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STATE OF NEBRASKA
OFFICIAL
MAR 24 1992
DEPT. OF JUSTICE

DATE: March 24, 1992

SUBJECT: Constitutionality of LB 424, an act changing the requirements for certain petitions and petition circulators.

REQUESTED BY: Senator Loran Schmit, Nebraska State Legislature

WRITTEN BY: Don Stenberg, Attorney General
Steve Grasz, Deputy Attorney General

Legislative Bill 424 is an act relating to elections. Section 14 of LB 424 amends Neb.Rev.Stat. §32-705 (Cum.Supp. 1990). Subsection 14(3) provides: "Every sheet of every petition mentioned in sections 32-702 to 32-713.01 circulated by a paid circulator shall have upon it the following language in letters no smaller than sixteen-point type in a contrasting color from other print on the petition: This petition is circulated by a paid circulator." Subsection 14(4) provides: "Any person willfully and knowingly circulating a petition outside of the county in which he or she is registered to vote shall be guilty of a Class I misdemeanor."

In your letter of March 20, 1992, you requested an opinion as to whether LB 424 is constitutional "particularly with respect to the dramatic changes it makes, with the E Clause attached, in the area of paid petitioners and elimination of petitioners from soliciting signatures outside the borders of their own county under any circumstances."

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Prohibition on Circulating Petitions
Outside of Circulator's County

We conclude section 14(4) of LB 424 is unconstitutional in that it violates the First Amendment of the Constitution of the United States and Article III, Sections 2-4, of the Nebraska Constitution.

In Meyer v. Grant, 486 U.S. 414 (1988)[1], the Supreme Court considered the constitutionality of a Colorado statute which contained an absolute ban on the compensation of petition circulators. The Court indicated that circulation of a petition involves core political speech which is protected by the First Amendment. The Court went on to state that the refusal to permit the sponsors of the petition to pay petition circulators impinged on 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.

Meyer v. Grant, 486 U.S. at 422, 423. The Court held the Colorado statute unconstitutional.

We believe Section 14(4) clearly limits the number of voices who will convey a petitioner's message and limits the size of the audience they can reach. Meyer, 486 U.S. at 423. Thus, it unconstitutionally impinges on political expression.

The next question involves the propriety of the proposed regulation of the initiative process by LB 424 under our state Constitution. In other words, does the bill impermissibly burden the initiative process or impermissibly involve the Legislature in that process under pertinent state constitutional provisions.

Article III, Section 4, of the Nebraska Constitution provides, in pertinent part, "[t]he provisions with respect to the initiative and referendum shall be self-executing, but legislation may be enacted to facilitate their operation." This constitutional provision means that the Legislature can enact reasonable statutes

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[1]The reasoning and holding in Meyer were also adopted by the Nebraska Supreme Court in State v. Radcliffe, 228 Neb. 868, 424 N.W.2d 608 (1988).

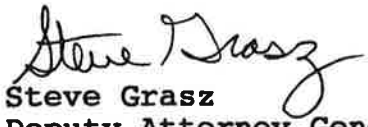
to prevent fraud or to render intelligible the purpose of a proposed law or constitutional amendment. State v. Swanson, 138 Neb. 597, 294 N.W. 200 (1940). Any statute which tends to ensure a fair, intelligent, and impartial result on the part of the electorate can be said to facilitate the exercise of the initiative power. Id. Legislation which would hamper, unnecessarily obstruct, or impede the initiative process, on the other hand, would be unconstitutional. State ex rel. Ayres v. Amsberry, 104 Neb. 273, 177 N.W. 179 (1920). We believe Section 14(4) impermissibly burdens and impedes the initiative process in violation of the Nebraska Constitution.

Identification of Paid Circulators

We believe the provision requiring identification of paid circulators is not clearly unconstitutional. This provision may make it less likely that petitioners will gather enough signatures, but it does not limit the size of the audience circulators can reach. This requirement arguably tends to ensure a fair, intelligent, and impartial result on the part of the electorate and could thus be said to facilitate the exercise of the initiative power.

Sincerely yours,

DON STENBERG
Attorney General



Steve Grasz
Deputy Attorney General

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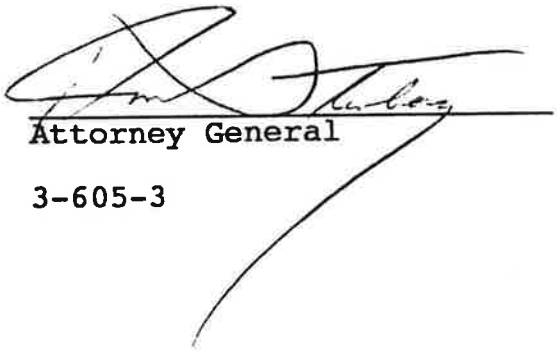

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