

2007 WL 38122

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United States District Court,  
E.D. Michigan,  
Southern Division.

COALITION TO DEFEND AFFIRMATIVE ACTION, Integration and Immigration 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, Turquoise Wiseking, 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'Shawnm 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,

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, and the Trustees of any other public college or university, community college, or school district, Defendants,

and

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,

v.

Jennifer Granholm, in her official capacity as Governor of the State of Michigan, Cross-Defendant.

No. 06-15024. | Jan. 4, 2007.

#### Attorneys and Law Firms

George B. Washington, Shanta Driver, Scheff & Washington, Detroit, MI, for Plaintiffs.

James E. Long, Brian O. Neill, Michigan Department of Attorney General, Lansing, MI, Laurie J. Michelson, Butzel Long, Detroit, MI, Leonard M. Niehoff, Ann Arbor, MI, for Defendants.

#### Opinion

### ***ORDER DENYING AS MOOT MOTION FOR STAY OF TEMPORARY INJUNCTION PENDING APPEAL***

DAVID M. LAWSON, United States District Judge.

\*1 This matter is before the Court on a motion for stay pending appeal filed by Eric Russell and Toward a Fair Michigan (“TAFM”). For the reasons set forth below, the Court will deny this motion as moot.

On December 19, 2006, Eric Russell and TAFM filed a motion to expedite their prior motion to intervene as defendants in this matter, and they also moved for a stay of the temporary injunction issued by this Court on December 19, 2006 pending an appeal of that order. On December 20, 2006, the Universities filed a response in opposition to both the motion to intervene and the motion for a stay. On December 22, 2006, Governor Granholm filed a similar response. On December 27, 2006, the Court granted the motion to expedite the parties’ motions to intervene, granted Eric Russell’s motion to intervene, and denied that of TAFM. The Court did not address the motion for a stay of the temporary injunction pending appeal at the time. On December 28, 2006, Eric Russell and TAFM filed a notice of appeal, challenging, among other things, this Court’s December 19 order entering the temporary injunction. Apparently, Eric Russell also filed with the Sixth Circuit an “Emergency Motion

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for a Stay Pending Appeal” of the temporary injunction. *Coalition to Defend Affirmative Action v. Granholm*, --- F.3d ---, ---, 2006 WL 3831217, \*4 (6th Cir.2006). That motion was filed with the Sixth Circuit on December 22, 2006, *ibid.*, only three days after Russell and TAFM filed with this Court their motion to expedite their motion to intervene and for a stay pending appeal. On December 29, 2006, the Sixth Circuit issued an opinion granting Eric Russell’s motion for a stay of this Court’s preliminary injunction pending appeal. *Id.* at \*15.

The Sixth Circuit has held that “a stay pending appeal ordinarily should be sought in the first instance in the district court.” *Southern Ohio Coal Co. v. Dep’t of Interior*, 1993 WL 642401, \*1 (6th Cir. Aug.30, 1993). Indeed, Federal Rule of Appellate Procedure 8(a) embodies this principle and provides that such a motion may be brought in a court of appeals only in exceptional circumstances. Nevertheless, the court of appeals in this case was apparently satisfied that such circumstances existed, as it ruled on Russell’s motion for stay pending appeal even though he and TAFM had filed a similar motion with this Court only ten days earlier. The court of appeals granted the motion to stay, and the Court therefore has no choice but to deny as moot the previous motion filed with this Court.

Accordingly, it is **ORDERED** that the motion for a stay pending appeal [dkt # 43] is **DENIED AS MOOT**.