

AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
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Supplementary Material

Chapter 10: The Reagan Era – Democratic Rights

Meyer v. Grant, 486 U.S. 414 (1988)

Colorado, like many western states, has an initiative process that allows citizens to place proposed laws on a ballot. To qualify for a place on the ballot, a measure must within a six-month period receive a minimum number of valid signatures of qualified voters on a petition. Petition circulators gathered those signatures while explaining and advocating for the proposal. The state protected the initiative process by criminalizing a number of acts, including forging signatures, paying someone to sign a petition, and paying someone to circulate petitions. Paul Grant was among a group of advocates for a constitutional amendment that would alter the regulatory jurisdiction of the Colorado Public Utilities Commission. Proponents of the amendment were convinced that they would need the help of paid circulators if they were going to collect the necessary number of signatures in the available time and sued the state secretary of state in federal court in order to win a declaration that the ban on paid circulators was unconstitutional and void.

*The district court upheld the measure, and a divided circuit court reversed on appeal. In an *en banc* hearing, the full circuit court reversed the panel's decision, concluding that the ban was a significant and unjustified burden on political speech. On appeal, the U.S. Supreme Court unanimously affirmed the *en banc* ruling.*

Would the use of paid circulators be as protected by the First Amendment if the Court had decided the campaign-finance cases differently? Why is the circulation of petitions "core political speech"? If the state had been able to demonstrate that paid circulators returned petitions with more invalid signatures, would the ban have been upheld? Colorado also requires that petition circulators be registered voters in the state. Is that limitation on who can circulate petitions valid?

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JUSTICE STEVENS, delivered the opinion of the Court.

....

We fully agree with the Court of Appeals' conclusion that this case involves a limitation on political expression subject to exacting scrutiny. *Buckley v. Valeo* (1976). The First Amendment provides that Congress "shall make no law . . . abridging the freedom of speech, or of the press; or the right of people peaceably to assemble, and to petition the Government for a redress of grievances." The Fourteenth Amendment makes that prohibition applicable to the State of Colorado. As we explained in *Thornhill v. Alabama* (1940), "the freedom of speech and of the press, which are secured by the First Amendment against abridgment by the United States, are among the fundamental personal rights and liberties which are secured to all persons by the Fourteenth Amendment against abridgment by a State."

Unquestionably, whether the trucking industry should be deregulated in Colorado is a matter of societal concern that appellees have a right to discuss publicly without risking criminal sanctions. . . . Appellees seek by petition to achieve political change in Colorado; their right freely to engage in discussions concerning the need for that change is guarded by the First Amendment.

The circulation of an initiative petition of necessity involves both the expression of a desire for political change and a discussion of the merits of the proposed change. Although a petition circulator

may not have to persuade potential signatories that a particular proposal should prevail to capture their signatures, he or she will at least have to persuade them that the matter is one deserving of the public scrutiny and debate that would attend its consideration by the whole electorate. This will in almost every case involve an explanation of the nature of the proposal and why its advocates support it. Thus, the circulation of a petition involves the type of interactive communication concerning political change that is appropriately described as "core political speech."

The refusal to permit appellees to pay petition circulators restricts political expression in two ways: First, it limits the number of voices who will convey appellees' message and the hours they can speak and, therefore, limits the size of the audience they can reach. Second, it makes it less likely that appellees will garner the number of signatures necessary to place the matter on the ballot, thus limiting their ability to make the matter the focus of statewide discussion.

.... Colorado's prohibition of paid petition circulators restricts access to the most effective, fundamental, and perhaps economical avenue of political discourse, direct one-on-one communication. That it leaves open "more burdensome" avenues of communication, does not relieve its burden on First Amendment expression. The First Amendment protects appellees' right not only to advocate their cause but also to select what they believe to be the most effective means for so doing.

.... We agree with the Court of Appeals' conclusion that the statute trenches upon an area in which the importance of First Amendment protections is "at its zenith." For that reason the burden that Colorado must overcome to justify this criminal law is well-nigh insurmountable.

We are not persuaded by the State's arguments that the prohibition is justified by its interest in making sure that an initiative has sufficient grass roots support to be placed on the ballot, or by its interest in protecting the integrity of the initiative process. As the Court of Appeals correctly held, the former interest is adequately protected by the requirement that no initiative proposal may be placed on the ballot unless the required number of signatures has been obtained.¹

The State's interest in protecting the integrity of the initiative process does not justify the prohibition because the State has failed to demonstrate that it is necessary to burden appellees' ability to communicate their message in order to meet its concerns. No evidence has been offered to support that speculation [that paid circulators will not verify signatures], however, and we are not prepared to assume that a professional circulator -- whose qualifications for similar future assignments may well depend on a reputation for competence and integrity -- is any more likely to accept false signatures than a volunteer who is motivated entirely by an interest in having the proposition placed on the ballot.

Other provisions of the Colorado statute deal expressly with the potential danger that circulators might be tempted to pad their petitions with false signatures. It is a crime to forge a signature on a petition These provisions seem adequate to the task of minimizing the risk of improper conduct in the circulation of a petition, especially since the risk of fraud or corruption, or the appearance thereof, is more remote at the petition stage of an initiative than at the time of balloting.

.... The Colorado statute prohibiting the payment of petition circulators imposes a burden on political expression that the State has failed to justify. The Court of Appeals correctly held that the statute violates the First and Fourteenth Amendments. Its judgment is therefore affirmed.

¹ Colorado also seems to suggest that it is permissible to mute the voices of those who can afford to pay petition circulators. "But the concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment." [footnote in original]