

STATE OF MICHIGAN
BOARD OF CANVASSERS

In the matter of:

A petition to amend the Constitution of the
State of Michigan
filed by the Michigan Civil Rights Initiative

**BRIEF IN RESPONSE TO THE STAFF REPORT AND
IN REPLY TO THE BRIEF FILED ON BEHALF OF
THE MICHIGAN CIVIL RIGHTS INITIATIVE**

INTRODUCTION

The State of Michigan has the responsibility to ensure basic fairness in the electoral process. Deceiving Michigan's black voters into unwitting participation in outlawing affirmative action is a sure recipe for protracted bitterness, polarization, and anger. Proceeding on the current basis of widespread deceit is unacceptable.

In July 2003, Ward Connerly came to Michigan and announced his intention to nullify the U.S. Supreme Court's pro-affirmative action decision in the University of Michigan Law School case, *Grutter v. Bollinger*. Connerly announced his intention at that time to put forward a ballot initiative that would amend the Michigan State Constitution to outlaw affirmative action policies. From start to finish, the Connerly anti-affirmative action effort entitled the "Michigan Civil Rights Initiative" has been a fraud.

The Connerly operation has understood from the beginning that the overwhelming majority of black and Latino voters in Detroit and other areas of the state would never willingly sign an anti-affirmative action ballot initiative petition. To create the perception of support among black voters in Detroit, Connerly has conducted a systematic campaign of fraud and misrepresentation organized to deceive Detroit's black electorate into

signing the petition to give up the right of their sons and daughters to attend the University of Michigan and other state universities.

To put things bluntly, the petition company that Connerly hired to oversee the signature gathering process lied to the petition circulators about the nature of the ballot initiative. The circulators, in turn, lied to the voters in order to induce them to sign the petition. The language of the petition was drafted to be purposefully misleading. Black signature gatherers were specifically hired to create the impression towards both black and white voters that MCRI was conducting a pro-affirmative action civil rights campaign.

The President of the Macomb County NAACP Ruthie Stevenson was told by one such signature gatherer that she and her organization personally supported the effort. Ms. Stevenson obviously refused to sign the MCRI petition and made clear to the petition gatherer that what he was saying was a lie. This lie was repeated many times, even after Ms. Stevenson had told him to stop lying about her position and that of the NAACP (See Dec R Stevenson).

Other circulators told other lies. Some told the parents of black students in Detroit that this petition effort would help their children go to college. Others said that this petition would increase equal opportunity. Others said it was pro-affirmative action when in fact it is clearly and unequivocally against affirmative action. The deception was of a substantive quality and was absolutely decisive to securing a significant if not overwhelming proportion of the signatures gathered.

The Staff Report of the Board of Elections makes clear that this Board should conduct an investigation of its own to determine the depth, scope, quality and quantity of

the deception and fraud used by circulators for MCRI to attain the petition signatures they submitted to the Board. Only a full investigation into the nature and quality of the fraud and deception can reveal the truth that the vast majority of MCRI signatures are not genuine.

We support the thrust of the Staff Report to this Board which leads to the necessary and inevitable conclusion that a full investigation of the unresolved challenges within the 500-signature sample is warranted.

Summation of the Staff Report.

Specifically, the staff found that 50 of the 325 signatures challenged by Operation King's Dream were invalid because they were "facially invalid" or "invalid due to the signer's registration status." Additionally, the staff has kept 195 of Operation King's Dream's challenged signatures in abeyance pending further investigation. The Staff Report makes clear that the validity of these signatures which were obtained through misrepresentation can not be verified or disregarded without further investigation. They further stated that if 153 of the 195 unresolved challenges were tainted by fraud or deception in a way that required their rejection, the MCRI's petition would not have sufficient support to entitle it to be placed on the ballot (Staff Report, p. 2).

The staff rejected 88 of the Operation King's Dream signature challenges, some of which we will be asking be reviewed by the Board (See Aff of M Stenvig).

The Board's authority.

Under the statute, this Board may conduct investigations, including hearings, on "*any complaints filed or for any purpose considered necessary* by the board to conduct

investigations of the petitions.” MCL 168.476(2)(emphasis added). As a proposal of this importance should not be certified for the ballot where there is evidence that the MCRI in fact procured its signatures by engaging in systematic fraud, this Board must conduct such an investigation.

Misciting two prior cases by the Court of Appeals, the MCRI claims that however it obtained its signatures, the Board must place the amendment on the ballot if a sufficient number of citizens were induced by any means to affix their names to a piece of paper placed in front of them (MCRI Brief, at 4-6, citing *Deleeuw v State Bd of Canvassers*, 263 Mich App 497 (2004) and *Citizens for Protection of Marriage v Bd of State Canvassers*, 263 Mich App 487, 492 (2004).

A signature procured by bribery, extortion, or threats is not a “genuine” signature. Nor are signatures procured by means of systematic fraud “genuine” – for a signature obtained by fraud and deception is not a “manifestation of the named person’s desire to see the real matter at issue voted upon by the general public.” *Stierle v Lima Township*, 1996 WL 33349455 (Mich Ct App 1996)(copy attached). As the Court of Appeals directly held, “...fraud in the circulation of a petition [is] a fatal defect, not mere non-compliance with a procedural requirement.” *Id.*

As will be seen, the facts here stand in stark contrast to those in *Deleeuw* and *Citizens for Protection of Marriage*, where there was no challenge to the “genuineness” of the signatures that had been obtained. A signature obtained through fraud is not genuine. To come to any other conclusion is to defy the spirit and letter of Michigan’s election laws and long tradition of fairness in elections, public policy, and to offend the basic morality and common sense of the electorate of this state.

Operation King's Dream asks this Board to conduct an investigation to determine whether the MCRI has in fact obtained a sufficient number of "genuine" signatures to require placement on the November 2006 ballot.

ARGUMENT

I

THE MCRI PERPETRATED SYSTEMATIC FRAUD IN BLACK MAJORITY AND OTHER COMMUNITIES.

In the Brief filed by Operation King's Dream, the challengers set forth evidence that they obtained in the two weeks that were allowed after the sample was chosen that demonstrated that MCRI circulators deliberately lied to two circuit court judges, a union official, a reporter, a divorce attorney – and to numerous persons who were included in the sample of 500 chosen by the staff.

The MCRI has not disputed any of the facts set forth in the sworn statements that the challengers provided--and for good reason. The fact is that the MCRI's petition was designed to facilitate misrepresentation. As set forth in the initial brief, it is no accident that numerous signers in the 500 person sample reported being told that the MCRI's petition "was for affirmative action," that it "would help black students get into college," and similar blatant misrepresentations.

But there is now even more evidence as to the MCRI's fraud. In the last week, the challengers have obtained a list of the names, addresses and phone numbers of many of the circulators. The challengers had little time; they could not locate many of the circulators; and they had no power to compel any of them to talk. The affidavit of M.

Heather Miller illustrates the difficulties that the challenger had in compiling the evidence obtained to date (Aff of Miller).

But even within those limits, the challengers uncovered overwhelming evidence as to the fraud that the MCRI perpetrated.

A. Fraud in Detroit.

Exie Chester, an MCRI circulator who turned in at least 231 petitions including eight in the sample chosen by the staff, described how she got signatures for this petition. The MCRI officials did not tell Ms. Chester what the petition was about – and she assumed that the ban on preferences meant that it banned “the kind of preferences that white families have in terms of money, connections and similar things.” (Dec of Chester, para 6). She saw MCRI circulators in front of 36th District Court in Detroit, obtaining signatures by telling “everyone that it was a petition to help blacks get into college” (Dec of Chester, para 9). She and her friend, Ms. Emmarine Kidd, then began using that line to obtain signatures from black citizens in front of liquor stores and at other public places in the City of Detroit:

11. From that point forward, I used that line as my means of getting signatures. I got an enthusiastic response and obtained many signatures based on the statement that “This is a petition to help blacks get into college.”

12. Much of the time, I was accompanied by a friend of mine, Ms. Emmarine Kidd, who is partially blind. She also assisted me in obtaining signatures, and she, too, told people that it was a petition to help black students get into college.

Ms Chester finally found out what the petition was really about when Ms. Kidd’s granddaughter – a University of Michigan student – saw the petition and told her what it really was. When she confronted the MCRI officials, however, they only smiled over the fraud that they had committed (Dec of Chester, paras 15-17).

The MCRI told Dana Clowney, a black citizen of Detroit, that the petition supported affirmative action (Dec of Clowney, para 6). Mr. Clowney circulated the petition in front of the main post office on Fort Street as well as in front of the liquor store across the street. Mr. Clowney obtained signatures by telling voters the following:

9. I told persons that this petition was to help minority students in getting into college. I also told them that there were people who were trying to keep blacks out of college and that this initiative would stop that.

(Dec of Clowney, para 9).

Mr. Clowney only stopped circulating after a friend – and some of those he asked to sign – told him that the petition he was circulating was in fact against affirmative action (Dec of Clowney, para 9).

An MCRI official named “Glenda” told Joseph Henry Reed, another Detroit resident, that the MCRI’s petition was for affirmative action and “would help black students get into college.” Glenda also told him that there was another petition that was attempting to end affirmative action but that this one was to “preserve it” (Dec of Reed, para 3). Using those lines, Mr. Reed circulated the MCRI’s petition at Northland Mall, in Troy, and in downtown Detroit and the Cass Corridor. After a few potential signers objected that the petition was against affirmative action, he raised it with MCRI supervisors “Glenda” and “Heidi,” who just laughed it off and said “some people will just be like that” (Dec of Reed, para 8). Mr. Reed continued circulating the petitions from August through November, although he reported receiving more objections as time went on (Dec of Reed, paras 8-10. 13). Mr. Reed obtained three of the signatures in the 500.

Jennifer Gratz, a top official in the MCRI campaign, along with a young white man and a black woman named Nicki, made similar statements about the MCRI petition

to LaVon Marshall, another Detroit resident who applied for a job circulating the MCRI's petition. Mr. Marshall circulated the petition at Food Basics and at downtown festivals, telling potential signers that it was for affirmative action. He obtained two of the signatures in the 500 (Dec of Marshall, para 8-12).

Ms. Chester, Mr. Clowney, Mr. Reed and Mr. Marshall had the courage to come forward and state what they had done. But of course the most systematic fraud was perpetrated by those who wish to remain silent – and whose testimony can only be obtained by means of subpoenas.

The affidavit of Heather Miller, a Detroit teacher, illustrates the evidence that an investigation could uncover. On July 13, she visited the home of Albert Anderson, an MCRI circulator who obtained four signatures in the sample of 500. When asked whether he told potential signers that the petition was for affirmative action, Mr. Anderson said that “Yeah, I got a dollar a signature, so I told them it was for affirmative action.” After asking for money from Ms. Miller – and being refused – he would answer no more questions (Aff of Miller, paras 2-3).

But as Ms. Miller and other investigators left his home, another person appeared, identifying himself as Sherman Irvin, another MCRI circulator who obtained one of the signatures in the sample of 500. Mr. Irvin told Ms. Miller that he petitioned throughout Detroit and Flint, obtaining signatures on the MCRI's petition by telling persons that it was for affirmative action. Some potential signatories reportedly objected to what Mr. Irvin was doing but he said he told them to “fuck off,” and threatened to get a gun if they did not leave him alone. As he said, “he needed the money” (Aff of Miller, paras 4-6).

In fact, as Ms. Miller and the other investigators left, Mr. Irvin asked for money, cigarettes, and empty bottles (Aff of Miller, para 7).

As is obvious, “signatures” obtained by such methods are not genuine by any reasonable definition of that term.

B. Fraud in southeastern Michigan outside Detroit.

In Mt. Clemens, Ruthie Stevenson, the President of the Macomb Count branch of the NAACP, encountered a particularly blatant form of the misrepresentation perpetrated by the MCRI circulators. Outside the Mt. Clemens post office, a young white man asked her to sign the petition because it was for “civil rights” and “affirmative action” and because the President of the Macomb County NAACP had endorsed the petition. Even after Ms. Stevenson told him that she *was* the President of the Macomb County NAACP, he persisted in telling her and others that they should sign the petition because it was pro-affirmative action and pro-civil rights and that the NAACP had endorsed it (Dec of Stevenson, paras 3-8).

In Flint, the basic story was the same. At a Halo Burger in downtown Flint, two white MCRI officials hired Elitha Marie Shumpert to circulate the MCRI petition. She petitioned in front of the Family Dollar Store in Flint. When some black citizens began telling her that the petition was against affirmative action, she asked her supervisors, who assured her that it was “...not against affirmative action at all.” She continued telling voters that it was for affirmative action until she quit for unrelated personal reasons (Dec of Shumpert, paras 9-12).

Yvonne Moore, a black citizen of Flint, was hired by a white woman named “Patricia” who worked for the MCRI campaign. She was not told that the petition aimed

to end affirmative action. She circulated the petition in Flint, Saginaw and Jackson – and she told potential signers that it was a way “to get kids into college.” She quit because the MCRI abandoned her at a polling place in Jackson, from which she had to take a midnight bus back to Flint (Dec of Moore, paras 3-10).

Three other black residents of Flint – Christi Lynn Sanders, June Scroggins, and Lerwonia Summers – have signed sworn declarations setting forth similar misrepresentation and fraud perpetrated on them – and, unwittingly, by them on voters whom they induced to sign the MCRI’s petition. Together, they obtained three of the 500 signatures by these means (Decs of Sanders, Scroggins, and Summers).

C. Fraud in western Michigan.

The MCRI perpetrated the same fraud in black and Latino/a communities on the western side of the State. Lupe Ramos-Montigny was approached at a Martin Luther King Day celebration in Grand Rapids and asked to sign the MCRI’s petition on the representation that it “protected” affirmative action in Michigan. She not only signed it, but persuaded her friends to sign it based on this misrepresentation (Dec of Ramos-Montigny).

The challengers also previously submitted an affidavit from Sammy Williams setting forth similar fraud in Benton Harbor.

D. More conventional fraud.

Finally, in investigating the fraud perpetrated by the MCRI’s circulators, the challengers uncovered more conventional fraud as well. Among the circulators who

allegedly obtained signatures from voters in Detroit was Tammy Lewis, who listed her address on the MCRI petitions as 678 Selden Street, Apt 204 in Detroit.

As shown by the attached death certificate, Ms. Selden died in 1999. As shown by the attached statement by Mr. James Hill, the father of her children, there is no known relative of Tammy Lewis who carries that name or who has ever resided at that address.

II

THE BOARD HAS THE LEGAL AUTHORITY AND DUTY TO REFUSE TO CERTIFY THE MCRI PETITION, OR, IN THE ALTERNATIVE TO CONDUCT AN INVESTIGATION AS TO WHETHER THE MCRI OBTAINED ITS SIGNATURES BY MEANS OF FRAUD AND MISREPRESENTATION.

The Constitution and statutes of the State of Michigan rightly require that an organization proposing to amend the Constitution of the State of Michigan show that there is a minimum quantity of genuine support for its proposal before the State and the electorate are required to undergo the expense and the division necessitated by such proposals:

The purpose of having a particular number of signatures to call for a referendum election is to prevent trivial matters, in which there is no desire on the part of the general public to be heard, from being presented...

Stierle, at 2.

No where is that requirement more urgent than on a petition such as this – which will divide the State for years to come, whatever the outcome of a vote on the proposal might be.

In *Deleeuw*, the Court of Appeals held that the Board has the authority and the duty to question "...the registration or the genuineness of the signature of the circulator or of a person signing a petition filed with the secretary of state..." *Id.*, 263 Mich App at

501. In its brief, the MCRI asserts that this Board may only consider whether the person actually signed the petition. But the Court of Appeals had already held to the contrary:

When it comes to this purpose [i.e., assuring that there is a sufficient level of support to require an election], there is essentially no difference between a forged signature and a signature from a person from whom the purpose of the petition has been concealed; neither signature is a manifestation of the named person's desire to see the real matter at issue voted upon by the general public.

Stierle, at 2.

In *Stierle*, the petitioners apparently substituted blank pieces of paper and the like to obtain signatures. But there is no difference between those methods and deliberately false statements that the petition would support affirmative action, help black students get into college and like – *when the stated purpose of the petition is exactly the opposite*.

The MCRI cannot defend what its circulators have done – and so it asks this Board to ignore that flagrant misconduct. It says that the petition itself is clear on its face. But the summary of the petition – which this Board has not passed on – is itself deliberately misleading by claiming, among other things, that the remedies in the law would not be changed. Moreover, the entire purpose of the petition is buried in an ambiguous phrase – the ban on “preferences” – that is buried on the back side and that is inscrutable to Ms. Chester and others who do not know that this term is a code word for eliminating affirmative action.

In fact, the MCRI's claim that the petition itself is clear is belied by the fact that two circuit court judges did not understand its purpose. Indeed, one of the few potential signers who did understand it was a management attorney who specialized in employment discrimination (Aff of Siebigtheroth). As is obvious – if the petition itself can be misunderstood by judges and understood only by constitutional scholars or labor

law practitioners – the language of the petition does not cure the simple straight-forward lies peddled by the MCRI circulators.

Nor does the allegedly extensive publicity, referred to by the MCRI, cure the misrepresentations perpetrated by its circulators. It is true that some people had heard of the petition – but many had not. Moreover, the MCRI circulators took advantage of that publicity by saying that there was another petition that opposed affirmative action and that this one supported it.

Finally, the MCRI's reliance on both *Deleeuw* and *Citizens for Protection of Marriage* is profoundly misplaced.

In *Deleeuw*, there was no question that a sufficient number of voters wanted Ralph Nader on the Presidential ballot. Whether those voters wanted him on the ballot because they supported him or because they hoped to aid President Bush did not detract from the fact that they did indeed “genuinely” wanted him on the ballot. Nor did technical problems with the circulator's signatures detract from the genuineness of the petition's signature.

But in this case, there is substantial evidence that the voters do not want a proposal to ban or sharply limit affirmative action on the ballot. The MCRI obtained one fourth of its signatures in communities with an overwhelming black majority – and it obtained those signatures by deliberately misrepresenting the fact that its petition aimed to end affirmative action.

Similarly, the MCRI's reliance on *Citizens for the Protection of Marriage* is misplaced. In that case, there was no dispute that the petitioners had obtained a sufficient

number of genuine signatures – and the sole question was how the proposal should be described on the ballot.

As set forth above, the challengers have in short time and under difficult circumstances produced substantial evidence that the MCRI engaged in systematic and deliberate deception in order to obtain the signatures that it needed for placement on the ballot. As the fraud perpetrated here is far more widespread, far more systematic, and on a far more important subject than was present in *Stierle*, the challengers submit that it is urgent that this Board exercise its authority to conduct a full investigation to determine whether the MCRI's petition has a sufficient number of "genuine" signatures to merit placement on the November 2006 ballot. MCL 168.476(2).

CONCLUSION

For the reasons stated, the challenger, Operation King's Dream, asks that this Board decline to certify the MCRI petition for the ballot, or, in the alternative, conduct further investigation to determine whether the MCRI petition should be certified in light of the fraud and other abuses that the MCRI has perpetrated.

By the challenger's attorneys,
SCHEFF & WASHINGTON, P.C.

BY: _____
George B. Washington (P-26201)
Miranda K.S. Massie (P-56564)
Shanta Driver (P-65007)
65 Cadillac Square, Suite 2900
Detroit, Michigan 48226
(313) 963-1921

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