No. 11-55316

IN THE

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

LIBERTARIAN PARTY OF LOS ANGELES COUNTY, THEODORE BROWN, and CHRISTOPHER AGRELLA,

Plaintiffs – Appellants,

Versus

DEBRA BOWEN, in her official capacity as Secretary of State,

Defendant – Appellee.

On Appeal from the Final Order of the U.S. District Court for the Central District of California, District Judge Philip S. Gutierrez, presiding, Case No. 2:10-cv-02488-PSG-OP

REPLY BRIEF

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ARGUMENT

Essentially admitting that the statutes currently prohibiting Appellants from circulating petitions are unconstitutional, the Defendant-Appellee (the "Secretary") in her Answering Brief asserts primarily that Appellants lack standing because "it is extremely unlikely the Secretary ever would attempt to enforce [the challenged] statutes," and claims that any adjudication of the obvious unconstitutionality of the challenged statutes would result in an "improper advisory opinion" because Plaintiff's failed to allege injury-in-fact, causation, or a likelihood that a favorable decision will redress the plaintiff's alleged injury. The Secretary apparently bases this argument on both a history of non-enforcement of the challenged statutes and the obvious unconstitutionality of the statutes. But a court's adjudication of this case is not an advisory opinion because the threat of criminal enforcement is real.

In making these assertions, the Secretary completely ignores the abjectly contrary statements made in her recent official publications. Depending on the context, the Secretary changes her position. In the real world, she instructs candidates that non-residents are barred from circulating petitions in her candidate information sheet entitled "Summary of Qualifications and Requirements," (R. 28, Exhibit A, p. 1, fn.1, Excerpts, p. 63), and also instructs all County Clerks and Registrars of Voters that circulators violating the Elections Code "be reported by local elections officials to the proper authorities" in a memorandum dated January

27, 2010, *see* www.sos.ca.gov/elections/ccrowv/pdf/2010/january/10038rd.pdf (hereinafter the "Secretary's 2010 Memorandum), p. 7; Reply Addendum, p. 7.[1] The Secretary's declared purpose is set forth in the memorandum: "Such a procedure properly punishes the errant circulator rather than the innocent petition or paper signer." *Id*.

In her litigation papers, however, she chooses to paint a different story, falling short of a complete disavowment, saying it is "unlikely" that the statute gets enforced, and that the Secretary has not enforced the statute in the past (forgetting to omit that she actually instructed elections officials to notify the appropriate authorities to recommend prosecution for petition circulators in 2010). *See* The Secretary's 2010 Memorandum. The two diametrically opposing statements – those made in the real world versus the statements made in her litigation papers – are a great object lessen regarding why we must strictly adhere to the legal standard for a motion for judgment on the pleadings, and focus on the Complaints' ***alleged*** facts and reasonable factual inferences in the Plaintiffs-Appellants' favor.

[1] The Secretary filed a motion asking to take judicial notice of the fact that the Secretary issued the Secretary's 2010 Memorandum in 2010. The Plaintiffs-Appellants do not oppose this motion, and point out that the procedural posture of this case still requires that reasonable inferences made from this fact must be made in the Plaintiffs-Appellants' favor. For the Court's convenience, a complete copy of the Secretary's 2010 Memorandum is attached to this Reply Brief as an addendum.

Following this legal standard here requires reversal and remand for continued proceedings.

I. DESPITE THE SECRETARY'S REPEATED ASSERTION THAT SHE IS "UNLIKELY" TO ENFORCE THE RESIDENCEY REQUIREMENTS OF THE CHALLENGED STATUTES, APPELLANTS ALLEGED AN INJURY-IN-FACT SUFFICIENT TO ESTABLISH STANDING, AND A LIVE CASE OR CONTROVERSY.

The Secretary asserts that this case presents no live case or controversy because Appellants failed to show an injury-in-fact sufficient to establish standing because they did not allege a "reasonable likelihood that the government will enforce the challenged law against them." (Answering Brief, p. 16.) However, the very legal opinion reissued and cited by the Secretary as support in her Answering Brief clearly illustrates and defines the "realistic danger of [Appellants] sustaining a direct injury as a result of the statute[s'] operation or enforcement" alleged by Appellants in the Amended Complaint. (Answering Brief, p. 15) (quoting *LSO, Ltd. v. Stroh*, 205 F.3d 1146, 1154 (9th Cir. 2000)).

In fact, despite the Secretary's assertion that the 2010 memorandum "should have provided Appellants with a large measure of assurance that they would not be prosecuted," (Answering Brief, p. 16), the opinion actually has the opposite effect. While the Secretary points to the opinion as evidence that she is unlikely to invalidate any petitions as a result of any violation of the challenged statutes, the most critical portion of the opinion suggests the Secretary will enforce the

challenged statutes in the precise manner alleged by Appellants in their Amended Complaint:

> Some local elections officials treat the entire petition section as invalid, whereas other officials disregard the deficiency for purpose of signature verification *but transmit the information to the local district attorney for possible criminal prosecution of the circulator. We believe that the latter course of action is the more consistent with statutory law, judicial decisions, and public policy.*

See The Secretary's 2010 Memorandum, p. 3 (emphasis added).[2]

In fact, the opinion states explicitly that the specific requirements of the Elections Code may not be ignored and clearly delineates the direct injury facing Appellants as a result of the operation of the challenged unconstitutional statutes – the same injury alleged in the Amended Complaint:

> The Code clearly contemplates that circulators be registered voters and otherwise qualified and state the qualifications in the circulator's affidavit. A circulator who completes a false affidavit is subject to criminal prosecution for perjury or, where applicable, violating Elections Code § 29780, *and suspected violators should be reported by local elections official to the proper authorities*.

See id, p. 7 (emphasis added).

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[2] It is also very interesting that in the Answering Brief, the Secretary repeatedly states that because of *Preserve Shorecliff Homeowners v. City of San Clemente*, 158 Cal. App. 4th 1427 (2008), there is little likelihood the statutes would ever be applied to the Plaintiffs-Appellants, because a similar statute was declared to be unconstitutional. Yet it was after *Preserve Shorecliff Homeowners* was decided in 2008 that the Secretary issued The Secretary's 2010 Memorandum and instructed local elections officials to recommend prosecution of circulators violating the Election Code statutes. *See* The Secretary's 2010 Memorandum, p. 7.

Compare the Secretary's recent statement to the allegation in the Amended Complaint: "A circulator who signs an incorrect declaration can be punished by fine or imprisonment." (R. 28, ¶ 18, Excerpts, p. 68.)

In addition to the Secretary's affirmative representation that the residency requirements of the challenged statutes are required of all candidates, along with her identification of statutory candidate qualifications and requirements that she believes are unconstitutional and not enforceable, R. 28, Exhibit A, p. 1, fn.1, Excerpts, p. 63, such language only provides additional cause for the Appellants' well-justified fear that the Secretary will enforce the unconstitutional residency statutes to their detriment.

II. APPELANTS NEED NOT "NAME NAMES" IN ORDER TO ESTABLISH INTENT TO VIOLATE THE CHALLENGED STATUTES.

In addition to conveniently ignoring critical language in her own reissued opinion to continually assert that Appellants fail to show a constitutionally sufficient injury-in-fact because she is "unlikely" to enforce the residency requirements of the challenged statutes, the Secretary also claims that Appellants fail to show a sufficient injury-in-fact because they did not establish their intent to violate the challenged statutes, nor identify the consequence of such violations. However, in doing so, the Secretary loses sight of the appropriate legal standard applicable to a Rule 12(c) motion to dismiss.

A motion for judgment on the pleadings merely tests the legal sufficiency of the complaint, *N. Star Int'l v. Arizona Corp. Comm'n*, 720 F.2d 578, 581 (9th Cir. 1983), and should be granted "only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations," *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 514, 122 S.Ct. 992, 998, 152 L.Ed.2d 1 (2002) (quoting *Hishon v. King & Spalding*, 467 U.S. 69, 73, 104 S.Ct. 2229, 81 L.Ed.2d 59 (1984)). In addition, in making a determination on a motion for judgment on the pleadings, the court must accept all material allegations in the complaint.

Under this standard, Appellants' First Amended Complaint clearly alleges facts sufficient to establish Article III standing. (R. 28, ¶¶ 19-20, Excerpts, p. 68). For example, the First Amended Complaint alleges that Brown wanted to circulate petitions in support of candidates located in political districts other than the district within which he lives, but refrained because of the residency requirements of the challenged statutes, Agrella wanted to circulate petitions for a state senate candidate that overlapped his district but refrained because he does not reside within the state senate district for which that candidate was running, and both Agrella and Brown intend in future elections to circulate petitions in support of candidates in political districts other than the district within which they live. *Id*.

Contrary to the Secretary's intended implication in relying on *Thomas v. Anchorage Equal Rights Commission*, 220 F.3d 1134 (9th Cir. 2000), *Thomas* does not create heightened pleading standards for constitutional challenges under the First Amendment and require Appellants to name names, dates, or locations in order to survive a motion for judgment on the pleadings. Rather, because a motion for judgment on the pleadings may be granted "only if it is clear that no relief could be granted under any set of facts that could be proved consistent" with the allegations of the complaint, *Sorema N.A.*, 534 U.S. at 514, and all material allegations in the complaint must be accepted as true with all reasonable inferences drawn the light most favorable of the Appellant, *Rennie & Laughlin, Inc. v. Chrysler Corp.*, 242 F.2d 208, 209 (9th Cir. 1957), the allegations in the First Amended Complaint adequately allege an intention to violate the challenged statutes, and therefore are sufficient to establish a constitutionally sufficient injury-in-fact to establish standing to challenge the residency requirements of Cal. Elec. Code §§ 8066, 8451 under the First Amendment.

III. THE SECRETARY'S REPEATED INSISTENCE THAT SHE IS UNLIKELY TO ENFORCE THE RESIDENCY REQUIREMENTS OF THE CHALLENGED STATUTES IS IMMATERIAL TO WHETHER THE APPELLANTS ALLEGED AN INJURY-IN-FACT, CAUSATION, AND REDRESSABILITY.

Even while referencing the Supreme Court's "hold your tongue and challenge now" approach, rather than forcing litigants to speak first and risk the

consequences, the Secretary still fails to apply the appropriate low threshold set forth by the Supreme Court and Ninth Circuit to establish standing in challenges to statutes infringing upon First Amendment rights, *see Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 301-02, 99 S.Ct. 2301, 60 L.Ed.2d 895 (1979); *Arizona Right to Life Political Action Committee v. Bayless*, 320 F.3d 1002, 1007 (9th Cir. 2003); *California Pro-Life Council, Inc. v. Getman*, 328 F.3d 1088, 1093 (9th Cir. 2003). Instead, the Secretary simply continues to claim that because she is unlikely to enforce the unconstitutional statutes at issue, Appellants cannot show injury-in-fact, causation, or redressability; ignoring both her affirmative representations and the law.

As detailed in the First Amended Complaint and Appellants' Opening Brief, not only has the Secretary not disavowed the residency requirements of the challenged statutes, but she continues to affirmatively represent that the requirements must be met by all candidates for office while identifying other candidate qualifications and requirements that she believes are unconstitutional and not enforceable. (R. 28, ¶¶ 7, 12-16 and Exs. A, p.1, fn.1, and B, Excerpts, pp. 63, 66-68) ("Bowen continues to notice all candidates that the residency requirement for petition circulators is a requirement for candidates for state office."). *See also* The Secretary's 2010 Memorandum. Because Appellants have alleged an intent to violate Cal. Elec. Code §§ 8066 and 8451 – statutes clearly applying to their

intended speech and conduct – along with altering their expressive activities to comply with residency requirements of which (1) the Secretary *is required* to enforce and (2) have not only not been disavowed, but are affirmatively represented as necessary for all qualified candidates, Appellants have more than met the slight showing necessary to show the injury-in-fact, causation, and redressability to establish standing in a First Amendment challenge. *See Lopez v. Candaele*, 630 F.3d 775, 791 (9th Cir. 2010) (citing *Santa Monica Food Not Bombs v. City of Santa Monica*, 450 F.3d 1022 (9th Cir. 2006) and *Bayless*, 320 F.3d at 100) ("In [previous cases], we held that [a plaintiff] can establish injury in fact sufficient for pre-enforcement standing merely by showing that it altered its expressive activities to comply with the statutes at issue and alleging its apprehension that the relevant statutes would be enforced against it").

Unfortunately for the Secretary, her repeated assertions that she is simply unlikely to enforce the challenged statutes simply have no bearing on sufficiency of Appellants' First Amended Complaint.

IV. THIS CASE IS RIPE BECAUSE, AS ALLEGED IN THE FIRST AMENDED COMPLAINT, THE CHALLENGED STATUTES HAVE HAD, AND WILL CONTINUE TO HAVE, AN ADVERSE IMPACT ON APPELLANTS.

The Secretary contends that *Renne v. Geary*, 501 U.S. 312, 111 S.Ct. 2331, 115 L.Ed.2d 288 (1991) compels a determination that this case is not justiciable because there is no ripe controversy. (Answering Brief, pp. 21-24.) However, the

Secretary's reliance on *Renne* is misplaced, and she again loses sight of the low threshold required to establish a case or controversy in First Amendment challenges as well as the legal standard under which a motion for judgment on the pleadings is determined.

In *Renne*, voters and party central committees challenged the constitutionality of an amendment to the California Constitution which prohibited political parties from endorsing or supporting candidates for judicial, school, county and city offices. *Renne*, 501 U.S. at 314, 111 S.Ct. at 2335. The Supreme Court determined that the case was not justiciable because (1) plaintiffs did not suffer any adverse impacts during the pendency of the lawsuit, (2) plaintiffs did not allege an imminent injury, and (3) the criminal provision of the amendment did not clearly proscribe the conduct in which the plaintiffs sought to engage. *Id*. at 320-22, 111 S.Ct. at 2338-39. The Court postponed judicial review "until a more concrete controversy arises, [which] also has the advantage of permitting the state courts further opportunity to construe [the amendment], and perhaps in the process to 'materially alter the question to be decided. *Id*. at 323, 111 S.Ct. at 2340.

Here, unlike the plaintiffs in *Renne*, and in light of the upcoming 2012 elections, (and the fact that elections including special elections take place regularly every year), Appellants have alleged and face imminent injury from the challenged statutes – statutes that unambiguously proscribe the conduct in which

the Appellants intend to engage. Further, Appellants have alleged sufficient facts regarding the chilling effect of the challenged statutes. As a result, for the purposes of determining the legal sufficiency of the Appellants' First Amended Complaint, Appellants have more than adequately alleged facts to establish a ripe controversy and overcome a motion for judgment on the pleadings.

CONCLUSION

For all of the foregoing reasons, the Judgment should be reversed and the case remanded for further proceedings.

Dated at Milwaukee, Wisconsin, on this 11th day of October, 2011.

RESPECTFULLY SUBMITTED

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CERTIFICATE OF COMPLIANCE

The following is hereby certified by the undersigned below:

1. All fonts are Times, in 14-point type. (Footnotes are in 14-point type).

2. This brief contains 2,488 words, exclusive of the table of contents, table of authorities, this certificate of compliance, and the certificate of service. This word count was performed with the Macintosh "Microsoft Word X" word count tool.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on October 11, 2011.

I also certify that all of the parties have counsel that are registered to receive service via the CM/ECF system.

Dated on October 11, 2011.

/s/ Daniel J. Treuden
Daniel J. Treuden, Esquire
Counsel for the Plaintiffs-Appellants

ADDENDUM

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STATE OF CALIFORNIA | ELECTIONS
1500 11th Street, 5th Floor | Sacramento, CA 95814 | Tel (916) 657-2166 | Fax (916) 653-3214 | www.sos.ca.gov

January 27, 2010

County Clerk/Registrar of Voters (CC/ROV) Memorandum #10038

TO: All County Clerks/Registrars of Voters

FROM: Rachelle C. Delucchi
Rachelle Delucchi
Elections Counsel

RE: Candidate Filing: Verification of Candidacy Paper Signatures

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A county elections official has recently asked if a person circulating nomination documents or signature in lieu of filing fee petitions is not in compliance with Elections Code section 8066 or 8106(b)(4), whether the signatures gathered on those documents or petitions from otherwise qualified individuals should be invalidated.

Pursuant to the attached legal opinion the Secretary of State's office issued in 1980, the answer to that question is that signatures on any candidacy paper (which includes nomination documents and signature in lieu of filing fee petitions) should not be marked insufficient solely because the circulator of the candidacy paper is not a registered voter.

If you have any questions please contact our office at (916) 653-7635.

Attachment

Office of the Secretary of State
March Fong Eu

1230 J Street
Sacramento, California 95814

Elections Division
(916) 445-0820

April 8, 1980

Opinion No. 80 SOS 1

RE: ELECTION PETITION CIRCULATORS

QUESTION

Should signatures on a petition or candidacy paper be marked insufficient solely because the circulator of the petition or paper is not a registered voter?

CONCLUSION

Signatures on a petition or candidacy paper should not be marked insufficient solely because the circulator of the petition or paper is not a registered voter.

ANALYSIS

Introduction:

Circulators of petition and candidacy papers are required by the Elections Code to be registered voters [Elections Code § 42] and must, inter alia, affirm to such registration in the circulator's affidavit which must be attached to the petition or paper [Elections Code § 44. See also sections dealing with specific papers and petitions].

On occasion, proponents or candidates submit petitions or papers for signature verification which have not been circulated by registered voters notwithstanding the provisions of the Elections Code. In these cases, California law does not specify whether the nonqualification of the circulator also invalidates otherwise sufficient signatures on the petition or paper. A recent survey of several

county clerks and registrars indicates that there is no uniform practice in this regard. Some local elections officials treat the entire petition section as invalid, whereas other officials disregard the deficiency for purpose of signature verification but transmit the information to the local district attorney for possible criminal prosecution of the circulator.[1] We believe that the latter course of action is the more consistent with statutory law, judicial decisions, and public policy.

Statutory Law:

The statutory duties of clerks[2] with respect to signature verification are substantially the same with respect to all the petitions and papers authorized by the Elections Code. In general, the clerk is required to verify the signatures to determine whether they are those of signers qualified to sign the respective petition or paper. No statute requires the clerk to verify the qualifications of the circulator. For example, Elections Code § 6506 requires the clerk to:

> ". . . verify the signatures and the political affiliations of the signers of the nomination paper with the registration affidavits on file in the office of the county clerk. The county clerk shall mark 'not sufficient' any signature which does not appear in the same handwriting as appears on the affidavit of registration in his office or which is accompanied by a declaration of party affiliation which is not in accordance with the declaration of party affiliation in the affidavit of registration. The county clerk may cease to verify signatures once the minimum requisite number of signatures has been verified."

See, also, Elections Code §§ 3520, subdivision (d), and 3521, subdivision (b).

With respect to statewide initiative and referendum petitions, Elections Code § 3511 does preclude the clerk from receiving or filing any ". . . petition which does not conform to the provisions of this article" [article 1, chapter 1, of division 5]. However, article 1 relates primarily to the preliminary procedural steps for petition circulation and certain elements required to be included in the petition rather than circulator's qualifications

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1. See discussion of criminal penalties, infra.

2. "Clerks," as used herein, includes county, city, and district clerks and county registrars of voters.

or signature verification. Thus, it provides no authority for the clerk to disregard petition signatures based on the nonregistration status of the circulator.

Judicial Decisions:

California courts have uniformly held that a clerk's duty relative to examining petitions or candidates' papers is limited to two responsibilities: (1) to determine whether the petition or paper contains the requisite elements specified by the law; and (2) to determine the number of qualified signers who have signed the petition or paper by comparing the signatures on the petition or paper with signatures on valid affidavits of registration.

As to the first duty, for example, the court in Dodge v. Free, (1973) 32 Cal.App.3d 436, held that the clerk need not verify a petition section that does not contain a circulator's affidavit, one of the elements required by law to be included in a petition. In upholding the clerk's refusal to verify petition signatures, the court concluded that the required affidavit was lacking in the absence of a subscription and date. See, also, Conn v. City Council, (1911) 17 Cal.App. 705, 713.

As to the second duty, Truman v. Rover, (1961) 189 Cal.App.2d 240, 243, is typical. In that case the court said:

> "It has been held that the clerk's duties in matters of this character are purely ministerial and not judicial (Reites v. Wilkerson, (1950) 95 Cal.App.2d 827, 829 [213 P.2d 773]; his duty is to examine the individual signatures to ascertain if they comply with the requirements of law, and if an adequate number are filed, he must certify the petition as sufficient. (Tilden v. Blood, (1936) 14 Cal.App.2d 407, 413 [58 P.2d 381].) A clerk may refuse to certify petitions because of noncompliance with such provisions." 189 Cal.App.2d at 243.

See, also, Conn v. City Council of the City of Richmond, (1911) 17 Cal.App. 705, 714; Wright v. Engram, (1921) 186 Cal. 659, 659-660; Williams v. Gill, (1924) 65 Cal.App. 129, 132; Tilden v. Blood, (1936) 14 Cal.App.2d 407, 413.

As to the issue at hand, Truman v. Rover, supra, is particularly instructive. In that case, the clerk initially invalidated enough signatures because of unqualified circulators to declare a referendum petition insufficient. After the superior court ruled that signatures should not

be invalidated based on the nonqualification of the circulators, the clerk reverified the signatures previously invalidated for that reason and declared the petition sufficient. The appellate court upheld the clerk's action declaring, in reference to the challenged signatures:

> ". . . the propriety of the city clerk's action in . . . accepting them [the challenged signatures] as valid signatures has long been settled in the law of California . . . . The clerk was duty bound to certify the petition as sufficient when his investigation disclosed an ample number of qualified signers." 189 Cal.App.2d at 243-244.

Thus, the only case which we have discovered which has considered the issue in California holds the clerk should not invalidate signatures based on the nonqualification of the circulator.[3]

The holding in Truman v. Royer, supra, is consistent with the judicial tradition of liberally construing elections statutes in order to favor the implementation of the important rights of recall, initiative, referendum, and candidacy. The basis for such tradition is articulated in Laam v. McLaren, (1915) 28 Cal.App. 632 wherein the court said:

> "The theory on which the modern system of government under the initiative, referendum, and recall statutes is founded, is that the people reserve to themselves the right to propose legislation, to pass upon legislative measures enacted by their representatives, and to remove elective officers whenever the people, in their judgment, deem such action necessary. This power is given them by the constitution and statutes enacted in aid of this power should be liberally construed and should not be interfered with by the courts except upon a clear showing that the law is being violated."
> 28 Cal.App. 632,638.

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3. Ley v. Dominguez, (1931) 212 Cal. 587, refers to the qualifications of circulators. In that case, the parties and the court apparently assumed that signatures could be invalidated when obtained by an unqualified circulator, and thus the question posed by this opinion was not at issue. See 212 Cal. at 593, 601, 602. See, also, Fraser v. Cummings, (1920) 48 Cal.App. 504, 505-6, where the court referred to the issue. However, petitioner did not raise the issue in pleadings, and the court specifically declared that the signatures were not before the court, and the petitioner did not controvert issue.

The courts' continued insistence on granting a liberal interpretation to statutes regulating election petitions in favor of exercising the rights the petitions represent provides a compelling reason not to read into the law restrictions on the use of the petitions that are not specifically provided for. The Elections Code does not prescribe invalidating petition signatures as the penalty for failure of the circulator to be qualified. Such a penalty should not be administratively created.

Public Policy:

We believe that the rule set forth in Truman v. Royer is consistent with furthering the public policy of encouraging citizen participation in governmental affairs. A signer of a petition or paper seldom knows with any certainty whether the circulator is indeed qualified to solicit signatures, and it is unreasonable to expect such signer to be able to make such a determination prior to signing. To nevertheless invalidate signatures of qualified voters on petitions and candidacy papers based on the nonregistration of the circulator would significantly interfere with the rights of such voters in petitioning their government and proposing candidates for office. What is known by the affirmative act of signing is that the voter has expressed his or her view relative to the subject of the petition or paper as provided by law. See Willett v. Jordan, (1934) 1 Cal.2d 461, 464. To thwart that expression by invalidating the voter's signature is not only patently unfair to the voter but significantly diminishes rights protected by the Constitution and the Elections Code.

On the other hand, we are not aware of any reason, compelling or otherwise, for reading into the statute a rule which would result in the invalidation of signatures in such a case. The circulator's duties are ministerial in nature, and we can perceive no rationale why his registration status would have any effect on the performance of those duties.

This is not to say, however, that the specific requirements of the Elections Code can be ignored. The Code clearly contemplates that circulators be registered voters and otherwise qualified and state the qualifications in the circulator's affidavit. A circulator who completes a false affidavit is subject to criminal prosecution for perjury or, where applicable, violating Elections Code § 29780, and suspected violators should be reported by local elections officials to the proper authorities.

Such a procedure properly punishes the errant circulator rather than the innocent petition or paper signer.[4]

MARCH FONG EU
Secretary of State

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Chief Counsel

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RICHARD B. MANESS
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4. Similar rules have been fashioned in related areas of law governing petitions in which requirements similar to the ones regarding circulators qualifications discussed in this opinion have been found mandatory as to the signers or circulators, but not on the clerks. For example, the Attorney General ruled that statutes made mandatory the printing of petition signers' full names, but recommended that, where reasonably possible, clerks should verify signatures not accompanied by the signers' printed full name. 58 Ops.Cal.Atty.Gen. 218 (1975). See, also, Chester v. Hall, supra, 55 Cal.App. at 618. Worth v. Downey, (1925) 74 Cal.App. 436; People v. City of Belmont, (1929) 100 Cal.App. 537, 541. Similarly, McDonald v. Curry, (1910) 158 Cal. 160, held that it was mandatory that nominating petition signers can sign the petition of not more than one candidate for an office, but it was not within the clerk's duty to check between petitions to determine that each signer signed only once. And, the Attorney General has declared that clerks did not have a duty to investigate and verify the truth of campaign statements filed with them. 32 Ops.Cal.Atty.Gen. 93-94 (1958).