

**STATE OF MICHIGAN
SUPREME COURT**

MICHIGAN CIVIL RIGHTS INITIATIVE,

Plaintiff/Respondent

-vs-

Sup Ct. No. 130342

BOARD OF STATE CANVASSERS,

Defendant/Respondent,

COA No. 264204

and

OPERATION KING'S DREAM, et al,

Intervening
Defendants/Respondents.

**BRIEF OF AMICI CURIAE: ACLU OF MICHIGAN, NATIONAL BAR
ASSOCIATION, DETROIT URBAN LEAGUE, NAACP DETROIT
BRANCH, AND ACCESS IN SUPPORT OF INTERVENING
DEFENDANTS OPERATION KING'S DREAM, ET. AL'S,
APPLICATION FOR LEAVE TO APPEAL**

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The Interests Of The Amici Curiae

A.) The American Civil Liberties Union of Michigan

The American Civil Liberties Union of Michigan (ACLU-M) has a longstanding commitment to ensuring that the civil rights and civil liberties of all citizens are protected. In the area of voting rights, the ACLU played a key role in the passage of the Voting Rights Act of 1965 and has, since that time, litigated key cases around the country to enforce that law.¹

The ACLU has also advocated before federal and state agencies around the country to ensure the processes and procedures used to effectuate the promises of the Voting Rights Act are effective and meaningful. For example, the ACLU recently submitted comments to the U.S. Election Assistance Commission which serves as a resource for information and review of procedures relating to the administration of

¹ The ACLU has a standing Voting Rights Project, and the organization's record of involvement in these issues over the years is far too extensive to report in full. See www.aclu.org. However, examples of this work include the following: The ACLU successfully challenged a grossly mal-apportioned districting plan in Buffalo County, South Dakota, which packed nearly all the members of the Crow Creek Sioux Tribe in one district to ensure white control of the county commission. *Kirkie v. Buffalo County, South Dakota*, Civ. No. 03-3011 (D. S. D. Feb. 12, 2004). Also in South Dakota, the ACLU blocked an attempt by the state to implement a statewide "emergency redistricting" law, which could have led to the dilution of Indian voting strength in Charles Mix County, without complying with Section 5 of the Voting Rights Act. *Quick Bear Quiver v. Nelson*, 387 F.Supp.2d 1027 D. S.D. 2005). The Supreme Court dismissed the state's cert. petition as moot. *Nelson v. Quick Bear Quiver*, 126 S.Ct. 1026 (2006). Last year in Georgia, the ACLU sought and obtained an injunction against enforcement of the state's discriminatory photo ID law. *Common Cause/Georgia v. Billups*, Civ. No. 4:05-CV-0201-HLM (N.D. Ga. Oct. 18, 2005). The ACLU also succeeded in convincing a three-judge court to amend its proposed redistricting plan, which had pared nearly half of the black members of the state house. *Larios v. Cox*, 314 F.Supp.2d 1357 (N.D. Ga. 2004). The ACLU won an important case invalidating discriminatory at-large elections used by Charleston County, South Carolina. *Moultrie v. Charleston County Council*, 365 F.3d 341 (4th Cir. 2004), cert. den'd, 543 U.S. 999 (2004).

Federal elections. See Comments on Election Assistance Commission's Proposed Voluntary Guidance on Implementation of Statewide Voter Registration Lists, June 13, 2005, www.aclu.org.

The ACLU-M's concerns include not only the rights that are implicated by the election issues that are presently before this Court, but also rights that are impacted by the ballot initiative in dispute which would, if passed, ban affirmative action for women and minorities in this State. The social, economic and political stakes for women and minority groups that have historically been the victims of discrimination are so significant, that the ACLU-M regards the fairness and integrity of the electoral process that will allow the voters of Michigan to make a considered, responsible decision in this matter to be of paramount importance. The ACLU-M therefore requests the opportunity to appear as *amicus curiae* in this matter.

B.) The National Bar Association

As the world's largest organization of lawyers of African descent, the National Bar Association (NBA) seeks to promote justice and equality for people of color and increase the numbers and professional opportunities of African American lawyers. The NBA and its members contributed greatly to the significant civil rights gains made by people of color in the 20th century. The NBA has a significant interest in voting rights, fair elections procedures and in promoting employment, educational and contracting opportunities for women and people of color. Representatives of the NBA, including current President Reginald Turner, served *pro bono publico* on the legal team representing Citizens for Affirmative Action's Preservation and seventeen African American and Latino students as interveners in *Gratz v Bollinger*, 539 U.S. 244 (2003).

C. Detroit Urban League

The Detroit Urban League has been part of the Michigan and Detroit landscape since 1916. Its mission is to enable African Americans and other minorities to reach their full human potential. It provides social services to residents of the City of Detroit, and addresses the civil rights needs of clients through various programs and services and through advocacy on issues affecting the community. Its programs and services have included employment counseling, referral and placement services, education and tutoring, substance abuse prevention and education and youth development initiatives.

The right to vote and participate in the political process is sacrosanct and critically important to the community the organization serves. The staff and volunteers have conducted voter registration drives and advocated high voter turnout. The Detroit Urban League has grave concerns about the process used for the collection of signatures for the affirmative action ballot initiative here in Michigan, and even deeper concerns about how this ballot initiative will affect and impact the organization's clients if it is passed. The Detroit Urban League's efforts and services are directly related to the historical discrimination and lack of opportunity often experienced by clients in the areas of employment and education. The Detroit Urban League supports and believes that there should be an investigation of fraud with regards to the solicitation of signatures for the MCRI.

D.) NAACP – Detroit Branch

Founded in 1909, the National Association for the Advancement of Colored People (“NAACP”) is the oldest and largest civil rights organization in the United States. It has 501(c)(4) status under the Internal Revenue Code. Article I, Section 3 and the NAACP's constitution provides that the purpose and aim of the organization is to improve the political, educational, social and economic status of minority groups, to

eliminate racial prejudice, to keep the public aware of the adverse effects of racial discrimination, and to take lawful action to secure its elimination. From Thurgood Marshall's victory in *Brown v. Board of Education* in 1954, to the Detroit NAACP's success in winning injunctive relief in the U.S. District court last November against the harassment of African American voters at the polls, the NAACP, at the national and local levels, has been at the center of nearly every major American civil rights case.

Article IV, Section 4 of the NAACP's constitution establishes a Legal Redress committee, to utilize the courts to combat discrimination. Further, Article XX, Section 1 gives NAACP branches, such as the Detroit branch – the nation's largest – the authority to cooperate and affiliate with other groups, organizations or coalitions when there is an incentive and purpose for said affiliation and cooperation on specific issues which are in accord with the program and policies of the Association. It is in this context that the Detroit Branch of the NAACP joins in the amicus curiae brief being filed by the American Civil Liberties Union of Michigan in the instant application for leave to appeal to the Michigan Supreme Court.

Preserving affirmative action is of central importance to the NAACP. Secured by the 1st, 5th, 13th, 14th, and 15th Amendments to the federal constitution, by federal and state law, and by U.S. Supreme Court precedent of long-standing, affirmative action is a vital tool in the fight for equal rights. There is strong evidence that the petition signatures gathered by the grossly mis-named Michigan Civil Rights Initiative, were gathered by fraudulent means.

E.) ACCESS

The Arab Community Center for Economic and Social Services (ACCESS) has a deep commitment to ensuring that the civil rights and civil liberties of all citizens are protected. The ACCESS Mission Statement provides;

ACCESS is a human services organization committed to the development of the Arab-American community, and the greater community, in all aspects of their social, economic and cultural lives. To support this goal, ACCESS provides a wide range of human and cultural services as well as advocacy work.... ACCESS is dedicated, in all of its efforts, to empowering and enabling people to become self reliant, and to leading more informed, productive, and fulfilling lives.

ACCESS has over 70 different programs and serves tens of thousands of individuals each year.² “Civic Engagement” is an integral part of each of the organization’s programs. In working with the newly arrived immigrant community ACCESS believes it is essential to encourage and promote participation in the political system. This will truly facilitate their integration into their new homeland. While most ACCESS programs are of the traditional social service genre, the organization believes that only by organizing and educating clients about civic participation is there hope of adequately addressing the social issues that bring them to ACCESS offices. Thus, “civic engagement” is integral to all programming and to all clients, regardless of their immigration, ethnic or racial status.³

ACCESS is concerned about the potential disillusionment of its clients when faced with the contradiction between the organization’s espousal of civic engagement and allegations of dishonesty in the collection of ballot signatures. The failure of any governmental body to meaningfully investigate the allegations of fraud and misrepresentation sends the wrong message to a traditionally unengaged community. Additionally there are rights that will be directly impacted by the ballot initiative in dispute. If passed, it will have a significant adverse effect upon ACCESS clients. Many of the organization’s programs receive Federal and State funding specifically targeting

² In the most recent fiscal year the number of unduplicated clients served by ACCESS core services was 48,756. Core Services are; Health, Mental Health, Employment, Social Services, Youth and Education, Legal and Immigration, Emergency Assistance, Translation Services, and Advocacy. This does not include an additional 15,575 contacts through the Arab American National Museum; which consists of general admissions, Educational Programming and Cultural Workshops.

³ While 74% of ACCESS clients are of Arab origin, 15% are African-American, 9% are Caucasian, 1% are Hispanic, 0.9% are Asian and 0.1% are Native-American.

these ethnic communities. The Civil Rights Initiative, if passed, could result in the loss of these programs and others, such as English as a second language, which are so integral to the integration of these communities into the larger American society. ACCESS therefore requests the opportunity to appear as *amicus curiae* in this matter.

Summary of Argument

The Court of Appeals usurped the valid powers of the Executive branch by ordering the Board of State Canvassers to certify a ballot question that would end affirmative action for women and minorities in the State of Michigan before that Board could even determine, by any appropriate means, whether allegations of fraud were credible and significant. The Michigan Constitution requires that election officials ensure the purity of elections. Even the Court of Appeals has acknowledged that state law (see MCL 168.31) provides for the investigation of election irregularities.

Since the supporters of the ballot initiative began their effort to obtain signatures to have the initiative placed on the November 2006 ballot, numerous individuals have charged that false statements were made to them about the purpose of the anti-affirmative action petitions at issue. If true, there has been widespread infringement of the most basic constitutional rights.

The sanctity of the voting process and the unfettered individual right to vote, uncompromised by external pressure or fraud, are among this nation's most fundamental liberties. It is also a hallmark of our democracy. Therefore, when a significant number of Michigan citizens claim that their signatures were fraudulently induced, and a public record of these allegations is established (*see* Exhibit A - Reports of Michigan Civil Rights Commission Hearing, Detroit, January 11, 2006) the courts must direct appropriate officials to investigate the alleged wrongdoing, and vindicate the aggrieved voters if necessary. Failure to do so will create a practical, if not legally binding, pernicious precedent that gives *carte blanche* to solicit signatures by whatever means.

Statement of Facts

At issue before this Court are allegations that persons collecting signatures for supporters of the ballot initiative (hereinafter MCRI) made false statements about the purpose of the petitions. It is further alleged that numerous unsuspecting citizens were induced to sign a document that opposes affirmative action, when in fact, it was their objective to support affirmative action. The Intervening Defendants state in their Application that these allegations were presented to the Board of Canvassers with the expectation that the allegations were to be considered on July 19, 2005. (App. for Leave to Appeal, p. 13).

Initially, when presented with what were purported to be a sufficient number of petition signatures to otherwise certify the ballot question, the Board of Canvassers did not vote to place the initiative on the ballot. In response, MCRI filed a Petition for Mandamus with the Court of Appeals. That Court ruled on October 31, 2005, that the Board of Canvassers is not endowed with the authority to investigate the fraud allegations because that body's investigative authority does not extend beyond issues that arise within the four corners of the petition document. A mandamus order was also issued that directed the Board of Canvassers to approve the petition, and to place the initiative on the November, 2006 ballot. The Board of Canvassers complied with that order on January 20, 2006. A motion for reconsideration by the Intervening Defendants was denied on December 7, 2005. It is from that ruling that the Intervening Defendants now seek leave to appeal.

Meanwhile, the complaints and allegations of fraud did not abate. The Michigan Civil Rights Commission conducted hearings on January 11, 2006 in Detroit, and on February 8, 2006 in Flint, where numerous citizens provided live testimony and sworn

affidavits that provided details of their allegations that petition circulators misled them about the true nature and purpose of the petitions.

Legal Argument

I. THE COURT OF APPEALS WAS OBLIGATED TO DIRECT THAT APPROPRIATE OFFICIALS INVESTIGATE ALLEGATIONS OF ELECTION FRAUD.

In its deliberations below, the Court of Appeals concluded that the Board of Canvassers lacked the authority to investigate allegations that numerous persons were fraudulently induced to sign petitions supporting a proposed constitutional amendment to ban affirmative action. *Michigan Civil Rights Initiative v. Board of State Canvassers*, et al., 268 Mich. App. 506, ___, 708 N.W.2d 139, 146 (2005). As a consequence, that Court's options were to either issue a mandamus order directing appropriate officials to investigate the fraud allegations, or, to ignore the allegations altogether and order that the initiative be placed on the ballot. The Court of Appeals' decision to take the latter course stands in stark conflict with longstanding concerns by Michigan's courts about the purity of elections.

The Michigan Constitution of 1963 provides in relevant part:

...The legislature shall enact laws to preserve the purity of elections, to preserve the secrecy of the ballot, to guard against abuses of the elective franchise, and to provide for a system of voter registration and absentee voting...

Art. 2. Section 4.

The phrase "purity of elections" was also used in the Constitutions of 1908 (Art. 3 Sec. 8) and 1850 (Art. 7 Sec. 6). It is upon this solid historical foundation that the courts have established a doctrine that proscribes fraud in all aspects of the electoral process.

This has been a central concern from the earliest years of Michigan's history. *See Attorney General v. Common Council of the City of Detroit*, 78 Mich. 545, 44 N.W. 388 (1889) (striking down as unreasonable and unconstitutional a purported anti-fraud election law that required in-person registration and imposed a discriminatory requirement for production of citizenship documents); *Maynard v. Board of Canvassers*,

84 Mich. 228, 47 N.W. 756 (1890) (denying a petition to compel the Board of Detroit Canvassers to issue a certificate of election to a candidate whose votes were the product of an unconstitutional cumulative voting procedure); *Attorney General v. May*, 99 Mich.538, 58 N.W. 483 (1894) (invalidating election results that were the product of a procedure that compromised the secret ballot); *Todd v. Board of Election Commissioners*, 104 Mich. 474, 62 N.W. 564 (1895) (upholding the constitutionality of an election law that prohibits candidates from having their names appear on the ballot more than once).

The cases cited above were considered in *Wells v. Kent County Board of Election Commissioners*, 382 Mich. 112, 168 N.W. 2d 222 (1969), where this Court stated:

From the above cases, it will be seen that the constitutional mandate to the legislature to enact laws to preserve the purity of elections has been interpreted by this Court to carry with it the corollary that any law enacted by the legislature which adversely affects the purity of elections is constitutionally infirm. The phrase, “purity of elections” is one of large dimensions...

Id. at 123, 227.

In *Socialist Workers Party v. Secretary of State*, 412 Mich. 571, 317 N.W.2d 1 (1982), this Court held:

...[W]e think the conclusion is justified that, even in the absence of specific constitutional or statutory provision, it is the clear duty of election officials, when reasonably possible, to prepare ballots in such a manner as will most effectively comply with the constitutional mandate touching the preservation of the purity of elections and guarding against abuse or misuse of the elective franchise.

Id. at 597, 11.

Accordingly, the Court of Appeals should have identified for the parties the agency or official authorized to investigate the fraud allegations. The Court should then have directed that the Board of Canvassers refer the matter to the appropriate authorities for at least a minimal investigation into whether the allegations of fraud were significant and credible. Michigan law clearly allows the Board to *receive* investigation results from others. MCL 168. 476(2). That law provides in relevant part: “The board may also

adjourn from time to time awaiting receipt of returns from investigations that are being made or for other necessary purposes...”

In *Deleeuw v. State Board of Canvassers*, 263 Mich. App. 497, 688 N.W.2d 847 (2004), the Court of Appeals determined that MCL 168.31 establishes the appropriate procedure for investigation of allegations of electoral improprieties. In that case, arguments were made that the Board of Canvassers could, and should, investigate the motives of those who sought to have Presidential candidate Ralph Nader’s name placed on the ballot. As in the instant case, the Court of Appeals held that the Board is not authorized to make such inquiries. However, in that case, the court took the additional step of explaining how an investigation might occur:

The challenge to the petition failed to establish that there were not at least thirty thousand valid signatures filed in support of Nader’s candidacy, and, in fact, the board never disputed the genuineness of the signatures or the registration status of the people who signed the petitions. Rather, the challenge alleged various violations of election law, a subject that is not within the scope of the board’s review. **See MCL 168.31 (requiring the Secretary of State to report election fraud to the Attorney General or prosecutor) and MCL 168.943 (conferring on circuit courts jurisdiction over offenses committed under the act)...**

Id. at 501, 850 (emphasis added).

MCL 168.31 provides in relevant part:

The secretary of state shall do all of the following: *** (h) Investigate, or cause to be investigated by local authorities, the administration of election laws, and report violations of the election laws and regulations to the attorney general or prosecuting attorney, or both, for prosecution.

It is remarkable that although the Court of Appeals cited and quoted in the instant case that portion of *Deleeuw* that references the authority of the Secretary of State to conduct an investigation, [*MCRI v. Board of State Canvassers, et al.*, 708 N.W. 2d at 146], the Court chose to preempt that process by issuing a mandamus order directing the Board of Canvassers to place the initiative on the ballot without any investigation at all. Thus, if the Court of Appeals was to issue an order of mandamus, it should have been for

the purpose of directing the Board of Canvassers to refer the allegations to the Secretary of State for an investigation. The Board should have been further directed to await the results of that investigation. Instead, the Court of Appeals chose to circumvent the entire process by directing that the proposed initiative be placed on the ballot as if no cloud of possible impropriety hovers over the election.

II. IMPORTANT PUBLIC POLICY INTERESTS ARE IMPLICATED WHEN MINORITY DISENFRANCHISEMENT IS ALLEGED.

The Intervening Defendants' Application for Leave to Appeal, along with the record of the special hearing convened by the Michigan Civil Rights Commission, are replete with allegations that many of those who were victims of the alleged fraud were minorities. *See* pages 7 to 13 of Application for Leave to Appeal. Specifically, it is alleged that petition circulators approached unwitting minorities and told them that the petitions were in support of affirmative action, or that the petitions would help people of color go to college. *Id.*

If the allegations are true, outright misrepresentation about what a ballot initiative will or will not do should never be tolerated. This is especially true if such misrepresentations led individuals most affected by the ballot question at issue to unwittingly, involuntarily and unknowingly call for the elimination of affirmative action programs that they in fact support and perceive to be helpful to their interests.

Even without misrepresentations, the name of the "Michigan Civil Rights Initiative" itself and rhetoric used by its supporters such as "preferential treatment," are understandably confusing when they are considered in the context of the general understanding and conventional use of such terms in recent American history. There was testimony at the MCRC hearing that the term "preferential treatment" was understood to

refer to discriminatory practices that favor white citizens. Exhibit A. Also, most established “civil rights” organizations such as the American Civil Liberties Union, NAACP, Urban League, etc. support affirmative action. This leads to the logical inference that there were strategic language choices made by MCRI that have caused considerable confusion.⁴

Some persons who have alleged fraud have stated that they would never have signed anything that would undermine affirmative action. *See* Exhibit A - news accounts of special Michigan Civil Rights Commission hearings. When consideration is given to the impact of Proposition 209, which passed in California in 1996, on that state’s educational system, it is easy to understand why. The abolition of affirmative action in California substantially reduced the presence of minority students at every level of higher education, ranging from the undergraduate to graduate and professional programs. *See* Exhibit B- “*Undergraduate Access to the University of California After the Elimination of Race-Conscious Policies,*” University of California, Office of the President, March 2003; Exhibit C - *Brief of Amici Curiae, UCLA School of Law Students of Color in Support of Respondent,* in *Grutter v. Bolinger*, at 11.

⁴ A statement posted on MCRI’s website is one example of how the organization has chosen to present itself as a defender of civil rights, while at the same time taking positions that are opposed to those of traditional civil rights organizations. The statement reads in part:

“Our goal is to finally realize the promise made four decades ago with the signing of the 1964 Civil Rights Act. Sadly, the Civil Rights Act has been interpreted by the courts to apply only to the private sector. So an enormous exception to the ‘equal protection’ clause of the 14th Amendment has been carved out. As strange as it seems, the kind of ugly discrimination that is flatly illegal when practiced by private companies and organizations is still permitted when done by the government itself - in employment, contracting, and admissions to taxpayer-financed schools! The Michigan Civil Rights Initiative would put an end to this once and for all by amending the Michigan Constitution to prohibit discrimination by state and local governments against anyone based on their race, sex, color, ethnicity or national origin. The ban would apply to hiring, contracting, and admissions to public schools.”

University of Michigan Professors Susan Kaufman and Anne K. Davis recently reported that:

[T]he number of women and minorities enrolled in and completing medical, computer science and technology programs and entering the workforce declined, probably because of the elimination of recruiting, admissions, outreach, counseling, tutoring and policies that take race and gender into account in order to increase participation.

“The Gender Impact of the Proposed Michigan Civil Rights Initiative,” (November, 2005) p. 3. Exhibit D.

The authors of this report observe that the impact of Proposition 209 has gone far beyond the educational system:

[S]ubsequent legal challenges have targeted local and municipal programs as well. California courts have consistently construed the Proposition broadly, striking down not only those programs that were designed for women, or racial and ethnic minorities, or included participation goals, but also those that sought to remedy documented patterns of racial discrimination. In Michigan, the intended scope of the initiative is all functions and all levels of state and local government.

Id. at 4.

In practical terms, the report notes that in California’s state colleges and universities: “...hiring of women faculty dropped immediately and dramatically on a number of campuses.” (*Id.* at 2.) Specifically, in 1994 (two years before Proposition 209), 37% of new faculty were women. “By 1999, it had declined to 25%. At [UC] Davis, the percentage of women hired as new faculty members dropped from 52% in 1994 to 13% in 1998.” (*Id.* at 3) The impact was not limited to the academic institutions. A June 2004 report⁵ explained:

Affirmative action requirements had begun to open the construction industry to carpenters, plumbers, electricians and other tradeswomen. After the passage of Proposition 209, the number of women in the construction trades declined, and in many cases, the trend toward increasing representation of women has been reversed. Although the total number of available jobs in California’s construction industry has increased, these jobs have gone almost entirely to men. Since 1995, the number of men employed in California’s construction industry has increased

⁵ “Proposition 209 and the Decline of Women in the Construction Trades” Produced by The Discrimination Research Center & Equal Rights Advocates (June 2004) p. 1.

by 23.7%, while the number of women employed in this industry has held relatively constant.

Exhibit E (p.1).

It should therefore be quite apparent why in the instant case, the persons who will be most affected by the outcome of the election should have an opportunity to assert their allegations before an appropriate investigative entity.

Effective participation by members of all racial and ethnic groups in the civic life of our Nation is essential if the dream of one Nation, indivisible, is to be realized.

Grutter v. Bollinger, 539 U.S. 306, 332, 123 S.Ct. 2325, 2340 (2003).

III. IMPORTANT PUBLIC POLICY CONSIDERATIONS ARE IMPLICATED WHEN A BALLOT INITIATIVE COULD HAVE A SERIOUS IMPACT ON THE ECONOMY OF THIS STATE.

If passed, the ballot initiative that would ban affirmative action could profoundly impact Michigan's economy. Thus, there must be special efforts to ensure that all citizens, regardless of race have the opportunity to accurately register their sentiment about a measure that is likely to affect them and their communities. The presence of fraud in an election frustrates that objective.

Michigan's faltering economy is characterized by a marked decline in new jobs, large-scale layoffs of employees, the pursuit of out-of-state employment by Michigan's intellectuals and professionals, and the state's inability to attract new businesses.⁶ Many

⁶ . See generally "Michigan Loses Jobs; rate worst in nation," 1/20/05, Detroit News. "United States Department of Labor News," Bureau of Labor Statistics, 1/25/06, at pg. 3, "Michigan had the next highest initial claims [to California], with 30,456... Michigan had the largest over-the-year increase in the number of initial claims (+19,615)."; Exhibit H:Grand Rapids Area Chamber of Commerce, October 18, 2005, at pg. 3, "Most importantly, passing the ballot will result in a negative impact on the business climate when [new] companies are looking to relocate here."

of the state's most promising graduates of the University of Michigan and Michigan State University, are lured out-of-state by opportunities that are not present in Michigan.⁷

The corporate community has begun to champion affirmative action because a diverse work force advances their business interests and makes them more competitive both in the United States and abroad.

Influential Michigan-based corporations, like General Motors and Ford Motor Company, rely on the affirmative action programs of Michigan's universities to shape prospective employees with the experiential and intellectual acumen only a university with a diverse student body can provide. As articulated in the General Motors Corporation Amicus Brief (hereinafter "GM Amicus") in *Grutter*,

[G]eneral Motors employs a large number of graduates from the University of Michigan. General Motors depends upon the University of Michigan and similarly selective academic institutions to prepare students for employment – to teach them the skills required to succeed and lead in the global marketplace. The quality of the education these students receive profoundly affects the ability of General Motors, and indeed all major American corporations, to compete... In General Motors experience, only a well educated, diverse work force, comprising people who have learned to work productively and creatively with individuals from a multitude of races and ethnic, religious, and cultural backgrounds, can maintain America's competitiveness in the increasingly diverse and interconnected work economy.

GM Amicus (Grutter) at 1, 2 [Exhibit F].

More particularly, corporations asserted during that litigation that revitalization of the Michigan economy can only be achieved if the state's core corporations, like General Motors, are able to draw prospective employees from the state's campuses where diversity flourishes, creating a forum where students can cultivate the "cross-cultural competence" businesses seek out.

⁷ See Exhibit G: "Attracting & Retaining The Best Talent To Michigan," November 2001 (The Partnership for Economic Progress, a collaborative initiative of the Michigan Economic Development Corporation and the Presidents Council, State Universities of Michigan) at pg. 4, "Graduates that choose to accept an out-of-state job do so primarily because of better job opportunities and better salaries – not a dislike of Michigan. 53% left because of a "better job opportunity."

[B]usinesses require managers and employees who understand that people from diverse backgrounds manifest diverse interests and who know how to translate that understanding into creative product development, community outreach, and marketing and advertising campaigns...Businesses depend upon institutions of higher learning to teach students the cross-cultural competence and cognitive skills they will need to perform at a high level in the business world. Higher education is the best, and for many students the only, opportunity to acquire these skills.

GM Amicus at 14, 19. Exhibit F.

If these campuses' affirmative action programs were eliminated, it is foreseeable that companies like General Motors will recruit students from other states' universities where affirmative action is still in place. As a result, the students of Michigan's universities will lose out, and the universities' reputation of producing professionals trained to serve both a (diverse) domestic and global market will also decline. Michigan cannot afford to have its citizens lose out on potential job opportunities. Thus, it is an economic imperative for the state of Michigan that affirmative action programs be safeguarded.

The ballot initiative circumvents the economic interests of the State of Michigan by impairing businesses' ability to recruit prospective employees with the cultural acumen critical to success in today's ever-expanding marketplace. General Motors, Ford Motor Company, and Daimler-Chrysler (customarily called the "Big Three," citing their considerable share of the American automotive market), are the collective bedrock of the Michigan economy. Therefore, the performance of the Big Three provides an economic barometer for the status, and trajectory of the Michigan economy. Moreover, the considerable number of the state's citizens, and families, who are directly and indirectly reliant on the automotive giants for employment and their role as the economic hub of their communities comprises a significant percentage of the population. Hence, affirmative action programs, particularly in higher education, must be secured in order to

maximize the Big Three's capacity to seek out, and employ, students qualified in the skills of cross-cultural competence and racial awareness.

[T]o accomplish that goal, academic institutions must be permitted to continue to consider, as one factor among many in their selection decisions, the race and ethnicity of applicants. Absent such consideration, the evidence suggests that the number of minorities admitted to and graduating from these selective institutions will plummet. Any reduction in diversity at these institutions accordingly would reduce the diversity of the pool of candidates from which businesses could select top corporate managers and professionals.

GM Amicus at 23. Exhibit F.

The economy and citizens of Michigan cannot afford yet another economic setback; The Board of Canvassers should have been permitted, at the very least, to refer the matter to another agency of state government for investigation of the alleged fraud tainting the MCRI petition.

In order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity. All members of our heterogeneous society must have confidence in the openness and integrity of the educational institutions that provide this training.

Grutter v. Bollinger, 539 U.S. 306, 332, 123 S.Ct. 2325, 2341 (2003).

Likewise, all members of our heterogeneous society must have confidence in the openness and integrity of the democratic processes. That confidence can be instilled by this Court.

CONCLUSION

In the face of the most serious allegations of fraud, the Court of Appeals has ignored established procedures for ensuring the fairness and purity of the electoral process by directing that the initiative in question be placed on the ballot without an investigation. If the allegations are true, the impact on the electoral process, race relations and the economy will be devastating. It is therefore respectfully requested that this honorable Court: grant the Intervening Defendants' pending application for leave to appeal; stay the Court of Appeals' Order of Mandamus; and remand this matter for the court below to oversee an investigation of fraud allegations.

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