

Introduction

The Kirwan Institute for the Study of Race and Ethnicity focuses its research and scholarship on race, ethnicity and social justice. The central goals of the Institute include reframing the way that we talk about, think about and act on race and ethnicity, and deepening understanding of the causes and consequences of and solutions to racial and ethnic hierarchy and disparity so that we can envision and realize a society that is fair and just for all people. We believe that affirmative action programs provide important tools for realizing that society.

Affirmative action is a set of programs designed to provide equal access and opportunity to disadvantaged groups, including people of color and women. Typical affirmative action initiatives include targeted outreach and recruitment efforts, the use of multiple criteria (including consideration of race and gender) in admissions and hiring, and targeted training programs. The Kirwan Institute believes that affirmative action programs are necessary in light of the depth and breadth of historical discrimination and modern-day structural racism. People of color and women still encounter institutional discrimination in our society, and affirmative action programs help remove those obstacles. They allow members of disadvantaged groups to be evaluated fairly in admissions and hiring, and thus ensure to them equal opportunities to achieve success.

The Kirwan Institute supports affirmative action through several different advocacy efforts. It supports research projects around communication about affirmative action. Kirwan has joined together with the Center for Social Inclusion to develop the Diversity Advancement Project. The Diversity Advancement Project aims to develop methods to persuade the public to support affirmative action policies and programs by the creation of tools to assist the field in effectively opening up a productive dialogue on racial equity with skeptical but convincing constituency groups. Kirwan is also working with Western Strategies on a project that aims to generate compelling messages that communicate the benefits of affirmative action. Kirwan has developed and maintains two websites (one public and one private) to gather together information and research on affirmative action and make it available to others in a central location. These websites provide background information on affirmative action and links to affirmative action resources, as well as information related to political efforts surrounding affirmative action. In all of its affirmative action work, the Kirwan Institute strives to create a transformative dialogue that will encourage long-term support for equal opportunity programs.

Affirmative action is an issue that prompts passionate debate. One of the Supreme Court's most recent contributions to that debate was its landmark decision in *Grutter v. Bollinger*.¹ In that case, the Supreme Court held that carefully crafted affirmative action programs, which consider race and gender as one factor among many, are constitutionally permissible, and that the school's interest in attaining student body diversity was a compelling government interest. However, the Court's opinion also asserted that it expected the need for affirmative action programs to end within twenty-five years.² The opinion, with its limited but time-bound support for affirmative action, has prompted even more discussion about the validity and need for affirmative action within American society. A large portion of that discussion has taken place in states where ballot

¹ *Grutter v. Bollinger*, 539 U.S. 306 (2003).

² *Id.* at 310.

initiatives aimed at eliminating affirmative action have been introduced. This report seeks to recount the history of those initiatives and lessons to be learned from them.

Ward Connerly and His Campaign to Eliminate Affirmative Action

Affirmative action programs have been under attack for many years. Likely the most significant effort to eliminate affirmative action is led by California businessman Ward Connerly, co-founder of the American Civil Rights Institute (ACRI). Connerly and the ACRI have been trying to eliminate affirmative action on a state-by-state basis since 1996. Their primary strategy is to introduce ballot initiatives that amend state constitutions to eliminate affirmative action. The ACRI titles these proposals “Civil Rights Initiatives” and their language 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.” The initiatives do not contain any reference specifically to affirmative action, and many voters who sign them believe they are supporting affirmative action, not eliminating it.³

Connerly’s effort to eliminate affirmative action began in California with Proposition 209. His campaign began collecting signatures in late 1995, and had gathered a sufficient number to place the proposition on the ballot by early 1996. The Connerly campaign faced little opposition at the signature gathering stage, something later characterized as “a lost opportunity” by advocates of equal opportunity programs.⁴ Proposition 209 then moved into a campaigning stage. Connerly’s group benefited from strong and consistent financial support, while opposition groups struggled with inconsistent messages and funding.⁵ Ultimately, voters passed Proposition 209 with 54% of the vote and amended California’s constitution to outlaw affirmative action. Since that time, many outreach programs have been eliminated, diversity in California’s flagship universities has significantly decreased, and government contracts have been awarded to far fewer people of color and women.⁶

Connerly then moved to Washington State, where he sponsored Initiative 200. Equal opportunity supporters learned from Proposition 209 and presented a strong, unified front with endorsement from important local leaders and companies.⁷ However, the opposition campaign elected to focus on affirmative action as a program benefiting women, and to place less emphasis on affirmative action as a program benefiting people of color.⁸ Unfortunately, this strategy did not succeed and Initiative 200 passed with 58% of the vote in November 1998.⁹

³ See *Operation King’s Dream v. Connerly*, No. 06-12773, slip op. at 1 (E.D. Mich. Aug. 29, 2006), available at <http://www.bamn.com/doc/2006/060829-tarnow-decision.pdf> (finding that Connerly’s campaign “engaged in systematic voter fraud by telling voters that they were signing a petition supporting affirmative action.”).

⁴ LYDIA CHÁVEZ, *THE COLOR BIND: THE CAMPAIGN TO END AFFIRMATIVE ACTION 250* (1998).

⁵ *Id.* at 250–52.

⁶ See *The Impacts of Prop 209 on Public Education, Employment, and Contracting*, <http://www.impact209.org/wp-content/uploads/2008/08/impacts-of-prop-209-factsheet.pdf> (last visited Nov. 29, 2008).

⁷ Sumi Cho, *Understanding White Women’s Ambivalence Towards Affirmative Action: Theorizing Political Accountability in Coalitions*, 71 *UMKCL REV.* 399, 401 (2002).

⁸ *Id.* at 399–400.

⁹ *Id.* at 400.

Connerly pressed his initiative again in 2006, this time in Michigan. Proposition 2, as it was called, faced more substantial opposition from equal opportunity supporters than either the California or Washington initiative. Connerly and the ACRI employed a very deceptive signature gathering process, and a lawsuit brought against these tactics ultimately resulted in a finding that the Connerly campaign committed voter fraud.¹⁰ The lawsuit did not, however, succeed in removing Proposition 2 from the ballot. Proponents of equal opportunity prepared and executed a campaign aimed at convincing voters to oppose the initiative. They convened a diverse, bi-partisan coalition with broad community support and leadership. Again, however, the campaign focused largely on how affirmative action benefits white women, with benefits for people of color at best a supplementary message.¹¹ Proposition 2 passed with an approval rate of 58%.¹²

The experiences of these three initiatives suggest the importance of an early response to signature gathering and early challenges to the initiative to keep it off the ballot. They underscore the value of broad coalitions organized to present a united front. They also suggest that focusing solely on the benefits of affirmative action for women is not sufficient,¹³ and that a broad message that encompasses both women and people of color will be more effective.

Fresh from his Michigan success, Ward Connerly announced that he would target five more states in November 2008: Arizona, Colorado, Missouri, Nebraska, and Oklahoma. The remainder of this report will look at the efforts to defeat Connerly's initiatives in each of these states. It will give a history of the campaigns as they unfolded, and analyze both successful and unsuccessful strategies as well as possible research questions emerging from the campaign experiences.

Missouri

In Missouri, Connerly and the ACRI needed to gather about 150,000 signatures to place their initiative on the ballot. In response to their efforts, Missouri faith groups, community organizations, students, and labor and business people came together to form WECAN (Working to Empower Community Action Now!), a coalition to protect affirmative action. WECAN led the decline to sign and voter education campaign that ultimately prevented Connerly from collecting the signatures he needed to get his measure on the November ballot, and brought about an early victory for advocates of equal opportunity.

Connerly's initiative began its journey in Missouri with the submission of ballot language to the Secretary of State, who then prepared the issue summary that would appear on the ballot. In Missouri, the Secretary's summary was very helpful to equal opportunity advocates; it stated that the measure would "ban affirmative action programs designed to eliminate discrimination against, and improve opportunities for, women and minorities."¹⁴

¹⁰ *Operation King's Dream v. Connerly*, No. 06-12773, slip op. at 1 (E.D. Mich. Aug. 29, 2006), available at <http://www.bamn.com/doc/2006/060829-tarnow-decision.pdf>.

¹¹ Khaled Ali Beydoun, *Without Color of Law: The Losing Race Against Colorblindness in Michigan*, 12 MICH. J. RACE & L. 465, 483 (2007).

¹² *Id.* at 485.

¹³ See Cho, *supra* note 7.

¹⁴ *Asher v. Carnahan*, No. 07AC-CC00648, slip op. at 12 (Mo. Cir. Ct. Cole County Jan. 10, 2008), available at <http://www.colecountycourts.org/Asher%20Judgment%20rev.pdf>.

Connerly and the ACRI, unhappy about the summary, challenged it in court. In January 2008 the court changed the summary to present the issue as whether the state constitution should be amended to “ban state and local government affirmative action programs that give preferential treatment in public contracting, employment or education based on race, sex, color, ethnicity or national origin unless such programs are necessary to establish or maintain eligibility for federal funding or to comply with a court order.”¹⁵

Although the final result was less favorable to equal opportunity advocates, the litigation over the ballot summary and related press coverage likely helped defeat the initiative. The ACRI did not begin collecting signatures until after the court ruled on the ballot language,¹⁶ and thus had only about four months to collect the 150,000 needed signatures. Faced with this time limitation, the public education and organizing activities of WECAN, and the threat of a legal challenge to the validity of its signatures,¹⁷ Connerly and the ACRI conceded defeat and failed to submit signatures to place the initiative on the ballot.

WECAN’s public education campaign in Missouri demonstrated the power of early organization and publicity. The easiest way to defeat Connerly’s initiative is to keep it off the ballot, and the easiest way to keep it off the ballot is to prevent his group from getting enough signatures in the first place. WECAN gathered together many volunteers who spent well over 1,000 hours educating voters about the initiative and encouraging them not to sign Connerly’s petitions.¹⁸ The group also set up a hotline for reporting the location of Connerly’s signature gatherers.¹⁹

WECAN’s voter education efforts also put forth several effective messages.²⁰ They utilized a racetrack metaphor promoted by the African American Policy Forum,²¹ arguing that affirmative action is still needed because women and people of color continue to face obstacles that block their paths and deny them access to equal opportunity. WECAN also pointed out the disparities that still exist for these groups, and emphasized the negative consequences that Connerly’s initiatives have had on diversity in the states where they have passed. They talked about the wide variety of people and organizations that support affirmative action. Finally, they publicized the deceptive nature of Connerly’s initiative and the fact that he was bringing this initiative to Missouri from out-of-state.

The power of WECAN’s messages and their coordinated organizing and public education efforts helped to defeat Connerly’s initiative at the earliest stage possible. As discussed above, the Missouri campaign utilized several important strategies. First, the Secretary of State wrote a ballot summary which revealed the true purpose of Connerly’s initiative. Though the court eventually changed the Secretary’s language, the time taken by litigation kept Connerly’s signature gathering period short. Second, Missourians organized quickly to counter Connerly and

¹⁵ *Id.* at 11.

¹⁶ David A. Lieb, *Affirmative Action Ballot Language Unfair, Judge Rules*, COLUMBIA MISSOURIAN, Jan. 7, 2008, <http://www.columbiainmissourian.com/stories/2008/01/07/affirmative-action-ballot-language-unfair-judge-ru>.

¹⁷ See discussion of Oklahoma campaign *infra*.

¹⁸ Missourians Reject Discrimination, May 4, 2008, <http://wecanmo.org>.

¹⁹ Marcus E. Hammond, Don’t Sign Affirmative Action Petition, Apr. 19, 2008, <http://wecanmo.org>.

²⁰ See *id.*

²¹ See African American Policy Forum, Myth 1: Affirmative Action is Preferential Treatment, <http://aapf.org/projects/myths/myth-1-affirmative-action-is-preferential-treatment> (last visited Dec. 3, 2008).

the ACRI during their early stages of signature gathering. Third, they deployed a public education campaign that utilized several effective messages to explain why voters should decline to sign Connerly's petitions. Together, these strategies worked to keep Connerly's initiative off the ballot in Missouri, and marked an early victory for supporters of equal opportunity.

Oklahoma

In Oklahoma, Connerly needed almost 140,000 signatures to place his initiative on the ballot, and he submitted slightly more than that number by the signature gathering deadline. However, after the Oklahoma Secretary of State found an unprecedented number of duplicate signatures and irregularities, and the ACLU and NAACP filed a challenge to Connerly's signature count and protest to his petitions, Connerly and the ACRI withdrew their initiative from consideration in April 2008.

In the autumn of 2007, Connerly and the ACRI submitted their initiative to the Oklahoma Secretary of State and then began collecting signatures. Their efforts were countered by a group named All Working to Achieve and Keep Equality (AWAKE), which deployed volunteers to discourage people from signing the petition.²² Oklahoma law provides that signature gathering must be completed within ninety days of the initiative's submission to the Secretary of State, so Connerly and the ACRI had only a short period of time to gather signatures. They turned in their signatures in December 2007. The Secretary of State, in her report on the initiative's signatures to the Oklahoma Supreme Court, noted that the count "took significantly more preparation time due to the scope and number of irregularities noted among signature pages throughout the counting and tabulation process."²³ Problems observed by the Secretary included duplicate signatures and duplicate addresses, over ninety signatures listing essentially the same address, individual circulators listing different addresses in different places, and lack of notarization.²⁴ The Supreme Court certified the signatures in spite of these irregularities.

After the Supreme Court's finding of sufficiency, the Secretary of State submitted the initiative's ballot title to the Attorney General for review. The Attorney General revised the ballot title to make clear that the initiative would end affirmative action programs in Oklahoma.²⁵ Like in Missouri, state officials recognized that the true purpose of Connerly's initiative was to ban affirmative action, and changed the ballot title language to make voters aware of this fact.

AWAKE, together with the national group By Any Means Necessary (BAMN), held a press conference in late February, accusing Connerly and the ACRI of fraud in their signature gathering.²⁶ On March 7, 2008, the ACLU and the NAACP Legal Defense Fund filed an objection to the signature count and protest to the initiative petition with the Supreme Court of

²² Matthew Hansen, *Petition Drive to Ban Affirmative Action Faces Hard Fight*, OMAHA WORLD-HERALD, July 1, 2008, http://www.omaha.com/index.php?u_page=2835&u_sid=10370893

²³ Letter from M. Susan Savage, Oklahoma Secretary of State, to the Honorable James R. Winchester, Chief Justice, Oklahoma Supreme Court (Feb. 7, 2008), *available at* http://www.aclu.org/images/asset_upload_file913_34799.pdf.

²⁴ *Id.* at 2–3.

²⁵ Press Release, American Civil Liberties Union, ACLU Sues to Protect Equal Opportunity (Mar. 7, 2008), <http://www.aclu.org/votingrights/minority/34519prs20080307.html>.

²⁶ Press Release, By Any Means Necessary, BAMN/AWAKE Efforts Succeed in Oklahoma (Apr. 5, 2008), <http://www.bamn.com/doc/2008/080405-oklahoma-victory.asp>.

Oklahoma.²⁷ In the complaint, they cited the Secretary of State's report and alleged that there were not enough valid signatures to place the initiative on the ballot.²⁸

A month later, Connerly and the ACRI filed a motion to withdraw their initiative.²⁹ The motion stated that, despite their best efforts, Connerly and the ACRI had not been able to collect the required number of signatures within the ninety-day timeframe, and that they did not "want to waste [the Supreme] Court's efforts nor taxpayer money" to pursue the initiative.³⁰

The Oklahoma victory resulted primarily from Connerly's opponents' ability to expose the fraudulent signature-gathering practices utilized by Connerly and the ACRI. The circulators Connerly used in Oklahoma, as well as in other states, executed their work so poorly that even the Secretary of State noted the scope and number of irregularities. The winning strategy was to file a legal challenge to the validity of the signatures submitted, and thus force Connerly and the ACRI to withdraw. The Oklahoma experience proved that employing a legal strategy to defeat Connerly's initiative early in the process can be very successful.

Arizona

In Arizona, Connerly and the ACRI needed to collect about 230,000 signatures to get their initiative on the ballot. They collected signatures throughout the spring and summer of 2008, but faced opposition from proponents of equal opportunity. In addition to Connerly's signature gathering process, legislation was introduced in the Arizona House to put an anti-affirmative action initiative directly on the ballot. This legislative measure, however, was quickly defeated.³¹ Connerly and the ACRI ultimately filed almost 335,000 signatures in Arizona, but after a legal challenge the initiative was decertified by the Arizona Secretary of State in August because over 40% of the submitted signatures were invalid.

In Arizona, Connerly and the ACRI were rumored to be low on signatures early in the process.³² They also faced early opposition from several groups that support equal opportunity. A local coalition named Protect Arizona's Freedom (PAF) emerged to play a leadership role in defeating Connerly's initiative, and began their efforts with a decline to sign campaign. PAF emphasized that Connerly's initiative would prohibit equal opportunity programs for women and people of color, and that it was being introduced in Arizona by an outsider.³³ They also challenged Connerly's deceptive signature gathering tactics and set up a hotline for people to call if they had been approached to sign the petition.³⁴ By Any Means Necessary (BAMN), working separately,

²⁷ Objection to the Signature Count and Protest to the Initiative Petition, *In re* Initiative Petition No. 387, No. 105,525 (Okla. Mar. 7, 2008), available at http://www.aclu.org/images/asset_upload_file678_34595.pdf.

²⁸ *Id.* at 2.

²⁹ Motion to Withdraw State Question 737, Initiative Petition 387, *In re* Initiative Petition No. 387, No. 105,525 (Okla. Apr. 4, 2008), available at http://www.aclu.org/images/asset_upload_file434_34802.pdf.

³⁰ *Id.* at 2.

³¹ Scott Wong, *Civil Right Measure May Be Adrift*, ARIZ. REPUBLIC, Apr. 20, 2008, <http://www.azcentral.com/news/articles/2008/04/20/20080420civilrights0420.html>.

³² *Id.*

³³ Protect Arizona's Freedom, Decline to Sign! Flyer, <http://www.protectarizonafreedom.org/Documents/PAF%20Decline%20to%20Sign.pdf> (last visited Nov. 21, 2008).

³⁴ *Id.*

also encouraged voters to decline to sign the petition and filed a lawsuit in June claiming that Connerly was deliberately deceiving voters about the purpose of his initiative.³⁵

Connerly and the ACRI submitted almost 335,000 signatures to the Arizona Secretary of State in early July, just meeting the deadline for submissions.³⁶ His initiative was subsequently endorsed by Arizona Senator and presidential candidate John McCain, though in the past McCain had opposed Connerly's initiatives.³⁷ After Connerly's submission, PAF began reviewing the initiative's signatures to determine their validity. PAF formed a round-the-clock operation that had nearly 1,000 volunteers reviewing the submitted signatures, and filed a lawsuit on August 18 challenging over 100,000 of these signatures.³⁸

On August 21, the Secretary of State decertified Connerly's initiative because he had not submitted enough valid signatures to place it on the ballot; the Secretary found that 40% of the signatures could not be counted. Connerly and the ACRI initially contested the Secretary's determination, but later withdrew the lawsuit because they could not review all the rejected signatures in time.³⁹

The Arizona victory marked the second state where Ward Connerly was defeated by a lawsuit challenging signature validity. PAF's efforts to educate voters early on about the true meaning and impact of Connerly's initiative, coupled with their tireless efforts to evaluate hundreds of thousands of signatures in a very short period of time, played a critical role in the ultimate decertification and defeat of the initiative.

Colorado

In Colorado, Connerly needed to collect about 76,000 signatures to place his initiative on the ballot, and ultimately submitted 128,000 signatures. The Colorado Secretary of State found a sufficient number of valid signatures to approve the initiative, and designated the measure "Amendment 46." A trio of local coalitions headed the effort to defeat Connerly's initiative, and on November 4, 2008, Colorado became the first state to vote against Connerly's Civil Rights Initiative at the polls.

Connerly began his effort in Colorado early; in May 2007 the ACRI submitted their initiative to the title board, which set the ballot title language as identical to Connerly's proposed language. Though equal opportunity supporters objected, the Colorado Supreme Court ultimately upheld

³⁵ Howard Fischer, *Suit Filed Against Initiative to End Affirmative Action*, ARIZ. DAILY SUN, July 1, 2008, http://www.azdailysun.com/articles/2008/07/01/news/state/20080701_arizo_176674.txt.

³⁶ *Affirmative Action Ban Makes Ballot*, ARIZ. REPUBLIC, July 3, 2008, <http://www.azcentral.com/news/articles/2008/07/03/20080703affaction.html>.

³⁷ Evan Brown, *Arizona Democrats Decry McCain Support of Connerly Initiative*, POLITICKERAZ.COM, July 29, 2008, <http://www.politickeraz.com/evanbrown/1787/az-democrats-decry-mccain-support-connerly-initiative>.

³⁸ Seth Colter Walls, *Affirmative Action Ban Likely Stripped From Arizona Ballot, Opponents Say*, HUFFINGTON POST, Aug. 19, 2008, http://www.huffingtonpost.com/2008/08/19/affirmative-action-ban-li_n_119831.html.

³⁹ *Group Abandons Lawsuit over Affirmative Action*, DESERET NEWS (Salt Lake City), Aug. 31, 2008, <http://deseretnews.com/article/1,5143,700255208,00.html>.

Connerly's language.⁴⁰ Connerly and the ACRI began collecting signatures in October 2007, shortly after the Court's decision.⁴¹ Colorado Unity, an already-existing statewide coalition dedicated to promoting equal opportunity, quickly organized a decline to sign campaign. Colorado Unity emphasized Connerly's deceptive signature gathering tactics and set up a hotline for people to call if they witnessed troubling occurrences involving the petition carriers.⁴² Several people filed complaints with the Secretary of State, claiming that circulators had lied to them about the initiative's purpose. The voter fraud committed by Connerly's circulators drew national coverage, with *The New York Times* running an article on the deception occurring in Colorado.⁴³

Connerly and the ACRI submitted 128,000 signatures in March 2008, and the Secretary of State found that there were a sufficient number of valid signatures to place the initiative on the ballot. In April, a second local group, Vote No on 46, filed a legal challenge, alleging that 69,000 of Connerly's signatures were invalid.⁴⁴ Problems with the signatures included that some circulators were not Colorado residents, some notaries were not currently licensed, and many people signed the petition more than once.⁴⁵ However, once the judge ruled that No on 46 could not include challenges to petitions regarding the legality of the circulators themselves, the group decided not to pursue the lawsuit.⁴⁶

Coloradans for Equal Opportunity (CEO), a third local group working to counter Connerly's initiative, introduced an alternative initiative aimed at protecting affirmative action early in 2008. However, Connerly challenged CEO's ballot title and delayed the initiative for several months. By the time the alternative initiative's ballot title was approved and CEO could begin collecting signatures, the August 4 deadline had nearly arrived. CEO faced continued opposition from Connerly and the ACRI as CEO gathered signatures.⁴⁷ Ultimately, CEO did turn in more than 117,000 signatures (enough to qualify for the ballot), but the Secretary of State found that there were not enough valid signatures to place the initiative on the ballot.⁴⁸ In October, Coloradans for Equal Opportunity filed a lawsuit challenging the Secretary's disqualification of 8,000 signatures.⁴⁹ If the suit is successful, the initiative could be placed on the 2010 ballot. Although

⁴⁰ *Baca v. Orr*, Case No. 07SA197 (Colo. Sep. 10, 2007), available at http://www.aclu.org/images/asset_upload_file410_34942.pdf.

⁴¹ Press Release, Colorado Unity, State Coalition Announces "Decline to Sign" Campaign (Oct. 4, 2007), <http://www.thebell.org/PUBS/other/2007/DeclineToSignpress10-4.pdf>.

⁴² *Id.*

⁴³ Dan Frosch, *Colorado Petition Draws Charges of Deception*, N.Y. TIMES, Apr. 1, 2008, <http://www.nytimes.com/2008/04/01/us/01denver.html>.

⁴⁴ Mike McPhee, *Group Challenges Affirmative Action Initiative*, DENVER POST, Apr. 24, 2008, http://www.denverpost.com/ci_9041278.

⁴⁵ *Id.*

⁴⁶ *Measure to End Affirmative Action Goes to Voters*, COLO. INDEP., Sep. 18, 2008, <http://coloradoindependent.com/8560/measur-to-end-affirmative-action-goes-to-voters>.

⁴⁷ John Schroyer, *Amendment 46, Initiative 82 Backers Go Toe-to-Toe in Accusations*, COLO. STATESMAN, July 17, 2008, <http://www.coloradostatesman.com/content/amendment-46-initiative-82-backers-go-toe-toe-accusations>.

⁴⁸ Kevin Flynn, *One Less Initiative on Hefty Colorado Ballot*, ROCKY MOUNTAIN NEWS, Sep. 3, 2008, <http://www.rockymountainnews.com/news/2008/sep/03/affirmative-action-protection-measure-falls-short>.

⁴⁹ *Secretary of State's Office Sued over Signature Disqualifications*, ROCKY MOUNTAIN NEWS, Oct. 4, 2008, <http://www.rockymountainnews.com/news/2008/oct/04/secretary-of-states-office-sued-over-signature>.

the alternative initiative did not ultimately qualify for the 2008 ballot, it did succeed in providing additional publicity about the harmful effects of Connerly's initiative.

After these disappointing losses, Vote No on 46 regrouped and began an energized campaign for a "no" vote on Election Day. They participated in debates and presentations regarding the initiative, discussed the discrimination in society that creates a continuing need for programs that consider race and gender, and drew attention to the diversity programs that would be eliminated if Amendment 46 passed.⁵⁰ No on 46 also organized opposition to Connerly's initiative from many sectors of society, including community, business, religious and student groups. Several public figures and newspapers also endorsed a "no" vote, including Colorado Governor Bill Ritter, Denver Mayor John Hickenlooper, The Denver Post, and the Denver Business Journal. These individuals and groups emphasized the deceptiveness of the initiative's language, and the continuing need for equal opportunity programs in Colorado.

Though initial polling showed that Connerly's initiative would pass by a wide margin, Vote No on 46's campaign began closing the gap in October, and immediately before the election polls were finding 42% of voters saying no and 38% saying yes.⁵¹ Vote No on 46 employed a grassroots campaign effort, with volunteers canvassing neighborhoods and working at phone banks. They also utilized paid media, with radio spots in English and Spanish. As a result of these efforts, Colorado became the first state to defeat Connerly's initiative at the ballot box.⁵² In doing so, Colorado voters rejected the initiative and reaffirmed Colorado's commitment to equal opportunity.

As detailed above, Colorado's trio of coalitions opposing Connerly employed several legal strategies to challenge his initiative. First, they filed a challenge to the ballot measure's deceptive language. Second, they encouraged voters to file complaints with the Secretary of State if they were lied to by an initiative circulator. Finally, Connerly's opponents also challenged the validity of many of the signatures submitted by Connerly and the ACRI. Though none of these legal strategies were ultimately successful, the publicity surrounding them helped draw attention to Connerly's deceptive tactics and the true meaning of Amendment 46. The effort to introduce an alternative initiative likewise brought helpful publicity to the fight against Connerly's initiative. If in the future an alternative initiative effort can be circulated earlier, it would not only raise public awareness but would also be more likely to make the ballot.

In addition to legal efforts, the Colorado equal opportunity coalitions put together a strong public education campaign, using effective messages to reach voters and convince them to vote against Amendment 46. They talked about how important equal opportunity programs are for the community as a whole, and worked with spokespeople to communicate that message to voters. They also publicized the out-of-state origin of the initiative and the deceptive tactics used to gather the signatures that placed it on the ballot. Many individuals and organizations publicly

⁵⁰ See Kevin Flynn, *Measure Targets Affirmative Action*, ROCKY MOUNTAIN NEWS, Sep. 17, 2008, <http://www.rockymountainnews.com/news/2008/sep/17/measure-targets-affirmative-action>.

⁵¹ Andy Vuong, *Most State Measures Look Poised for a Loss*, DENVER POST, Nov. 1, 2008, http://www.denverpost.com/ballotissues08/ci_10876316.

⁵² Kevin Flynn, *Colorado Voters Preserve Affirmative Action*, ROCKY MOUNTAIN NEWS, Nov. 6, 2008, <http://www.rockymountainnews.com/news/2008/nov/06/colorado-voters-preserve-affirmative-action>.

denounced Connerly's initiative, and voiced support for equal opportunity policies programs. In the final days before the election, numerous volunteers knocked on doors and called voters to make sure they knew what Amendment 46 would do in Colorado and were prepared to vote against it.

Possible other contributing factors to Colorado's electoral success include a multitude of amendments on the ballot and a large turnout of progressives who were voting for Barack Obama.⁵³ However, the narrowing of the gap in the polls throughout the last month showed that Colorado's equal opportunity groups were getting their message to the voters.⁵⁴ This dedication and perseverance ultimately brought about the first defeat of Ward Connerly's initiative on Election Day.

Nebraska

In Nebraska, Connerly needed to file 112,000 signatures to get his initiative on the ballot. In July 2007, Connerly and the ACRI filed about 167,000 signatures, and the Nebraska Secretary of State found that the initiative had enough signatures to qualify for the ballot. Despite a dedicated campaign to defeat Connerly's initiative, voters approved the ballot measure in the November 4 election.

After Connerly announced his intention to pursue the initiative in Nebraska, a coalition called Nebraskans United came together in support of equal opportunity and dedicated their efforts to defeating Connerly's initiative. In February, a legislative measure was introduced to place the initiative directly on the ballot. However, Nebraskans United organized against this measure and forced its proponent to withdraw it from consideration.⁵⁵

Nebraskans United then turned its focus to a decline to sign campaign, utilizing several different messages. They argued that the playing field was still not level, and depicted affirmative action as enhancing opportunity and access for excluded individuals.⁵⁶ They also argued that a diverse workforce was needed in a global economy.⁵⁷ They publicized how Connerly's funding came almost entirely from outside of Nebraska, and pointed out the deceptiveness of the initiative's language and ballot circulators.⁵⁸ Additionally, several prominent local organizations publicly opposed the initiative, including the University of Nebraska Board of Regents, the Greater Omaha Chamber of Commerce, the Nebraska Board of Education, the State Board College of Trustees, and the Nebraska Democratic Party.

⁵³ Katie Kerwin McCrimmon, *Colorado May Become First to Support Preference Programs*, ROCKY MOUNTAIN NEWS, Nov. 5, 2008, <http://www.rockymountainnews.com/news/2008/nov/05/colorado-voters-may-be-first-support-preference-pr>.

⁵⁴ *Id.*

⁵⁵ *Effort to End Affirmative Action in Nebraska Not Over*, WOWT.COM, Feb. 27, 2008, <http://www.wowt.com/home/headlines/16016362.html>.

⁵⁶ See, e.g., James B. Milliken & John P. Schlegel, *Local View: Affirmative Action Ban Would Take Away Opportunities*, LINCOLN JOURNAL STAR, June 29, 2008, <http://journalstar.com/articles/2008/06/29/opinion/columns/doc4866a3ed5ae3f017453458.txt>.

⁵⁷ About Nebraskans United, <http://www.nebraskansunited.org/about.htm> (last visited Dec. 3, 2008).

⁵⁸ *Id.*

Nebraskans United also sent out volunteers to document circulators' illegal acts and discourage people from signing Connerly's petition.⁵⁹ They discovered that many of Nebraska's laws regarding petition drives were being violated; for example, circulators were giving signers false names and failing to read them the initiative's object statement.⁶⁰

Despite Nebraskans United's efforts, Connerly and the ACRI submitted about 167,000 signatures in July, and in late August the Secretary of State approved the signatures. The Nebraska Attorney General proposed ballot title language that exactly mirrored the deceptive language of Connerly's amendment, so in late July Nebraskans United filed another legal challenge requesting alternate ballot title language. Unfortunately, the judge ruled that the Secretary of State's language should remain.⁶¹

Nebraskans United then switched gears to a vote no campaign, encouraging voters to reject Connerly's initiative and preserve affirmative action. They utilized messages from the decline to sign campaign, focusing on the value of equal opportunity programs to the community and the damaging effects Connerly's initiative would have on the state's ability to promote diversity. Volunteers canvassed neighborhoods and encouraged voters to vote no,⁶² and debates and rallies were held to educate the voting public about the initiative.⁶³ Nebraskans United also filed another lawsuit, challenging the validity of over 40,000 signatures submitted by Connerly and the ACRI.⁶⁴

On Election Day, Nebraska voters approved Connerly's ballot measure, but it is uncertain whether the measure will go into effect.⁶⁵ The lawsuit filed by Nebraskans United is still pending, with a decision from the District Court expected soon. The District Court's decision will likely be appealed to the Nebraska Supreme Court. If that court finds that the Connerly campaign utilized fraud in their signature collection, then the initiative and the voters' subsequent approval will be invalidated.

Nebraskans United faced an uphill battle from the outset, as Connerly's group collected the bulk of its signatures before they organized. The Nebraska experience underscores the importance of organizing early in order to run an aggressive opposition campaign. Nebraskans United faced setbacks on the ballot title language, with a Secretary of State who left Connerly's deceptive

⁵⁹ Matthew Hansen, *Petition Drive to Ban Affirmative Action Faces Hard Fight*, OMAHA WORLD-HERALD, July 1, 2008, http://www.omaha.com/index.php?u_page=2835&u_sid=10370893.

⁶⁰ Matthew Hansen, *Foes to Dispute Petitions in Affirmative Action Drive*, OMAHA WORLD-HERALD, June 26, 2008, http://www.omaha.com/index.php?u_page=2798&u_sid=10366809.

⁶¹ Matthew Hansen, *Judge OKs Wording of Affirmative Action Ballot Measure*, OMAHA WORLD-HERALD, Aug. 29, 2008, http://www.omaha.com/index.php?u_page=2798&u_sid=10419234.

⁶² Erin Grace, *Get-Out-the-Vote Group Fights Connerly Measure*, OMAHA WORLD-HERALD, Sep. 26, 2008, http://www.omaha.com/index.php?u_page=2835&u_sid=10443483.

⁶³ See, e.g., Susan White, *Rally Aims to Mobilize Foes of Ban on Affirmative Action*, OMAHA WORLD-HERALD, Oct. 27, 2008, http://www.omaha.com/index.php?u_page=2798&u_sid=10470798; Melissa Lee, *LIBA Hosts Debate on Affirmative-Action Ban*, LINCOLN JOURNAL-STAR, Oct. 21, 2008, <http://www.journalstar.com/articles/2008/10/21/news/local/doc48fe36876cb3f400242138.txt>.

⁶⁴ Melissa Lee, *Suit Hits Nebraska Anti-Affirmative Action Petitions*, LINCOLN JOURNAL STAR, Sep. 12, 2008, <http://journalstar.com/articles/2008/09/12/news/local/doc48ca7f3e14f98113112881.txt>.

⁶⁵ Matthew Hansen, *Nebraska Voters Back Affirmative Action Ban*, OMAHA WORLD-HERALD, Nov. 5, 2008, http://www.omaha.com/index.php?u_page=2835&u_sid=10478162.

language intact and a court that refused to modify that language. They also faced infrastructure and funding difficulties in getting their messages out. However, Nebraskans United had many successes. They involved community, religious, student, university, business, and political groups in their campaign to defeat the initiative. They employed messaging strategies that emphasized the importance of equal opportunity for all Nebraskans. They also gathered a large amount of evidence regarding illegal circulator conduct and used that evidence to challenge 40,000 signatures. Though the group may not have been able to bring about a “no” vote on such a deceptive initiative, their efforts showed that “there are many great Nebraskans . . . who will keep alive the goal of equal opportunity for all.”⁶⁶

Conclusion

The 2008 election year was a great success for advocates of equal opportunity. Connerly targeted five states for his Super Tuesday effort, and was defeated in four of them. Three states managed to keep him off the ballot altogether, and Colorado gave him his first electoral defeat. Early decline to sign campaigns, run by broad community coalitions, were integral. They kept Connerly off the ballot in Missouri, and in other states they laid the groundwork for subsequent legal challenges to succeed. Legal challenges to signature validity were another essential strategy, keeping Connerly off the ballot in both Oklahoma and Arizona. Additionally, all of the campaigns employed successful messaging that emphasized the importance of equal opportunity for all members of society, the deceptive nature of Connerly’s initiative, and the harmful effects these measures would have on programs designed to increase racial and gender diversity in education and employment. In Nebraska and Colorado, proponents of equal opportunity recruited prominent spokespersons to draw publicity to the issue. In Colorado especially, the No on 46 coalition was very successful in getting its message out to voters.

Connerly himself has realized the magnitude of his losses. *The Colorado Independent* interviewed him after Election Day, and stated that he will “likely halt his nationwide push to end race and gender preferences.”⁶⁷ According to the interview, he does not intend to return anytime soon to promote these initiatives again.⁶⁸ Advocates for equal opportunity certainly hope that this is true, and that we can move from defensive to offensive positions in support of affirmative action policies and programs. But if Connerly or his initiatives reappear, we know several strategies that can be used to defeat them.

Research Questions

Though the groups who were on the ground in these campaigns are still reviewing and evaluating what happened, what was learned, and what needs to be studied further, the Kirwan Institute has put together a few preliminary ideas on what future research might be valuable to supporters of equal opportunity. Possible research questions emerging from the initiative campaigns of 2008 include the following:

⁶⁶ Letter from David Kramer and Danielle Nantkes, Directors of Nebraskans United, to Nebraskans United members (Nov. 4, 2008), <http://www.nebraskansunited.org>.

⁶⁷ Naomi Zeveloff, *After Colorado Loss, Ward Connerly May Pull the Plug on Affirmative-Action Bans*, COLO. INDEP., Nov. 7, 2008, <http://coloradoindependent.com/14617/ward-connerly-may-pull-the-plug>.

⁶⁸ *Id.*

1. *What messages are most effective at preventing people from signing Connerly's petitions? What messages are most effective at encouraging people to vote no? Are there similarities and/or differences between these messages?*

From the foregoing experiences with Connerly's initiative, we have learned that there are two distinct phases of the campaign: the signature gathering phase and the build-up to the election phase. Those who oppose Connerly's initiative want to convince people not to sign the petition during the first phase, and to vote against the initiative during the second phase. Though both goals are similar in their opinion of the initiative, it is possible that different messages may be more effective in one phase than in the other. For instance, messages concerning the deceptive nature of Connerly's signature gathering tactics may be more effective in decline-to-sign campaigns, while messages concerning the importance of equal opportunity programs to the community as a whole may be more effective during the vote-no campaign. Though these messages have all been used in the past, during both phases, it could be helpful to look at their effect on both desired actions (declining to sign, voting no) to further guide the deployment of those messages.

2. *How effective is a campaign that focuses on negatives – deceptive language, deceptive signature gathering efforts, outside influence, outside money? If it is effective, what are the best methods to deploy that message without triggering the harmful effects that can emerge from negative advertising?*

A significant portion of the messages used in the campaigns against Connerly's initiative focused to a great extent on negative aspects of the initiative—the deceptive language of the initiative, the deceptive efforts of Connerly's signature gatherers, the fact that the initiative was being brought into the state by an outsider, the fact that money from outside the state was funding the initiative, and the fact that Ward Connerly was being paid very well for his work on these initiatives.⁶⁹ Preliminary polling has shown that these messages were effective in moving voters to vote against the initiative in Colorado. Yet political campaigns are often criticized for negative ads, and some studies have found that negative ads discourage voter turnout and increase voter cynicism.⁷⁰ Thus, research exploring the negative ad strategy against Ward Connerly could be very useful. If the negative strategy is effective, there are likely to be some methods of communicating that message that are more effective than others. Research on the best way to deploy these messages could assist future campaigns.

- a. *Does using the term "carpetbagger" for Ward Connerly help defeat his initiative?*

During the 2008 election, many groups opposing Connerly's initiative characterized Connerly as a "carpetbagger."⁷¹ The term spurred controversy in Colorado; Connerly's

⁶⁹ See, e.g., Amendment 46: Misrepresentation, <http://votenoamendment46.com> (last visited Nov. 30, 2008); Ward Connerly, The Color of Money, <http://www.bigmoneyconnerly.org> (last visited Nov. 30, 2008).

⁷⁰ See, e.g., STEPHEN ANSOLABEHRE & SHANTO IYENGAR, GOING NEGATIVE: HOW POLITICAL ADVERTISEMENTS SHRINK AND POLARIZE THE ELECTORATE (1996).

⁷¹ See, e.g., Connerly's "Super Tuesday"—The Politics of Carpetbagging, <http://www.bigmoneyconnerly.org/node/1402> (last visited Nov. 30, 2008).

group contended that the term was “racially offensive” and two radio stations pulled ads that used the term.⁷² The debate over the term prompts the question of whether characterizing Connerly as a “carpetbagger” is an effective strategy. Research on whether this message convinces voters to oppose the initiative could be useful when making future decisions on whether to use “carpetbagger” terminology in campaigns.

3. *How much does endorsement by big names (governors, mayors, presidential candidates) and organizations (chambers of commerce, universities) affect voter behavior? Are there specific characteristics that make spokespeople more effective?*

Many political, educational, and community groups and leaders have made public statements and resolutions against Connerly’s initiative in each state where the amendment has been introduced. The right messenger is an important part of the message.⁷³ For instance, Houston faced a similar anti-affirmative action initiative in 1997. Houston’s mayor was a spokesperson against the anti-affirmative action initiative there, and his message helped convince voters to vote against it.⁷⁴ This year in Colorado, polling identified Mayor Hickenlooper as an important spokesperson for the coalition opposing Connerly’s initiative. Research that looks at which spokespeople have been the most effective thus far, and whether there are particular characteristics that make spokespeople more effective, could help campaigns decide which spokespeople to recruit in the future.

⁷² See Kevin Flynn, *Two Radio Stations Pull Anti-Amendment 46 ‘Carpetbagger’ Ad*, ROCKY MOUNTAIN NEWS, Nov. 1, 2008, <http://www.rockymountainnews.com/news/2008/nov/01/two-radio-stations-pull-anti-amendment-46-ad>.

⁷³ DIVERSITY ADVANCEMENT PROJECT, THINKING CHANGE 11 (2005), available at <http://4909e99d35cada63e7f757471b7243be73e53e14.gripelements.com/pdfs/DAPreportThinkingChange.pdf>.

⁷⁴ See *id.* at 12.