

THE UNIVERSITY OF MICHIGAN  
REGENTS COMMUNICATION  
ITEM FOR INFORMATION

Received by the Regents  
December 13, 2007

Subject: Litigation

December 2007

I. NEW CASES

There are no new cases this month.

II. RESOLUTIONS

1. Sandra Fernandez v Board of Regents of the University of Michigan. Washtenaw County Circuit Court. (Judge Timothy Connors) (Filed March 17, 2005).

This complaint was filed by a former medical school student. She claims that, while in medical school, she was diagnosed with a medical condition that required her to request accommodations for test taking, which the University provided. Ultimately, however, Ms. Fernandez was dismissed from medical school because of failing grades. She alleges that the University failed to properly accommodate her. She also claims that she was treated differently because of her national origin, which claims she later withdrew voluntarily. Plaintiff seeks judgment against the University, damages, reinstatement, costs, interest and attorney fees. The University filed a motion for summary disposition, which was granted by the court on December 7, 2006 and the case was dismissed. Plaintiff filed a claim of appeal to the Michigan Court of Appeals; oral argument was heard on November 6, 2007. On November 14, 2007, the Court of Appeals affirmed the trial court's decision granting our motion for summary disposition.

III. CASE UPDATES

2. Coalition to Defend Affirmative Action, Integration and Immigrant Rights and Fight for Equality By Any Means Necessary (BAMN), et al. v Jennifer Granholm, Regents of the University of Michigan, Board of Trustees of Michigan State University, Board of Governors of Wayne State University and Trustees of any other public college or university, community college, or school district. United States District Court, Eastern Division of Michigan. (Judge David M. Lawson) (Filed November 8, 2006).

Plaintiffs, including BAMN, The Rainbow PUSH Coalition, a number of black high school students in Michigan, college and graduate school students in Michigan, the AFSCME labor organization, and others, assert that ballot Proposal 2 was placed on the Michigan ballot by racially-targeted voter

fraud and violates the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution and is preempted by Titles VI and VII of the Civil Rights Act of 1964 and Title IX of the Educational Amendments of 1972. They claim that state actors will be prohibited from utilizing policies to desegregate universities, employment and public contracting, thereby prohibiting state bodies from fulfilling federal mandates to desegregate. Plaintiffs also claim that public universities have a First Amendment right to determine their academic standards and to determine the criteria for admission to the university. Plaintiffs seek declaratory relief that Proposal 2 is preempted by the federal civil rights acts, violates the First Amendment of the U.S. Constitution and violates the Equal Protection Clause of the Fourteenth Amendment. On December 17, 2006, the plaintiffs filed an amended complaint, which sets forth their arguments in greater detail.

On December 11, 2006, the University of Michigan, along with Michigan State University and Wayne State University, sought a preliminary injunction precluding implementation of Proposal 2 to the Universities' admissions and financial aid policies through the end of the current admissions and financial aid cycles and otherwise seeking a declaration of rights and responsibilities under Proposal 2. The Attorney General then moved to intervene in the suit, and the Court granted the motion on December 14th. On December 18, 2006, the parties (the Attorney General, the Governor, the Universities, and the plaintiffs) stipulated their agreement to the Universities' requested injunctive relief through 12:01 am on July 1, 2007. On December 19th, the Court, pursuant to the stipulation of the parties, enjoined enforcement of Proposal 2 to the Universities' admissions and financial aid policies through the end of the current admissions and financial aid cycles or until further order of the Court, stated that this injunction would expire at 12:01 am on July 1, 2007 (unless vacated by the Court before that date), dismissed that portion of the Universities' claim seeking temporary injunctive relief with prejudice, and dismissed the remaining part of the Universities' claim without prejudice.

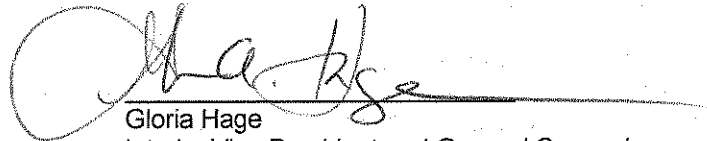
On December 22, two proposed intervenors to the suit, Eric Russell (an applicant to the University of Michigan Law School) and Toward a Fair Michigan ("TAFM") filed an appeal to the Sixth Circuit challenging the district court's failure to rule on their motion to intervene and its issuance of the injunction granting temporary relief to the three defendant Universities. Russell and TAFM asked the Sixth Circuit to stay the injunction pending review of the merits of their appeal, and also sought a writ of mandamus compelling the district court to lift its injunction. On December 29, a three-judge panel of the Sixth Circuit granted the requested stay of the district court's injunction pending the Sixth Circuit's review of the merits of the appeal and dismissed the request for a writ of mandamus as moot. In addition, on December 27, the district court granted Russell's motion to intervene in the underlying litigation, but denied TAFM's request to intervene, as well as all other pending motions seeking intervention (which had been filed by the City of Lansing, the Michigan Civil Rights Initiative, and the American Civil Rights Foundation.) BAMN filed a petition with the Supreme Court (via Justice Stevens, as Circuit Justice for the Sixth Circuit) for review of the Sixth Circuit's decision to stay the injunction pending appeal. Justice Stevens referred the matter to the entire Supreme Court, which denied BAMN's petition on January 19. Russell's appeal therefore remains pending before the Sixth Circuit. He has filed a motion to expedite the Sixth Circuit's review of the whole case, arguing that there is no need for development of a factual record before the district court (as Judge Lawson has ordered) because there is no set of facts under which BAMN could succeed on its legal theories. The Universities filed a response opposing this motion. Although the Sixth Circuit has not definitively ruled on the motion to expedite, it has issued a briefing schedule that suggests that the motion is, in effect, denied. Under this briefing schedule, Russell's brief is due April 2nd, and the Universities' response is due May 4th.

By January 31, all defendants filed their answer to BAMN's amended complaint. That case (*Chase Cantrell, et al. v Jennifer Granholm and Michael Cox*), which was consolidated with an ACLU action also challenging Proposal 2 that does *not* name the University as a defendant, continues to proceed in district court. The Cantrell plaintiffs filed a motion to dismiss Eric Russell from the litigation.

3. Michigan Paralyzed Veterans of America v University of Michigan. United States District Court, Eastern District of Michigan. (Judge Sean F. Cox) (Filed April 17, 2007).

Plaintiff ("MPVA") claims that the University is discriminating against MPVA, its members and others similarly situated by denying them equal access to seating at the Michigan Stadium, in violation of the Americans with Disabilities Act. Plaintiff seeks an injunction (1) restraining the University from receiving federal funding, (2) restraining the University from proceeding with any further construction at the Stadium and (3) requiring the University to provide individuals with disabilities full and equal access to the Stadium. The United States Department of Justice filed a motion to intervene in the lawsuit. The parties stipulated to that intervention and to a week-long inspection of the Stadium by the DOJ; that inspection began on November 27, 2007.

Respectfully submitted,



Gloria Hage  
Interim Vice President and General Counsel

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