

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

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JENNIFER GRATZ and PATRICK  
HAMACHER,  
for themselves and all others  
similarly situated,  
Plaintiffs,  
v.  
LEE BOLLINGER, JAMES J.  
DUDERSTADT, THE UNIVERSITY  
OF MICHIGAN, and THE UNIVERSITY  
OF MICHIGAN COLLEGE OF LITERATURE,  
ARTS, AND SCIENCE,  
Defendants.

Civil Action #  
COMPLAINT  
CLASS ACTION

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Nature of the Action

1. This is a class action brought for violations and threatened violations of the rights of the plaintiffs and the class they represent to equal protection of the laws under the Fourteenth Amendment to the United States Constitution, and for racial discrimination in violation of 42 U.S.C. 1981, 1983 and 2000d et seq. Plaintiffs seek declaratory and injunctive relief and compensatory and punitive damages in an amount to be proven at trial.

Jurisdiction and Venue

2. This Court has jurisdiction of the action under 28 U.S.C. 1331 and 1343. This action arises under the Fourteenth Amendment to the United States Constitution, and under federal laws, 42 U.S.C. 1981, 1983, and 2000d et seq.

3. Venue in this Court is proper under 28 U.S.C. 1391 and this Court has personal jurisdiction over the defendants in this matter because the events giving rise to this claim occurred, and will occur, in this district.

Plaintiffs

4. Jennifer Gratz is, and at all times relevant to this

litigation was, a resident of the State of Michigan. Gratz applied in 1994 for admission to the University of Michigan College of Literature, Science & Arts (the "LSA College") in Ann Arbor as an undergraduate beginning in the academic year 1995-96. In January 1995, the LSA College placed her on a "wait list" for admission. In April 1995, she was apprised that her application had been rejected. She has attended University of Michigan at Dearborn instead.

5. Patrick Hamacher is, and at all times relevant to this litigation was, a resident of the State of Michigan. Hamacher applied for admission to the LSA College as an undergraduate in 1996. By letter dated November 19, 1996, the LSA College informed him that he had been placed on a "wait list" for admission. Sometime in the spring of 1997, he was apprised that his application had been rejected. He has attended Michigan State University instead, but would transfer to the LSA College if offered an opportunity. He intends to apply to transfer if the discriminatory admissions system described herein is eliminated.

#### Defendants

6. The University of Michigan is a public educational institution in the State of Michigan. The LSA College is a school under the supervisory authority of the University of Michigan.

7. James Duderstadt was the President of the University of Michigan during the time that Gratz's application was under consideration. He was, at that time, the individual ultimately responsible for the admissions policies described below. He is being sued in his individual capacity.

8. On or around February 1, 1997, Lee Bollinger became the President of the University of Michigan, and was President at the time that Hamacher's application was rejected. He was, at that time, the individual ultimately responsible for the admissions policies described below. He is being sued in both his individual and official capacities. Unless enjoined, he will continue to approve of, and implement, an admissions system substantially the same as the system described below.

#### Class Action Allegations

9. Gratz and Hamacher bring this class action pursuant to Rules 23(a), 23(b), and 23(c)(4)(A) of the Federal Rules of Civil Procedure on behalf of a class consisting of all students who: applied for and were not granted admission to the LSA College for all academic years since 1995-96 through the entry of a judgment in this action; and were members of those racial or ethnic groups, including Caucasian, that defendants treated less favorably in

considering their applications for admission to the LSA College.

10. Plaintiffs seek to maintain this class, pursuant to Rules 23(b) and 23(c)(4), on the issues of whether defendants engaged in unlawful discrimination and whether defendants should be enjoined from continuing their discriminatory policies.

11. The Class is so numerous that joinder of all its members is impracticable. Defendants receive thousands of applications for admission each year for the LSA College. Plaintiffs do not know addresses or the precise number of rejected applicants, but can ascertain this information from the defendants' records.

12. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are whether defendants violated the Fourteenth Amendment to the United States Constitution, and federal laws, 42 U.S.C. 1981, 1983, and 2000d et seq., by discriminating and by conspiring to discriminate against certain applicants on the basis of race, and whether they will continue to do so.

13. Plaintiffs' claims are typical of the claims of the members of the Class, and they are adequate representatives of the Class. Plaintiffs and members of the Class have sustained damages because of defendants' unlawful activities alleged herein. Plaintiffs have retained counsel competent and experienced in race discrimination litigation and intend to prosecute this action vigorously. Plaintiffs will fairly and adequately protect the interests of the Class.

14. A class action is superior to other available means for the fair and efficient adjudication of the controversy.

#### Facts

15. The University of Michigan is a State-run university which also receives federal funds. The LSA College is an educational unit part of, operated by, and responsible to, the University of Michigan. It also receives federal funds.

16. The LSA Admissions Form asks each applicant to disclose his or her race.

17. Each of the plaintiffs identified his or her race by checking the box next to "white."

18. Defendants used the race information provided by plaintiffs and other applicants to determine who would be admitted to the LSA College.

19. Defendants used different admissions standards based on each student's self-identified race. As a result, students from favored racial groups had a significantly greater chance of

admission than students with similar credentials from disfavored racial groups.

20. Applicants from disfavored racial groups were not compared directly to applicants from favored racial groups.

21. Plaintiffs, categorized as white, were not among the favored racial groups that benefitted from less stringent admissions standards.

22. Defendants did not merely use race as a "plus" factor or as one of many factors to attain a diverse student body. Rather, race was one of the predominant factors (along with scores on standardized admissions tests and high school grades) used for determining admission.

23. Defendants had no compelling interest to justify their use of race in the admissions process, and were not motivated by either an interest in educational diversity or by a desire to remedy the present effects of any past discrimination.

24. Assuming arguendo that defendants had a compelling interest for which they used race in their admissions criteria, defendants did not consider, and never employed, any race neutral alternative to achieve that interest.

25. As a result of defendants' racially discriminatory procedures and practices, plaintiffs' applications were rejected. Each of the plaintiffs suffered humiliation, emotional distress, and pain and suffering as a consequence of his or her application being rejected. Each of the plaintiffs also suffered humiliation, emotional distress, and pain and suffering upon learning that defendants had discriminated against him or her on the basis of race.

26. As a result of defendants' discrimination, Gratz and Hamacher were forced to attend undergraduate institutions that were either less prestigious or more expensive (or both) resulting in higher educational costs and lower future earnings.

27. If not enjoined, the University of Michigan, the LSA College, and Bollinger will continue to use race in selecting students for the LSA College.

#### FIRST CLAIM

28. Plaintiffs repeat and reallege the allegations and averments of paragraphs 1-27 as if fully set forth herein.

29. Bollinger and Duderstadt acted under color of law to deny plaintiffs equal protection of the laws, and to discriminate on the basis of race, in violation of 42 U.S.C. 1981 and 1983.

30. Bollinger and Duderstadt violated plaintiffs' clear and well-established Constitutional right to receive the same consideration for admissions as applicants of other races.

#### SECOND CLAIM

31. Plaintiffs repeat and reallege the allegations and

averments of paragraphs 1-30 as if fully set forth herein.

32. The University of Michigan and the LSA College are recipients of federal funds. They discriminated against plaintiffs on the basis of their race, color, and/or ethnicity in violation of 42 U.S.C. 2000d et seq.

RELIEF

WHEREFORE, plaintiffs demand judgment:

- A. Awarding them compensatory and punitive damages in an amount to be proven at trial;
- B. Declaring that defendants violated their rights to nondiscriminatory treatment under the Fourteenth Amendment and 42 U.S.C. 1981, 1983, and 2000d et seq.;
- C. Enjoining defendants from continuing to discriminate on the basis of race in violation of the Fourteenth Amendment;
- D. Requiring the LSA College to offer Hamacher admission as a transfer student;
- E. Awarding attorneys' fees and costs pursuant to 42 U.S.C. 1988 and any other applicable authority; and
- F. Awarding any other relief that is appropriate and just.

Respectfully submitted,

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