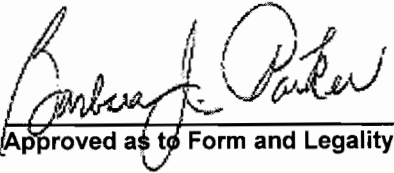


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Approved as to Form and Legality

## Oakland City Council

RESOLUTION No. 83612 C.M.S.

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**RESOLUTION AUTHORIZING THE CITY ATTORNEY, ON BEHALF OF THE CITY OF OAKLAND, TO JOIN IN AN AMICUS (FRIEND OF THE COURT) BRIEF IN THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT CASE OF COALITION TO DEFEND AFFIRMATIVE ACTION, ET AL., V. REGENTS OF UNIVERSITY OF MICHIGAN (CASE NOS. 08-1387/1389/1534/09-111) ASKING THE COURT TO AFFIRM THE DECISION OF A THREE-JUDGE PANEL INVALIDATING MICHIGAN'S PROPOSAL 2, WHICH LIKED CALIFORNIA'S PROPOSITION 209 PROHIBITS CONSIDERATION OF RACE OR GENDER IN PUBLIC EMPLOYMENT, EDUCATION AND CONTRACTING**

**WHEREAS**, City of Oakland and other local government entities in California have been subject to Proposition 209, which is virtually identical to Michigan's Proposal 2, since it was enacted by the California electorate in 1996; and

**WHEREAS**, several years ago, the State of Michigan passed Proposal 2, which like California's Proposition 209 prohibits consideration of gender or race in public education, public contracting and public employment; and

**WHEREAS**, several entities (the "plaintiffs") challenged the constitutionality of Proposal 2 focusing on the prohibition against affirmative action in education; and

**WHEREAS**, the plaintiffs were unsuccessful in the United States District Court and appealed to the Sixth Circuit Court of Appeals; and

**WHEREAS**, a three-judge panel of the Sixth Circuit ruled that Proposal 2 was unconstitutional based on two United States Supreme Court cases that prohibit placing political barriers in the way of women and minorities who seek to achieve beneficial legislation; and

**WHEREAS**, the plaintiffs' theory which the three-judge panel embraced, is that any group that wants preferential treatment in contracting (veterans, disabled, etc.) has the right to petition their local government for that preference, and that Proposal 2's preclusion of that right to women and minorities violates the Equal Protection Clause of the United States Constitution; and

**WHEREAS**, this is the same argument that San Francisco, Oakland and other public entities made in the United States Court of Appeals for the Ninth Circuit regarding Proposition 209; however the Ninth Circuit ruled against us; and

**WHEREAS**, the Sixth Circuit has granted en banc review of the three-judge panel's decision, and the amicus brief explains why the Ninth Circuit's decision was flawed and urges the Sixth Circuit to affirm the three-judge panel's decision; now therefore be it

**RESOLVED**, that the City Council authorizes the City Attorney on behalf of the City of Oakland to join in and sign onto an amicus brief in the Sixth Circuit asking the Court of Appeals to affirm the decision of the Sixth Circuit's three-judge panel striking down Michigan's Proposal 2 on equal protection grounds.

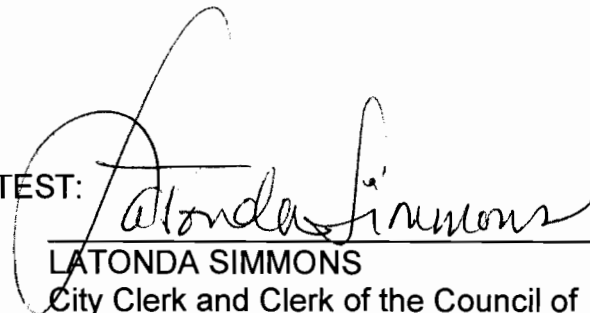
IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:      **NOV 15 2011**

BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, SCHAAF AND  
PRESIDENT REID

AYES- 8  
NOES - 0  
ABSENT - 0  
ABSTENTION - 0

ATTEST:



LATONDA SIMMONS

City Clerk and Clerk of the Council of  
the City of Oakland, California