

# IM26 Petition Challenge

## BACKGROUND, PROCESS, AND FAQ

### For Over a Decade, South Dakotans Have Been Trying to Stop Out of State Circulators:

#### 2007: Petition circulator residency requirement established.

- The statutory requirement that a petition circulator be "a resident of the state of South Dakota" was first enacted in 2007 through the passage of House Bill 1156.
- HB 1156 (2007) was, in large part, brought as a response to a ballot measure referred to as "J.A.I.L. for Judges," where an overtly out-of-state group attempted to pass a constitutional amendment by bringing out-of-state, paid circulators to gather petition signatures.
- The House Prime Sponsor of HB 1156 (2007), Representative Buckingham, said that the residency requirement was necessary because "our precious right of referendum and initiative are the rights for South Dakotans; not Californians or citizens of other states." Representative Buckingham explained while speaking from the House floor:
  - *"1156 recognizes that the constitutional rights of a referendum and initiative are rights guaranteed to our citizens, the residents of South Dakota, and not to those of California."*
  - *"1156 simply requires that the petition circulators be residents of South Dakota. After all, our precious right of referendum and initiative are the rights for South Dakotans; not Californians or citizens of other states."*
  - *"The intent of HB 1156 . . . is an attempt to put in place reasonable regulations to protect the integrity of our laws and constitution, prevent voter fraud, and make clear that these fundamental rights of initiative and referendum are the rights of our citizens; those individuals who are residents of South Dakota."*
- The Senate Prime Sponsor of HB 1156 (2007), Senator Gray, also explained:
  - *"[1156] requires petition circulators to be a resident of South Dakota. I would submit to you, ladies and gentlemen, that it's our ballot, it's our state, it's our future: it ought to be our residents circulating those petitions."*

#### 2016: Petition circulator residency requirement reaffirmed.

- In 2016, the bi-partisan State Board of Elections proposed HB 1037 which clarified that the South Dakota residency requirement applies to the circulation of

proposed ballot questions. The measure passed without a single dissenting vote.

## **Process Followed for Signature Review of IM26 by State Officials:**

### **SECRETARY OF STATE**

#### **By Law, the Secretary of State Conducts a Limited Review.**

- The Secretary of State reviews a random sample of signatures.
- For IM26, the Secretary of State reviewed 710 signatures of 22,091 submitted.
- The Secretary of State does not review each of the signatures submitted.
- The Secretary of State does not verify residency of circulators.
- The Secretary of State is not authorized, nor required, to review or look into whether circulators followed the law.

### **ATTORNEY GENERAL**

#### **The Statute Does Not Provide a Role for the Attorney General in the Review Process.**

- The Attorney General does not review the petitions prior to certification based on the sample considered by the Secretary of State.
- The Attorney General does not verify the residency of circulators.

### **INTERESTED PARTIES**

#### **An Interested Party, including a Ballot Question Committee, has a Narrow Review Window.**

- By law, petitions submitted by the Sponsor are considered private from the time they are received by the Secretary of State until the review process is complete. In the case of IM26, that process was completed on April 11, 2018.
- By law, petitions are not available for public review until the sample is reviewed by the Secretary of State.
- The Ballot Question Committee ("BQC") review of the IM26 circulators was the first time any third party checked the circulators' residency qualifications.

### **COURT CHALLENGE**

#### **A Court Challenge is the Only Remedy to Address Unqualified Circulators.**

- A third party, including a BQC, has limited ability to challenge all petitions.
- By law, any challenge with the Secretary of State is limited to the signatures included in their sample only; there is no avenue to challenge the qualifications of circulators with the Secretary of State.

- By law, in addition, only the signatures included in the random sample may be challenged with the Secretary of State. All other signatures included in the petitions submitted by the Sponsor and believed to be invalid must be challenged in Court.
- If the BQC had not challenged, there would have been no formal review of all the petitions.
- Review of residency in Court is expressly permitted by [South Dakota Law](#).

### **BOTTOM LINE**

- If proponents had followed the law, IM26 would not have qualified for the ballot.
- Refer to Exhibit A of the [Application for Writ](#) (last page).

## **Frequently Asked Questions:**

**Q1: How many signatures did the proponents need to submit under the law?**

**A1:** 13,871. <https://sdsos.gov/elections-voting/assets/HowToCirculate2018BQPetition.pdf>

**Q2: Why does South Dakota have a residency requirement for petition circulators?**

**A2:** The law was passed based on a desire to protect the rights of South Dakota residents. The prime sponsor of House Bill 1156 (2007), Representative Buckingham, said that the residency requirement was necessary because "our precious right of referendum and initiative are the rights for South Dakotans; not Californians or citizens of other states." Representative Buckingham explained while speaking from the House floor:

*"1156 recognizes that the constitutional rights of a referendum and initiative are rights guaranteed to our citizens, the residents of South Dakota, and not to those of California."*

See [SDCL 2-1-16](#); [2-1-17.1](#); [2-1-1.3](#)

**Q3: What are the legal requirements for a circulator of a ballot petition?**

**A3:** The Secretary of State has prepared [detailed instructions](#) on how to properly circulate a ballot petition. The materials for the 2018 election state:

1. A petition circulator must be at least eighteen years of age and a resident of the state of South Dakota. No registered sex offender may circulate a petition except if the sex offender is in the employ of, and under immediate supervision of, another person and where the

circumstances preclude any contact with children (SDCL 12-1-32 through 12-1-34).

2. The petition circulator must personally witness each signature on the petition being circulated. The petition's verification must be completed following circulation and must include the circulator's printed name, residence address, city, state, complete date and be signed under oath before a South Dakota notary public or other officer authorized to administer oaths.

3. Each petition signer must be a registered voter in the state of South Dakota in the jurisdiction for which the petition is circulated (SDCL 12-6-8).

The petition circulator certification can be seen here:

[https://sdsos.gov/elections-voting/assets/2018\\_IM\\_Petition\\_Prescription\\_Drugs.pdf](https://sdsos.gov/elections-voting/assets/2018_IM_Petition_Prescription_Drugs.pdf)

**Q4: What is a resident?**

**A4:** SDCL 2-1 does not define "residence" related to petition circulators, but "residence" is defined for the purpose of determining voting residence as "the place in which a person has fixed his or her habitation and to which the person, whenever absent, intends to return." SDCL 12-1-4.

**Q5: How do you prove someone isn't a resident?**

**A5:** The investigation commenced by South Dakotans Against the Deceptive Rx Ballot Issue began shortly after April 11, 2018 when the petitions that had been filed with the Secretary of State last year were formally sampled and then the entirety of them made public. Prior to this time, our committee had received many reports that out-of-state circulators had been used to gather the petitions. After the petitions were made public, professionals were engaged to review each of the nearly 2,000 petition sheets that were submitted and attempted to verify the residency and addresses of circulators named on those petitions.

**Q6: How many circulators are on the IM26 petitions?**

**A6:** Based on a review of the 1,943 pages filed with the Secretary of State, our reviewers concluded there were 80.

**Q7: How many circulators are you challenging?**

**A7:** According to the affidavits now on file, there are 10 circulators in question. Those 10 circulators submitted a total of 6,238 signatures. [See row "B" on Exhibit A.](#)

**Q8: How many signatures do you think were legitimately submitted?**

**A8:** We believe proponents of IM26 only submitted 8,959 valid signatures, far short of the 13,871 needed under the law. [See row "Z" on Exhibit A.](#)

**Q9: Hasn't the Secretary of State already reviewed all of the signatures?**

**A9:** No. Under South Dakota law, the Secretary of State only reviews a random sample. For IM26, a sample of 710 of the 22,091 signatures was reviewed by the Secretary of State.

**Q10: Why did you file a lawsuit?**

**A10:** Under [South Dakota law](#), the ability of any person to file a challenge with the Secretary of State is limited. It does not go beyond the scope of their review of 710 signatures and any challenge with the Secretary of State cannot include "signatures not included in the random sample".

In 2017, the Legislature made it clear these types of formal discussions can only happen in Court.

**Q11: Why not file a challenge with the Secretary of State?**

**A11:** A Court challenge is necessary for formal review of facts the Secretary of State could not consider, including: whether the circulator did not live at the address listed on the petition and whether the circulator listed a residence address in South Dakota, but is not a South Dakota resident.

**Q12: How are your actions consistent with the integrity of the ballot measure process?**

**A12:** The statutory authority of the Secretary of State is limited, and the Secretary of State does not: review all of the petitions, verify residency of circulators or inquire whether circulators followed the law.

The Court proceeding is a forum for a formal review of all the facts and is consistent with the intent of the Legislature to keep the process of changing South Dakota law for South Dakota residents.

**Q13: Where can I find a summary of total submitted and those that you claim are not valid?**

**A13:** Attached to our Court filings is a Signature Calculation Summary. You can view that document by clicking here: [Signature Calculation Summary: Exhibit A.](#)