

1 JONATHAN F. MITCHELL *
2 jonathan@mitchell.law
3 Mitchell Law PLLC
4 111 Congress Avenue, Suite 400
5 Austin, Texas 78701
6 (512) 686-3940 (phone)

7 * *pro hac vice* application pending

8 WILLIAM J. BROWN JR.
9 California Bar No. 192950
10 bill@brownwegner.com
11 Brown Wegner LLP
12 2010 Main Street, Suite 1260
13 Irvine, California 92614
14 (949) 705-0081

15 *Counsel for Plaintiff*

16 [Additional counsel for Plaintiff on next page]

17 UNITED STATES DISTRICT COURT
18 CENTRAL DISTRICT OF CALIFORNIA
19 SOUTHERN DIVISION

20 **Students Against Racial Discrimination,**
21 **Plaintiff,**

22 v.

23 **The Regents of the University of**
24 **California; Maria Anguiano, Elaine E.**
25 **Batchlor, Josiah Beharry, Carmen Chu,**
26 **Michael Cohen, Gareth Elliott, Howard**
“Peter” Guber, Jose M. Hernandez,

Case No. 8:25-cv-00192

Complaint

1 **Nancy Lee, Richard Leib, Hadi**
2 **Makarechian, Ana Matosantos, Robert**
3 **Myers, Lark Park, Janet Reilly, Mark**
4 **Robinson, Gregory Sarris, Jonathan**
5 **“Jay” Sures, Gavin Newsom, Eleni**
6 **Kounalakis, Robert Rivas, Tony**
7 **Thurmond, Michael V. Drake M.D.,**
8 **Geoffrey Pack, Alfonso Salazar,** each in
9 their official capacities as regents of the
10 University of California System; **Carol T.**
11 **Christ,** in her official capacity as chancellor
12 of the University of California at Berkeley;
13 **Julio J. Frenk Mora,** in his official capacity
14 as chancellor of the University of California
15 at Los Angeles; **Howard Gillman,** in his
16 official capacity as chancellor of the
17 University of California at Irvine; **Sam**
18 **Hawgood,** in his official capacity as
19 chancellor of the University of California at
20 San Francisco; **Pradeep K. Khosla,** in his
21 official capacity as chancellor of the
22 University of California at San Diego;
23 **Cynthia K. Larive,** in her official capacity
24 as chancellor of the University of California
25 at Santa Cruz; **Gary S. May,** in his official
26 capacity as chancellor of the University of
California at Davis; **Juan Sánchez Muñoz,**
in his official capacity as chancellor of the
University of California at Merced; **Kim A.**
Wilcox, in her official capacity as
chancellor of the University of California at
Riverside; **Henry T. Yang,** in his official
capacity as chancellor of the University of
California at Santa Barbara,

Defendants.

1 [Additional counsel for Plaintiff]

2 REED D. RUBINSTEIN*

3 DANIEL EPSTEIN*

4 RYAN GIANNETTI*

reed.rubinstein@aflegal.org

daniel.epstein@aflegal.org

ryan.giannetti@aflegal.org

America First Legal Foundation

300 Independence Avenue SE

Washington, DC 20003

(202) 964-3721

9
10 * *pro hac vice* applications pending

1 Federal law prohibits universities that accept federal funds from discrim-
2 inating on account of race. *See* 42 U.S.C. § 2000d (Title VI); 42 U.S.C.
3 § 1981. The University of California System is flouting these requirements by
4 using racial preferences in student admissions at all nine of its campuses—a
5 practice that violates the clear and unequivocal text of Title VI and 42 U.S.C.
6 § 1981, as well as the Equal Protection Clause of the Fourteenth Amend-
7 ment. The plaintiff brings suit to enjoin these discriminatory practices, and
8 to ensure that the defendants comply with their obligations under federal an-
9 ti-discrimination laws.

10 JURISDICTION AND VENUE

11 1. The Court has subject-matter jurisdiction under 28 U.S.C. § 1331 and
12 28 U.S.C. § 1343.

13 2. Venue is proper because a substantial part of the events giving rise to
14 the claims occurred in this judicial district and division. *See* 28 U.S.C.
15 § 1391(b)(2). Venue is additionally proper because at least one of the defend-
16 ants resides in this judicial district and division and all defendants reside in
17 California. *See* 28 U.S.C. § 1391(b)(1).

18 PARTIES

19 3. Plaintiff Students Against Racial Discrimination (SARD) is a volun-
20 tary, unincorporated, non-profit membership organization formed for the
21 purpose of restoring meritocracy in academia and fighting race and sex pref-
22 erences that subordinate academic merit to so-called diversity considera-
23 tions. SARD has members who are ready and able to apply for admission to
24 each of the University of California’s nine campuses. SARD’s website is at
25 <https://www.sard.law>. Its office and mailing address are located in Santa
26 Ana, California.

1 4. Defendant The Regents of the University of California is a non-profit
2 educational institution organized under the laws of the state of California. It
3 can be served at its Office of the General Counsel, 1111 Franklin Street, 8th
4 Floor Oakland, California 94607.

5 5. Defendants Maria Anguiano, Elaine E. Batchlor, Josiah Beharry, Car-
6 men Chu, Michael Cohen, Gareth Elliott, Howard “Peter” Guber, Jose M.
7 Hernandez, Nancy Lee, Richard Leib, Hadi Makarechian, Ana Matosantos,
8 Robert Myers, Lark Park, Janet Reilly, Mark Robinson, Gregory Sarris, and
9 Jonathan “Jay” Sures are appointed regents of the University of California
10 system. They can be served at the Office of the General Counsel, 1111 Frank-
11 lin Street, 8th Floor Oakland, California 94607. The appointed regents are
12 sued in their official capacities.

13 6. Defendants Gavin Newsom, Eleni Kounalakis, Robert Rivas, Tony
14 Thurmond, Michael V. Drake M.D., Geoffrey Pack, and Alfonso Salazar are
15 ex officio regents of the University of California system. They can be served
16 at the Office of the General Counsel, 1111 Franklin Street, 8th Floor Oak-
17 land, California 94607. The ex officio regents are sued in their official capaci-
18 ties.

19 7. Defendants Carol T. Christ, Julio J. Frenk Mora, Howard Gillman,
20 Sam Hawgood, Pradeep K. Khosla, Cynthia K. Larive, Gary S. May, Juan
21 Sánchez Muñoz, Kim A. Wilcox, and Henry T. Yang are chancellors of the
22 University of California at Berkeley; the University of California at Los An-
23 geles; the University of California at Irvine; the University of California at
24 San Francisco; the University of California at San Diego; the University of
25 California at Santa Cruz; the University of California at Davis; the University
26 of California at Merced; the University of California at Riverside; and the

1 University of California at Santa Barbara. They can be served at the Office of
2 the General Counsel, 1111 Franklin Street, 8th Floor Oakland, California
3 94607. Each of the chancellors is sued in his or her official capacity.

4 **BACKGROUND**

5 8. The University of California system discriminates on account of race
6 when admitting students by giving discriminatory preferences to non-Asian
7 racial minorities. This practice allows applicants with inferior academic cre-
8 dentials to obtain admission at the expense of rejected candidates with better
9 academic credentials. This discriminates against large numbers of Asian-
10 American and white applicants, who are denied admission to UC schools
11 based on their race. And it also harms Hispanic and black students who are
12 often placed at a significant academic disadvantage, and thus experience
13 worse outcomes, because of the university's use of racial preferences. Stu-
14 dents of all races are harmed by the University of California's discriminatory
15 behavior.

16 9. These racial preferences are illegal under the clear and unambiguous
17 text of Title VI, which prohibits all forms of racial discrimination at universi-
18 ties that receive federal funds and make no exception for diversity-based af-
19 firmative-action programs.

20 10. They also violate 42 U.S.C. § 1981, which prohibits racial discrimina-
21 tion in contracting and makes no exception for diversity-based affirmative-
22 action programs.

23 11. And they violate Proposition 209, a state constitutional amendment
24 approved by California voters in 1996 (and reaffirmed by California voters in
25 2020) providing that “the State shall not discriminate against, nor grant pref-
26 erential treatment to, any individual or group on the basis of race, sex, color,

1 ethnicity, or national origin in the operation of public employment, public
2 education, or public contracting.”

3 12. After the voters approved Proposition 209 in 1996, the University of
4 California (UC) began to institute new admissions policies compliant with
5 the law, and applied “race-neutrality” to admissions for graduate students
6 matriculating in 1997 and for undergraduate students matriculating in 1998.

7 13. The effects of Proposition 209 upon UC and its students were com-
8 plex and are still debated by academics. But several major effects are undis-
9 puted. First, race-blind admissions produced a sharp drop in black freshman
10 matriculants at UC’s most competitive schools (UC Berkeley and UCLA),
11 but higher enrollment rates of these students at less-elite UC schools (*e.g.*,
12 UC Davis and UC Irvine), in part because black students who would have at-
13 tended UC Berkeley or UCLA with a preference were admissible at UC Da-
14 vis or UC Irvine without a preference.

15 14. Second, black students at UC campuses post-209 were generally
16 closer to their peers in levels of academic preparation, grades, persistence in
17 STEM fields, and graduation rates—especially rates of graduation in four
18 years.

19 15. Third, all the patterns described above for black students also affect-
20 ed Hispanic students, though both the reductions in admissions and the im-
21 provements in academic outcomes were less pronounced for Hispanics, pre-
22 sumably because Hispanics had received smaller ethnically based preferences
23 than blacks before Proposition 209.

24 16. Fourth, UC launched a variety of initiatives post-209 aimed at im-
25 proving the high-school-to-UC pipeline for young Californians, especially for
26 those from economically disadvantaged backgrounds. Over the years, accord-

1 ing to UC documents, hundreds of millions of dollars were invested in these
2 programs. These measures had a disproportionate and beneficial effect upon
3 black and Hispanic high school students, and led to large increases in black
4 and Hispanic applications to UC schools. For example, the total number of
5 black, in-state applications for freshman-year admission to UC was stagnant
6 in the years before these initiatives (2,191 in 1989, and 2,151 in 1998), but
7 rose rapidly once the initiative began in 1999 (black applicants rose from
8 2,151 in 1998 to 3,307 in 2006, a greater than 50% increase.).

9 17. For all of these reasons, the actual number of blacks and Hispanics
10 graduating from UC with bachelor's degrees was far higher for 2006 matricu-
11 lants than for pre-209 matriculants, and there was no campus for which the
12 number was materially lower.

13 18. Nonetheless, UC administrators, who had uniformly opposed Propo-
14 sition 209 when it was proposed, continued to heavily criticize the re-
15 strictions it placed on their ability to increase racial diversity at UC campus-
16 es. In 2003, the UC Regents repealed its own internal measures forbidding
17 the use of race in admissions and hiring.

18 19. In 2006, UCLA announced that the number of blacks matriculating
19 as freshman at the school would fall below one hundred for the first time in
20 many years. Although this was largely a stochastic drop, and was largely off-
21 set by a large increase in black transfers to UCLA that year, the UCLA an-
22 nouncement generated a large amount of critical media coverage and protests
23 from UCLA students and faculty. UCLA's then chancellor, Norm Abrams,
24 met with the admissions committee and urged them to overhaul the admis-
25 sions, and in particular to move to a more subjective "holistic" policy, to ad-
26 dress concerns about low black admissions numbers. One of the members of

1 that admissions committee, political scientist Timothy Groseclose, has writ-
2 ten an entire book documenting how this new policy became a subterfuge for
3 reactivating racial preferences in admissions. See Tim Groseclose, *Cheating:*
4 *An Insider's Report on the Use of Race in Admissions at UCLA* (2014). The
5 number of blacks admitted as freshmen to UCLA roughly doubled in the next
6 admissions cycle.

7 20. Groseclose also documented that a majority of UCLA's undergradu-
8 ate admissions committee were unwilling to allow Groseclose—a member of
9 the committee—access to the admissions files or to detailed (anonymized)
10 data on applicant characteristics. As a compromise, the university agreed to
11 appoint Robert Mare, a distinguished sociologist who was sympathetic to the
12 use of racial preferences, to examine the question of whether UCLA's post-
13 2006 “holistic” policy was, in fact, making decisions partly on the basis of
14 applicant race.

15 21. Mare completed two exhaustive studies—one completed in 2012, a
16 second completed in 2014—on UCLA's undergraduate admissions. The sec-
17 ond, larger report was not made public until disclosed in response to a Public
18 Records Act (“PRA”) request in 2018. Both reports showed unambiguously
19 that UCLA had awarded many more undergraduate admissions to blacks and
20 Hispanics, and many fewer admissions to Asian-Americans, than could be
21 explained by considering all of the non-racial factors used in admissions.
22 Mare even provided numerical estimates of exactly how many student offers
23 (by race) resulted from the consideration of race. Over five years, over two
24 thousand offers were thus affected, by Mare's estimate.

25 22. Meanwhile, UC administrators began to encourage other UC cam-
26 puses to adopt the same “holistic” approach that UCLA had implemented.

1 In 2011, the Regents mandated that all UC campuses utilize either “holistic”
2 or “comprehensive” review in undergraduate admissions—in other words,
3 that they move away from objective criteria towards more subjective assess-
4 ments of the overall appeal of individual candidates. Trends in racial admis-
5 sions patterns consistently show that the adoption of the holistic process fa-
6 vored black and Hispanic admissions and disfavored Asian-Americans and,
7 to a lesser extent, whites.

8 23. For example, in 2010, UC Berkeley’s admission rate for black, in-
9 state freshman applicants was 13%, compared to an overall admissions rate of
10 21%. This disparity reflected the lower average academic preparation of black
11 applicants. By 2023, the black admissions rate at Berkeley was 10%, compared
12 to an overall admission rate of 12%. Over this period, in other words, Berkeley
13 moved towards a practice of aiming for a similar admissions rate for all ethnic
14 groups, regardless of qualifications.

15 24. At UC Irvine, the 2010 admissions rate for black, in-state freshmen
16 was 24%, compared to an overall admissions rate of 45%. By 2023, the rates
17 were, respectively, 21% and 26%. At UCLA, the 2010 admissions rate for
18 black, in-state freshmen was 14%, compared to an overall admissions rate of
19 23%. By 2023, the rates were, respectively, 10% and 9%. Note that, based on
20 the Mare report, we know that black applicants were already receiving a large
21 admissions preferences at UCLA in 2010. At UC Santa Barbara, the 2010
22 admissions rate for black, in-state freshmen was 28%, compared to an overall
23 admissions rate of 45%. By 2023, the rates were, respectively, 25% and 28%.

24 25. During this same period, UC also became notably more opaque in
25 matters relating to race. It shut down websites that had made it possible for
26 researchers to study the relationship between student credentials, race, and

1 admissions, or to study aggregated changes in GPA, attrition from STEM
2 fields, or graduation rates by race. In 2018, it refused to provide anonymized,
3 individual-level data on student admissions and outcomes, although in 2008
4 it had willingly disclosed identical data covering student admissions up to
5 2006.

6 26. One of the few types of data that the University of California does
7 make publicly available is a website that shows, for individual California high
8 schools, the number of freshman applicants to each UC school, the number
9 of admitted students, and the number of enrolled students. This data is bro-
10 ken down by race, though numbers are only reported if the “cell” size is at
11 least three. (In other words, if a given high school has ten Hispanic applicants
12 to Berkeley, of whom four are admitted and two enroll, the website will re-
13 port the “ten” and the “four” but will show no data for Hispanic enroll-
14 ment.). These data provide further evidence that UC schools pursue propor-
15 tional racial representation despite substantial differences in academic prepa-
16 ration across racial groups. For example, the website reports that at Long
17 Beach Polytechnic, 237 students applied for admission to UCLA in 2023, of
18 whom 23 were admitted (just under 10%). Forty-one of the applicants were
19 black, of whom 4 were admitted (again, just under 10%). Yet the average
20 achievement level of black students at Long Beach Polytechnic on state ex-
21 ams was substantially lower than the achievement level for students overall
22 (roughly one-half standard deviation). At Woodrow Wilson High School, also
23 in Long Beach, 186 students applied for admission to UCLA, and 20 were
24 admitted (11%). Of the 186 applicants, 33 were black, and 4 of these appli-
25 cants were admitted (12%). Yet the average achievement level of black stu-
26 dents at Woodrow Wilson High School on state exams was substantially low-

1 er than the achievement level for students overall. Similar patterns can be
2 demonstrated for many other high schools. In other words, the tendency of
3 UC schools to approximate racial parity in overall admissions rates cannot be
4 explained by differences in the high schools attended by students of different
5 races.

6 27. University of California law schools have been even more overt in
7 their violation of state and federal laws prohibiting racial preferences. In
8 2014, the National Bureau of Economic Research published a working paper
9 by Danny Yagan, an associate professor of economics at UC Berkeley. Yagan
10 found that racial preferences at UC Berkeley's Law School declined after
11 Proposition 209 became law, but still remained quite large. The black admis-
12 sions rate of 31%, Yagan found, would have fallen to 8% had the school applied
13 the same criteria that it applied to whites. Holding credentials of individual
14 applicants constant, Yagan found that black applicants received an admis-
15 sions preference as large as 61 percentage points.

16 28. This pattern of discrimination continues and operates to varying de-
17 grees across UC law schools. Just as the University of California was unwill-
18 ing to provide anonymized, individual-level data on undergraduate applicants
19 after 2010, so it was unresponsive to a public records request filed by UCLA
20 law professor Richard Sander for law school data in 2011. In 2014, Sander
21 brought suit to enforce his request, and UC subsequently provided him ad-
22 missions data for UC Berkeley Law School, UCLA Law School, and UC Da-
23 vis Law School, covering many admissions cycles up through 2011. These da-
24 ta show significant racial preferences at all three law schools throughout this
25 period, and confirm the general pattern documented by Yagan.

26

1 29. More recently, Professor Sander has obtained data from Law School
2 Data (www.lsd.law), a website that law school applicants use to report and
3 compare their admissions outcomes at law schools. The site contains (anon-
4 ymized) data on tens of thousands of law school applicants over the past four
5 years, including information on LSAT scores, undergraduate grades, ethnici-
6 ty, the schools to which the student applied, and the admissions outcome.
7 Analysis of the data shows that the implicit weights on various admissions
8 factors in the data, such as academic credentials, are very similar to the
9 weights revealed by analysis of publicly disclosed data from law schools, sug-
10 gesting that the data are highly reliable. Regression analysis of this data (see
11 attached Table 1) and tabular presentation of the data (see attached Table 2)
12 show a very pronounced pattern of racial preferences across all the UC law
13 schools. In these analyses, “relative credential” is a measure of the academic
14 Index of each applicant (LSAT and undergraduate grade point average com-
15 bined) relative to the estimated median credential of students at a given law
16 school, based on data reported by the law schools to the American Bar Asso-
17 ciation. Thus, if a law applicant has an academic index of 750, and applies to
18 a law school with a median academic index of 800, then the applicant has a
19 “relative credential” of -50. As Table 2 suggests, black students with low
20 relative credentials have, at the five UC law schools analyzed collectively,
21 about ten times the chance to be admitted as does a “non-URM” (*i.e.*, white
22 or Asian-American) student with similar credentials.

23 30. The shift to race-neutral admissions brought about by Proposition
24 209 benefitted black and Hispanic students both in terms of placement and
25 outcomes. Yet the university’s decision to pursue racial preferences in the
26

1 teeth of Proposition 209 has willfully disregarded the interests of black and
2 Hispanic candidates and harmed their educational outcomes.

3 **FACTS RELATED TO STANDING**

4 31. Plaintiff SARD is a voluntary membership organization founded in
5 2024. SARD seeks to restore meritocracy in academia and eliminate the cor-
6 rupt and unlawful race and sex preferences that subordinate academic merit
7 to so-called diversity considerations.

8 32. SARD has student members who are ready and able to apply for ad-
9 mission to the University of California and each of its nine campuses.

10 33. Individual A is a member of SARD. He is an Asian-American male.

11 34. Individual A stands able and ready to apply for admissions as an un-
12 dergraduate freshman to each of the University of California's nine campuses
13 that have undergraduate colleges. *See Carney v. Adams*, 592 U.S. 53, 60
14 (2020); *Gratz v. Bollinger*, 539 U.S. 244, 261 (2003); *Northeast Florida Chap-*
15 *ter of Associated General Contractors of America v. City of Jacksonville*, 508 U.S.
16 656, 666 (1993). But the pervasive and ongoing use of racial preferences pre-
17 vents Individual A from competing with other applicants for admission on an
18 equal basis. Specifically, Individual A is unable to compete on an equal basis
19 with applicants who are black or Hispanic. This inflicts injury in fact. *See*
20 *Gratz*, 539 U.S. at 261–62; *Jacksonville*, 508 U.S. at 666.

21 35. Individual B is a member of SARD. She is an Asian-American fe-
22 male.

23 36. Individual B stands able and ready to apply for admissions as a grad-
24 uate student to each of the University of California's nine campuses that
25 have undergraduate colleges. *See Carney v. Adams*, 592 U.S. 53, 60 (2020);
26 *Gratz v. Bollinger*, 539 U.S. 244, 261 (2003); *Northeast Florida Chapter of As-*

1 *sociated General Contractors of America v. City of Jacksonville*, 508 U.S. 656,
2 666 (1993). But the pervasive and ongoing use of racial preferences prevents
3 Individual B from competing with other applicants for admission on an equal
4 basis. Specifically, Individual B is unable to compete on an equal basis with
5 applicants who are black or Hispanic. This inflicts injury in fact. *See Gratz*,
6 539 U.S. at 261–62; *Jacksonville*, 508 U.S. at 666.

7 37. Individual C is a member of SARD. He is a white male.

8 38. Individual C stands able and ready to apply for admissions as an un-
9 dergraduate transfer to eight of the University of California’s nine campuses
10 that have undergraduate colleges (all except UCLA), and he has already
11 submitted his transfer applications. *See Carney v. Adams*, 592 U.S. 53, 60
12 (2020); *Gratz v. Bollinger*, 539 U.S. 244, 261 (2003); *Northeast Florida Chap-*
13 *ter of Associated General Contractors of America v. City of Jacksonville*, 508 U.S.
14 656, 666 (1993). But the pervasive and ongoing use of racial preferences pre-
15 vents Individual C from competing with other applicants for admission on an
16 equal basis. Specifically, Individual C is unable to compete on an equal basis
17 with applicants who are black or Hispanic. This inflicts injury in fact. *See*
18 *Gratz*, 539 U.S. at 261–62; *Jacksonville*, 508 U.S. at 666.

19 39. Individual D is a member of SARD. He is a white male.

20 40. Individual D stands able and ready to apply for admissions as a law
21 student to each of the University of California’s five campuses that have a
22 law school: Berkeley, UCLA, Davis, Irvine, and UC Law San Francisco
23 (formerly known as UC Hastings). *See Carney v. Adams*, 592 U.S. 53, 60
24 (2020); *Gratz v. Bollinger*, 539 U.S. 244, 261 (2003); *Northeast Florida Chap-*
25 *ter of Associated General Contractors of America v. City of Jacksonville*, 508 U.S.
26 656, 666 (1993). But the pervasive and ongoing use of racial preferences pre-

1 vents Individual D from competing with other applicants for admission on an
2 equal basis. Specifically, Individual D is unable to compete on an equal basis
3 with applicants who are black or Hispanic. This inflicts injury in fact. *See*
4 *Gratz*, 539 U.S. at 261–62; *Jacksonville*, 508 U.S. at 666.

5 41. All of these Article III injuries are fairly traceable to the allegedly un-
6 lawful conduct of the defendants discriminating on account of race in viola-
7 tion of 42 U.S.C. § 1981, Title VI, and Proposition 209. And all of these inju-
8 ries will be redressed by the requested relief, which will enjoin the defendants
9 from continuing these discriminatory policies and require them to adopt
10 colorblind student-admission policies.

11 **FIRST CLAIM FOR RELIEF—VIOLATIONS OF TITLE VI**

12 42. Each of the defendants is violating Title VI by discriminating in favor
13 of black, and Hispanic applicants for admission and against whites and
14 Asians.

15 43. Each of the nine UC undergraduate campuses and five UC law
16 schools to which the members of SARD intend to apply is a “program or ac-
17 tivity” that “receives Federal financial assistance” within the meaning of Ti-
18 tle VI.

19 44. SARD therefore seeks declaratory and injunctive relief that prohibits
20 the defendants from considering or discriminating on account of race in any
21 way in student admissions, and that compels the defendants to select appli-
22 cants for admission in a color-blind manner.

23 45. SARD seeks this relief under Title VI, 42 U.S.C. § 1983, and any
24 other law that might supply a cause of action for the requested relief.

25 46. SARD seeks this relief against each of the named defendants, includ-
26 ing the institutional defendants.

1 47. The text of Title VI makes no exceptions for “compelling state inter-
2 ests,” “student-body diversity,” or race-based affirmative-action programs. It
3 prohibits *all* forms of racial discrimination at institutions that receive federal
4 funds—regardless of whether that racial discrimination is independently
5 prohibited by the Equal Protection Clause.

6 **SECOND CLAIM FOR RELIEF—VIOLATIONS OF 42 U.S.C. § 1981**

7 48. 42 U.S.C. § 1981(a) guarantees individuals the same right to make
8 and enforce contracts without regard to race. *See* 42 U.S.C. § 1981(a) (“All
9 persons within the jurisdiction of the United States shall have the same right
10 in every State and Territory to make and enforce contracts . . . as is enjoyed
11 by white citizens”).

12 49. 42 U.S.C. § 1981(a) protects whites (and Asians) on the same terms
13 that it protects “underrepresented” racial minorities. *See McDonald v. Santa*
14 *Fe Trail Transportation Co.*, 427 U.S. 273, 295 (1976) (“[T]he Act was meant,
15 by its broad terms, to proscribe discrimination in the making or enforcement
16 of contracts against, or in favor of, any race.”).

17 50. The individual defendants are violating 42 U.S.C. § 1981(a) by dis-
18 criminating in favor of blacks and Hispanics in student admissions, and
19 against whites and Asians.

20 51. SARD therefore seeks declaratory and injunctive relief that prohibits
21 the individual defendants from considering or discriminating on account of
22 race in any way in student admissions, and that compels the defendants to
23 select applicants for admission in a color-blind and race-neutral manner.

24 52. SARD seeks this relief under 42 U.S.C. § 1983, as well as the implied
25 right of action that the Supreme Court has recognized to enforce 42 U.S.C.
26 § 1981(a), and any other law that might supply a cause of action for the re-

1 requested relief. *See Johnson v. Railway Express Agency, Inc.*, 421 U.S. 454, 459–
2 60 (1975).

3 53. SARD seeks this relief only against the individual defendants, and
4 not against the institutional defendants, as 42 U.S.C. § 1981 neither abrogates
5 nor waives a state institution’s sovereign immunity from suit. *See Sessions v.*
6 *Rusk State Hospital*, 648 F.2d 1066 (5th Cir. 1981) (“Section 1981 contains no
7 congressional waiver of the state’s eleventh amendment immunity.”).

8 54. The text of 42 U.S.C. § 1981(a) makes no exceptions for “compelling
9 state interests,” “student-body diversity,” or race-based affirmative-action
10 programs. It prohibits *all* forms of racial discrimination in contracting—
11 regardless of whether that racial discrimination is independently prohibited
12 by the Equal Protection Clause.

13 **THIRD CLAIM FOR RELIEF— EQUAL PROTECTION CLAUSE**

14 55. As public institutions, the University of California is subject to the
15 commands of the Equal Protection Clause, which prohibits state universities
16 or their components from denying to any person the equal protection of the
17 laws.

18 56. The Supreme Court has held that the Equal Protection Clause pro-
19 hibits race sex discrimination by state universities in student admissions. *See*
20 *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*,
21 600 U.S. 181, 206 (2023).

22 57. The University of California’s use of racial preferences is incompati-
23 ble with the Supreme Court’s interpretation of the Equal Protection Clause.

24 58. SARD therefore seeks declaratory and injunctive relief that prohibits
25 the defendants from considering or discriminating on account of race in any
26

1 way in student admissions, and that compels the defendants to select appli-
2 cants for admission in a color-blind and race-neutral manner.

3 59. SARD seeks this relief under 42 U.S.C. § 1983 and any other law that
4 might supply a cause of action for the requested relief.

5 60. SARD seeks this relief only against the individual defendants, and
6 not against the institutional defendants, as 42 U.S.C. § 1983 authorizes law-
7 suits only against “persons” and not states or state institutions. *See Will v.*
8 *Michigan Dep’t of Police*, 491 U.S. 58, 64–71 (1989) (a state is not a “person”
9 under 42 U.S.C. § 1983).

10 DEMAND FOR RELIEF

11 61. SARD respectfully requests that the court:

- 12 a. declare that each of the defendants is violating Title VI by dis-
13 criminating in favor of non-Asian racial minorities in student
14 admissions;
- 15 b. declare that the individual defendants (but not the institutional
16 defendants) are violating 42 U.S.C. § 1981(a) and the Equal Pro-
17 tection Clause by discriminating in favor of non-Asian racial mi-
18 norities in student admissions;
- 19 c. permanently enjoin the defendants from considering race in
20 student admissions;
- 21 d. permanently enjoin the defendants from asking or allowing an
22 applicant for admission to reveal their race;
- 23 e. appoint a court monitor to oversee all decisions relating to the
24 defendants’ admission of students to ensure that these decisions
25 are free from racial discrimination of any sort;
- 26 f. award costs and attorneys’ fees under 42 U.S.C. § 1988;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

g. grant all other relief that the Court may deem just, proper, or equitable.

Respectfully submitted.

JONATHAN F. MITCHELL*
Texas Bar No. 24075463
Mitchell Law PLLC
111 Congress Avenue, Suite 400
Austin, Texas 78701
(512) 686-3940 (phone)
(512) 686-3941 (fax)
jonathan@mitchell.law

/s/ William J. Brown Jr.
WILLIAM J. BROWN JR.
California Bar No. 192950
Brown Wegner LLP
2010 Main Street, Suite 1260
Irvine, California 92614
(949) 705-0081 (phone)
bill@brownwegner.com

REED D. RUBINSTEIN*
DANIEL EPSTEIN*
RYAN GIANNETTI*
D.C. Bar No. 400153
America First Legal Foundation
300 Independence Avenue SE
Washington, DC 20003
(202) 964-3721 (phone)
reed.rubinstein@aflegal.org
daniel.epstein@aflegal.org
ryan.giannetti@aflegal.org

* *pro hac vice* applications forthcoming

Dated: February 3, 2025

Counsel for Plaintiff