

Initiative and Referendum Institute v. United States Postal Service, 1:00cvO1246 (2000)

Complaint

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

THE INITIATIVE AND REFERENDUM INSTITUTE)
1825 I Street, N.W., Suite 400)
Washington, DC 20006,)

AMERICANS FOR MEDICAL RIGHTS)
1250 Sixth Street, Suite 202)
Santa Monica, CA 90401,)

CITIZENS FOR LIMITED TAXATION)
Post Office Box 408)
Peabody, MA 01960,)

CLEAN)
1524 Tacoma Avenue South)
Tacoma WA 98402,)

THE HUMANE SOCIETY)
OF THE UNITED STATES)
2100 L Street, NW)
Washington, DC 20003,)

NEBRASKANS FOR LIMITED TERMS)
Post Office Box 208)
Tecumseh, NE 68450,)

OREGONIANS FOR FAIR ELECTIONS)
6048 Tollgate)
Sisters, OR 97759,)

OREGON TAXPAYERS UNITED)
16140 S.E. Eighty-Second Drive)
Clackamass, OR 97015,)

U.S. TERM LIMITS)

Lawrence MI 49064,)
) COMPLAINT
DENNIS POLHILL)
14142 Denver West Parkway, #185)
Golden, CO 80401,)
)
GLORIA ROBINSON)
2531 West Philadelphia)
Detroit, MI 48206,))
)
BILL SIZEMORE)
16140 S.E. Eighty-Second Drive)
Clackamass, OR 97015,)
)
KATHLEEN SNAREY)
7317 Middlebury)
Lambertsville, MI 48144, and)
)
WILLIAM WESTERMEYER)
3400 S. Mill Avenue, #25)
Tempe, AZ 85282,)
)
Plaintiffs,)
)
v.)
)
UNITED STATES POSTAL SERVICE)
475 L'Enfant Plaza, SW)
Washington, DC 20260)
)
Defendant.)
)
_____))

MOTION FOR TEMPORARY RESTRAINING ORDER

Plaintiffs hereby move for issuance of a temporary restraining order pursuant to Fed. R. Civ. P., Rule 65(b), to stay enforcement of that portion of 39 C.F.R. § 232.1(h)(1) which prohibits "soliciting signatures on petitions, polls or surveys" on United States Postal Service property pending resolution on the merits of its constitutionality, so far as that regulation applies to Postal Service property that (1) is otherwise open to the public, and (2) is not inside lobbies or other interior areas of Postal Service buildings.

Plaintiffs have met the burden for a temporary restraining order by meeting the four factors weighed by the Court. First, Plaintiffs will suffer irreparable injury if the temporary restraining order does not issue because the challenged regulation infringes upon their First Amendment right to free speech and possibly on their right to participate in the democratic process. In the absence of a temporary restraining order, Plaintiffs' chances of gathering enough signatures by the impending deadlines for the year 2000 ballot, most of which fall in June or July, will be jeopardized. No remedy at law is available to compensate Plaintiffs if the temporary injunctive relief does not issue. Second, the Defendant will suffer no harm if temporary relief is granted. Third, public interest in protecting the right to free speech and the right to access the democratic process favors entry of a temporary restraining order. Fourth, there is a substantial likelihood that plaintiffs will prevail on the merits. The regulation unconstitutionally restricts political speech in a public forum and does not constitute a mere "time, place and manner" restriction. In the alternative, even if the Court were to decide that Postal Service property otherwise open to the public (and outside the Postal Service buildings themselves) is not a public forum, the regulation prohibiting signature gathering is unreasonable.

In support of their Motion for a Temporary Restraining Order, Plaintiffs rely upon the Statement of Points and Authorities, filed contemporaneously herewith, and the affidavits and declarations attached thereto for Barbara Anderson, Andrew Bandyk, Anjie Crow, Bart Grant, Janine Hawkins, Paul Jacobs, Tracy Lincoln, Shawn Newman, Vincent Ott, Wayne Pacelle, Gloria Robinson, Kaylin Robinson, Kathleen Snarey, Dane Waters, and William Westermeyer.

Respectfully submitted,

-

Ky E. Kirby (D.C. Bar 398463)

John R. Ferguson (D.C. Bar 160309)

Duke K. McCall, III (D.C. Bar 456847)

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

3000 K Street, N.W., Suite 300

Washington, DC 20007-5116

Phone: (202) 424-7500

Fax: (202) 424-7647

OF COUNSEL:

Arthur B. Spitzer

AMERICAN CIVIL LIBERTIES UNION OF THE

NATIONAL CAPITAL AREA

1400 20th Street, N.W.,

Washington, DC 20036

Phone: (202) 457-0800

Fax: (202) 452-1868