

**STATE OF MICHIGAN
COURT OF APPEALS**

MICHIGAN CIVIL RIGHTS INITIATIVE,

Plaintiff/Petitioner

-vs-

BOARD OF STATE CANVASSERS,

COA No. 264204

Defendant/Respondent,

and

OPERATION KING'S DREAM, EXIE
CHESTER-GRIFFIN, ROOSEVELT J.
BRISTON, LILLIAN A. CUMMINGS, NICOLE
MCCOY, ALICIA ROSE SPENCER, CHERYL
THOMPSON, LESLIE ATZMON, MONICA
SMITH, MARICRUZ LOPEZ, KATE STENVIG,
LIANA MULHOLLAND, ALISHIA STEWARD,
JOSEPH JOHNSON, JOHNATHAN
CRUTCHER, TURQUOISE WISE-KING,
DENESHEA RICHEY, IVAN ADAMS,
RHIANNON CHESTER, and CURTIS RAY,

Proposed Intervening
Defendants/Respondents.

MOTION TO INTERVENE

Pursuant to MCR 7.211 and 2.209, Operation King's Dream and the proposed individual intervenors listed above move the Court to grant them leave to intervene as defendants/respondents in this action for mandamus.

1. The proposed intervenors either filed or supported the challenge filed at the State Board of Canvassers that the Michigan Civil Rights Initiative had obtained the signatures for its petition by racially targeted fraud and deceit.

2. In addition to being an open supporter of the MCRI, the office of Attorney General Mike Cox has issued a letter of opinion to the Board of Canvassers that it has no authority to consider the assertion that the MCRI obtained the signatures on its petition by systematically lying to black voters.

3. Unless intervention is granted, there will be no party and no counsel before this Court who can defend the rights of black, other minority, and all voters who stand on fundamental democracy. No party in the case will be able to address the legal or social impermissibility of certifying a proposed amendment to the Constitution secured on the basis of systematically lying to black people, the very people whose fundamental democratic rights will be abrogated should this proposition succeed.

4. In specific support of the motion to intervene, the intervening respondents state as follows:

I. The proposed intervening defendants/respondents.

A. Operation King's Dream

1. BAMN is a national civil rights coalition dedicated to the defense of affirmative action and other civil rights gains and to the building of the new civil rights movement. BAMN's membership includes circulators and signatories of plaintiff MCRI's anti-affirmative action petition who were fraudulently misled about the intention and impact of the MCRI ballot proposal.

2. BAMN has been active in the defense of affirmative action policies in California since 1995 and in Michigan since 1997. BAMN intervened as a party defendant in *Grutter v. Bollinger*, the University of Michigan Law School affirmative action case. *See*

Grutter v. Bollinger, 188 F.3d 394 (CA6 1999) (granting intervention motion of BAMN and others).

3. BAMN established its affiliate Operation King's Dream as a Ballot Question Committee under the Michigan Campaign Finance Act, MCL 169.201 *et seq.*, to lead the campaign to defeat the efforts of plaintiff Michigan Civil Rights Initiative (MCRI) to place on the Michigan ballot a constitutional amendment that would, if adopted, ban affirmative action throughout state education, employment, and contracting.

4. Prior to the instant Board of Canvassers controversy, BAMN and Operation King's Dream's efforts to defend affirmative action in Michigan against plaintiff MCRI have included both litigation and participation in Board of Canvassers hearings in 2003 and 2004. *See Coalition to Defend Affirmative Action*, 262 Mich. App. 395 (2004).

Operation King's Dream has also engaged in education and outreach efforts, and numerous rallies and pickets.

5. Operation King's Dream filed the complaint with the Board of Canvassers alleging systematic, racially targeted fraud by MCRI that led to the Board's declining to certify MCRI's petition.

B. Individuals

1. Petition Circulators

7. Exie Chester-Griffin was a petition circulator for MCRI. Ms. Chester-Griffin collected thousands of signatures from black registered voters in the City of Detroit. Ms. Chester-Griffin was responsible for obtaining 8 signatures out of the 500-signature sample selected by the Secretary of State for initial evaluation of MCRI's petition. MCRI officials led Ms. Chester-Griffin to believe that the MCRI petition would expand and

improve opportunities in higher education for young black people in Detroit. She was never told that the purpose of the petition was to end affirmative action programs at the University of Michigan or anywhere else. Ms. Chester-Griffin was deceived by MCRI officials and she in turn deceived thousands of Detroit voters about the intent and purpose of the MCRI ballot petition effort (See Apx. Ex A).

8. Sammy Williams was a petition circulator for MCRI. Mr. Williams circulated petitions in Benton Harbor. Mr. Williams mistakenly led signers to believe that the MCRI petition was a civil rights petition for affirmative action. Mr. Williams was not informed by MCRI officials that the intent and purpose of the petition was to limit or to end affirmative action measures. Mr. Williams was responsible for collecting two of the signatures out of the 500-signature sample (See Apx. Ex B).

2. Petition Signers

9. Roosevelt J. Briston, Lillian A. Cummings, and Nicole McCoy are black registered voters in Detroit. Alicia Rose Spencer and Cheryl Thompson are black registered voters from Southfield, Michigan. Leslie Atzmon is a registered voter in Ann Arbor, Michigan. The names of all six of the aforementioned individuals were selected by the Secretary of State for the 500-signature sample. All six of the individuals were led to believe that the Michigan Civil Rights Initiative was a civil rights petition for affirmative action. None of them would have signed the petition had they known its true aim and purpose (See Apx. Ex C).

3. Students

10. Monica Smith is a registered voter in Detroit and a black student at the University of Michigan. She is a beneficiary of affirmative action is applying to attend the

University of Michigan and Wayne State University's Law Schools. Her ability to attend these law schools would be directly, adversely affected if affirmative action programs were eliminated based on the deception and fraud obtained through MCRI petition signature-gathering process.

11. Maricruz Lopez is a Latina freshman at the University of Michigan and a resident of the City of Detroit. Ms. Lopez is a graduate of Cass Technical High School in Detroit. Ms. Lopez aspires to be a lawyer. Her opportunities to pursue this life-long dream would be limited if MCRI succeeded in its aim of getting an amendment to the Michigan State Constitution banning affirmative action programs.

12. Kate Stenvig is a graduate student in the School of Education at the University of Michigan and a resident and registered voter of Detroit. Liana Mulholland is a freshman in the School of Art and Design at the University of Michigan and resident of Detroit. Both women are activists doing educational outreach in Michigan high schools about the issue of affirmative action and integration. As women, both would be directly negatively affected if the MCRI ballot initiative effort based on deception and fraud were successful.

13. Alishia Steward, Joseph Johnson, and Johnathan Crutcher are black students who attend Cody High School of Detroit; Turquoise Wise-King is a student at Mumford High School; and Deneshea Richey is a student at Cass Technical High School. The above students intend to attend a university in Michigan. All three have been active high school student organizers campaigning to end the state takeover of the Detroit schools, and for equal, quality education and civil rights for Detroit's youth, and in particular, for black, Latino, and other minority youth. Their rights as students, citizens of Detroit, and future voters – and the rights of hundreds of thousands of other young people for whom they

speak – would all be negatively affected if the MCRI ballot petition based on fraud and deceit were certified for the November 2006 election.

15. Ivan Adams and Rhiannon Chester, graduates of Mumford High School of Detroit, and Curtis Ray, graduate of Cass Technical High School of Detroit, are attending Wayne State University this fall. All three of these black students and civil rights organizers are planning to attend a graduate or professional school in Michigan. Their right to attain a graduate or professional education, their rights as citizens of Detroit, and the rights of thousands of other Detroit university and high school students who they represent would be adversely affected if the MCRI petition were certified for the November 2006 ballot.

II. Reasons for granting intervention.

16. MCR 2.209 provides for intervention of right as follows:

On timely application, a person has a right to intervene in an action...when the applicant claims an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

17. This Court has repeatedly emphasized that the rule “should be liberally construed to allow intervention when the applicant's interest otherwise may be inadequately represented.” *Precision Pipe and Supply v. Meram Construction et al.*, 195 Mich. App. 153, 156 (1992) citing *Sumter v. Kosinski*, 165 Mich. App. 784, 802 (1988). *See also Vestevich v. West Bloomfield Twp.*, 245 Mich. App. 759, 761-762 (2001).

18. Turning to the first requirement, there is no question that this application is timely, having been filed only 22 days after MCRI's Petition for a Writ of Mandamus,

and prior to the Court's consideration of the petition. The answer, brief, and appendix filed with this motion meet the requirements of MCR 2.209(C)(2).

19. Further, all proposed intervening defendants/respondents have a substantial interest in the non-certification of plaintiff MCRI's petition for placement on the ballot.

20. Operation King's Dream filed the complaint documenting systematic, racially targeted fraud by MCRI directed in particular at black and other minority communities that prompted the Board of Canvassers to hold the hearing at which the Board ultimately declined to certify MCRI's petition.

21. The individual intervenors are petition circulators or signatories who were deceived by MCRI's policy of lying about the initiative into circulating and/or signing MCRI's petition.

22. The following documents establishing these facts are attached to this motion as exhibits:

- a. Operation King's Dream's fraud complaint before the Board of Canvassers (Apx. Ex. A);
- b. The hearing and agenda notice sent to Operation King's Dream by the Board of Canvassers establishing a date and time for the hearing on the complaint (Apx. Ex. B);
- c. The Secretary of State's staff report analyzing the complaint (Apx. Ex. C);
- d. Affidavits by individual intervenors regarding the fraud, where pertinent (Apx. Ex. D);
- e. The letter from Chief Deputy Attorney General Gary P. Gordon taking the position that the Board had no authority to investigate the fraud charges, which letter had been requested by Representative Leon Drolet, a proponent of MCRI, in response to BAMN's challenge.¹ (Apx. Ex. E)

¹ Attorney General Michael Cox is well-known for his outspoken opposition to affirmative action policies. Attorney General Cox is the highest-ranking elected Republican in the state to have come out publicly in support of MCRI.

- f. A letter from Canvasser Lyn Bankes to the Legislative Leader of the Michigan House of Representatives expressing her “deep concerns about the validity of the number of signatures gathered in predominantly black communities” and stating , “I abstained from voting because I did not have the authority to ask for an investigation [of the fraud complaint.]” (Apx. Ex. F)
23. Thus, Operation King’s Dream and the other proposed intervenors are at least as much the adversaries of MCRI in this action as the Board of Canvassers itself. This action is about the Board of Canvasser’s authority to decline to certify MCRI’s petition in light of Operation King’s Dream’s claim that the signatures gathered were overwhelmingly the product of fraud and deceit, particularly directed at black and other minority voters. MCRI takes the position that the Board has no power to investigate allegations of systematic, racially targeted fraud and no power to decline to certify its petition. The proposed intervenors’ position is the mirror opposite: they defend the Board’s authority both to investigate MCRI’s petition and to decline to certify it.
24. MCRI’s petition and brief both discuss BAMN and the impact of Operation King’s Dream’s fraud complaint upon the Board’s deliberations. *See* Petition at 3-4; Br. at 2, 9. Indeed, plaintiff MCRI served counsel for BAMN and Operation King’s Dream with its petition and brief, acknowledging the organizations’ interest and central involvement in the case at bar. The proof of service is included in the Appendix (Apx. Ex. G).
25. It is self-evident that the proposed intervenors further meet the requirements of MCR 2.209 by being “so situated that the disposition of the action may as a practical matter impair or impede [their] ability to protect [their] interest.” If this Court rules for plaintiff MCRI on the Board’s authority to investigate Operation King’s Dream’s fraud allegations and on its authority to decline to certify the petition, Operation King’s Dream and the other proposed intervenors will have no means of protecting their interest.

26. The final requirement for intervention of right under MCR 2.209 is also more than met: the proposed intervenors' interest "may" not be adequately represented by the Board of Canvassers itself. *See Precision Pipe, supra*, 195 Mich. App. at 156. First, the Board is a neutral adjudicative body, not an advocate on affirmative action or electioneering fraud. Second, the Board declined to investigate Operation King's Dream's fraud complaint on the grounds that it lacked legal authority to do so, a position obviously opposed by Operation King's Dream and the other proposed intervenors.

27. Finally, as the Deputy Attorney General has already opined that the Board may not consider the question of whether the MCRI obtained its signatures by racially targeted fraud, the intervention is essential if there is to be *any* party to these proceedings who represents that portion.

28. The proposed intervenors are thus entitled to intervene of right in this action.

29. Additionally, the proposed intervenors should be permitted to intervene under MCR 2.209(B), governing permissive intervention, in that their claims and defenses legally and factually overlap with the existing action and in that their participation will not delay or prejudice the adjudication of the rights of the existing parties.

Conclusion

For the above reasons, Operation King's Dream and the individual intervenors should all be permitted to intervene of right in this action pursuant to MCR 2.209(A) or, alternatively, should be granted permissive intervention pursuant to MCR 2.209(B).

In addition, the proposed intervenors request the opportunity for a hearing before the Motions Panel on the issue of intervention.

Respectfully submitted,
SCHEFF & WASHINGTON, P.C.
Attorneys for Proposed Intervening
Defendants/Respondents

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

Dated: August 24, 2005