

BAMN: By Any Means Necessary **How Radicals Use Race Preferences and Immigration to Change the Debate**

By Kevin Mooney

***Summary:** The radical group called *By Any Means Necessary*, or *BAMN*, believes racial profiling is wrong but racial quotas in hiring and college admissions are right. A contradiction? *BAMN* doesn't care. It goes to court and into the streets to cause trouble and provoke political upheaval.*

Arizona is ground zero in the battle over immigration and affirmative action. In April, the state legislature and Gov. Jan Brewer made it a state crime to be in Arizona illegally. SB 1070 establishes procedures for the state to identify and detain illegal immigrants and turn them over to federal custody for prosecution and deportation. The law also orders employers to fire illegals subject to revocation of their business licenses should they fail to make a good faith effort to uphold the law, which is scheduled to take effect in August.

Arizona also has banned schools from teaching "ethnic studies." Supporters of the new law say Chicano studies classes in Tucson encouraged attitudes of resentment and anti-white racism. The law prohibits teaching classes that "advocate ethnic solidarity instead of the treatment of pupils as individuals" and "promote the overthrow of the United States government." It reduces state funding to any school that fails to comply.

Arizona is also at the center of a renewed struggle over race and gender-based affirma-



Inciting fanatics: BAMN leaders Luke Massie (left) and Shanta Driver (right) routinely agitate protesters.
(photo: www.chetlyzarko.com)

tive action. Last year the legislature passed a measure that will let voters decide whether the state constitution should be amended to outlaw the use of race, ethnicity and gender to give applicants preferential treatment in government hiring, contracting and public education. Voters will decide this question in November.

These measures have stirred up great controversy, and there is considerable debate over the moral rightness, legal standing, and political judgment of enacting each of them.

Whatever the outcome, there is no doubt they are stirring up a proverbial hornets nest.

The debate may soon go nationwide. Across the country, citizen anger at uncontrolled

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illegal immigration has provoked a reaction from radical left-wing activists, who claim the real issue is racism. Left-wing groups are mobilizing their supporters, holding rallies and trying to create new coalitions. The activists' aim is to revive radical politics by focusing on what they consider a winning set of issues. Their goal is to reframe the debate over immigration and use it to transform American politics.

Reviving the Left, Confronting the Right

One little-known but politically potent organization is called the Coalition to Defend Affirmative Action, Integration and Immigrant Rights and Fight for Equality By Any Means Necessary. Commonly abbreviated in the media as By Any Means Necessary or BAMN, it seeks to preserve racial preference policies that have been rejected at the ballot box and by rulings of the U.S. Supreme Court.

BAMN's current focus is "affirmative action," the form of government-sanctioned

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discrimination that has become a racial spoils system benefiting left-wing attorneys, university and corporate "human resources" offices, and self-described civil rights groups. Pressure groups like BAMN are always on the alert to protect 'diversity' programs and 'inclusion' projects and to fight efforts to set up race-neutral policies that would undermine them.

BAMN takes the fight to the streets as well as into courtrooms. In Michigan in 2006, several hundred BAMN activists stomped on the floor and shouted obscenities to disrupt a meeting of the state's Board of Canvassers, which had gathered to certify a ballot initiative allowing voters to decide whether to ban government race and gender-based preference policies. BAMN bussed in Detroit high school students whose chants drowned out speakers.

Chetly Zarko, treasurer of the Michigan Civil Rights Initiative, which sponsored the initiative, described how BAMN co-chairs Shanta Driver and Luke Massie incited the protesters with an "almost fanatical, religious expression on their faces." Zarko wrote, "When directly asked in the hallway as the riot was escalating, local police however cited their fear that they would be sued if they intervened too early - and that they would only intervene if 'property was being destroyed.' That happened minutes later, as the crowd surged forward and flipped over a table."

BAMN also sent unprepared and unsupervised Detroit high schoolers to a University of Michigan program against illegal immigration. The program sponsor, the conservative group Young Americans for Freedom, was shouted down by students hurling slurs and profanities, a tactic that so reinforced negative stereotypes of black youth that the campus NAACP protested BAMN's tactics.

Yet it would be a mistake to dismiss BAMN as just another radical fringe group of no consequence. BAMN also fights and wins battles in court. Earlier this year, it filed a lawsuit to overturn California's Proposition 209, a ballot initiative passed by state voters in 1996 to end race preferences in any state program, but especially in higher education. The initiative received 54 percent of the vote and subsequently was affirmed as constitutional by the Ninth U.S. Circuit Court of Appeals. But BAMN's suit alleges that outlawing race and sex-based preferences in public education, contracting and employment violates the equal protection clause of the U.S. Constitution.

"It is an injustice and a social explosion waiting to happen for California to enforce a system of de facto segregation in which Latina/o, black, and Native American students, who comprise a fast-growing majority of California's high-school students, are almost entirely shut out of this state's most selective public universities," said a BAMN release. "The level of segregation at UC-Berkeley relative to the state population is matched only in the Deep South. Proposition 209 cannot stand."

On June 23, the Pacific Legal Foundation, on behalf of Ward Connerly, president of the American Civil Rights Institute (ACRI), filed a motion to intervene in the case and to dismiss the BAMN lawsuit. PLF was forced to take action because it could not count on the state and university officials that BAMN named as defendants to make a forceful response. The defendants were neither forceful advocates of race neutral policies nor strong defenders of Proposition 209.

"The lawsuit names Governor Arnold Schwarzenegger, the Regents of the University of California, and U.C. President Mark G. Yudof as defendants," PLF observed in

its press release. “But both the Governor and the University defendants have shown a reluctance to defend Proposition 209’s constitutionality. In moving to be dismissed from the lawsuit, they are relying primarily on claims of immunity.”

In January 2007, a court had rejected BAMN’s effort to overturn a similar Michigan law known as Proposition 2. But in California anything is possible. BAMN founder and co-chair Shanta Driver, a lead counsel in the suit, has assembled a legal team whose firepower is concentrated within the Detroit firm of Scheff & Washington where George B. Washington and Eileen R. Scheff are listed as partners. The team also includes Oakland attorney Ronald Cruz, Los Angeles attorney Monica Smith, and Detroit attorney Joyce Schon.

Unlike the defendants (Schwarzenegger, et.al), the plaintiffs do not mince words:

“Qualified Latina/o and black students are being rejected by the UC’s in higher proportions than UC qualified white students. BAMN and the student plaintiffs are challenging Proposition 209 because Latina/o, black, Native American and other minority students are forced to labor under an unequal political procedure in seeking redress for discrimination in admissions. Every other group in the state of California, from veterans to rural students to disabled students to lesbian gay students have the right to ask the UC Regents to employ an admissions system that will increase their numbers in the UC student body. The only group legally barred from petitioning the Regents for a change in the admissions system to increase the admission of students from their communities are Latina/o, black, and other underrepresented minority students.”

BAMN co-chair Shanta Driver, who takes center stage at its public events, is a 1975 Harvard graduate with a J.D. from Wayne State University Law School. BAMN literature calls her “the legal architect of the successful student intervention in *Grutter v. Bollinger*.” This is the 2003 U.S. Supreme Court decision that preserved affirmative action programs in university admissions. Driver is not only BAMN national co-chair but also heads its non-profit affiliate—United



Shanta Driver

for Equality and Affirmative Action Legal Defense Fund.

BAMN’s Origins and Mission

BAMN describes itself as a “student and youth based.” It was started by Shanta Driver in 1995 in Berkeley, California to oppose a decision by the Regents of the University of California to end the use of race as the criterion for admitting more minority students. The Regents told University administrators to create a more complex formula to achieve “diversity” in the student body.

Driver has no patience with such compromises. Her view is that liberals in universities, labor unions and in the Democratic party are fearful of radical social movements and reluctant to argue that affirmative action

policies are part of an ongoing “struggle for equality.”

By contrast, BAMN invokes the example of the black activist Malcolm X, who called for “*action on all fronts by any means necessary*.” BAMN’s journal, “The Liberator,” boldly identifies the enemy. It is the national leadership of the Republican Party. The Republican strategy, says BAMN, is to focus on the alleged unfairness of affirmative action to channel public frustration away from the real issues of stagnating wages and growing inequality. Republicans and their allies in conservative foundations and think-tanks have a master plan to re-segregate America: “The unbridled cynicism of the resegregationists’ efforts would make a Judas blush,” says the BAMN website.

BAMN proposes to create statewide coalitions of students, women and minorities in California, Michigan and other states where there are current legal battles over ending racial preference policies, particularly in higher education but in other areas as well. “The Liberator” calls for a new youth groups, new women’s groups, and minority groups that will create a mass movement to confront the racist Right. This new “New Left” will force Barack Obama to choose between his progressive base and his wealthy financial backers on Wall Street and in the Democratic Party.

In August 2005 the Detroit News reported that the FBI had circulated a 2002 report among Michigan law enforcement officials citing BAMN as a potential terrorist group. The ACLU complained that federal and state counterterrorism officers had “turned their attention to groups and individuals engaged in peaceful protest activities.”

In an important respect, BAMN’s radical political agenda is obscured by the media’s

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focus on its lawsuits, says Jennifer Gratz, executive director of the Michigan Civil Rights Institute, the principal opponent of race preference policies in the state. “The idea here is to recruit and indoctrinate young people,” Gratz said. “BAMN identifies with the affirmative cause because it gives them a connection with high school and college students who then show up at their rallies and learn the ideology.” BAMN also seeks ties with teachers unions who sympathize with its radical priorities for public education. In Detroit it is fighting a ballot initiative giving the mayor control over city schools. BAMN’s website makes its positions clear:

Organize Independent Mass Actions and Build the New Student-Led Civil Rights Movement to Defend Public Education from Pre-K Through College

** Stop Relying on the Democrats to Save Us*

** End “Race to the Top” Now - Release All Federal Funds to the States Based on Need*

** No More Charters, No Vouchers*

** Save Public Education: Stop Union Busting, Get Rid of Arne Duncan Now*

Why is “Affirmative Action” in College Admissions Still An Issue?

California Proposition 209, the ballot initiative to end race preferences in state programs, was spearheaded by Ward Connerly, an African American and a former UC Regent who established the American Civil Rights Institute (ACRI) in 1996. Connerly supports affirmative action policies that genuinely end racial discrimination, but he argues that race and gender preferences do just the opposite. Following passage of Prop 209, ACRI has successfully worked to pass similar initiatives in Washington state, Michigan and Nebraska. ACRI’s “Arizona Civil Rights Initiative” failed to get enough signatures to

be on the state’s 2008 ballot, but action by the state legislature insures that voters will have their say in November 2010.

BAMN clearly regards Connerly as its main enemy. In 2008 BAMN Driver told an interviewer on National Public Radio that it was Connerly’s intention “to drive black and Latino students out of the University of Michigan and off of campuses across this country.” With a straight face she said Connerly’s “aim and intent” was to “re-segregate higher education.”

BAMN and ACRI remain locked in conflict because the U.S. Supreme Court has issued some confusing and contradictory rules regarding the use of racial preferences. In 2003 the Court in the case *Gratz v. Bollinger* ruled 6-3 that the University of Michigan’s affirmative action policy for undergraduates was unconstitutional. The University admitted undergraduates according to a point system in which minority students received bonus points. This is an unconstitutional quota system, said the Court.

However, in *Grutter v. Bollinger*, a companion ruling issued on the same day, the Court seemed to say just the opposite. It ruled 5-4 that the University of Michigan’s affirmative action policy for admitting law school students was constitutional. Justice Sandra Day O’Conner spoke for the slim majority in arguing that the state had a compelling interest in achieving a “diverse student body” and that it could use race so long as it was one of many factors in the admissions process and was “narrowly tailored” to achieve its goal.

Connerly’s ACRI attempted to end all the confusion by sponsoring Proposal 2, the Michigan Civil Rights Initiative, which changed the state constitution so that the University could no longer use racial prefer-

ences, whether “narrowly tailored” or not, in any public program. Proposal 2 passed by a 58-42% margin in 2006 and became law. Lower courts have upheld the law and the U.S. Supreme Court refused to review their decision. However, in November 2009 BAMN again challenged the law in a federal appeals court. It is working with Harvard law professor Laurence Tribe and the blue chip law firm Cravath, Swain and Moore. The law is defended by the Center for Individual Rights, a public interest law firm founded by Michael Greve and Michael McDonald.

While BAMN has been filing lawsuits to overturn Michigan’s Proposal 2 and California’s Proposition 209, Ward Connerly’s ACRI is fighting back to protect its victories and extend them to states like Arizona. Max MacPhail, the ACRI director in Arizona, protests that “Members of BAMN have hijacked signatures that Arizona voters signed with the intent of having their voices heard. BAMN has disenfranchised the voters of our state.”

Adds Connerly, “We had BAMN people on tape in Arizona trying to buy signatures from many of our circulators so we would not be able to turn them in. There is a lot of intimidation and harassment at work here and we’ve seen what can best be described as Saul Alinsky-type tactics used in other states as well.” Connerly warns that BAMN is working with other organizations, including the NAACP, ACLU, ACORN and organized labor, especially the Service Employees International Union (SEIU) to defend race and gender preferences in government programs.

The Washington, D.C. Reaction: Racial Profiling and Race Preferences

It’s ironic that many of those who oppose racial profiling are supporters of race preferences, and they don’t seem bothered by this glaring inconsistency. For instance,

after Governor Brewer signed the Arizona immigration law, President Obama hastened to denounce it. He claimed that using state police to enforce federal law is “irresponsible,” “misguided” and “discriminatory.” In May, speaking from the White House lawn in a joint appearance with Mexican President Felipe Calderon, Obama warned that the law could lead to racial profiling. Obama said the Justice Department would scrutinize the new statute for possible civil rights violations.

“I want everyone, American and Mexican, to know my administration is taking a very close look at the Arizona law,” Obama said. “We’re examining any implications, especially for civil rights...in the United States of America, no law-abiding person – be they an American citizen, a legal immigrant, or a visitor or tourist from Mexico – should ever be subject to suspicion simply because of what they look like.”

Contrast this to the Obama Administration’s actions one month earlier. In March it filed a legal brief that called on a federal appeals court to preserve race-based admissions at the University of Texas.

“The university’s effort to promote diversity is a paramount government objective,” the brief declared. “The question is not whether an individual belongs to a racial group, but rather how an individual’s membership in any group may provide deeper understanding of the person’s record and experiences, as well as the contribution she can make to the school.”

The Texas case will test Sandra Day O’Connor’s muddled 2003 *Grutter v. Bollinger* ruling that prohibits “outright racial balancing” but accepts the use of race as a

“plus-factor” in achieving diversity in admissions. The Texas case could head to the U.S. Supreme Court.

Which way would the Court go?

The high court remains narrowly divided on racial questions. In a June 2009 decision, *Ricci v. DeStefano*, the Supreme Court ruled 5-4 that the city of New Haven, Conn., unfairly denied promotions to white firefighters by invalidating their test results after no black firefighters scored high enough to be



BAMN critic Chetly Zarko

considered for promotion. Ward Connerly was delighted. In a press release Connerly said, “The days of racial set-asides are over. Citizens demand their government treat each of us fairly and equally regardless of race, ethnicity, color, gender, or national origin.”

However, Judge Sonia Sotomayor sat on the appellate court that originally *denied* the firefighters’ claim. She now sits on the U.S. Supreme Court.

Jennifer Gratz was the plaintiff in the *other* University of Michigan case, *Gratz v. Bol-*

linger, which clearly struck down race preferences in undergraduate admissions, and she worked to pass the Michigan Civil Rights Initiative, which voters approved in 2006.

Gratz, who is now ACRI’s director of research, wryly observes, “The people who scream the loudest about racial profiling support race preferences in university admissions and government contracting. That’s always an interesting dynamic.”

George Soros and the Race Preference Battle in Missouri

The term “affirmative action” entered the political vocabulary as an executive order issued by President John F. Kennedy in March 1961. Kennedy established a Committee on Equal Employment Opportunity and mandated that government contractors and subcontractors “take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color or national origin.”

Public opinion polls show that Americans generally favor the notion of affirmative action. But to them it means opposing racial quotas and set-asides and supporting color-blind policies that emphasize personal merit.

“This is now a 70-30 issue with 70 percent of the public firmly on our side,” says Ward Connerly. “The American people are ready to move beyond race-based policies and we see this with the initiatives that have already passed. I’m optimistic over the long-term because we have already won the philosophical argument.”

Even so, pressure groups like BAMN and

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ACORN go to great lengths to block or distort ballot initiatives overturning race preferences.

Look at how opponents distorted an ACRI ballot initiative in Missouri. Connerly's group kept the phrase "affirmative action" off its ballot description because it knew the term had a positive connotation for many voters. ACRI wanted the ballot's description to be clear and unambiguous.

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

However, Missouri state law requires ballot language be drawn up "in the form of a question," which gave Missouri Secretary of State Robin Carnahan an opening. She took the requirement and used it against ACRI.

Carnahan substituted two bullet points to make the amendment sound as if it were a deliberately discriminatory measure rolling back opportunities for women and minorities. Her proposed ballot question said:

Shall the Missouri Constitution be amended to:

** Ban affirmative action programs designed to eliminate discrimination against, and improve opportunities for, women and minorities in public contracting, employment and education; and*

** Allow preferential treatment based on race, sex, color ethnicity, or national origin to meet federal program funds*



Missouri Secretary of State Robin Carnahan

eligibility standards as well as preferential treatment for bona fide qualifications based on sex?

Outraged supporters of the initiative fought back in court. "We had to take this to court because the secretary of state made it sound as though we were out to eliminate all affirmative action programs and this was not true and the language needed clarification," said Tim Asher, the state's ACRI chairman. "The average voter needed to understand that we were targeting preferences."

This fight over ballot language is not unique. It is the consequence of a deliberate strategy

proposed by a group called the Secretary of State (SOS) project, a scheme funded by the financier George Soros. Soros's SOS is an IRS-designated 527 political committee that raises money for candidates for the once-obscure state office of Secretary of State. It can accept unlimited funds and does not need to disclose its donors until well after the election cycle. One of its preferred candidates was Missouri's Secretary of State, Robin Carnahan, now a Democratic candidate for the U.S. Senate.

Carnahan's maneuver stirred up so much controversy and confusion that ACRI was unable to collect enough signatures to put its measure

on the 2008 ballot. Her Republican opponents say she received help from ACORN, whose members interfered with anyone who tried to collect petition signatures. (A website called ACORNCarnahan.com, sponsored by the Missouri GOP, analyzes 1,400 pages of email correspondence between Carnahan's office and ACORN.)

ACRI's Tim Asher had wanted to put the Missouri Civil Rights Initiative on the ballot this November. But a court has ruled that Carnahan's false rewrite of the ballot language cannot itself be rewritten, leaving Carnahan free to resubmit it. If she loses her Senate bid to Republican Rep. Roy Blunt, she will most likely serve out the remainder of her term as secretary of state. ACRI supporters are determined to wait her out.

White Americans: Evil or Stupid?

Shanta Driver, BAMN's leader, says her group will make every effort to prevent the public from voting up or down on amendments that try to prohibit state governments from discriminating on the basis of race and gender.

"We've got to stop these initiatives before they get on the ballot," she said. "If you have a majority white state and you don't stop enough petitions from being collected before these initiatives get on the ballot, there's an excellent chance that you are going to lose. There's been next to no occasion in the history of the United States where the voters are presented with an opportunity to vote for white privilege or black equality and they vote for black equality."

Even though she is convinced that most whites are bigots and racists, Driver also insists that opponents of race preferences are

trying to deceive and dupe ignorant voters. Which is it?

"There is an on-going effort to frame the debate in a way that is dishonest and most confusing," Driver has said. "The petition drives and the proposed ballot language that voters will see are designed to obfuscate the real intent and real outcome of these initiatives."

By Any Means Necessary?

Lawyers for the ACLU, ACORN activists, Hispanic group leaders and SEIU union organizers are working themselves into a frenzy counting the days until Arizona's immigration statute SB 1070 takes effect. They conjure up nightmare visions of people being dragged from their cars and made to show their "papers," and they denounce Republican State Sen. Russell Pearce, the bill's author, as a racist. The activists make no mention of the fact that Sen. Pearce also helped put the civil rights initiative outlawing race preferences on the November ballot.

So who's really in favor of racial profiling?

Ward Connerly says those who oppose racial profiling but endorse racial preferences may have a larger political agenda. He notes that African-American, Hispanic and Native American citizens currently qualify for "affirmative action" quotas, preferences and set-asides. "Now imagine with the stroke of a pen in Washington, D.C. illegal aliens are given amnesty," Connerly warns. "Then they are instantly recognized as an under-represented minority and entitled to affirmative action preferences. This is not something most Americans would support, but it's something we should be mindful

of as it will make our task that much more difficult."

That's something to think about.

Shanta Driver is determined to recreate the nationwide radical mass movements of the 1960s and 1970s. So far BAMN has had limited success in stirring up mass protests to Ward Connerly's civil rights ballot initiatives and to court decisions overturning race preference policies. But the immigration debate is just getting underway.

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Many thanks.

Terrence Scanlon
President

Briefly Noted

ACORN demanded and received changes to a congressional report that –surprise, surprise– fails to find ACORN did anything wrong. Longtime ACORN lawyer **Arthur Z. Schwartz** wrote the Government Accountability Office (GAO), which was examining federal grants to ACORN under orders from Congress, to demand the modifications. ACORN's election division, **Project Vote**, which used to employ President **Obama**, even suggested language reinforcing its claim that it has nothing to do with ACORN. The GAO report is available at <http://www.gao.gov/new.items/d10648r.pdf>.

Political advisor **Karl Rove** is reportedly putting together a group on the right to be an answer to the **George Soros-led Democracy Alliance** whose mission is to build a lasting political infrastructure of think tanks, activist groups, leadership schools, and media outlets to help the left gain and keep power. Politico newspaper calls the developing group “a massive fundraising, organizing and advertising machine based on the model assembled by Democrats early in the decade, and with the same ambitious goal — to recapture Congress and the White House.” Also involved is former **RNC** chairman **Ed Gillespie**.

Ten Catholic bishops have pulled out of the leftist **Catholic Campaign for Human Development** (CCHD) over the past year, according to the National Catholic Reporter (NCR). Several bishops said they stopped collecting money for CCHD out of “concerns about some grant recipients ... [that] were directly involved in some activity not in accord with Catholic moral and social teaching.” CCHD used to be a major funding of ACORN, until it dropped the group in 2008 following a million-dollar embezzlement scandal that rocked ACORN.

Death panel czar? President Obama gave **Donald Berwick** a recess appointment to be administrator of the **Centers for Medicare & Medicaid Services** rather than submit him to the scrutiny of a U.S. Senate confirmation process. Berwick, who praises rationing by Britain's National Health Service (NHS), was CEO of the **Institute for Healthcare Improvement**.

The **National Conference of State Legislatures** (NCSL) and the **Retail Industry Leaders Association** said they support tax-grab legislation introduced by Rep. **Bill Delahunt** (D-Mass.) that would tax Internet-based purchases. Currently consumers who buy products out-of-state via the Internet don't pay sales taxes on the purchases. Pro-big government groups such as NCSL say they support the bill because it will help states collect an extra \$23 billion in taxes per year.

The taxpayer-supported **National Science Foundation** is giving \$52,034 to psychology professor **David Sears**, a leftist UCLA professor of politics and psychology, to write a report proving Obamacare opponents are racists, The Daily Caller website reports. According to the NSF, the research project “attempts to provide further evidence for this Obama-induced racialization by pinpointing the extent that health-care opinions are influenced by racial attitudes and determining Obama's causal role in racializing public opinion about a policy that has no manifest racial content.” The Daily Caller translates this academic double-talk as “Opposition stems from Obama's pigmentation, not his policies.” Sears has written that “[r]ace is probably the most visceral issue in American public life.”