



# docket report

## Point of Attack

Spring 2009

### IN THIS ISSUE

**Change We Believe In**  
page two

**An Experiment in  
Limits**  
page four

**To the Victors Go the  
Spoiled Big Apple**  
page seven

**The Nanny State v.  
“Dr. Mom”**  
page eight

**MCRI-Go-Round**  
page eleven

“**F**undamental and astounding.” That’s how Abraham Lincoln described the changes wrought by the Civil War.

The events last fall in economics and politics also were fundamental and astounding. No one could have anticipated that problems with mortgage-backed securities would have led to a panicked bailout by the party that championed the free market. Or how that, in turn, would lead to a new president’s launching weekly salvos to restructure not just the financial markets but other big swaths of American society, as well.

The results so far look astoundingly bad. The stimulus bill passed in February ties up massive amounts of potential investment capital in unproductive uses—that is, the pet projects of Democratic congressmen—for years to come. President Obama’s budget, released a mere week later, vacuums up the rest by raising taxes, eliminating deductions, and locking the country into a nationalized healthcare program the final cost of which can only be imagined.

Compounding all that is Obama’s ambitious effort to bring every corner of American life under regulatory control. Among other nifty ideas, carbon dioxide, a substance people (and especially liberals in Congress) breathe out continually, now will be an official pollutant and taxed and regulated in Obama’s absurd attempt to outdo King Canute and make the sea levels fall.

The political fallout from all this is not easy to predict, but one thing is sure. Few in Washington want to address the real problem that invited the situation we’re now in. And that is the idea that government authority is elastic, derived from a “living” Constitution, and tailored to the political needs of the party in power.

There’s only way to punch through the myths and distortions occasioned by untethered government authority: high profile constitutional lawsuits. We are not a policy shop and we do not write white papers that talk about limited government as if it were another policy preference. Instead, we bring cases on behalf of real clients who assert claims under the actual,

rather than imagined, Constitution.

Any one of three of our cases now at the Court of Appeals level could go to the Supreme Court in the next several years. In one, we seek to clamp down on the use of federal courts to veto the decision of voters to end the use of racial preferences (*BAMN v. Granholm*, p. 11). In another, we are trying to guarantee the right of competent parents—rather than state child protection officials—to oversee the medical treatment of their children (*Mueller v. Auker*, p. 8). And in the third, we have a good shot at limiting the ability of the Justice Department to impose unconstitutional race and gender quotas on police, education, and other local agencies based solely on numerical racial disparities (*U.S. v. New York City Dept. of Education*, p. 7).

As CIR’s two recent victories against the New York City schools demonstrate, much can be accomplished with clients willing to hold our government to the written Constitution (*Ng v. NY Dept. of Ed.*, *Rau v. NY Dept. of Ed.*, p. 2).

As always, details follow...

# Change We Believe In

*Ng v. New York Dept. of Education & Rau v. New York Dept. of Education*

COOPERATING COUNSEL: MICHAEL CARVIN AND SHAY DVORETZKY; JONES DAY<sup>1</sup>

In his famous race speech, President Obama said whites are supposed to stop feeling resentful about preferences and minorities are supposed to stop feeling they need them. It would seem living in a post-racial era is nothing more than “feelings”— and it’s the government’s business to tell us what to feel.

Well, call us skeptics, but we doubt that more talk like that is going to move us an inch closer to racial harmony. For that, we’re going to need a government that understands that its role is not to lecture about feelings but to reform the policies that cause bad feelings (not to mention ruined lives, weak schools’ and a national penchant for lying about anything having to do with race).

We’re not holding our breath, of course. But we believe in change, too, and so we decided actually to bring some post-racial thinking to the New York City schools.

We started with Brooklyn’s Mark Twain Magnet School for the gifted and talented. Nobody had done anything about a *Welcome Back, Kotter*-era federal court order dating back to the 1970’s that set a racial quota for the school: no more—and no less—than 70% of the gifted and talented in the school could be white.

To preserve that quota amid changing demographics in Brooklyn, the school had been giving a sizable racial preference to white applicants,

who could now get in with lower grades and test scores than those of the Indian daughter of our client, Dr. Anjan Rau. About a week after we sued on Dr. Rau’s behalf, the New York City Department of Education rushed into court and petitioned to lift the quotas. It took another month for the judge to agree, and that was soon enough for Dr. Rau’s second daughter to be admitted to the school—as many others, based solely on merit, will be after her.

Next we turned to the city’s drive to lower the proportion of Asian students attending its elite Specialized High Schools, where admission by law is based only on students’ performance on a difficult entrance exam. Following agitation by the usual suspects (including the now-notorious organization called “ACORN”), the city’s Department of Education came to the realization that it had a “problem”

with the racial proportions in these schools.

For example, the student body of the most elite of them, Stuyvesant High School in Manhattan, now is nearly 70% Asian, about 25% white, and about 5% black or Hispanic. This, though the student population in New York City public schools as a whole is approximately 14% white, 14% Asian, and 72% black or His-



*Stanley Ng and daughter Christie*

<sup>1</sup>Only on *Ng v. New York Dept. of Education*


panic. What to do? *The New York Times* could wring its hands all it wanted; the requirement that applicants pass an entrance exam to get into these schools was set by statute.

Stanley Ng found out firsthand what the school system had done when he went in to pick up an application for his daughter to attend something called the “Specialized High School Institute,” an enrichment program the city offers middle-school students to help them prepare for the entrance exam. Incredibly, his daughter’s school refused even to give him an applica-

tion. When he called the official who ran the prep program to ask about that, the official explained calmly that there were already “too many Asians” in the Specialized High Schools. (He was a little more polite about it, actually; he said Asians were “overrepresented” in these schools.) Mr. Ng, puzzled that his daughter should be penalized because previous Asians had done well on the entrance exam, wrote CIR.

So we sued. Almost immediately, the city said it would stop using race in admission to the Institute. But we thought it only fair to reimburse our

clients for the money they had to shell out to Kaplan (Stanley, not Gabe) and other private prep services. It took a while, but on the eve of depositions of school officials, a nervous Department of Education settled the case, agreeing to pay many thousands in fees and damages.

As Barack Obama knows (maybe he knows everything), sometimes change is hard, sometimes it’s easy, and sometimes it’s in between. Whichever way, we’re happy to restore some of the rule of the United States Constitution in the Big Apple. 

## Social Engineering Off the Tracks

National Association of Scholars President Peter Wood aptly described official support for racial preferences as “a mile wide but an inch deep.” Left unchallenged, administrators will employ every manner of racial preference almost without thinking. But the minute someone like CIR calls them to task, they retreat without so much as a whimper.

Sound good? Maybe not so much.

Preferences are like toxic assets that the country can’t get off the books. The Supreme Court keeps bailing them out with just enough legal capital to keep them afloat for a while longer in the hopes that they will just go away. But as long as the courts allow the consideration of race, school officials will find endless ways to consider race. And if the Supreme Court can’t come up with a decent principle to justify the use of race, school officials won’t bother to look for one, either.

The Supreme Court in effect has licensed the government to mess with people—bus people here, kick them out of school there, restrict them from this program, demand they take that program—for no more reason than the government’s whim.

CIR’s cases remind the courts (and, eventually, the Supreme Court) that the unprincipled use of race is not just undesirable, it’s drastically unconstitutional. As we learned in *Ng* and *Rau*, sometimes merely the prospect of writing a brief is enough to give government lawyers a case of the hives.

So we’re happy to play the disciplinarian; nothing makes our day like sending school officials to the “principal’s office” (a.k.a. the local federal district court) where they can receive a much-needed crash lesson in basic civics (the stuff about the Constitution being “the supreme law of the land,” and all that).

We’re concentrating our efforts these days on the truly mind-numbing use of race in elementary and secondary schools, where racial preferences daily undermine the chances of children to get even a basic education, never mind their chances of attending an elite state college. This year, we hope to expand our docket of elementary and secondary school cases. We’re looking at cases involving district- and even state-wide “racial balancing” plans that cost millions but do nothing to improve education.

# An Experiment in Limits

*Waltz v. Brumfeld, et al.*

COOPERATING COUNSEL: HENRY WEISSMANN AND J. RAZA LAWRENCE, MUNGER, TOLLES & OLSON LLP

In 2005, Supporting Unlimited Possibilities, Inc., a California corporation that makes pots of money from housing developmentally disabled persons at public expense, scored another coup: it got its license from the state, and zoning approval, for the placement of another group home it would operate. This one was a home for troubled young women, now to be funded by the state and placed in a quiet residential street in an “equestrian” neighborhood in Norco, California. The facility’s self-stated mission is to serve residents exhibiting behaviors such as “property destruction, temper tantrums, self-abuse, physical aggression,

suicidal ideation, fire setting and sexual inappropriateness.” The home’s manager explained that the later behavior might include “failing to fully dress.”

Maybe that would be interesting to a few 15-year-old lads in the vicinity, but Julie Waltz, a 63-year-old grandmother who lived down the street, had some big concerns about the placement of this home for the “disabled” in her neighborhood. (In part, she was worried that one of the home’s target patient populations, convicted sex offenders, would move in later—or maybe just that Paris Hilton and Britney Spears would keep dropping by to visit their “peeps.”) Maybe she

should have been more tolerant (or maybe not). She decided to exercise the basic first amendment rights she assumed she had and joined in with her neighbors who were protesting the placement. Her contribution to the protest consisted of signs she put in her own yard. One said, “Sexual inappropriate fire-setter facility (tax \$ at work),” another, “I.R.C. does place sex offenders.”

Brushing aside the obvious advice from their own counsel, officials at the California Department of Fair Employment and Housing decided on an “experimental” response: to launch an investigation of Julie Waltz for “housing discrimination” in



## News You Might Have Missed

**S**peaking of investigations, a group called “the National Hispanic Media Coalition” has petitioned the FCC to launch a probe into “hate speech” on television and radio against “immigrant communities,” and its effect on crimes against Latinos. The group claims that media figures who inveigh against lax enforcement of immigration laws are committing “hate speech” that makes unenlightened elements of the populace physically attack Hispanics.

Citing comments by Lou Dobbs (he was accused of purveying “false facts,” a form of “hate speech,” we guess), Michael Savage, Rush Limbaugh, Bill O’Reilly, and Tucker Carlson, the petition goes on to cite five racially-motivated crimes against Hispanics.

Needless to say, the group neglected to mention other factors that might better explain violence against Hispanics, including a horrific race war now raging between blacks and Mexicans in our nation’s prisons. And, unsurprisingly, the coalition failed to cite evidence that any hate-crime perp was a Tucker Carlson fan, or in fact ever listened to any conservative talk radio or watched any cable news programs.


Still, the petition likely will get a sympathetic ear from Obama’s FCC, at least if he was to be believed when he told the Congressional Hispanic Caucus during a campaign appearance: “This election is about the twelve million people living in the shadows, the communities taking immigration enforcement into their own hands . . . they’re counting on us to stop the hateful rhetoric filling our airwaves, rise above the fear and demagoguery, and finally enact comprehensive immigration reform.” A type of “hate speech” all its own, we would say, especially given Obama’s habit of singling out Rush Limbaugh, AIG employees and other enemies of the new statism for special presidential tongue-lashing.

How Obama intends “to stop the hateful rhetoric filling our airwaves” he did not say. But an FCC investigation, with its built-in speech-chilling effects, might be an effective beginning.

violation of the Fair Housing Act. How a statute such as the Fair Housing Act could override the rights to free speech guaranteed in the Constitution, however “experimentally,” the officials never have explained. But perhaps they had another kind of “experiment” in mind: to pick out one of the more innocuous (and presumably easier to intimidate) protestors, harass her with an investigation, and see if she and the many like her folded in their opposition to this government policy. If that was their aim, the experiment was a success; few want to be investigated by

the government for illegal acts, or have government officials use the media to air accusations that they are mean and nasty perpetrators of “housing discrimination” against the disabled. This is what they did to Julie Waltz. And for whatever reason, the protests that had been ballooning against the residential placement of these group homes died down.

Julie Waltz isn’t Rush Limbaugh, but she is made of sterner stuff than the officials may have anticipated. She has fired back in court, and with CIR’s help seeks to vindicate her right to speak against government policies she

opposes, be they ever so sacred to the Left, vested financial interests, or various advocacy groups. Our aim is to highlight and extend the bedrock legal principle that citizens have the right to petition the government for redress of grievances, a principle we have reason to expect will be under increasing, cynical attack in the months and years to come. The people’s elected representatives in California these days are a pretty hopeless bunch—so now it’s up to this lone private citizen to make the state officials’ little “experiment” come to an inglorious end. 

## Your Donations at Work...

Last year, CIR spent 78% of its expenses on its actual mission: litigation and public education. Only 12% was devoted to fundraising and 10% to administration.

CIR is able to achieve this efficiency because our supporters are unusually loyal and generous. We rely heavily on word of mouth and the continued generosity of our own loyal donors.

CIR's efficiency is even greater than it appears: Much of our litigation is handled by top-flight members of the private bar who donate their time *pro bono* to our cases. That means that every dollar you contribute to CIR results in two or three dollars of legal work in service to our mission.



## Ask Naught for Pay but the Dawning Day...

CIR offers a limited number of unpaid, full-time summer clerkships and year-round, part-time clerkships. Interns have the chance to do research, write op-eds, spin the media, and perform other important tasks. Interested? Send your resume to Terry Pell ([pell@cir-usa.org](mailto:pell@cir-usa.org)).



Last summer CIR hosted three top-notch Law Clerks and Interns. Pictured from left to right: Richard Leudeman (Harvard College); Ian Boardman (Boston University School of Law); and Joshua Newborn (George Mason University School of Law).

# To the Victors Go the Spoiled Big Apple

*U.S. v. New York City Dept. of Education*

One result of the Republicans' running a presidential candidate who believes in none of the principles of the Republican Party is that a Democratic administration gets to come to power. This is fine for McCain (now he gets to "work with" the One in the Senate) but it leaves actual conservatives and other concerned citizens very much in the cold.

And as the strange banners of the new statism (very much like the old statism) stir damply in the slow breeze, the sound of stampeding feet can be heard in the distance. These belong to former Clinton Administration officials piling back into the civil rights agencies.

But at CIR we may be a little less dispirited than others, because we're still in the thick—we started the whole to-do, and we refuse to let it go—of a case instigated by those same officials in their last incarnation.

Way back in the early nineties—before the Republicans formally adopted "Me, Too" as their official motto—even the incumbents of New York City government retained a vestigial belief in the importance of merit in the civil service, and transparency in how civil servants are selected.

Maybe you remember this from high school history (we

did, after we looked it up). You know, in the nineteenth century, the notorious "spoils system" for picking government workers based on political party loyalty only became an object of national revulsion (because of a number of unforeseeable things, such as corruption, absenteeism, and rampant inefficiency) that peaked when a disappointed job-seeker assassinated President Garfield.

Around then, a young Theodore Roosevelt, at the time a New York Assemblyman, successfully pushed a stunner of a concept: government employees should be selected based not on how many corpses they managed to persuade to vote for Al Franken, but on "merit and fitness." New York even put this requirement into its Constitution. It's still there.

We're not exactly Progressive Era types at CIR, but we can recognize a decent reform when we see one. There's a lot to be said about selecting civil servants based on merit—at least when you really think about it. And however logical it is, that's what they did in New York City. They had tests and everything, just as the New York Constitution required.

They even had tests for school custodians—not as inconsiderable an occupation as one might

at first think. The city pays them money to run the school, and after buying supplies and hiring their own subordinate cleaners, and so on, they get to keep what's left over. This arrangement is calculated to cut down on graft and waste (no more kickbacks to handpicked suppliers of Mop & Glo, or padding the cleaning staff with one's favorite relatives—not when it all comes out of the custodian's hide). But the hitch with such a system is that the custodians have to have more than a little something going on upstairs.

They also have to know pesky technical things like how to meet a payroll and how to protect children from exploding boilers, runaway storeroom fires, and toxic chemical clouds. These are all topics covered on the test. On average whites happened to do better on the exam than the blacks or Hispanics who took it. Naturally, the Clinton Justice Department concluded that the test—a written, multiple-choice exam about running school buildings and designed to make any distinctions based on qualities irrelevant to merit impossible—was a vehicle of race-discrimination.

The DOJ launched a lengthy investigation, during which the

*continued on page ten*

# The Nanny State v. “Dr. Mom”

*Mueller v. Auker et al.*

COOPERATING COUNSEL: JOHN RUNFT, RUNFT & STEELE LAW OFFICES PLLC

There was a time when child welfare law was about, well, the welfare of children. For some years now, however, child welfare law has been about something quite different: outsourcing the little matter of childrearing to the state.

The principal means for doing this has been to shift authority for child welfare to a network of teachers, doctors, social workers, and child protection officials, all of whom, in turn, shift responsibility around among themselves according to a complex set of rules that (miraculously) prevent responsibility from ever falling on any one individual. (We guess it really does take a village.)

Like most government bailouts, this one doesn't work very well. Taking responsibility for a child's welfare turns into taking responsibility for following authoritative child welfare procedures, which is not the same thing at all: a system premised upon avoiding responsibility does not do very well by children, who depend on the adults around them to take responsibility.

This is the lesson we've been forced to learn over and over again in our representation of the Muellers, a Boise, Idaho, family that made the mistake of actually taking responsibility for their daughter's well-being one night in the emergency room.

You see, someone had a difficult choice to make—whether to administer a spinal tap to an infant who had a slightly elevated fever. (We've learned to call this procedure by its more precise, if no more reassuring, name: a “lumbar puncture.”)

Mrs. Mueller, a trained engineer, who was with her daughter that night, knew a thing or two about medical risks. More important, she was the mother who had brought this child into the world only five short weeks earlier. She knew what it meant to give her all for this baby.

But on that night, she had to live in the world of risks and benefits, weighing the odds that her daughter might have bacterial meningitis against the difficulties and pain of a lumbar puncture accompanied by steroids and antibi-

otics—an approach with its own odds of injury and even death.

And so she did what she had to do—she took responsibility and made a decision. Though this decision meant the world to her and would, as it turned out, be momentous for the doctors in the hospital that night, the decision itself was unexceptional. In fact, many of the best pediatricians in the country recommend doing precisely what she did. She elected to treat the fever, do some blood tests, and then wait to see if her baby's temperature came down before taking further, more serious steps.

Of course, it was a great relief to her and everyone else when her daughter's temperature did come down. But that's when she ran head-on into the Idaho child protection law. Because what mattered to the blame-shifters was not whether Mrs. Mueller's decision was sound, but the (shocking) fact that she made it on her own. And the more responsibility Mrs. Mueller was willing to shoulder, the more determined the blame-shifters became in reasserting the authority of the state's procedures and in depriving Mrs. Mueller not only of her independence but even her dignity.

First the emergency room physician decided he didn't want to be responsible for any more of Mrs. Mueller's decision-making. So he called in the case as “possible neglect.” Neither the social worker nor the first two police officers who showed up wanted to take responsibility for overriding a mother's reasonable medical decision.

So a detective had to be brought in to solve the impasse: while the doctor apparently staged taking the child's temperature (to separate her physically from her mother), the police took hold of the mother's arms, moved her to a nearby room, informed her that her child was now in the custody of the state, told her she couldn't use the telephone to call her husband, and then threatened to arrest her if she didn't quiet down. A couple rooms away, the doctor did the lumbar puncture he was determined to do (complete with steroids and antibiotics).



*The four Mueller children from left to right are Brecken, Noah, Taige and Von*

The next day, Mr. and Mrs. Mueller went home with their child, on the condition that they show up in 48 hours for a “shelter care” hearing at which time they could make the case to have legal custody of their child fully restored to them.

As a result of this child protection jiu-jitsu, everyone got to point his precious finger at someone else: the doctor could point to the child protection regulations, the child protection officials could point to the police, the police could point to the doctor, superiors could blame subordinates, subordinates could blame their bosses. And so on, and so on.


The answer, of course, was to sue them all, and that’s what we’ve done. CIR is representing the Muellers in a potentially landmark effort to reassert the fundamental constitutional right of competent parents to make their own decisions about their children, regardless how difficult, heart wrenching, and momentous those decisions sometimes are. Because it’s precisely those kind of decisions that the Constitution reserves to parents. And, as the Mueller’s experience shows, it’s in precisely those kind of decisions that the state apparatus is at its blame-shifting worst.

Our legal effort has nothing to do with instances of genuine parental neglect. Both we and the Muellers are determined to make sure that this suit does not tie the hands of officials properly interceding when a child is in imminent danger.

Perhaps because of Mrs. Mueller’s reasonableness in the face of rather brutal treatment that night in the hospital, the federal judge hearing the case has seen fit to rule in her favor on the main question of the case. In what is sure to be widely quoted language, he ruled that:

“[A] difficult choice—a choice that poses risks either way—should never trigger intervention by the state. With no safe alternative, the state...loses all claim to make decisions for the child.”

Now that we’ve settled the law, we have to settle the facts. In the next year, we hope to go to trial to resolve disputes about who said what to whom that night in the hospital as, predictably, the doctor, the police, and the social workers have different recollections of what happened.

No matter which of the finger-pointers ends up holding the bag, though, the case will go the Ninth Circuit, where we hope to establish a Court of Appeals precedent. 

*continued from page seven*

New York City bureaucrats frantically hired (without any test, and in violation of the New York, as well as the United States, Constitution) as many minorities and women custodians as they could get their hands on, while ignoring any white men who sat waiting for the interview.

Despite all this, the United States sued the NYC Board of Education for “testing discrimination,” NOT against white men, but blacks and Hispanics. The Clinton DOJ also claimed that the Board had discriminated against minorities and women in recruiting people to take the exam in the first place.

On that recruiting claim, we have to admit the Clinton folks were on to something. It turned out New York City made desperate attempts to conceal the exam from minorities and women, first by repeatedly placing Page 1 headlines announcing the exam, with accompanying stories about the job and how to apply, in a widely circulated New York newspaper. Still fearing way too many people knew about the exam, especially minorities and women, the city sent detailed announcements of the exam, and how to apply for it, to thousands of organizations whose members might be interested in the job, and took numerous other steps to shroud the very existence of the exam in secrecy. All to no avail; somehow the word got out, and many times more people applied for the exam than there were custodian jobs to fill.

But we’re getting a little ahead of ourselves. In response to the lawsuit, New York officials tumbled, putting up about as much resistance as Paris Hilton does when a *paparazzo* calls out, “Show us some skin!” Local school officials retired to a back room with Clinton officials and


## Places to Go, People to See...

CIR is pleased to welcome Megan Beth Lott as CIR’s new Senior Director of Development. Megan graduated from The College of William and Mary in 1982 with a B.A. in Government. Formerly Senior Director of Membership and Development at the American Legislative Exchange Council, Megan has also raised funds for the Lab School of Washington, the National Council for Adoption, the Clare Boothe Luce Policy Institute, and the Leadership Institute. Megan has raised over \$100 million for the causes she believes in. She is an avid reader, a devoted fan of Shakespeare and Jane Austen, and a dedicated godmother to 18 children. You may reach Megan at (202) 833-8400 ext. 106 or [lott@cir-usa.org](mailto:lott@cir-usa.org). Welcome aboard!



together they drew up an agreement calling for the Board, incredibly, to give minorities and women jobs as custodians without *any* test.

That’s when (in 1999) CIR barged rudely in, representing current custodians (including minorities who had passed the exam and been hired in the constitutional manner). After the case had bopped up and down to the Second Circuit and following innumerable pre-trial motions and hearings (we take full responsibility), the district court threw out the “recruiting discrimination” theory. Now we’re appealing—along with the ACLU Women’s Rights Project and the NAACP, both of whom are less appealing—to the Second Circuit, taking aim at the reasoning the judge used to support the testing theory.

We’ve already achieved a deterrent effect with all this—the Obama Justice Department may not want to face such an imbroglio every time it wishes to concoct a cozy discriminatory consent decree (as the district court judge complained, the paper in this case includes 500 pages of briefs and a “seven foot mountain of supporting documentation”). But now we have our sights on something more. This case may well go beyond the Second Circuit, in which case the Clinton retreads could face another roadblock to their ambitions: a long-overdue Supreme Court precedent that finally makes some sense of the sad farce that goes by the name “disparate impact discrimination law.” Stay tuned. It’s been thirteen years, but it’s just getting interesting. 

---



---

# MCRI-Go-Round

*Bamn, et al. v. Granholm, et al.*

COOPERATING COUNSEL: CHARLES J. COOPER, DAVID THOMPSON, AND JESSE PANNUCIO, COOPER & KIRK LLC; ALAN PALMER, J. D. TALAFERRO; KERRY L. MORGAN, PENTIUK, COUVEREUR & KOBILJAK

As the world and America now know, in 2006 the Michigan Civil Rights Initiative banning race preferences passed overwhelmingly, even though in partisan politics it was a year generally as bad for conservatives as the current climate. Despite this evidence of the sturdy unpopularity of race preferences, their supporters should perk up; the secret ballot can't last long.

After all, "card check" seems about three minutes from passing—and California already has an eye-opening law that the names and addresses of those who contribute over \$100 to ballot initiative campaigns must be disclosed to the general public. The purpose of this law perhaps wasn't perfectly clear until Proposition 8 passed last fall, and financial supporters of that measure to protect marriage started getting bizarre email threats.

The wacky events in California just go to show the lengths the Left will go to to shut down citizen ballot initiatives nationwide. From its point of view, the results of these initiatives certainly must be confusing; the people who vote in these things apparently aren't the same people who in those "scientific" public opinion polls commissioned by *Newsweek* and the *New York Times* favor "sensible" policies such as instant legalization for twenty million illegal aliens and the Canadian "single payer" system. Instead, they keep voting for tax cuts, or against government benefits for illegal aliens,

or resoundingly against the government's preferring one race over another. Something must be wrong...

Our opponent, a group that calls itself "By Any Means Necessary," or BAMN, for one, doesn't care what's wrong or right. As they hinted delicately when a mob of them poured a Big Gulp on MCRI sponsor Jennifer Gratz when they sighted her outside the federal courthouse in Detroit during the pre-voting phase of their assault on the initiative, they'll do whatever it takes.

After MCRI's passage, what it apparently takes to stop it is federal judges with "heart," who really "know what it means" to follow the lead of the *New York Times* editorial page, and BAMN is looking for some as hard as Obama is. Luckily, federal judge David Lawson wised up after Chuck Cooper threatened to open the University of Michigan up to these *totally* unneces-

sary discovery demands about the disastrous effects of race preferences on minority students there. The judge quickly ruled that making race preferences illegal, though a downright heartless idea (we paraphrase), was something Michigan voters actually had the right to do under the federal Constitution. Plaintiffs asked Lawson to reconsider, and he considered doing so but in the end decided not to.

So now the legality of Michigan's new constitutional amendment banning preferential treatment by race goes up to the U.S. Court of Appeals for the Sixth Circuit. And it may not stop there, in which case CIR will be aiming to achieve a Supreme Court precedent that protects democracy (and equal treatment) across the nation. We're keenly anticipating it all, and have great faith in Chuck, who makes dealing with this stuff look easy. 



*Ward Connerly and Jennifer Gratz at the MCRI victory party*

Where  
There's  
a Will ...  
There's  
a Way

**T**hrough a well-planned will, you can make a number of provisions that can reduce estate taxes... and help CIR. Many gifts by will are made by people who first provide for their loved ones and then choose to leave the remainder of their assets to charitable interests that have been an important part of their lives. Many people simply designate a percentage of

their estate to go to one or more charitable organizations of their choice. Some name specific property or a specific dollar amount. Still others name one or more charities as final beneficiaries to receive whatever remains in the estate after other heirs are provided for.

For CIR's supporters, a planned gift is the perfect way to ensure every dollar is spent according to your wishes. Your consideration

of a planned gift gives the Center for Individual Rights the guaranteed resources to continue fighting—and winning—a carefully chosen strategic handful of legal campaigns to defend the Constitution and to restore government to its traditional limits. For further information, please contact Megan Beth Lott, CIR's Senior Director of Development, at (202) 833-8400 ext. 106 or [lott@cir-usa.org](mailto:lott@cir-usa.org).

CENTER FOR INDIVIDUAL RIGHTS  
1233 20th St, N.W., Suite 300  
Washington, D.C. 20036

phone: 202-833-8400  
e-mail: [genl@cir-usa.org](mailto:genl@cir-usa.org)  
web: [www.cir-usa.org](http://www.cir-usa.org)

docket report



PRST First Class  
U.S. Postage  
PAID  
Suburban, MD  
Permit No. 2295