IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BARBARA GRUTTER, for herself and all others similarly situated,

Plaintiff-Appellees,

v.

LEE BOLLINGER; JEFFREY LEHMAN; DENNIS SHIELDS; AND THE BOARD OF REGENTS OF THE UNIVERSITY OF MICHIGAN,

Defendants-Appellants,

-and-

KIMBERLY JAMES et al.,

Intervening Defendants.

Case No. 01-1447

APPELLEE'S RESPONSE TO APPELLANTS' EMERGENCY MOTION TO STAY INJUNCTION

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Plaintiff-Appellee opposes Defendants' Emergency Motion for a stay of the district court's injunction issued on March 27, 2001, after more than three years of litigation and a 15-day bench trial. The district court declared that "the law school's 1992 admissions policy violates the Equal Protection Clause of the Fourteenth Amendment and Title VI of the 1964 Civil Rights Act." March 27 Op., at 54. It enjoined Defendants from the further consideration of race in its admissions process, *see id.* at 90, but made no requirements with respect to admissions decisions already made, or with respect to any other aspect of Defendants' admissions system or policy.

The Defendants' motion for a stay should be denied for the reasons set forth herein and for those articulated by Judge Friedman in his nine-page Opinion and Order Denying Defendants' Motion To Stay Injunction, filed on April 3, 2001. There are many reasons why Defendants' motion should be denied, but some deserve particular attention at the outset. First, as a matter of procedure and jurisdiction, defendants have not filed a valid notice of appeal, which this Court must therefore dismiss, because no separate appealable judgment was entered in the district court, as required by Federal Rule of Civil Procedure 58.

Second, even if this Court had jurisdiction to entertain the appeal and consider the merits of the motion for a stay, Defendants have reacted to the district court's injunction in an extreme, gratuitous, and unnecessary manner. They claim to have shut down their admissions process—suspending any further consideration of files or decisions on admission—pending a decision on their stay request. The district court's order required

no such drastic action. Defendants are enjoined only from the consideration of race as a factor in making admissions decisions. And as the district court made clear in its April 3, 2001, Opinion and Order, the injunction is precisely tailored to a prohibition on using race for the reasons that were offered at trial in justification of the defendants' policies—"namely, in order to assemble a racially diverse class or to remedy the effects of societal discrimination." *See* April 3, 2001, Opinion and Order, at 5. The district court patently did not order the defendants to write or design a new admissions policy or to discard the existing policy in any except one particular. Defendants' choice to react to this injunction by **voluntarily** shutting down all consideration of files cannot plausibly support a claim of "irreparable injury" or the need for an "emergency" stay. Defendants' complaints, therefore, about the disruption, inconvenience, and injury caused by the district court's order are, in fact, complaints about self-inflicted injuries. Defendants have created and can terminate the "emergency" for which they have brought this motion for stay; they should not be rewarded for their unreasonable and overbroad interpretation of the district court's injunction by entry of a stay.

Third, in shutting down their admissions process, Defendants have made no showing whatsoever about what efforts they have made to comply with the specific and limited requirements of the district court's injunction. The Defendants have simply said, "We can't do this." Defendants should not be allowed to seek refuge from the Constitution without even making minimal efforts to comply, and their submissions conspicuously omit explanation of any efforts to do so.

Fourth, for the reasons discussed in more detail below, Defendants have not demonstrated that they are likely to prevail on appeal in reversing the findings and conclusions of the district court. Significantly, Defendants have the burden to show that they are likely to prevail on appeal in reversing the district court's determinations on two matters: (1) that diversity is not a compelling governmental interest and (2) that even if diversity were such a compelling interest, Defendants' admissions system is not narrowly tailored to achieve that interest. It is critical that Defendants demonstrate both points because what Defendants seek through their stay is not merely the opportunity to consider race; they clearly seek also to resume file consideration and decisionmaking under the regime that was struck down, after fifteen days of trial, as "indistinguishable from a quota system." *See* April 3, 2001 Opinion and Order, at 7. Therefore, even if Defendants could show the likelihood of justifying their use of race based on the diversity rationale, they would not be entitled to a stay of the district court's Order and determination that this particular admissions system is violative of the plaintiff's and class members' constitutional civil rights. In the district court, the Defendants did not even address this issue to the court. *See* April 3, 2001 Opinion and Order at 6 ("defendants do not even mention narrow tailoring or suggest why the court's analysis of this prong of the strict scrutiny test is likely to be reversed on appeal.")

Finally, it is the plaintiff and the class that will be irreparably injured by a grant of a stay. This case involves constitutional and statutorily-created civil rights of plaintiff and the class to the equal protection of the laws; constitutional deprivations are *per se*

irreparable. If Defendants are permitted to resume their illegal consideration of race in the admissions process, many of the class members will be deprived of the opportunity to compete for seats in the class on an equal footing with those whose race is considered in the process.

ARGUMENT

I. The Appeal Should Be Dismissed.

No separate appealable judgment was entered in the district court. Accordingly, this appeal must be dismissed. This Court does not have jurisdiction to enter a stay.

Rule 58 of the Federal Rules of Civil Procedure provides that "[e]very judgment shall be set forth on a separate document." Since an order granting an injunction is appealable pursuant to § 1292(a)(1), it is a "judgment" for purposes of Rule 58. *See* Rule 54(a) ("[j]udgment as used in these rules includes a decree and any order from which an appeal lies.") Accordingly, the separate document requirement of Rule 58 applies to injunctions. *Cf. Beukema's Petroleum Co. v. Admiral Petroleum Co.*, 613 F.2d 626, 627 (6th Cir. 1979) ("[T]he express provisions of Rule 58 for entry of judgment on a separate document applies not only to final judgments in the ordinary sense but also to preliminary injunctions entered pursuant to Rule 65, FED. R. CIV. P., and made appealable under 28 U.S.C. § 1292(a)(1)").

No separate judgment was entered in the lower court. Rather, defendants have appealed from the Court's March 27, 2001, order, which is set forth at the end of the court's 90-page Findings of Fact and Conclusions of Law. *See* Motion Appendix, Ex. B.

The March 27 Order plainly does not meet the requirements of Rule 58. *E.g.*, *Green v. Nevers*, 196 F.3d 627, 631 (6th Cir. 1999) ("every judgment must be set forth on a document that is separate and distinct from any opinion or memorandum"); *Whittington v. Milby*, 928 F.2d 188, 192 (6th Cir. 1991) ("The advisory committee notes confirm that this rule [*viz.*, Rule 58] means what it says: 'there [must] be a judgment set out on a separate document—distinct from any opinion or memorandum—which provides the basis for the entry of judgment.'"); *Columbus Coated Fabrics v. Industrial Comm'n of Ohio*, 498 F.2d 408, 408-09 (6th Cir. 1974) (opinion and order setting forth district court's findings and conclusions failed to meet the requirements of Rule 58).[1]

Accordingly, defendants have not filed a valid notice of appeal, and this Court must dismiss the appeal. *United States v. Dean*, 519 F.2d 624, 625 (6th Cir. 1975) (where separate document had not been entered after initial order, Court holds that "[i]f the [initial order] were the only docket entry by the District Court, we would be required to remand the case to the District Court for entry of a judgment from which an appeal could be taken"); *Silver Star Enterprises, Inc. v. M/V Saramacca*, 19 F.3d 1008, 1012 (5th

[1] Under certain circumstances, the parties can waive the requirements of the separate document rule. *Whittington*, 928 F.2d at 192. Those waiver rules, however, do not apply to an order granting an injunction. *Beukema's Petroleum*, 613 F.2d at 628 (rationale of *Banker's Trust v. Mallis*, 435 U.S. 381 (1978), permitting waiver under certain circumstances, not applicable to "an appeal [that] involved injunctive relief under Section 1292(a)(1)"). In any event, those requirements for waiver include the appellees' consent to the appeal from the improper order. *Whittington*, 928 F.2d at 192; *Salletti v. Carey*, 173 F.3d 104, 109-110 (2d Cir. 1999); *Williams v. Borg*, 139 F.3d 737, 739-40 (9th Cir. 1998). Here, plaintiffs-appellees object to the absence of a separate document.

Cir. 1994) (dismissing appeals from orders for which no separate documents were issued or entered).[2]

[2] In a related appeal, *Gratz v. Bollinger*, Appeal No. 01-1333, defendants expressed grave doubts about the appealability under § 1292(a)(1) of a non-final order denying permanent injunctive relief. *See* Defendants' Statement Respecting Interlocutory Appellate Jurisdiction in Appeal Nos. 01-102, 01-104, and 01-1333. While these doubts are and were misplaced, it is curious that they have no appealability doubts about a non-final order granting injunctive relief.

II. The Motion for "Emergency" Stay Should be Denied.

Assuming that Defendants had filed a proper notice of appeal and that this Court therefore possessed jurisdiction, this Court should apply the familiar standard applied to all requests for injunctive relief. The Court is to balance whether the Defendants are likely to prevail on appeal, to what extent compliance with the district court's Order will irreparably injure Defendants, the prospect of "substantial" injury to other parties if the stay is granted, and "where the public interest lies." *Nader v. Blackwell*, 230 F.3d 833, 834 (6th Cir. 2000); *see Michigan Coalition of Radioactive Material Users, Inc. v. Griepentrog*, 945 F.2d 150, 153 (6th Cir. 1991). Defendants have cited only one Sixth Circuit decision, *Nader v. Blackwell*, 230 F.3d 833, 834 (6th Cir. 2000), in which the Court stayed pending appeal a district court's injunction based on a finding of constitutional violations. In that case, the Sixth Circuit stayed an election-related injunction several weeks before the election, but specifically based that stay on "plaintiffs' own delay" in seeking judicial intervention. 230 F.3d at 835. No such fault can be attributed to Plaintiff in this case.

Defendants allege irreparable injury because compliance with the district court's Order will cause delay in completing the admissions process for the class entering this year. Whatever nominal delay there may be (and there need not be any if Defendants simply comply with the limited scope of the injunction) in no way warrants a stay of the district court's Order. Given the alternative grounds for the district court's Order—both that diversity is not a compelling interest **and** that, in any event, the 1992 admissions

policy is not narrowly tailored—there is no reason whatsoever to believe that Defendants will prevail on appeal. Permitting Defendants to continue to violate the constitutional rights of applicants to the law school constitutes not only "substantial" harm, but is per se "irreparable." *See Planned Parenthood Ass'n v. Cincinnati*, 822 F.2d 1390, 1400 (6th Cir. 1987). And the final factor also weighs against a stay "because 'it is always in the public interest to prevent the violation of a party's constitutional rights.'" *Connection Distributing Co. v. Reno*, 154 F.3d 281, 288 (6th Cir. 1998) (quoting *G & V Lounge, Inc. v. Michigan Liquor Control Comm'n*, 23 F.3d 1071, 1079 (6th Cir. 1994)).

A. Defendants Will Not Prevail on Appeal.

For the Defendants to be entitled to a stay, they either must prove that the district court's decision will likely be reversed on appeal or that the balance of harms weighs so strongly in their favor that the Court should err on the side of not requiring compliance. *See Michigan Coalition*, 945 F.2d at 153 (on motion for stay pending appeal, movant must show "likelihood of reversal"); *see also id.* ("probability of success that must be demonstrated is inversely proportional to the amount of irreparable injury [the movants] will suffer absent the stay"). Defendants may not rely solely, however, on the balance of harms, for at a minimum they must establish "'serious questions going to the merits.'" *Id.* at 154 (quoting *In re DeLorean Motor Co.*, 755 F.2d 1223, 1229 (6th Cir. 1985)).

Defendants attempt to establish likelihood of prevailing on the merits by insisting that "diversity" is a compelling governmental interest. They rest their argument on an assertion that Justice Powell's lone opinion in *Bakke*—the only one to address the

diversity rationale—constitutes the opinion of the Court on whether diversity is a compelling governmental interest. Defendants confuse the fact that Justices Powell and four other Justices (the Brennan group) agreed that race could sometimes be considered in admissions with the **very different** matter of whether these five Justices agreed that achieving diversity could be the basis for that consideration. Section V-C of Powell's opinion, the only portion of Powell's analysis joined in by the Brennan group, says nothing at all about diversity, and neither do the opinions of any other of the Justices who wrote separately in *Bakke*.

The district court noted that the "status of Justice Powell's endorsement of the diversity rationale is debatable." *See* April 3, 2001 Op. and Order at 4. And indeed, there has been disagreement among the courts about whether diversity is a compelling governmental interest and whether Justice Powell's opinion with respect to that rationale is now, or ever was, controlling. But this disagreement hardly affords a basis upon which this Court should rule in an emergency stay motion, with little or no meaningful opportunity to consider a complete record and fully developed legal arguments, that Defendants are likely to prevail in reversing the district court's determinations on the diversity rationale and narrow tailoring. The Defendants (at least the Defendants Board of Regents and Lee Bollinger) have themselves acknowledged that "there is a substantial ground for difference of opinion" about whether diversity constitutes a compelling

governmental interest.[3] It is simply an impermissible stretch to argue that the standard for likelihood of success of reversal has been met on a showing that the issue decided by the district court is one on which there is disagreement among the courts. It would be all the more improper to hastily conclude on a motion for emergency stay that the district court is likely to be reversed on an issue (viability of the diversity rationale) that is one of first impression in the Sixth Circuit. *See* April 3, 2001 Op. and Order, at 4-5 (noting that Sixth Circuit cases relied upon by Defendants do not support proposition that diversity is compelling or that Justice Powell's diversity rationale in *Bakke* is controlling).

Defendants' argument that interests other than remedial ones may be compelling is completely beside the point. The district court only considered and enjoined against the use of race in admissions under the rationales offered by Defendants and Intervenors, so nothing in its Opinion or Order forecloses the possibility that other interests might be found compelling. *See* April 3, 2001 Op. and Order at 5 ("This court's injunction should not be understood as prohibiting '*any and all*' use of racial preferences.") (emphasis in original). The issue that Defendants must prove likelihood of reversal on is not an abstract question about whether other unknown interests might sometimes justify racial classifications; it is, instead, whether the district court' analysis on the diversity rationale is likely to be reversed. For the reasons set forth herein and in the district court's opinion,

[3] The district court in a separate challenge to the admissions policies of the University of Michigan certified an appeal on this ground pursuant to 28 U.S.C. § 1292(b) from a summary judgment decision, *see Gratz v. Bollinger*, Appeal No. 01-1333, and the Defendants Board of Regents and Bollinger concurred with the basis for the certification in seeking permission to appeal the district court's order in that case. *See* Defendants' Petition for Permission to Appeal.

see generally April 3, 2001 Op. and Order, Defendants have not made the required showing on likelihood of reversal.

Defendants fall far short also in showing that they are likely to obtain a reversal of the district court's findings of fact and conclusion that the Defendants' admissions system is not narrowly tailored to achieve diversity, even if that interest is compelling. It is critical to note that the district court concluded that there "was overwhelming evidence" supporting its findings on narrow tailoring. *See* April 3, 2001 Op. and Order at 6. It concluded, after a 15-day trial, that Defendants' system was "indistinguishable from a quota" system. *Id.* at 7. Defendants now ask this Court to conclude that it will likely reverse those findings, although the Court has almost nothing before it except legal arguments.[4]

The significance of Defendants' reach has been explained before by the Sixth Circuit. Likelihood of success on the merits means something different after a trial than it does at the preliminary-injunction stage. *See Michigan Coalition*, 945 F.2d at 153.

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[4] One of those misplaced legal arguments is that because there is no holding in *Bakke* that race-neutral alternatives must be considered, then there is no such requirement. That hardly answers the objection. There is no doctrine allowing divination of constitutional doctrine where the Court is silent. *See, e.g.*, *Texas v. Cobb*, 2001 U.S. LEXIS 2696, *13 (U.S. April 2, 2001) ("Constitutional rights are not defined by inferences from opinions which did not address the question at issue"); *Waters v. Churchill*, 511 U.S. 661, 678 (1994) (plurality) (Court's precedents "cannot be read as foreclosing an argument that they never dealt with"). Moreover, the Court has clearly held subsequent to the decision in *Bakke* that race-neutral alternatives must be considered. *See City of Richmond v. J.A. Croson, Co.,* 488 U.S. 469, 507 (1989).

> [A] motion for a stay pending appeal is generally made after the district court has considered fully the merits of the underlying action and issued judgment . . . As a result, a movant seeking a stay pending review on the merits of a district court's judgment will have greater difficulty in demonstrating a likelihood of success on the merits [than will a movant seeking a preliminary injunction]. In essence, a party seeking a stay must ordinarily demonstrate to a reviewing court that there is a likelihood of reversal. Presumably, there is a reduced probability of error, at least with respect to a court's findings of fact, because the district court had the benefit of a complete record that can be reviewed by this court when considering the motion for a stay. *Id.*

On appeal, the district court's findings of fact cannot be reversed except for a showing that they are "clearly erroneous." *See* FED. R. CIV. P. 52(a). When the evidence will support a conclusion either way, a trial judge's choice between two permissible views of the weight of the evidence cannot be clear error. *See United States v. Yellow Cab,* 338 U.S. 338, 342 (1949). "If the district court's account of the evidence is plausible in light of the record viewed in its entirety, the court of appeals may not reverse it even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently." *See Anderson v. Bessemer City,* 470 U.S. 564, 573-74 (1985). It is simply inconceivable that given this standard, Defendants have

shown likelihood of reversal on narrow tailoring when this Court has virtually nothing from the record before it on that issue.

Defendants have shown no likelihood that they will prevail on appeal. They certainly have not shown that the district court's Order is ***likely*** to be reversed.

B. The Defendants Will Not Suffer Irreparable Injury.

As Defendants see it, compliance with the district court's Order will cause them "incalculable and irremediable injury," principally in two ways. First, Defendants assert that they will encounter administrative inconvenience if forced to comply with the district court's Order at this time, in the midst of enrolling the class that will enter this year. Aside from the facial illogic of this convenient assertion—given the law school's consistent protestations before and during trial that race is only one of a multitude of factors used in the admissions process—it cannot conceivably justify continued deprivation of constitutional rights. Second, according to Defendants, compliance with the district court's Order will thwart their ability to enroll a critical mass of minority students consistent with their educational mission and exercise of academic freedom. The latter argument is just a restatement of Defendant's legal position on the status of the diversity interest.

1. Administrative Inconvenience Does Not Warrant a Stay.

Administrative inconvenience does not constitute irreparable injury. The predicate for Defendants' hue and cry seems to be that they have a well-oiled machine in place and if forced to replace it, there will be disruption or inconvenience. They may make

mistakes in estimating the yield rate, for example, so the resulting class may be slightly smaller or larger than is ideal.[5] This type of injury is simply no excuse for continuing a policy that violates the constitutional rights of applicants. *See, e.g., City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 508 (1989) ("the interest in avoiding the bureaucratic effort necessary to tailor remedial relief . . . cannot justify a rigid line drawn on the basis of a suspect classification"). Moreover, nothing in the Court's order forbids an assessment of yield rates. What defendants are enjoined from considering is an applicant's race in evaluating and deciding upon the question of admission. Moreover, Defendants have had ample notice–more than three years–of the possibility that the law school's 1992 admissions policy would be declared unconstitutional. To the extent that they failed to prepare for that possibility, there is no justification for continued violation of the constitutional rights of applicants to the law school.

Defendants complain that the district court's injunction "requires the Law School to devise a completely new admissions system." *See* Defendants' Stay Mem. at 2. That is simply nonsense, as the injunction requires nothing of the kind. Defendants also state that they cannot "surgically excise the consideration of race from application review overnight." *See* Defendants' Stay Mem., at 14. But they never explain why not. They do not claim to have tried. Their statement ignores the language of the 1992 admissions policy itself, which contemplates that at a certain point in the admissions process, after Defendants have achieved their desired level of racial diversity, race may be accorded less

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[5] Of course, mistakes in estimating the yield rate can be made with or without a system that uses racial preferences. Defendants do not explain why the risk of error increases when racial preferences are removed.

weight or no weight at all in the process. *See* Tr. Ex. 4, at 13 (Appellee's App. Ex. A). *See also* Trial Testimony of Richard Lempert, Tr. Vol. 3, at 126-127 (Appellee's App. Ex. B) (admitting that there is a point in the process when it is no longer appropriate to consider race in making admissions decisions). If Defendants' **own policy** contemplates circumstances in which the admissions office may no longer consider race as a factor, it is disingenuous for Defendants to suggest that they cannot comply with a court order having the same effect.

At bottom, the defendants' complaints of disruption, inconvenience and a "halt" in the admission process arise from their unwillingness to comply with the district court's order, not from their inability to do so or from any irreparable harm that will follow in so complying. Any "emergency" in this regard is self-inflicted.

2. Defendants May Not Avoid Their Constitutional Obligations by Relying on Their Educational Mission.

Perhaps it is true that if Defendants rely solely on LSAT-UGPA scores to make admissions decisions, they will be hampered in fulfilling their educational mission of enrolling a diverse student body. But the district court's Order does not require them to do so. The district court ordered Defendants to stop using racial classifications in violation of applicants' constitutional rights. The district court also suggested that the Defendants should focus their efforts on the "search for lawful solutions, ones that treat all people equally and do not use race as a factor." March 27 Op., at 85. If this Court

stays the district court's March 27 Order, the Defendants will have no incentive to undertake that search.

This assumes, of course, that Defendants themselves have a clear vision of the educational mission that is to be compromised, which, as the district court noted, they do not. Defendants profess a desire to obtain viewpoint diversity by means of a critical mass of underrepresented minority students, but the district court found that the Defendants cannot define this "critical mass," March 27 Op., at 50, and that, in any event, the "connection between race and viewpoint is tenuous at best." *Id.* at 47. It is difficult to comprehend how such an interest, the contours of which are "so ill-defined," can possibly be the subject of irreparable injury. *Id.* at 50. In any event, Defendants merely beg the question of whether diversity is a compelling interest by arguing that they would be irreparably harmed in not being able to use diversity as a reason to consider race in the admissions process.

Defendants appear to believe that they are irreparably injured if they are not permitted to violate applicants' constitutional rights. Their only justification is their "educational mission" and "academic freedom." Neither of these proffered justifications warrants violation of rights given to individuals by the United States Constitution. *Cf. Runyon v. McCrary*, 427 U.S. 160, 176 (1976) (First Amendment rights cannot justify race-based discrimination by private school).

Defendants will not be irreparably injured by having to comply with the district court's Order. Defendants are attempting to create a problem by taking an unreasonable

stance and shutting down their entire admissions process. Nothing prohibits them from considering each file on an individualized basis, evaluating each candidate for admission based on his or her individual accomplishments, life experiences, and other interesting qualities and backgrounds. The district court did not order the Defendants to halt their admissions process, and self-inflicted injury certainly cannot form the basis for this Court sanctioning continued violation of applicants' rights—which is precisely what a stay would entail.

3. Continued Violation of Applicants' Constitutional Rights Is *Per Se* Irreparable Injury.

In addition to considering the consequences that compliance with the district court's Order will have on Defendants, this Court must consider the rights of the applicants. The district court found that, by applying the law school's 1992 admissions policy, the Defendants have violated the constitutional rights of applicants to the law school for many years. Permitting Defendants to continue to violate the constitutional rights of applicants to the law school constitutes not only substantial harm, but is *per se* irreparable. *See Planned Parenthood Ass'n v. Cincinnati*, 822 F.2d 1390, 1400 (6th Cir. 1987).

Defendants acknowledge the principle that even "minimal infringement" of constitutional rights "constitutes irreparable injury," but they advance this argument only in connection with the law school's claim of academic freedom. Defendants' Stay Mem. at 17. Their myopic view of the constitutional rights at issue in this case prevents them from seeing that that very same principle precludes, as a matter of law, the issuance of a stay in this case.

Rather than recognize the infringement of applicants' constitutional rights that would result from the issuance of a stay, Defendants attempt to diminish such injury by arguing that, since the Plaintiff did not seek a preliminary injunction, she and others like her must only suffer injury compensable by damages. Defendants' Stay Mem. at 18. This argument—and, in many ways, this motion—reveals the same callous disregard for the rights of applicants to the law school that resulted in the continuation of this unconstitutional policy throughout the pendency of this action. The fact that Plaintiff did not, either individually or on behalf of the class, seek a preliminary injunction in no way diminishes the magnitude of the harm that she and other applicants have suffered.[6]

D. The Public Interest Is Served by Denying Defendants' Motion.

As the Sixth Circuit has stated, '"it is always in the public interest to prevent the violation of a party's constitutional rights.'" *Connection Distributing Co. v. Reno*, 154 F.3d 281, 288 (6th Cir. 1998) (quoting *G & V Lounge, Inc. v. Michigan Liquor Control Comm'n*, 23 F.3d 1071, 1079 (6th Cir. 1994)); *see also EOEA*, 937 F. Supp. at 709 (because the defendants' policy "runs afoul of the Constitution, . . . it is contrary to the public interest"). "The public interest in this case is represented by the principles embodied in the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. In this case, the public interest would not be served but instead violated if the court were to grant the requested stay." *Associated General Contractors of Ohio v. Drabik*, 50 F. Supp. 2d 741, 772 (S.D. Ohio 1999), *aff'd*, 214 F.3d 730 (6th Cir. 2000).

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[6] Moreover, since the class includes those who are applying now, and those who will apply next year, it plainly includes people for whom injunctive relief is the most appropriate remedy. The district court made the same point in denying the motion for stay. *See* April 3, 2001 Opinion and Order, at 8.

CONCLUSION

The district court's Order does no appreciable harm to Defendants. To the contrary, the law school's 1992 admissions policy has violated the constitutional rights of applicants for many years, and it should not be permitted to continue to harm others. Accordingly, Defendants' motion for stay should be denied.

Respectfully submitted,

Dated: April 4, 2001.

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