Super-Tuesday for Equal Rights

*By Ward Connerly & Jennifer Gratz**

The Court expects that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today.

Justice Sandra Day O'Connor
Grutter opinion (June 23, 2003)

When the *Gratz* and *Grutter* opinions were released in 2003, many believed that eliminating race preferences was a lost cause, at least for a while. But the organizations of which we are a part—the American Civil Rights Institute (ACRI) and the American Civil Rights Coalition (ACRC)—set out to abbreviate Justice O'Connor's predicted twenty-five years.

Just days after the *Gratz* and *Grutter* decisions, we announced our intentions to assist the people of Michigan place a civil rights initiative on the 2004 ballot. The language of the California Civil Rights Initiative (Proposition 209) was used as a model; the operative clause of the initiatives reads:

> The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.

We knew this would be no small task. Michigan, after all, was considered "ground zero" for the issue of race-based preferences, and because of the lawsuits against the University of Michigan, the opposition was already organized and determined to stop the people from voting. The American Civil Liberties Union (ACLU), the National Association for the Advancement of Colored People (NAACP), a group named By Any Means Necessary (BAMN), and many others joined together and filed numerous lawsuits to stop the initiative from gathering signatures and gaining support. After the Michigan Civil Rights Initiative failed to make the 2004 ballot opponents claimed victory. But, quietly, our small cadre of supporters redirected our efforts to the 2006 ballot.

The process for qualifying an initiative for the ballot sounds simple: gather enough signatures in the prescribed amount of time and your issue gains access to the ballot. However, nothing is simple when it comes to race. The Michigan effort turned in the most signatures in the state's history—and even that margin was not comfortable enough. Opponents challenged the signatures in every court fathomable—from state court to federal court to the court of public opinion. Political posturing aside, the courts ultimately ruled that the people had the right to vote. And, on November 7, 2006, the people of Michigan reignited the national movement to end race based preferences.

The Michigan victory was the first step to curbing Justice O'Connor's twenty-five year sentence of race preferences. Immediately after, when asked her thoughts about the Michigan Civil Rights Initiative, Justice O'Connor simply stated, " It is entirely within the right and privilege of voters..." And so, it is only fitting that more states have the opportunity to exercise their right to prohibit the use of racial preferences.

When we launched "Super-Tuesday for Equal Rights," we knew that our opponents would consider this their last stand and would pull out all the stops. For example:

• In past efforts, and in the current battle-ground states, supporters of race preferences tried to blur the line between affirmative action programs that grant preferential treatment based on race and general affirmative action programs with misleading rhetoric. Only programs—whether named "affirmative action" or not—which are outright discriminatory or grant preferential treatment are eliminated by a civil rights initiative.

• Opponents to color-blind government often fail to recognize that "affirmative action" and "race preferences" are not necessarily one and the same. In fact, in 1961, when President John F. Kennedy first introduced the nation to the concept of "affirmative action," he did not advocate preferential treatment. Executive Order 10925 stated that "affirmative action" must be taken to "ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin." Kennedy's message was simple: treat all people equally, *without regard* to race. The types of programs Kennedy's version of "affirmative action" allowed for are preference-free. For instance, one can believe in the need to help those who are socio-economically disadvantaged, one form of affirmative action, without advocating or using preferences based on race.

• Supporters of race preferences confuse "equal opportunity" with equal outcome, and use rhetoric that confuses the public as well. Affirmative action programs intended to guarantee equal opportunity can (and should) exist without preferential treatment. Americans tend to believe that anyone, regardless of race or sex, should be allowed to compete, and once that occurs, that the government should get out of the way and let the chips fall where they may.

• Supporters of preferences say that they, like everyone, are against quotas, but that they believe in and celebrate "diversity." However, the term diversity is nothing more than a code-word for quota in most cases under our current preferential regime.

• Supporters of preferential treatment claim that somehow breast cancer screening centers, neo-natal programs, or domestic violence shelters also qualify as preferential treatment. This tactic preys on voter fear, on the hope that the public will believe that if preference programs are eliminated health programs which are

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** Ward Connerly is President of the American Civil Rights Institute, a former member of the Board of Regents of the University of California, and a 2005 recipient of the Bradley Prize for his defense of the American ideals of freedom, liberty and equality. Jennifer Gratz is Director of Research at the American Civil Rights Institute, was the lead plaintiff in the landmark US Supreme Court case, Gratz v. Bollinger, and the 2007 recipient of the American Conservative Union's Reagan Award for her role as Executive Director of the Michigan Civil Rights Initiative.*

often specific to one gender would be in jeopardy. In fact, none of these health-based programs have been eliminated in any of the states where a civil rights initiative has already passed and been in practice—in some cases, for a decade or longer.

• Opponents allege that it is fraudulent to say that ending race preferences is consistent with the 1964 Civil Rights Act, and that ending race preferences does not spell Doomsday for *all* affirmative action programs. The media seems to accept these allegations—strengthening the depth of their message. Of course, the very essence of civil rights is to treat everyone equally. No amount of mental gymnastics can twist logic enough to convince rational thinkers that when one is preferred based on race another is not discriminated against by the same criterion.

Nonetheless, we did not expect civility and the law to be cast aside in this debate. In Missouri, for example, activist politicians changed the language of the initiative, leading to a lengthy court battle. The Missouri constitution allows petition sponsors up to eighteen months to collect signatures from voters, but because of the legal challenge the Missouri Civil Rights Initiative had less than four months to circulate its petition.

In the four months that the Missouri Civil Right Initiative had to collect signatures, petition circulators were arrested for petitioning on public property, such as in front of public libraries, on public sidewalks, and just outside offices of the Department of Motor Vehicles. In addition, the unions, the Association of Community Organizations for Reform Now (ACORN), the Coalition to Defend Affirmative Action, Integration & Immigrant Rights and Fight for Equality By Any Means Necessary (BAMN), and the Soros-funded Ballot Initiative Strategy Center joined together to organize a "blocking" campaign. Groups that typically consisted of five to ten people would surround a petition circulator and intimidate him or her and potential signers. Who wants to sign a petition when someone is telling them that their picture will appear on a blog with the caption "racist" attached to it? Finally, in the closing days there were rumors that opposing groups were illegally paying for petition signatures and then discarding those signatures.

In Nebraska, while not yet as heated as Missouri, it has come to our attention that opponents are organizing a campaign to have individuals sign names other than their own on the Nebraska Civil Rights Initiative petitions. This, of course, is illegal and makes checking signature validity more than difficult.

In Colorado, opponents are creating an initiative of their own. This version hijacks the language of the Colorado Civil Rights Initiative, but adds an exception. The initiative would ban preferential treatment based on race except when the Supreme Court has already allowed preferences. This is meant to do nothing more than confuse voters. It is rumored that a similar tactic is being considered in Arizona.

Yet, when given the chance, the voters have demonstrated overwhelmingly their opposition to race preferences. Not all states allow the people to make these decisions on their own. Only seventeen states allow for the people to initiate constitutional amendments, and four states (California, Washington, Florida, and Michigan) already have language prohibiting discrimination and preferential treatment, either through a citizen-approved initiative or an executive order—as in Florida. Super-Tuesday for Equal Rights was our attempt to quickly bring five more states under the fold. As of now, it appears that three of those states (Arizona, Colorado, and Nebraska) will have the opportunity to join those states free of preferences in 2008 and the other two (Missouri and Oklahoma) will have to regroup, as was done in Michigan, for the 2010 election.

Ultimately, however, the nation is poised to end the era of race preferences long before Justice O'Connor's twenty-five-year sentence has expired in 2028. One can only hope that with a critical mass of voters choosing to end race preferences, politicians will finally have the fortitude to join the people and recognize that people should be judged based on their individual merit and not by the color of their skin.