

petitioners, who own 2 percent in assessed value of the taxable property so desire. If such an election were to be held, voting would not be limited to registered voters who are also property owners. Any eligible registered voter could vote.

Because the right to vote is not involved, but rather the right to sign a petition which, we agree with New Mexico, is a step removed from the actual voting process, Nevada need only show a rational basis, not a compelling interest, for the restriction to suffice. Nevada has a rational basis for restricting the signers of this petition to property owners.

The public will benefit from the expansion/renovation of the convention center; however, the property owners are the taxpayers who will bear the financial burden. The legislature, to protect these taxpayers, may create a petition process for them to bring the entire matter to a vote of the people.

The legislature may want to reexamine this statute, but that is a policy decision outside the scope of this opinion.

CONCLUSION

The requirement in NRS 350.020(3) that property ownership is a qualification for validating signatures on a petition to bring a local government bond issuance decision to the vote of the people does not violate the Equal Protection Clause of the U.S. Constitution.

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AGO 99-37 CONSTITUTIONAL LAW; ELECTIONS; INITIATIVE; RECALL
PETITIONS; REFERENDUM; Nevada provisions requiring petition

circulators to be registered voters violate the U.S. Constitution and should be amended. Nevada is prohibited from requiring petition groups from listing the name, address, and amount paid to each petition circulator. Reporting the amount paid per petition signature or the total amount paid to petition circulators is permissible.

Carson City, December 1, 1999

Pamela Crowell, Deputy Secretary of State for Elections, Office of the Secretary of State, 101 North Carson Street, Suite 3, Carson City, Nevada 89701-4786

Dear Ms. Crowell:

You have requested an opinion from this office regarding the impact of a recent United States Supreme Court case on the signature gathering process for petitions in this state.

QUESTION ONE

Does the United States Supreme Court decision, *Buckley v. American Constitutional Law Foundation (ACLF)*, 525 U.S. 182 (1999) impact the provision governing the initiative petition process as mandated by the Nevada Constitution and Nevada election law?

ANALYSIS

The Nevada Constitution, as well as certain provisions of the Nevada Revised Statutes dealing with election law, has traditionally been interpreted to require the circulator of an initiative petition be a registered voter.⁴ However, the United States Supreme Court recently held in *Buckley v. ACLF*, that a similar Colorado law violated the First Amendment of the United States Constitution and was therefore unconstitutional.

⁴ Nev. Const. art. 19, § 3; NRS 295.055(2).

In *Buckley v. ACLF* the Court reviewed three conditions placed on the ballot initiative process by Colorado statutes: “(1) the requirement that initiative-petition circulators be registered voters, . . . ; (2) the requirement that they wear an identification badge bearing the circulator’s name, . . . ; and (3) the requirement that proponents of an initiative report the names and addresses of all paid circulators and the amount paid to each circulator, . . .” *Buckley v. ACLF*, 525 U.S. at ___, 119 S. Ct. at 639. The Court affirmed the judgment of the U.S. Court of Appeal that struck down these three requirements for “trenching unnecessarily and improperly on political expression.” *Buckley v. ACLF*, 525 U.S. at ___, ___ 119 S. Ct. at 649, 642.⁵

A background inquiry into the treatment of election regulations⁶ shows that the Supreme Court has recognized the state’s interest in preserving the integrity of the electoral process, upholding “generally-applicable and evenhanded restrictions.” *Anderson v. Celebrezze*, 460 U.S. 780, 788 n. 9 (1983).

While not advocating unregulated access to the ballot, the Supreme Court has struck down regulations which were deemed to place too great a burden on the individual’s free exercise of speech. *See Meyer v. Grant*, 486 U.S. 414 (1988) (striking down a law which prohibited payment to petition circulators) (Nevada has no such law); *McIntyre v. Ohio Elections Com’n*, 514 U.S. 334 (1995) (invalidating law which prohibited anonymous election-related hand billing).

The Supreme Court’s recent decision in *Buckley v. ACLF* guides our review on the issue before us. In that case, the Supreme Court determined that petition circulation is core political speech and found that a restriction that required petition circulators to be registered voters violated the First Amendment because it “significantly inhibits communication with voters about proposed political change, and [is] not warranted by the state interests (administrative

⁵ The holding in *Buckley v. ACLF* was based on First Amendment principles. However, the U.S. Court of Appeals recognized that “when a statute allows some people to speak but not others, the principles of equal protection and free speech are intertwined.” *ACLF v. Meyer*, 120 F.3d 1092, 1100 (10th Cir. 1997).

⁶ For purposes of this opinion, “election regulations” include the state constitution, state statutes, and state administrative regulations.

efficiency, fraud detection, informing voters) alleged to justify those restrictions.” *Id.* at 642. Agreeing with *Meyer*, the Court stated, “Petition circulation . . . is ‘core political speech,’ because it involves ‘interactive communication concerning political change.’” *Id.* at 639.

One of the Colorado statutes at issue in *Buckley v. ACLF* provided: “No section of a petition for any initiative or referendum measure shall be circulated by any person who is not a registered elector and at least eighteen years of age at the time the section is circulated.” Colo. Rev. Stat. § 1-40-112(1)(1998). Although Nevada law does not contain such explicit language, it has traditionally been interpreted to require petition circulators to be registered voters. For example, that part of the state constitution governing initiative petitions provides:

Each signer shall affix thereto his or her signature, residence address and the name of the county in which he or she is a registered voter. The petition may consist of more than one document, but each document shall have affixed thereto an affidavit made by one of the signers of such document to the effect that all of the signatures are genuine and that each individual who signed such document was at the time of signing a registered voter in the county of his or her residence

Nev. Const. art. 19, § 3.

Through a somewhat circuitous route, this provision has traditionally been interpreted as requiring petition circulators be registered voters. Each petition must be circulated by an individual designated to collect signatures. Each signer of the petition must be a registered voter. Accompanying each petition must be an affidavit, made by a signer of the petition (i.e., the circulator) attesting that all of the signatures are genuine and that each signer was a registered voter.

The petition circulator is the individual responsible for gathering signatures, explaining the purpose of the petition, and obtaining the signatures of those

qualified to sign the document. Despite its seemingly elusive nature, once analyzed, the traditional interpretation of this section of the constitution has been to require that petition circulators be registered voters. The signer of the affidavit can be the petition circulator because the petition circulator is in the best position to attest to the statements in the affidavit. The signer of the affidavit must also sign the petition and only registered voters may sign the petition. Therefore, the petition circulator was required to be a registered voter. Further, there is a provision in Nevada statutes that also requires signers of an initiative petition, like the circulator, to be a registered voter.⁷ In light of the Supreme Court's decision in *Buckley v. ACLF*, Nevada's requirement that petition circulators be registered voters would be similarly treated and thereby deemed invalid.

To evaluate the constitutionality of laws regulating the electoral process, we look to the framework established by the Supreme Court in *Timmons*:

When deciding whether a state election law violates First and Fourteenth Amendment associational rights, we weigh the “character and magnitude” of the burden the State’s rule imposes on those rights against the interests the State contends justify that burden, and consider the extent to which the State’s concerns make the burden necessary. Regulations imposing severe burdens on plaintiffs’ rights must be narrowly tailored and advance a compelling state interest. Lesser burdens, however, trigger less exacting review, and a State’s “important regulatory interests” will usually be enough to justify “reasonable, nondiscriminatory restrictions.”

Timmons v. Twin Cities Area New Party, 520 U.S. 351, 358 (1997) (citations omitted) (prohibiting individual from appearing on ballot as candidate of more than one party).

⁷ “Each document of the petition must bear the name of a county, and only registered voters of that county may sign the document.” NRS 295.055(2).

The states clearly have a substantial interest in preserving fairness, order, and integrity in the election process through enacting reasonable regulations. However, regulations that implicate the First Amendment protections are subject to strict scrutiny, i.e. these regulations must be narrowly tailored and advance a compelling state interest that justifies imposing severe burdens on one's First Amendment rights. The Supreme Court has found that the regulation at issue in *Buckley v. ACLF* places a substantial burden on the individual's freedom of expression without sufficient justification from the state. In a similar analysis in *Meyer*, the Supreme Court applied strict scrutiny to strike down another Colorado law that made it a felony to compensate petition circulators. *Meyer v. Grant*, 486 U.S. at 423.

In *Meyer*, the Court reasoned that such a ban on compensation burdened political expression because it reduced the number of potential speakers and limited the size of the audience that could be reached, thereby reducing the quantity of expression. *Id.* at 422-423. The state could not sufficiently justify its interest in placing such a burden on an individual. *Id.* at 425.

Additionally, "statutes that limit the power of the people to initiate legislation are to be closely scrutinized and narrowly construed." *Meyer v. Grant*, 486 U.S. at 423. The voter registration requirement at issue excludes a certain group of people from participating in the political process. *Buckley v. ACLF* provides clear precedent that such a restriction limits political expression and has a discriminatory effect by excluding a group of persons from participating in core political speech. *See Meyer v. Grant*, 486 U.S. at 421-422. The Supreme Court has held that the voter registration requirement is not narrowly tailored to advance the state's interests nor are the state's interests substantial enough to justify such a burden on the individual's freedom of expression. *Buckley v. ACLF*, 525 U.S. at ___, 119 S. Ct. at 644. Nevada can preserve the integrity of the signature gathering process on an initiative petition through less restrictive means, such as requiring that all petition circulators be 18 years of age and be residents of the state, and so attest in the affidavit. *Id.* at 644-645 n.10.

Although the voter registration provision at issue before us is contained in the state constitution, it is still subject to strict scrutiny. Colorado's voter registration requirement for petition circulators was adopted by constitutional

amendment as a result of a referendum approved by the people. *ACLF v. Meyer*, 870 F.Supp. 995, 1002 (D. Colo. 1994). The district court found that such a restriction “limits the number of persons available to circulate . . . and, accordingly, restricts core political speech.” *Id.* However, the court erroneously upheld the law, exempting it from any level of scrutiny because it had been adopted as a constitutional amendment. *Id.* The U.S. Court of Appeals properly reversed the district court and struck down the voter registration requirement finding “it unconstitutionally impinges on free expression.” *ACLF v. Meyer*, 120 F.3d at 1100. State laws are not to escape scrutiny simply because they are cloaked within the protection of the state constitution. *Id.* (“the voters may no more violate the United States Constitution by enacting a ballot issue than the general assembly may by enacting legislation”).

In sum, the *Buckley v. ACLF* decision requires us to conclude that a state law that limits petition circulation to registered voters imposes a burden on political expression in violation of the First and Fourteenth Amendments. The restriction burdens expression by not only limiting the number of people available to circulate a petition and reducing the size of the audience, but by taking away an individual’s right to choose not to register, yet remain politically active. *Buckley v. ACLF*, 525 U.S. at ___, 119 S. Ct at 644 (reasoning that the choice not to register to vote implicates political thought and expression).

The State of Nevada cannot assert any greater interest in requiring its petition circulators to be registered voters than those asserted by Colorado. Therefore, the holding of the Supreme Court applies with equal force to the provisions governing the initiative petition process as mandated by the Nevada Constitution as well as Nevada election law. Guided by *Buckley v. ACLR*, Nevada law cannot require petition circulators to be registered voters, and any provisions of the state constitution or election law must comply with this mandate.

CONCLUSION TO QUESTION ONE

The United States Supreme Court decision, *Buckley v. ACLF*, applies to the Nevada provisions requiring initiative petition circulators to be registered

voters, and based upon this decision these provisions violate the First and Fourteenth Amendments of the U.S. Constitution and are therefore unenforceable or invalid.

QUESTION TWO

Provided the *Buckley v. ACLF* decision does impact Nevada's initiative petition process, what is the impact on the process for other petitions?

ANALYSIS

Buckley v. ACLF guides our review in determining whether the voter registration requirement for petition circulators is invalid as applied to other petitions in Nevada. It is our opinion that the voter registration requirement for petition circulators is an invalid restriction for all ballot-access petitions in Nevada.⁸

Analyzing these petitions under the canopy of *Buckley v. ACLF*, it is clear that the voter registration requirement for petition circulators at issue is invalid because of the burden it places on political expression, not because of the type of petition involved. It is the act of circulating the petition which the Supreme Court has deemed important enough to invoke the protection of the First and Fourteenth Amendments. Petition circulation has been found to be core political speech because it involves "both the expression of a desire for political change and a discussion of the merits of the proposed change." *Meyer v. Grant*, 486 U.S. at 421. Petition circulation implicates these compelling interests without regard to the type of petition being circulated. *See Buckley v. ACLF*, 525 U.S. at ___, 119 S. Ct. at 651, J. Thomas, concurring in the judgment, ("the aim of a petition is to secure political change, and the First Amendment,

⁸ This analysis applies to all petitions in Nevada, for example, referendum (Nev. Const. art. 19, § 3, NRS 295.055), major political party (NRS 293.128), minor political party or minor political party candidate (NRS 293.172), independent candidate (NRS 293.200), county initiative or referendum (NRS 295.095(6) and 295.150), municipal initiative and referendum (NRS 295.205), Presidential independent candidate (NRS 298.109), recall (Nev. Const. art. 2, § 9, NRS 306.030), and recall nomination (NRS 306.110).

by way of the Fourteenth Amendment, guards against the State's efforts to restrict free discussions about matters of public concern").

Each of these petitions require that an affidavit be attached, signed by the circulator of the petition declaring that the signatures are genuine and that the petition is signed only by registered voters. The voter registration requirement for petition circulators is present for each ballot-access petition in Nevada. This requirement is unconstitutional as to all petitions, as evaluated under the *Buckley v. ACLF* standard. It is the classification of the speech involved that demands constitutional protection. Because petition circulation involves interactive communication about political change, it is "core political speech" and First Amendment protection is "at its zenith." *Buckley v. ACLF*, 525 U.S. at ___, 119 S. Ct. at 639-40 (citing *Meyer*, 486 U.S. at 422-25).

CONCLUSION TO QUESTION TWO

The voter registration requirement for petition circulators is invalid as applied to any ballot access petition in Nevada, applying the *Buckley v. ACLF* standard.

QUESTION THREE

If there is an impact on Nevada's petition processes, what will be necessary to achieve compliance?

ANALYSIS

In order to be compliant with the holding in *Buckley v. ACLF*, the provisions of the Nevada election law that require the petition circulator to be a registered voter can be amended by the Legislature in the next session to reflect the Supreme Court's decision. This office hereby offers to work with you to draft proposed legislation to be submitted to the Legislature. The provision governing initiative and referendum in the Nevada Constitution poses a larger problem and should also be addressed by the Legislature in the next session. Those provisions in the Nevada Administrative Code that need to be changed

can and should be accomplished shortly, without waiting for the legislature to meet.

Examining each of the petitions mentioned in this opinion, we make the following recommendations.

- Initiative Petitions – The relevant provisions governing initiative petitions are article 19, section 3(1) of the Nevada Constitution, NRS 295.055, and NAC 295.020(2). These provisions must be read so as not to conflict with the United States Constitution and therefore may no longer be interpreted as requiring the petition circulator to be a registered voter. At the very least NAC 295.020(2) should be amended to reflect this fact.
- Referendum Petitions – Referendum petitions are governed by the same provisions as initiative petitions and we make the same recommendation.
- Independent Candidate for President – The relevant provisions for this petition are NRS 298.109(2) and NAC 293.182(1)(b). The statute can be interpreted to be consistent with *Buckley v. ACLF*, and the regulation needs to be amended to also be consistent.
- Major Party – The relevant provisions for this petition are NRS 293.128(2) and NAC 293.182(1)(b). The statute must be amended, but the regulation is fine.
- Minor Party – The relevant provisions are NRS 293.172(1)(b) and NAC 293.182(1)(b). The statute is fine, but the regulation must be amended.
- Independent Candidate – NRS 293.200(2) and NAC 293.182(1)(b) are the relevant provisions for this petition. NRS 293.200(2) was amended by the 1999 Legislature to bring it into compliance with *Buckley v. ACLF*. Act of June 11, 1999, ch. 637, § 13, 1999 Nev. Stat. 3552. The regulation must be amended.
- County Initiative and Referendum – The relevant provisions for these petitions are NRS 295.095(6), NRS 295.150, and NAC 295.020(3)(c). NRS 295.095(6) and

NAC 295.020(3)(c) are fine, but NRS 295.150 needs to be amended.

- Municipal Initiative and Referendum – The relevant provisions are NRS 295.205(6) and NAC 295.020(3)(c). These provisions are fine.
- Recall – Recall petitions are governed by article 2, section 9 of the Nevada Constitution and NRS 306.030(2). Both of these provisions can be interpreted to be consistent with *Buckley v. ACLF*.
- Recall Nomination – This petition is governed by NRS 306.110 and is fine.

You may want to suggest to the Legislature that a provision be added to title 24 of NRS clarifying that no petition circulator must be a registered voter. Another policy decision for the Legislature is whether the affidavit should be signed by the circulator or a signer of the petition if the circulator is not a registered voter. If the circulator is to sign the affidavit, then article 19, section 3 of the Nevada Constitution would need to be amended. Also, *Buckley v. ACLF* upheld additional terms found in the Colorado affidavit that are not found in the Nevada affidavit. The Legislature may choose to add some or all of these terms to the Nevada affidavit.

Other states also have faced this issue. In Arizona the Attorney General issued an opinion concluding, as we have, that *Buckley v. ACLF* applies to all petitions in Arizona and recommending that the Secretary of State continue to use the affidavit language mandated by Arizona law on petition forms until (and unless) the statute is revised. Op. Az. Att’y Gen. No. 199-010, R99-011 (April 13, 1999).

Nebraska has also addressed this issue. A “Nebraska statutory law which prohibit[ed] and criminalize[d] the circulation of initiative petitions by persons who [were] not . . . registered to vote for one month prior to the circulation of the petitions” was challenged in federal court. *Bernbeck v. Moore*, 126 F.3d 1114, (8th Cir. 1997). “The district court concluded that the statutory provisions restrict appellees’ core political speech and, because they are not

narrowly tailored to serve the State’s compelling interests, violate appellees’ First Amendment rights.” *Id.* The U.S. Court of Appeals affirmed. *Id.* at 1115.

CONCLUSION TO QUESTION THREE

Those provisions in the Nevada Constitution and in Nevada election law that require the petition circulator to be a registered voter should be amended to bring Nevada into compliance with *Buckley v. ACLF*.

QUESTION FOUR

Does this U.S. Supreme Court decision impact the statutory and regulatory provisions governing the reporting of contributions and expenses by ballot advocacy groups or recall committees?

ANALYSIS

In addition to the voter registration for petition circulator requirement discussed above, the *Buckley v. ACLF* decision also addressed certain disclosure requirements in Colorado’s law. *Buckley v. ACLF*, 525 U.S. at ___, 119 S. Ct. at 646-49. The U.S. Court of Appeals struck down that portion of the Colorado law that compelled disclosure of the names and addresses of all paid circulators and the amount paid to each. While affirming the Court of Appeal’s decision, the Supreme Court upheld the record keeping, recording, and disclosure provisions of the Federal Election Campaign Act of 1971, 2 U.S.C. § 421 et seq. (1970 ed., Supp. IV), but reasoned that “exacting scrutiny is necessary when compelled disclosure of campaign-related payments is at issue.” *Buckley v. ACLF*, 525 U.S. at ___, 119 S.Ct. at 647. This is not to say that exacting scrutiny will defeat any and all disclosure requirements. The Supreme Court held that the state’s interest in the disclosure of names of initiative sponsors and the total amount of money expended to collect signatures for their petitions was substantial and upheld that portion of the disclosure requirement. *Id.* It was the compelled disclosure of the names, addresses, and specific amount paid to each circulator that was struck down.

Nevada's campaign disclosure laws require that ballot advocacy groups and committees for the recall of a public officer must file an expenditure report that lists the name, address, and amount of the expenditure. NAC 294A.075(1). This expenditure report contains the very disclosure requirements that were struck down in *Buckley v. ACLF*. Compelled disclosure of the name, address, and amount paid, specific to each petition circulator, is likely to fall within the purview of *Buckley v. ACLF* and be deemed invalid. *Buckley v. ACLF*, 525 U.S. at ___, 119 S. Ct. at 646.

Requiring disclosure of the total amount paid to the circulators as a group entity or the amount paid per petition signature, rather than the amount paid to each individual and disclosure of personal information specific to each circulator are requirements likely to be upheld under *Buckley v. ACLF*. *Id.* at 647. Such a change would entail amending NAC 294A.075(1) by the Secretary of State's office.

CONCLUSION TO QUESTION FOUR

Buckley v. ACLF prohibits Nevada from requiring ballot advocacy groups or committees for the recall of a public officer from listing the name, address, and amount paid to each circulator of a petition. However, *Buckley v. ACLF* does permit an expenditure report to reveal the amount paid per petition signature or the total amount paid to petition circulators. Nevada's laws should be amended accordingly.

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AGO 99-38 COLLECTION AGENCIES, LICENSES, LIENS: A property management firm that attempts to collect delinquent homeowners assessments as part of its overall management duties on behalf of the association is not required to be licensed as a collection agency prior to