

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.

**THE INDEPENDENCE INSTITUTE,
JON CALDARA,
DENNIS POLHILL,
JESSICA CORRY
MASON TVERT,
RUSSELL HAAS,
DOUGLAS CAMPBELL, and
LOUIS SCHROEDER,**

Plaintiffs,

v.

**BERNIE BUESCHER, in his official capacity as Colorado Secretary of State,

Defendant.**

COMPLAINT

PLAINTIFFS, by and through counsel David A. Lane of KILLMER, LANE & NEWMAN, LLP, respectfully allege for their Complaint as follows:

I. INTRODUCTION

Overview

1. Colorado is one of several States that permits its citizens to place propositions on the ballot through an initiative process. Colo. Const., Art. V, § 1; Colo. Rev. Stat. §§ 1-40-101 to 1-40-119 (1980 and Supp. 1987). In 2009 the Colorado Legislature passed HB 1326 (hereinafter “The Act”) (see attached) which Plaintiffs contend imposes unconstitutional limitations on the ability of citizens to circulate petitions which would result in initiatives appearing on the ballot in the general elections in November.

2. Because the unconstitutional provisions in the Act are violative of the First Amendment to the United States Constitution as applied to the states through the Fourteenth Amendment, Plaintiffs seek equitable relief from this Honorable Court seeking a declaration that the Act is unconstitutional and an Order enjoining its enforcement as well as attorney fees and costs.

Jurisdiction And Venue

3. This action arises under the Constitution and laws of the United States and is brought pursuant to Title 42 U.S.C. § 1983. Jurisdiction is conferred on this Court pursuant to Title 28 U.S.C. § 1331. Jurisdiction supporting Plaintiff's claim for attorney fees and costs is conferred by 42 U.S.C. § 1988.

4. Venue is proper in the District of Colorado pursuant to 28 U.S.C. § 1391(b). All of the events relevant to the claims contained herein occurred within the State of Colorado.

II. PARTIES

The Independence Institute

5. Founded in 1985, the Independence Institute is a non-partisan, non-profit policy research and education organization dedicated to providing timely information regarding social and public policy issues to concerned citizens, government officials, and public opinion leaders. Since 1985, it has been the mission of the Independence Institute to help promote the ideals of limited government in free markets and to promote personal and economic liberty. In furtherance of this mission, the Independence Institute provides educational materials addressing a broad spectrum of policy issues, including public education, transportation, and taxation. In addition to its publications, the Independence Institute also presents speeches, publishes reviews, hosts symposia, produces advertising, holds public debates, hosts monthly member events,

presents legislative briefings, and public forums. The Independence Institute strongly supports the constitutional right of initiative and referendum. Over the years, the Independence Institute has established separate issue committees to support petitioning efforts for initiative campaigns and has provided in-kind contributions consistent with Colorado law for such efforts. The Independence Institute as an organization is being chilled from further petitioning by the various provisions of the Act.

Jon Caldara

6. Jon Caldara is the President of the Independence Institute. Caldara also separately hosts a daily radio talk show as well as a current affairs television program. Caldara writes daily in a blog about the latest Independence Institute efforts. Jon Caldara hosts a weekly Podcast on iVoices.org, the podcast of the Independence Institute.

7. Caldara is the veteran of many issue campaigns. In 1998, Caldara, as an individual, led the statewide effort to defeat Referendum B, a proposal for the state to keep a billion dollars of the taxpayers' surplus for unspecified projects. In 2000, he ran the campaign against the educational spending mandate, Amendment 23. In 2001, he led the defeat of a tax increase for a monorail system over the Rocky Mountains. In 2005, through a separate issue committee, he ran the campaign against Colorado's attack on the Taxpayer's Bill of Rights, Referendums C and D, defeating the debt increase, Ref. D. Caldara was not compensated by the Independence Institute or any issue committee for his efforts. His services were and continue to be provided on a volunteer basis. Caldara is currently involved in the petitioning process and various provisions of the Act are chilling Caldara's ability to continue with the petitioning process

Dennis Polhill

8. In 1993 Dennis Polhill became a Senior Fellow in Public Infrastructure at the Independence Institute. In addition to infrastructure and transportation, Dennis Polhill also writes about economics, role-of-government, and democracy issues. In 1994 he became chairman of the Colorado Term Limits Coalition. CTLC mounted petition drives in 1994, 1996, and 1998 to amend the Colorado Constitution. All succeeded in achieving ballot status and in winning election. In 1996 and 2006 a coalition of interests advocated the Petition Rights Amendment with Polhill as a lead proponent to forever protect the process from the Colorado Legislature. PRA achieved ballot status, but was defeated at the ballot box. Dennis Polhill was not compensated by the Independence Institute or any issue committee for his efforts. His services were and continue to be provided on a volunteer basis.

9. Polhill has petitioned several times in the past. He spearheaded the petition resulting in term limits. He petitioned the consumer protection referendum, limiting unfair government competition against private business. He has petitioned to stop infringements on the Colorado petition process. In the future he plans to petition. He is routinely consulted by others on the petition process. He plans to petition regarding redistricting in Colorado in the future. He has spearheaded, consulted on or been associated with countless petitions and has been a prime proponent on six petitions. Various provisions of the Act are chilling his further involvement in the petitioning process.

Mason Tvert

10. Mason Tvert is the co-founder and executive director of SAFER (Safer Alternative For Enjoyable Recreation) and its social welfare lobbying arm, the SAFER Voter Education Fund. He is a coauthor of *Marijuana Is Safer: So why are we driving people to drink?* and a member of the Denver Marijuana Policy Review Panel appointed by Mayor John W.

Hickenlooper. He appears frequently on local, state, and national news outlets discussing marijuana and marijuana policy, and he is a frequent contributor of columns and articles pertaining to the subject.

11. Mason Tvert has coordinated a variety of successful ballot campaigns dedicated to educating the public about the relative safety of marijuana compared to alcohol. He led the successful ballot initiative efforts in Denver in 2005 and 2007 (both titled Initiated Question 100), which respectively removed all penalties for private adult marijuana possession under city ordinances and established a new ordinance designating such activity the city's lowest law enforcement priority.

12. Mason Tvert also coordinated an unsuccessful statewide ballot initiative in 2006 (Amendment 44), which would have removed all penalties for private adult marijuana possession under state statutes. He has preliminary plans for introducing a similar statewide initiative in 2012, which would remove criminal penalties for private adult marijuana possession and establish a system of regulation in which marijuana is treated similarly to alcohol. Mason Tvert would like to continue in the future with petitioning however he is chilled in so doing by various provisions of the Act.

Jessica Corry

13. Jessica Corry has been a public policy analyst with the Independence Institute since 2003, and now heads the Institute's Property Rights Project and Campus Accountability Project. Jessica Corry holds a *Juris* Doctor from the University of Denver's Sturm College of Law, where she was a Chancellor's Scholar and focused on public interest law. She completed her Master's Degree with honors in Government at the Johns Hopkins University, where she served as commentary editor for *The Johns Hopkins Journal of American Politics*. She earned her

Journalism degree with honors from the University of Colorado, where she minored in Political Science.

14. Jessica Corry is an attorney with Hoban and Feola, where she specializes in land use law and governmental affairs. She also runs her own political communications firm, Triple C Strategies. She also writes columns for several publications. She was previously employed by the United States Senate where she was a press secretary.

15. Jessica Corry has been actively involved in petitioning since the age of seven, when she stood next to her father outside Arvada grocery stores, helping him to collect signatures on a local petition alleging a government cover-up at Rocky Flats. She has served as spokesperson for initiatives in the last two major statewide elections. Jessica Corry would like to continue to petition in the future however she is chilled in so doing by various provisions of the Act. Jessica Corry was not compensated by the Independence Institute for these efforts and provided her services as a volunteer. Jessica Corry would like to continue to petition in the future; however, she is chilled in so doing by various provisions of the Act.

Russell Haas

16. Mr. Haas is a retiree who has circulated approximately five petitions from the mid 1990s through the present. He has recently circulated a petition involving government borrowing.

17. Russell Haas has plans to continue to actively be involved in the petitioning process however he is chilled in doing so by provisions of the Act.

Douglas Campbell

18. Mr. Campbell is semi-retired and consults with people about retirement. He was a circulator in 1994, and he was a named proponent in 1996. He has been a named proponent in at

least six petitions at the state and local level. He is currently a circulator coordinator for a petition regarding a cap on governmental indebtedness.

19. He is planning to petition for judicial term limits and judicial reform in the future. He is chilled from so doing by The Act.

Louis Schroeder

20. Mr. Schroeder is semi-retired. He intends to pursue the issue of a property tax amendment via the petition route. He is currently a proponent of the property tax amendment and he is collecting signatures.

21. He is planning to petition in the future. He is chilled from so doing by The Act

III. FACTUAL BACKGROUND

B. Factual Allegations

1. Legislative Intent

22. In passing the Act, the legislature “found, determined and declared” that the following problems existed in the ballot initiative process, all which needed to be rectified:

- During the 2008 general election, the honesty of many petition circulators was at issue;
- Circulators were alleged to have used third parties to circulate petitions sections even though the third parties did not sign the affidavits averring that they circulated part of the petition;
- Some of the third party circulators were not of legal age;
- Some third party circulators were paid in cash to conceal their identities;
- Some circulators were providing false names or residential addresses in the circulator’s affidavits thereby evading detection by petition challengers;
- Some circulators lacked even a rudimentary understanding of the legal requirements relating to petition circulation;
- Some circulators got “notarized” petitions by persons who were not actual notary publics.

C.R.S. § 1-40-101 (2)(A)(I).¹

¹ Plaintiffs believe generally that these legislative “findings” are unsupported by evidence.

23. The legislature went on to find that the per signature compensation system of paying circulators gave them “an incentive...to collect as many signatures as possible, without regard for whether all petition signers are registered electors.” C.R.S. § 1-40-101 (2)(A)(II).

24. Subsection (III) decries the notion that many circulator affidavits are notarized and submitted “without regard for specific requirements of law.”

25. In C.R.S. § 1-40-101 (2)(B)(I), the legislature finds that non-resident petition circulators “typically” leave the state upon the submission of the petitions they circulated to the Secretary of State for verification, a “full and fair examination of fraud related to petition circulation is frustrated, and as a result, the secretary of state has been forced to give effect to certain circulator affidavits that were not properly verified and thus were not prima facie evidence of the validity of petition signatures on affected petition sections.”

26. Subsection (II) notes that the courts have no authority to exercise jurisdiction over circulator and notary fraud when the circulators leave the State of Colorado.

27. The result of the above, according to the legislature is that in the 2008 general election “one or more ballot measures appeared on the statewide ballot...even though significant numbers of the underlying petition signatures were obtained in direct violation of Colorado law and the accuracy of the Secretary of State’s determination of sufficiency could not be fully evaluated by the District Court.” C.R.S. § 1-40-101 (2)(C)(I).

28. The legislature concluded that in order for the initiative process to “operate as an honest expression of the voters’ reserved legislative power, it is essential that circulators truthfully verify all elements of their circulator affidavits and make themselves available to participate in challenges to the Secretary of State’s determination of petition sufficiency.” *Id.* subsection (II).

29. The Act was passed by the legislature and signed into law by the governor in response to the findings and declarations *supra*.

2. *The Act*

30. C.R.S. § 1-40-107(5) amounts to the Legislature unlawfully amending the State Constitution by shortening the time for filing a petition with the Secretary of State by three weeks from the time period mandated by the Colorado Constitution.

31. C.R.S. § 1-40-108(1) similarly unlawfully amends the State Constitution in the same way.

32. C.R.S. § 1-40-111(2)(A), captioned “Notarization-list of circulators and notaries”, requires generally that each petition be signed, dated, notarized and an affidavit signed by the petition circulator averring to the truth of this information as well as that each signature was affixed in the circulator’s presence, that each signature is legitimate to the best of the circulator’s knowledge, that the circulator did not pay the signatories.

33. Among other things the Act requires that any circulator be “a resident of the state”.² The Act mandates that all circulators who fail to “make himself or herself available to be deposed and to provide testimony in the event of a protest shall invalidate the petition section if it is challenged on the grounds of circulator fraud.”

34. C.R.S. § 1-40-111(2)(B)(I)(c) mandates that any circulator submitting a petition to the Secretary of State must swear that the petition signatures were compiled in compliance with applicable law. In order to obtain a notary signature, which is mandated, the circulator must show a form of identification set forth in C.R.S. § 1-1-104(19.5), which mandates that the only

valid form of identification is one showing that the circulator lives at a Colorado residence.

35. C.R.S. § 1-40-111(4) mandates that proponents maintain a list of names and addresses of all circulators who circulate petitions as well as all notaries who notarize petitions as well as the petition section numbers that each circulator circulated and each notary notarized. This list must be filed by the petitioner with the Secretary of State . Failure to so file the Secretary of State must compile this list and the proponents will be charged a fee to cover the cost of preparation..

36. C.R.S. § 1-40-111(3)(A) mandates that “...the circulator of such petition section shall be required to make himself or herself available to be deposed and to testify in person, by telephone, or by any other means permitted under the Colorado Rules of Civil Procedure.” This provision of the Act applies when allegations of signature forgery, third party circulators, false circulator name or address in the affidavit, or payment of money to induce signers to sign are raised.

37. C.R.S. § 1-40-112(3) of the Act mandates that the Secretary of State develop circulator training programs for paid and volunteer circulators. It further requires that “proponents of an initiative petition or the representatives of a petition entity shall inform paid and volunteer circulators of the availability of these training programs...” Subsequent statutory language makes the training program mandatory. (See C.R.S. § 1-40-135(2)(A)).

38. Subsection (4) states: “It shall be unlawful for any person to pay a circulator more than twenty percent of his or her compensation for circulating petitions on a per signature or petition section basis.”

² This provision is not part of HB 1326 and has been part of the law in Colorado for years. This provision of the statute has not been addressed by the federal court however a virtually identical provision of an Oklahoma statute was found to be violative of the First Amendment in *Yes on Term Limits, Inc. v. Savage*, 550 F.3d 1023 (10th

39. C.R.S. § 1-40-117 deals with how a petitioner can cure defects in the petition resulting from invalid signatures. The Act mandates the any additional signatures be filed “...no later than three months and three weeks before the election...” The Act deleted the previous time period as “within the time required by the state constitution” which differs from the statutory amendment in the Act.

40. C.R.S. § 1-40-118(2.5)(A) specifies that if a district court finds invalid signatures due to fraud “committed by any person involved in petition circulation” and a successful challenge against the petition is mounted on that basis the challenger “may commence a civil action to recover reasonable attorney fees and costs from the person responsible for such invalid signatures or petition sections.”

41. Subsection (B) permits a challenger to “be entitled to the recovery of reasonable attorney fees and costs from a proponent of an initiative petition who defends the petition against a protest or the proponent’s attorney, upon a determination by the district court that the defense, or any part thereof, lacked substantial justification or that the defense, or any part thereto, was interposed for delay or harassment.” Similarly, a proponent who defeats a challenge which is similarly deemed meritless may collect fees and costs.

42. C.R.S. § 1-40-135(2)(A) requires that no petitioner pay any compensation to a circulator without first obtaining a license to do so from the Secretary of State. A license may be denied if the Petitioner does not agree that “it shall not pay a circulator more than twenty percent of his or her compensation on a per signature or per petition basis; or (II) if no current representative of the petition entity has completed the training related to potential fraudulent activities in petition circulation as established by the Secretary of State, pursuant to §1-40-

112(3).

43. Subsection (C) goes on to state that the Secretary of State may revoke a previously granted license if, among other reasons, “(V) Payment to a circulator of more than twenty percent of his or her compensation on a per signature or per petition section bases...”

44. C.R.S. § 1-40-135(3)(a) states that “Any procedures which alleged violations involving petition entities are heard and adjudicated ...alleging that a petition entity was not licensed when it compensated any circulator...If a violation is determined to have occurred, such petition entity shall be fined by the Secretary in an amount not to exceed one hundred dollars per circulator, for each day that the named individual or individuals circulated petition sections on behalf of the unlicensed petition entity.”

45. The Act goes on to state that if a violation occurs wherein a petition entity violates “a provision of paragraph (c) of subsection (2) of this section [e.g. paying a circulator more than twenty percent of his income for piecemeal signatures] ...the secretary shall revoke the entity’s license for not less than ninety days of more than one hundred eighty days.” Subsequent violations result in revocations between 180 days and one year.

3. The Effect Of The Act On Plaintiffs

46. The Act unconstitutionally chills each Plaintiff from engaging in the petitioning process in the following ways:

- It shortens the time for circulating petitions in violation of the Colorado Constitution thus making the collection of an adequate number of signatures more difficult;
- The residency requirement for circulators along with the Colorado-resident identification requirement shrinks the pool of available circulators making it more difficult to obtain the requisite number of signatures and deprives persons who reside outside of Colorado from participating in First Amendment protected activity;
- The requirement that any circulator make him or herself available for possible future judicial proceedings shrinks the pool of potential circulators excluding those who may wish to leave the State of Colorado upon completing their job of circulating and not have to be bound to appear in future judicial proceedings in the event that fraud is raised;

- The requirement that petitioners or circulators attend a government-run training program chills the willingness of circulators and petitioners to engage in the process and unconstitutionally interjects the government into protected speech;
- The limitation on circulators only being able to earn twenty percent of their income on piecemeal signature collection reduces the number of circulators who have any incentive to work hard to obtain as many signatures as they can and it makes it almost impossible for a petitioner to obtain the requisite number of signatures necessary for a proposal to appear on the ballot;
- The provision that a challenger may obtain attorneys fees if a circulator commits “fraud” in obtaining signatures chills petitioners from engaging in the process as the potential enormous civil liability to petitioners for the criminal acts of circulators will reduce greatly the numbers of people willing to engage in sponsoring petitions;

STATEMENT OF CLAIMS

First Claim for Relief – C.R.S. § 1-40-111(2)(A), § 1983 First And Fourteenth Amendment Violation – Exercise of Free Speech

47. All statements of fact contained within this Complaint are hereby incorporated into this claim as though set forth fully herein.

48. The requirement that a circulator be a resident of Colorado burdens the free speech rights of all non-residents who wish to exercise their political rights under the First Amendment to the United States Constitution.

49. Because people who are non-residents enjoy freedom of speech, any potential circulator who feels strongly about any proposed ballot initiative has a right to travel to Colorado and work to achieve the passage of the initiative by helping in the circulation of ballot petitions.

50. The residency requirements limit the ability of plaintiffs to recruit large numbers of non-resident circulators available to petitioners seeking to place ballot initiatives before the voters in a general election thereby making it more difficult to obtain the requisite number of

signatures to appear on the ballot.³

**Second Claim for Relief – C.R.S. § 1-40-111(2)(B)(I)(c),
§ 1983 First And Fourteenth Amendment Violation –
Exercise of Free Speech**

51. All statements of fact contained within this Complaint are hereby incorporated into this claim as though set forth fully herein.

52. C.R.S. § 1-40-111(2)(B)(I)(c) mandates that any circulator submitting a petition to the Secretary of State must show a form of identification set forth in C.R.S. § 1-1-104(19.5), which mandates that the only valid form of identification is one showing that the circulator lives at a Colorado residence.

53. This provision violates the First Amendment rights of any potential non-resident circulator who wishes to exercise his or her right to circulate a petition in Colorado.

54. This provision shrinks the pool of available circulators thereby making it more difficult for petitioners to obtain the requisite number of signatures on any petition.

**Third Claim for Relief – C.R.S. § 1-40-111(2)(A), and (3)(A),
§ 1983 First And Fourteenth Amendment Violation –
Exercise of Free Speech**

55. All statements of fact contained within this Complaint are hereby incorporated into this claim as though set forth fully herein.

56. C.R.S. § 1-40-111(2)(A), and C.R.S. § 1-40-111(3)(A) mandate that circulators “make themselves available” for possible challenges.

57. This provision burdens freedom of speech in that it forces individuals who wish to

³ Non-resident “agitators” hold a cherished place in American history. Indeed the Freedom Riders were instrumental in obtaining civil rights for all in this country.

engage in the protected activity of circulating a petition to bind themselves for an indefinite period to the State of Colorado thereby making it less likely that a sufficient number of circulators will be willing to circulate petitions.

58. The purpose of this statute is to prevent fraud and make it easier to discover evidence of fraud, however no other constitutionally protected legal activity subjects a person to be bound to the state of Colorado into the future, even though fraud may exist in many endeavors.

59. In no other area of law is it presumed that criminal activity will occur thus everyone engaged in the activity must bind themselves to the state of Colorado, lest someone wish to challenge the lawfulness of their conduct.

60. This provision of the law chills potential circulators from engaging in protected speech.

61. This statute is not narrowly tailored as it shrinks the pool of circulators available while ignoring the fact that in the event that fraud is alleged, the petition signers themselves can be contacted in order to determine the validity of their signatures and criminal statutes exist for prosecuting those who perpetrate frauds such as this.

**Fourth Claim for Relief – C.R.S. § 1-40-112(3)
§ 1983 First And Fourteenth Amendment Violation –
Exercise of Free Speech**

62. All statements of fact contained within this Complaint are hereby incorporated into this claim as though set forth fully herein.

63. C.R.S. § 1-40-112(3) mandates State-run training programs for people engaged in the petitioning process.

64. The First Amendment does not tolerate government-mandated training prior to the exercise of free speech.

65. Petitioners, as is true of all persons, are expected to know the law and violations of the law are addressed in the penal code of the State of Colorado.

66. Being forced to attend a government-run training program is an intolerable burden on free speech as it reduces the number of circulators and petitioners willing to engage in the protected activity.

**Fifth Claim for Relief – C.R.S. § 1-40-112(4)
§ 1983 First And Fourteenth Amendment Violation –
Exercise of Free Speech**

67. All statements of fact contained within this Complaint are hereby incorporated into this claim as though set forth fully herein.

68. C.R.S. § 1-40-112(4) mandates that no more than twenty-percent of a circulator's payment be piecemeal per signature.

69. This statute is allegedly designed to take away any incentive for circulators to falsify their petitions by increasing their compensation based upon the mere number of signatures gathered.

70. The effect, however will be that it makes it extremely unlikely, and far more difficult for a petitioner to obtain the requisite number of signatures to qualify for placement on the ballot.

71. Circulators will be paid by the hour and as such, for the vast bulk of the time any circulator is engaged in the circulation process, they will make the same amount of money whether they work diligently to obtain legitimate signatures or do nothing to obtain signatures.

72. Indeed, this statute gives the circulator a major disincentive from working hard and obtaining signatures.

73. This statute makes it far more difficult for a petitioner to obtain the requisite number of signatures for placement on the ballot as circulators will have lost their financial incentive to

obtain signatures.

74. The cost of paying circulators by the hour compared to the expected reduced number of signatures each circulator will obtain makes it economically unfeasible for petitioners to engage in the process, thereby chilling them in the pursuit of their First Amendment rights.

**Sixth Claim for Relief – C.R.S. §
§ 1983 First And Fourteenth Amendment Violation –
Exercise of Free Speech and Due Process of Law**

75. All statements of fact contained within this Complaint are hereby incorporated into this claim as though set forth fully herein.

76. C.R.S. § 1-40-117 unconstitutionally amends the Colorado Constitution legislatively.

77. The time for presenting circulated petitions to the Secretary of State is mandated by the Colorado Constitution and the legislature cannot simply amend it.

78. By shortening the constitutionally mandated time period for submitting signatures, the Act makes it less likely that a petitioner will obtain the requisite number of signatures to present for the ballot.

79. This provision of the Act unconstitutionally chills plaintiffs in pursuit of their rights under the First Amendment and unconstitutionally amends the Constitution of the State of Colorado without due process of law.

**Seventh Claim for Relief – C.R.S. § 1-40-118(2.5)(A),
§ 1983 First And Fourteenth Amendment Violation –
Exercise of Free Speech**

80. All statements of fact contained within this Complaint are hereby incorporated into this claim as though set forth fully herein.

81. C.R.S. § 1-40-118(2.5)(A), awards attorney fees against the person “responsible” for any fraud in the circulation/petition process found by the court during a challenge.

82. This statute is void for vagueness as it does not specify whether the person “responsible” for the fraud will legally be deemed the circulator who actually committed it or the doctrine of *respondeat superior* will make the petitioner who hired the circulator “responsible” and thus civilly liable for the criminal conduct of another.

83. Circulators are to be held criminally accountable for frauds under the criminal laws of the State of Colorado if they personally commit crimes. Similarly, petitioners who violate criminal statutes are held personally liable for those violations.

84. The vagueness in the statutory language causes petitioners to be chilled in their willingness to engage in the protected activity of circulating petitions for fear of being financially devastated for acts they did not participate in.

**Eighth Claim for Relief – C.R.S. § 1-40-135(2)(A)
§ 1983 First And Fourteenth Amendment Violation –
Exercise of Free Speech**

85. All statements of fact contained within this Complaint are hereby incorporated into this claim as though set forth fully herein.

86. C.R.S. § 1-40-135(2)(A) mandates that petitioner licensing is required and can be revoked if the more than twenty percent prohibition on a circulator’s income provision is not agreed to.

87. For reasons previously set forth, the twenty-percent provision is unconstitutional, thus forcing petitioners to agree to abide by an unconstitutional provision in order to be licensed is itself unconstitutional and chills a reasonable person from exercising free speech.

88. This statute also mandates that if no representative of the petition’s proponent has gone through state-mandated, state-run training classes, the license will be revoked.

89. This hinges the protected free speech rights on agreeing to an unconstitutional

provision of the law. This provision is unconstitutional, thus forcing petitioners to agree to abide by an unconstitutional provision is itself unconstitutional and chills a reasonable person from exercising free speech.

**Ninth Claim for Relief – C.R.S. § 1-40-111(2)(A),
§ 1983 First And Fourteenth Amendment Violation –
Exercise of Free Speech**

90. All statements of fact contained within this Complaint are hereby incorporated into this claim as though set forth fully herein.

91. C.R.S. § 1-40-135(3)(a) mandates that the lack of a license results in heavy penalties while hinging licensing on unconstitutional provisions of statutes referenced above.

92. The financial penalties for failing to agree to and abide by unconstitutional provisions of the Act chill plaintiffs from exercising their rights under the First Amendment to the United States Constitution.

CONCLUSION

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in his favor and against Defendants, and award him all relief as allowed by law and equity, including, but not limited to, the following:

Appropriate equitable relief including but not limited to prospective injunctive relief, declaratory and other injunctive remedies;

Attorney's fees and costs; and
Any other relief this Court deems just and proper..

Dated this 15th day of March, 2010.

Killmer, Lane & Newman, LLP

s/David A. Lane

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