
Nos. 06-2640, 06-2642, 06-2653

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

COALITION TO DEFEND AFFIRMATIVE ACTION,
INTEGRATION AND IMMIGRANT RIGHTS AND FIGHT
FOR EQUALITY BY ALL MEANS NECESSARY, et al.,

Plaintiffs-Appellees,

v.

JENNIFER GRANHOLM, et al.,

Defendants-Appellees,

and

ERIC RUSSELL and TOWARD A FAIR MICHIGAN,

Proposed Intervenor-Defendants-Appellants

On Appeal from the United States District Court
for the Eastern District of Michigan
Honorable David M. Lawson, District Judge

**MOTION OF MICHIGAN CIVIL RIGHTS INITIATIVE
COMMITTEE AND AMERICAN CIVIL RIGHTS FOUNDATION
FOR LEAVE TO FILE A RESPONSE BRIEF TO THE EMERGENCY
MOTION FOR A STAY PENDING APPEAL IN SUPPORT OF
APPELLANTS ERIC RUSSELL AND TOWARD A FAIR MICHIGAN**

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**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

This statement should be placed immediately preceding the table of contents in the brief of the party. See copy of the 6th Cir. R. 26.1 on page 2 of this form. Sign and date this form.

Coalition to Defend Affirmative Action, Integration and Immigrant Rights and Fight for Equality by Any Means Necessary, et al.

v.

Jennifer Granholm, et al.

**DISCLOSURE OF CORPORATE AFFILIATIONS
AND FINANCIAL INTEREST**

Pursuant to 6th Cir. R. 26.1, American Civil Rights Foundation

Name of Party

makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

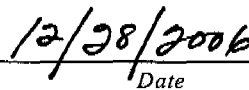
No.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

Not to the knowledge of American Civil Rights Foundation.



Signature of Counsel



Date

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

This statement should be placed immediately preceding the table of contents in the brief of the party. See copy of the 6th Cir. R. 26.1 on page 2 of this form. Sign and date this form.

Coalition to Defend Affirmative Action, Integration and Immigrant Rights and Fight for Equality by Any Means Necessary, et al.

v.

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**DISCLOSURE OF CORPORATE AFFILIATIONS
AND FINANCIAL INTEREST**

Pursuant to 6th Cir. R. 26.1, Michigan Civil Rights Initiative Committee

Name of Party

makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

No.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

Not to the knowledge of Michigan Civil Rights Initiative Committee.


Signature of Counsel

12/28/2006
Date

**MOTION FOR LEAVE TO FILE
RESPONSE BRIEF TO THE EMERGENCY MOTION
FOR A STAY PENDING APPEAL**

The Michigan Civil Rights Initiative Committee (MCRIC) and American Civil Rights Foundation (ACRF) respectfully move this Court for leave to file the accompanying response brief in support of Defendant-Intervenor Eric Russell and Toward a Fair Michigan. MCRIC and ACRF's motion to intervene in this matter was denied by the district court by order dated December 27, 2006. (Docket No. 55.) MCRIC and ACRF have filed a Notice of Appeal as to said denial in Case No. 06-2653, and will ask this Court to expedite its consideration of their appeal.

**INTEREST OF MICHIGAN CIVIL RIGHTS INITIATIVE
COMMITTEE AND AMERICAN CIVIL RIGHTS
FOUNDATION**

MCRIC, through its Treasurer and Chairperson Leon Drolet, registered with the Michigan Secretary of State as the official Ballot Question Committee for Proposal 2, for the purpose of reporting all campaign statements as required by Michigan law. MCRIC was also the source of information in favor of MCRI as published by the website www.michiganedusource.org.

MCRIC was formed by the coauthors of Proposal 2, commonly known as the Michigan Civil Rights Initiative, and other Michigan residents who want to eradicate the use of race, ethnicity, or sex in public decision making. MCRIC, its members, and its Executive Director, Jennifer Gratz, have been at the forefront of the protracted

campaign to adopt Proposal 2 and are committed to achieving the passage of laws that prohibit the use of race, sex, or ethnicity in any public education, public contracting, or public employment context. Jennifer Gratz was the named plaintiff in the recent United States Supreme Court decision that prohibited the University of Michigan from automatically awarding 20 points to minority applicants to its undergraduate school. *Gratz v. Bollinger*, 539 U.S. 244 (2003), as well as a named defendant in preelection challenge to Proposal 2. *Operation King's Dream v. Ward Connerly, Jennifer Gratz, Michigan Civil Rights Initiative, Terry Lynn Land, et al.*, Appeal No. 06-2144. MCRIC sought to intervene in this lawsuit to protect its interest in insuring that Proposal 2 is found constitutional in all respects.

ACRF is a nonprofit, public benefit corporation, with members who are Michigan residents, that has been created to monitor and enforce laws that ban government's use of race, sex, or ethnicity, in public contracting, public education, or public employment. ACRF sought to intervene in this lawsuit on behalf of itself and its individual members, some of whom are Michigan citizens, residents, and taxpayers, and who will be subject to, and will expect the State to comply with, the mandates of equal treatment and equal opportunity embodied within the Michigan Civil Rights Initiative. Ward Connerly is a member of the Board of Directors of the ACRF. Mr. Connerly was the chairman of California's Proposition 209, the sister initiative to Proposal 2. He worked closely with the MCRIC and was active in the pre-election

challenge to Proposal 2 and is a named defendant in *Operation King's Dream v. Connerly, et al.*, Appeal No. 06-2144.

MCRIC and ACRF are familiar with the legal issues raised in this litigation and are familiar with the pleadings and facts of this case. One day after the Plaintiffs filed a certificate of service showing service on Jennifer Granhom, MCRIC and ACRF filed their motion to intervene on December 14, 2006, along with a motion to dismiss plaintiffs' complaint pursuant to F.R.Civ.Proc. 12(b)(6). On December 18, 2006, they also filed an opposition to the motion for preliminary injunction. On December 27, 2006, the district court denied their motion and they filed a notice of appeal the same day (Appeal No. 06-2653). If permission to file a response brief is granted, MCRIC and ACRF will respond to this Court's Order requesting that the parties "address the plaintiffs' likelihood of success on the merits of the underlying action."

MCRIC and ACRF will argue that the injunctive relief sought by university defendants is based solely on a faulty understanding that "academic freedom" under First Amendment entitles them to employ race- and sex-based classifications in public university admissions. Such a right simply does not exist and the state may limit race- and sex-based classifications that might be allowable under the Federal Constitution. Further, MCRI and ACRF will argue that there is no conflict between Proposal 2 and the Equal Protection Clause of the Fourteenth Amendment and Titles VI, VII, and IX of the Civil Rights Act of 1964. Such arguments have been soundly rejected in

Coalition for Economic Equity. v. Wilson, 122 F.3d 692 (9th Cir. 1997), *cert. denied*, 522 U.S. 963 (1997). In rejecting a challenge to Proposition 209, the Ninth Circuit said:

To hold that a democratically enacted affirmative action program is constitutionally permissible because the people have demonstrated a compelling state interest is hardly to hold that the program is constitutionally required. The Fourteenth Amendment, lest we lose sight of the forest for the trees, does not require what it barely permits.

Coal. for Econ. Equity, 122 F.3d at 709.

Further, MCRIC and ACRF will show that the administrative burdens discussed by university defendants are based on speculation and conjecture. Last, MCRIC and ACRF will show that the balance of equities and the public's interest in the timely implementation of Proposal 2 is overwhelmingly opposed to granting injunctive relief.

CONCLUSION

For the above-stated reasons, MCRIC and ACRF respectfully move this Court for leave to file a response brief to the Emergency Motion for a Stay Pending Appeal, or, in the alternative, to participate as Amici Curiae.

DATED: December 28, 2006.

Respectfully submitted,

SHARON L. BROWNE
ALAN W. FOUTZ

By /s/ Alan W. Foutz
ALAN W. FOUTZ

Counsel for Michigan Civil Rights
Initiative Committee and American Civil
Rights Foundation

CERTIFICATE OF SERVICE

I hereby certify that the foregoing MOTION OF MICHIGAN CIVIL RIGHTS INITIATIVE COMMITTEE AND AMERICAN CIVIL RIGHTS FOUNDATION FOR LEAVE TO FILE A RESPONSE BRIEF TO THE EMERGENCY MOTION FOR A STAY PENDING APPEAL IN SUPPORT OF APPELLANTS ERIC RUSSELL AND TOWARD A FAIR MICHIGAN was filed with the Clerk this 28th day of December, 2006, via electronic filing and federal express to the following addresses:

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I further certify that copies of the foregoing motion were served this day via electronic mail and regular mail upon each of the following:

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