

# The Civil Rights Project



*Proyecto Derechos Civiles*

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## **U.S. Researchers File Brief with U.S. Supreme Court Opposing Michigan's Proposal 2 and Ban on Affirmative Action**

--LOS ANGELES--The Civil Rights Project today submitted a brief to the U.S. Supreme Court for *Schuette v. Coalition to Defend Affirmative Action et al.*, in support of the Court of Appeals decision overturning the referendum banning affirmative action in Michigan. The referendum, known as Proposal 2, was designed to overturn affirmative action plans at the University of Michigan and other universities in the state and to inscribe that prohibition into the state constitution. Under the policy incorporated in the referendum, universities in Michigan were allowed to consider virtually any factor in admitting students *except for* a student's race. Previously the Supreme Court upheld the University of Michigan's affirmative action plan, which considered race as *one of many* factors in a holistic evaluation of students, and tried to create a diverse class in a very segregated state. The Supreme Court's 2003 *Grutter v. Bollinger* decision recognized that the University had produced strong and convincing evidence of the educational value that a diverse student body creates for all groups of students, and that it was not selecting any student solely on the basis of his or her race or ethnicity.

The U.S. Court of Appeals concluded that Proposal 2 rigged the political process by selectively cementing prohibitions in the state constitution against only the consideration of race, which violated the principles of equal protection. Since minority groups did not have the millions of dollars needed to collect the signatures to launch a counter-referendum to change the state constitution, Proposal 2 would permanently harm communities of color in the state and specifically make it impossible for them to pursue change through the normal political process.

Given the enormous cost of overturning the referendum, Proposal 2 prevents educational leaders in Michigan from ever taking steps designed for educational equity and good preparation of students, which they believed to be essential to their mission, and which the Court had already endorsed as constitutionally permissible.

The Civil Rights Project, a non-partisan research center, submitted a brief summarizing the social science evidence showing the deep and lasting harm that would be caused by leaving the restriction in the state's constitution. The evidence, from selective colleges in states with affirmative action bans, showed that such policies sharply reduced access for black and Latino students to the strongest universities. The brief also shows that in Michigan, which has one of

the very highest levels of racial segregation in unequal public schools, students of color are rarely given the kind of schooling available to white middle class students. The brief substantiates that a policy like affirmative action was essential to give talented and strongly motivated underrepresented students a chance to prepare for and attend college.

The brief also addresses the “mismatch” claim that minority students with lower test scores (often due to this unequal schooling) would do better and be happier at less competitive colleges, presumably where there was no “stigma” from affirmative action. Research summarized in the brief shows that contrary to this theory, students of color actually do better at more competitive colleges. Though they often have less adequate preparation they rise to meet the challenges. They also have more positive experiences at colleges practicing affirmative action where they are not part of a small and isolated minority. This latter finding specifically counters the claims of the mismatch theorists who purport that students felt better at colleges where affirmative action was banned.

Pennsylvania State University Professor Liliana Garces, who was counsel of record for the brief, commented, “It is critical that the Court be presented with reliable research evidence relevant to the legal issues in the case. The Court’s decision will have important consequences for the educational practices and policies of postsecondary institutions nationwide, particularly those that seek to address racial and ethnic inequities in education. ”

“This brief, the work of leading social scientists,” said CRP Co-director and Professor Gary Orfield, “shows us that it is urgently important to preserve the rights of colleges to practice affirmative action policies that leaders of higher education know are essential. We must not permanently cement prohibitions against these moderate and effective policies in state constitutions.”

To read the BRIEF OF CIVIL RIGHTS PROJECT/PROYECTO DERECHOS CIVILES AS AMICUS CURIAE IN SUPPORT OF RESPONDENTS CHASE CANTRELL ET AL see:

To receive updates from the Civil Rights Project, sign onto our mailing list at: <http://civilrightsproject.ucla.edu/news/mailling-list>

### **About The Civil Rights Project at UCLA**

Founded in 1996 by former Harvard professors Gary Orfield and Christopher Edley, Jr., the Civil Rights Project/Proyecto Derechos Civiles is now co-directed by Orfield and Patricia Gándara, professors at UCLA. Its mission is to create a new generation of research in social science and law, on the critical issues of civil rights and equal opportunity for racial and ethnic groups in the United States. It has commissioned more than 450 studies, published 14 books, including five on access to higher education, and issued numerous reports from authors at universities and research centers across the country. The U.S. Supreme Court, in its 2003 *Grutter v. Bollinger* decision upholding affirmative action, and in Justice Breyer’s dissent (joined by three other Justices) to its 2007 *Parents Involved* decision, cited the Civil Rights Project’s research.

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*Natasha Amlani*, an exceptional student and recent graduate of the University of California, Los Angeles, whose hard work behind-the-scenes kept the committee organized.