

# Order

**Michigan Supreme Court  
Lansing, Michigan**

January 5, 2022

Bridget M. McCormack,  
Chief Justice

ADM File No. 2021-38

Adoption of Administrative  
Order No. 2022-1

Commission on Diversity,  
Equity, and Inclusion in the  
Michigan Judiciary

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Brian K. Zahra  
David F. Viviano  
Richard H. Bernstein  
Elizabeth T. Clement  
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Elizabeth M. Welch,  
Justices

Administrative Order No. 2022-1 – Commission on Diversity, Equity, and Inclusion in the Michigan Judiciary

In January 2021, the Michigan Supreme Court and the State Court Administrative Office created a Diversity, Equity, and Inclusion Committee with the initial goal of exploring issues related to the demographics of the workforce that support our judiciary and training within the judicial branches. The Committee's work grew to include exploration of other topics that impact our communities. On October 1, 2021, the Committee presented a report to the Supreme Court that included a recommendation that the Court create an ongoing interdisciplinary Commission to continue and build on the work that has been done to date. Therefore, on order of the Court, the Commission on Diversity, Equity, and Inclusion in the Michigan Judiciary is created, effective immediately.

## I. Purpose

The purpose of the Commission on Diversity, Equity, and Inclusion in the Michigan Judiciary is to assess and work towards elimination of demographic and other disparities within the Michigan judiciary and justice system. The goals of the Commission include:

- Develop policies and standards to promote diversity, equity, and inclusion.
- Assist the judicial branch with elimination of disparities within the justice system;
- Increase participation of members from under-represented communities in judicial branch leadership;
- Assist local courts with implementation of diversity, equity, and inclusion plans and processes;
- Collaborate with other judicial branch commissions, governmental entities, and private partners to propose and implement policies aimed at achieving a more diverse, equitable, and inclusive justice system;

## II. Duties

The Commission will assess the demographic and other disparities within the judicial branch and the justice system and develop, coordinate, and implement initiatives to achieve the previously described goals. Toward this end, the Commission is directed to work with an expert facilitator to develop a strategic plan to guide the initial work of the Commission.

## III. Commission Leadership

A. Executive Team – The leadership, direction, and administrative support for the Commission’s activities is provided collaboratively by the State Court Administrative Office and other Supreme Court staff, the State Bar of Michigan, and the Michigan State Bar Foundation. The co-chairs (or chair and vice-chair) of the Commission, State Court Administrator, the Executive Director of the State Bar of Michigan, and the Executive Director of the Michigan State Bar Foundation, or their designees, constitute the Executive Team. Duties of the Executive Team include:

1. Preparing meeting agendas;
2. Providing data required for Commission deliberations;
3. Identifying and pursuing third party funding sources for Commission initiatives; and
4. Preparing a biennial report for the Supreme Court.

B. Co-Chairs or a Chair and Vice-Chair – Either two co-chairs or a chair and vice-chair will be appointed by the Court as leadership for the Commission. Individuals selected for these leadership positions shall serve two-year terms and may be reappointed.

1. Initial appointments – Individuals selected for (co)chair/vice-chair positions when the Commission is first constituted shall serve their initial two-year term regardless of their continued membership in the groups outlined in Section IV.A.
2. After the initial selection, individuals selected for the (co)chairs/vice-chair positions shall be chosen from the membership of the Commission upon recommendation of the Executive Team to the Supreme Court.
3. Duties of the Chair(s) include:
  - a. Presiding at all meetings of the Commission;
  - b. Approving a draft agenda for Commission meetings; and

- c. Serving as the official spokesperson of the Commission.
4. The vice-chair or co-chair will perform the duties of the chair in the chair's absence.

#### IV. Commission Membership

- A. Membership shall be comprised of 24 members from the following groups:
  1. A sitting Justice of the Michigan Supreme Court;
  2. The State Court Administrator, or designee;
  3. The Executive Director of the State Bar of Michigan, or designee;
  4. The Executive Director of the Michigan State Bar Foundation, or a designee;
  5. One member each, recommended by the following:
    - a. The Michigan State Planning Body;
    - b. The Michigan Indigent Defense Commission;
    - c. The Justice For All Commission;
    - d. The Michigan Association of Counties;
    - e. The Prosecuting Attorneys Association of Michigan;
    - f. The Association of Black Judges of Michigan;
    - g. The Board of Commissioners from the State Bar of Michigan membership;
  6. One member each, appointed by the Supreme Court, from the following bodies/stakeholder groups as members:
    - a. The Michigan Court of Appeals;
    - b. The Michigan Judges Association (Circuit Court Judge);
    - c. The Michigan District Judges Association;
    - d. The Michigan Probate Judges Association;
    - e. The Michigan Court Administrators Association;
    - f. An administrator or faculty member of a Michigan ABA-accredited law school;
    - g. Four members of various affinity and/or special purpose bar associations (as defined by the Commission's Executive Team);
    - h. Three community members with contacts with the justice system.
- B. Appointments. With the exception of the members who will serve by virtue of their status (See Section IV.A.2 to IV.A.4), the Supreme Court shall appoint all members of the Commission.
  1. Within 60 days of entry of this order, the groups identified in Section

IV.A.5 shall submit the names of their initial recommended designee to the Executive Team for consideration.

2. The Executive Team will promptly establish a process to solicit and receive applications for membership for the initial appointment of groups identified in Section IV.A.6.
3. Within 120 days of entry of this order, the Executive Team will submit to the Court its recommendations for the initial Commission members described in subsection 1 and 2 above, and the Court will appoint the Commission members within 30 days thereafter.
4. After initial appointments are complete, the Executive Team will develop and implement a process for receiving future recommendations and applications and for making appointments and reappointments based on commitment to the purpose and goals of the Commission and to ensure diversity of membership.

- C. Terms – With the exception of the appointments of a sitting Michigan Supreme Court Justice, the State Bar of Michigan Executive Director, the Michigan State Bar Foundation Executive Director, and the State Court Administrator, members of the Commission will be appointed for three year terms and will be limited to serving two full terms. A member may be re-appointed. Initial terms will commence on the date of appointment and may be less than three years to ensure that the terms are staggered with initial terms of one-year, two-years, and three-years. All members appointed or reappointed following these inaugural terms will serve three-year terms. After initial appointment, all terms commence January 1st of each calendar year.

Justice Elizabeth M. Welch and Judge Cynthia D. Stephens are appointed to the Commission and shall serve as the initial co-chairs.

- D. Vacancy – The Executive Team may declare a vacancy exists if a commissioner resigns from his or her position from the Commission or moves outside of Michigan or a commissioner does not attend two consecutive meetings without being excused by the chair or co-chairs. If the vacancy is from a group identified in Section IV.A.5, that group shall recommend for appointment another person to fill the vacancy. In the event of other vacancies on the Commission, the Executive Team will recommend to the Supreme Court appointment of a replacement member who will serve the remainder of the term of the former incumbent. After serving the remainder of the term, the new member may be reappointed for no more than two full consecutive terms.

## V. Meetings, Committees, and Workgroups

- A. The Commission will establish operating procedures for conducting meetings. The procedures will be available to the public.
- B. The Commission may establish Workgroups or Subcommittees as needed to facilitate or accomplish the work of the Commission.
- C. The Executive Team may invite individuals whose particular experience and perspective is needed or helpful to assist with the Commission's work, including participation in Workgroups or Subcommittees.

#### VI. Staffing and Administration

- A. The State Court Administrative Office and other Supreme Court staff will provide administrative support to the Commission.
- B. If funding is received by the Commission, the Michigan State Bar Foundation may serve as fiscal agent for the funds.

#### VII. Compensation

- A. Members of the Commission will serve without compensation.

#### VIII. Reporting Requirement

- A. The Commission will file a biennial report with the Supreme Court about the Commission's activities and progress during the previous 24-month period and its goals for the next 24 months. The biennial report will be available to the public on the Court's website.
- B. The Commission may make additional information, data, presentations, and publications available to the public and may solicit public comment concerning the Commission's work.

WELCH, J. (*concurring*). I concur in the Court's decision to establish the Commission on Diversity, Equity, and Inclusion, and I write briefly to respond to the concerns raised by my dissenting colleague. As Justice VIVIANO notes, this Commission is being created upon the recommendation of the Committee on Diversity, Equity, and Inclusion (DEI Committee), which I joined as a cofacilitator after taking office.<sup>1</sup> Prior to

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<sup>1</sup> Chief Justices of this Court have a long history of creating committees to work with the State Court Administrative Office (SCAO) and to study a variety of issues. In 2020, the

recommending the creation of the Commission, the Committee spent hundreds of hours meeting and working with the State Court Administrative Office, the State Bar of Michigan, individual members of the bench and bar, various other stakeholders, and representatives of commissions created in other states. The recommendation to create the Commission is based not merely on the work completed over the last year, but also on decades of prior research and recommendations, including those of the 1987 Supreme Court Task Force on Gender Issues in the Courts, the 1987 Task Force on Racial/Ethnic Issues in the Courts, the 1996 State Bar of Michigan Task Force on Race/Ethnic and Gender Issues in the Courts and the Legal Profession, the National Consortium on Racial and Ethnic Fairness in the Courts (of which Michigan is a founding member), the National Center for State Courts, the Conference of Chief Justices, and the Conference of State Court Administrators. Leadership in these varied groups has been nonpartisan and includes judges of different ideologies from around the nation.

Over the decades, all of these bodies have called on state courts to do more and to take direct action to ensure that the courts, as institutions existing for the benefit of the people, reflect the people they serve. The 1987 taskforces made numerous recommendations to address discrimination and gender bias in the court, and they specifically recommended that a “Standing Committee on Racial/Ethnic and Gender Issues in the Courts should be created by the Supreme Court” to monitor and implement the recommendations of those bodies and carry out many of the functions that we charge the Commission with today.<sup>2</sup> Shortly thereafter, this Court issued Administrative Order No. 1990-3, which directed “[t]hat judges, employees of the judicial system, attorneys and other court officers commit themselves to the elimination of racial, ethnic and gender

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Chief Justice instructed SCAO to launch the Diversity and Inclusion Committee to address internal hiring practices and trial court training. This work was addressed with the justices of this Court *at least as early as September 2020* in connection with the proposed rescission and replacement of Administrative Order No. 1997-9. The Diversity and Inclusion Committee later became the Committee on Diversity, Equity, and Inclusion.

<sup>2</sup> Michigan Supreme Court, *Final Report of the Michigan Supreme Court Task Force on Gender Issues in the Courts* (December 1989), p 140, available at <[https://www.michbar.org/file/programs/eai/pdfs/regtf\\_1989\\_part1.pdf](https://www.michbar.org/file/programs/eai/pdfs/regtf_1989_part1.pdf)> (accessed December 27, 2021) [<https://perma.cc/SB4M-LBV4>]. See also Michigan Supreme Court, *Final Report of the Michigan Supreme Court Task Force on Racial/Ethnic Issues in the Courts* (December 1989) <[https://www.michbar.org/file/programs/eai/pdfs/regtf\\_1989\\_part2.pdf](https://www.michbar.org/file/programs/eai/pdfs/regtf_1989_part2.pdf)> (accessed December 27, 2021) [<https://perma.cc/7F56-ECVZ>]; Michigan Supreme Court, *Michigan Supreme Court Task Force on Gender Issues in the Courts: Conclusions and Recommendations* <[https://www.michbar.org/file/programs/eai/pdfs/regtf\\_1989\\_part3.pdf](https://www.michbar.org/file/programs/eai/pdfs/regtf_1989_part3.pdf)> (accessed December 27, 2021) [<https://perma.cc/UU78-6Y4J>].

discrimination in the Michigan judicial system” and “[t]hat the Michigan Judicial Institute continue its efforts to eliminate gender and racial/ethnic bias in the court environment through the education of judges, court administrators and others.” Despite calls for change over 30 years ago, ongoing internal work, and the growing number of voices calling on the Courts to take a lead on DEI issues, it was not until now that our Court has finally and publicly taken that next necessary step.

The purpose of the Commission is to gather information and work with stakeholders directly affected by our justice system. The DEI Committee focused on talent, retention, education, leadership, and data. The Commission will continue this important work with its own strategic plan and focus areas. Undoubtedly, this work is not easy. There are varying viewpoints about how best to create a healthy work environment and how to best serve the public. But the wheel does not need to be reinvented here: For over 30 years private, nonprofit, and other public sector entities have identified best practices that build an inclusive work force and better serve customers, clients, and the public. The Conference of Chief Justices and the Conference of State Court Administrators currently have a national DEI effort underway that is led by Texas Chief Justice Nathan L. Hecht and includes team members from across the country. The DEI Committee’s report has set forth the best practices of analogous bodies in other states and outlined challenges and mistakes that arose with similar efforts in other states. While many states have in fact been successful in their efforts, it is also wise to learn from the mistakes of others. Our order creates a collaborative body that will be well suited to closely study these issues and make recommendations for potential change.

I appreciate and share Justice VIVIANO’s dedication to preserving the neutrality of judicial decision-making and ensuring equal treatment under the law. These are immutable qualities of a court that must be held sacred. However, I struggle to understand how creating a more inclusive and welcoming workplace or court system fails to achieve those goals. Further, as an advisory body, the Commission has no authority to tell judges how to resolve legal disputes that appear before our courts. If a proposed policy or procedure would “ignore the Constitution and laws of our state and nation” then the Court would refuse to adopt or implement such a recommendation.

This new Commission will assist the Court in recognizing its deficiencies and blind spots as an institution and an employer. It is only with this knowledge that we can begin visualizing and building a judiciary that is more reflective of and better situated to serve the people of Michigan. While the opportunity to embark on this path was missed a generation ago, I enthusiastically concur in our Court’s decision to take the initial steps toward directly addressing diversity, equity, and inclusion concerns within our courts.

VIVIANO, J. (*dissenting*). I dissent from today’s order establishing the Commission on Diversity, Equity, and Inclusion, a catchphrase that is politically fraught—and for that reason alone should be approached with extreme caution by the judicial branch. I am afraid that the Court has failed to accord this matter the careful deliberation it deserves. The

Commission is the product of an internal committee on diversity, equity, and inclusion (the DEI Committee) that was itself instituted by the State Court Administrative Office (SCAO) without any input from or even notice to this Court. While the order creating the Commission sets forth an expansive purpose statement, it nowhere establishes the scope or meaning of the critical terms, “diversity,” “equity,” and “inclusion.”<sup>3</sup> I am concerned that the Commission will endow these core concepts with meanings that will produce heated disputes and call into question the judiciary’s neutrality. Because of these procedural and substantive flaws in the Court’s order, I must respectfully dissent.

In January 2021, the DEI Committee was formed to examine the topics of diversity, equity, and inclusion. The origins of the DEI Committee remain a mystery to me, as a proposal to create it was never discussed by the Court and its existence went almost entirely unmentioned. Perhaps this furtive start would not be so troubling if the DEI Committee had been confined to research. But the DEI Committee already has affected the judiciary’s functioning. It suggested reforms, which SCAO adopted, to the application and questionnaire we give to candidates seeking appointment as chief judges.<sup>4</sup> As the Committee’s report states, “The questionnaire now requests information related to the candidate’s experience and training in DEI [i.e., diversity, equity, and inclusion] and includes DEI as a competency to be evaluated as part of the selection criteria.” SCAO, DEI Committee, *Final Report* (October 1, 2021), p 7. The questionnaire that was used in this past year’s chief judge application process now deems as a core competency the “Commitment to Diversity, Equity, and Inclusion.” Two of the 10 questions now involve “diversity, equity, and inclusion,” including one that asks the applicant to describe how he or she has “demonstrate[d] alignment with the judiciary’s commitment to diversity, equity, and inclusion[.]”

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<sup>3</sup> In setting forth a statement of the Commission’s purpose, goals, and duties, the Court’s order (in my view wisely) rejected the DEI Committee’s suggestion that the Commission “should work with a facilitator to decide upon its mission and goals.” Instead, the Court’s order provides that “the Commission is directed to work with an expert facilitator to develop a strategic plan to guide the initial work of the Commission.” One wonders why the Court is so sure that an outside consultant is needed at all for this purpose, what expertise such a person might have that would be of value (and is apparently lacking from the Commission as presently constituted), and whether the expenses incurred will be a worthwhile expenditure of taxpayer resources.

<sup>4</sup> Apparently, the DEI Committee also assisted the Michigan Judicial Institute in updating its jury orientation video to include a new segment on unconscious bias. See LegalNews.com, *Juror Orientation Video Update Addresses Unconscious Bias*, <<http://legalnews.com/grandrapids/1506757/>> (accessed January 3, 2022) [<https://perma.cc/84A8-DC67>].

I am not sure how applicants are to answer this question, given that this Court has not established any guidance on just what our “commitment” entails. Indeed, as far as I know, we have never made such a “commitment” to a particular version of these values. Even today’s order leaves for the future the determination of what it means for the courts to be diverse, equitable, and inclusive.<sup>5</sup> But it is no small thing to leave unstated the meaning of “diversity, equity, and inclusion.” As noted above, this catchphrase occupies disputed terrain in our politically polarized society.<sup>6</sup> Our nation was founded upon and dedicated to the then radical principle that “all men are created equal.” *The Declaration of Independence* (US, 1776). The authors of the Declaration

meant to set up a standard maxim for free society, which should be familiar to all, and revered by all; constantly looked to, constantly labored for, and even though never perfectly attained, constantly approximated, and thereby constantly spreading and deepening its influence, and augmenting the happiness and value of life to all people of all colors everywhere. [Basler, ed, 2 *Collected Works of Abraham Lincoln* (New Brunswick: Rutgers University Press, 1953), p 406.]

Equality therefore requires that the law accord all just and equal treatment. The “leading object” of a government founded upon this principle is “to elevate the condition of men—to lift artificial weights from all shoulders—to clear the paths of laudable pursuit for all—to afford all, an unfettered start, and a fair chance, in the race of life.” [4 *Collected Works of Abraham Lincoln*, p 438.]

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<sup>5</sup> And it is not apparent that the Commission will succeed in either defining these terms or implementing its definitions. As the DEI Committee report acknowledges, “[w]hile over 35 other states have DEI structures related to their courts, many are fairly new in their work, have faltered, or have had a less robust impact.” *Final Report*, p 11. Hardly a ringing endorsement for the creation of a new bureaucratic structure overseeing an as yet undetermined subject matter.

<sup>6</sup> That this is so should hardly need saying. See, e.g., Voegeli, *Republics, Extended and Multicultural: Not All Majorities are Created Equal*, Claremont Review of Books (Spring 2020), <<https://claremontreviewofbooks.com/republics-extended-and-multicultural/>> (accessed January 3, 2022) [<https://perma.cc/62KQ-HMYG>] (discussing the modern emphasis on diversity and equity and warning of its departure from the principles that form the structure of our government); Mitchell, *The Identity-Politics Death Grip*, City Journal (Autumn 2017), <<https://www.city-journal.org/html/identity-politics-death-grip-15500.html>> (accessed January 3, 2022) [<https://perma.cc/Z9UJ-9TV3>] (“The irony of identity politics is that it does not see itself as political; it supposes that we live in a post-political age, that social justice can be managed by the state, and that those who oppose identity politics are the ones ‘being political.’”).

Thus, when the order the Court issues today proclaims an intent to “[i]ncrease participation of members from under-represented communities” and to achieve an inclusive justice system, I am in full agreement—to the extent that we lift obstacles that prevent full and equal participation in our courts. All who come to our courts, in any capacity, should be afforded equal treatment under the law. To me, this means that in our judicial decision-making and our administration of the judiciary, we must pay no heed to race, ethnicity, gender, or other natural distinctions that have no bearing on the treatment we deserve as fellow humans or on our legal rights and obligations. Cf. *Grutter v Bollinger*, 539 US 306, 353 (2003) (Thomas, J., concurring in part, dissenting in part) (“The Constitution abhors classifications based on race, not only because those classifications can harm favored races or are based on illegitimate motives, but also because every time the government places citizens on racial registers and makes race relevant to the provision of burdens or benefits, it demeans us all.”). This conception of equality and inclusion leaves ample room to cultivate a diversity of viewpoints and experiences that enriches the courts. See Posner, *Divergent Paths: The Academy and the Judiciary* (Cambridge: Harvard University Press, 2016), p 63 (stressing the importance of vocational diversity).

But to the extent that calls for diversity, equity, and inclusion encourage decision-making on the basis of race, gender, ethnicity, and other immutable characteristics in order to achieve outcomes favored by one faction or another, they pose a stark challenge to the core commitments to equality and viewpoint diversity. See Epstein, *The Civil Rights Juggernaut*, 2020 U Ill L Rev 1541, 1542 (2020) (noting that invocations of diversity and inclusion often are not calls to disregard race or “to make sure that individuals from all groups and all walks of life are included in modern social discourse”). For example, by requiring applicants for chief judge positions in our courts to affirm our “commitment” to diversity, equity, and inclusion, we have already indicated that those with differing conceptions of these terms will find it harder to succeed. The problems cut even deeper when invocations of diversity and inclusion run up against laws and standards that seek to banish considerations of race, gender, ethnicity, and other protected characteristics. This has been demonstrated by an early version of the standard proposed by the American Bar Association (ABA) for accreditation of law schools. That standard would demand that law schools “take effective actions that, in their totality, demonstrate progress in (1) Diversifying the student body, faculty, and staff; and (2) Creating an inclusive and equitable environment . . . .” ABA Standards Committee, *Recommendations for Approval for Notice and Comment on Standard 206 Revisions* (November 4, 2021), Appendix A, available at [https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/council\\_reports\\_and\\_resolutions/nov21/21-nov-std-206-notice-and-comment-w-appendix.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/nov21/21-nov-std-206-notice-and-comment-w-appendix.pdf) (accessed December 27, 2021). The ABA’s proposed interpretations of the standard make clear just what diversity means and how close the schools must sail to the wind, so to speak: “The requirement of a constitutional provision or statute that purports to prohibit consideration of race, color, ethnicity, religion, national origin, gender, gender identity or expression, sexual orientation, age, disability, or military

status in admissions or employment decisions is not a justification for a school’s non-compliance with Standard 206.” *Id.* Under this standard, a school may be forced to violate the law or risk losing accreditation.<sup>7</sup> Does the majority’s commitment involve a similar requirement to ignore the Constitution and laws of our state and nation?

The Florida Supreme Court recently addressed this tension between diversity initiatives and constitutional protections, amending its regulations of the profession to clarify that continuing legal education credits would not be awarded for any courses that “uses quotas based on race, ethnicity, gender, religion, national origin, disability, or sexual orientation in the selection of course faculty or participants.” *In re Amendment to Rule Regulating the Florida Bar 6-10.3*, \_\_\_ So 3d \_\_\_ (Fla, 2021) (Docket No. SC21-284); slip op at 1 (quotation marks and citation omitted). The rule came about in response to efforts by a section of the Florida Bar, following the lead of the ABA, to require quotas of various races, ethnicities, genders, and similar characteristics in its continuing legal education panel policy. *Id.* at \_\_\_; slip op at 2. The Florida Supreme Court stated that such requirements were “antithetical to basic American principles of nondiscrimination” and “depart from the American ideal of treating people as unique individuals, rather than as members of groups. Quotas are based on and foster stereotypes. And quotas are divisive.” *Id.* at \_\_\_; slip op at 4 (quotation marks and citation omitted).

Such initiatives pose even starker risks when they are spearheaded by the judiciary. As judges, we have the ethical duty to “respect and observe the law” without partiality. Code of Judicial Conduct, Canon 2(B). And we must, “[w]ithout regard to a person’s

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<sup>7</sup> The most recent version of the ABA standard, currently under consideration, has softened its language but not its aims. The new proposed standard requires “[c]oncrete actions towards creating an inclusive and equitable environment . . . .” *Recommendations for Standard 206 Revisions*, Interpretation 206-3. The new standards do not require law schools to consider “race and ethnicity in employment and admissions” if the school is in a “jurisdiction[] that prohibit[s] [these] consideration[s] . . . .” *Id.*, Interpretation 206-4. And all schools must include “underrepresented groups” among “faculty, staff, and students,” all of whom likely will be forced to undergo “[d]iversity, equity, and inclusion education . . . .” *Id.*, Interpretations 206-2 and 206-3. Whether a law school meets the standard is determined not simply “based on the totality of the law school’s actions” but also, specifically, on “the results achieved.” *Id.*, Interpretation 206-3.

race, gender, or other protected personal characteristic, . . . treat every person fairly, with courtesy and respect.” *Id.*<sup>8</sup> We must “be particularly cautious with regard to membership activities that discriminate, or appear to discriminate, on the basis of race, gender, or other protected personal characteristic.” Code of Judicial Conduct, Canon 2(F). Moreover, we hear cases involving allegations of discrimination. If the Commission created today sets about to encourage the judiciary to consider these characteristics in any area under our purview, I fear that our ethics, fidelity to law, and impartiality will justly be called into question.

Chief Justice Roberts was right when he said that the “way to stop discrimination on the basis of race is to stop discriminating on the basis of race.” *Parents Involved in Community Schs v Seattle Sch Dist No 1*, 551 US 701, 748 (2007) (opinion of Roberts, C.J.). The way to be equitable, diverse, and inclusive is to stop taking account of race and other protected characteristics. I fear that the Commission may take the opposite view, one that would require attorneys and judges to violate their oaths of fidelity to the law and call into question the neutrality that is essential to the judiciary.<sup>9</sup> But this is always the danger when courts wade into hotly disputed social issues. By plunging ahead, I believe that this Court, and the Commission it creates today, will serve only to engender conflict and undermine the public’s faith in the judicial branch as impartial arbiters. For these reasons, I respectfully dissent.

ZAHRA, J., joins the statement of VIVIANO, J.

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<sup>8</sup> See also MCR 9.202(B)(1)(d) (providing that it is misconduct in office for a judge to “treat[] . . . a person unfairly or discourteously because of the person’s race, gender, or other protected personal characteristic”).

<sup>9</sup> The oaths taken by lawyers and judges in Michigan both require the oath-takers to swear that they will support the Constitutions of Michigan and the United States. See State Bar of Michigan, *Lawyer’s Oath*, available at <<https://www.michbar.org/generalinfo/lawyersoath>> (accessed December 27, 2021) [<https://perma.cc/NX49-R2A2>]. See also Const 1963, art 11, § 1.



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

January 5, 2022

A handwritten signature in black ink, appearing to read "Larry S. Royster", written over a horizontal line.

Clerk