

Insights

MISSOURI HOUSE BILL 703: NEW PROVISIONS REGULATING STATEWIDE INITIATIVE PETITION CIRCULATORS MAY END UP IN THE U.S. SUPREME COURT

Apr 03, 2023

The Missouri House of Representatives will soon consider whether to pass House Bill 703, which contains two new provisions applicable to statewide initiative petition circulators. *First*, circulators must be a Missouri resident “or physically present” in Missouri “for at least thirty consecutive days prior to the collection of signatures.” And, *second*, circulators are prohibited from being “paid anything of value that is based on the number of signatures collected.” This article previews the constitutional landscape in the event the bill passes both the House and the Senate and is signed by the Governor.

The First Amendment protects political expression. Because petition circulation involves core political speech, similar provisions have been challenged nationwide on First Amendment grounds, with varying results in the Courts of Appeals on the first provision and uniformity on the second.

With respect to residency requirements, in *Buckley v. American Constitutional Law Foundation*, 525 U.S. 182 (1999), while the Supreme Court held that States may not require petition circulators be registered voters, it suggested that a residency requirement would be a permissible, less restrictive means of protecting against fraud, by ensuring that circulators could be subpoenaed. *Accord Lux v. Rodrigues*, 561 U.S. 1306, 1308 (2010) (Roberts, C.J., in chambers) (stressing that *Buckley* was “careful ... to differentiate between registration requirements, which were before the Court, and residency requirements, which were not”).

Following *Buckley*, the Eighth Circuit (which encompasses Missouri) upheld North Dakota’s residency requirement for circulators because it ensured circulators were subject to the State’s subpoena power, residents could still circulate—and had successfully circulated—petitions even if non-residents could not, and non-residents were still free to speak to voters regarding ballot measures. *Initiative & Referendum Inst. v. Jaeger*, 241 F.3d 614 (8th Cir. 2001).

Three Circuits, however, have split with the Eighth Circuit. The First, Ninth, and Tenth Circuits have invalidated residency requirements from different States. See *Pierce v. Jacobsen*, 44 F.4th 853 (9th Cir. 2022) (Montana); *We the People PAC v. Bellows*, 40 F.4th 1 (1st Cir. 2022) (Maine); *Yes On Term*

Limits, Inc. v. Savage, 550 F.3d 1023 (10th Cir. 2008) (Oklahoma). These Circuits did so on the ground that less restrictive alternatives—like requiring circulators to consent to a State’s jurisdiction—were available to advance the States’ interests in preventing fraud.

While H.B. 703’s residency requirement may pass muster in the Eighth Circuit, it is unclear whether it will also pass muster in the Supreme Court, which may be likely to grant certiorari and review the question to resolve the circuit split. The Supreme Court may lean into its dicta in *Buckley* that a residency requirement “more precisely” furthers a State’s subpoena service objective. Or it may side with the First, Ninth, and Tenth Circuits and invalidate H.B. 703’s residency requirement.

As for H.B. 703’s pay-per-signature restriction, the path is much clearer. The Supreme Court in *Meyer v. Grant*, 486 U.S. 414 (1988), invalidated Colorado’s categorical ban on compensating initiative petition circulators. The ban imposed a burden on political expression that the State had failed to justify.

But Three Circuits have upheld lesser restrictions that simply regulate the manner of compensation for initiative petition circulators. The Second, Eighth, and Ninth Circuits have held that pay-per-signature restrictions, unlike complete bans on compensation, do not categorically limit the pool of circulators to voice support for or opposition to ballot measures. Circulators may be paid by the hour, even if not paid for each signature obtained. These courts have also concluded that a State’s pay-per-signature restriction furthered the State’s important regulatory interests in preventing fraud and protecting the integrity of the initiative process. See *Pierce v. Jacobsen*, 44 F.4th 853 (9th Cir. 2022) (Montana); *Person v. N.Y. State Bd. of Elections*, 467 F.3d 141, 143 (2d Cir. 2006) (New York); *Prete v. Bradbury*, 438 F.3d 949 (9th Cir. 2006) (Oregon); *Initiative & Referendum Inst. v. Jaeger*, 241 F.3d 614 (8th Cir. 2001) (North Dakota).

Accordingly, H.B. 703’s pay-per-signature restriction—worded similarly to the other States’ restrictions that have been upheld—is likely to pass muster in the Eighth Circuit. Given the lack of a circuit split on this issue, Supreme Court review is less likely on this issue. However, the Court may take up a case that involves a challenge to both H.B. 703’s residency requirement *and* pay-per-signature restriction.

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