

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,

CONSOLIDATED CASES

and

CHASE CANTRELL, et al,

Case No. 06-15637

Plaintiffs,

Hon. David M. Lawson

vs.

JENNIFER GRANHOLM and MICHAEL A. COX,

Defendants.

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**DEFENDANT MICHAEL A. COX'S ANSWER AND AFFIRMATIVE DEFENSES TO  
PLAINTIFFS' FIRST AMENDED COMPLAINT FOR INJUNCTIVE AND  
DECLARATORY RELIEF IN CASE NO. 06-15024**

Defendant Michael A. Cox, by his attorneys, answers Plaintiffs' First Amended  
Complaint for Injunctive and Declaratory Relief in case No. 2:06-CV-15024 as follows:

1. Defendant Cox denies the allegations contained in paragraph 1 for the reasons  
they are based on incorrect statements of law and fact and therefore are not true.

2. Defendant Cox admits Proposal 2 proceeded to a vote. Defendant Cox denies the remaining allegations in paragraph 2 for the reason they are based on incorrect statements of law and fact and, therefore, are not true.

3. Defendant Cox denies the allegations in paragraph 3, for the reason they are not true.

4. Defendant Cox denies the allegations in paragraph 4 for the reason they are not true.

5. Defendant Cox denies the allegations in paragraph 5 for the reason they are not true.

6. Defendant Cox denies the allegations in paragraph 6 for the reason they are based on incorrect statements of law and fact and, therefore, are not true.

7. Defendant Cox denies the allegations that Proposal 2 deprives Plaintiffs of rights, privileges and immunities under the laws of the United States for the reason it is not true. Defendant Cox neither admits nor denies the remaining allegations in paragraph 7 being without sufficient information to formulate a response.

#### **JURISDICTION AND VENUE**

8. Defendant Cox neither admits nor denies the allegations contained in paragraph 8 for the reason they represent a legal conclusion which by law requires no answer and the allegations shall be taken as denied where material.

9. Defendant Cox neither admits nor denies the allegations contained in paragraph 9 for the reason they represent a legal conclusion which by law requires no answer and the allegations shall be taken as denied where material.

**PARTIES**

10. Defendant Cox neither admits nor denies the allegations contained in paragraph 10 for lack of sufficient information to formulate a response.

11. Defendant Cox neither admits nor denies the allegations contained in paragraph 11 for lack of sufficient information to formulate a response.

12. Defendant Cox neither admits nor denies the allegations contained in paragraph 12 for lack of sufficient information to formulate a response.

13. Defendant Cox neither admits nor denies the allegations contained in paragraph 13 for lack of sufficient information to formulate a response.

14. Defendant Cox neither admits nor denies the allegations contained in paragraph 14 for lack of sufficient information to formulate a response.

15. Defendant Cox neither admits nor denies the allegations contained in paragraph 15 for lack of sufficient information to formulate a response.

16. Defendant Cox neither admits nor denies the allegations contained in paragraph 16 for lack of sufficient information to formulate a response.

17. Defendant Cox neither admits nor denies the allegations contained in paragraph 17 for lack of sufficient information to formulate a response.

18. Defendant Cox neither admits nor denies the allegations contained in paragraph 18 for lack of sufficient information to formulate a response.

19. Defendant Cox neither admits nor denies the allegations contained in paragraph 19 for lack of sufficient information to formulate a response.

20. Defendant Cox neither admits nor denies the allegations contained in paragraph 20 for lack of sufficient information to formulate a response.

21. Defendant Cox neither admits nor denies the allegations contained in paragraph 21 for lack of sufficient information to formulate a response.

22. Defendant Cox neither admits nor denies the allegations contained in paragraph 22 for lack of sufficient information to formulate a response.

23. Defendant Cox neither admits nor denies the allegations contained in paragraph 23 for lack of sufficient information to formulate a belief as to the truth of the allegations and the allegations shall be taken as denied where material.

24. Defendant Cox admits the identified Plaintiffs are labor unions. Defendant Cox denies the members of these labor unions stand to suffer discrimination in absence of affirmative action for the reason it is untrue. Defendant Cox neither admits nor denies the remaining allegations in paragraph 24 being without sufficient information to formulate a response.

25. Defendant Cox neither admits nor denies the allegations contained in paragraph 25 for lack of sufficient information to formulate a response.

26. Defendant Cox admits the allegations contained in paragraph 26.

27. Defendant Cox admits the allegations contained in paragraph 27.

28. Defendant Cox admits the allegations contained in paragraph 28.

29. Defendant Cox admits the allegations contained in paragraph 29.

30. Defendant Cox admits the allegations contained in paragraph 30.

#### **STATEMENT OF FACTS**

31. Defendant Cox neither admits nor denies the allegations contained in paragraph 31 for lack of sufficient information to formulate a response.

32. Defendant Cox denies the allegation that segregation in education is especially intense in Michigan for the reason it is untrue. Defendant Cox neither admits nor denies the

remaining allegations in paragraph 32 being without sufficient information to formulate a response.

33. Defendant Cox neither admits nor denies the allegations contained in paragraph 33 being without sufficient information to formulate a response.

34. Defendant Cox neither admits nor denies the allegations contained in paragraph 34 for lack of sufficient information to formulate a response.

35. Defendant Cox neither admits nor denies the allegations contained in paragraph 35 being without sufficient information to formulate a response.

36. Defendant Cox neither admits nor denies the allegations contained in paragraph 36 for lack of sufficient information to formulate a response.

37. Defendant Cox neither admits nor denies the allegations contained in paragraph 37 for lack of sufficient information to formulate a response.

38. To the extent Defendant Cox denies the allegations in the preceding four paragraphs, the allegations in paragraph 38 are denied. Defendant Cox neither admits nor denies the remaining allegations in paragraph 38 being without sufficient information to formulate a response.

39. Defendant Cox neither admits nor denies the allegations contained in paragraph 39 for lack of sufficient information to formulate a response.

40. Defendant Cox neither admits nor denies the allegations contained in paragraph 40 for lack of sufficient information to formulate a response

41. Defendant Cox neither admits nor denies the allegations contained in paragraph 41 for lack of sufficient information to formulate a response.

42. Defendant Cox neither admits nor denies the allegations contained in paragraph 42 for lack of sufficient information to formulate a response.

43. Defendant Cox neither admits nor denies the allegations contained in paragraph 43 for lack of sufficient information to formulate a response.

44. Defendant Cox neither admits nor denies the allegations contained in paragraph 44 for lack of sufficient information to formulate a response.

45. Defendant Cox neither admits nor denies the allegations contained in paragraph 45 for lack of sufficient information to formulate a response.

46. Defendant Cox neither admits nor denies the allegations contained in paragraph 46 for lack of sufficient information to formulate a response.

47. Defendant Cox neither admits nor denies the allegations contained in paragraph 47 for lack of sufficient information to formulate a response.

48. Defendant Cox neither admits nor denies the allegations contained in paragraph 48 for lack of sufficient information to formulate a response.

49. Defendant Cox neither admits nor denies the allegations contained in paragraph 49 for lack of sufficient information to formulate a response.

50. Defendant Cox neither admits nor denies the allegations contained in paragraph 50 for lack of sufficient information to formulate a response.

51. Defendant Cox neither admits nor denies the allegations contained in paragraph 51 for lack of sufficient information to formulate a response.

52. Defendant Cox neither admits nor denies the allegations contained in paragraph 52 for lack of sufficient information to formulate a response.

53. Defendant Cox neither admits nor denies the allegations contained in paragraph 53 for lack of sufficient information to formulate a response.

54. Defendant Cox neither admits nor denies the allegations contained in paragraph 54 for lack of sufficient information to formulate a response.

55. Defendant Cox admits that California Proposition 209 contains the same language as Michigan's Proposal 2.

56. Defendant Cox neither admits nor denies the allegations contained in paragraph 56 for lack of sufficient information to formulate a response.

57. Defendant Cox neither admits nor denies the allegations contained in paragraph 57 for lack of sufficient information to formulate a response.

58. Defendant Cox neither admits nor denies the allegations contained in paragraph 58 for lack of sufficient information to formulate a response.

59. Defendant Cox neither admits nor denies the allegations contained in paragraph 59 for lack of sufficient information to formulate a response.

60. Defendant Cox neither admits nor denies the allegations contained in paragraph 60 for lack of sufficient information to formulate a response.

61. Defendant Cox denies the allegations in paragraph 61 for the reason they mischaracterize the *Grutter* ruling and, therefore, are not true.

62. Defendant Cox admits the University of Michigan Law School admissions plan considered race as a factor prior to the adoption of Proposal 2 by the voters. Defendant Cox neither admits nor denies the remaining allegations in paragraph 62 being without sufficient information to formulate a response.

63. Defendant Cox neither admits nor denies the allegations contained in paragraph 63 for lack of sufficient information to formulate a response.

64. Defendant Cox denies the allegations contained in paragraph 64 for the reason they mischaracterize Judge Tarnow's ruling and, therefore, are not true.

65. Defendant Cox neither admits nor denies the allegations contained in paragraph 65 for lack of sufficient information to formulate a response. In further answer, Defendant Cox asserts on November 7, 2006, Proposal 2 passed with 2,141,010 citizens voting in favor of the proposal and 1,555,691 citizens voting against the proposal, a 57.9% to 42.1% margin of victory.

66. Defendant Cox denies the allegations in paragraph 66 for the reason they are based on incorrect statements of fact and law and, therefore, are not true.

67. Defendant Cox denies the allegations in paragraph 67 for the reason they are untrue.

68. Defendant Cox denies the allegations in paragraph 68 for the reason they are untrue.

69. Defendant Cox neither admits nor denies the allegations contained in paragraph 69 for lack of sufficient information to formulate a response.

70. Defendant Cox neither admits nor denies the allegations contained in paragraph 70 for lack of sufficient information to formulate a response.

71. Defendant Cox neither admits nor denies the allegations contained in paragraph 71 for lack of sufficient information to formulate a response.

72. Defendant Cox neither admits nor denies the allegations contained in paragraph 72 for lack of sufficient information to formulate a response.



73. Defendant Cox neither admits nor denies the allegations contained in paragraph 73 for lack of sufficient information to formulate a response.

74. Defendant Cox neither admits nor denies the allegations contained in paragraph 74 for lack of sufficient information to formulate a response.

75. Defendant Cox denies the allegations in paragraph 75 for the reason they are based on incorrect statements of law and fact and, therefore, are not true.

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

76. Defendant Cox denies the allegations in paragraph 76 for the reason they are based on incorrect statements of law and fact and, therefore, are not true.

77. Defendant Cox neither admits nor denies the allegations in paragraph 77, being without sufficient information to formulate a response.

78. Defendant Cox denies the allegations in paragraph 78 for the reason they are not true. Defendant Cox states further answer, if the allegations in paragraph 77 are proven true.

79. Defendant Cox denies as untrue the allegations of fact and conclusions of law contained in paragraph 79.

80. Defendant Cox denies the allegations in paragraph 80 for the reason they are based on incorrect statements of law and fact and, therefore, are not true.

81. Defendant Cox denies the allegations in paragraph 81 for the reason they are based on incorrect statements of law and, therefore, are not true.

82. Defendant Cox denies the allegations in paragraph 82 for the reason they are not true.

**COUNT TWO**

**PREEMPTION BY TITLE VI OF THE CIVIL RIGHTS ACT OF 1964**

83. Defendant Cox neither admits nor denies the allegations contained in paragraph 83 for lack of sufficient information to formulate a response.

84. Defendant Cox admits paragraph 84 accurately quotes 42 USC 2000d. Defendant Cox neither admits nor denies the remaining allegations in paragraph 84 being without sufficient information to formulate a response.

85. Defendant Cox neither admits nor denies the allegations contained in paragraph 85 for the reason they represent a legal conclusion which by law requires no answer and the allegations shall be taken as denied where material.

86. Defendant Cox neither admits nor denies the allegations contained in paragraph 86 for the reason they represent a legal conclusion which by law requires no answer and the allegations shall be taken as denied where material.

87. Defendant Cox denies the allegations in paragraph 87 for the reason they are based on incorrect statements of law and fact and, therefore, are not true.

88. Defendant Cox denies the allegations in paragraph 88 for the reason they are not true.

89. Defendant Cox denies the allegations in paragraph 89 for the reason they are not true.

90. Defendant Cox denies the allegations in paragraph 90 for the reason they are based on incorrect statements of law and fact and, therefore, are not true.

**COUNT THREE  
PREEMPTION BY TITLE IX OF THE EDUCATION AMENDMENTS OF 1972**

91. Defendant Cox neither admits nor denies the allegations contained in paragraph 91 for the reason they represent a legal conclusion which by law requires no answer and the allegations shall be taken as denied where material.

92. Defendant Cox neither admits nor denies the allegations contained in paragraph 92 for the reason they represent a legal conclusion which by law requires no answer and the allegations shall be taken as denied where material.

93. Defendant Cox neither admits nor denies the allegations contained in paragraph 93 for the reason they represent a legal conclusion which by law requires no answer and the allegations shall be taken as denied where material.

94. Defendant Cox denies the allegations in paragraph 94 for the reason they are based on incorrect statements of law and fact and, therefore, are not true.

95. Defendant Cox denies the allegations in paragraph 95 for the reason they are based on incorrect statements of law and fact and, therefore, are not true.

**COUNT FOUR  
PREEMPTION BY TITLE VII OF THE CIVIL RIGHTS ACT OF 1964**

96. Defendant Cox neither admits nor denies the allegations contained in paragraph 96 for the reason they represent a legal conclusion which by law requires no answer and the allegations shall be taken as denied where material.

97. Defendant Cox neither admits nor denies the allegations contained in paragraph 97 for the reason they represent a legal conclusion which by law requires no answer and the allegations shall be taken as denied where material.

98. Defendant Cox neither admits nor denies the allegations contained in paragraph 98 for lack of sufficient information to formulate a belief as to the truth of the allegations and the allegations shall be taken as denied where material.

99. Defendant Cox neither admits nor denies the allegations contained in paragraph 99 for the reason they represent a legal conclusion which by law requires no answer and the allegations shall be taken as denied where material.

100. Defendant Cox denies the allegations in paragraph 100 for the reason they are based on incorrect statements of law and fact and, therefore, are not true.

101. Defendant Cox denies the allegations in paragraph 101 for the reason they are based on incorrect statements of law and fact and, therefore, are not true.

**COUNT FIVE  
VIOLATION OF THE FIRST AMENDMENT**

102. Defendant Cox denies the allegations in paragraph 102 for the reason they mischaracterize the *Grutter* decision and, therefore, are not true.

103. Defendant Cox denies the allegations in paragraph 103 for the reason they are based on incorrect statements of law and fact and, therefore, are not true.

104. Defendant Cox denies the allegations in paragraph 104 for the reason they are based on incorrect statements of law and fact and, therefore, are not true.

105. Defendant Cox denies the allegations in paragraph 105 for the reason they are based on incorrect statements of law and fact and, therefore, are not true.

106. Defendant Cox denies the allegations in paragraph 106 for the reason they are based on incorrect statements of law and fact and, therefore, are not true.

107. Defendant Cox denies the allegations in paragraph 107 for the reason they are based on incorrect statements of law and fact and, therefore, are not true.

WHEREFORE, Defendant Michael A. Cox, respectfully requests this court to enter an order dismissing Plaintiffs' Amended Complaint with prejudice and grant such further relief this court deems just and equitable.

### AFFIRMATIVE DEFENSES

Defendant Michael A. Cox, provides notice that he may rely upon the following affirmative defenses in this matter:

1. Some or all of the Plaintiffs lack standing to bring these claims.
2. Some or all of the Plaintiffs' claims may be barred as moot.
3. The court must abstain from exercising jurisdiction over Plaintiffs' Complaint.
4. Plaintiffs fail to state a claim upon which relief may be granted.
5. Plaintiffs' claims may be barred by the doctrine of preclusion, including res judicata and collateral estoppel.
6. The court should in the exercise of its discretion, decline to exercise jurisdiction over this declaratory judgment action.

Defendant Cox reserves the right to add any affirmative defenses that become known during the course of these proceedings.

Respectfully submitted,

Michael A. Cox  
Attorney General

*s/Margaret A. Nelson*  
Margaret A. Nelson (P30342)  
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Assistant Attorneys General  
Attorneys for Defendant Michael A. Cox  
Public Employment, Elections & Tort

Dated: January 26, 2007  
ans2firstamended complaint

**CERTIFICATE OF SERVICE**

I hereby certify that on January 26, 2007, I electronically filed the foregoing paper with the clerk of the court using the ECF system which will send notification of such filing of the following:  
**DEFENDANT MICHAEL A. COX'S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFFS' FIRST AMENDED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF IN CASE NO. 06-15024.**

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