

Initiative Proponents No Longer Required To Identify Themselves On Petitions

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CASE SNAPSHOT

California's requirement that State and local initiative proponents identify themselves on petitions has been ruled unconstitutional. In a decision issued this week the U.S. Court of Appeals for the 9th Circuit also upheld the requirement that ballot measure proponents must be registered voters or qualified to vote, and thus not corporations or associations. As a result, City Clerks and City Attorneys should not enforce the initiative proponent identification requirement for initiative petitions under Elections Code Sections 9202 and 9207 unless the full 9th Circuit reviews the decision en banc or the United States Supreme Court overturns this decision. Petitions still must be submitted by qualified individuals.

In *Chula Vista Citizens for Jobs and Fair Competition, et al. v. Norris, et al.*, two associations ("the associations") sought to place an initiative on the ballot in the City of Chula Vista. The initiative related to local contracting practices. The City Charter adopts most of the California Elections Code's requirements regarding initiative petitions, including the requirement that only California registered voters or persons qualified to register to vote may circulate ballot measure petitions ("the elector requirement") and the requirement in Sections 9202 and 9207 that initiative proponents identify themselves in the notice of intention to circulate the petition, which also appears on the petition itself ("the identification requirement"). While two local voters agreed to serve as the proponents of the initiative, their names did not appear on the notice of intention and petition. The City Clerk rejected the petition because of that omission.

The associations filed suit in federal court on the grounds that that the elector requirement violated the associations' First Amendment to engage in political speech and the identification requirement violated the individual proponents' right to advocate for new laws anonymously. The 9th Circuit rejected the first challenge and upheld the second. The court ruled that associations do not have the First Amendment right to circulate initiative petitions, upholding the elector requirement. However, the court ruled that Elections Code Sections 9202 and 9207 are unconstitutional to the extent that they require proponents to identify themselves on the face of initiative petitions. Initiative proponents have the right to make their proposals to the voters, through their petitions, without identifying themselves if they so choose, the court held. The court reasoned that some proponents may believe that their message will be better-received if it is not connected to the identity of the messenger, and proponents have the First Amendment right to make that choice.

Other identification and disclosure requirements in the Elections Code are unaffected by this case, although an argument may be made that the same First Amendment theories apply to referendum and recall proponents. Local agency elections officials should consult with counsel regarding those petitions.

If you have questions, or would like more information on how this ruling may affect your agency and projects, please contact Craig Steele or any member of our Public Law Department.