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,

vs.

Case No. 2:06-cv-15024
Hon David M. Lawson
Magistrate Judge R. Steven Whalen

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, and the TRUSTEES OF any other public college or university, community college, or school district, MICHAEL COX, in his official capacity as Attorney General of the State of Michigan,

Defendants.

And

REGENTS OF THE UNIVERSITY OF MICHIGAN, BOARD OF TRUSTEES OF MICHIGAN STATE UNIVERSITY, BOARD OF GOVERNORS OF WAYNE STATE UNIVERSITY,

Cross Plaintiff

vs.

JENNIFER GRANHOLM, in her official capacity as Governor of the State of Michigan, and MICHAEL COX, in his official capacity as Attorney General of the State of Michigan,

Cross Defendants.

FIRST AMENDED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

George B. Washington (P 26201)
Shanta Driver (P65007)
SCHEFF & WASHINGTON, P.C.
Attorneys for Plaintiffs
645 Griswold--Ste 1817
Detroit, MI 48226
313-963-1921

BUTZEL LONG, P.C.
Leonard M. Niehoff (P36695)
Philip J. Kessler (P15921)
Christopher M. Taylor (P63780)
350 S. Main Street, Suite 300
Ann Arbor, MI 48104
734-995-3110
Attys for Regents of the University of Michigan, Board of Trustees of Michigan State University, and Board of Governors of Wayne State University

James E. Long (P53251)
Brian O. Neill (P63511)
Michigan Department of the Atty General
Attys. For Jennifer Granholm
P.O. Box 30758
Lansing, MI 48909
517-373-1111

Margaret A. Nelson (P30342)
Heather S. Meingast (P55439)
Joseph E. Potchen (P49501)
Michigan Department of the Atty General
P.O. Box 30736
Lansing, MI 48909
517-373-6434
Attys for Michael Cox

FIRST AMENDED 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. Having gotten on the ballot through what was identified by Federal District Court Judge Arthur Tarnow as "systematic voter fraud," Proposal 2 threatens to deny minorities and women equal access to the political process, to resegregate the finest public universities in the state in violation of Title VI and VII of the of the Civil Rights Act, and to suspend the First Amendment rights of the University of Michigan so recently asserted by the United States Supreme Court in *Grutter v. Bollinger,* 439 US 306 (2003).

2. Proposal 2 would never have made it to the ballot without systematic voter fraud that was specifically targeted against black voters. This fraud proceeded to a vote, despite the fact that it had been thoroughly documented in a one-thousand page report of the Michigan Civil Rights Commission and in the decision of the Honorable Arthur Tarnow of this District Court.

3. On November 7, 2006, white voters in Michigan, by nearly a two-to-one majority, overrode the opposition of over 85 percent of black voters to approve Proposal 2, which, if implemented, will deepen segregation and racial polarization in Michigan for years to come.

4. Michigan's black and Latino/a communities, a mere seventeen percent of the total electorate, know that the passage of Proposal 2 relied on deceit, prejudice, and fear. The capacity of the government to defend their basic right to equal treatment, justice and full citizenship has been called into question.

5. The circumscribing of fundamental democratic rights of black and other minority people carried out in the electoral process, cannot be extended to deny Michigan's black, Latino/a and other minority people and women the fundamental right to equal protection in the political process, to equal opportunities to attend their public universities and to become doctors, lawyers, engineers, or astronauts, and to be afforded on an equal basis the just desserts of the community they have contributed so fully to creating.

6. The plaintiffs, who are students, applicants and prospective applicants at the defendant universities, as well as organizations who have fought against Proposal 2, assert that both on its face and as applied Proposal 2 violates the following federal laws:

A. In violation of the Equal Protection Clause, Proposal 2 has created a political structure that discriminates on account of race, national origin and gender. Alumni, residents of the State, residents of particular areas of the State, veterans, lesbians and gay men and a host of other groups may continue to petition the faculties and administrations of the defendant universities for preferences in admissions. Racial and national minorities and women alone must, however, secure an amendment to the Constitution before they may petition for what are misleadingly called "preferences" in admissions.

B. In violation of the ban on racial discrimination contained in Title VI of the Civil Rights Act of 1964, 42 USC 2000d, Proposal 2 requires the defendant universities to apply grades, test scores and other admission criteria in rigid ways. These criteria encapsulate and magnify the inequalities caused by separate and unequal education. When applied rigidly and without considering the race or national origin of the applicant, these criteria inevitably result in a vast drop in the admissions of racial and national minorities. As such a drop prevents compliance with the terms, purposes and objectives of Title VI and of the regulations enforcing Title VI, Title VI preempts Proposal 2 under the Supremacy Clause of the Constitution of the United States.

C. In violation of the ban on sex discrimination contained in Title IX of the Education Amendments of 1972, Proposal 2 requires the defendant universities to abandon targeted recruiting and special admission and other programs designed to encourage women to enter careers in mathematics, science, engineering and other fields where women have been excluded or vastly underrepresented. As this prevents compliance with

the terms, purposes and objectives of Title IX, Title IX preempts Proposal 2 under the Supremacy Clause of the Constitution of the United States.

D. In violation of the ban on discrimination in employment contained in Title VII of the Civil Rights Act of 1964, 42 USC 2000e-l, and the mandate for affirmative action contained in Executive Order 11246, Proposal 2 requires the defendant universities to abandon the lawful, voluntary programs of affirmative action in recruiting, hiring and promoting employees which have been so essential to overcoming discrimination in hiring, especially in teaching and other professional positions. Title VII and Executive Order 11246 therefore preempt Proposal 2 under the Supremacy Clause of the Constitution of the United States.

E. In violation of the First Amendment right of the defendant universities to select their students and their teaching staff, Proposal 2 limits the universities' right to select their students and teachers in the crucial areas of race, national origin and gender. The Proposal therefore violates the First Amendment rights of the universities and the First Amendment rights of the students who attend those universities.

7. 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 1983. They accordingly seek declaratory and injunctive relief, attorneys' fees and costs, and such further relief as is just and equitable.

JURISDICTION AND VENUE

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

9. 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

10. 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 and opposing attacks upon affirmative action.

11. 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.

12. The plaintiff Rainbow PUSH Coalition is a voluntary unincorporated association organized for the purpose of promoting education and participation in American democracy and civil rights.

13. 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.

14. 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.

15. 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 is in the process of applying for law school at the defendant University of Michigan and Wayne State Universities.

16. 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 is in the process of applying for law school at the defendant University of Michigan and Wayne State Universities.

17. 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 and to live and work in Michigan in the future.

18. 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.

19. The plaintiffs Candice Young, Tristan Taylor, and Jerell Erves are black students and graduates who plan to apply to the graduate or professional schools of the defendant universities.

20. 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.

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

22. 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.

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

24. 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 stand to suffer discrimination in the absence of affirmative action.

25. The plaintiff Defend Affirmative Action Party is a voluntary student political organization on the University of Michigan student government.

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

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

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

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

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

STATEMENT OF FACTS

A. Facts regarding the applicants to the defendant universities.

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

32. Segregation in education is especially intense in Michigan. More than eighty-three percent of black students are in segregated majority-minority schools. Sixty-four percent of black students are in intensely-segregated schools (90-100% black).

33. Segregated schools are overcrowded, under-resourced, offer less advanced placement courses, and are increasingly being deprived of music, art, athletic, and afterschool programs.

34. Intensely-segregated schools have more concentrated poverty than poor white schools.

35. The plaintiffs named in paragraphs 13, 14, and 18 and almost all of the black, Latino/a, and Native American students from Michigan who apply to the defendant universities have thus attended separate and unequal elementary and secondary schools.

36. The plaintiff Issamar Camacho attends Roosevelt High School in Los Angeles, one of the largest high schools in the nation. Roosevelt High School is 99 percent Latino/a. Segregated education for Latino/a students is an increasing phenomenon in the nation, and almost all Latino/a, black, and Native American students from other states that apply to the defendant universities have attended separate and unequal elementary and secondary schools.

37. The few black, Latino/a and Native American students who attend integrated schools are frequently tracked, confronted by racially hostile environments, and otherwise deprived of the benefits of an equal elementary and secondary education.

38. As a direct and proximate result of the facts set forth in the preceding four paragraphs, the plaintiffs named in paragraphs 13, 14, 18 and 21 and 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 training than the average of the white students who apply.

39. The standardized tests used by the defendant universities to measure applicants for admission—including especially the SAT and the ACT tests—have a discriminatory impact upon black, Latino/a and Native American students, both because they capture the educational inequality set forth above and because they magnify that inequality by culturally-biased questions, test-taking conditions, access to test preparation courses, the test question selection process, and stereotype threat.

40. As a direct and proximate result of the facts set forth in the preceding paragraph, the plaintiffs named in paragraphs 13 through 21 and almost all black, Latino/a and Native American students, on average, score lower on standardized tests than do their white counterparts. These tests are used by all three defendant universities in making admissions decisions.

41. Josie Hyman, Alejandra Cruz, and Maricruz Lopez, who have been admitted into the defendant universities and other universities, have attempted to overcome the inequalities described above.

42. Black, Latina/o, and Native American students have experienced a hostile environment at majority-white campuses, greater financial pressures, and a host of other factors. Even when they have performed outstandingly at such universities, their grades have suffered from the discrimination they have endured.

43. As with the SAT and ACT tests, the LSAT, GRE 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.

44. The lower median grade point averages and 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.

45. Because of the intensity of racial and national inequality, the black, Latino/a and Native American applicants have lower median grade point averages and test scores than white students from equivalent economic backgrounds.

46. As a direct and proximate result of the facts set forth in the preceding paragraphs, the black, Latino/a and Native American students and almost all similar 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.

B. The defendant universities' admission systems.

47. From the Michigan Constitution of 1850 forward, the faculties and administrations of the various schools and colleges in the defendant universities have established the criteria for selecting applicants for admission.

48. Before the advent of affirmative action, the various schools and colleges of the defendant universities admitted students based upon a rigid application of grade point averages, test scores, and other criteria which denied black, Latina/o, and other minority students an equal opportunity to attend.

49. As a direct and proximate result of that system applied to the applicant pool described above, the schools and colleges of the various universities admitted almost no black, Latino or Native American students before the advent of affirmative action.

50. The University of Michigan Law School, for example, graduated approximately 2,000 white students in the 1960s and only eight black students during the same period.

51. The growth of the Civil Rights Movement, the antiwar movement, and intense student struggles led to political debate on admissions policies at the various campuses. The decision of the faculties and administrations of many of the schools and colleges in the defendant universities to adopt affirmative action programs was an outgrowth of this debate.

52. 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 and graduate education, but also to the process of shaping the educational institutions themselves.

53. The affirmative action plans differed in details, but in general they (a) placed a less rigid reliance on criteria that encapsulated discrimination like grade point averages and tests, (b) considered the race or national origin of the student in evaluating his or her qualifications, including test scores and grades, and (c) placed more reliance on

interviews, recommendations and similar factors that were used to evaluate the abilities of the applicants, including especially the applicants from racial and national minorities.

54. 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 essentially all of the schools at those universities.

C. Proposition 209.

55. In 1996, the electorate of the State of California passed Proposition 209, from which Michigan's Proposal 2 is copied word-for-word.

56. As interpreted by its sponsors and by the government and courts of California, Proposition 209 banned granting any "preference" to black, Latino/a, Native American and other students in admissions to the universities of that State.

57. Under Proposition 209, the universities in California have been forced to return to a rigid use of grade point averages and test scores without any consideration of the race or national origin of a student.

58. 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, especially when that enrollment is considered, as it must be, in relation to the fast-growing populations of young black and especially Latino/a people in the state.

59. As black, Latino/a and Native American students have been forced out of the flagship campuses of the University of California system, those able to attend college

have been forced into the less selective schools in the University of California and California State systems.

60. After ten years of Proposition 209, higher education in California is becoming a two-tier resegregated system.

D. Proposal 2.

61. In *Grutter*, the United States Supreme Court approved the affirmative action plan at the University of Michigan Law School.

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

63. Immediately after the *Grutter* decision, Ward Connerly and the Michigan Civil Rights Initiative announced a petition drive to amend the Constitution of the State of Michigan.

64. As set forth in a decision by the Honorable Arthur Tarnow of this Court, the MCRI proposal obtained a place on the general election ballot by a massive campaign of fraud characterized by soliciting signatures on its petition by telling blacks and liberal whites that the proposed amendment supported affirmative action.

65. On November 7, 2006, sixty-five percent of white voters of Michigan voted for Proposal 2, while eighty-five percent of black and Latino/a voters voted against it.

66. By their votes, the white voters of Michigan for the first time placed restrictions on the admission policies of the defendant universities.

67. By their votes, the white voters of Michigan purported to exclude those black, Latino/a and Native American students whom they believed had received "preference" for admission to the defendant universities.

68. As in California, the proponents of Proposal 2 assert that the elimination of "preference" requires the rigid application of the grades, test scores and other applicable criteria without any consideration of race, national origin or gender.

69. The failure to evaluate those criteria in light of the race, national origin or gender will result in a dramatic drop in the enrollment of black, Latino/a and Native American students in the various schools of the defendant universities.

70. The University of Michigan, for example, has estimated that there will be an immediate fall of 80 percent in the number of black, Latino/a and Native American students admitted to its Law School, with a further decline in later years as fewer students from underrepresented minorities are admitted to undergraduate institutions.

E. Affirmative action in employment.

71. For reasons analogous to the conditions of underrepresented minority students, prior to the advent of affirmative action, minority applicants for employment at academic institutions, particularly in the teaching and professional positions, were essentially unable to secure employment in the defendant universities.

72. With the adoption of affirmative action policies, the defendant universities have dramatically increased the number of black, Latino/a and Native American faculty members, administrators and employees.

73. By banning affirmative action in employment, however, Proposition 209 resulted in a one-third drop in female faculty hiring in the University of California from which the University has not fully recovered.

74. By banning affirmative action in employment, Proposal 2 will have the same effect on hiring in the defendant universities.

F. Conclusion.

75. 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.

COUNT ONE
RACIAL AND OTHER DISCRIMINATION
IN THE STRUCTURE OF GOVERNMENT IN VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT

76. Proposal 2 establishes classifications in the structure of government based on race, national origin and gender in violation of the Equal Protection Clause of the Fourteenth Amendment.

77. Under Proposal 2, veterans, residents of the State, residents of particular areas of the State, alumni, persons who attend particular high schools or colleges and numerous other groups may petition the faculty and administration at the defendant universities for changes in admission and hiring criteria, including “preferences” for members of any of those groups.

78. Under the regime established by Proposal 2, however, racial minorities, students or applicants from particular national origins, and women may not petition the faculty and administration at the defendant universities for changes in admission and hiring that either are or could be labeled as "preferences."

79. In particular, racial and national minorities and women may not petition the faculties and administrations for affirmative action programs in admissions or employment that are lawful under the decisions of the United States Supreme Court even though every other group may petition for any form of lawful action that will benefit their particular interest.

80. In order to secure lawful changes in admission or employment practices, racial minorities, persons of particular national origins, and women may now seek relief only by mounting a statewide campaign to amend the Constitution of the State of Michigan to eliminate Proposal 2.

81. By essentially eliminating the right of underrepresented minorities and women to petition for lawful affirmative action plans by the same means that others petition for a redress of their grievances, Proposal 2 has denied black, Latino/a, Native American and other citizens, as well as women of all races, of the "rights, privileges and immunities" secured by the Equal Protection Clause and by the Constitution and laws of the United States.

82. By these acts, Proposal 2 violates 42 USC 1983, and causes great damage to the plaintiffs and the other citizens of the United States.

Wherefore, the plaintiffs ask that this Court enter preliminary and permanent injunctive and declaratory relief restraining the defendants from implementing

Proposal 2 and awarding to the plaintiffs such further relief as is just and equitable, including the attorneys' fees and costs of this action.

COUNT TWO
PREEMPTION BY TITLE VI
OF THE CIVIL RIGHTS ACT OF 1964

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

84. In an effort to end racial and national origin segregation in public schools, college, 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.

85. 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.

86. 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).

87. As demonstrated by the experience in California and by the facts set forth above, Proposal 2's ban on any "preference" in the use of grade point averages, test scores and similar criteria 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.

88. In requiring the defendant universities to abandon any "preferences" in the evaluation of test scores, grade point averages or any similar criteria, Proposal 2 makes compliance with both Title VI and Proposal 2 a physical impossibility.

89. In requiring the defendant universities to abandon any "preferences" in the evaluation of test scores, grade point averages or any similar criteria, Proposal 2 also stands as an obstacle to the accomplishment of the purposes of Title VI of the Civil Rights Act of 1964.

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

Wherefore, the plaintiffs ask that this Court enter preliminary and permanent injunctive and declaratory relief restraining the defendants from implementing Proposal 2 and awarding to the plaintiffs such further relief as is just and equitable, including the attorneys' fees and costs of this action.

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

91. 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).

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

93. 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.

94. In requiring the defendant universities to abandon any "preferences" in the evaluation of test scores, grade point averages or any similar criteria, Proposal 2 stands as an obstacle to the accomplishment of the eliminating admissions criteria which have the effect of discriminating on account of sex, as required by Title IX and the regulations implementing Title IX.

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

Wherefore, the plaintiffs ask that this Court enter preliminary and permanent injunctive and declaratory relief restraining the defendants from implementing Proposal 2 and awarding to the plaintiffs such further relief as is just and equitable, including the attorneys' fees and costs of this action.

COUNT FOUR
PREEMPTION BY TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

96. In Title VII of the Civil Rights Act of 1964, the Congress of the United States prohibited discrimination on account of race, color, national origin and gender in the employment within the United States.

97. By the amendments of 1972, Congress made Title VII applicable to the states and their subdivisions, including the defendant universities.

98. Title VII was intended as a spur and catalyst to cause employers to reexamine their employment practices and to eliminate, insofar as it is practical, the vestiges and current practices of discrimination.

99. In furtherance of the purposes of Title VII, the defendant universities may, and in some cases, must take race- and gender-conscious steps to eliminate discrimination on account of race, national origin or gender in their employment practices, including but not limited to their practices for choosing employees for positions on the faculty and in the administration of the defendant universities.

100. In requiring the defendant universities to abandon any "preferences" in their employment practices, Proposal 2 stands as an obstacle to the voluntary efforts required and allowed in order to accomplish the purposes of Title VII of the Civil Rights Act of 1964.

101. Title VII preempts Proposal 2 under the Supremacy Clause of the Constitution of the United States.

Wherefore, the plaintiffs ask that this Court enter preliminary and permanent injunctive and declaratory relief restraining the defendants from implementing Proposal 2 and awarding to the plaintiffs such further relief as is just and equitable, including the attorneys' fees and costs of this action.

COUNT FIVE
VIOLATION OF THE FIRST AMENDMENT

102. The United States Supreme Court, in its landmark June 23, 2003 decision in *Grutter*, affirmed the defendant universities' First Amendment right to select their students and teaching staff and to determine their academic standards.

103. As prospective students at the defendant universities, the plaintiffs stand as beneficiaries of these First Amendment rights when they seek admission to the defendant universities.

104. As students at the defendant universities, the plaintiffs stand as further 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.

105. 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.

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

107. 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 for declaratory relief that Proposal 2 violates the First Amendment and injunctive relief restraining the defendant universities from changing their admission or other policies in an attempt to comply with Proposal 2, for attorneys' fees and costs, and for such further relief as is just and equitable.

By Plaintiffs' Attorneys,
SCHEFF & WASHINGTON, P.C.

BY: /s/George B. Washington
George B. Washington (P-26201)
Shanta Driver (P-65007)
645 Griswold—Ste 1817
Detroit, Michigan 48226
(313) 963-1921
(313) 407-4865

Dated: December 17, 2006

CERTIFICATE OF SERVICE

I hereby certify that on December 17, 2006, I electronically filed the Plaintiffs' First Amended Complaint which will automatically send notification of filing to:

James E. Long (P53251)
Brian O. Neill (P63511)
Michigan Department of the Atty General
Attys. For Jennifer Granholm
P.O. Box 30758
Lansing, MI 48909

Margaret A. Nelson (P30342)
Heather S. Meingast (P55439)
Joseph E. Potchen (P49501)
Michigan Department of the Atty General
P.O. Box 30736
Lansing, MI 48909
Attys for Michael Cox

BUTZEL LONG, P.C.
Leonard M. Niehoff (P36695)
Philip J. Kessler (P15921)
Christopher M. Taylor (P63780)
350 S. Main Street, Suite 300
Ann Arbor, MI 48104
Attys for Defendant Universities
niehoff@butzel.com

/s/George B. Washington
George B. Washington (P-26201)
SCHEFF & WASHINGTON, P.C.
645 Griswold—Ste 1817
Detroit, Michigan 48226
(313) 963-1921
scheff@ameritech.net

Dated: December 17, 2006