

To identify or not to identify, that is the question for ballot initiatives in California

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A recent federal court decision out of California could have implications for ballot initiative processes across the country, including in Ohio. The United States Court of Appeals for the Ninth Circuit ruled that ballot issue petition proponents cannot be required to disclose their identities on the face of initiative petitions. *Chula Vista Citizens v. Norris*.¹

The 9th Circuit examined the issue of anonymity in the political process and whether requiring a petition proponent to identify him or herself on the petition form is a violation of the First Amendment. Using an “exacting scrutiny” standard to determine whether there is a substantial relationship between the disclosure requirement and a sufficiently important government interest, the court relied on a watershed case out of Ohio to protect anonymity at the point of contact with voters. In *McIntyre v. Ohio Elections Commission*,² the United States Supreme Court ruled that an individual’s decision to remain anonymous in speech is protected by the First Amendment. The 9th Circuit also pointed to *Buckley v. American Constitutional Law Foundation*³ and noted that “the injury to speech is heightened when speakers are compelled to disclose their identities at the same time they deliver their political message.”

The 9th Circuit panel was not swayed by the state’s arguments that the restrictions are necessary to inform the electorate of the official proponent’s identity and to preserve the integrity of the electoral process. Because the state already has other laws requiring disclosure at other points in the petition process (which were not challenged by petitioners) — by filing an intention to circulate petitions with the City Clerk’s office and in a newspaper of general circulation — the electorate already has the means to discover the identity of the official proponents. The court also wrote that the state failed to adequately support the need for further disclosures on the petition itself.

Under Ohio Revised Code 3519.02, petitioners must designate a committee of three to five individuals to represent them in the initiative or referendum process. Pursuant to Ohio Revised Code Section 3519.05, the names and addresses of those committee members must be included on all petitions that are circulated during the signature gathering stage of the process. However, Ohio does not have an equivalent of Chula Vista’s requirements for filing notice with the city law clerk or publishing a notice in the newspaper. This distinction could be critical and might justify a different result if a similar challenge were raised in Ohio. Additional litigation involving the tensions between free speech and government regulation of the electoral process is certain to result.

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Footnotes

1. 12-55726 (9th Cir. 2014).
2. 514 U.S. 334 (1995).
3. 525 U.S. 182 (1999).

Authors
