

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN**

ENTERTAINMENT SOFTWARE  
ASSOCIATION, VIDEO SOFTWARE  
DEALERS ASSOCIATION, and  
MICHIGAN RETAILERS  
ASSOCIATION,

Plaintiffs,

vs.

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

Defendants.

Case No: 05-73634

Hon. George Caram Steeh

Magistrate Judge Steven D. Pepe

**PLAINTIFFS' EMERGENCY MOTION  
FOR EXPEDITED BRIEFING SCHEDULE  
ON PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION**

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Attorneys for Plaintiffs

September 26, 2005

**PLAINTIFFS' EMERGENCY MOTION FOR EXPEDITED BRIEFING SCHEDULE ON  
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Plaintiffs, by their undersigned attorneys, under E.D. Mich. 65.1, move the Court for an order setting plaintiffs' motion for preliminary injunction for an expedited hearing and briefing schedule.

Plaintiffs respectfully submit that an expedited briefing schedule is necessary to provide the Court sufficient time to rule on the plaintiffs' motion for a preliminary injunction in their constitutional challenge to a Michigan law that is due to go into effect on December 1, 2005. As explained below, plaintiffs, associations that represent video game publishers and retailers, have challenged Public Act 108 ("the Act").<sup>1</sup> The Act imposes serious content-based restrictions on video game expression, and plaintiffs are therefore seeking to enjoin the Act before it goes into effect. Given the proximity of the Act's effective date, plaintiffs are concerned that the normal briefing period under the Local Rules will not afford the Court sufficient time to rule on plaintiffs' motion. Accordingly, plaintiffs ask that the Court set a briefing schedule as set forth below.

In further support of their motion, plaintiffs state as follows:

1. This case, filed on Wednesday, September 21, 2005, involves a constitutional challenge to the Act, signed into law by Governor Jennifer Granholm on September 14, 2005.
2. The Act violates the First Amendment of the United States Constitution by creating penalties for the sale or rental of video games based solely on a game's "ultra-violent explicit" content.
3. The Act will go into effect on December 1, 2005. See, Exhibit A.

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<sup>1</sup> Due to a printing error, the Act was originally published as Public Act 107. The Office of the Great Seal of the State of Michigan has subsequently corrected the mistake and it has been re-published as Public Act 108.

4. If the Act is allowed to take effect, it will have an immediate effect on the First Amendment rights of the plaintiffs, their members, and all Michigan residents.
5. For example, the Act makes it unlawful for any “person” to “disseminate” to a minor an “ultra-violent explicit video game that is harmful to minors.” A person who violates this provision is “responsible for a state civil infraction” and may be ordered to pay a fine up to \$40,000.
6. Under the Act, a person with “managerial responsibility for a business enterprise renting or selling ultra-violent explicit video games that are harmful to minors” may not “knowingly permit a minor who is not accompanied by a parent or guardian to play or view the playing” of such video games. A person who violates this provision is liable for a misdemeanor, imprisonment for up to 93 days, and/or a fine of up to \$25,000.
7. Plaintiffs’ Amended Complaint seeks, among other relief, a preliminary injunction enjoining the defendants from enforcing, or directing the enforcement of, the challenged provisions of the Act.
8. Plaintiffs are filing along with this motion a motion for preliminary injunction under Rule 65, Fed.R.Civ.P., and E.D. Mich. L.R. 65.1.
9. Under E.D. Mich. L.R. 65.1, motions for preliminary injunction must comply with the briefing requirements of L.R. 7.1(b)-(d).
10. Under E.D. Mich. L.R. 7.1, a motion for preliminary injunction is considered a dispositive motion. As a dispositive motion, defendants would be allowed 21 days after service to respond to the motion. Plaintiffs would be allowed seven days to file a reply brief.
11. Under the briefing schedule set out under E.D. Mich. L.R. 7.1, briefing would not be

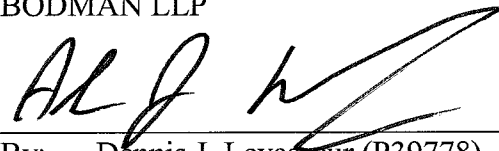
completed until October 24. This would allow only five and a half weeks, including the Thanksgiving holiday, for the Court to conduct a hearing on the motion and make its ruling before the Act is scheduled to take effect.

12. E.D. Mich. L.R. 65.1 states that “the court may set a different time schedule for motions and briefing \* \* \*.”
13. As it is imperative that the parties are able to brief the motion for preliminary injunction, have oral argument on the issue of the preliminary injunction, and the Court has adequate time to decide the motion prior to December 1, 2005, the Court should set up an expedited briefing schedule for plaintiffs’ motion for preliminary injunction.
14. Pursuant to E.D. Mich LR 7.1, plaintiffs’ counsel sought concurrence in the relief requested in this motion. Concurrence was denied.

14. Plaintiffs propose that the briefing schedule be shortened to allow defendants 14 days to file their response brief and plaintiffs five days to file their reply brief. Additionally, plaintiffs ask the Court to schedule a hearing on the motion for October 31. This would give this Court ample opportunity to rule on the preliminary injunction before the December 1 effective date.

Respectfully Submitted,

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**BRIEF IN SUPPORT OF PLAINTIFFS'  
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In support of this motion, plaintiffs rely on Rule 65, Fed.R.Civ.P., and E.D. Mich. L.R.

65.1.

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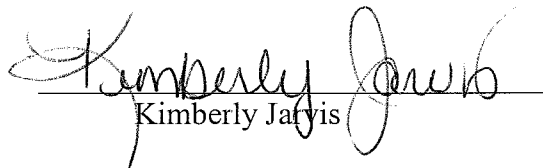
**PROOF OF SERVICE**

Kimberly Jarvis certifies that she is an employee of Bodman LLP, that on September 26, 2005 she caused to be served a copy of **Plaintiffs' Emergency Motion for Expediting Briefing Schedule on Plaintiffs' Motion for Preliminary Injunction** and this Proof of Service upon the person(s) listed below via **Hand Delivery** upon:

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Timothy A. Baughman, Esq.  
Assistant Prosecuting Attorney  
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Detroit, Michigan 48226

I declare under penalty of perjury that the foregoing statement is true and correct to the best of my information, knowledge and belief.

  
Kimberly Jarvis