

TO: OFFICIALS IN CHARGE OF MALLS, SHOPPING CENTERS AND OTHER RETAIL ESTABLISHMENTS

LEGAL PROTECTION OF PETITION CIRCULATORS

Petitioners have a right to petition anywhere which is public access, for example, petitioners have a right to petition in public and private shopping centers/malls, parks, fairs, beaches, concerts, etc. (See *Robins v. Pruneyard Shopping Center*, 1979; *Rosen v. Portland Airport Authority*, 1981).

The rationale behind the *Pruneyard* decision and the line of cases to follow is that malls, shopping centers and other retail establishments have largely replaced traditional public forums such as town square and court houses.

The circulation of initiative petitions is a matter which involves the core political speech rights of circulators under the First Amendment (See *Meyer v. Grant*, 486 U.S. 414, 100 L. Ed. 2d 423, 1988). Any attempts to limit access to petition circulators is an attempt to limit the protected political speech rights of circulators and their sponsors. We would view any attempt to limit this protected speech to be wholly at odds with the First Amendment to the United States Constitution. **In order to avoid unnecessary litigation, we ask that petition circulators be given access without interference.**

The United States Supreme Court's First Amendment jurisprudence on the scope of free speech in the face of private power has had a history, with speech in nominally private spaces at first accorded protection, *Food Employees v. Logan Valley Plaza*, 391 U.S. 308, 88 S. Ct. 1601, 20 L. Ed. 2d 603 (1968), then eclipsed in *Lloyd Corp. v. Tanner*, 407 U.S. 551, 92 S. Ct. 2219, 33 L. Ed. 2d 131 (1972).

Consistent with the United States Constitution and the U.S. Supreme Court, we may find that the Colorado State Constitution guarantees greater protections of petitioners' rights of speech than is guaranteed by the First Amendment.

Article 5. Threats and Theft to Prevent Petition Circulation and Filing

Threats to a circulator:

Every person who threatens to commit an assault or battery on a person circulating a referendum, initiative, or recall petition or on a relative of a person circulating a referendum, initiative, or recall petition or to inflict damage on the property of such circulator or such relative, with the intent to dissuade the circulator from circulating the petition or in retribution for such circulation is guilty of a misdemeanor..

Taking petition from circulator:

Every person who forcibly or by stealth takes from the possession of the circulator any initiative, referendum, or recall petition on which one or more persons have affixed their signatures is guilty of a misdemeanor.

The Secretary of State, being Chief elections Officer, is required to investigate all reported possible election violations and refer same to the appropriate District Attorney or the Attorney General (G.C. 12172-5).

If you have any questions, please feel free to contact: The Secretary of State's Office, Elections and Lobbyist Division or The Colorado Supreme Court.