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BALLOT INITIATIVES - SOUTH DAKOTA

SD Voice v. Noem

United States Court of Appeals, Eighth Circuit - February 17, 2023 - F.4th - 2023 WL 2055397

Ballot question committee brought action against South Dakota officials seeking permanent injunction against enforcement of South Dakota statutes regulating ballot initiative campaigns.

The United States District Court for the District of South Dakota entered judgment for committee in part. Parties cross-appealed. The Court of Appeals dismissed appeal and remanded. After a bench trial, the District Court permanently enjoined enforcement of one-year filing deadline for ballot initiative petitions and denied motion for a stay of ruling pending appeal. Officials appealed and committee cross-appealed.

The Court of Appeals held that:

- One-year filing deadline to submit petitions to initiate state statutes violated First Amendment right to free speech;
- Filing deadline to submit initiative petitions to amend the State Constitution violated First Amendment; and
- District court lacked authority to impose a new filing deadline.

South Dakota statute providing that petitions to initiate state statutes be filed at least one year before the next general election implicated First Amendment right to free speech, where the one-year filing deadline limited the number of voices who would convey the proposed message during the year before the election and burdened the ability to express a position on a political matter by signing an initiative petition.

South Dakota statute providing that petitions to initiate state statutes be filed at least one year before the next general election imposed a burden on political speech that South Dakota failed to justify with the interest of election integrity, and thus, statute violated First Amendment free speech guarantee; although South Dakota's interest in protecting the integrity of the initiative process was a paramount interest, there was nothing to suggest that the one-year filing deadline lent anything of value to South Dakota, and South Dakota had validated prior referenda petitions in as little as two days using a random sample of collected signatures, and spent at most five months reviewing all petitions in prior years.

South Dakota statute providing that petitions to initiate state statutes be filed at least one year before the next general election imposed a burden on political speech that South Dakota failed to justify with an interest of administrative efficiency, and thus, statute violated First Amendment free speech guarantee; although administrative efficiency was a legitimate interest that was noteworthy because of South Dakota's small staff of 14 people, South Dakota had no trouble complying with various deadlines in past years including the 12-week deadline to certify ballot questions before the general election.

South Dakota statute providing that petitions to initiate state statutes be filed at least one year before the next general election imposed a burden on political speech that South Dakota failed to justify with an interest of the legislature's ability to respond to petitions, and thus, statute violated First Amendment free speech guarantee; assuming that such an interest existed, the one-year filing deadline did virtually nothing to advance it, and South Dakota already had an intervening legislative session between a general election and the date an initiated law became effective.

South Dakota statute providing that initiative petitions to amend the State Constitution be filed at least one year before the next general election violated the First Amendment right to free speech; statute imposed a burden on political speech that South Dakota failed to justify with asserted interests of election integrity, administrative efficiency, or the legislature's ability to respond to petitions.

District court lacked authority to impose a new filing deadline upon its determination that South Dakota statute setting forth a one-year filing deadline for petitions to initiate state statutes was facially violative of First Amendment right to free speech; court could only grant request for permanent injunction against enforcement of filing deadline and allow the legislature to decide how to respond.

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