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TO: The Honorable Detroit City Council

FROM: David Whitaker, Director 
Legislative Policy Division (LPD) Staff

DATE: June 30, 2020

RE: Restoring Affirmative Action in Michigan

Council Member Spivey has directed the Legislative Policy Division to draft a resolution requesting that the State Legislature take steps to begin to move the State of Michigan toward reinstating Affirmative Action policies in our state colleges and universities. Council President Jones has also directed LPD to draft such a resolution pertaining to all industries where educational, contractual and employment opportunities are available. Council Member Benson also directed LPD to draft a report describing the process for the state legislature to put a constitutional voter initiative on the ballot restoring affirmative action. The requested resolution is attached.

For Council's convenient reference, Art. 1, Sec. 26 of the Michigan State Constitution currently states, in its entirety:

§ 26 Affirmative action programs.

- (1) The University of Michigan, Michigan State University, Wayne State University, and any other public college or university, community college, or school district shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.
- (2) The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.

(3) For the purposes of this section "state" includes, but is not necessarily limited to, the state itself, any city, county, any public college, university, or community college, school district, or other political subdivision or governmental instrumentality of or within the State of Michigan not included in sub-section 1.

(4) This section does not prohibit action that must be taken to establish or maintain eligibility for any federal program, if ineligibility would result in a loss of federal funds to the state.

(5) Nothing in this section shall be interpreted as prohibiting bona fide qualifications based on sex that are reasonably necessary to the normal operation of public employment, public education, or public contracting.

(6) The remedies available for violations of this section shall be the same, regardless of the injured party's race, sex, color, ethnicity, or national origin, as are otherwise available for violations of Michigan anti-discrimination law.

(7) This section shall be self-executing. If any part or parts of this section are found to be in conflict with the United States Constitution or federal law, the section shall be implemented to the maximum extent that the United States Constitution and federal law permit. Any provision held invalid shall be severable from the remaining portions of this section.

(8) This section applies only to action taken after the effective date of this section.

(9) This section does not invalidate any court order or consent decree that is in force as of the effective date of this section.

History: Add. Init., approved Nov. 7, 2006, Eff. Dec. 23, 2006

Art. XII, Sec. 1 of the State Constitution provides the mechanism for the State Legislature to place such an initiative on the ballot:

Amendments to this constitution may be proposed in the senate or House of Representatives. Proposed amendments agreed to by two-thirds of the members elected to and serving in each house on a vote with the names and vote of those voting entered in the respective journals shall be submitted, not less than 60 days thereafter, to the electors at the next general election or special election as the legislature shall direct. If a majority of electors voting on a proposed amendment approve the same, it shall become part of the constitution and shall abrogate or amend existing provisions of the constitution at the end of 45 days after the date of the election at which it was approved.

Conclusion

The subject of affirmative action, and specifically how to organize, fund and carry out a campaign to repeal Art. 1, Sec. 26 of the State Constitution, and replace it with a robust authorization of affirmative action as government policy to remedy major past injustices, is a very large one.¹ That work clearly would have to go beyond LPD and Detroit City Council. Council Members may wish to contact Lieutenant Governor Garlin Gilchrist regarding the Coronavirus Task Force on Racial Disparities he chairs, and suggest that it might be key vehicle for moving forward with this work.

If Council has any other questions or concerns regarding this subject, LPD will be happy to provide further research and analysis upon request.

¹ A major New York Times Magazine article by Nikole Hannah-Jones, entitled [What is Owed](#) (available at that link or upon request from LPD), on June 24, 2020, makes the case in great detail that “**If true justice and equality are ever to be achieved in the United States, the country must finally take seriously what it owes black Americans.**” That article analyzes the key issues brilliantly. In particular, it notes both that economic resources are absolutely necessary to overcome the awful racist aspects of our history that gave rise to recent demonstrations, and that such programs cannot be “color blind” (assuming anything ever really is), i.e., they will require affirmative action.

RESOLUTION CALLING FOR RESTORATION OF AFFIRMATIVE ACTION IN MICHIGAN

By Council Member André L. Spivey joined by Council President Brenda Jones

WHEREAS, In the context of the historic conditions of white supremacy and structural and systemic racial bias prevalent throughout United States history, and as the result of a well-funded out-of-state anti-civil rights and anti-human rights campaign's advocacy efforts that featured widespread misrepresentations and outright fraud as documented in subsequent federal litigation, on November 7, 2006, Michigan voters approved a voter ballot initiative, currently embodied in Art. 1, Sec. 26 of the Michigan Constitution, that prohibits the use of affirmative action in Michigan; and

WHEREAS, Since Michigan voters adopted Art. 1, Sec. 26 of the State Constitution, socioeconomic and political conditions - especially for people of color, women, LGBTQ and other sometimes disfavored groups and individuals, based on personal characteristics unrelated to their merit, human dignity or human rights - have been deteriorating in Michigan, and the prohibition on affirmative action programs prevents government from effectively addressing many problems and concerns of such traditionally disfavored constituents; and

WHEREAS, Affirmative action is merely the fair and unbiased extension of all rights and privileges of citizenship and membership in the human family to everyone, including the proactive and affirmative engagement with traditionally disfavored groups and individuals to establish work forces, student bodies, elected representation, and authority and power structures of all kinds that include diverse membership reflecting the composition of the entire population and thereby making maximum use of the human resources available to deal with our common situation; and

WHEREAS, In the last few months after the police killing of George Floyd in Minneapolis and other notorious incidents of racist police brutality, a historic uprising of oppressed Americans against racism, police misconduct, the deadly adverse racial disparity of consequences in the continuing Covid-19 pandemic, and other structural and systemic racist aspects of American society, has apparently changed consciousness of racial oppression and discrimination in this country, including among many whites; and

WHEREAS, Under the new and still-evolving analysis of racial injustices, the voters' 2006 prohibition of affirmative action in Michigan appears to be completely out-of-step and to directly contradict the long-overdue changes currently being publicly advocated; and

WHEREAS, Although affirmative action has not to date been very high on the list of protestors' demands during recent demonstrations, reparations for slavery and post-emancipation systemic discrimination and racism have been prominent, and well-designed and –resourced affirmative action policies and programs should be a major element of such reparations for African Americans, if any; and

WHEREAS, The Michigan State Legislature is the primary government body in Michigan that is empowered to place a voter initiative to change the State Constitution on the ballot, and Detroit City Council strongly urges the State Legislature to place such an initiative restoring affirmative action on the ballot forthwith;

NOW, THEREFORE, BE IT RESOLVED THAT Detroit City Council strongly urges all elected leaders, influential corporations and other institutions, and all citizens in Michigan to move as swiftly as possible to restore affirmative action in Michigan by amending the Michigan State Constitution to repeal Art. 1, Sec 26, and replacing it with a robust pro-affirmative action policy authorization; and

BE IT FURTHER RESOLVED THAT Copies of this resolution shall be distributed to Mayor Mike Duggan, Governor Gretchen Whitmer, Lieutenant Governor Garlin Gilchrist, the Detroit delegation in the Michigan State Legislature, and media and public contacts.