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May 2, 1984

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ARIZONA ATTORNEY GENERAL

The Honorable Peter Kay  
Arizona State Senator  
State Capitol - Senate Wing  
Phoenix, Arizona 85007

Re: I84-062 (R84-077)

Dear Senator Kay:

You have asked whether circulators of initiative petitions can destroy or refuse to file those petitions with the Secretary of State prior to the date when the petitions become null and void. Your request arises from representations made by circulators of petitions pertaining to hospital cost containment measures. Specifically, those circulators have indicated that they may refuse to file the initiative petitions or destroy them if certain legislation is passed. For the reasons set forth below, we conclude that a person who has signed these petitions may force, through legal action, the filing of the petitions with the Secretary of State.

The Arizona legislature has prescribed specific requirements for obtaining signatures of qualified electors for initiative petitions. A.R.S. § 19-112. Once a qualified elector signs a petition, he must follow a specific procedure to withdraw his signature which includes signing and submitting an affidavit affirming his intention to withdraw his signature from the petition. A.R.S. § 19-113.A.4. This statute ensures that only the elector himself can withdraw his signature. A.R.S. § 19-113.

The destruction of initiative petitions or the failure to file the petitions with valid signatures would, in effect, constitute a unilateral withdrawal of the signatures of qualified electors, contrary to the procedures prescribed by A.R.S. § 19-113. For this reason, we believe that a court may require that the initiative petitions be submitted absent withdrawal by each individual signer of a sufficient number of the signatures contained thereon.

This conclusion was reached by the court in State v. Superior Court, 126 P. 920 (Wash. 1912). In that case, the

court rejected an argument that one who has circulated a petition can withdraw the petition and the names upon it. The court stated, "the right to withdraw, like the right to sign, is a personal privilege, and can be exercised only by the person directly concerned." Id. at 923.

A person who signs an initiative petition with the intent that it will be filed and in furtherance of a particular action proposed by the petition has a right to expect that circulators will, in good faith, submit the petitions to the Secretary of State. A contrary conclusion would abrogate the entire system for obtaining petition signatures. An individual elector would never know when he signed a petition whether that particular petition would be filed. That elector would thus be motivated to circulate his own petitions for that particular measure. Such a system would destroy the orderly process for circulation of petitions established by the legislature.

Our conclusion is supported by Ariz. Const., Art. IV, Pt. 1, § 1 ("Article 4") which provides "All petitions submitted under the power of the Initiative. . . shall be filed with the Secretary of State not less than four months preceding the date of the election at which the measures so proposed are to be voted upon." (emphasis added) Article 4 further provides "Any measure or amendment to the Constitution proposed under the Initiative, and any measure to which the Referendum is applied, shall be referred to a vote of the qualified electors. . . ." (emphasis added) In this context, we believe that the use of the word "shall" gives the individual signers a right to have the petitions filed with the Secretary of State on their behalf so that the matter can be referred to a vote of the qualified electors as required by Article 4.

Moreover, when a qualified elector signs an initiative petition, he makes a "demand" that the proposed law be submitted to the qualified electors. A.R.S. § 19-102 requires that electors sign initiative petitions which contain this language:

We, the undersigned, citizens and qualified electors of the state of Arizona, respectfully demand that the following proposed law (or amendment to the constitution, or other initiative measure), shall be submitted to the qualified electors of the state of Arizona (county, city or town of \_\_\_\_\_) for their approval or rejection at the next regular general election (or county, city or town election) and each for himself says:

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The signer's "demand", once obtained, is not conditioned upon the whims of the circulators of the petitions.

Finally, we note that the Secretary of State issues an official number to each petition upon application, prior to circulation. A.R.S. § 19-111. We thus believe that these petitions are records which are the property of the state. See Matthews v. Pyle, 75 Ariz. 76, 251 P.2d 893(1953); A.R.S. § 41-1347. As such, they cannot be destroyed without complying with the proper procedures. See A.R.S. §§ 41-1347 and 41-1351.

Very truly yours,



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