

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

COALITION TO DEFEND AFFIRMATIVE
ACTION, et al,

Case No. 06-15024

Plaintiffs,

Hon. David M. Lawson

vs.

JENNIFER GRANHOLM, in her official capacity as
Governor of the State of Michigan, the REGENTS
OF THE UNIVERSITY OF MICHIGAN, the
BOARD OF TRUSTEES OF MICHIGAN STATE
UNIVERSITY, the BOARD OF GOVERNORS OF
WAYNE STATE UNIVERSITY, and the
TRUSTEES OF any other public college or
university, community college, or school district,

Defendants,

and

CONSOLIDATED CASES

CHASE CANTRELL, et al,

Case No. 06-15637

Plaintiffs,

Hon. David M. Lawson

vs.

JENNIFER GRANHOLM and MICHAEL A. COX,

Defendants.

**GOVERNOR JENNIFER GRANHOLM'S
ANSWER AND AFFIRMATIVE DEFENSES TO FIRST
AMENDED COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF IN CASE NO. 06-15024**

Jennifer Granholm, in her official capacity as Governor of the State of Michigan, by
counsel, answers Plaintiffs' First Amended Complaint for Injunctive and Declaratory Relief in
Case No. 06-15024 as follows:

1. Governor Granholm admits only that in a prior proceeding, Federal District Court Judge Tarnow concluded that the circulators of the petition that led to the placement of Proposal 2 on Michigan's November 2006 ballot engaged in a pattern of voter fraud. The remaining allegations of paragraph 1 contain legal conclusions, not averments of fact. Therefore, no further response is required and Plaintiffs are left to their proofs.

2. Governor Granholm admits only that on June 7, 2006, the Michigan Civil Rights Commission issued a comprehensive report entitled "The Michigan Civil Rights Commission's Report on the Use of Fraud and Deception in the Collection of Signatures for the Michigan Civil Rights Initiative Ballot Petition", and that Judge Tarnow relied upon the report in his decision in *Operation King's Dream v. Connerly*, 2006 WL 2514115 (E.D. Mich.). The remaining allegations of paragraph 2 contain legal conclusions, not averments of fact. Therefore, no further response is required and Plaintiffs are left to their proofs.

3. Governor Granholm admits that on November 7, 2006, a majority of the Michigan electorate who voted in the November 2006 election approved Proposal 2. The remaining allegations of paragraph 3 contain legal conclusions, not averments of fact and, therefore, do not require a response and Plaintiffs are left to their proofs.

4. Governor Granholm is without sufficient knowledge or information to either admit or deny the factual allegations of paragraph 4. To the extent that paragraph 4 contains legal conclusions, not averments of fact, no further response is required and Plaintiffs are left to their proofs.

5. The allegations of paragraph 5 contain legal conclusions, not averments of fact. Therefore, no response is required and Plaintiffs are left to their proofs.

6. The allegations of paragraph 6(A) through 6(E) contain legal conclusions, not averments of fact. Therefore, no response is required and Plaintiffs are left to their proofs.

7. The allegations of paragraph 7 contain legal conclusions, not averments of fact. Therefore, no response is required and Plaintiffs are left to their proofs.

JURISDICTION AND VENUE

8. Governor Granholm admits that this Court has jurisdiction based on 28 U.S.C. § 1311 and 28 U.S.C. § 1343(3).

9. Admitted.

PARTIES

10. Upon information and belief, Governor Granholm admits the allegations of paragraph 10.

11. Upon information and belief, Governor Granholm admits the allegations of paragraph 11.

12. Upon information and belief, Governor Granholm admits the allegations of paragraph 12.

13. Governor Granholm is without sufficient knowledge or information to either admit or deny the allegations of paragraph 13. Therefore, no response is required and Plaintiffs are left to their proofs.

14. Governor Granholm is without sufficient knowledge or information to either admit or deny the allegations of paragraph 14. Therefore, no response is required and Plaintiffs are left to their proofs.

15. Governor Granholm is without sufficient knowledge or information to either admit or deny the allegations of paragraph 15. Therefore, no response is required and Plaintiffs are left to their proofs.

16. Governor Granholm is without sufficient knowledge or information to either admit or deny the allegations of paragraph 16. Therefore, no response is required and Plaintiffs are left to their proofs.

17. Governor Granholm is without sufficient knowledge or information to either admit or deny the allegations of paragraph 17. Therefore, no response is required and Plaintiffs are left to their proofs.

18. Governor Granholm is without sufficient knowledge or information to either admit or deny the allegations of paragraph 18. Therefore, no response is required and Plaintiffs are left to their proofs.

19. Governor Granholm is without sufficient knowledge or information to either admit or deny the allegations of paragraph 19. Therefore, no response is required and Plaintiffs are left to their proofs.

20. Governor Granholm is without sufficient knowledge or information to either admit or deny the allegations of paragraph 20. Therefore, no response is required and Plaintiffs are left to their proofs. Therefore, no response is required and Plaintiffs are left to their proofs.

21. Governor Granholm is without sufficient knowledge or information to either admit or deny the allegations of paragraph 21. Therefore, no response is required and Plaintiffs are left to their proofs.

22. Governor Granholm is without sufficient knowledge or information to either admit or deny the allegations of paragraph 22. Therefore, no response is required and Plaintiffs are left to their proofs.

23. Governor Granholm is without sufficient knowledge or information to either admit or deny the allegations of paragraph 23. Therefore, no response is required and Plaintiffs are left to their proofs.

24. Governor Granholm admits that the various identified AFSCME Locals are labor organizations each having a diverse membership base. The remaining allegations of paragraph 24 contain legal conclusions, not averments of fact. Therefore, no response is required and Plaintiffs are left to their proofs.

25. Upon information and belief, Governor Granholm admits the allegations of paragraph 25.

26. Admitted.

27. Admitted.

28. Admitted.

29. Admitted.

30. Admitted.

STATEMENT OF FACTS

A. Facts regarding the applicants to the defendant universities.

31. The allegations of paragraph 31 contain legal conclusions, not averments of fact. Therefore, no response is required and Plaintiffs are left to their proofs.

32. The allegations of paragraph 32 contain legal conclusions, not averments of fact. Therefore, no response is required and Plaintiffs are left to their proofs.

33. The allegations of paragraph 33 contain legal conclusions, not averments of fact. Therefore, no response is required and Plaintiffs are left to their proofs.

34. The allegations of paragraph 34 contain legal conclusions, not averments of fact. Therefore, no response is required and Plaintiffs are left to their proofs.

35. The allegations of paragraph 35 contain legal conclusions, not averments of fact. Therefore, no response is required and Plaintiffs are left to their proofs.

36. Governor Granholm is without sufficient knowledge or information to admit or deny whether plaintiff Camacho attends Roosevelt High School in Los Angeles, that Roosevelt High School is one of the "largest" high schools in the nation, or that Roosevelt High School is 99 percent Latino/a. The remaining allegations of paragraph 36 contain legal conclusions, not averments of fact. Therefore, no response is required and Plaintiffs are left to their proofs.

37. The allegations of paragraph 37 contain legal conclusions, not averments of fact. Therefore, no response is required and Plaintiffs are left to their proofs.

38. The allegations of paragraph 38 contain legal conclusions, not averments of fact. Therefore, no response is required and Plaintiffs are left to their proofs.

39. Upon information and belief, Governor Granholm admits that the defendant universities rely to some extent on standardized tests, including the SAT and ACT, to evaluate applicants for admissions. Governor Granholm states, however, that she has no role in determining the admissions policies for the defendant universities. Further responding, the remaining allegations of paragraph 39 contain legal conclusions, not averments of fact. Therefore, no response is required and Plaintiffs are left to their proofs.

40. Upon information and belief, Governor Granholm admits that the defendant universities rely to some extent on standardized tests, including the SAT and ACT, to evaluate

applicants for admissions. The remaining allegations of paragraph 40 contain legal conclusions, not averments of fact. Therefore, no response is required and Plaintiffs are left to their proofs.

41. Governor Granholm is without sufficient knowledge or information to either admit or deny into what universities, if any, plaintiffs Hyman, Cruz, or Lopez have been admitted. The remaining allegations of paragraph 41 contain legal conclusions, not averments of fact. Therefore, no response is required and Plaintiffs are left to their proofs.

42. The allegations of paragraph 42 contain legal conclusions, not averments of fact. Therefore, no response is required and Plaintiffs are left to their proofs.

43. Governor Granholm is without sufficient knowledge or information to either admit or deny the allegations of paragraph 43. Therefore, no response is required and Plaintiffs are left to their proofs. Further responding, Governor Granholm reiterates that she has no role in determining the admissions policies for the defendant universities.

44. Governor Granholm is without sufficient knowledge or information to either admit or deny the allegations of paragraph 44. Therefore, no response is required and Plaintiffs are left to their proofs.

45. The allegations of paragraph 45 contain legal conclusions, not averments of fact. Therefore, no response is required and Plaintiffs are left to their proofs.

46. The allegations of paragraph 46 contain legal conclusions, not averments of fact. Therefore, no response is required and Plaintiffs are left to their proofs.

B. The defendant universities' admission systems.

47. Upon information and belief, Governor Granholm admits the allegations of paragraph 47. Further responding, Governor Granholm states that she has no role in determining the admissions policies for the defendant universities.

48. Governor Granholm admits only that prior to the advent of affirmative action, minorities and women were generally under-represented in many settings, including institutions of higher learning. The remaining allegations of paragraph 48 contain conclusions of law, not averments of fact. Therefore, no response is required and Plaintiffs are left to their proofs.

49. The allegations of paragraph 49 contain legal conclusions, not averments of fact. Therefore, no response is required and Plaintiffs are left to their proofs.

50. Governor Granholm is without sufficient knowledge or information to either admit or deny the allegations of paragraph 50. Therefore, no response is required and Plaintiffs are left to their proofs.

51. Governor Granholm is without sufficient knowledge or information to admit or deny what specifically may have factored into defendant universities' decisions to adopt affirmative action programs as alleged in paragraph 51. Further responding, Governor Granholm states that she has no role in determining the admissions policies for the defendant universities.

52. The allegations of paragraph 52 contain legal conclusions, not averments of fact. Therefore, no response is required and Plaintiffs are left to their proofs.

53. Governor Granholm is without sufficient knowledge or information to admit or deny the allegations of paragraph 53 to the extent they describe the affirmative action plans of defendant universities.

54. The allegations of paragraph 54 contain legal conclusions, not averments of fact. Therefore, no response is required and Plaintiffs are left to their proofs.

C. Proposition 209

55. Governor Granholm admits that other than adding the names of Michigan-specific universities, Michigan's Proposal 2 is nearly identical to the verbiage of California's Proposition 209.

56. Upon information and belief, Governor Granholm admits the allegations of paragraph 56.

57. Upon information and belief, Governor Granholm admits that California's proposition 209 precludes California's public universities from considering race or national origin when making admissions decisions. Governor Granholm is without sufficient knowledge or information, however, to either admit or deny the remaining allegations of paragraph 57.

58. Governor Granholm is without sufficient knowledge or information to either admit or deny the allegations of paragraph 58. Therefore, no response is required and Plaintiffs are left to their proofs.

59. Governor Granholm is without sufficient knowledge or information to either admit or deny the allegations of paragraph 59. Therefore, no response is required and Plaintiffs are left to their proofs.

60. The allegations of paragraph 60 contain legal conclusions, not averments of fact. Therefore, no response is required and Plaintiffs are left to their proofs.

D. Proposal 2

61. Governor Granholm admits that, as discussed in *Grutter*, the United States Supreme Court determined that the University of Michigan's Law School admissions policy did not violate the Equal Protection Clause of the United States Constitution.

62. Governor Granholm admits that the allegations set forth in paragraph 62 are consistent with the United States Supreme Court's determination in *Grutter*.

63. Admitted.

64. Governor Granholm admits that Judge Tarnow, in *Operation King's Dream v. Connerly*, 2006 WL 2514115 (E.D. Mich.), determined that "MCRI and its circulators engaged in a pattern of voter fraud by deceiving voters into believing that the petition supported affirmative action."

65. Upon information and belief, Governor Granholm admits the allegations of paragraph 65.

66. Governor Granholm admits only that as a result of the passage of Proposal 2, a majority of voters who participated in Michigan's November 2006 election voted to place restrictions on the admissions policies of defendant universities.

67. Governor Granholm is without sufficient knowledge or information to determine what any particular voter specifically intended by voting for or against Proposal 2. Therefore, no response is required and Plaintiffs are left to their proofs.

68. Governor Granholm is without sufficient knowledge or information to either admit or deny the allegations of paragraph 68. Therefore, no response is required and Plaintiffs are left to their proofs.

69. Governor Granholm is without sufficient knowledge or information to either admit or deny the allegations of paragraph 69. Therefore, no response is required and Plaintiffs are left to their proofs.

70. Governor Granholm is without sufficient knowledge or information to admit or deny the allegations of paragraph 70. Therefore, no response is required and Plaintiffs are left to their proofs.

E. Affirmative action in employment.

71. The allegations of paragraph 71 contain legal conclusions, not averments of fact. Therefore, no response is required and Plaintiffs are left to their proofs.

72. Governor Granholm is without sufficient knowledge or information to either admit or deny the allegations of paragraph 72. Further responding, Governor Granholm states that she has no role in determining the hiring or employment policies for the defendant universities.

73. Governor Granholm is without sufficient knowledge or information to admit or deny the allegation of paragraph 73. Therefore, no response is required and Plaintiffs are left to their proofs.

74. The allegation of paragraph 74 contains legal conclusions, not averments of fact. Therefore, no response is required and Plaintiffs are left to their proofs.

F. Conclusion.

75. The allegations of paragraph 75 contain legal conclusions, not averments of fact. Therefore, no response is required and Plaintiffs are left to their proofs.

COUNT ONE

**RACIAL AND OTHER DISCRIMINATION IN
THE STRUCTURE OF GOVERNMENT IN VIOLATION OF
THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT**

76. The allegations of paragraph 76 contain legal conclusions, not averments of fact. Therefore, no response is required and Plaintiffs are left to their proofs.

77. Upon information and belief, Governor Granholm admits the allegations of paragraph 77. Further responding, however, Governor Granholm states that she has no role in determining the admissions or employment policies for the defendant universities.

78. Governor Granholm admits that under Proposal 2, the universities are, with limited exceptions as set forth in Const 1963, art 1, § 26, precluded from granting preferences to any individual or group on the basis of race, national origin, or gender. Further responding, Governor Granholm states that she has no role in determining the admissions or employment policies for the defendant universities.

79. Governor Granholm admits that under Proposal 2, the universities are, with limited exceptions as set forth in Const 1963, art 1, § 26, precluded from granting preferences to any individual or group on the basis of race, national origin, or gender.

80. The allegations of paragraph 80 contain legal conclusions, not averments of fact. Therefore, no response is required and Plaintiffs are left to their proofs.

81. The allegations of paragraph 81 contain legal conclusions, not averments of fact. Therefore, no response is required and Plaintiffs are left to their proofs.

82. The allegations of paragraph 82 contain legal conclusions, not averments of fact. Therefore, no response is required and Plaintiffs are left to their proofs.

WHEREFORE, Governor Granholm requests that this court dismiss the complaint as against her, with prejudice, and award her costs and attorney fees incurred in defending this matter.

COUNT TWO

PREEMPTION BY TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

83. Governor Granholm admits that the defendant universities receive federal funding.

84. Governor Granholm admits that 42 U.S.C. 2000d prohibits discrimination on the basis of race, color, or national origin in any program or activity receiving federal financial assistance.

85. Admitted.

86. Governor Granholm admits that, with the exception of minor omissions, Plaintiffs have accurately stated the language of 34 C.F.R. 100.3(b)(2) in paragraph 86 of their Complaint.

87. The allegations of paragraph 87 contain legal conclusions, not averments of fact. Therefore, no response is required and Plaintiffs are left to their proofs.

88. The allegations of paragraph 88 contain legal conclusions, not averments of fact. Therefore, no response is required and Plaintiffs are left to their proofs.

89. The allegations of paragraph 89 contain legal conclusions, not averments of fact. Therefore, no response is required and Plaintiffs are left to their proofs.

90. The allegations of paragraph 90 contain legal conclusions, not averments of fact. Therefore, no response is required and Plaintiffs are left to their proofs.

WHEREFORE, Governor Granholm requests that this court dismiss the complaint, with prejudice, as against her, and award her costs and attorney fees incurred in defending this matter.

COUNT THREE

PREEMPTION BY TITLE IX OF THE EDUCATION AMENDMENTS OF 1972

91. Admitted.

92. Admitted.

93. The allegations of paragraph 93 contain legal conclusions, not averments of fact. Therefore, no response is required and Plaintiffs are left to their proofs.

94. The allegations of paragraph 94 contain legal conclusions, not averments of fact. Therefore, no response is required and Plaintiffs are left to their proofs.

95. The allegations of paragraph 95 contain legal conclusions, not averments of fact. Therefore, no response is required and Plaintiffs are left to their proofs.

WHEREFORE, Governor Granholm requests that this court dismiss the complaint, with prejudice, as against her, and award her costs and attorney fees incurred in defending this matter.

COUNT FOUR

PREEMPTION BY TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

96. Admitted.

97. Admitted.

98. The allegations of paragraph 98 contain legal conclusions, not averments of fact. Therefore, no response is required and Plaintiffs are left to their proofs.

99. The allegations of paragraph 99 contain legal conclusions, not averments of fact. Therefore, no response is required and Plaintiffs are left to their proofs. Moreover, Governor Granholm states that she has no role in determining the admissions or employment policies for the defendant universities.

100. The allegations of paragraph 100 contain legal conclusions, not averments of fact. Therefore, no response is required and Plaintiffs are left to their proofs.

101. The allegations of paragraph 101 contain legal conclusions, not averments of fact. Therefore, no response is required and Plaintiffs are left to their proofs.

WHEREFORE, Governor Granholm requests that this court dismiss the complaint, with prejudice, as against her, and award her costs and attorney fees incurred in defending this matter.

COUNT FIVE

VIOLATION OF THE FIRST AMENDMENT

102. The allegations of paragraph 102 contain legal conclusions, not averments of fact. Therefore, no response is required and Plaintiffs are left to their proofs. Further responding, Governor Granholm states that she has no role in determining the admissions or employment policies for the defendant universities.

103. The allegations of paragraph 103 contain legal conclusions, not averments of fact. Therefore, no response is required and Plaintiffs are left to their proofs.

104. The allegations of paragraph 104 contain legal conclusions, not averments of fact. Therefore, no response is required and Plaintiffs are left to their proofs.

105. The allegations of paragraph 105 contain legal conclusions, not averments of fact. Therefore, no response is required and Plaintiffs are left to their proofs.

106. The allegations of paragraph 106 contain legal conclusions, not averments of fact. Therefore, no response is required and Plaintiffs are left to their proofs.

107. The allegations of paragraph 107 contain legal conclusions, not averments of fact. Therefore, no response is required and Plaintiffs are left to their proofs.

WHEREFORE, Governor Granholm requests that this court dismiss the complaint, with prejudice, as against her, and award her costs and attorney fees incurred in defending this matter.

AFFIRMATIVE DEFENSES

Governor Granholm may rely upon the following affirmative defenses and reserves the right to assert such other defenses as may become apparent throughout the course of these proceedings.

1. Plaintiffs fail to state a claim upon which relief may be granted against any named defendant.
2. Plaintiffs fail to state a claim upon which relief may be granted as against Governor Granholm.
3. Plaintiffs lack standing for their First Amendment claim, to the extent the claim is one that is even recognized as valid.

WHEREFORE, Governor Granholm requests that this court dismiss the complaint, with prejudice, as against her, and award her costs and attorney fees incurred in defending this matter.

Respectfully submitted,

s/James E. Long
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Dated: January 26, 2007

CERTIFICATE OF SERVICE

I hereby certify that on January 26, 2007, I electronically filed with the clerk using the ECF system which will send notification of such filing of the following GOVERNOR JENNIFER GRANHOLM'S ANSWER AND AFFIRMATIVE DEFENSES TO FIRST AMENDED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF IN CASE NO. 06-15024.

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