



March 31, 2011

The Honorable Scott Gessler
Colorado Secretary of State
1700 Broadway
Suite 200
Denver, CO 80290

Subject: Comments on Proposed Rules

Dear Secretary Gessler:

Current Colorado law and the rules pertaining to citizens who sponsor initiatives and referendums and those who circulate petitions for such ballot measures puts the vitality of this democratic process in jeopardy. Simply put: Citizens are becoming afraid to take part in initiative campaigns.

Today, two sponsors of an initiative voted on and defeated in the last election are being sued personally and face potential bankruptcy due to the cost of litigation in an ongoing lawsuit, *Donna Johnson v. Jon Caldara and Linda Gorman*, not for any action they took, but for actions taken by others. Moreover, the actions in question in that case are alleged fraud supposedly committed by 51 petition circulators, who in fact did not commit fraud by any rational definition.

These 51 petition circulators legally worked on a 2010 petition, but were required to sign a circulator affidavit, written by the Secretary of State's office, which asked them to give their Colorado address. Since these circulators were living only temporarily in Colorado, they not surprisingly wrote down their temporary Colorado address.

It has been documented that circulators contacted the Secretary of State's office last year for clarification as to how to properly fill out the confusing circulator affidavit mandated on all petition forms and were not given consistent guidance as to what was legally required. Now, two sponsors are facing costly litigation and more than 50 American citizens have been accused as "frauds" due to a Colorado statute, enjoined as likely an unconstitutional violation of fundamental First Amendment rights, combined with a failure by the Secretary of State's office to provide a clear and lawful circulator affidavit and to set out rules in keeping with the First Amendment rights of citizens.

We are very glad to see the new Secretary of State engaged in rulemaking to assist

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citizens in participating in the initiative and referendum process.

First, though it may be the case that the Secretary plans to draft a new circulator affidavit upon completion of this rulemaking process, we urge the Secretary to immediately draft such an affidavit, to make absolutely certain that never again will circulators be mislead or entrapped into filing what someone might construe as a "False circulator address."

Moreover, the term "false circulator name or address" in 15.3.43 (C) should be defined and is not. What precisely constitutes a "false circulator address"? Would a circulator writing a nickname, rather than his or her full first name, be considered a fraudulent act? It seems only reasonable that there must be an attempt to deceive, and not simply an innocent mistake, for an action to be considered fraudulent.

In 15.3.43 (B) "circulation of a petition section" should be defined. If a person other than the signer of the circulator affidavit were to hold a petition as people signed it, or even to engage people to sign that petition, but remain in full view of the affidavit signer and in range so that the signer of the circulator affidavit could indeed hear any discussion between that person and those signing the petition, would there be any violation?

On behalf of Citizens in Charge and our members in Colorado, thank you for the opportunity to submit our comments on these proposed new rules.

Sincerely,


Paul Jacob
President

cc: Andrea Gyger
Hilary Rudy