



West

THE COUNCIL OF STATE GOVERNMENTS

Rulings on Signature Requirements for State Ballot Initiatives

The Supreme Court has [not allowed](#) a federal district court order to go into effect which required Oregon to include a ballot initiative with only 50 percent of the signatures required by Oregon's constitution, due to the COVID-19 pandemic.

The Oregon Constitution requires advocates of ballot initiatives to obtain signatures equal to eight percent of ballots cast in the most recent governor's race (here about 150,000) four months before the general election. People Not Politicians Oregon sued the Oregon Secretary of State claiming that "during these unprecedented times" the signature threshold violated the First Amendment because the governor's ban on social gatherings meant it could not obtain in-person signatures.

A federal district court [granted](#) People Not Politicians Oregon a preliminary injunction requiring the Secretary of State to reduce the signature threshold by 50 percent. The court concluded the Secretary of State's "refus[al] to make reasonable accommodation, during the unprecedented time of the pandemic, reduced the total quantum of speech on the public issue of [partisan gerrymandering]," likely in violation of the First Amendment.

The Ninth Circuit [denied](#) the Secretary of State's application for a stay without an explanation. One judge dissented concluding the Oregon Constitution's signature threshold requirement doesn't implicate or violate the First Amendment.



In its [application](#) for an emergency stay of the district court order the Oregon Secretary of State argued the “injunction effectively rewrites the provisions governing how the Oregon Constitution can be amended through an initiative.”

The Secretary of State also argued that if this case came before the Supreme Court on the merits the Court would probably hear it because there is a circuit split over “the extent to which state law requirements for initiatives implicate the First Amendment.” Likewise, according to the Secretary of State, “there is a fair prospect that this Court will conclude that—whatever the rule might be for other regulations of initiatives—signature and deadline requirements do not implicate the First Amendment.”

In [opposing](#) the stay, People Not Politicians Oregon noted that the Oregon Attorney General and not the Secretary of State appealed the district court order and questioned whether the Attorney General had standing to do so.

People Not Politicians Oregon didn’t deny the existence of a circuit split on the applicability of the First Amendment to this case. Instead, it argued the “Attorney General’s chances of success depend on the application of a rule that this Court is unlikely to adopt—namely, that a state’s access restrictions on its ballot-initiative process are per se exempt from First Amendment scrutiny irrespective of the circumstances in which they are applied.”

None of the Justices explained how or why they voted except Justices Ginsburg and Sotomayor indicated they would not have granted a stay in this case.



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It is not surprising that the Supreme Court froze the district court order in this case. Recently the Court stayed a [similar injunction](#) in a case involving court-ordered modification to Idaho's citizen initiative process.

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