
No. 06-2640

In the
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

COALITION TO DEFEND AFFIRMATIVE ACTION, et al.,

Plaintiffs-Appellees,

v.

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,

Defendants-Appellees,

MICHAEL A. COX, Attorney General of the State of Michigan,

Intervening Defendant-Appellee,

and

ERIC RUSSELL, TOWARD A FAIR MICHIGAN,

Intervening Defendants-Appellants.

**INTERVENING DEFENDANTS-APPELLANTS ERIC RUSSELL'S AND TOWARD
A FAIR MICHIGAN'S MOTION TO SUSPEND THE BRIEFING SCHEDULE**

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**INTERVENING DEFENDANTS-APPELLANTS ERIC RUSSELL'S AND TOWARD
A FAIR MICHIGAN'S MOTION TO SUSPEND THE BRIEFING SCHEDULE**

Pursuant to Rule 26(b) of the Federal Rules of Appellate Procedure and Rule 26(a) of the Sixth Circuit Rules, Intervening Defendants-Appellants Eric Russell and Toward A Fair Michigan (“TAFM”) (together, “Appellants”) move for a suspension of the briefing schedule established by the Sixth Circuit Clerk’s letter of February 20, 2007 (attached as Exhibit 1). Several parties to this appeal have consented to the relief requested in this Motion.¹ In support of this Motion, Appellants state as follows:

STATEMENT

On November 7, 2006, the voters of Michigan enacted a ballot initiative commonly known as “Proposal 2,” which provides, *inter alia*, that “[t]he 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.” MICH. CONST. art. I, § 26. On November 8, 2006, Plaintiffs-Appellees Coalition To Defend Affirmative Action, et al., filed suit in the United States District Court for the Eastern District of Michigan, seeking to enjoin the enforcement of Proposal 2 on various federal statutory and constitutional grounds. They named as defendants Defendant-Appellee Governor Jennifer Granholm and the governing boards of three Michigan public universities, who are also

¹ Counsel for Appellants have contacted counsel for all parties to this appeal, including counsel for the plaintiffs in the action captioned *Cantrell, et al. v. Granholm, et al.*, which the District Court consolidated with this case after the filing of this appeal. Counsel for Plaintiffs-Appellees Coalition To Defend Affirmative Action, et al., for Defendant-Appellee Governor Jennifer Granholm, and for Intervening Defendant-Appellee Attorney General Michael Cox have indicated that they consent to the relief sought in this Motion. Counsel for the University Defendants did not respond to indicate whether they consent to the relief sought in this Motion. Counsel for the plaintiffs in the *Cantrell* action requested that their position as to the relief requested in this Motion be stated as follows: “The *Cantrell* Plaintiffs do not oppose this motion, but their position is as stated in their prior filings: that the stipulated injunction, and all orders relating to it, should be vacated as moot.”

Defendants-Appellees herein (“the University Defendants”). Defendant-Appellee Attorney General Michael Cox was subsequently granted leave to intervene. On December 18, 2006, Appellants Russell and TAFM also sought leave to intervene in the District Court. On December 19, 2006, prior to ruling on Appellants’ pending motions to intervene, the District Court adopted a stipulated injunction, submitted by the Plaintiffs, the University Defendants, the Governor, and the Attorney General, which enjoined the enforcement of Proposal 2 against the admissions and financial aid policies of the University Defendants until 12:01 a.m. on July 1, 2007.

Appellants Russell and TAFM promptly appealed, both from the District Court’s failure to rule on their motions to intervene and from the order granting the stipulated preliminary injunction. They also sought an emergency stay pending appeal of the stipulated injunction. This Court requested briefing on the merits of all the pending federal claims relevant to the application of Proposal 2 to the admissions and financial aid policies of the University Defendants. On December 29, 2006, this Court granted an emergency stay pending appeal of the stipulated injunction. *Coalition To Defend Affirmative Action v. Granholm*, 473 F.3d 237, 253 (6th Cir. 2006). Meanwhile, the District Court granted Appellant Russell’s motion to intervene and denied Appellant TAFM’s motion to intervene, thus rendering moot Appellants’ appeal from the District Court’s failure to rule on those motions.

Appellants Russell and TAFM subsequently filed a Motion To Expedite this appeal, requesting expedited consideration of the underlying merits of the pending federal claims against the Governor and University Defendants.² As a partial basis for that Motion, Appellants argued that expedited consideration of the merits would obviate significant costs and uncertainties associated with proceedings in the District Court. *See, e.g.*, Motion To Expedite 11-12. Three

² Appellant TAFM simultaneously moved for expedited consideration of its appeal from the District Court’s denial of its motion to intervene, No. 06-2656.

parties filed oppositions to the Motion To Expedite on February 5, and Appellant Russell filed a reply brief in support on February 12.

On February 20, the Sixth Circuit Clerk issued a scheduling letter to the parties to this appeal, adopting a briefing schedule that provides for the filing of final versions of all briefs on June 19, 2007. *See* Feb. 20, 2007 Letter of Sixth Circuit Clerk (attached as Exhibit 1). As noted above, the stipulated injunction that is at issue in this appeal will expire by its own terms at 12:01 a.m. on July 1, 2007. *See* 473 F.3d at 242. The briefing schedule adopted, therefore, appears to foreclose as a practical matter the possibility of full consideration of this appeal (including oral argument, if any) prior to the expiration of the temporary injunction from which this appeal was taken—an event that will, most likely, render moot all remaining issues in this appeal.

ARGUMENT

Appellants are unwilling to dismiss this appeal voluntarily at this time, because the termination of this Court's jurisdiction incident to a voluntary dismissal might well dissolve the emergency stay pending appeal that this Court granted on December 29. As an automatic result of the dissolution of this stay, the District Court's order granting the stipulated injunction might well go back into effect immediately, prior to its date of self-expiration. But Appellants are likewise unwilling to impose upon the Court and upon the parties to this appeal—all of whom are simultaneously engaged in active litigation of this case in the District Court—the burden of briefing and considering the merits of an appeal that will, in all likelihood, become moot so promptly after the close of the briefing schedule. Appellants have therefore consulted with counsel for all parties to this appeal, including the parties that were granted intervenor status in this case after the notice of appeal was filed, and counsel for all parties but one have indicated that they consent to the suspension or postponement of the briefing schedule until after July 1,

2007. *See supra* note 1. Therefore, Appellants respectfully request a suspension of the briefing schedule in this appeal until after July 1, 2007. On that date or promptly thereafter, Appellants intend to move to dismiss this appeal voluntarily as moot.

CONCLUSION

For the reasons stated, with the consent of all parties to this appeal, Appellants respectfully request a suspension or postponement of the briefing schedule adopted in the Sixth Circuit Clerk's letter of February 20, 2007.

March 26, 2007

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of March 2007, I caused to be served a true and correct copy of the foregoing via overnight delivery and electronic mail upon the following:

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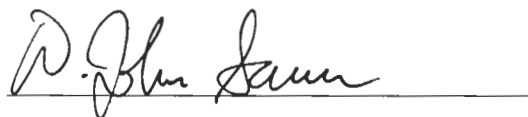
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Exhibit 1

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

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RE: 06-2640
Coalition to Defend vs. Granholm
District Court No. 06-15024

Dear Counsel,

The briefing schedule for this appeal is listed below. It is very important that you adhere to the procedural rules that govern the format of these documents, in particular Sixth Cir. Rule 28(a). **The proof copy of your brief is not a rough draft. What you write in your proof brief is what the judges will eventually read.** You may correct only typographical errors and you must add joint appendix references to the brief before you submit it as your final brief.

Appellant's or Petitioner's principal brief:	1 signed original mailed by 4/2/07
Appellee's or Respondent's principal brief:	1 signed original mailed by 5/4/07
Appellant's or Petitioner's reply brief: (optional)	1 signed original mailed by 5/21/07
Joint Appendix:	5 copies mailed by 5/29/07
ALL Final Briefs:	1 signed original + 6 copies of each brief mailed by 6/19/07

The joint appendix assists the judges in reviewing the briefs and in preparing for oral argument by providing them with those documents from the district court or agency record that are critical to understanding the issues on appeal. It is important to bear that in mind when you are designating the documents to be included. Remember also that record

items belong only in the joint appendix, not the briefs.

Checklists for the brief and joint appendix, which summarize the format requirements of the Federal Rules of Appellate Procedure, are available on the court's web site as noted above. If counsel does not have Internet access, contact the clerk's office immediately and the forms will be mailed to you. These checklists are not a substitute for reading the rules but may aid your understanding of them. **If you delegate preparation of the brief or joint appendix to someone else in your office or to an appellate service, please provide them with a copy of this schedule.**

The web site includes the Federal Rules of Appellate Procedure, Sixth Circuit Rules and Internal Operating Procedures and other information that will aid you in the appellate process. All information is free except for access to the public docket. To get docket information, you must register with the judiciary's PACER Service Center at tel. 800-676-6856.

If you have questions about appellate procedure, even after reading the rules, please contact the clerk's office for assistance.

(Ms.) Nancy Barnes
Case Manager