

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ENTERTAINMENT SOFTWARE
ASSOCIATION, VIDEO SOFTWARE
DEALERS ASSOCIATION, and MICHIGAN No. 05-73634
RETAILERS ASSOCIATION ,

Plaintiffs,

v

HON. GEORGE CARAM STEEH
MAGISTRATE JUDGE PEPE

JENNIFER GRANHOLM, in her official
capacity as Governor of the State of Michigan;
MICHAEL A. COX, in his official capacity as
Attorney General for the State of Michigan, et
al, and KYM L. WORTHY, in her official
capacity as Wayne County Prosecuting
Attorney,

Defendants.

Dennis J. Levasseur (P39778)
Alicia J. Blumenfeld (P67511)
Bodman LLP
100 Renaissance Center
Detroit MI 48243
(313) 393-7596

Paul M. Smith
Katherine A. Fallow
Kathleen R. Hartnett
Amy L. Tenney
Jenner & Block LLP
601 Thirteenth Street, NW, Ste 1200
Washington DC 20005
(202) 639-6000

Denise C. Barton (P41535)
Jason R. Evans (P61567)
Ann Sherman (P67762)
Attorneys for Defendants
Michigan Department of Attorney General
Public Employment, Elections & Tort Div.
P.O. Box 30736
Lansing MI 48909
(517) 373-6434

DEFENDANTS' CROSS-MOTION FOR SUMMARY JUDGMENT

ORAL ARGUMENT REQUESTED

Defendants Governor Jennifer Granholm and Attorney General Michael A. Cox oppose Plaintiffs' Motion for Summary Judgment under Federal Rule of Civil Procedure 56(c) because Plaintiffs have not demonstrated that the Act violates constitutionally-guaranteed rights.

Defendants file this cross-motion for summary judgment because there is no genuine issue of material fact as to the constitutionality of the Act.

In support of Defendants' cross-motion for summary judgment, Defendants state as follows:

1. 2005 Public Act 108 was passed by the People of the State of Michigan through their elected legislators, and signed into law on September 14, 2005.

2. During the hearing on the motion for preliminary injunction, Defendants presented only a portion of the legislative record in this case. This Court granted Plaintiffs' motion on November 9, 2005, noting that Defendants "are not likely to succeed on the merits." This Court's Opinion did not, however, foreclose any chance of Defendants' succeeding in demonstrating the Act's constitutionality.

3. Additional evidence and testimony presented in the accompanying brief demonstrate that Defendants are entitled to summary judgment because Michigan's Act regulating minors' access to ultra-violent video games is constitutional. This evidence demonstrates that the State has a compelling interest and that the Act is narrowly tailored to achieve that interest.

4. In support of this Motion, Defendants submit a brief explaining in detail why Defendants' Motion for Summary Judgment should be granted.

5. On January 20, 2006, Plaintiffs' attorney was contacted by telephone in order to seek concurrence in this cross-motion, pursuant to ED Mich LCR 7.1(2). Plaintiffs' attorney did not concur in the relief requested, necessitating this motion.

6. On January 25, 2006 this court entered an order allowing Defendants to "correct the record by filing a separate cross-motion for summary judgment that relies on the arguments contained in their response to plaintiffs' motions for summary judgment."

This Court should not grant permanent injunction of the Act, signed into law by the People of the State of Michigan through their elected officials. Both the Act's legislative record and the additional evidence presented in the referenced brief not only defeat justify summary judgment in favor of Defendants. Defendants therefore request that this Honorable Court enter summary judgment in favor of Defendants on all remaining counts.

RELIEF REQUESTED

WHEREFORE, Defendants respectfully request that this Court grant Defendants' Motion for Summary Judgment.

**BRIEF IN SUPPORT OF DEFENDANTS'
CROSS-MOTION FOR SUMMARY JUDGMENT**

Pursuant to the Court's Order dated January 25, 2006, Defendants rely on the issues, arguments, and exhibits contained in their brief filed in opposition to Plaintiffs' Motion for Summary Judgment dated January 23, 2006.

RELIEF REQUESTED

WHEREFORE, Defendants respectfully request that this Court grant Defendants' Motion for Summary Judgment.

Respectfully submitted,

Michael A. Cox
Attorney General

s/ Denise C. Barton
P.O. Box 30736
Lansing, MI 48909
Primary E-Mail: Bartond@michigan.gov
(P41535)

Dated: January 30, 2006

CERTIFICATE OF SERVICE

I hereby certify that on January 30 2006, 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: Defendants' Cross-Motion for Summary Judgment with supporting brief.

s/ Denise C. Barton (P41535)
Dept of Attorney General
Public Employment, Elections & Tort Defense Div.
P.O. Box 30736
Lansing, MI 48909-8236
(517) 373-6434
Email: bartond@michigan.gov

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