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April 4, 2011

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

RE: Rule Making on Initiative Petitions – Residency Issue for Petition Circulators

Dear Mr. Secretary:

At the rule making hearing held on March 31, 2011 concerning initiative petitioning rules including Rule 15 dealing with the circulator's statement of residency on his or her affidavit, Mr. Hobbs left the record open for supplemental comment. Please accept the following case citations, which were cited in whole or in part during my testimony:

A. The place one lives is not necessarily where one "resides."

The merits of this controversy, therefore, depend upon the construction to be given to the residence qualification (for voters) thus prescribed. It is contended by counsel for contestee that the word "reside," as therein used, signifies to "dwell," "abide" or "live" in the state; and that when a person has actually lived in the state the specified time he meets this requirement. With this construction of the word we cannot agree. We think the **residence** therein contemplated is **synonymous with "home" or "domicile," and means an actual settlement within the state, and its adoption as a fixed and permanent habitation; and requires not only a personal presence for the requisite time, but a concurrence therewith of an intention to make the place of inhabitancy the true home;** and that one who has made a home or domicile in some other state or territory where his family reside, cannot, by a sojourn here on business or pleasure, however long, without abandoning such former domicile, acquire a residence in the constitutional and statutory sense.

Sharp v. McIntire, 46 P.2d 115, 116 (Colo. 1896); *accord Zivian v. Brooke-Hitching*, 28 P.3d 970, 973-74 (Colo. Ct. App. 2001) and 8 CCR 1505-1 (Rule 48.1 dealing with required statement of residency in the event of voter challenge at the polls).

The Honorable Scott Gessler

April 4, 2011

Page 2

B. The same word in the same statute – here, "resides – must be given the same meaning.

[W]hen . . . the legislature employs the same words or phrases in different parts of a statute, then, in the absence of any manifest indication to the contrary, the meaning attributed to the words or phrases in one part of the statute should be ascribed to the same words or phrases found elsewhere in the statute."

Colo. Common Cause v. Meyer, 758 P.2d 153,161 (Colo. 1988); *accord Citizens for Responsible Gov't State PAC v. Davidson*, 236 F.3d 1174, 1192 (10th Cir. Colo. 2000).

C. "False," as used in "false address," is a clear and understandable term.

"The word 'false' means 'contrary to fact or truth.'" .

People v. Weiss, 133 P.3d 1180, 1187 (Colo. 2006) citing American Heritage Dictionary of the English Language 638 (4th ed. 2000).

D. Constitutional concerns about petition-related litigation are "at most, minimal."

Plaintiffs argue that the phrase "the person responsible for such invalid signatures or petition sections" is unconstitutionally vague. Plaintiffs argue that "[t]his provision substantially burdens speech by chilling persons from engaging in protected first amendment activity for fear of incurring fines for conduct they neither participated in nor condoned".... This fear is apparently based on the potential that petition organizers would face respondeat superior liability for the wrongful acts of petition circulators.... [T]he evidence presented thus far shows that § 1-40-118(2.5)(a) constitutes, **at most, a minimal burden on speech**. This burden is sufficiently outbalanced by the **state's important interest in protecting the integrity of elections by deterring fraud and permitting third-party involvement in the verification process**.

Independence Inst. v. Buescher, 2010 U.S. Dist. LEXIS 92946 at 27 (D.Colo. Aug. 13, 2010) (citations omitted) (emphasis added).

Very truly yours,

ROTHGERBER JOHNSON & LYONS LLP


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cc: Andrea Gyger