



WISCONSIN LEGISLATIVE COUNCIL  
PROPOSED REPORT TO THE LEGISLATURE

SPECIAL COMMITTEE ON  
AFFIRMATIVE ACTION

June 8, 2007

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# Special Committee on Affirmative Action

Prepared by:  
Mary Matthias, Senior Staff Attorney, and Scott Grosz, Staff Attorney  
June 8, 2007

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**PART I**  
**KEY PROVISIONS**  
**OF COMMITTEE RECOMMENDATIONS**

The Special Committee on Affirmative Action recommends the following proposals to the Joint Legislative Council for introduction in the 2007-08 Session of the Legislature.

**WLC: 0112/3, Relating to Affirmative Action Practices in State and Local Government Contracting and State and Local Government Hiring, and the Consideration of Race or Ethnicity in the University of Wisconsin System and by the Higher Educational Aids Board**

WLC: 0112/3 specifies that for the following purposes, a persons race or ethnicity may be taken into account only if the person is a U.S. citizen: student loans, state civil service hiring, minority business contracting, affirmative action plans required for firms that contract with the state, University of Wisconsin (UW) admissions, and any contracting or hiring undertaken by a local unit of government.

**WLC: 0110/3, Relating to Certification and Recognition of Women-Owned Businesses and Minority Businesses, Minority Financial Advisers, and Minority Investment Firms**

WLC: 0110/3 specifies that a minority-owned business is eligible to participate in the state purchasing minority business set-aside program only if the net worth of each individual in control of the business is less than \$1,000,000. The net worth limitation also applies to certification of women-owned businesses, although those businesses are not eligible for the set-asides.

**WLC: 0115/2, Relating to Information on State Contracts With Businesses**

WLC: 0115/2 requires the Department of Administration (DOA) and Department of Transportation (DOT) to maintain a website containing information on all contracts with private sector and requires an asterisk to be placed next to the listing of any contract that was not awarded to the lowest, responsible bid or most advantageous proposal.



## PART II

# COMMITTEE ACTIVITY

### Assignment

The Joint Legislative Council established the Special Committee on Affirmative Action and appointed the chairperson by a June 9, 2006 mail ballot. The committee was directed to: review state and local government affirmative action policies, including policies in student admission to the UW and Wisconsin Technical College System and state contracting and hiring, to determine: (a) whether those policies are uniform in content and administration throughout state and local government; (b) the effect of those policies on the public, and (c) whether these policies are cost-effective.

Membership of the Special Committee, appointed by an August 1, 2006 mail ballot, consisted of two Senators, three Representatives, and 13 public members. A list of committee members is included as **Appendix 2** to this report.

### Summary of Meetings

The Special Committee held five meetings on the following dates:

October 4, 2006	May 4, 2007 (Milwaukee)
December 19, 2006	June 4, 2007
January 11, 2007	

At the October 4, 2006 meeting, the Special Committee received testimony from invited speakers.

Committee member **Robert Gregg** provided background information on federal and state laws that govern affirmative action in Wisconsin, discussed the constitutional requirements of affirmative action programs, and answered questions from the committee relating to the authority for affirmative action programs as well as the enforcement and auditing of programs. **Patricia Brady**, General Counsel, UW System, described the University's statutory mission to increase diversity and answered questions related to affirmative action in higher education.

**Demetri Fisher**, Office of State Employee Relations (OSER), discussed demographics of Wisconsin's population and described OSER analysis, assistance, and training with regard to affirmative action programs of state agencies. Mr. Fisher answered questions from the committee relating to OSER and the Division of Affirmative Action as well as questions on definitions and compliance monitoring for the programs OSER administers. **Helen McCain**, **James Langdon**, and **Laura Rice**, DOA, discussed affirmative action in the context of state contracting. The representatives from DOA answered questions regarding the evaluation and financial impact of the affirmative action programs administered by DOA. **Michele Carter-Rutledge**, DOT, discussed affirmative action programs that affect DOT and answered questions from the committee

At the December 19, 2006 meeting, the Special Committee heard from three invited speakers. **Dave Cieslewicz**, Mayor, and **Lucia Nunez**, Director of the Department of Civil Rights, City of Madison, discussed the diversity and affirmative action policies of the city and explained how these policies benefit the city and its residents. **Ward Connerly**, Chairman, American Civil Rights Institute, explained his views on affirmative action, stating that in his opinion, the government should not use race as a factor in any aspect of governmental decision-making. The discussion focused mainly on the use of race as a factor in university admissions and the effects of Proposition 209, an initiative that amended the California constitution to prohibit affirmative action in that state.

At the January 11, 2007 meeting, the Special Committee received testimony from invited speakers. **Maria Monteagudo**, Employee Relations Director, City of Milwaukee, discussed the diversity, affirmative action, and equal employment policies and practices followed by the City of Milwaukee. She described the underutilization model used by the city as well as special recruitment efforts that are more likely to reach minority job applicants.

**Lucia Nunez**, Director, Department of Civil Rights, City of Madison, continued the testimony she offered at the committee's December 19, 2006 meeting. She responded to questions regarding the impact of affirmative action on the City of Madison workforce. She also responded to questions regarding her opinion of the amount of racial discrimination in the state and the challenges related to defining race.

**John D. Wiley**, Chancellor, and **Robert Seltzer**, Director of Admissions, discussed the admissions process at the UW-Madison. Chancellor Wiley noted that the University strives to have a campus that reflects the demographics of the state and that research shows all students benefit from education in a diverse environment. Mr. Seltzer provided a detailed description of the review of admissions applications and provided handouts containing admissions data.

**Larry Rubin**, Assistant Vice President for Academic and Student Services, and **Vicki Washington**, Interim Assistant Vice President, Academic Diversity and Development, UW System, discussed the meaning of the terms affirmative action and diversity in the University context. Ms. Washington noted that diversity relates to the admissions process while the term affirmative action is used in employment situations. Mr. Rubin discussed upcoming changes to systemwide admissions policies. Ms. Washington and Mr. Rubin responded to questions from committee members on issues such as institutional racism and the unique experiences of identifiable minorities.

Chair Grothman instructed committee members to forward their suggestions for legislative options to the Legislative Council staff.

The Special Committee held its fourth meeting, on May 4, 2007, at the Milwaukee Public Schools Central Administration Building. The committee engaged in a lengthy discussion regarding the process that should be followed by the committee. A motion was made to terminate all further proceedings of the committee. The motion failed.

The committee heard testimony from two Public Members of the committee. **Jean Abramowski**, owner of A Compliance Connection, described how her firm prepares and maintains Affirmative Action plans for companies that contract with the federal and state government. **Ray Camosy**, President of Camosy, Inc., a private construction firm, described his experiences as a business owner competing for government construction contracts in Wisconsin and Illinois.

The committee directed staff to prepare several drafts for consideration at its next meeting. Chairperson Grothman stated that he would be asking staff to prepare several additional drafts, for consideration at the next meeting, and invited all committee members to contact the staff if they wanted additional drafts prepared on their behalf.

At the June 4, 2007 meeting, the Special Committee considered and took action on a number of bill drafts. The committee first considered WLC: 0112/2, establishing a U.S. citizenship requirement for various programs that consider race or ethnicity. The committee approved recommendation of the draft to the Joint Legislative Council.

The committee next took up WLC: 0116/2, which would have required any person participating in various programs that consider race or ethnicity to affirm that he or she is at least 25% heritage in the racial or ethnic group to which they claim to belong. The draft established a penalty for any false affirmation of race or ethnicity. Approval of this draft failed on a roll call vote.

The committee discussed and approved WLC: 0110/2, which makes minority businesses ineligible for certain state minority business assistance programs if the net worth of any owner or director of the business exceeds \$1,000,000. The committee also applied this net worth limitation to women-owned businesses.

The committee also modified and approved WLC: 0115/1, which requires the DOA and DOT to post on a website certain information about their contracts with the private sector, and indicate which contracts were not awarded to the lowest, responsible bid or most advantageous proposal.

The committee discussed several bill drafts relating to UW admissions policies, but took no action on them. The committee also considered but rejected a draft that would have incorporated federal contracting affirmative action requirements into Wisconsin law.

The committee engaged in a lengthy discussion about WLC: 0117/1, a proposed constitutional amendment that would have prohibited the consideration of race, color, ethnicity, or national origin in the operations of public employment, education, or contracting. That proposal failed to gain approval on a tie vote.



## **PART III**

# **RECOMMENDATIONS INTRODUCED BY THE JOINT LEGISLATIVE COUNCIL**

This part of the report provides background information on, and a description of, the bills as recommended by the Special Committee on Affirmative Action.

### **WLC: 0112/3**

#### **Background**

Current law defines “minority business,” “minority financial advisor,” and “minority investment firm.” A company certified by the Department of Commerce (Commerce) as one of these types of minority firms is eligible to participate in certain programs such as the minority business exception to the low-bid requirement for state purchasing.

Under current law, a minority business, minority financial adviser, or minority investment firm must be at least 51% owned, controlled, and actively managed by a minority group member or members who are U.S. citizens or permanent residents and must be performing a useful business function.

Section 16.765, Stats., requires contracting agencies, the UW Hospitals and Clinics Authority, the Fox River Navigational System Authority, the Wisconsin Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority, and the Bradley Center Sports and Entertainment Corporation to include in each contract a provision stating that the contractor will take affirmative action to ensure equal employment opportunities, except with respect to sexual orientation.

Under current law, the Ben R. Lawton Minority Undergraduate Program provides financial assistance, in the form of grants, to certain minority undergraduate students enrolled in the UW System. The draft would create the requirement that a student must be a U.S. citizen in order to receive a grant under the Ben R. Lawton Minority Undergraduate Grant Program.

Under current law, the Higher Educational Aids Board (HEAB) operates a minority teacher loan program. Under the program, the board shall award loans to certain minority students who teach or agree to teach in school districts with high minority populations. The loan program also specifies terms for loan forgiveness. Additionally, the HEAB operates a minority undergraduate grant program. Under the program, the board provides financial assistance, in the form of grants, to certain minority students enrolled in the Wisconsin Technical College System and private institutions of higher education.

Current law, ch. 230, Stats., relating to state civil service, establishes the policy to take affirmative action which is not in conflict with other provisions of the chapter.

#### **Description**

This draft amends each of the provisions described above to add a U.S. citizenship requirement. Specifically, the draft:

- Creates the additional requirement that Commerce may not certify a business as minority business, minority financial advisor, or minority investment firm unless each minority group member who owns, controls, or actively manages the businesses is a U.S. citizen.

- Prohibits the consideration of race or ethnicity, for purposes of determining compliance with affirmative action requirements in s. 16.765, Stats., of any person who is not a U.S. citizen.
- Specifies that the UW System may not consider the race or ethnicity of an applicant in that applicant's admission to the UW System unless the applicant is a U.S. citizen.
- Creates the requirement that a student must be a U.S. citizen in order to receive a minority undergraduate grant or minority teacher loan from the HEAB.
- Requires contractors, employers, and applicants for employment to be U.S. citizens in order to be eligible for affirmative action contracting and hiring programs of a city, village, town, school district, or county unless the citizenship requirement would cause a loss of federal funding to the local governmental unit.
- Prohibits the consideration of race or ethnicity for affirmative action in ch. 230, Stats., unless the consideration of race or ethnicity applies to a U.S. citizen.

## **WLC: 0110/3**

### **Background**

Current law defines “minority business,” “minority financial advisor,” and “minority investment firm.” A company certified by Commerce as one of these types of minority firms is eligible to participate in certain programs such as the minority business exception to the low-bid requirement for state purchasing.

Under current law, a minority business, minority financial adviser, or minority investment firm must be at least 51% owned, controlled, and actively managed by a minority group member or members who are U.S. citizens or permanent residents and must be performing a useful business function.

Current law also defines “woman-owned business” for the purposes of certification of such businesses by the Commerce. A “woman-owned business” must be at least 51% owned, controlled, and actively managed by a woman and must be performing a useful business function in this state. Woman-owned businesses are not eligible for the exception to the low-bid requirement for state purchasing.

### **Description**

This draft creates the additional requirement that Commerce may not certify a business, financial adviser, or investment firm as a minority business, minority financial adviser, or minority investment firm if the individual net worth of any minority group member who owns, controls, and actively manages the business, financial adviser, or investment firm exceeds \$1,000,000.

Likewise, the draft specifies that a woman-owned business may not be certified as such by Commerce if the individual net worth of a woman who owns, controls, or actively manages the business exceeds \$1,000,000.

The draft also applies the \$1,000,000 net worth limitation to the definition of “women's business” for the purpose of contracting goals in the construction of baseball park facilities and related services.

The draft further specifies that a local governmental unit may not recognize a business or grant any preference to a business as a woman-owned or minority-owned business if the individual net worth of any minority group member or woman who owns, controls, and actively manages the business exceeds \$1,000,000.

## **WLC: 0115/2**

### **Background**

Under current law, state agencies, in awarding contracts to private companies for goods and services, must generally award the contract to the lowest responsible bid or most advantageous proposal. Exceptions to this requirement apply to contracting with minority-owned businesses and, under certain circumstances, vendors domiciled in the state. An agency may award up to 5% of the total amount expended annually to minority businesses that submit a qualified responsible bid that is no more than 5% higher than the low bid. Under s. 16.75 (1) (a) 2., Stats., an agency may grant a preference to a Wisconsin vendor if a state or nation in which a competing vendor is domiciled grants a preference to vendors domiciled in that state or nation.

### **Description**

The draft requires the Department of Administration and the Department of Transportation to each maintain a website setting forth the following information regarding contracts with businesses:

1. Data on state purchases from businesses, including amounts expended and the percentage of total expenditures awarded.
2. The identity of businesses that have been awarded contracts under an exception to the responsible low-bid or most advantageous proposal requirement.



## Appendix 1

### Committee and Joint Legislative Council Votes

WLC: 0112/3, WLC: 0110/3, and WLC: 0115/2 were recommended by the Special Committee on Affirmative Action to the Joint Legislative Council for introduction in the 2007-08 Session of the Legislature.

#### Special Committee Votes

The Special Committee voted to recommend WLC: 0112/3 to the Joint Legislative Council for introduction in the 2007-08 Session of the Legislature. The vote on the draft was as follows:

*Fred Mohs moved, seconded by Raymond Camosy, to approve WLC: 0112/2, requiring U.S. citizenship for inclusion in certain programs that consider race. The motion passed on a vote of Ayes, 10 (Sen. Grothman; Rep. Suder; Public Members Alcala-Ament, Binter, Camosy, Dziedzic, Mohs, Sather, Wagner, and Wick); and Noes, 8 (Sen Taylor; Reps. Grigsby and Kessler, and Public Members Abramowski, Gregg, Monteagudo, Washington, and Williams).*

The Special Committee voted to recommend WLC: 0110/3 to the Joint Legislative Council for introduction in the 2007-08 Session of the Legislature. The vote on the draft was as follows:

*Chair Grothman moved, seconded by Fred Mohs, to approve WLC: 0110/2, as amended, establishing a net worth limitation for inclusion in certain programs for minority-owned businesses. The motion passed on a vote of Ayes, 10 (Sen. Grothman; Rep. Suder; and Public Members Alcala-Ament, Binter, Camosy, Dziedzic, Mohs, Sather, Wagner and Wick); and Noes, 8 (Sen. Taylor; Reps Grigsby and Kessler; and Public Members Abramowski, Gregg, Monteagudo, Washington, and Williams).*

The Special Committee voted to recommend WLC: 0115/2 to the Joint Legislative Council for introduction in the 2007-08 Session of the Legislature. The vote on the draft was as follows:

*Chair Grothman moved, seconded by Representative Suder, to approve WLC: 0115/1, requiring certain information regarding minority contractor to be posted on a website, with the following changes: the names of all firms contracting with the state will be included on the website, with an asterisk placed next to the names of firms that were not the lowest bidded on the contract they won. The motion passed on a vote of Ayes, 13 (Sen. Grothman; Rep. Suder; and Public Members Abramowski, Alcala-Ament, Binter, Camosy, Dziedzic, Gregg, Mohs, Sather, Wagner, Wick and Williams); and Noes, 5 (Sen. Taylor; Reps Grigsby and Kessler; and Public Members Monteagudo and Washington).*



**Wisconsin Legislative Council  
Special Committee on Affirmative Action  
Minority Report  
June 8, 2007**

Senator Lena C. Taylor  
Wisconsin State Senate - 4<sup>th</sup> District

Representative Tamara D. Grigsby  
Wisconsin State Assembly – 18<sup>th</sup> District

Representative Frederick Kessler  
Wisconsin State Assembly – 12<sup>th</sup> District

Ms. Vicki Washington, Public Member  
University of Wisconsin System

Ms. Marie Monteagudo, Public Member  
City of Milwaukee

Mr. Robert Gregg, Public Member  
Boardman, Suhr, Curry & Field LLP

## **I. Introduction**

We, the undersigned members of the Special Committee on Affirmative Action, (“Special Committee”) submit this minority report to express our serious objections to the manner, method, and process in which the Special Committee performed its legislative business over the past eight months. As discussed in detail below, we believe that the activities of the Special Committee have done nothing to contribute or advance a productive examination of our state’s affirmative action laws. Instead, the Special Committee’s actions, under the leadership of Chairman Glenn Grothman, represent a great disservice to the residents of Wisconsin. Chairman Grothman’s unorthodox tactics and style in leading the Special Committee prevented an open, fair, and deliberative process and are an affront to core democratic principles. In addition to the Special Committee’s procedural failings, a majority of the proposed amendments considered by the body contained major substantive flaws as outlined below. The proposals that were passed by the Special Committee do not serve the public interest and will actually block opportunities for advancement by members of communities of color in Wisconsin. Therefore, we strongly urge the Joint Legislative Council to reject the three proposed amendments that were passed by the Special Committee on June 4, 2007.

### Background on the Special Committee

The Special Committee was established in June, 2006 by the Joint Legislative Council in order to review state and local government affirmative action policies, including student admission policies for the University of Wisconsin and Wisconsin Technical College System along with state contracting and hiring policies. Specifically, the Special Committee was charged to determine: (1) whether those policies are uniform in content and administration throughout state and local government; (2) the effect of those policies on the public; and (3) whether these policies are cost-effective.

It is important to note from the outset that Wisconsin’s holistic approach to affirmative action is unique when compared to other states. Wisconsin’s affirmative action programs are part of a much broader system that not only recognizes race, ethnicity, and gender; but also considers factors such as military service and geography. It is disturbing that throughout the deliberations of this Special Committee, the broad nature of the state’s affirmative action programs were not recognized.

As Chairman of the Special Committee’s proceedings, Mr. Grothman has routinely disregarded Joint Legislative Council procedure and long-standing precedent set by other committee chairmen. From October 4, 2006 through June 4, 2007, the Special Committee convened five times. These meetings were extremely contentious and revealed Chairman Grothman’s predisposition against affirmative action and his intention to circumvent the process and disregard the evidence presented to advance his pre-determined views. Chairman Grothman operated in a hostile, biased and arbitrary manner. Specific examples of the Chairman’s failure to maintain a balance include: 1) purposeful domination of discussion time during each meeting; 2) routinely failed to recognize committee members who held contrary viewpoints; 3) unnecessarily limited discussion by committee members; 4) rude to committee members with whom he disagreed, among other failings. Chairman Grothman’s tactics reached a low both before and during the Special Committee’s final six-hour-long meeting on June 4.

Virtually all of the testimony presented to the Special Committee by experts in Wisconsin, fell in support of affirmative action and its benefits. Most of the experts administered affirmative action programs for the state of Wisconsin, and for local governmental units and municipalities. The one contrary piece of testimony presented was from Ward Connerly, an individual who is neither a Wisconsin resident nor an expert on Wisconsin’s affirmative action policies, procedures and practices. Mr. Connerly was accorded an exclusive platform to present his views during a meeting in opposition to affirmative action for well over 3 hours.

Despite the fact that Wisconsin’s affirmative action programs do not use quotas, Mr. Connerly’s testimony singularly concentrated upon university admissions in California, Michigan, and other states which allegedly operate under a quota or “point” system. We reject Mr. Connerly’s testimony on the

grounds that it was wholly irrelevant to Wisconsin's affirmative action policies and should not have been presented to the Special Committee.

Furthermore, we vigorously object to the Chairman's manipulation of the process to deny the Special Committee the opportunity to hear from Frank Wu, Dean of Wayne State University School of Law, a nationally renowned scholar and expert on affirmative action, whose views are contrary to those espoused by Ward Connerly. Without consulting the Special Committee, Chairman Grothman arbitrarily cancelled the meeting at which Dean Wu was to speak, Chairman Grothman directed Dean Wu, an expected witness, to cancel his airline reservations, as Mr. Grothman told Dean Wu that his testimony was not needed. Instead Chairman Grothman propounded to Dean Wu, leading and rhetorical questions narrowly proscribed by his own skewed viewpoints, in order to severely constrain Dean Wu's ability to provide learned and informed responses. Compounding this injustice, Chairman Grothman asked Dean Wu to respond within 3-4 days of uninviting him. Therefore, because the testimony of Dean Wu was excluded, we believe that as a matter of procedural fairness, Mr. Connerly's testimony should have been excluded as well. (See attached letter from Dean Wu.)

Unfortunately, procedural deficiencies that characterized the prior meetings were especially acute and disruptive during the meeting on June 4<sup>th</sup>. At the June 4 meeting, Mr. Grothman advanced an agenda that allowed only 15 minutes of discussion per topic, leaving each of the 18 members only 40 seconds to comment on each of the 11 proposals. In addition, the 11 proposals on the agenda were circulated to the members less than one week prior to the meeting. As the meeting began, Senator Taylor questioned the appropriateness of the procedures stipulated in the agenda. Chairman Grothman refused to respond to her or discuss the issue. Despite several attempts by committee members to pursue a discussion of the proposed amendment, Chairman Grothman summarily proceeded and directed the Legislative Council staff to take the roll call vote resulting in an extremely confusing and chaotic situation. This typified the rest of the meeting. Given the important nature of the topics on the agenda - especially the proposed amendment to alter the state's constitution - we believe that the proceedings and work product of the Special Committee do not reflect a thoughtful and deliberative process and should be rejected by the Joint Legislative Council.

## **II. Analysis of Substantive Flaws in Proposals that Were Passed or Rejected**

### WLC: 0112/2 – Citizenship Requirement

We cannot endorse WLC 0112/2, which would change state policy to exclude permanent legal residents from consideration for various affirmative action programs in the State. Specifically, programs affected by this section would include (1) admission to the University of Wisconsin system; (2) the Ben R. Lawton minority undergraduate grant program; (3) the higher educational aids board (HEAB) minority teacher loan program, which encourages students to teach in school districts with high minority populations, and the HEAB minority undergraduate grant program; and (4) hiring for state civil service positions.

We do not believe that this proposal is fair to lawful permanent residents who pay taxes and contribute to our communities, but have not yet attained citizen status. Many individuals who have attained lawful permanent resident status hold permanent jobs, pay taxes, and contribute to our communities through volunteerism and community service. Naturalization takes a number of years; after attaining permanent resident status, itself a time-consuming process, an applicant must maintain continuous residence in the United States for a *minimum* of three to five years.<sup>1</sup> Lawful permanent residents who pay taxes and make other contributions to our communities, but who are stuck in the red tape involved with naturalization, should not be excluded from consideration for programs designed to enhance diversity and expand opportunities.

In addition to the matter of basic fairness, it should be noted again that a key purpose of affirmative action programs is to promote diversity in the classroom and in our workplaces. We have not been

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<sup>1</sup> U.S. Citizenship and Immigration Services, I M-476, *A Guide to Naturalization*, Jan. 2007, at 22.

presented with any evidence that lawful permanent residents and other immigrants offer any less diversity of experiences and viewpoints than native born citizens or those individuals who have successfully navigated the bureaucracy required to become a naturalized citizen.

Basing its opinion on extensive data regarding student success in the classroom and workplace, the Supreme Court has recognized that educational outcomes are improved when “the greatest possible variety of backgrounds”<sup>2</sup> are represented in the classroom. To achieve this goal, admissions programs must be “flexible enough to consider all pertinent elements of diversity in light of the particular qualifications of each applicant.”<sup>3</sup> In fact, the Court has struck down programs which rigidly award points for minority status.<sup>4</sup> The University of Wisconsin Board of Regents recently updated the System’s admissions guidelines with an eye toward expanding diversity in the student body. Under the new system, the University does not award points when evaluating candidates, but instead takes a holistic approach to admissions, with a student’s demonstrated academic ability carrying the most weight.<sup>5</sup>

Individual applicants will not be the only, or even the primary, parties suffering the ill effects of changing Wisconsin policy in this way. In endorsing diversity in the classroom, the Supreme Court cited evidence presented by friends of the court including major corporations, educational organizations, and the United States military.<sup>6</sup> Testimony presented to the Special Committee regarding a number of employers here in Wisconsin, including American Transmission Corporation, Kimberly-Clark Corporation, and Quarles and Brady LLP, demonstrates the real-world significance of diversity in the classroom. In a January letter to the Board of Regents, Mark Williamson, Vice President of Major Projects for American Transmission Company stated that

[d]iversity on campus creates a richer learning environment and hones skills that will be needed in the business world. Businesses like ATC will continue to utilize and rely on job candidates that best possess these skills. To the extent that the UW system can prepare all of its students for the broader business environment they will eventually face, it makes our task of recruiting and hiring that much easier. . .<sup>7</sup>

Barring admissions officers from even considering the race or ethnicity of non-citizen applicants to the University of Wisconsin system would hamper officials’ efforts to build a diverse class, resulting in a negative impact on the learning experience of all students enrolled in Wisconsin’s traditionally strong university system.

Currently, permanent legal residents are able to apply for loans and loan forgiveness through the higher educational aids board (HEAB) minority teacher loan program. The purpose of the program is to attract teachers to school districts in which at least 29 percent of the student population is comprised of minorities. WLC 0112/2 would narrow the pool of applicants who are able to apply for this program by barring highly educated permanent legal residents from even being considered for the minority teacher loan program. The effect of this proposal would lead to discrimination against non-citizens at the expense of children in some of our most needy communities.

In furtherance of the goal of attaining an educated workforce, the state offers the Lawton Scholarship and HEAB minority undergraduate retention grant program. These scholarships are only offered to continuing students demonstrating financial need and are intended to increase retention of minority

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<sup>2</sup> *Grutter v. Bollinger*, 539 U.S. 306, 330 (2003).

<sup>3</sup> *Id.*

<sup>4</sup> *Gratz v. Bollinger*, 539 U.S. 244, 271 (2003).

<sup>5</sup> See University of Wisconsin System Webpage, <http://www.uwsa.edu/bor/policies/rpd/rpd7-3.htm>.

<sup>6</sup> *Grutter*, 539 U.S. at 330-33.

<sup>7</sup> Letter from Mark Williamson, Vice President of Major Projects at American Transmission Company, to UW System Board of Regents (Jan. 29, 2007), available at <http://www.legis.state.wi.us/lc/committees/study/2006/AACT/index.htm>.

students, who have higher dropout rates than non-minorities.<sup>8</sup> The experience of California following the passage of Proposition 209 illustrates the importance of access to education in securing employment: the more education a minority individual had, the less likely they were to leave the labor force after Proposition 209 was passed.<sup>9</sup> For minorities with less than a high school degree, non-participation in the labor force after Proposition 209 was passed rose by 3.5 percent.<sup>10</sup> For those with a high school degree, the number rose by 2.8 percent.<sup>11</sup> For those with education beyond a high school degree, the number rose by 2.5 percent.<sup>12</sup> Based on the foregoing evidence, we believe that it is in the State's best interest to continue providing all Wisconsin residents with incentives to pursue higher education. Foreclosing lawful permanent residents from the opportunity to apply for the Lawton Scholarship and the HEAB minority undergraduate grant program would contravene this goal.

In enacting this proposal, Wisconsin would be out of step with the majority of peer states, who recognize the importance of education in lifting the children of immigrants out of poverty and helping them to make a place for themselves in mainstream America. Of particular interest in this debate are the children of illegal immigrants, who did not choose to come to this country, but who have been raised and graduated from high school here. While these children may not be United States citizens, they know no other home and hold a place in the community.

Likewise, there is national support for providing educational opportunities to such children. One example is the proposed DREAM Act, a bipartisan federal bill which would provide the children of immigrant parents with a path to legal citizenship. The DREAM Act would encourage states to extend educational benefits, such as in-state tuition to U.S. raised children who were brought to the United States five years ago before attaining the age of 15, and who can demonstrate good moral character. The Act has garnered 48 Senate cosponsors and 152 Republican and Democratic cosponsors in past years.<sup>13</sup>

The matter of providing in-state tuition to the children of immigrants has been debated in many states, and the trend has been toward broadening educational opportunities. As of March of 2007, ten states had passed legislation providing in-state tuition to these children, and six states had introduced legislation which would extend in-state tuition to undocumented immigrant students.<sup>14</sup> In contrast, six states have introduced legislation denying in-state tuition to these students;<sup>15</sup> only Georgia has actually passed such a bill.<sup>16</sup>

The vote on WLC 0112/2 suffered from the same procedural maladies which have beset all of the proceedings of the Committee. The Committee was called to vote upon the citizenship proposal without any prior discussion and despite the objections of Committee members.<sup>17</sup> In the end, the measure was approved for referral to the Joint Legislative Council by the slimmest margin possible, a 10 to 8 vote.<sup>18</sup>

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<sup>8</sup> See Derek Montgomery, *Professor Analysis: Factors Involved in Minority Retention*, BADGER HERALD, Sep. 26, 2002, [http://badgerherald.com/news/2002/09/26/professor\\_analysis\\_f.php](http://badgerherald.com/news/2002/09/26/professor_analysis_f.php); Associated Press, *U.S. College Drop-out Rate Causes Concern*, MSNBC, Nov. 15, 2005, <http://www.msnbc.msn.com/id/10053859/>.

<sup>9</sup> Caitlin Knowles Myers, *A Cure for Discrimination? Affirmative Action and the Case of California Proposition 209*, Middlebury College Economics Discussion Paper No. 05-25, September 2005.

<sup>10</sup> *Id.* at 19.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> See The National Immigration Law Center website,

[http://www.nilc.org/immlawpolicy/DREAM/dream\\_basic\\_info\\_0406.pdf](http://www.nilc.org/immlawpolicy/DREAM/dream_basic_info_0406.pdf) and [http://www.nilc.org/immlawpolicy/DREAM/dream\\_act\\_06\\_summary\\_2006-04.pdf](http://www.nilc.org/immlawpolicy/DREAM/dream_act_06_summary_2006-04.pdf).

<sup>14</sup> See Achieving the Dream: Community Colleges Count, "Update: State Policies Regarding In-State Tuition for Undocumented Students,"

[http://www.achievingthedream.org/pdfs/publicpolicy/UndocImmigUpdate\\_0307.pdf](http://www.achievingthedream.org/pdfs/publicpolicy/UndocImmigUpdate_0307.pdf).

<sup>15</sup> *Id.*

<sup>16</sup> See Dave Williams, *No In-State Tuition for Illegal Immigrants*, ALBANY HERALD, May 9, 2007, <http://www.albanyherald.com/stories/20070509n3.htm>

<sup>17</sup> See "June 4, 2007 Meeting" Audio,

<http://www.legis.state.wi.us/lc/committees/study/2006/AACT/index.htm>.

<sup>18</sup> *Id.*

This is too thin a reed upon which to enact a change to state law which will have such a broad-ranging negative impact on Wisconsin residents. We implore the Joint Legislative Council not to approve WLC 0112/2.

#### WLC: 0110/2 – Wealth Limit for Minority Business Owners

The Joint Legislative Council should not adopt WLC 0110/2. The amendment fails to address both the financial and anti-discrimination goals of the program. Further, procedural irregularities and deficiencies that pervaded the June 4, 2007 meeting precluded meaningful discussion about the proposed amendments.

Nationally, contracting is an essential part of the economy, employing six percent of the national population. Due to the potential for upward mobility and the long tradition of minorities in the industry, contracting is crucial to minority development.<sup>19</sup> It has been shown that minority-owned businesses are more likely to hire minority employees and reinvest in minority communities than nonminority-owned businesses.<sup>20</sup> In urban areas, an increase in the number of minority-owned businesses can lead to the renewal of previously blighted areas.<sup>21</sup>

Placing a \$1,000,000 cap on individual net wealth will likely shrink the pool of qualifying minority-owned businesses and hinder the State's progress in satisfying its affirmative action requirements. Most recently, the State was unable to reach its five percent goal of spending on minority-owned businesses.<sup>22</sup> In 2006, minority-owned business purchases reached only 2.81 percent of overall spending.<sup>23</sup> In fact, although African American-owned businesses make up 45 percent of Wisconsin certified minority-owned businesses, they were only awarded 16 percent of the contracts in 2006.<sup>24</sup> The \$1,000,000 cap would thus negatively impact the state's already slow progress in achieving its minority contracting goals.

The cap would also discourage and effectively prevent the economic growth of minority-owned businesses. Since access to capital is largely based on individual net wealth, the cap restriction would seriously hinder the ability of businesses to leverage capital for growth. The result would be a "cap" on the number of large minority-owned businesses.

In the construction industry minority-owned businesses struggle to compete with nonminority-owned businesses. As noted in 1999 by U.S. Senator Lautenberg,

"Jim Crow laws were wiped off the books over 30 years ago. However, their pernicious effects on the construction industry remain. Transportation construction has historically relied on the old boy network which, until the last decade, was almost exclusively a white, old boy network. ... This is an industry that relies heavily on business friendships and relationships established decades, sometimes generations, ago — years before minority-owned firms were even allowed to compete."<sup>25</sup>

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<sup>19</sup> David G. Blanchflower & Jon Wainwright, *An Analysis of the Impact of Affirmative Action Programs on Self-Employment in the Construction Industry 2* (Nat'l Bureau of Econ. Research, Working Paper No. 11793, 20056), available at <http://www.nber.org/papers/w11793>.

<sup>20</sup> Timothy Bates, *The Urban Development Potential of Black-Owned Businesses*, 72 JOURNAL OF THE AMERICAN PLANNING ASSOCIATION 227 (2006).

<sup>21</sup> *Id.*

<sup>22</sup> Wisconsin Department of Administration, *State of Wisconsin Minority Business Report, Fiscal Year 2006 Annual Report*, 2 (Apr. 18, 2007).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 12.

<sup>25</sup> See Branchflower & Wainwright supra note 19 at 6 (quoting 64 Fed. Reg. 5101 (Feb. 2, 1999)).

Senator Lautenberg's statement indicates that affirmative action programs help level the playing field – one that traditionally has been inaccessible to minority-owned businesses. This is illustrated by the precipitous drop in minority-owned business contracts that occurred after the passage of Proposition 209 in California. In the years following its passage, the amount of money awarded to minority- and women-owned businesses fell by 22 percent, which resulted in a \$94.5 million loss per year to these businesses.<sup>26</sup>

As a consequence of the significant underutilization of minority-owned businesses in Wisconsin contracting, they likely still need some assistance to get started and to grow. Just as small businesses need assistance to survive and grow into medium-sized businesses, larger businesses need assistance to survive and develop into larger businesses. In fact, the Wisconsin Minority Business Development Fund expressly serves to make available “greater accessibility to capital resources for start-up, *expansion* and technical assistance.”<sup>27</sup>

Citizen Committee member Robert Gregg stated during the June 4 meeting that he has been awarded contracts despite not being the lowest bid.<sup>28</sup> Mr. Gregg is white. This supports his presentations made to the Committee prior to the June 4, 2007 meeting that affirmative action also benefits other economically disadvantaged groups including non-minorities, veterans and people with disabilities.<sup>29</sup> Mr. Gregg voted “no” on 0110/2 because the time allowed for discussion was trivial and he could not support it in good faith.<sup>30</sup> Ultimately, all comments about the cap were subjective, and speculative at best.<sup>31</sup>

The proposal passed by a narrow margin with a vote of 10 to 8. In light of the significant substantive and procedural flaws discussed above, the Joint Legislative Council should not adopt WCL 0110/2.

#### WLC: 0115/1 – Minority Contract Reporting

Given the abhorrent “procedures” followed during the June 4, 2007 meeting, Proposal WCL 0115/1 must not be adopted by the Joint Legislative Council.

The idea of improving the transparency of state spending is not objectionable, per se. However, Senator Grothman's utter disregard of the legislative process to propose it is inexcusable. Adopting this measure would send the message that proposed legislation does not require meaningful discussion and debate. As the following examples indicate, the voting for this proposal was a disorderly mockery of the legislative process.

The purpose of this proposal remains unclear. According to Senator Grothman, citizen Committee member Robert Camosy suggested this proposal.<sup>32</sup> In light of this, Senator Grothman gave Mr. Camosy the opportunity to speak about it. Mr. Camosy stated that he was specifically concerned about a single contractor and that the purpose of the bill is to ensure the lowest bidder wins the contract, regardless of race. He said he was not concerned about whether that bidder is a minority.

Senator Grothman stated he perceived the purpose to be identifying minority-owned businesses. Clearly, Senator Grothman's statement of the purpose is completely contradictory to Mr. Camosy's. This confusion is evident in the suggested amendments to the original proposal.

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<sup>26</sup> Kaufmann, Susan W., *The Potential Impact of the Michigan Civil Rights Initiative on Employment, Education and Contracting*, Center for the Education of Women, University of Michigan, September 2006, at 7.

<sup>27</sup> *Id.* at 7 (emphasis added).

<sup>28</sup> See *Audio*, June 4, 2007, Meeting, <http://www.legis.state.wi.us/lc/committees/study/2006/AACT/index.htm>.

<sup>29</sup> [Letter from Public Member Robert Gregg to the Special Committee](#), June 4, 2007 Meeting Agenda, <http://www.legis.state.wi.us/lc/committees/study/2006/AACT/index.htm>

<sup>30</sup> See *Audio* from June 4, 2007 Meeting, *supra* note 28.

<sup>31</sup> See *id.*

<sup>32</sup> All references to the meeting in this section are from *Audio* from June 4, 2007 Meeting, *supra* note 28.

The record indicates that Senator Grothman made a friendly amendment that all businesses would be reported but that minority- and women-owned businesses would be distinguished by an asterisk. Mr. Camosy was less concerned with the race or gender of the business owner, and instead wanted identified those businesses that won the contract without being the lowest bidder. Again, these two positions are contradictory.

A motion was made by Senator Grothman to amend the proposed list of businesses to include asterisks only beside companies awarded contracts despite not offering the lowest bid. Senator Taylor expressed concern that they would be voting on an oral change, unable to see the written amendment, as is the normal procedure. Senator Grothman reiterated that he wanted the meeting to end by 10:00 p.m. and that the amendment was explained clearly enough to be voted on.

Without a written version of the proposed amendment, it remains unclear how the vote has changed the proposal. Are minority- and women-owned businesses to be identified with an asterisk, or will asterisks only indicate those companies awarded contracts despite not having the lowest bid? The concern is that we, the undersigned, were not certain about the language contained in the proposed amendment for or against which we voted.

The vote tally was 13 for and 5 against. Although a reporting scheme to improve transparency of state spending may be acceptable, the circumstances under which this current proposal arrived to the Joint Legislative Committee warrant rejection.

### **III. What's at Stake: An Attack on the Principles of Equality<sup>33</sup>**

#### ***a. Challenges to Affirmative Action***

Since its inception during the Civil Rights Movement, affirmative action has opened doors for those who have been locked out and has helped to create strong leaders and rich educational environments. As recently as 2003, the U.S. Supreme Court issued a powerful decision explaining the benefits and necessity of continuing affirmative action programs and upholding the University of Michigan Law School's affirmative action program, noting affirmative action's contribution to creating a robust exchange of ideas, breaking down racial stereotypes, and promoting cross-racial understanding.<sup>34</sup> The federal government and many state governments continue to operate strong affirmative action programs to promote both diversity and access to government benefits.<sup>35</sup>

For decades, however, these affirmative action programs have been the subject of controversy. Opponents argue that these measures are tantamount to unlawful preferences, quotas, and reverse discrimination. Traditionally, opponents have waged the battle over affirmative action in the courts, challenging publicly-sponsored race-conscious measures as antithetical to Constitutional equal rights principles. The U.S. Supreme Court has settled on a middle ground, approving many forms of government affirmative action, but evaluating the validity of specific programs with a "strict scrutiny" test.<sup>36</sup> Despite such strict limitation on race-conscious diversity measures, opponents of affirmative action are not satisfied, and continue to win public opinion by intentional mischaracterization of affirmative action as racial preferences.

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<sup>33</sup> The information in Parts III.a and III.b *infra* can be found in more detail in Barbara Arnwine, *The Battle Over Affirmative Action: Legal Challenges and Outlook*, in THE STATE OF BLACK AMERICA 2007 159, 159-66 (National Urban League 2007).

<sup>34</sup> *Grutter v. Bollinger*, 539 U.S. 306 (2003).

<sup>35</sup> The following cases upheld the use of affirmative action in federal and state government contracting: *see, e.g., Northern Contracting, Inc. v. Illinois, et al.*, 473 F.3d 715 (7th Cir. 2007); *Western States Paving Co. v. Wash. State Dep't of Transp., et al.*, 407 F.3d 983 (9th Cir. 2005); *Sherbrooke Turf, Inc. v. Minn. Dep't of Transp., et al.*, 345 F.3d 964 (8th Cir. 2003); *Builders Ass'n of Greater Chicago v. City of Chicago*, 298 F. Supp. 2d 725 (N.D. Ill. 2003); *Concrete Works of Colo., Inc. v. City and County of Denver*, 321 F.3d 950 (10th Cir. 2003); *Adarand Constructors, Inc. v. Slater*, 228 F. 3d 1147 (10th Cir. 2000); María E. Enchautegui et al., *Do Minority -Owned Businesses Get A Fair Share Of Government Contracts?*, Urban Institute, (1997); Appendix – The Compelling Interest for Affirmative Action in Federal Procurement, 61 Fed. Reg. 26,050 (May 23, 1996).

<sup>36</sup> *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978).

In contrast to the vast majority of states that continue to promote and maintain strong affirmative action programs, ballot initiatives in California, Washington, and Michigan have rolled back affirmative action, and an Executive Order by Florida's Governor Jeb Bush banned state sponsored affirmative action. Wisconsin should not add itself to this ignominious list. Although California's Proposition 209 was characterized as a civil rights initiative, in practice it has prohibited California state and local schools, colleges, universities, employers, and contracting agencies from engaging in almost all types of race-conscious affirmative action designed to promote diversity and redress past discrimination. In 1998, Washington voters passed Initiative 200,<sup>37</sup> which was modeled after California's Proposition 209. Most recently, in November 2006, Michigan voters passed Proposal 2006-02, also modeled after Proposition 209.<sup>38</sup> A group of Michigan citizens have since mounted a challenge to Proposal 2, asserting that it "run[s] afoul of core Fourteenth Amendment principles."<sup>39</sup> Affirmative action opponents have now formed "exploratory committees in Arizona, Colorado, Missouri, Nebraska, Nevada, Oregon, South Dakota, Utah and Wyoming"<sup>40</sup> and are planning an anti-affirmative action "Super Tuesday" in the fall of 2008 with ballot initiatives in several states.<sup>41</sup>

The efforts in Wisconsin to dismantle affirmative action have inappropriately targeted the state by failing to distinguish the clear differences between our state's approach compared to the programs utilized in California and Michigan. As previously stated, Wisconsin's affirmative action programs are part of a much broader system that not only recognizes race, ethnicity, and gender; but also considers factors such as military service and geography.

### ***b. Dangerous Real-World Effects***

The experiences of states that have rolled back affirmative action provide a clear warning against adopting these measures in Wisconsin. California, Texas, and Florida have all experimented with cutting back or eliminating affirmative action programs for public contracting, education, or employment, and the results have been uniformly detrimental to minority participation in these areas.

After California's Proposition 209 was implemented, the state experienced a sharp decline in the number of subcontracting opportunities to disadvantaged business enterprises. Only a third of the certified minority businesses in California's transportation construction industry at the time of Proposition 209's passage in 1996 remain in business today.<sup>42</sup> According to one report, "[c]ontract dollars awarded to businesses owned by minorities and women fell by 22% following the repeal of

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<sup>37</sup> Wash. I-200, *amending* Rev. Code Wash. (ARCW) § 49.60.

<sup>38</sup> Michigan's Proposal 2006-02, *amending* MLCS Const. Art. I, § 26.

<sup>39</sup>*Cantrell v. Granholm*, Complaint filed December 19, 2006, E.D. Mich., Case 2:06-cv-15637. Initially, a Detroit federal judge granted three Michigan state universities permission to continue use of race-conscious admissions procedures through the current admissions cycle. *Cantrell v. Granholm*, Complaint filed December 19, 2006, E.D. Mich., Case 2:06-cv-15637. The Sixth Circuit then stayed that order, and in January 2007 the Supreme Court denied an application to lift the Sixth Circuit's stay. *Coalition to Defend Affirmative Action v. Granholm*, 473 F.3d 237 (6th Cir. 2006), 2007 U.S. LEXIS 1157 (U.S. 2007). At that point, the University of Michigan elected to resume consideration of applications without taking race into account, based on the concern that "[the university could not] sustain any further delay in our admissions process without harming [its] ability to enroll a class of students for the 2007-8 academic year." *Michigan Resumes Admissions and Says It Is Complying With Proposal 2*, CHRONICLE OF HIGHER EDUCATION, January 10, 2007, <http://chronicle.com/news/article/1502/michigan-resumes-admissions-and-says-it-is-complying-withproposal-2>.

<sup>40</sup> See *e.g.* AFFIRMATIVE ACTION COMPLIANCE MANUAL FOR FEDERAL CONTRACTORS, The Bureau of National Affairs, December 29, 2006, Number 334.

<sup>41</sup> Tamar Lewin, *Colleges Regroup After Voters Ban Race Preferences*, N.Y. TIMES, Jan. 26, 2007.

<sup>42</sup> Morris, Monique W., Thanasombat, Sirithon, Sumner, Michael D., Pierre, Sara, and Borja, Jessica Z., *Free to Compete?: Measuring the Impact of Proposition 209 on Minority Business Enterprises*, Discrimination Research Center, August 2006, at 21.

affirmative action programs in California,” resulting “in a loss of at least \$94.5 million per year to these businesses.”<sup>43</sup>

Following the passage of Proposition 209, researchers compared California’s experience with that of the rest of the country to determine the effect on the labor force of removing affirmative action programs.<sup>44</sup> Between 1995 and 1999, the rate of employment of minorities in California, relative to those of the rest of the country, where affirmative action programs were not removed, fell by 2.8 percent. Between 1995 and 2000, the rate of non-participation in the labor force among minorities rose by 2.2 percent (the non-participation rate, as opposed to the unemployment rate, measures the number of people who have left the workforce entirely). These results suggest that Proposition 209 removed significant numbers of women and minorities from the labor force.<sup>45</sup>

Proposition 209 also had profound effects on higher education. Several studies have found an alarming decline in the number of African-American, Hispanic, and Native American students enrolled in the UC system’s premier flagship campuses. A recent Harvard study found that from 1995 to 2001, African American enrollment at UC-Berkeley went from 6.7 percent to 3.9 percent.<sup>46</sup> At UCLA, Black enrollment went from 7.4 percent to 3.4 percent during this same time period. Despite California’s attempts to mitigate this decline with the implementation of a “four percent plan,” which admits four percent of the top of every high school’s graduating class to the state’s university system, there has been no effective increase in the numbers of students of color at these premier institutions.

While the citizens of Florida and Texas have not yet voted to ban affirmative action, other actions have curtailed the use of race-conscious measures in these states. In 1996, the Fifth Circuit Court of Appeals declared that a Texas law school could not use race as a factor in admissions. However, that decision was reversed in the *Grutter v. Bollinger* (University of Michigan) case mentioned above, and most Texas state universities have since restored affirmative action policies. In 1999, Florida’s Governor Jeb Bush issued an Executive Order to eliminate state-sponsored affirmative action programs. In response to the abandonment of affirmative action programs, Texas and Florida adopted “percent plans,” much like California’s.<sup>47</sup>

Studies reveal that after the implementation of the Texas ten-percent plan, both the University of Texas-Austin and Texas A&M have experienced a decline in the number of minority students admitted and enrolled. According to a report by the U.S. Commission on Civil Rights, only 38 percent of Black applicants were admitted to UT-Austin in 2001.<sup>48</sup> Similarly, a U.S. Civil Rights Commission study found that Florida’s Talented 20 Program (T20 Program) places Black students at a severe disadvantage from the outset, because “blacks have the smallest percentage of high school graduates qualifying as T20 students.”<sup>49</sup> The ramifications of this finding are evident from enrollment data from the University of Florida which reveal that before the T20 Program, the proportion of black enrolled students was increasing. However, in 2001, the first full year of the T20 Program, black enrollment experienced a dramatic decline from 11.8 percent to 7.2 percent.<sup>50</sup>

### **c. *The Continuing Need for Affirmative Action in Wisconsin***

Nationally, the need for affirmative action is far from over. According to 2005 data from the U.S. Census Bureau, the median income for whites was \$48,554, but only \$35,967 for Hispanics and

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<sup>43</sup> Kaufmann, Susan W., *The Potential Impact of the Michigan Civil Rights Initiative on Employment, Education and Contracting*, Center for the Education of Women, University of Michigan, September 2006, at 6.

<sup>44</sup> Caitlin Knowles Myers, *A Cure for Discrimination? Affirmative Action and the Case of California Proposition 209*, Middlebury College Economics Discussion Paper No. 05-25, September 2005.

<sup>45</sup> *Id.* at 17.

<sup>46</sup> The Harvard Civil Rights Project, *Percent Plans in College Admissions: A Comparative Analysis of Three States’ Experiences*, March 2003, at 49.

<sup>47</sup> *Hopwood v. Texas*, 78 F.3d 932 (5th Cir. 1996).

<sup>48</sup> U.S. Commission on Civil Rights, *Beyond Percentage Plans: The Challenge of Equal Opportunity in Higher Education*, November 2002, at i.

<sup>49</sup> *Id.* at vii.

<sup>50</sup> The Harvard Civil Rights Project, *supra* note 46, at 50.

\$30,858 for Blacks.<sup>51</sup> Moreover, 24.9 percent of the Black population and 21.8 percent of the Hispanic population lived in poverty, whereas only 10.6 percent of white Americans lived in poverty.<sup>52</sup>

Unfortunately, these national trends are also evident in Wisconsin. In our state, minorities comprise 13 percent of the total state population and eleven percent of the labor force, with the Hispanic and Black populations comprising approximately three quarters of the total minority population.<sup>53</sup> However, the Hispanic unemployment rate is nearly double the white unemployment rate, and the Black unemployment rate is over triple their white counterparts'.<sup>54</sup> Professional disparities are even more pronounced. Minorities comprise only five percent of the state's officials and managers and seven percent of professionals and technicians. In contrast, they make up 14 percent of service workers and 12 percent of laborers and helpers.<sup>55</sup>

Nationwide, school systems are rapidly resegregating, despite the promise of *Brown v. Board of Education*.<sup>56</sup> Wisconsin is no exception. A 2002 study by the Harvard Civil Rights Project listed Milwaukee as one of the top 20 national districts with the most rapid decline in white exposure to Blacks;<sup>57</sup> as of 2003-2004, only seven percent of our white students attend multi racial schools,<sup>58</sup> making Wisconsin the eleventh most segregated state in the nation for Black students.<sup>59</sup> These inequities are continued in higher education. In the University of Wisconsin system, Blacks comprise only three percent of the total enrolled population of nearly 170,000 students. Hispanics make up only two percent.<sup>60</sup>

These data illustrate the persistent challenges our state must confront in our ongoing attempts to include minorities in leadership roles in business and to provide them with the tools to achieve academically. Eliminating the ability of the state to engage in affirmative action practices and improve the diversity of our workplaces and schools would have a chilling effect that would only serve to further widen this divide. In a state that believes in equal opportunity for all, affirmative action is a necessary tool to create a level playing field. As President Lyndon Johnson explained in 1965, "[y]ou do not take a person who, for years, has been hobbled by chains and liberate him, bring him up to the starting line in a race and then say, 'you are free to compete with all the others,' and still justly believe that you have been completely fair."<sup>61</sup>

#### **IV. Conclusion**

The creation of the Special Committee last year provided us with a unique opportunity to engage in a proactive dialogue and examination of the state's affirmative action policies. It was our hope that the final work product of the Special Committee would have advanced new proposals on ways to improve equal opportunity, inclusiveness, and diversity within the state. Unfortunately, Chairman Grothman's

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<sup>51</sup> Carmen DeNavas-Walt et al, *Income, Poverty, and Health Insurance Coverage in the United States: 2005*, 6 (U.S. Census Bureau 2006) available at <http://www.census.gov/prod/2006pubs/p60-231.pdf>.

<sup>52</sup> *Id.* at 14.

<sup>53</sup> *Wisconsin Affirmative Action Data*, Wisconsin Department of Workforce Development, May 22, 2007, available at [http://dwd.wisconsin.gov/oea/aa\\_xls/STATE.xls](http://dwd.wisconsin.gov/oea/aa_xls/STATE.xls).

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> See generally The Harvard Civil Rights Project, *Brown at 50: King's Dream or Plessy's Nightmare?* Jan. 2004, available at

<http://www.civilrightsproject.harvard.edu/research/reseg04/brown50.pdf>

<sup>57</sup> The Harvard Civil Rights Project, *Race in American Public Schools*, Aug. 2002, at 8 available at

[http://www.civilrightsproject.harvard.edu/research/deseg/Race\\_in\\_American\\_Public\\_Schools1.pdf](http://www.civilrightsproject.harvard.edu/research/deseg/Race_in_American_Public_Schools1.pdf)

<sup>58</sup> Harvard Civil Rights Project, *Racial Transformation and the Changing Nature of Segregation*, Jan. 2006 at 22 available at [http://www.civilrightsproject.harvard.edu/research/deseg/Racial\\_Transformation.pdf](http://www.civilrightsproject.harvard.edu/research/deseg/Racial_Transformation.pdf).

<sup>59</sup> *Id.* at 26.

<sup>60</sup> *The University of Wisconsin System Student Statistics Single Year Headcount Reports*, The University of Wisconsin System Office of Academic Affairs, 2006-2007 Data, available at [http://www.uwsa.edu/opar/ssb/single\\_year\\_hc.htm](http://www.uwsa.edu/opar/ssb/single_year_hc.htm).

<sup>61</sup> President Lyndon B. Johnson, "To Fulfill These Rights," Commencement Address at Howard University, June 4, 1965.

efforts to advance his preconceived views at the expense of meaningful debate, combined with his abuse of power as Chair and total disregard for parliamentary process, prevented the Special Committee from fulfilling its mission. Moreover, the proposals are severely flawed in substance and impact, and are unnecessarily draconian, punitive, and restrictive. They serve no rational state interests. Therefore, we strongly urge the Joint Legislative Council to reject the three proposed amendments that were passed by the Special Committee on June 4, 2007.



Senator Lena C. Taylor  
Wisconsin State Senate - 4<sup>th</sup> District

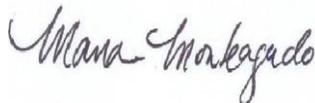


Representative Tamara D. Grigsby  
Wisconsin State Assembly – 18<sup>th</sup> District

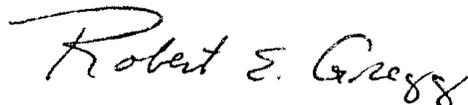


Representative Frederick Kessler  
Wisconsin State Assembly – 12<sup>th</sup> District

Ms. Vicki Washington, Public Member  
University of Wisconsin System



Ms. Marie Montegudo, Public Member  
City of Milwaukee



Mr. Robert Gregg, Public Member  
Boardman, Suhr, Curry & Field LLP

## Appendix 3

### Joint Legislative Council

*[Joint Legislative Council Members Who Selected and Appointed Committee and Its Membership]*

#### Co-Chair

**ALAN LASEE**  
*Senate President*  
2259 Lasee Road  
De Pere, WI 54115

#### Co-Chair

**STEVE WIECKERT**  
*Representative*  
1 Weatherstone Drive  
Appleton, WI 54914

#### SENATORS

**RONALD W. BROWN**  
1112 Violet Avenue  
Eau Claire, WI 54701

**DAN KAPANKE**  
1610 Lakeshore Drive  
La Crosse, WI 54603

**DALE SCHULTZ**  
*Majority Leader*  
515 N. Central Avenue  
Richland Center, WI 53581

**RUSSELL DECKER**  
6803 Lora Lee Lane  
Schofield, WI 54476

**MARK MILLER**  
4903 Roigan Terrace  
Monona, WI 53716

**DAVID ZIEN**  
*President Pro Tempore*  
1716 63<sup>rd</sup> Street  
Eau Claire, WI 54703

**SCOTT FITZGERALD**  
N4692 Maple Road  
Juneau, WI 53039

**FRED A. RISSER**  
5008 Risser Road  
Madison, WI 53705

**GLENN GROTHMAN**  
111 South 6<sup>th</sup> Avenue  
West Bend, WI 53095

**JUDY ROBSON**  
*Minority Leader*  
2411 E. Ridge Road  
Beloit, WI 53511

#### REPRESENTATIVES

**JOHN AINSWORTH**  
W6382 Waukechon Road  
Shawano, WI 54166

**MICHAEL HUEBSCH**  
*Majority Leader*  
419 West Franklin  
West Salem, WI 54669

**MARLIN D. SCHNEIDER**  
3820 Southbrook Lane  
Wisconsin Rapids, WI 54494

**PEDRO COLON**  
338 West Walker Street  
Milwaukee, WI 53204

**DEAN KAUFERT**  
1360 Alpine Lane  
Neenah, WI 54956

**DAVID TRAVIS**  
5440 Willow Road  
Waukegan, WI 53597

**STEPHEN J. FREESE**  
*Speaker Pro Tempore*  
310 East North Street  
Dodgeville, WI 53533

**JIM KREUSER**  
*Minority Leader*  
3505 14th Place  
Kenosha, WI 53144

**JOHN GARD**  
*Speaker*  
481 Aubin Street, P.O. Box 119  
Peshtigo, WI 54157

**ANN NISCHKE**  
202 W. College Avenue  
Waukesha, WI 53186

This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the co-chairs and ranking minority members of the Joint Committee on Finance, and 5 Senators and 5 Representatives appointed as are members of standing committees.

# Joint Legislative Council

[Current Joint Legislative Council Members Receiving Committee Report]

## Co-Chair

### **FRED RISSER**

*Senate President*  
5008 Risser Road  
Madison, WI 53705

## Co-Chair

### **STEVE WIECKERT**

*Representative*  
1 Weatherstone Drive  
Appleton, WI 54914

## SENATORS

### **ROGER BRESKE**

8800 Hwy. 29  
Eland, WI 54427

### **TIM CARPENTER**

*President Pro Tempore*  
2957 South 38<sup>th</sup> Street  
Milwaukee, WI 53215

### **G. SPENCER COGGS**

3732 North 40<sup>th</sup> Street  
Milwaukee, WI 53216

### **ALBERTA DARLING**

1325 West Dean Road  
River Hills, WI 53217

### **RUSSELL DECKER**

6803 Lora Lee Lane  
Weston, WI 54476

### **SCOTT FITZGERALD**

*Minority Leader*  
N4692 Maple Road  
Juneau, WI 53039

### **SHEILA HARSDORF**

N6627 County Road E  
River Falls, WI 54022

### **ALAN LASEE**

2259 Lasee Road  
De Pere, WI 54115

### **MARK MILLER**

4903 Roigan Terrace  
Monona, WI 53716

### **JUDY ROBSON**

*Majority Leader*  
2411 E. Ridge Road  
Beloit, WI 53511

## REPRESENTATIVES

### **JOAN BALLWEG**

170 W. Summit Street  
Markesan, WI 53946

### **TERESE BERCEAU**

4326 Somerset Lane  
Madison, WI 53711

### **JEFF FITZGERALD**

*Majority Leader*  
910 Sunset  
Horicon, WI 53032

### **MARK GOTTLIEB**

*Speaker Pro Tempore*  
1205 Noridge Trail  
Port Washington, WI 53074

### **MICHAEL HUEBSCH**

*Speaker*  
419 West Franklin  
West Salem, WI 54669

### **DEAN KAUFERT**

1360 Alpine Lane  
Neenah, WI 54956

### **JIM KREUSER**

*Minority Leader*  
3505 14th Place  
Kenosha, WI 53144

### **MARK POCAN**

309 N. Baldwin Street  
Madison, WI 53703

### **KITTY RHOADES**

708 4th Street  
Hudson, WI 54016

### **MARLIN SCHNEIDER**

3820 Southbrook Lane  
Wisconsin Rapids, WI 54494

This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the co-chairs and ranking minority members of the Joint Committee on Finance, and 5 Senators and 5 Representatives appointed as are members of standing committees.

**Affirmative Action**

Senator Glenn Grothman, **Chair**  
111 South 6th Avenue  
West Bend, WI 53095

Representative Tamara D. Grigsby  
2354 N. 41st Street  
Milwaukee, WI 53210

Representative Fred Kessler  
11221 W. Sanctuary  
Milwaukee, WI 53224

Representative Scott Suder  
102 South 4th Avenue  
Abbotsford, WI 54405

Senator Lena Taylor  
3407 West Highland Drive  
Milwaukee, WI 53208

Jean Abramowski  
A Compliance Connection  
29400 Durand Avenue  
Milwaukee, WI 53221

Rose Alcala-Ament  
1987 Hawthorne Heights Drive  
DePere, WI 54115

Rudy Binter  
5621 South 22 Street  
Milwaukee, WI 53221

Raymond Camosy  
Camosy, Inc.  
P.O. Box 427  
Kenosha, WI 53141

Jeffrey Dziedzic  
6020 Highway 28  
Allenton, WI 53002

Robert Gregg  
Boardman, Suhr, Curry & Field LLP  
P.O. Box 927  
Madison, WI 53701-0927

Fred Mohs  
Mohs, MacDonald, Widder & Paradise  
20 N. Carroll Street  
Madison, WI 53703-2707

Marie Monteagudo  
Department of Employee Relations  
City of Milwaukee  
Room 706, City Hall (7<sup>th</sup> floor)  
200 East Wells Street  
Milwaukee, WI 53202-3554

Chi Sather  
15035 Pomona Road  
Brookfield, WI 53005

Kate Wagner  
227 W. Brown Street  
Waupun, WI 53963

Vicki Washington  
Academic Diversity and Development  
1220 Linden Drive  
Madison, WI 53706

Jeremy Wick  
516 Wisconsin Avenue Apt. 4  
Madison, WI 53703

Noel Williams  
Williams, CPA, LLC  
1850 N. Martin Luther King Drive  
Suite 201  
Milwaukee, WI 53212

STUDY ASSIGNMENT: The committee is directed to review state and local government affirmative action policies, including policies in student admission to the University of Wisconsin and Wisconsin Technical College System and state contracting and hiring, to determine: (a) whether those policies are uniform in content and administration throughout state and local government; (b) the effect of those policies on the public, and (c) whether these policies are cost-effective.

18 MEMBERS: 2 Senators, 3 Representatives, and 13 Public Members.

LEGISLATIVE COUNCIL STAFF: Mary Matthias, Senior Staff Attorney; Scott Grosz, Staff Attorney; and Tracey Young, Support Staff.



## Appendix 5

### Committee Materials List

(Copies of documents are available at [www.legis.state.wi.us/lc](http://www.legis.state.wi.us/lc))

Additional (Revised) Materials for the June 4, 2007 Meeting				
<ul style="list-style-type: none"> <li>• <a href="#">Memo No. 1</a>, Summary of Additional Material in WLC: 0110/2, WLC: 0112/2, and WLC: 0116/2 (June 1, 2007)</li> <li>• <a href="#">WLC: 0110/2</a>, relating to certification of businesses, financial advisers, and investment firms as minority businesses, minority financial advisers, and minority investment firms</li> <li>• <a href="#">WLC: 0112/2</a>, relating to affirmative action practices in state and local government contracting and state and local government hiring, and the consideration of race or ethnicity in the University of Wisconsin System and by the higher educational aids board</li> <li>• <a href="#">WLC: 0116/2</a>, relating to affirmative action practices in state and local government contracting and state and local government hiring, and the consideration of race or ethnicity in the University of Wisconsin System and by the higher educational aids board</li> </ul>				
June 4, 2007 Meeting	<a href="#">Notice</a>	<a href="#">Agenda</a>	<a href="#">Audio</a>	<a href="#">Minutes</a>
<ul style="list-style-type: none"> <li>• <a href="#">WLC: 0110/1</a>, relating to certification of businesses, financial advisers, and investment firms as minority businesses, minority financial advisers, and minority investment firms.</li> <li>• <a href="#">WLC: 0112/1</a>, relating to affirmative action practices in state contracting and state hiring, and the consideration of race or ethnicity in the University of Wisconsin System and by the higher educational aids board.</li> <li>• <a href="#">WLC: 0111/1</a>, relating to the consideration of race or ethnicity in the University of Wisconsin System and by the higher educational aids board.</li> <li>• <a href="#">WLC: 0114/1</a>, relating to qualifications of students admitted to the University of Wisconsin system for purposes of student body diversity.</li> <li>• <a href="#">WLC: 0118/1</a>, relating to University of Wisconsin admission policies.</li> <li>• <a href="#">WLC: 0115/1</a>, relating to information on state contracts with minority businesses.</li> <li>• <a href="#">WLC: 0116/1</a>, relating to affirmative action practices in state contracting and state hiring, and the consideration of race or ethnicity in the University of Wisconsin System and by the higher educational aids board.</li> <li>• <a href="#">WLC: 0109/1</a>, relating to affirmative action requirements applicable to state contracting.</li> <li>• <a href="#">WLC: 0117/1</a>, relating to discrimination by the state or its political subdivisions (first consideration).</li> <li>• <a href="#">Proposal No. 1</a>, Submitted by Public Member Robert Gregg.</li> <li>• <a href="#">Proposal No. 4</a>, Submitted by Public Member Robert Gregg.</li> <li>• <a href="#">Letter</a> from Public Member Robert Gregg to the Special Committee.</li> <li>• <a href="#">State of Wisconsin Minority Business Report</a>, Fiscal Year 2006 Annual Report</li> <li>• <a href="#">Memorandum</a> from Senator Glenn Grothman to Members of the Special Committee</li> <li>• <a href="#">Letter</a> from Frank Wu, Wayne State University Law School</li> </ul>				
May 4, 2007 Meeting	<a href="#">Notice</a>	<a href="#">Agenda</a>	<a href="#">Audio</a>	<a href="#">Minutes</a>
<ul style="list-style-type: none"> <li>• <a href="#">Chart</a>, University of Wisconsin-Madison, Summer/Fall 2006 New Freshmen Targeted Minority Admits and Non-Admits</li> <li>• <a href="#">Chart</a>, University of Wisconsin-Madison, Summer/Fall 2006 New Freshmen Female Admits and Non-Admits</li> <li>• <a href="#">Chart</a>, University of Wisconsin-Madison, Summer/Fall 2006 New Freshmen Male Admits and Non-Admits</li> <li>• Packet of letters from the business community to the University of Wisconsin-Madison and the University of Wisconsin System relating to diversity policy:               <ul style="list-style-type: none"> <li>○ <a href="#">Mark Williamson</a>, Vice President, Major Projects, American Transmission Company</li> <li>○ <a href="#">Paul La Schiazza</a>, President, AT&amp;T Illinois</li> <li>○ <a href="#">Andrew J. Smiltneek</a>, Director, Innovation Management Implementation, Kimberly-Clark</li> </ul> </li> </ul>				

<ul style="list-style-type: none"> <li>○ Corporation <ul style="list-style-type: none"> <li>○ <a href="#">Nancy K. Peterson</a>, Co-Chair, Diversity Committee, Quarles &amp; Brady, LLP</li> </ul> </li> <li>• <a href="#">Memorandum</a>, <i>State Agency Positions Related to Affirmative Action</i>, from Bob Lang, Director, Legislative Fiscal Bureau (April 30, 2007)</li> </ul>				
<b>January 11, 2007 Meeting</b>	<a href="#">Notice</a>	<a href="#">Agenda</a>	<a href="#">Audio</a>	<a href="#">Minutes</a>
<ul style="list-style-type: none"> <li>• <a href="#">Handout</a>, submitted by Hanna Buck, ASM, University of Wisconsin-Madison</li> <li>• <a href="#">Testimony</a>, submitted by Maria Monteagudo, Employee Relations Director, City of Milwaukee</li> <li>• <a href="#">Suggestions</a>, by Public Member Vicki Washington</li> <li>• <a href="#">Handout</a>, <i>The Relationship between Academic Preparation Indicators and First-Year GPA at UW-Madison</i></li> <li>• <a href="#">Handout</a>, <i>Freshman Admission Expectations (2007-08)</i></li> <li>• <a href="#">Chart</a>, <i>University of Wisconsin-Madison Fall 2006 New Freshmen Non-Minority Admits and Minority Admits</i></li> <li>• <a href="#">Chart</a>, <i>University of Wisconsin-Madison Fall 2006 New Freshmen Non-Minority Non-Admits and Minority Admits</i></li> <li>• <a href="#">350-203 Diversity</a>, <i>Equal Employment Opportunity and Affirmative Action</i></li> </ul>				
<b>December 19, 2006 Meeting</b>	<a href="#">Notice</a>	<a href="#">Agenda</a>	<a href="#">Audio</a>	<a href="#">Minutes</a>
<ul style="list-style-type: none"> <li>• <a href="#">Handout</a>, submitted by Matt Nelson and Carlo Albano</li> <li>• <a href="#">Handout</a>, submitted by the Teaching Assistant's Association (TAA) Diversity Committee</li> <li>• <a href="#">Handout</a>, submitted by Azliza Asri, Multicultural &amp; Diversity Issues Director, University of Wisconsin - Stevens Point</li> <li>• <a href="#">Handout</a>, submitted by Jennifer Knox, Board Member, United States Student Association; Alex Buchner and Hannah Buck, ASM Diversity Committee Members</li> <li>• <a href="#">Testimony</a>, submitted by Mayor David J. Cieslewicz</li> <li>• <a href="#">PowerPoint</a>, presented by Lucia Nunez, Director, Department of Civil Rights, City of Madison</li> <li>• <a href="#">Handout</a>, submitted by Lucia Nunez, Director, Department of Civil Rights, City of Madison</li> <li>• <a href="#">Handout</a>, submitted by Lucia Nunez, Director, Department of Civil Rights, City of Madison</li> <li>• <a href="#">Handout</a>, Small Business Profile: Wisconsin</li> <li>• <a href="#">Remarks</a>, submitted by Police Officer Jamar Gary, City of Madison</li> <li>• <a href="#">Letter</a>, John Kubica, President United Union of Roofers, Waterproofers and Allied Workers (December 21, 2006)</li> <li>• <a href="#">Memorandum</a>, from James Greer, Coordinator, Madison Area Joint Apprenticeship Committee (December 20, 2006)</li> <li>• <a href="#">Letter</a>, from John A. Scocos, Secretary, Department of Veterans Affairs (October 12, 2006)</li> </ul>				
<b>October 4, 2006 Meeting</b>	<a href="#">Notice</a>	<a href="#">Agenda</a>	<a href="#">Audio</a>	<a href="#">Minutes</a>
<ul style="list-style-type: none"> <li>• <a href="#">Presentation</a>, by Demetri Fisher, Administrator, Division of Affirmative Action, Office of State Employment Relations</li> <li>• <a href="#">Presentation</a>, by Michele Carter-Rutledge, Program Manager, Department of Transportation</li> <li>• <a href="#">Handout</a>, <i>Fact Sheets on Highway Provisions</i></li> <li>• <a href="#">Table</a>, <i>WisDOT AA-EEO Programs Listing</i></li> </ul>				