions policies that include consideration of race is to seek a state constitutional amendment through a voter ballot initiative.

53. The Michigan voter initiative process is lengthy, complex, difficult and expensive. Article 2, Section 9 of the Michigan Constitution requires that the sponsor of a voter initiative gather signatures from registered voters totaling “not less than eight percent . . . of the

total vote cast for all candidates for governor at the last preceding general election” to secure access to the state ballot. The Secretary of State has determined that, in the next state election, this amounts to more than 390,000 signatures. The costs of accomplishing this task alone can be in the hundreds of thousands of dollars.

54. If the initiative sponsor is successful in gathering the required signatures, the initiative will appear on the state ballot and the sponsor must attempt to secure the support of the majority of the participating voters in the next election. The costs of securing this support may be equal to or greater than that of qualifying for the ballot.

55. Taken together, this initiative process places a significantly heavier burden on those seeking certain types of beneficial legislation that include consideration of race than on those seeking the same type of legislation that allows for the consideration of other characteristics.

56. Placing this sort of unique and substantial burden on the ability of particular minority groups to achieve legislative or administrative action that is in their interests is—and for more than three decades has been—a textbook violation of Equal Protection principles.

D. The *Hunter/Seattle* Doctrine

57. As the United States Supreme Court has explained, a state law violates the Equal Protection Clause when it “disadvantage(s) any particular group by making it more difficult to enact legislation in its behalf.” *See Hunter v. Erickson*, 393 U.S. 385, 393 (1969) (invalidating statute adopted by majority of Akron, Ohio voters amending the city charter to require popular approval of any ordinance regulating real estate transactions “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” (emphasis added)). In *Seattle*, the Court invalidated a statewide measure that, while facially neutral, had the practical effect of barring busing to redress *de facto* racial segregation while permitting busing for any other reason.

58. Proposal 2 effects precisely the same type of distortion of the political process that the Supreme Court condemned in *Hunter* and *Seattle*. By creating a political process that sets aside race, among other categories, for consideration “at a new and remote level of government,” *Seattle*, 458 U.S. at 483, Proposal 2 imposes a “substantial and unique burden on racial minorities.” *Id.* at 470.

CLAIM FOR RELIEF

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

All Plaintiffs Against All Defendants

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

60. Proposal 2 is unconstitutional because it places a substantial and unique burden on racial minorities who seek legislation on their behalf. As a result, groups seeking beneficial legislation including consideration of race face a completely different and much more onerous political process than do those seeking beneficial legislation based on other characteristics.

61. Plaintiffs seek to enjoin the application of Proposal 2.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment as stated below:

1. For injunctive relief to ensure compliance with the United States Constitution;
2. For costs of suit and attorneys’ fees; and
3. For such other and further relief as the court may deem just, proper and appropriate.

Respectfully submitted,

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Attorneys for Plaintiffs Chase Cantrell *et al.*
Dated: January 17, 2007

CERTIFICATE OF SERVICE

I hereby certify that on January 17, 2007, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notifications of such filing of the following document: First Amended Complaint, to:

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