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BALLOT INITIATIVES - SOUTH DAKOTA

Dakotans for Health v. Noem

United States Court of Appeals, Eighth Circuit - November 1, 2022 - F.4th - 2022 WL 16559224

Ballot question committee brought action against Governor of the State of South Dakota, South Dakota Attorney General, and South Dakota Secretary of State, alleging that legislative bill amending state law regarding petition circulation process violated First Amendment.

The United States District Court for the District of South Dakota granted committee's motion for preliminary injunction, and state appealed.

The Court of Appeals holds that:

- Committee had standing to seek prospective First Amendment relief;
- Committee was likely to succeed on merits of its First Amendment claim;
- Committee faced irreparable harm in absence of preliminary injunction; and
- Balance of harms and public interest favored issuance of preliminary injunction.

Ballot question committee faced concrete, particularized, and actual injury from South Dakota law imposing new obligations on persons compensated to circulate initiative petitions, as required to establish standing to seek prospective First Amendment relief, even though challenged provisions were directed primarily at petition circulators; requirement that paid petition circulators publicly disclose sensitive personal information would likely make it more difficult for committees to recruit paid circulators, thereby restricting committee's ability to reach its audience, and South Dakota regulated petition circulators and ballot question committees in such way that their interests were highly intertwined, if not inseparable.

Ballot question committee was likely to succeed on merits of its claim that South Dakota law requiring paid petition circulators to make sensitive personal information publicly available violated First Amendment, for purposes of evaluating committee's entitlement to preliminary injunction; state failed to show that paid petition circulators created greater risk of fraud than volunteers, public disclosure requirement was likely to chill right to circulate petitions, and requirement was not narrowly tailored to serve state's important interests.

Ballot question committee faced irreparable harm in absence of preliminary injunction barring enforcement of South Dakota law imposing restrictions on paid petition circulators that likely violated First Amendment; committee could not sue for money damages, and law affected core political speech by impacting number of persons willing to circulate petitions for committee and number of persons eligible to circulate for it, and thus its ability to reach its audience and successfully gather enough signatures to place question on ballot.

Balance of harms and public interest favored issuance of preliminary injunction barring enforcement of South Dakota law imposing restrictions on paid petition circulators that likely violated First Amendment; while South Dakota had important interests in protecting integrity of ballot initiative

process, it had no interest in enforcing overbroad restrictions.

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