

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

COALITION TO DEFEND AFFIRMATIVE ACTION,
INTEGRATION AND IMMIGRANT RIGHTS AND
FIGHT FOR EQUALITY BY ANY MEANS NECESSARY
(BAMN), UNITED FOR EQUALITY AND AFFIRMATIVE
ACTION LEGAL DEFENSE FUND, RAINBOW PUSH
COALITION, CALVIN JEVON COCHRAN, LASHELLE
BENJAMIN, BEAUTIE MITCHELL, DENESHA RICHEY,
STASIA BROWN, MICHAEL GIBSON, CHRISTOPHER
SUTTON, LAQUAY JOHNSON, TURQOISE WISE-KING,
BRANDON FLANNIGAN, JOSIE HUMAN, ISSAMAR
CAMACHO, KAHLEIF HENRY, SHANAE TATUM,
MARICRUZ LOPEZ, ALEJANDRA CRUZ, ADARENE
HOAG, CANDICE YOUNG, TRISTAN TAYLOR,
WILLIAMS FRAZIER, JERELL ERVES, MATTHEW
GRIFFITH, LACRISSA BEVERLY, D'SHAWN M
FEATHERSTONE, DANIELLE NELSON, JULIUS CARTER,
KEVIN SMITH, KYLE SMITH, PARIS BUTLER, TOUISSANT
KING, AIANA SCOTT, ALLEN VONOU, RANDIAH GREEN,
BRITTANY JONES, COURTNEY DRAKE, DANTE DIXON,
JOSEPH HENRY REED, AFSCME LOCAL 207, AFSCME
LOCAL 214, AFSCME LOCAL 312, AFSCME LOCAL 836,
AFSCME LOCAL 1642, AFSCME LOCAL 2920, and the
DEFEND AFFIRMATIVE ACTION PARTY,

Plaintiffs,

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

Case No. 2-06-CV-15024

Hon. David M. Lawson

The REGENTS OF THE UNIVERSITY OF MICHIGAN, the BOARD OF TRUSTEES OF MICHIGAN STATE UNIVERSITY and the BOARD OF GOVERNORS OF WAYNE STATE UNIVERSITY,

Cross-Plaintiffs

vs.

JENNIFER GRANHOLM, in her official capacity as Governor of the State of Michigan

Cross-Defendant

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CROSS-CLAIM OF THE REGENTS OF THE UNIVERSITY OF MICHIGAN, THE BOARD OF TRUSTEES OF MICHIGAN STATE UNIVERSITY AND THE BOARD OF GOVERNORS OF WAYNE STATE UNIVERSITY FOR DECLARATORY JUDGMENT

Defendants / Cross-Plaintiffs, the Regents of the University of Michigan, the Board of Trustees of Michigan State University, and the Board of Governors of Wayne State University (“the Universities”), hereby cross-claim against Cross-Defendant Jennifer Granholm, in her official capacity as Governor of the State of Michigan as follows:

NATURE OF THE ACTION

1. This is an action for declaratory judgment pursuant to 28 U.S.C. § 2201 in which the Universities seek a determination of their rights and responsibilities under Article I, § 26 of the Michigan Constitution, an amendment passed on November 7, 2006 and with an effective date of December 23, 2006 (the “Amendment”).

THE PARTIES

2. The Universities are corporate bodies created by Article VIII, § 5 of the Constitution of the State of Michigan and are charged with the “general supervision” of these institutions.

3. Cross-Defendant Jennifer Granholm is the Governor of the State of Michigan and, as such, responsible for enforcing the laws of the State of Michigan.

JURISDICTION

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because this case arises under the Constitution of the United States.

COUNT I

DECLARATORY JUDGMENT

5. The Amendment has nine sections, is among the longest provisions of the Michigan Constitution, and includes a number of legal terms. Serious controversies exist regarding the validity, meaning, impact, and application of the Amendment. Inconsistent statements have been made about its constitutionality and its consequences and many, including the Universities, are uncertain of its reach. The Governor has requested an interpretation of the Amendment from the Civil Rights Commission. The Universities have special reason for

concern about these controversies and uncertainties because they are specifically named in paragraph 1 of the Amendment.

6. The Amendment implicates federal law. It incorporates whole bodies of federal law by reference, including “federal programs,” “federal law,” and the “United States Constitution.” Further, paragraph 7 of the Amendment provides that “[i]f any part or parts of this section are found to be in conflict with the United States Constitution or federal law, this section shall be implemented to the maximum extent that the United States Constitution and federal law permit.” The Supremacy Clause of the United States Constitution similarly provides that, in the event of a conflict, federal law takes precedence over state law.

7. The Universities have a specific and immediate crisis that cannot await the clarifications that will ultimately be provided by this Court, other courts, and the Civil Rights Commission.

8. The Amendment becomes effective in the midst of the Universities’ current admissions and financial aid cycle. For most colleges, schools, departments, and programs within the Universities those cycles run from the early fall through the spring.

9. Months before the current cycle began the Universities put their admissions and financial aid policies in place in reliance on the Supreme Court’s reaffirmation in *Grutter v Bollinger*, 539 U.S. 306 (2003) that they have an academic freedom right, based in the First Amendment to the Constitution of the United States, to select their students and that they may, in the course of doing so, give some consideration to such factors such as race.

10. Before the current cycle began the Universities devoted substantial time and energy to training their admissions and financial aid personnel about those policies and to disseminating information about those policies to the public.

11. Individuals have applied for admission and have requested financial aid in reliance upon these announced policies. The Universities have not yet made decisions with respect to many of the applications and requests received to date. But the Universities have already made thousands of decisions applying those policies and processes during this cycle.

12. Forcing the Universities to abandon their existing admissions and financial aid policies in the midst of this cycle would require them to apply different policies to applicants within the same cycle and different policies than they have announced.

13. Moreover, because the Universities cannot by December 23 discover, evaluate, develop, implement, and train personnel around a new approach to admissions and financial aid that will yield a diverse student body, forcing the Universities to abandon their existing policies on that date would result in the loss of their First Amendment-based academic freedom right to admit a class that best meets their academic goals during this cycle.

14. The Universities therefore request a declaratory judgment determining their rights and responsibilities under the Amendment. In light of the urgency of the situation and the certainty that the Universities will suffer irreparable harm absent immediate relief, the Universities also seek limited and preliminary injunctive relief preserving the status quo until the Court has had the opportunity to give this issue full consideration.

WHEREFORE, the Universities respectfully request that this Court

- A. enter a judgment declaring that under federal law the Universities may continue to use their existing admissions and financial aid policies through the end of the current cycle, and otherwise declaring their rights and responsibilities under the Amendment in light of federal law to the extent necessary and just, and
- B. issue a preliminary injunction that preserves the status quo and allows the Universities to continue to use their existing admissions and financial aid policies through the end of the current cycle or until this Court enters the requested declaratory judgment; if the Court cannot rule on the request for a preliminary injunction before December 22 then the Universities alternatively seek a

temporary restraining order with notice to preserve the status quo from December 22 until the Court can rule on the request for preliminary injunction.

Respectfully submitted,

BUTZEL LONG, PC

By: /s/ Leonard M. Niehoff
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Dated: December 11, 2006

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EASTERN DISTRICT OF MICHIGAN
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AFSCME LOCAL 312, AFSCME LOCAL 836, AFSCME LOCAL
1642, AFSCME LOCAL 2920, and the DEFEND AFFIRMATIVE
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University and the Board of Governors of
Wayne State University

CERTIFICATE OF SERVICE

I hereby certify that on December 11, 2006, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following: George B. Washington and Shanta Driver, SCHEFF & WASHINGTON, PC, 645 Griswold, Suite 1817, Detroit, MI 48226 and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: Michelle M. Rick, Deputy Legal Counsel, Office of Legal Counsel, State of Michigan, Office of the Governor, PO Box 30013, Lansing, MI 48909.

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