

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

JENNIFER GRATZ, and PATRICK HAMACHER and all others similarly situated

Plaintiffs,

vs.

LEE BOLLINGER,
JAMES J. DUDERSTADT
THE UNIVERSITY OF MICHIGAN, and
THE UNIVERSITY OF MICHIGAN
COLLEGE OF LITER\TURE, ARTS and
SCIENCE

Defendants.

and EBONY PATTERSON, RUBEN MARTINEZ,
LAURENT CRENSHAW, KARLA R.
WILLIAMS, LARRY BROWN, TIFFANY
HALL, KRISTEN M.J. HARRIS, MICHAEL
SMITH, KHYLA CRAINE, NYAH
CARMICHAEL, SHANNA DUBOSE, EBONY
DAVIS, NICOLE BREWER, KARLA
HARLIN, BRIAN HARRIS, KATRINA
GIPSON, CANDICE B.N. REYNOLDS, by and
through their parents or guardians, DENISE
PATTERSON, MOISES MARTINEZ, LARRY
CRENSHAW, HARRY J. WILLIAMS,
PATRICIA SWAN-BROWN, KAREN A.
MCDONALD, LINDA A. HARRIS, DEANNA
A. SMITH, ALICE BRENNAN, IVY RENE
CARMICHAEL, SARAH L. DUBOSE, INGER
DAVIS, BARBARA DAWSON, ROY D.
HARLIN, WYATT G. HARRIS, GEORGE C.
GIPSON, SHAWN R. REYNOLDS, AND
CITIZENS FOR AFFIRMATIVE ACTION'S
PRESERVATION

Proposed Defendant-Intervenors

Civil Action No. 97-75231

Hon. Patrick J. Duggan

Hon. Thomas A. Carlson

MOTION TO INTERVENE

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Ebony Patterson, by her parent, Denise Patterson, Ruben Martinez. by his parent Moises Martinez. Laurent Crenshaw by his parent Larry Crenshaw, Karla R. Williams. by her parent Harry J. Williams, Larry Brown, by his parent Patricia Swan-Brown, Tiffany Hall. by her parent Karen A. McDonald, Kristen M.J. Harris. by her parent Linda A. Harris, Michael Smith. by his parent Deanna A. Smith, Khyla Craine, by her parent Alice Brennan, Nyah Carmichael by her parent Ivy Rene Carmichael, Shanna Dubose by her grandparent Sarah L. Dubose, Ebony Davis, by her parent Inger Davis, Nicole Brewer, by her parent Barbara Dawson, Karla Harlin, by her parent Roy D. Harlin, Brian Harris, by his parent Wyatt G. Harris, Katrina Gipson, by her parent George C. Gipson, Candice B.N. Reynolds, by her parent Shawn R. Reynolds, and Citizens For Affirmative Action's Preservation ("CAAP") hereby move, pursuant to Fed. R. Civ. P. 24(a) and (b), for leave to intervene as party defendants in this action. A copy of Applicants' proposed answer, is hereto attached. This motion is made on behalf of the persons and organizations described below. each of whom has a compelling interest in ensuring an admissions program that allows fully-qualified African-American and Latino students continued access to the University of Michigan, College of Literature, Arts and Science ("University").

1. Ebony Patterson is a 10th-grade African-American student at Cass Technical High School in Detroit, Michigan. Ebony has performed well academically and plans to apply to the University of Michigan.
2. Ruben Martinez is an 11th-grade Mexican-American student at Lawrence High School in Lawrence, Michigan. Ruben has performed well academically and plans to apply to the University of Michigan.
3. Laurent Crenshaw is a 12th-grade African-American student at W.E.B. Dubois Preparatory Academy in Detroit, Michigan. Laurent has performed well academically and has applied to the University of Michigan.
4. Karla Williams is an 11th-grade African-American student at Huron High School in Ann Arbor, Michigan. Karla has performed well academically and plans to apply to the University of Michigan.
5. Larry Brown is an 11th-grade African-American student at Cass Technical High School in Detroit, Michigan. Larry has performed well academically and plans to apply to the University of Michigan.
6. Tiffany Hall is a 10th-grade student at the New School Pilot Program in Ann Arbor, Michigan. Tiffany has performed well academically and plans to apply to the University of Michigan.
7. Kristen M.J. Harris is a 10th-grade African-American student at Pioneer High School in Ann Arbor, Michigan. Kristen has performed well academically and plans to apply to the University of Michigan.
8. Michael Smith is a 12th-grade African-American student at Notre Dame High School in Detroit, Michigan. Michael has performed well academically and has (?) applied to the University of Michigan.
9. Khyla Craine is a 10th-grade African-American student at Pioneer High School in Ann Arbor, Michigan. Khyla has performed well academically and plans to apply to the University of Michigan.

10. Nyah Carmichael is a 9th-grade African-American student at Renaissance High School in Detroit, Michigan. Nyah has performed well academically and plans to apply to the University of Michigan.
11. Shanna Dubose is a 10th-grade African-American student at Adrian High School in Adrian, Michigan. Shanna has performed well academically and plans to apply to the University of Michigan.
12. Nicole Brewer is an 11th-grade African-American student at Cass Technical High School in Detroit, Michigan. Nicole has performed well academically and plans to apply to the University of Michigan.
13. Ebony Davis is a 10th-grade African-American student at Cass Technical High School in Detroit, Michigan. Ebony has performed well academically and plans to apply to the

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University of Michigan.

14. Karla Harlin is a 9th-grade African-American student at Frank Cody High School in Detroit, Michigan. Karla has performed well academically and plans to apply to the University of Michigan.
15. Brian Harris is an 11th-grade African-American student at Cass Technical High School in Detroit, Michigan. Brian has performed well academically and plans to apply to the University of Michigan.
16. Katrina Gipson is a 10th-grade African-American student at Pioneer High School in Ann. Arbor Michigan. Katrina has performed well academically and plans to apply to the University of Michigan.
17. Candice Reynolds is an 11th-grade African-American student at Cass Technical High School in Detroit, Michigan. Candice has performed well academically and plans to apply to the University of Michigan.
18. Citizens for affirmative Action's Preservation ("CAAP") is a non-profit organization with the mission of preserving higher educational opportunities for African-American and Latino students in the State of Michigan. The organization consists of groups and individuals, some of whom are parents or grandparents of prospective African-American and Latino applicants to the University. CAAP is concerned about the effect a ruling barring any consideration of race in admissions programs would have on access of African-American and Latino youth to higher education throughout the State of Michigan. Applicants should be permitted intervention because this lawsuit directly threatens their vital interest in ensuring that fully-qualified African American and Latino students have continued access to higher education at the University and throughout the State. Plaintiffs apparently seek to bar any consideration by the University of Michigan of an applicant's racial or ethnic background or of how an applicant's racial or ethnic background has affected his or her experiences. A disposition in favor of Plaintiffs would substantially decrease the number of African-American and Latino students at the school, create a more racially isolated experience for those African-American and Latino students who do attend,

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and deny all students the benefits of a racially and ethnically diverse educational environment. Moreover, intervention is warranted because the Defendants are inadequate representatives of Applicants' interests. First, although the University has expressed an intent to defend its consideration of race as a factor in admissions, as a public actor it is undoubtedly subject to various pressures that may temper its ability to defend race-conscious admissions programs. Second, the University faces less risk of harm than do Applicants if Plaintiffs were to prevail: while the University will continue to exist, albeit without the contributions of many African-American and Latino students, Applicants face a serious risk of exclusion from educational opportunity at the University. Third, as with any government actor seeking to defend race-conscious action against legal challenges. Defendants' interests in providing the evidence that might be necessary to uphold race-conscious action on remedial grounds is in plain tension with their interest in avoiding liability for discrimination. *Ct Wygant v. Jackson Bd of Educ.*, 476 U.S. 267, 286,292 (1986) (O'Connor, J., concurring). Courts, including those in the Sixth Circuit, have rightly recognized that these sorts of conflicts are sufficient to authorize intervention on the part of beneficiaries of the challenged measure. *See, e.g., Jansen v. City of Cincinnati*, 904 F.2d 336, 342 (6th Cir. 1990); *Baker v. City of Detroit*, 504 F. Supp. 841, 849 (E.D. Mich. 1980).

Finally, even if there were any doubt as to Applicants' entitlement to participate, Fed. R. Civ.P.24(b) provides that where, as here, a timely application poses no threat of prejudice to the present parties and involves, as does Applicants', legal and factual questions that substantially overlap with those raised by the initial parties, intervention should be liberally granted.

Whether as a matter of right or of the Court's sound discretion, Applicants *Ebony Patterson et al.* request that the Court grant them the status of parties defendant in this litigation.

Respectfully submitted,

Dated: February 5, 1998

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