



STATISTICAL INTRODUCTION

With over 17 months to collect data, and with the aid of the Michigan Civil Rights Commission (MCRC or Commission) conducting 4 government sponsored hearings, opponents of the Michigan Civil Rights Initiative (MCRI or Initiative) have failed to provide any evidence that would question the validity of the Michigan Civil Rights Initiative's worthiness to be on the November 2006 ballot. The evidence they have provided has been taken out of context and part of a campaign theme developed before a single signature was collected. In many cases, the evidence conflicts factually with other evidence or "exculpatory" (proof of innocence) has intentionally been hidden.

Here are the basic statistics

- On January 6, 2005, the Michigan Civil Rights Initiative submitted 508,202 signatures. To gain a position on the ballot, 317,757 signatures from registered Michigan voters were necessary. These signatures had to be collected in no more than a 180 consecutive days.
- Over a year after signatures were submitted and at least 18 months after people signed petitions, the Michigan Civil Rights Commission held hearings asking people to recall what they were told when approached to sign the Michigan Civil Rights Initiative (MCRI) petition.
- To knock MCRI from the ballot would require proof that more than 180,000 signatures were defective. Various media accounts have even BAMN's most exaggerated highest estimate at 125,000, a number that they have unscientifically estimated based on a presumption that people living in certain zip codes must be black, and with the racist presumption that no black person would sign the petition. Even with those assumptions, they do not meet the threshold.
- The Commission alleges that it collected 500-1000 "affidavits," none of which are notarized. Despite requests from individuals for copies of all "affidavits," the Commission has only provided the public with 75 of the affidavits to view.
- 197 people have "testified" at the 4 hearings, of which at least 46 of them do not show up as people who signed the Michigan Civil Rights Initiative petition.
- Of the 197 people who testified, twelve (12) names appear to be members of the opposition group By Any Means Necessary (BAMN) and a few are State Representatives, Mayors, and other officials with political motivation.

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Exhibit A – Michigan Civil Rights Commission press release and resolution opposing the Michigan Civil Rights Initiative. Released January 11, 2004.

Exhibit B – Documents that outline the rebuttal that MCRI put together for the Board of Canvassers.

Exhibit B1 is a summary of the rebuttal.

Exhibit B2 is a notarized affidavit from a petition signer that was later lied to by BAMN.

Exhibit B3a is a document that BAMN followed MCRI petitioners with and passed out to potential signers.

Exhibit B3b is a printout from the BAMN website that asked people to report petitioning activity so that they could send ground crews out to harass and intimidate circulators and potential signers.

Exhibit C – Official documents released from the Secretary of State and the Attorney General regarding the MCRI signatures.

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Exhibit F – MIRS article from January 6, 2005.

TIMELINE OF EVENTS OUTSIDE OF COMMISSION HEARINGS

BAMN HAD MULTIPLE OPPORTUNITIES TO AIR THEIR ALLEGATIONS.

February 12, 2002

BAMN announces that when they say “By any means necessary, we mean it.” And that they indeed will use whatever means, legal or otherwise, are necessary to further their cause. Luke Massie, BAMN and Operation King’s dream co-chair is quoted in an article that BAMN counterfeited documents. Massie stated, “There’s not a lot of case law on counterfeiting federal court tickets ... When we say by any means necessary we mean it.” See Exhibit D1.

June 23, 2003

Grutter v. Bollinger et al, and *Gratz v. Bollinger et al*, decided by the US Supreme Court. The split decision encourages states to find alternatives.

July 8, 2003

Ward Connerly, Jennifer Gratz, Barbara Grutter, and others announce their general intent to form the Michigan Civil Rights Initiative.

January 11, 2004

Note this date is prior to any petitions being circulated or signatures being collected for the Michigan Civil Rights Initiative (MCRI).

Michigan Civil Rights Commissioner (MCRC) Mark Bernstein states in a press release, now on his law firms private website, “The Michigan Civil Rights Initiative is a shameful attempt to confuse and manipulate unsuspecting voters...”

Michigan Civil Rights Commission adopts a resolution opposing the Michigan Civil Rights Initiative.

Some statements of interest in the resolution:

“Whereas, the Michigan Civil Rights Initiative is...in fact, opposed by the Michigan Civil Rights Commission...”

“...The Michigan Civil Rights Initiative represents an attempt to mislead Michigan voters regarding the issue of discrimination and state entities...”

See Exhibit A.

January 12, 2004

The Michigan Civil Rights Initiative announces that it would begin collecting signatures for the 2004 ballot, at a press conference in Farmington Hills, MI. MCRI’s opposition vowed to follow circulators to make sure that signers knew their side of the story as well as to file litigation to keep MCRI off the ballot. See Exhibits B3a-B3b.

January 26, 2004

Opponents of MCRI sue claiming that the very presence of petitioners on this issue created a “hostile environment” warranting a governmental denial of petitioners First Amendment right to even be on the street. (Henry et al v. Michigan Civil Rights Initiative).

February 5, 2004

BAMN files suit against the Board of State Canvassers for approving the Michigan Civil Rights petition as to form, citing six technical legal issues. One United Michigan, then Citizens for a United Michigan, later joins the case as a plaintiff.

March 25, 2004

Circuit Court Judge Manderfield sides with BAMN on one technical issue and with MCRI on the remainder.

March 30, 2004

MCRI appeals Judge Manderfield’s decision.

March 26, 2004

Judge Susan Borman throws out the January 26th complaint, saying that there is no precedent in the history of the nation that would allow her to take the requested action. (Henry v. Michigan Civil Rights Initiative).

June 11, 2004

Court of Appeals overturns Manderfield’s decision and deems BAMN and One United Michigan’s arguments “meritless”. It rules that the language printed on the petition was plain and complied with Michigan law.

June 30, 2004

One United Michigan appeals ruling to Michigan Supreme Court.

July 22, 2004

BAMN appeals court of appeals ruling to the Michigan Supreme Court.

July 6, 2004

MCRI begins circulating petitions for the 2006 election cycle.

December 27, 2004

Supreme Court upholds Court of Appeals ruling in BAMN vs. Board of State Canvassers.

January 6, 2005

Michigan Civil Rights Initiative submits 508,202 signatures to be reviewed, certified, and placed on the November 2006 ballot. Dave Waymire, spokesperson for One United Michigan makes a scene at MCRI's press conference claiming that MCRI circulators were told the petition was "against affirmative action". Waymire's theatrics included holding up a sign he claimed was used by circulators (See Exhibit F).

March 7, 2005

Board of Canvassers sets challenge deadline. BAMN requests more time than policy dictated. Despite this delay, the deadline was set at 2 weeks, like every other initiative before it.

April 4, 2005

Following standard Board of Canvasser policy, the Secretary of State draws a random 500 signature sample to determine validity. BAMN announces that they will be challenging the signatures.

April 18, 2005

BAMN files their challenge with the SOS.

July 12, 2005

MCRI files a detailed response to BAMN's challenge, refuting every single challenge and provide data for every single signature in the sample. See MCRI Report and Exhibit B.

July 13, 2005

Secretary of State releases staff report on MCRI's sample signatures - the report states that 90% of MCRI's signatures are valid.

July 15, 2005

AG releases opinion on misrepresentation issues, noting that only a court would have jurisdiction over alleged fraud and that the Board of Canvassers did not. BAMN never avails itself of a court challenge on the question of fraud, preferring to drag the process out as long as possible.

July 19, 2005

Board of Canvassers meets, multiple motions are made -- some to investigate the signatures, some to outright reject the signatures, and some to certify the signatures -- no motion passes. Board is deadlocked. Chairman of the Michigan Democratic Party is videotaped giving orders to both Democratic Canvassers.

August 2, 2005

MCRI sues the Board of Canvassers to meet its statutory obligation to certify the petition.

August 23, 2005

The "In the Hood Research" organization files to intervene. AG files response to lawsuit, noting that the Board of Canvassers was seeking "clarification" as to its duties.

August 24, 2005

BAMN files motion to intervene. MCRI does not object to this motion, giving BAMN a full opportunity to make its arguments.

MCRI waits roughly two months while briefs are exchanged. As the briefing process concluded, MCRI files a motion for immediate consideration.

October 31, 2005

The Court of Appeals rules ordering the Board of Canvassers to certify the Michigan Civil Rights Initiative for the 2006 ballot. BAMN briefs prior to this had alleged fraud. The Court dismisses those arguments.

November 4, 2005

"In the Hood Research" files a motion for reconsideration.

November 4, 2005

MCRI receives notice that the Board of Canvassers will meet on Nov. 22nd to consider the certification of signatures.

November 18, 2005

MCRI receives notice that the Board of Canvassers meeting has been cancelled due to a lack of a quorum. Both Democrats on the board, at the last minute, said they could not attend the meeting. Board meeting is rescheduled for December 7, 2005.

November 21, 2005

BAMN files a motion for reconsideration, which, by court rules, allows the Board of Canvassers to wait until the motion is dispensed with before complying with order.

December 2, 2005

MCRI is removed from the board of canvassers agenda, citing the motion for reconsideration.

December 3, 2005

MCRI files motion for immediate consideration of the motion for reconsideration and a motion for ruling to take immediate effect.

December 5, 2005

“In the Hood Research” files motions to strike and stay.

December 6, 2005

BAMN files motion and brief responding to MCRI’s December 5 motion.

Following Canvassers meeting with other business on December 7, 2005

Court issues an order directing the Board of Canvassers to approve the MCRI signatures “forthwith” and that their ruling has immediate effect.

December 7, 2005

In the Hood Research” files separate claim (put on new docket) of reconsideration.

December 12, 2005

”In the Hood Research” files a motion with the court

December 14, 2005

All 4 members of the Canvassers show up for meeting despite rumors of car trouble and other issues. BAMN co-chairs Shanta Driver and Luke Massie are captured on camera as they initiate and lead a 20 minute outburst of chanting that prevents the Board of Canvassers from hearing themselves or testimony. The outburst erupts into a melee as two hundred BAMN members surge toward the Board itself, flipping over a table, standing on chairs, and threatening the safety of the Court Reporter. The Canvassers adjourned for lunch, reconvene an hour later with security in place, and begin testimony. Just as the Canvassers called for a vote, BAMN members again attempted to shout down the meeting. Audio and video evidence shows the Canvassers huddled, and one Democrat is recorded as voting no and the other is recorded as abstaining. The Board fails to follow the court order.

December 15, 2005

MCRI files motion to hold board members in contempt and to direct the action of the Board.

December 19, 2005

BAMN responds to MCRI's contempt motion.

December 20, 2005

Court releases its motion to begin contempt proceedings and rules MCRI onto ballot, directing the Secretary of State to take proper measures to place MCRI on the ballot.

December 22, 2005

Court orders Board of Canvassers to approve language by January 20, 2006.

December 29, 2005

BAMN files yet another motion for reconsideration.

January 4, 2006

BAMN’s motion for reconsideration denied.

January 4, 2006

MCRI, OUM, BAMN and one other unknown party meet with Chris Thomas, Brad Whitman, an AG rep, and an SOS rep regarding language.

January 6, 2006

SOS releases proposed ballot language.

January 13, 2006

MCRI receives notice that the Board of Canvassers will meet on January 20th

January 18, 2006

BAMN and “In the Hood Research” each file appeals to the Supreme Court.

January 18, 2006

Court of Appeals denies “In the Hood Research’s” separate claims and sanctions the “In the Hood Research” attorneys for abuse of process.

January 20, 2006

Board of Canvassers meets and approves ballot language.

January 20, 2006

In the Hood files motion with the SC to stay the Court of Appeals ruling.

February 2, 2006

Appeals Court strikes “In the Hood Research” third motion for reconsideration.

February 13, 2006

“In the Hood Research” files a miscellaneous motion with the Supreme Court, its purpose not fully ascertained.

February 13, 2006

MCRI files a response in opposition to the motions appealing to the Supreme Court.

February 22, 2006

AG files a response in opposition to the SC appeal.

February 27, 2006

The ACLU of Michigan files an amicus brief with the Supreme Court supporting BAMN. (Note: The ACLU contradicts former arguments they made during a 2004 case about a petition drive regarding the lottery in Washington DC)

February 28, 2006

A new lawsuit is filed (directly to the Supreme Court) involving MCRI signatures by Godfrey Dillard, Adams v. Board of Canvassers.

March 21, 2006

AG files brief opposing Dillard complaint.

March 21, 2006

AG files brief opposing Supreme Court application.

March 29, 2006

Supreme Court denies appeal.

March 30, 2006

Supreme Court dismisses Dillard complaint.

April 3, 2006

Court of Appeals sets contempt hearing date.

April 4, 2006

Dillard files motion for reconsideration.

April 11, 2006

In the Hood files motion objecting to contempt hearings.

April 18, 2006

BAMN files a motion for reconsideration.

June 22, 2006

BAMN files federal lawsuit.



**COUNTER-ANALYSIS OF THE HEARINGS AND REPORT
PRODUCED BY THE MICHIGAN CIVIL RIGHTS COMMISSION
VERSION II¹**

**SECTION I.
INTRODUCTION**

The Michigan Civil Rights Commission ("Commission" or "MCRC"), or at least some fraction thereof, has issued a widely publicized report about the Michigan Civil Rights Initiative ("MCRI") petition-gathering process.

The most significant political point about the Commission Report is that it is almost completely untrue and biased, and evidence from the Commission's own documents conclusively proves that the Commission misrepresented facts by misquoting, refusing to quote, and distorting evidence that a court would consider exculpatory (proof of innocence). Additionally, the issuance of this report, along with the techniques used by the Commission in its "investigation," raise serious ethical questions about the honesty and integrity of the report writers, misuse of governmental power, lack of due process and violations of the Commission's own rules, the First Amendment rights of circulators, and the Commission's "ultra vires" (beyond its authority) appropriation of judicial powers (violating separation of powers doctrine) when it acted beyond the scope of its Constitutionally and legislatively granted authority.

This report and analysis begins in reverse order, with the evidence that the Commission ignored that proves MCRI circulators told the truth. This evidence both disproves many of the Commission's specific allegations, and disproves its more general assertion that MCRI engaged in a "systematic and coordinated" practice of deception. It concludes with evidence that the Commission violated state and federal law and Constitutional practice.

**SECTION II.
THE COMMISSION'S MIND WAS MADE UP BEFORE IT HEARD EVEN A
SHRED OF EVIDENCE, PRIOR TO ANY SIGNATURES WERE COLLECTED**

On January 11, 2004 the Michigan Civil Rights Commission adopted a resolution opposing the Michigan Civil Rights Initiative and issued statements to the press from Commissioners on the issue (press release and resolution attached as Exhibit A).

¹ This report was compiled by a group of individuals with special recognition to Chetly Zarko of Zarko Research & Consulting (www.chetlyzarko.com). Please contact MCRI Campaign Manager Doug Tietz at 517-699-2582 for all media inquiries or comment.

Michigan Civil Rights Commissioner Mark Bernstein stated in a press release:
“The Michigan Civil Rights Initiative is a shameful attempt to confuse and manipulate unsuspecting voters...”

Michigan Civil Rights Commission adopts a resolution opposing the Michigan Civil Rights Initiative. Some statements of interest in the resolution: “Whereas, the Michigan Civil Rights Initiative is...in fact, opposed by the Michigan Civil Rights Commission...”

“...The Michigan Civil Rights Initiative represents an attempt to mislead Michigan voters regarding the issue of discrimination and state entities...”

These statements were made two years before the Commission began its current hearings and before even a single signature was collected. Bernstein’s language, “a shameful attempt to confuse and manipulate voters,” was written the day before MCRI announced the launch of its 2004 drive. Accusing someone of fraud before they have even had an opportunity to commit it is evidence of Commission bias and that the entire line of reasoning was set in place as a political strategy beforehand and not based on actual facts.

SECTION III.

THE COMMISSION WILLFULLY IGNORED TESTIMONY, AND TOOK OTHER TESTIMONY OUT-OF-CONTEXT, WHICH PROVES THAT MCRI CIRCULATOR REPRESENTATIONS WERE TRUTHFUL AND THAT A “SYSTEMATIC” DECEPTION WAS IMPOSSIBLE.

The Commission claims to have entered between 500 and 1000 pages of “affidavits” (although not legally sufficient to meet that term) and four transcripts of dozens of individuals’ testimonies. As of this writing, the Commission has not made available (pursuant to FOIA and the Michigan Constitution) most of the affidavits, but evidence of testimony from the transcripts proves that in many cases MCRI circulators told the truth under even the Commission’s strained interpretation of that word. The fact that so many individuals testified in ways that demonstrate the integrity of circulators disproves the central thesis of the Commission’s report – that is, MCRI officials did not engage in the alleged “systematic” and “targeted” fraud. The intentionally ignored evidence itself proves this to be impossible.

Please consider the following individual testimonies. Note that while each of these individuals clearly opposes MCRI, his or her factual testimony still clearly suggests that no fraud occurred.

B. ANALYSIS OF THE DETROIT AND FLINT HEARINGS:

1. The Exculpatory Testimony of Mayor Woodrow Stanley:

Here is the grossly distorted context the Commission’s final report in June gives to Mayor’s (of Flint) Stanley’s testimony (Page 8, Commission Report):

The MCRC heard repeated testimony that petition circulators represented the proposed Constitutional amendment for which they were soliciting signatures as being “in support of affirmative action” and civil rights. As former Flint Mayor Woodrow Stanley stated, “I don’t remember the exact words, but I know the pitch was not, ‘Do you want to sign a petition to get rid

of affirmative action?' That is not what was said on any of the three occasions when I had an opportunity to encounter circulators."

And while other quotes are footnoted to the page number of the hearing transcripts, Mayor Stanley's quote is left without footnotes. Here is the left-out-of-the-report testimony, which probably explains the lack of a footnote:

MR. STANLEY: Mr. Chairman, as I recall – and again, I cannot recall verbatim what their pitch was. But clearly the pitch was that this was an effort to support affirmative action. *Clearly, you know, that was what the pitch was. And I don't remember the exact words, but I know the pitch was not, "Do you want to sign a petition to get rid of affirmative action?"* That is not what was said on either [sic] of the three occasions when I had an opportunity to encounter circulators. [Emphasis added] Flint Hearing Transcript, February 8, 2006, Page 12.

First, he doesn't remember "verbatim" the "pitch," so it can't be said his testimony proves deception of any kind. Second, if a circulator did not say the petition was "to get rid of affirmative action," it does not follow that he/she was somehow "implying" that the petition supported affirmative action. To hold petitioners to a standard that they must say exactly what the opposition wants them to say would be unreasonable. But Mr. Stanley's testimony contains the fully sprouted seeds of exculpatory evidence on the next page.

MR. STANLEY: I think it's quite common because they were -- on the occasions where I encountered them, they were at places where there were a lot of folks; at the supermarket, very busy supermarket two occasions, and at an outdoor concert or something where there were a lot of folks. And, Mr. Chairman, and members of the commission, the one thing that I know from just years of circulating various proposals and my own petitions and so forth, I know this: People sign any and everything without contemplating, without considering. A lot of times they sign as a sort of a, well this will get them away from me so I'll just sign this. *And I just -- because when I didn't sign, he would walk over to someone else, and halfway through his pitch, they were signing.* [Emphasis added] Flint Hearing Transcript, February 8, 2006, Page 13.

He witnessed people signing without reading or contemplating, but he did not witness circulator misrepresentations. His years of petitioning "experience" is that people sign petitions "just to get away" from the petitioner, or for other personal, non-political reasons (maybe they like the smile of the petitioner). While these are very unfortunate reasons to sign a petition, they do not imply petitioner misconduct and are legal signatures. None of this human tendency has anything to do with race --- whites and blacks may engage in this type of signing behavior – and in the experience of Mr. Stanley they do. Mayor Stanley's testimony is very strong evidence that the MCRI petition circulation was generally without wrong-doing, and conclusive evidence that the particular unidentified circulator he witnessed was without wrong-doing. The Commission has demonstrated its utter bias and abused its public trust here in not including the full context of the Mayor's testimony.

2. The Prejudice of a Signer: The story of Kathilaine Butler.

The story of Kathilaine (Kathleen) Butler actually provides powerful evidence for the dishonesty of the Commission's report writers, and equally powerful evidence for truthful circulator conduct. Butler admits that her signature was her own error and prejudice is in

assuming all black people hold a particular opinion, but the Commission again chooses only its favorite line. Here is the Commission's brutally deceptive choice of quotes:

Ms. Kathleen Butler stated that when she asked the circulator if this petition was for affirmative action, the circulator answered "Yes." She stated, "I'm very upset that I was duped into signing this petition. I feel like I was lied to, deliberately lied to. I never, ever would sign a petition like this." Commission Final Report, Page 8.

Here's the intentionally-forgotten beginning of Ms. Butler's testimony:

MS. BUTLER: Okay. I was approached at the Kroger store near my house in Ann Arbor, Michigan. I'm not exactly sure when this was. It was a few months ago at least. It was a black person that approached me. It's very busy in front of this Kroger store. And they said they were from the Civil Rights Initiative, and it was something about affirmative action. And because I am definitely for affirmative action, I probably filled in for that person and said, "Oh, is this a petition to keep affirmative action?" And they probably said yes. I don't remember exactly the wording that was involved. But I signed it. I would say I probably signed it and didn't read it because the person was black. *I actually believed that because the person was black, they couldn't possibly be not for affirmative action. And that's my mistake.* Court Reporter Transcript, Flint Hearing, February 8, 2006, Page 16.

Certainly holding a black circulator responsible for criminal fraud because his skin is black and a (white) signer made an assumption about the petition based on his color would be absurd. This evidence is again proof that there was no wrong-doing on the part of the circulator. The fact that the Commission intentionally omits Butler's relevant factual testimony from their report and only includes her conclusions of emotion shows that the Commission willfully looked for only a certain type of testimony and ignored other types. This is evidence that the Commission abused the public trust when writing its report.

3. The inconvenient and completely ignored story of public policy graduate student Elizabeth Jordan.

Next, a young public policy graduate student, Elizabeth Jordan, testified. Her testimony is again, remarkable proof of reasonable circulator conduct, even within BAMN's definitions. The Commission **dismisses and avoids** this exculpatory testimony by not including it in their report at all. Ms. Jordan's testimony is additionally unusual in that she testifies consistently to two different potential signing events over two weeks, showing a pattern of honest and reasonable circulation.

MS. JORDAN: Thank you. I was approached twice for my signature over the last summer within about a two or three week period. The first time it happened was just outside the Value City in Flint. And it was two young white women who approached me. And they asked me -- I can't remember their exact words, but it was essentially, you know, "Are you in favor of civil rights?" And I said, "Well, yeah." And they said, "Well, then would you like to sign this petition?" And I said, "What's this about?" And they said, "Well, are you in favor of making entry into college equal?" And of course I am in favor of that. But I think I had heard a report on the radio some weeks prior stating that there was going to be this petition drive coming to Michigan. And so it kind of tickled the back of my mind. And before I signed I said, "Oh, is this about affirmative action?" They never used the term

"affirmative action." But when I asked that and I asked, "Is this against affirmative action," she said, "Well, yeah." [Emphasis Added] Flint Hearing Transcript, February 8, 2006.

Ms. Jordan has testified here that the circulators met even BAMN's interpretation of the meaning of the amorphous term "affirmative action." This is when she took action and lobbied the store owner to expel the circulators. She then testified exactly the same thing happened two weeks later.

Significantly, one Commissioner, a co-signer of the personal letter to the Michigan Supreme Court, realized that this wasn't fraud when he asked Ms. Jordan:

MR. ABDRAHBOH: What would be, I guess, the misleading part or the fraudulent part of it if you asked them how this relates to affirmative action and they told you? How were you –

Ms. Jordan explained why she felt emotionally defrauded, but she was still honest enough to give an accurate rendition of facts. Those inconvenient facts prove reasonable circulator conduct on two separate occasions – which is why the Commission did not include her testimony in its final report. A pattern of ignored "inconvenient" facts demonstrates that the MCRI could not have "coordinated" a vast conspiracy (which would have encompassed thousands of circulators), as the Commission baldly alleges. The Commission violated its trust with the people of Michigan when it did presented only selective evidence, only evidence which supports its "finding," ignoring evidence that encourages another conclusion. This has betrayed the public's reasonable assumption of trust that the Commission will engage in fair investigations.

4. The Completely Unreported Testimony of Circulator Sally Horton.

Perhaps the most remarkable case of the Commission's being displeased with the outcome of testimony is found in the case of a circulator who testified that she understood the petition perfectly. The Commission actually goes through a convoluted process of trying to lead the witness. Her testimony conclusively proves that circulator conduct was reasonable and without wrong-doing. Her testimony never made it into the final Commission report. January 11, 2006, Detroit Hearing Transcript, Page 26-28.

MR. BERNSTEIN: Were you aware or -- did you approach people -- when you approached people to obtain their signature, when you went up to somebody walking into a grocery store or a drug store, what would you say to them?

MS. HORTON: I thought it was actually against affirmative action. So that's basically what I told the people.

MR. SCOTT: You thought it was against affirmative action, to end affirmative action, or you thought it was for affirmative action? I'm asking you. You've got to answer for yourself. What did you think? You can't answer for her.

MR. MAYS [Sitting with the witness]: Discrimination and affirmative --

MR. SCOTT: I'm asking her.

MR. MAYS: -- action are still being cleared up, that's why I'm --

MR. SCOTT: I'm asking her though. You can't answer for her.

MS. HORTON: That's what I'm saying. I don't understand the word "affirmative action." That's why I have to ask Eric.

MR. SCOTT: I'm sorry?

MS. HORTON: I have to ask him because I didn't understand the word against -- or whether it was

against or -- I wouldn't be against my own, you know --
MR. SCOTT: Well, that's what I was asking. What did you understand? Did you understand it to be against or for affirmative -- what did you understand at the time that you received the petition?
MS. HORTON: I don't know.
MR. BERNSTEIN: And it's okay if you didn't understand. Was it unclear?
MS. HORTON: I didn't understand it; right. And I still don't understand it.
MR. BERNSTEIN: Okay. Okay.
MR. SCOTT: Are you personally for or against affirmative action?
MS. HORTON: (No verbal response)

This sequence represents an appalling abuse of "leading" techniques by the Commission. The chain is so blatant that the Commission didn't want to draw attention to it in the final report. Nonetheless, this still proves that Ms. Horton's first understanding was completely consistent with a properly trained circulator.

5. The unreported testimony of extremely honest circulator.

In perhaps the most clear-cut example of truthful circulating, Ray Lord, Genesee County resident, stated:

First, let me say that I was approached by a person with a petition. To be honest, she really didn't try to mislead me because we really didn't get that far into it. You see, I have this thing about people who circulate petitions and get paid for it. And I always question them on it. I feel that it's not illegal, but it's unethical. I think they should feel the cause in order to be involved like that or at least explain it. But anyway, I questioned her. I said, "Are you being paid?" And then I asked her how much, and she got a little antsy. And she was missing some more people. It was lunch time at the courthouse down at the City of Flint. So she kind of let me go, and she went to the other people. Flint Hearing Transcript, February 8, 2006, Page 95-6.

Here, the petitioner was so honest that she admitted she to being paid, a statement that obviously was against her self-interest. The Commission's failure to include proof of this kind of honest conduct by circulators represents an abuse of public trust.

6. The unreported testimony of Antoine Edson and many others.

In the Flint Hearing Transcript (Page 74 et. seq.), Antoine Edson, an African American male, described his experience leaving his weekly bowling league. Two college-aged white women using the phrase "discrimination" and "equal access to college education" approached his group. While he continued on to his car to deposit his bowling ball, others signed, whom he alleges were so drunk that they did not have the legal capacity to sign (although he made no mention of taking car keys or calling the police to prevent these drunk signing bowlers from driving home). Upon getting to his car, he realized something was wrong about the words being used, so he returned to the women and asked if it was "against affirmative action." The woman who responded said, "YES." Edson describes how a near brawl almost broke out, but his testimony, again deleted from the Commission's final report, proves that the circulators were engaged in reasonable and honest presentation. The testimony of many others was similarly ignored by the Commission, but it would take volumes more to illustrate them.

B. ANALYSIS OF THE GRAND RAPIDS HEARING “AFFIDAVITS” AND BAMN ADMITTING TO WRITING AFFIDAVITS FOR WITNESSES.

The only affidavits made public by the Commission, following a Freedom of Information Act request by an MCRI supporter, are those collected in Grand Rapids, because they were created in an electronically scanned format.² These affidavits share a remarkable consistency – a short examination of the entirety reveals that they were created using several “forms” provided by BAMN. The scanned version even contains “blank forms” that weren’t filled out, proving that the testimony given was not in the “original words” of the person allegedly signing the affidavit. The affidavits do not meet the requirements of the Michigan judicial process – they are not notarized and they contain only general allegations of opinion rather than specific factual information. All of them allege a variation on a conclusion of opinion – that because the signer is a “supporter” of “affirmative action,” he or she would never have “knowingly signed” the MCRI petition. Since the affidavits are all exactly the same, written by BAMN, they lack credibility despite the Commission’s wholesale acceptance of the submissions, many of which were simply given over to the Commission by members of BAMN (which is hearsay).

In the Flint hearing, BAMN member Monica Smith, revealed that the affidavits she submitted that day were written by BAMN, and that there were actually a few new “affidavits” which she would turn in later because a few motivated people were “actually writing their own out.”³

C. ANALYSIS OF GRAND RAPIDS HEARING

1. Minimum Wage Petition References Appear for the First Time in May 2006 Testimony.

In the Grand Rapids hearing, there are seven references to the minimum wage petition. MCRI notes that the minimum wage petition circulated this year after the Detroit and Flint hearings, not during the time that MCRI circulated in late 2004 and the first week of 2005. Furthermore, since the minimum wage petition was not circulated until after the Flint Hearing, which contains no reference to minimum wage, and since it is much easier to remember things earlier this year than to remember things a full 18 months to 2 years ago, MCRI argues that these well-meaning persons may have mistaken the timing of the petition they may have signed. They very well may have been approached by a bona fide minimum wage circulator! Indeed, the lack of reference to the minimum wage in earlier hearings and reference to it only after it hit the street is compelling evidence that memory and current events played exactly this role.

Jerilyn Riley is an example the several different mentions of the minimum wage petition.

² Available at http://www.chetlyzarko.com/MDRC-docs/MDRC_GR_Hearing_6-22-2006_Affidavits1.pdf
http://www.chetlyzarko.com/MDRC-docs/MDRC_GR_Hearing_6-22-2006_Affidavits2.pdf
<http://www.chetlyzarko.com/MDRC-docs/mdrc-master.html>

³ Court Reporter Transcript, Flint Hearing, February 8, 2006, Page 111.

MS RILEY: And so when I was approached about this affirmative action support as well as minimum wage, I incorporated other people. Grand Rapids Hearing Transcript, May 22, 2006, Page 46.

BAMN was also circulating an anti-MCRI “support of affirmative action” petition during the 2006 Commission hearings, which is exactly when the minimum wage petition was being circulated. Indeed, the minimum wage petition was circulated largely by groups and individuals that would support BAMN, and it wouldn't be surprising if BAMN members “piggy-backed” the two petitions. Simply put, there isn't sufficient evidence in this statement to determine whether Ms. Riley even signed an MCRI petition in 2004. The coincidence and memory problems also easily explain this.

2. Extraordinary use of a radio talk show to generate and lead witnesses.

MCRI also notes the rather extraordinary method the Commission and BAMN used to create community fervor over the issue. By sworn testimony, there was no interest or outrage until BAMN and the Commission provided a list of names to be read aloud over a popular local radio station. After this public “shaming” suddenly there were people lining up to be outraged. Using a radio station to broadcast names is an extreme way to “lead witnesses.” MCRI also questions the source of the names announced publicly, since several testified that they never signed the MCRI petition. Here is evidence of Mr. Womack's use of the radio:

MR. WOMACK: Basically I'm here today to speak on behalf of the community of Grand Rapids, Michigan. We do a radio show on WJNZ 1140 AM, the Pulse of the City. A week out into this meeting we felt there was no community support of this meeting or the knowledge wasn't out there. So what we begin to do is we invited BAMN in, and we spoke about the issue. Two days later we felt that some awareness was there, but it was not to the seriousness of this issue. So I read off the names of all of our listeners that I knew would not sign that petition. And one by one they started to call in. Grand Rapids Hearing, Page 8, May 22, 2006.

First, note the underlying “knowledge wasn't out there.” This is at least an indication that BAMN determined they couldn't prove enough fraud in Grand Rapids, so they simply advertised and used the radio to generate witnesses. This method is not “investigation.” Mr. Womack's “public shaming” technique is intimidating to say the least. Announcing names on the radio and posting them on websites is a perfect example of “leading witnesses” and tainting a pool of witnesses.

3. BAMN Volunteer Admits to “Many” Signing Understanding that it was “anti-affirmative action.”

Ms. Schwartz is typical of a BAMN volunteer. In an attempt to obscure the fact that many people knew exactly what they were signing, she throws out sweeping generalizations and injects her opinion as to what the folks she spoke to were thinking according to her definitions. Nonetheless, her testimony provides powerful data that at least 85% of signers “did knowingly sign an anti-affirmative action petition” in her own words.

MS SCHWARZ: I've been a volunteer with BAMN and Operation King's Dream to call residents in Mt. Pleasant, where I live, who signed the petition. And I've spoken, oh, my guess is to about 40 people. Mt. Pleasant is a mostly white area. And as far as I know, everyone I've spoken to has been right. And a lot of those people did knowingly sign an anti-affirmative action petition. But my rough guess, without having gone through and counted numbers, is as many people as I spoke to who knew what they were signing did not know what they were signing and do not believe that they would have knowingly signed the MCRI if they had known it was to ban affirmative action. And all the people I talked to and that I have sent affidavits to for them to complete, they weren't able to be here, and so I wanted to say something about the responses that I've gotten. And very few people I talked to actually remembered signing the petition themselves. The first person I spoke to who did, though, she remembered that she was standing in line to see Michael Moore speak when he came to CMU in October of 2004, I believe it was. And what I found interesting about this was I was there that time as a volunteer getting people to sign things, too, and getting people registered to vote, because I expected it to be a certain type of crowd to see Michael Moore. And the circulators there also expected that. And the people -- the woman that I talked to that was approached there was approached and told that she was signing something to support affirmative action. And like I said, most people I talked to didn't remember the circumstances and just generally thought that, you know -- believed that no way would they have knowingly signed to ban affirmative action. But also besides that that didn't remember, they didn't believe that they had ever signed any petition at all. And I talked to my guess is of the 40 people maybe like 6 or 7 people who just would not believe me that they had signed a petition. Grand Rapids Hearing Transcript, May 22, 2006. Pages 27-28.

Note the underscored statements. First, she counts 40 conversations. Second, she forgets to count how many exactly “fraudulent” cases there were. Finally, she remembers that only 6-7 didn't remember signing. She admits that many remembered signing. With testimony like this, we know that “many” people knew what they signed with an understanding of the issue even in BAMN's terms, and we know that many people simply didn't remember. There is not a single case of demonstrated wrong-doing in this testimony – simply evidence that most people didn't remember things and many who did “knowingly sign(ed) an anti-affirmative action” petition, which is not surprising given the elapsed time.

6. The Impossible Story of something on the petition.

Ms. Holloway appears to have confused MCRI with something else. The words “affirmative action” *do not appear* anywhere on the MCRI petition.

MS. HOLLOWAY: He said do I want to sign a petition to support affirmative action. And I did try to read it quickly, because there was other people coming, and he was solicitating others as well. And I remember seeing "affirmative action," so I assumed it was legitimate. Grand Rapids Hearing Transcript, May 22, 2006. Page 43.

BAMN in fact did circulate an anti-MCRI petition using the words “affirmative action.” The evidence here suggests the witness may have confused the petitions.

7. The Story of BAMN Harrassment on the Phone.

Ms. Smith provides a window into the BAMN world of confusing and intimidating people. When the caller did not get the desired response and became rude, Ms. Smith hung up. She felt sufficiently threatened to come down to the Commission meeting to

profess innocence for whatever she may or may not have done. Such tactics are a travesty.

MS. SMITH: My name is Rosie Smith. And the reason I'm here is because someone called me Friday night and told me my name was on that ballot, on that paper. And I don't know how it got on there. If I signed it, I don't remember. But I'm here to -- I want it off. Because he went on a long time. Then when I went in the caller ID so I could see where it came from, but it was a 313 area code, the person that called. And he kept yapping. And he said, "I'm not getting anywhere with you, so I just hang up." Grand Rapids Hearing Transcript, May 22, 2006. Page 50.

Ms. Smith's story is a showcase example of the tactics BAMN used to elicit so-called evidence. There is no evidence here of circulator misconduct, but there is evidence of BAMN's misconduct in the "investigation."

6. Leading questions by Chairman Mark Bernstein lead to implausible answers.

The testimony of Edwina Cerbantes is yet another instance where it is reasonable to conclude she is remembering something from earlier this year. MCRI asks those reading the report to take note that during the vast majority of the time MCRI circulated there was no other petition on the street, so two clipboards would have been rare. For a few weeks, the "Dove petition" was circulating, but it is noteworthy that not one person remembers that petition. Again we question what lists these names were taken from.

MS. CERBANTES: My name is Edwina Cerbantes. And I was approached on Franklin Street and asked to sign a petition to increase minimum wage, and so I did. And then today I went online and discovered that my name was on this list. And I couldn't understand how it got there. And I would like to have it removed from this list.

MR. BERNSTEIN: Now, the person that approached you, did they represent the document as a minimum wage initiative?

MS. CERBANTES: Yes.

MR. BERNSTEIN: And did they have other clipboards with them, or was it just one clipboard?

MS. CERBANTES: No. He had another clipboard with him. He had two, actually. And he said, "I want you to sign this." And I was in a hurry, so I didn't really read it. And he said it was to increase minimum wage. And I said, "Well, what is minimum wage now?" And he said, "Like 5-something." I said, "Well, yeah, definitely I want to sign that," so I signed it. Grand Rapids Hearing Transcript, May 22, 2006. Page 51-54.

The underscored portions are examples of questions that courts would routinely reject as "leading questions." Mr. Bernstein provides testimony for her that will match other testimony he has heard. Had the Commission afforded MCRI a right to legal representation at the hearings, which is what would have happened in a court, and had the Commission followed the "Rules of Evidence," such questions would have been rejected. Had Bernstein done some simple research and realized that the minimum wage petition was so recent, he may have understood the frequent confusion among petitions. The danger of leading questions is that it will result in inaccurate, though well-intentioned, responses. In a court, where an alternative reasonable explanation for a set of facts is available, the rule is that the alternative explanation must be accepted unless it proven that the alleged action occurred. The sudden appearance of "minimum wage" signers in testimony only in the last hearings by the Commission and only after the minimum wage

petition was circulated, is most reasonably explained as truthful testimony that relates not to MCRI but to the more recent minimum wage petition which was circulated in February 2006, 13 months after MCRI.

Here's a final example of extreme and calculated leading by Bernstein. Until the very last sentence, the witness holds her ground on the facts, which prove to be exculpatory evidence that no wrong-doing was present in her case:

MS. CARDE: My name is on the list. My son told me that it was called over the radio. Other than that, I was at the rally yesterday and saw it was on there also. I do not remember signing anything against affirmative action. I would never do anything like that. Anybody who knows me know I'd never sign anything like that. I'm very much for civil rights, and I speak about it all the time. As a nurse, if it wasn't for the nursing shortage I know that chances are I probably wouldn't have a job. So I'm very much for affirmative action.

MR. BERNSTEIN: Now, how many petitions have you signed in the last two years, would you estimate? One, two, three?

MS. CARDE: In the last two years, maybe two.

MR. BERNSTEIN: Okay. And so do you recall anybody approaching you for another petition? Perhaps it was misrepresented to you as minimum wage, as we've heard from other people here this evening. Or how do you think that your name was found on that list?

MS. CARDE: I don't know. I don't remember anybody approaching me about affirmative action. I remember at the African American Festival last year there was someone that asked me sign a petition, and it was -- I just remember them saying it was something for -- it wasn't for or against something, but it was something just to give people the ability to make a decision, if they were agreed or disagreed with something. It wasn't anything specific as far as which way you wanted to vote on it, but just to give people a choice.

MR. SCOTT: Did you recall what the substance of it was? The choice for what?

MS. CARDE: It seems like it was about the gay marriage thing. That's what it seemed like it was about. But I'm not sure.

While Ms. Carde's final statement about the gay marriage petition seems like an indication of something awry, it should be noted she testifies to signing two petitions in the last two years. The "gay marriage" petition was circulated from spring 2004 to July 5, 2004 (qualifying for the 2004 ballot by meeting the July 5, 2004 deadline). MCRI was circulated from July 6, 2005 to January 6, 2005. A reasonable explanation is that she signed both petitions, given that she signed two. Notice Bernstein's highly leading "minimum wage" slant – the witness holds to "I don't know." There is no evidence of wrong-doing here by MCRI circulators, but there is evidence of abusive questioning, and plausible alternatives which are being ignored by the Commission.

D. ANALYSIS OF THE LANSING HEARING

1. The Enigmatic Testimony of the Unattended Petition

Debra Gomez indicates that someone called her to sign a petition and sign an "affidavit." Since BAMN called numerous signers and asked for affidavits, it would be plausible that she is recalling the conversation she had with a BAMN member to sign an "affidavit" rather than actually signing the petition.

MR. BERNSTEIN: So someone contacted you by telephone --

MS. DEBRA GOMEZ: Yeah.

MR. BERNSTEIN: -- and asked you to sign a petition that was -- and they indicated to you that it was in the lobby of your apartment complex?

MS. DEBRA GOMEZ: It was there, yeah. And some of -- it had signatures of some of the people here I live, so I thought it was okay to sign it.

MR. BERNSTEIN: And what did the person over the telephone say to you regarding the content of the petition?

MS. DEBRA GOMEZ: I can't remember now, but I did agree, and I signed an affidavit and everything like that that had to be signed.

Petitions only need to be signed in one place, and no affidavit is necessary for a signature. The fact that Ms. Gomez mentions signing an affidavit after receiving a phone call is convincing evidence that the phone call and the "petition" she signed were provided by BAMN. Ms. Gomez has probably made this error in confusion, but the confusion was not caused by MCRI. BAMN also circulated a non-binding anti-MCRI petition, which would generate additional confusion. More troubling is that BAMN would have left the petition in her housing complex lobby, indicating that it could have been a ploy to create this kind of story. The bottom line though is that Ms. Gomez doesn't remember exactly what was said, so this story doesn't prove very much.⁴ Had a fair investigation occurred, MCRI would have sought a copy of the affidavit and petition that was signed to examine it.

2. It was a Civil Rights Petition!

Mr. Shrewsbury, an attorney, claims that he signs many petitions, that he doesn't remember his experience signing the petition other than it was presented as a "civil rights petition." The initiative makes clear that civil rights belong to all people, which is certainly an opinion circulators would be entitled to present under the First Amendment.

MR. SHREWSBURY: ... I'm embarrassed to admit that I'm a lawyer from Plymouth. You would think that I would know better, but I generally -- I've signed a lot of petitions in my time, and I generally am in favor of signing petitions that will put an issue on the ballot because then that gives the entire voting population the opportunity to voice their opinion on them. Based on the comments that you just made, Mr. Chairman, I'm not sure I can enlighten you much on my experience with this particular one because I don't remember exactly where I signed it. But I do recall that it was presented to me as a civil rights initiative -- I probably shouldn't say "initiative" because that's the name of the group, but it was a civil rights petition, and I'm generally in favor of civil rights for everybody.

⁴ Version I of this report originally analyzed the Gomez story as a demonstration that Gomez read the petition of her own accord without petitioner interference. This is certainly true. She had access to only the words of the petition, which the Court of Appeals ruled as legal. But Version II adds additional context that the editor thought was appropriate after a full review of the testimony. That context, the signing of an "affidavit" simultaneous to the petition, suggests that Gomez never actually signed MCRI (ballot petitions are not accompanied by affidavits, but BAMN challenges and "counter-petitions" could have been). The Commission never investigated for any witness whether the witness' name actually appeared on the petitions even though the petitions are a publicly available record retained by the Secretary of State. MCRI believes Ms. Gomez's testimony is an accurate rendition of something, but it is not at all clear what that is.

Shrewsbury's testimony completely supports the MCRI position. MCRI is specifically about protection of civil rights for ALL. The Commission Final Report does not discuss Shrewsbury's testimony, an omission that demonstrates the bias of the Commission investigation.

3. Testimony from an impossible time frame, a nearly impossible location, and an admission of prejudice based on the circulator's skin color.

Shirley Schwartz makes the same mistake as seen in the Kathleen Butler testimony (Section III, B. of this report) when she admits that she assumed that because the circulator was black that the petition was for affirmative action.

MS. SCHWARTZ: There was an African-American lady circulating through the crowd asking if any of us would like to sign a petition for affirmative action. I took that to mean in favor of affirmative action. Lansing Hearing Transcript, May 8, 2006. Page 58-61.

Certainly it would be unfair to hold the African American circulator criminally responsible for the error of the signer in prejudging her skin color. Schwartz also states that she believes she signed in the spring. The petitions that were turned in were not circulated in the spring – they were circulated from July 2004 – Early January 2005.

MR. BERNSTEIN: And do you know the approximate time of year or maybe the date?

MS. SCHWARTZ: Oh, I'm not sure anymore of the date, but it was spring or something like that. The weather was decently warm. Lansing Hearing Transcript, May 8, 2006. Page 58-61.

MCRI was circulated in summer, fall, and winter 2004, and although this is not conclusive, it is suggestive that the petition she would be referring to would have been another petition. There is no evidence to suggest that Ms. Schwartz signed MCRI since the Commission did not investigate that matter, and given that BAMN was circulating an anti-MCRI petition in the spring of 2005, it is reasonable to conclude that it is possible she signed that petition. Other testimony elicited from more of Bernstein's "leading questions" determined that the petition was signed at a booth on the "Diag" of the University of Michigan campus. There was considerable BAMN harassment of U-M student volunteers for MCRI during the period in which the petitions were circulated, and it is implausible that dozens of people would be "duped" at the hub of the University of Michigan where scrutiny on MCRI circulation was at its peak. The location of this alleged fraud and how it went unnoticed for 18 months is incredible.

4. The case of a "cookie-cutter" and "hearsay" affidavit where the signer admits to not remembering anything specific and admits to impossible facts.

Joyce Schon (a BAMN member from California) read a statement from Lowell Zenobia Lamb. First, Ms. Lamb claimed that she signed the petition only a year ago – but the signatures were turned January 2005, more than a year ago. The time frame alleged therefore can not implicate MCRI. And then Ms. Lamb states that she was asked to sign a "casino petition" at the same time – but the casino petition was completed before MCRI began collecting signatures (the casino petition was also circulated more than two years ago). And then she goes on to say that she doesn't remember what was said.

MS. SCHON: This one from Lowella Zenobia Lamb, this is a Lansing resident who says: "A year ago at the post office in East Lansing a white woman approached me and asked me to sign this petition. I remember because she asked me to sign a casino petition at the same time. I am for affirmative action because I remember when it started. I was a secretary in human services. I helped a lot of students go to college. I have children, grandchildren and great grandchildren. I would never harm their future opportunities." She was really mad when I talked to her on the phone.

Here's another Lansing --

MR. BERNSTEIN: If I may interrupt you, did she indicate to you that she had been misled in terms of signing the petition?

MS. SCHON: Oh, absolutely. I mean, she says here, "I would never knowingly sign a petition to end affirmative action. The only way I could have signed is if I had been misled." She didn't remember exactly what the circulator said to her.

MR. BERNSTEIN: And when she said, "misled," did she say "misled," or did she infer being misled in one of two ways or both in terms of the conduct of the circulator and/or the content or the drafting of the text?

MS. SCHON: She said the circulator misrepresented it.

MR. BERNSTEIN: In what way?

MS. SCHON: I don't know because she didn't -- she didn't remember, but --

MR. BERNSTEIN: But we have a signed -- we have an affidavit with her name on it?

MS. SCHON: We do. We do.

MR. CALILLE: Does the affidavit include anything more specific with regard to the nature of the misrepresentation?

MS. SCHON: No.

Lansing Hearing Transcript, May 8, 2006. Page 65-66.

The Commission Final Report, Page 10, takes Ms. Schon's testimony out-of-context.

Joyce Schon presented 31 affidavits from voters to the commission. She stated that these individuals saw their names on a website that identified MCRI petition signers. These people were visibly upset to discover that they had signed something that could lead to the end of affirmative action. All explained how the ballot language was misrepresented to them by the circulator.

This is simply not true. The Commission's conclusion is betrayed by "But we have a signed – we have an affidavit with her name on it?" It appears that Mr. Bernstein's only test of guilt is that "we have an affidavit with her name on it."

5. Calculated testimony of an employee of Michigan United

Mary Pollack, a member of MCRI's opposition, claims that she was approached with 2 petitions, one for MCRI and the other for "gambling." The "gambling petition" was not being circulated at the same time as MCRI. And she goes on to state that the evidence that's been provided is all hearsay and would not be admissible in a court of law.

MS POLLACK: My name again is Mary Pollack. And I am the coordinator of Lansing Area United, which is the regional organization of Michigan United. I'm also representing the Michigan chapter of the National Organization for Women on a group called Michigan Women United. I was approached at the Lansing Collins Road Post Office to sign one of these petitions by a young man who was asking me to sign two petitions. And I think the other one was about gambling or something like that. I declined to sign. When BAMN filed their challenge, I went over to the Bureau of Elections and read through the lengthy document, and I hope that you have a copy of that document. Though not always the kind of evidence one would like to see in a court of law ...

It's not direct evidence that one would like to have in a court of law, but you could use that to follow up. Lansing Hearing Transcript, May 8, 2006. Page 58-61. Lengthy testimony is ellipsed.

She “declined to sign,” a slogan of both opposition groups in 2004 when it was fairly communicating its opposition position to the public. She “hopes” the Commission had a copy of the BAMN challenge. The Commission never included the copy of Bureau of Elections documents (See below. Section IV. A-C). Also, she never at any time says that the “young man who was asking” her to sign “two petitions” was circulating MCRI or said anything about affirmative action. The testimony was carefully calculated to say nothing. Pollack’s testimony did not make the Commission Final Report.

6. The rational testimony of Dr. William B. Allen, former Commissioner to the United States Commission on Civil Rights, and evidence of BAMN suborning perjury.

Dr. Allen’s testimony is very telling (Exhibit E, Allen’s letter to the Attorney General). BAMN members encouraged people to come testify even if they hadn’t signed the MCRI petition. Dr. Allen’s testimony is evidence BAMN was willing to “suborn perjury” – certainly reprehensible, but definitely part of “any means necessary.”

What particularly struck me was that the representative of BAMN not only told us to come and share our particular experiences if we signed the petition, but also urged us to come and speak even if we weren't sure we had signed it because, after all, it was always possible we might have signed it and had forgotten, but that we should just come and testify anyway.

The Commission Final Report, Page 10, relegates Dr. Allen’s testimony to this single, out-of-context, sentence.

Michigan State University Professor William Allen, the only MCRI supporter to testify at any of the four hearings, testified that he found the petition to be clearly understandable and not misleading.

The Commission completely ignores Dr. Allen’s testimony of how BAMN approached people at a church he was speaking at. The Commission does not cite Dr. Allen’s credentials. Dr. Allen, an accomplished African American scholar, was a Commissioner on the United States Commission on Civil Rights, a body similar to Michigan’s Commission but vested with federal anti-discrimination investigation duties.

SECTION IV.

THE COMMISSION WILLFULLY IGNORED HUNDREDS OF PAGES OF TESTIMONY AND DOCUMENTATION THAT WAS PROVIDED BY MCRI TO PUBLIC BODIES PREDATING THE COMMISSION INVESTIGATION.

A. OVERVIEW. COMMISSION IGNORED THE RECORD OF 2005.

The Commission alleges in its report that MCRI “failed to comply” with its unlawful (see later sections) requests for records in May 2006, and that this made it impossible for the Commission to render a fair judgment. However, as an investigatory body, the

Commission at least had an ethical obligation to examine the public record already compiled on signature gathering. It did not mention a single document from MCRI during that period, nor did it address any of MCRI's hundreds of pages of responses. To completely fail to address the record that MCRI did create was an abuse of public trust and demonstrates the bias the Commission exhibited in its report.

The public record is replete with official MCRI response to the allegations. Every single allegation that BAMN brought forth was thoroughly refuted by the Michigan Civil Rights Initiative (Exhibit B1-B3 for samples) in hundreds of pages of analysis, including a real, signed affidavit that BAMN had lied or confused a person on the phone in its "investigation," and that hundreds of BAMN challenges were without justification.

Exhibit B in its entirety is attached, although it is only a summary of hundreds of pages of argument. Here are some highlights:

The state pulled a sample of 500 signatures and determined that 450 signatures of the 500 signature samples are valid (i.e. the validity rate of the MCRI petition is 90%). This means that we have nearly 140,000 extra VALID signatures. In order to be certified, MCRI needs 331 signatures in the sample to be valid.

The challenge consisted of 3 basic types of claims:

- Technical claims
- Claims of misrepresentation through an "Affidavit"
- Claims that "affidavits" should be extended to additional signers

Of the 135 technical claims (legitimate types of challenge based on date of signing, incorrect address, etc), MCRI agreed that 43 signatures were bad and defended the remaining 92. The Secretary of State staff analyzed these technical claims, and actually found 7 additional signatures on its own review which it ruled invalid. Those 50 signatures were the total number rejected, leaving MCRI with a statistical probability of having 455,000 signatures.

The remaining "challenges" by BAMN were based on arguments of alleged "misrepresentation." Thirty-seven challenges were based on "affidavits" signed "over the phone," 38 affidavits with "cookie-cutter" documents (using a form prepared by BAMN alleging general conclusions), and only 3 affidavits actually signed by the persons making the allegations. Six alleged affidavits didn't even exist – they were completely missing.

These challenges were still not enough to get BAMN over the challenge threshold, so a final argument called the "extension argument" was made. Every circulator who was implicated above was challenged *en masse*. Seventy-five extension challenges were made on "phone affidavits," 50 on cookie-cutter affidavits, and only 4 on affidavits from individuals actually testifying. Ten additional circulator challenges were made by circulators BAMN recruited to attest that they had misrepresented the petition.

If BAMN loses any of these arguments, it fails to meet the challenge threshold:

- the broader “extension” argument, which is based on an unlawful and unethical presumption of guilt over innocence.
- the “cookie-cutter” affidavits (judicial process requires testimony asserting unique facts).
- the “phone” affidavits (affidavits must be signed and original), or the non-notarized (nearly all affidavits) affidavits.

B. THE COMMISSION IGNORED REPORTS PROVIDED BY THE SECRETARY OF STATE AND THE ATTORNEY GENERAL.

Reports are attached (Exhibit C1-C2). The Commission completely ignored the conclusions and results of both the Secretary’s investigation and the Attorney General’s finding’s that a court would have jurisdiction to handle BAMN’s allegations. As our attached timeline demonstrates, BAMN has had many opportunities since 2004 to air claims of misrepresentation.

C. THE COMMISSION IGNORED COURT RULINGS.

The Commission also ignored the findings of the Court of Appeals, issued in November and December 2005. Additionally, in *Lungren v. Superior Court of California*, the Court of Appeals ruled that “Any statement to the effect that [Prop] 209 repeals affirmative action programs would be over inclusive and hence ‘false and misleading’ ... Affirmative action is an ‘amorphous, value-laden term.’”

D. THE COMMISSION BASED ITS INVESTIGATION ON THE ATTESTATIONS OF A GROUP UNDER INVESTIGATION BY THE FBI, THAT ADMITS IT WILL USE “ANY MEANS NECESSARY,” AND HAS SPECIFICALLY ADMITTED TO CREATING FRAUDULENT DOCUMENTS. MCRC TRUSTED THIS GROUP TO DO ITS WORK.

1. History Proves BAMN will commit Fraud and Forgery of its own.

See attached news story Exhibit D1-D2.

The Coalition to Defend Affirmative Action, Integration & Immigrant Rights and Fight for Equality By Any Means Necessary (CDAAIRFEBAMN, commonly known as BAMN) and its affiliates have proven in the challenge submitted that they truly will use *any means necessary* in order to keep the Michigan Civil Rights Initiative (MCRI) off the ballot. Fraud permeates the BAMN organizations and is, not only tolerated, but taught by its leadership, (see *BAMN Defends Purpose* Michigan Daily Feb. 12, 2002, reprinted at: <http://www.alternet.org/wiretap/12394>). Luke Massie, BAMN’s current co-chairman, told the conference that “activists counterfeited tickets to the University’s affirmative action lawsuits hearing in Cincinnati...which shows what the new Civil Rights Movement is willing to do to win.” Massie is quoted in the article as saying “There’s not a lot of case law on counterfeiting federal court tickets ... When we say ‘By Any Means Necessary’ we mean it.” This last quote says it all, BAMN is willing to lie, cheat, intimidate, and commit fraud to win “by any means necessary”.

Evidence that BAMN will openly commit document fraud and forgery is mitigating evidence casting doubt on everything else it produces. This history meshes with Dr. Allen's testimony in Section III, D, 6, Exhibit E, where BAMN suborned perjury.

2. Specific Contradictions in BAMN's 2005 Claims Repudiate Allegations.

Here are some relevant examples of improper activity by BAMN in the case of the Board of Canvassers "investigation," also in Exhibit D1-D2. These passages are actual words from BAMN witnesses in contradiction to BAMN central thesis, but they are not emphasized by BAMN in media or presentations, and are deliberately ignored. The Commission later does the same thing with other witnesses who make factual statements inconsistent with the central thesis of BAMN misrepresentation. These contradictions either demonstrate either vast error or fraud by BAMN, not MCRI.

A. BAMN Witness - Jessica Curtin

1. All "affidavits" witnessed by Ms. Curtin are dated after the date in which the challenge was due. The "affidavits" are dated on April 20, 2005, however, by notarized affidavit Ms. Curtin claims to have talked with these signers prior to, or on, April 16, 2005.

2. According to Jessica Curtin's notarized affidavit, John Irving (doc # 46534), among others, says that he was led to believe "the petition favored affirmative action and that if he had been told it opposed affirmative action, he would not have signed it." However, after talking with John Irving, it is clear that he opposes race preferences and that it was BAMN, et al that misrepresented the issue on the phone. See Irving affidavit submitted by MCRI.

B. BAMN Witness - Kate Stenvig

1. According to Kate Stenvig's notarized affidavit, James Tock (doc #11729), among others says that "MCRI circulators told him either that the petition supported affirmative action or concealed from him the true purpose of the petition." However, after talking with James Tock, it is clear that he opposes race preferences, that he understood the issue when he signed the petition, and that it was BAMN, et al that misrepresented the issue. See affidavit submitted by Gratz outlining conversation with Tock.

C. BAMN Witness - Tristan Taylor

1. Witnessed an "affidavit" stating "under penalties of perjury" that "the circulator led me to believe that the petition was a civil rights petition for affirmative action. ... The true aim of the petition ... was concealed from me ..." (see cookie-cutter "affidavit" language) but the signer (Christie Fields, doc # 37416) "[does] not recall what [the circulator] said" (see notarized affidavit submitted by Taylor, paragraph 9).

2. Witnessed an "affidavit" stating "under penalties of perjury" that "the circulator led me to believe that the petition was a civil rights petition for affirmative action. ... The true aim of the petition ... was concealed from me ..." (see cookie-cutter "affidavit" language) but the signer, Renitta Bowers (doc #3900), says that she was told by the circulator that the petition "would increase the number of persons going to college" (see notarized affidavit submitted by Taylor, paragraph 10) and the circulator of Ms. Bower's petition (Lerwonia Summers) says that she told people the petition was "to let people get into college based on their intelligence" (see notarized affidavit submitted by Taylor, paragraph 11) These statements indicate that Renitta Bowers cannot "declare under penalties of perjury" that the circulator mislead or misrepresented the issue (see "affidavit" signed by Renitta Bowers).

D. BAMN Witness - Stephen Conn

1. Spoke with and secured an "affidavit" by Charles Thompson stating "under penalties of perjury" that "the true aim of the petition, to limit or end affirmative action was concealed from

me” (see cookie-cutter circulator “affidavit” language). But, the circulator (Charles Thompson) “went to the training and learned that it was a petition against affirmative action” (see notarized affidavit submitted by Conn, paragraph 5).

E. BAMN Witness - M. Heather Miller

1. Witnessed an “affidavit” stating “under penalties of perjury” that “the circulator led me to believe that the petition was a civil rights petition for affirmative action. . . . The true aim of the petition . . . was concealed from me . . .” (see cookie-cutter “affidavit” language) but the signer, Nicole McCoy (doc #2889), “[does] not recall what [the circulator] said” (see notarized affidavit submitted by Miller, paragraph 3).

F. BAMN Witnesses - Joseph Wagner & Candice Young

1. Witnessed a circulator “affidavit” by Charles Thompson stating “under penalties of perjury” that “the true aim of the petition, to limit or end affirmative action was concealed from me” (see cookie-cutter circulator “affidavit” language). But, the circulator, Charles Thompson, “went to the training and learned that it was a petition against affirmative action” (see notarized affidavit submitted by Conn, paragraph 5) Ellipsed from original. Exhibit D1-D2.

The elimination of all of these witnesses claims, using the same “extension” standard BAMN uses against MCRI, would alone be sufficient to bring BAMN’s challenge below the threshold necessary to remove MCRI from the ballot.

SECTION V.

THE COMMISSION ADMITS THE “INVESTIGATION” WAS “NOT COMPLETE” AND THAT IT “CANNOT MAKE AN EDUCATED ANALYSIS.”

In several places in its own report the Commission acknowledges that its investigation is incomplete. For example, on Page 6, the Commission Report states:

"[W]ithout the information requested in the MCRC Order and without the voluntary cooperation of MCRI to answer questions and concerns about the petition gathering process the MCRC cannot make an educated analysis of who is actually at the root of the fraud that has occurred." [emphasis added]

The Commission further admits, on Page 11, that its assessment is not "complete":

"Every effort was made to obtain testimony from MCRI including the issuance of a valid, lawful, narrowly tailored Order to produce relevant information. The failure of MCRI to comply with the MCRC Order effectively precluded a complete assessment of these allegations."

This reinforces the conclusion that the Commission's biased and speculative result is not the product of a thorough investigation but is only politically motivated.

Here, the Commission also severely distorts the truth when it alleges “failure of MCRI to comply with the MCRC Order.” MCRI responded that it would comply with a legally drafted order authorized by a court (see below for analysis of Commission’s authority requiring court approval of discovery). In reality, the Commission failed to comply with its statutory obligations when it failed to seek court authorization, and that the Commission intentionally fostered ignorance and non-disclosure. The Commission admits its own results are not reliable.

In addition, the Commission failed to acquire evidence which MCRI voluntarily submitted to the Board of Canvassers in 2005. The Commission deliberately connived to fail in conducting a reasonable or diligent inquiry.

SECTION VI.

THE COMMISSION – OR INDIVIDUAL COMMISSIONERS – VIOLATED STATE LAW WHEN IT DID NOT TAKE A VOTE TO APPROVE THIS REPORT.

The Commission report itself is NOT SIGNED. Nowhere in the personal letter to the Michigan Supreme Court, the Commission report, or the materials posted on the Commission website is there provided any actual vote of the members of the Commission that resulted in this “report.” MCL 37.2601(3) requires:

"A majority of the members [of the Commission] is required to take action on matters not of a ministerial nature."

Four of the seven members of the Commission were required to vote in favor of issuing the report. Which commissioners voted on the MCRC resolution authorizing the adoption and release of the report and how did each commissioner vote? If there was no vote, then Commissioners Bernstein and Abdrabboh, who signed the letter to the Michigan Supreme Court, acted unlawfully in the name of the Commission. If there was a secret vote, this is a clear violation of the Open Meetings Act.

SECTION VII.

THE COMMISSION VIOLATED THE OPEN MEETINGS ACT.

State law requires the Commission to conduct all of its business in compliance with the Open Meetings Act. MCL 37.2601(4). If the Commission is able to dynamically pursue its political agenda via its state-provided taxpayer-supported website, why is it unable or unwilling to post its meeting minutes or public notices on-line?⁵ Therefore, the Commission should answer these questions: when was the open meeting during which a majority of the members of the Commission voted to issue this report? When and where was the notice of that meeting posted as required by the Open Meetings Act? Violating the Open Meetings Act is a misdemeanor. MCL 15.272. In addition to having no evidence that the meeting was ever lawfully posted, the Commission plainly violated the Open Meeting Act in May 2006 when an MCRI supporter made a lawful request to Harold Core, the Commission’s publicity officer, to be included on the Commission’s regular meeting notification list. That request was ignored, and no meeting notice was sent to the known MCRI supporter, although clearly notice was sent to BAMN and others. This plainly violated the OMA requirement of notification, and the equality clause of the Fourteenth Amendment.

⁵ The only Commission public meeting notice presently on the MCRC website is for an "upcoming meeting" to be held on Monday, January 23, 2006, 10:00 AM. The Commission website is obviously seriously out of date when it comes to Open Meeting notifications.

SECTION VIII.
THE COMMISSION VIOLATED ITS OWN RULES IN UNDERTAKING THIS INVESTIGATION.

The Administrative Rules governing the Commission and the Department are found at the Michigan Administrative Code, R.37.1 - 37.27.

These rules govern the procedure for Commission and Department actions. This procedure is generally: (1) the filing of a complaint identifying the complainant. (R.37.4); (2) conference and conciliation (R. 37.5); (3) issuance and service of a charge of discrimination (R.37.6 - 37.10); (4) Answer to charge (R. 37.11); (5) Hearing on the charge; (6) issuance of preliminary order and findings of fact (R. 37.16(1)); (7) Opportunity for parties to review preliminary Commission order and file exceptions to it. (R. 37.16(1)); (8) issuance of order and findings of fact, and recommendation of remedial action or dismissal of charge (R.37.16(2)); and (9) Appeal of MCRC order to circuit court.

The Commission complied with none of these rules in doing what it has done. It isn't even known whether a complaint was filed, let alone one "identifying the complainant," and none of the other safeguards were followed. These protections give the accused parties, in this case MCRI and its unnamed "agents," due process rights. Bypassing them is a blatant violation of the Fourteenth Amendment Due Process Clause. Further, nothing in the Commission's rules, the State Constitution, or any other state law, empowers the Commission to communicate directly with the Michigan Supreme Court about a matter pending before the Commission.

The Commission report does not state that any formal discrimination complaint was ever filed with it. The report states only that the Commission somehow "became aware" of allegations. (Report, Page 4) The Commission does not report that it received any complaint as defined by its own rules; such a valid complaint would have triggered the due process protections provided in the Commission Rules. These protections include giving the MCRI notice of the complaint, an opportunity to file an answer to the complaint, an opportunity for the MCRI to have the Commission obtain subpoenas on the MCRI's behalf, and an opportunity to appeal the Commission findings to the circuit court. In initiating an investigation without a complaint and following none of these procedures, the Commission acted "ultra vires" (outside its Constitutional authority), and violated the rights of MCRI and its circulators as protected by the Fourteenth Amendment and First Amendment.

Nowhere in the "Findings and Recommendations" (Report, Page 12-13) did the Commission find that the MCRI had committed "discrimination." In its "findings" the Commission never once uses the word "discrimination." In the absence of discrimination, the Commission of course has no constitutional nor statutory authority to investigate petition fraud, and therefore the Commission acted outside its authority. The Commission's actions are purely political theatre calculated to help defeat the MCRI. The Commission clearly began with its conclusions already in place, and this reasonably negates what they have dubiously referred to as "findings."

SECTION IX.

THE COMMISSION'S ACTIVITY VIOLATES CAMPAIGN FINANCE LAW, THE COMMISSIONERS IMPROPERLY USED THE HEARINGS AS A PLATFORM TO SPEAK ON THE BALLOT QUESTION, AND THE COMMISSION WAS BIASED BEFORE ALL THE EVIDENCE WAS IN.

The Chair and the Commission violated Section 57 of the Michigan Campaign Finance Act which prohibits the use of public resources to defeat a ballot question. Given the emphasis the Commission and almost every witness placed on supporting affirmative action and opposing the MCRI, it is now obvious that the Commission undertook its actions in conducting four hearings around the state not for the purpose of any legitimate MCRC business but, rather, for the purpose of politically rallying opponents to the MCRI. The public record and media accounts are replete with examples of the Commission's bias, but we will focus on one. Consider this statement made by Commissioner Kelvin Scott at the first hearing, before all the evidence was in:

... I just wanted to say on behalf of myself that I'm pleased that my colleagues made this bold step out of the zone of relative anonymity into the fray of one of the most important issues in our state and in our state's history. The allegations regarding the ways in which the MCRI obtained these signatures are very, very serious because the MCRI's ultimate goal is radical and extraordinary and it's rare. ...

"We want the citizens - we want all the citizens of this state involved in this process before going to the polls to hear the information before they decide if we are going to remain a state that values diversity, fairness, equality, and equal opportunity. For all its citizens through the programs that have been a Part of this society for the past 40 years and that have been repeatedly sanctioned by the U.S. Supreme Court or go back to a system where the rights of minorities are ignored."
(MCRC hearing Detroit January 11, 2006 p. 127-128)"

Mr. Scott's political soapbox speech *occurred before the Commission heard a single word of testimony*, proving again its predisposed bias in this matter and that the "investigation" was really an enormously long anti-MCRI campaign speech paid for by the taxpayer. The discussion of MCRI's "ultimate goals" preclude any possible legitimate investigation, and therefore become illegal advocacy using public resources. There would be no problem if Mr. Scott personally hosted and financed his own private press conference, but there is a significant problem when he uses taxpayer resources. Given that the Commission was acting outside its legal authority, clearly it was attempting to improperly influence a ballot question.

SECTION X.

BAMN'S COMPLAINTS TO THE COMMISSION WERE NOT TIMELY.

MCRC Rule 37.4(6) requires a complaint to be filed within 180 days of the alleged occurrence. The MCRI filed its petitions on January 6, 2005. Using this as a base date, any civil rights complaint concerning the petition-gathering had to be filed with the MCRC/MDCR no later than July 5, 2005. However, in its report, the Commission allowed that it only became aware of the complaints others were making in the Fall and Winter of 2005. (Report, Page 4). This is well beyond the 180- day time frame. The

Commission did not announce its intention to take up this issue until January 2006, *after the Michigan Court of Appeals had already ruled on the matter*. The political timing of this fact suggests that the Commission's activity was not to legitimately investigate anything, but to change the outcome of the political process.

Much is made by both BAMN and the Commission that "no one" had investigated the petitions before the Commission, but BAMN attorneys had over one year to investigate and go to court on any instance of fraud it could prove, and they have appeared now before two courts including the highest in the State. Additionally, the Attorney General and the Secretary of State all ruled on the issue of the allegations that were before them since April 2005.

SECTION XI.
THE COMMISSION FINDINGS AND HEARINGS WERE UNLAWFUL BECAUSE IT FAILED TO SERVE A "CHARGE" UPON ANYONE.

R 37.12(1) states that a charge must first be made and served before the Commission can even conduct a "hearing": "Upon or after the issuance and service of a charge, the commission or director may schedule and summon the parties to a hearing thereon." In this matter no charge has ever been issued, either before or after the Commission conducted its hearing.

SECTION XII.
THE COMMISSION ABUSED POWER IN ATTEMPTING TO COMPEL MCRI TO PRODUCE CERTAIN RECORDS.

State law empowers the Commission to, among other things, "compel through court authorization the attendance of witnesses and the production for examination of books, papers, or other records relating to matters before the commission." However, despite having subpoena power, the Commission never even tried to use it for any person associated with the MCRI nor the petition circulating process. Why not? The Commission did issue an "Order" stating that it was seeking to "compel" MCRI leaders into producing documents, but it did not seek court authorization, and the "Order" was therefore illegal. The order was also not signed by any Commissioner or even a staff lawyer (and hence giving them a level of deniability through dispersion), and therefore also had no legal effect.

Following MCRI's response to the fake "order," the Commission report savages MCRI organizers for not "complying," despite MCRI's response letter stating its wish to comply if the Commission submitted a lawful order authorized by a court. MCRI called the Commission's illegal bluff. The Commission's failure to use its real statutory subpoena power is itself strong evidence that the Commission recognized that it was skating out onto legally thin ice and that its inquisition would be lambasted if subjected to real judicial scrutiny.

The Order sought to require the MCRI to produce nearly everything it possessed from the signature-gathering phase by May 30, 2006. This was just seven days before the MDCR ultimately issued the report. Nonetheless, on May 22, even before the MCRI response to the Order was due, it is clear that Mr. Bernstein had reached his conclusion. He stated:

"At the end of the day I'll just concede to everybody, I wish our Commission had more power than it does, to be very honest." Grand Rapids Hearing Transcript, May 22, 2006. Page 91-92.

But how could he have concluded that by May 22, when, by his own admission, he had yet to hear from the MCRI and the Commission's response to the Commission's discovery request was not even due for eight more days?

But Commission Chair Mark Bernstein blatantly lied even to his allies in BAMN:

"[A]nd additionally we have issued -- I issued personally on my signature an order to MCRI to comply with and to deliver and produce documentation related to the circulation activities of their circulators." Grand Rapids Hearing Transcript, May 22, 2006. Page 93.

Again, a review of the document shows this statement to be a bald lie. No one had the courage to sign that order. Mr. Bernstein, as a Commissioner, was not under oath, as were those testifying, nonetheless this single statement evidence's Bernstein's lack of integrity. He lied to those he claimed to be protecting. The disingenuous claim by the Commission that "[the] MCRI refused to comply" with their order is therefore exposed.

SECTION XIII.

THE AFFIDAVITS RELIED UPON BY THE COMMISSION ARE DEFECTIVE UNDER MICHIGAN LAW.

The Commission informed the Supreme Court that it had received over 200 affidavits. What the Commission did not inform the Supreme Court was that many of these are "form" affidavits in which the material facts are the same on each form and blanks were provided for witness name, address, phone and signature. These form-affidavits are defective under Michigan law. Also, these affidavits are not notarized. To be valid, an affidavit must be verified by oath or affirmation. This means the affiant must make his statement before a person capable of administering an oath or affirmation, i.e. a notary public. Also, in these "affidavits" the witnesses do not state that the material statements are made on personal knowledge. In the affidavits the witnesses do not show affirmatively that if sworn as witnesses, the affiants can testify competently to the facts stated in the affidavit. All these defects render these "affidavits" legally meaningless under Michigan law.

SECTION XIV.

THE COMMISSION RELIED ON UNRELIABLE HEARSAY.

Much of the "evidence" the Commission recounts is suspicious hearsay. For example, "Robert Womak, who hosts a radio talk show on WJNZ, 1140 AM, targeted to the

African-American community, testified about allegations of fraud that he heard from callers when he read the names of Grand Rapids petition signers on his radio program." (Report, Page 10) This is literally hearsay upon hearsay.

The Commission report, not surprisingly, does not even acknowledge the possibility that those now claiming to be victimized by fraud could be motivated by social and professional pressures to do so, or through the process known as "leading testimony," which is why courts have strict rules about testimony.

The Commission report is replete with unsupported conclusions, qualified claims, and equivocating use of the passive voice. For example the Commission reports: "About one-quarter of the total number of signatures gathered by MCRI are likely from African American individuals. It was felt that these communities were targeted by MCRI who hired African American circulators, suggesting to them that the petition drive would ensure civil rights." (Report, Page 9) On what "evidence" is the "likely" one-quarter statistic based? Who are these mystery persons who "felt" that these communities were targeted, and upon what evidence is that "feeling" based.

Scientific polling data shows that at least 20 percent of African Americans oppose preferences. One recent poll by a Democratic polling firm even suggested that up to 40 percent of African Americans oppose preferences even when the phrase "affirmative action" is used to describe it. Additionally, around 10 percent of the population is white in the neighborhoods that are predominantly African American. Certainly, the Commission's argument can't be that every person in these areas holds a certain opinion merely based on the fact that the person may live in the area or even that he or she is black. Additionally, although those opposing race preferences might be a statistical minority in "majority/minority" regions, the statistical principle of self-selection operates for circulation – that is, when a circulator asks hundreds of people to sign a petition, he is selecting out those who would oppose the initiative (although some would still sign perhaps because of a smile or expedience, as the Flint Mayor testified), so a relatively small percentage of a region can be reflected in larger numbers by volume of those who would sign. This is the same principle that applies to "straw polls."

SECTION XV.

THE COMMISSION PLAINLY IS COLLUDING WITH BAMN AND TIMING ITS RELEASE OF INFORMATION TO THE PUBLIC TO MAXIMIZE MEDIA EFFECT AND DENY OPPOSITION A RIGHT TO REVIEW EVIDENCE

Collusion and political motivation are evidenced by the Commission's timing. On Friday, June 9, 2006, the Commission issued a press release advising that it would release its "report" on Monday June 12, 2006.

Yet, the report the Commission released on June 12 was accompanied by two letters dated June 7, both addressed to the Michigan Supreme Court and transmitting the report, that same day. Why wasn't the report released to the public in conjunction with the Commission's June 7 transmittal of it to the Supreme Court, or even two days later in

conjunction with the June 9 press release? Why did the MCRC delay for five days between June 7 and the release of the report? The answer has to be that the Commission hoped to have the benefit of the Sunday papers, while also avoiding the report's being subjected to too much scrutiny.

More alarming is that BAMN clearly knew what was in the Commission's report in advance of its transmittal to the Supreme Court and its release to the public. On June 6, 2006, Dan Heaton of the Macomb Daily News reported:

"...Shanta Driver, co-national chairwoman of ... BAMN ... -- said a report due out later this week by the Michigan Civil Rights Commission will ask the state Supreme Court to reconsider its earlier ruling that put the proposal on the ballot ...

http://www.macombdaily.com/stories/060606/loc_affirm001.shtml

How did Ms. Driver of BAMN know so accurately what the Commission's report was going to say even before the Commission had officially submitted it to the Supreme Court? Obviously, there is deliberate collusion between the Commission and BAMN. That collusion cries out for investigation into the relationship between BAMN and the Commission, particularly between BAMN and the Commission Chair Mark Bernstein. Again, such collusion would violate due process and campaign finance law.