No. 06A678

IN THE SUPREME COURT OF THE UNITED STATES

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

Petitioners,

v.

JENNIFER GRANHOLM, as Governor of the State of Michigan, the REGENTS OF THE UNIVERSITY OF MICHIGAN, the BOARD OF TRUSTEES OF MICHIGAN STATE UNIVERSITY, the BOARD OF GOVERNORS OF WAYNE STATE UNIVERSITY,

-and-

MIKE COX, in his capacity as Attorney General of Michigan, and ERIC RUSSELL,

Respondents,

PETITIONERS' REPLY BRIEF IN SUPPORT OF THEIR MOTION TO DISSOLVE THE STAY ENTERED BY THE SIXTH CIRCUIT AND TO REINSTATE THE TEMPORARY INJUNCTION ENTERED BY THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

To the Honorable John Paul Stevens, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Sixth Circuit

George B. Washington*
Shanta Driver
SCHEFF & WASHINGTON, P.C.
Attorneys for the Petitioners
645 Griswold—Ste 1817
Detroit, Michigan 48226
(313) 963-1921

TABLE OF CONTENTS

INDEX OF AUTHORITIES ii

INTRODUCTION 1

I. THERE IS A HIGH PROBABILITY THAT THIS COURT WILL REVIEW AND REVERSE THE DECISION OF THE SIXTH CIRCUIT BECAUSE IT CLEARLY AND OBVIOUSLY PROVIDES A MORE ONEROUS PROCEDURE THAT MINORITIES AND WOMEN--AND ONLY THOSE GROUPS--MUST FOLLOW IN ORDER TO SECURE CHANGE IN GOVERNMENT POLICY THAT IS IN THEIR INTEREST. 5

II. THERE IS A HIGH PROBABILITY THAT THIS COURT WILL REVIEW AND REVERSE THE DECISION OF THE SIXTH CIRCUIT BECAUSE THIS CASE WILL PRESENT THE FUNDAMENTAL ISSUES AT STAKE CLEARLY AND UNEQUIVOCALLY. 7

III. THE COURT'S DENIAL OF THE WRIT IN *COAL. FOR ECONOMIC EQUITY V WILSON* DOES NOT DETERMINE WHETHER IT WILL GRANT THE WRIT IN THIS CASE. STATEMENT OF FACTS. 9

IV. IN THE ABSENCE OF A STAY, THE UNIVERSITIES AND BLACK, LATINO/A, AND NATIVE AMERICAN STUDENTS WOULD SUFFER IRREPARABLE HARM THAT FAR EXCEEDS THAT TO THE PLAINTIFF. 11

INDEX OF AUTHORITIES

Cases

Ashcroft v. American Civil Liberties Union, 542 U.S. 656 (2004) 8

Certain Named and Unnamed Non-Citizen Children and Their Parents v. Texas, 448 U.S. 1327, 1330 (1980) (Powell, in chambers) 8

Coal. for Economic Equity v Wilson, 122 F. 3d 692 (9th Cir. 1997), *cert. den.* 522 U.S. 963 (1997) 4, 9

Coleman v PACCAR, Inc., 424 U.S. 1301 (1976)(Rehnquist, J., in chambers) 7, 8

Gonzales v. O Centro Espirita Beneficente Uniao Do, 546 U.S. 418 (2006) 8

Grutter v Bollinger, 539 U.S. 306 (2003) 2, 10,11

Holtzman v. Schlesinger, 414 U.S. 1304 (1973)(Marshall, J, in chambers) 8

Hopwood v Texas, 78 F. 3d 932 (5th Cir. 1996), *cert. den.* 518 U.S. 1033 (1996) 10

Hunter v. Erickson, 393 U.S. 385 (1969) 3,4,5,6,7,10,11

Meredith v. Fair, 83 S.Ct. 10, 9 L.Ed.2d 43 (1962)(Black, J, in chambers) 8

O'Connor v Bd. of Educ., 449 U.S. 1301 (1980)(Stevens, J, in chambers) 8

Romer v Evans, 517 U.S. 620 (1996) 2,4,6,11

Schlesinger v. Holtzman, 414 U.S. 1321 (1973)(Douglas, J, in chambers) 8

W. Airlines v. Int'l Brotherhood of Teamsters, 480 U.S. 1301, 1305 (1987) (O'Connor, in chambers) 8

Washington v Seattle School District No. 1, 458 U.S. 457 (1982) 2,4,6,11

Other authorities

Eryn Hadley, Comment, "Did the Sky Really Fall? Ten Years After California's Proposition 209," 20 BYU J. Pub. L. 103 (2005). 13

INTRODUCTION

The issues at stake in this case go to the heart of the promise of equality and democracy guaranteed by the Fourteenth Amendment. Since the Civil War two issues – equal participation in the democratic process and the right to equal educational opportunity -- have served as the bell weather in determining if black, Latino/a and other minority people, and women are treated as equal citizens in this society.

The immediate implementation of Proposal 2 threatens to eviscerate these fundamental rights. It threatens to create a new legal structure in which black, Latino/a, and other minority people will be deprived of the protections of the Fourteenth Amendment depending upon the state in which they reside. The unity of the nation is at issue, the revival of Jim Crow and state's rights is at our doorstep.

Michigan's Proposal 2 will drive black, Latino/a, and Native American students out of the State's most prestigious universities. Moreover, it will permanently deprive minority students and citizens alone of the right to petition the governing boards of the universities for changes in admissions and other academic policies.

If the effects of this Proposal were confined to Michigan alone, this case would present issues that demanded review by this Court. But because the proponents of this Proposal have vowed to put it on the 2008 ballot in numerous other states, the demands for review are even more urgent.

In California and Washington, millions of black and Latino/a citizens have already lost the right to participate in the political process on an equal footing and tens of thousands of Latino/a, black, and other minority youth have lost the right to attend their leading public universities.

In December 2006, the plaintiffs, the Governor, the Attorney General, and the elected governing boards of the University of Michigan, Michigan State, and Wayne State recognized the general havoc that Proposal 2 would wreak if the universities were forced to implement it in the middle of an admissions cycle. In addition, the universities recognized that implementing new admissions systems before the legal challenges were even addressed, and before the universities had time to devise any alternative system for admissions would lead to only one outcome: the exclusion of black, Latino, native American and women students and the creation of an unfair and unequal admissions system.

Recognizing all this, the parties negotiated an agreement to defer the effective date of Proposal 2 until July 1, 2007, insofar as it applied to the admissions and financial policies of the defendant universities. Despite the obvious impossibility of implementing Proposal 2 in December 2006, the Sixth Circuit set aside that agreement and order at the request of a single individual.

The opponents of the stay now suggest that the universities simply delete the consideration of race and gender. But the current admissions systems were carefully designed in accordance with this Court's decision in *Grutter v Bollinger*, 539 U.S. 306 (2003). They have been utilized by the University of Michigan and specific schools of the other universities and they rely on the individual consideration of each applicant.

But ignoring the race and gender of black, Latino, Native American, and women applicants would lead to a process in which the individual identities of those students could not be considered. In this society, race and gender are central facts of everyone's

identity. Underrepresented minority and women applicants are entitled to individual consideration in an admissions system that is carefully formed to be fair and equal.

In the briefs that they filed in support of the motion for a stay, the three universities and the Governor have detailed the devastating harm that the Sixth Circuit's decision has created and will create in the admissions and financial aid systems at the universities and, more importantly, in the life of every student who has applied or who will apply for admission to the defendant universities as of fall 2007.

For reasons that he does not explain, Michigan's Attorney General has abandoned the defense of the agreement that he signed. But the brief that he filed, the brief of the intervenor Eric Russell, and the brief of the amici Michigan Civil Rights Initiative do not dispute *any element of the irreparable harm that will be caused to the universities, to the applicants, and, in particular, to the minority applicants by the Sixth Circuit's order.* According to them, those are merely costs that others must bear in the war to end "preferences."

Fundamentally, the opponents of the stay also do not dispute the evident fact that Proposal 2 creates a distinctly more onerous procedure that racial minorities and women--*and only those groups*--must follow in order to secure policies that are in their interest. Nor do they dispute that this Court has directly held that separate and unequal political procedures violate the Equal Protection Clause. See *Hunter v. Erickson*, 393 U.S. 385 (1969); *Washington v Seattle School District No. 1*, 458 U.S. 457 (1982); and *Romer v Evans*, 517 U.S. 620 (1996). As with their arguments on harm, the opponents argue that the drastic departure from established precedent is justified by the war on "preferences" that they are waging.

Finally, the opponents of the stay do not dispute the fact that blacks, Latino/as and Native Americans do not enjoy a "preference" in their overall ability to gain access to the defendant universities. Nor do the opponents of the stay offer a definition for the "preferences" they seek to abolish.[1] Nor, finally, do the opponents even bother to respond to a central argument of the petitioners' motion--that a majority may not deny a minority of its rights simply by affixing the label "preferences" to the lawful demands of the minority.

Without responding to any of the arguments actually raised by the petitioners, the opponents of the stay simply repeat their mantra that *Hunter*, *Seattle School District* and *Romer* do not apply because they and the judges on the Sixth Circuit panel have labeled the demands of the minority as "preferences." There is little new in this argument, and the petitioners respond to it briefly because a brief response is all that it deserves.

Beyond that argument, the opponents assert that this Court should deny the stay for three primary reasons:

(1) this Court is unlikely to grant certiorari in this case because it purportedly provides a "poor vehicle" for deciding the fundamental issues at stake;

(2) this Court is further unlikely to grant certiorari in this case because it denied the writ in *Coal. for Economic Equity v Wilson*, 122 F. 3d 692 (9th Cir. 1997), *cert. den.* 522 U.S. 963 (1997); and

(3) the irreparable harm is, in any event, purportedly equally balanced.

As is set forth below, none of these objections has any merit whatever.

---

[1] In particular, "preferences" must mean that in some way the universities depart from a neutral standard. But the opponents of the stay have never stated what that neutral standard is. By default, they claim that it is test scores and grade point averages and other supposed measures of educational achievement. But almost everyone recognizes that those standards are permeated with multiple layers of discrimination, including above all racial discrimination.

I

THERE IS A HIGH PROBABILITY THAT THIS COURT WILL REVIEW AND REVERSE THE DECISION OF THE SIXTH CIRCUIT BECAUSE IT CLEARLY AND OBVIOUSLY PROVIDES A MORE ONEROUS PROCEDURE THAT MINORITIES AND WOMEN--AND ONLY THOSE GROUPS--MUST FOLLOW IN ORDER TO SECURE CHANGE IN GOVERNMENT POLICY THAT IS IN THEIR INTEREST.

In their initial motion, the petitioners assert that Proposal 2 has created a distinctly more onerous political procedure that racial minorities and women--*and only those groups*--must follow if they are to secure changes in the admission programs at the defendant universities.

Apart from quibbling that the governing boards and a referendum are determined at the state level (Russell Br, pp. 16-17), the opponents do not dispute the *fact* that Proposal 2 imposes *distinct* and *onerous* political burdens on minorities--and on minorities alone.[2] As they essentially concede, minorities and women alone may not approach the Regents, the Trustees, or the Board of Governors for any change that may be called a "preference." The demands of racial minorities and of women alone are subject to review by state trial courts. And alone among the groups who seek changes, minorities and women must not only elect new Regents, but must wage a statewide campaign to amend the Constitution in order to secure changes that either are or may be labeled as "preferences" by the majority.

In attempting to defend this transparently discriminatory law, Russell begins his brief by stressing the supposedly "overwhelmingly" majority of the electorate that voted in favor of Proposal 2 (Russell Br, p. 1). But Russell fails even to acknowledge the racial

[2] Neither Russell nor the MCRI have the temerity to attempt to defend the Sixth Circuit panel's claim that *Hunter* does not apply because the sum total of the persons whose rights are abridged by Proposal 2 constitute a majority of the State's population.

polarization in that vote. The two thirds of white voters who cast "Yes" votes were able to override the 85 percent of black voters who cast "No" votes because there are far more white voters in Michigan than there are black voters. Russell fails to recognize that a racial minority has political rights because he wants to believe that there is no such thing as a racial minority.

As the Cantrell *amici* suggested, in its vote for Proposal 2, the majority not only closed the door to future efforts by the minority to secure change--it did everything it could to nail the door shut so that the minority could never again seek admissions policies that have resulted in the admission of significant numbers of black, Latino/a and Native American students into the most selective universities in the State (Cantrell Br., pp. 10, 14). Moreover, as Cantrell amici have also aptly stated, the attempt to decree separate procedures for adopting the demands that are at the heart of this litigation are particularly inappropriate given that this Court has determined that those demands are not only lawful, but that they further a compelling state interest (Cantrell Br, p. 12, citing *.Grutter, supra.).*

The issue at stake boils down to simple question. If affixing the label "preferences" is sufficient to override a minority's right to access to equal political procedures in its fight for lawful demands that further its interests, then there is nothing left of the protection of minority rights established by *Hunter*, *Seattle School District*, and *Romer*. The petitioners are confident that this Court would not let such important and long-standing principles be abolished in silence--especially given Mr. Connerly's plan to place proposals essentially identical to Michigan's Proposal 2 are placed before the electorate in numerous other states.

II

THERE IS A HIGH PROBABILITY THAT THIS COURT WILL REVIEW AND REVERSE THE DECISION OF THE SIXTH CIRCUIT BECAUSE THIS CASE WILL PRESENT THE FUNDAMENTAL ISSUES AT STAKE CLEARLY AND UNEQUIVOCALLY.

Russell implicitly recognizes the fundamental nature of the issues at stake by beginning his brief with assertions that the petitioners have failed to "identify an appropriate vehicle for reviewing those claims" (Russell Br, p. 1). In support of that claim, Russell asserts that the injunction was not entered on the plaintiffs' claims and that there is no likelihood that the Court will review the decision of the Sixth Circuit in the current procedural posture of the case (Russell Br, p. 9).

But the Sixth Circuit panel itself recognized the fundamental fallacy of Russell's first argument. It is true that the Universities filed the initial motion for a stay. But before any party answered that motion, the parties negotiated and agreed upon an interim order. As vehemently as the petitioners disagree with the result reached by the Sixth Circuit panel, that panel correctly recognized that where there the parties *agreed* to an order, all parties recognized and took account of all of the issues at stake in the litigation. In assessing whether the District Court properly entered that consent order, the panel thus reviewed all of the issues, *including* what the universities have called "the difficult and serious federal constitutional issues raised by this case" (Univ. Br., p. 9).[3]

Russell's other reason for asserting that this case provides a "poor vehicle" for deciding the constitutional issues at stake is similarly weak. As Justice Rehnquist recognized in *PACCAR*, the question is *not* whether the constitutional issue is ripe for

[3] In fact, Russell successfully urged the Sixth Circuit panel to adopt *his* view of the *Hunter* issues. Having won on that issue, Russell is in a poor position indeed to say that this Court can not review the panel's decision on those same issues.

review by this Court *at the time of the motion for a stay.* The question is whether that issue is likely to be reviewed by this Court upon a "final disposition in the Court of Appeals:"

> ...[A] Circuit Justice has jurisdiction to vacate a stay where it appears that the rights of the parties to a case pending in the court of appeals, w*hich case could and very likely would be reviewed here upon final disposition in the court of appeals*, may be seriously and irreparably injured by the stay, and the Circuit Justice is of the opinion that the court of appeals is demonstrably wrong in its application of accepted standards in deciding to issue the stay. A narrower rule would leave the party without any practicable remedy for an interlocutory order of a court of appeals which was ex hypothesi both wrong and irreparably damaging; [footnote omitted] a broader rule would permit a single Justice of this Court to simply second-guess a three-judge panel of the court of appeals in the application of principles with respect to which there was no dispute.
>
> *Coleman v PACCAR, Inc.*, 424 U.S. 1301, 1303-1304 (1976)(Rehnquist, J., in chambers)(emphasis added), citing *Schlesinger v. Holtzman*, 414 U.S. 1321 (1973)(Douglas, J, in chambers); *Holtzman v. Schlesinger*, 414 U.S. 1304 (1973)(Marshall, J, in chambers); *Meredith v. Fair,* 83 S.Ct. 10, 9 L.Ed.2d 43 (1962)(Black, J, in chambers).

Numerous other Circuit Justices have followed the holding in *PACCAR. Certain Named and Unnamed Non-Citizen Children and Their Parents v. Texas,* 448 U.S. 1327, 1330 (1980) (Powell, in chambers); *W. Airlines v. Int'l Brotherhood of Teamsters*, 480 U.S. 1301, 1305 (1987)(O'Connor, in chambers) (citing Paccar); *O'Connor v Bd. of Educ.*, 449 U.S. 1301 (1980)(Stevens, J, in chambers).

The Sixth Circuit now has before it the substantive appeal on the preliminary injunction. On numerous occasions, this Court has granted the writ in precisely that posture. *Gonzales v. O Centro Espirita Beneficente Uniao Do,* 546 U.S. 418 (2006); *Ashcroft v. American Civil Liberties Union,* 542 U.S. 656 (2004). The Sixth Circuit's final disposition of the issues now before it will thus provide a clear vehicle for resolving the fundamental constitutional and statutory issues at stake.

Moreover, as in *PACCAR,* where some issues were on remand to the Secretary of Transportation, before the final disposition by the Court of Appeals on the appeal of the preliminary injunction, that Court will in all likelihood have before it the final decision on the merits by a District Court that has vowed to expedite this case in order to facilitate expeditious appeals.

Russell's claim that this case presents a "poor vehicle" for determining the fundamental issues at stake is an argument of convenience. This case presents fundamental issues now--and will present even more fundamental issues on final disposition of the proceedings in the Sixth Circuit.

III

THE COURT'S DENIAL OF THE WRIT IN *COAL. FOR ECONOMIC EQUITY V WILSON* DOES NOT DETERMINE WHETHER IT WILL GRANT THE WRIT IN THIS CASE.

Russell asserts that this Court's decision ten years ago to deny the writ in *Coalition for Economic Equity v Wilson* means that there is no reason that the Court will "chart a different course here" (Russell Br, p. 3).

But for two reasons, that is clearly untrue.

First, unlike in 1996, when California adopted Proposition 209, the devastating consequences of this measure are now abundantly clear. After ten years, it is clear that this Proposal will drive black, Latino/a and Native American students out of the most selective public universities in the state.

Second, unlike in 1996, this Court has now decided *Grutter.* At the time that this Court denied the writ in *Coalition for Economic Equity*, there was considerable question whether affirmative action policies at public universities were lawful under *any*

circumstances. See, e.g., *Hopwood v Texas*, 78 F. 3d 932 (5th Cir. 1996), *cert den* 518 U.S. 1033 (1996). In those circumstances, it could be argued that it made little sense to determine whether minorities were entitled to equal rights in fighting for policies that might in themselves be unlawful to begin with.

That concern is no longer present. Not by a "bare majority," as Russell would have it, but by a vote of six to three, this Court found that universities could take race into account in order to achieve a diverse and racially-integrated class. *Grutter*, *supra*. Unlike in 1997, this Court can now determine the *Hunter* issues in the context of the decision that says that demands for affirmative action in higher education are not only lawful but further a compelling social interest sufficient to withstand strict scrutiny by this Court.

In two other ways, *Grutter* makes it far more likely that this Court would grant the writ now even though it did not in 1997.

First, in *Grutter*, the Court held that the universities had a right grounded in the First Amendment that required that their admission decisions be afforded a distinct deference by the lower federal and state courts. Proposal 2--by empowering every trial judge to determine what was a "preference" based on race or gender--would totally destroy that policy.

Second, in *Grutter*, the Court urged universities to experiment with various admission systems to determine what worked best in the complex social reality of racial relations in the United States. Id. Proposal 2, however, destroys experimentation, for it subjects any experiment that can be called a "preference" to a lawsuit under state law.

Grutter was a seminal decision by this Court. Now that Mr. Connerly has spread his proposals beyond the Ninth Circuit, the petitioners submit that this Court will grant the writ in order to determine whether *Grutter* can be repealed piece-by-piece by procedures that fail to comply with the requirement for equality set forth in *Hunter*, *Seattle School District* and *Romer*.

IV.

IN THE ABSENCE OF A STAY, THE UNIVERSITIES AND BLACK, LATINO/A, AND NATIVE AMERICAN STUDENTS WOULD SUFFER IRREPARABLE HARM THAT FAR EXCEEDS THAT TO THE PLAINTIFF.

The Universities and the Governor have set forth the irreparable harm that will accrue to the institutions and to all applicants to those universities. As their briefs and affidavits state, to change the admissions systems in hundreds of different programs at mid-stream is to create chaos. It will inevitably create lasting harm to students whose applications were accepted or rejected simply because they applied at a different time or, even worse, because their schools or a testing service sent the relevant documents to the universities at a different time.

There is, however, a special and greater harm to black, Latino/a, and Native American applicants. In her affidavit, the Provost of the University of Michigan has candidly stated that the University has reviewed its admissions policies many times, but that it has yet to identify any means other than the explicit consideration of "race, ethnicity, or gender...to achieve its compelling interest in diversity" (Pet. Mot., Ex. D, Aff. of Sullivan, para. 20). That is, the Provost has stated under oath that based on the University's current information, that there will be many fewer black, Latino/a, and

Native American students if Proposal 2 is actually implemented at the University of Michigan.

Of even greater relevance to the request for a stay, the Provost states that whatever might be done to mitigate this disastrous effect can not be accomplished if the University has to change its policies at breakneck speed in the middle of an admission cycle:

> Given the complex nature of this undertaking [devising a new admissions system] and the experiences of those states that have banned public affirmative action through initiatives similar to Proposal 2, it is not possible for the University, by December 23rd, to craft new policies and procedures that will promote the University's recognized compelling interest in diversity--in the context of the particular educational mission, goals, and circumstances of each of the 130 units that makes admissions decisions--let alone to adequately educate its prospective students, parents, and high school counselors about the new guidelines, or to train its faculty and staff regarding implementation of those new policies and procedures by that date.
>
> (Pet. Mot., Ex. D, Aff. of Sullivan, para. 23).

That is, the entering classes of fall 2007 will have even less black, Latino/a and Native American students than they would have had in any event under Proposal 2 because the University has been forced to adopt a new system with no time to assess, much less implement, any measures to mitigate the devastating effects of that Proposal.

The Affidavit of Kim Wilcox, the Provost at Michigan State, sets forth analogous harm to minority students at that school. As she states, Michigan State's admissions systems do not explicitly consider the race, national origin or gender of applicants. But corporations and individuals have given gifts to Michigan State that are explicitly tied to those factors. Michigan State has simply not had the time to review its contracts, to renegotiate contracts where necessary, and to seek guidance from the probate courts where the donor is deceased or can not be located. The result:

> [The immediate] implementation of Proposal 2 would pose a hardship on the incoming students who may not be able to attend MSU without aid, as well as [on] students in the middle of their academic careers who are counting on these scholarship awards to complete them.
>
> (Pet. Mot., Ex. D, Aff of Wilcox, para. 11).

Despite the fact that the only evidence before it supported the catastrophic harm described above, the Sixth Circuit granted the stay purportedly because there was equal harm if the stay were not granted. But the only person who objected to the consent order was Mr. Russell. All we know about Mr. Russell, however, is that he is a white man who has applied to the Law School at the University of Michigan. Whether he would be admitted under any system is not known. Nor is it known whether he would be rejected under any system. In short, it is not known whether he will suffer *any* harm at all.

Yet on the basis of what is purely speculative harm to one person, the Sixth Circuit has decreed that the universities must implement Proposal 2 at a speed that *guarantees* that the maximum number of black, Latino/a and Native American applicants are excluded from the classes that enter in 2007.

On the surface, the opponents of the stay are oblivious to the terrible consequences that the forced implementation will cause to minority students. Beneath the surface, however, they assert that that harm is actually desirable.

On the sole basis of a comment by second-year law student who worked for the attorneys for the MCRI,[4] the MCRI assures the Court that black, Latino/a and Native American students are actually better off after Proposition 209 because they now attend Riverside, Santa Cruz and San Diego rather than UCLA and Berkeley (MCRI amicus, p. 9-10). Given the determined fight that black students have waged from James Meredith

[4] See Eryn Hadley, Comment, Did the Sky Really Fall? Ten Years After California's Proposition 209, 20 BYU J. Pub. L. 103 (2005).

forward to attend the best universities in every state, few black or Latino/a students or citizens have anything but contempt for that argument.

That determined opposition is what links together the two attacks that are joined in Proposal 2. The proponents of that Proposal know that they can not drive large numbers of black, Latino/a, and Native American students out of the most selective universities unless they deprive those students and their parents of the right to fight to defend their interests through normal democratic channels.

After all the progress that has been made, black and minority students in Michigan will not accept the return of a separate and unequal system of higher education. Especially when one recalls the tumultuous events that led universities to adopt affirmative action policies in the late 1960s, it is even more clearly important that this Court take up the fundamental issues at stake in this case.

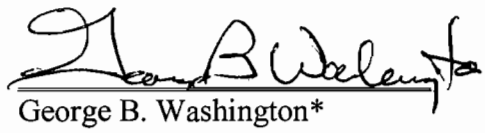
If minorities do not have the right to fight for admissions policies through normal democratic channels--and the universities have no right to accept just demands for changes in admission procedures--the Nation has locked itself into a potentially explosive conflict, without any ability for that conflict to be resolved through the normal procedures.

As the whole point of assuring equal political access is to assure that the minority may resolve its disputes through the normal *and equal* processes of democracy, this Court will assuredly review and reverse any decision that sustains the distinctly unequal processes mandated by Proposal 2.

This Court should stay the order of the Sixth Circuit so that the legal challenges can proceed apace and so that the universities and the lives of students both black and

white will not be irreparably disrupted by the irresponsible demand that Proposal 2, whose legality is dubious at best, should be implemented at break neck speed.

By Petitioners' Attorneys,

BY: 

George B. Washington*
Shanta Driver
SCHEFF & WASHINGTON, P.C.
645 Griswold—Ste 1817
Detroit, Michigan 48226
(313) 963-1921

Dated: January 19, 2007

* Counsel of record.

CERTIFICATE OF SERVICE

George B. Washington hereby certifies that he served a copy of the PETITIONERS' REPLY BRIEF IN SUPPORT OF THEIR MOTION TO DISSOLVE THE STAY ENTERED BY THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT AND TO REINSTATE THE TEMPORARY INJUNCTION ISSUED BY THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN on this day by Federal Express and e-mail to the following counsel for the parties:

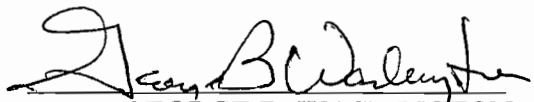
Charles J. Cooper
Cooper and Kirk
555 Eleventh Street, N.W., Suite 750
Washington, D. C. 20004
Attorneys for Russell
202-220-9600

Michael E. Rosman
Center for Individual Rights
1233 20th St, NW, Suite 300
Washington, D.C. 20036
Attys for Intervening Defendant Russell
rosman@cir-usa.org
202-833-8410

Leonard Niehoff
Butzel Long
350 S. Main Street, Suite 300
Ann Arbor, MI 48104
Attys for Defendant Universities
734-995-1777
niehoff@butzel.com

Margaret Nelson
Assistant Attorney General
P.O. Box 30736
Lansing, MI 48909
Attys for Intervening Defendant Cox
517-373-2454
nelsonma@michigan.gov

James Long
Assistant Attorney General
Atty for Defendant Granholm
P.O. Box 30758
Lansing, MI 48909
517-335-5328
longj@michigan.gov



GEORGE B. WASHINGTON

Dated: January 19, 2006