

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

1. YES ON TERM LIMITS, INC.,)	
)	
2. ROBERT MURPHY,)	
)	
3. SHERRI FERRELL, and)	
)	
4. ERIC DONDERO,)	
)	
Plaintiffs,)	
)	
vs.)	Case No. CIV-07-_____
)	
5. M. SUSAN SAVAGE, individually and in)	
her official capacity as Oklahoma Secretary)	
of State, and)	
)	
6. W.A. DREW EDMONDSON,)	
individually and in his official capacity as the)	
Oklahoma Attorney General,)	
)	
Defendants.)	

**COMPLAINT FOR PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF
AND DECLARATORY JUDGMENT**

**(Violation of First Amendment Rights, Privileges and Immunities, and Dormant
Commerce Clause Rights Under the United States Constitution)**

COME NOW PLAINTIFFS Yes on Term Limits, Inc, Robert Murphy, Sherri
Ferrell, and Eric Dondero, and, for their Complaint and request for declaratory and
injunctive relief against Defendants, allege as follows:

PRELIMINARY STATEMENT

1. This Complaint alleges that an Oklahoma statutory scheme effectively
requiring that Oklahoma initiative petitions be circulated only by Oklahoma residents,

essentially prohibiting nonresidents from circulating such petitions, violates Plaintiffs' Free Speech rights under the First Amendment of the United States Constitution. The scheme provides for the invalidation of signatures gathered by out-of-state circulators and for criminal penalties. By enforcing the statutory scheme in connection with Plaintiffs' anticipated initiative petition drive in the summer and fall of 2007, the Defendants will violate and chill Plaintiffs' right to engage Oklahomans in political speech under the United States Constitution. Enforcement of the statutory scheme will also violate the Privilege and Immunities Clauses and Commerce Clause of the United States Constitution.

2. Because Plaintiffs are already in the process of planning their initiative drives and must start gathering signatures within weeks, this Complaint seeks Declaratory relief and Preliminary and Permanent Injunctions.

JURISDICTION AND VENUE

3. This Court has jurisdiction over Plaintiffs' federal claims under 28 U.S.C. § 1343(a), which provides for original jurisdiction of this Court in suits authorized by 42 U.S.C. § 1983 to redress the deprivation under color of state law, statute, ordinance, regulation, custom or usage of any right, privilege or immunity secured by the Constitution of the United States or by any act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

4. Venue is proper in this district because the Defendants are residents of or have their official offices in the Western District of Oklahoma. Additionally, many of the activities of Plaintiffs' initiative petition drive will take place within this district.

PARTIES

5. Defendant M. Susan Savage is the Oklahoma Secretary of State. She is statutorily charged with counting signatures on initiative petitions, and current law directs her not to count signatures on petition pages not verified by a qualified Oklahoma elector.

6. Defendant W.A. (Drew) Edmondson is the Oklahoma Attorney General. He is charged with enforcing Oklahoma law and prosecuting violations of the Oklahoma penal statutes, including 34 Okla. Stat. §3.1, which subjects persons who are not qualified Oklahoma electors and who circulate initiative petitions to fines of up to \$1,000 and/or one year in county jail.

7. Plaintiff Yes on Term Limits, Inc. (“the Committee”) was organized in June, 2007 as an Oklahoma not-for-profit corporation. The Committee has also filed as a political committee with the Oklahoma Ethics Commission. Paragraph 4 of the Certificate of Incorporation states:

The purposes for which the Corporation is formed are: To engage in lawful acts or activities exclusively for charitable, religious and educational purposes, including the promoting public awareness on the prerequisites for good government, encouraging greater civic participation among Oklahoma citizens by promoting limits on the terms of elected officials and other reforms, and the advocating for measures that promote clean, ethical, state government.

8. The Committee seeks to place before Oklahoma voters a proposed constitutional amendment enacting term limits for elected state officials such as the

Attorney General, Lieutenant Governor, State Treasurer, Insurance Commissioner, State Auditor and Inspector, Superintendent of Public Instruction, and the Commissioner of Labor. The Committee believes that clean, ethical government and civic participation by Oklahoma citizens will be promoted by term limits on these offices. The Committee also believes in the value of direct democracy. It believes that the initiative process is not only the most democratic means for enacting a proposal of this magnitude, it is also the process that gives the term limits proposal its greatest chance of becoming part of the Oklahoma Constitution.

9. The Plaintiff Committee plans a petition drive for its proposed initiative election on the term limits amendment for the summer and fall of 2007. It would like to begin gathering signatures as soon as possible, but plans to start no later than August 1, 2007. As permitted by State law, it would then gather signatures over a period of ninety days. As of mid-June 2007, the Committee was in the process of having an Oklahoma attorney draft the text of the term limits amendment prepared.

10. Plaintiff Robert Murphy is a long-time resident of Oklahoma. He serves as Vice President of the Committee and is working with the Committee to place the term limits measure on the ballot. Mr. Murphy has been an advocate of term limits in Oklahoma for 20 years. He proposed term limits to the Oklahoma Constitutional Review Committee in 1987, participated in at least one subsequent petition drive for term limits for legislators and the office of governor, and supports the current term limits measure. Mr. Murphy has been involved in numerous petition drives in Oklahoma.

11. Plaintiffs Sherri Ferrell and Eric Dondero are professional petition circulators. Ms. Ferrell resides in Florida and Mr. Dondero resides in Texas. Plaintiffs

recently learned about the term limits petition drive being planned by Yes on Term Limits, Inc., and the committee's need for their professional petition circulation services in Oklahoma during the summer and fall of 2007. Both Ms. Ferrell and Mr. Dondero are eager to work on the petition drive for Plaintiff Yes on Term Limits, Inc., and both are able to do so during the summer and fall of 2007. However, both Ms. Ferrell and Mr. Dondero are aware that the Oklahoma Supreme Court has ruled that certain Oklahoma statutes do not allow signatures gathered by non-resident circulators to be counted, and that non-residents who circulate petitions in Oklahoma are subject to fines and imprisonment. Because of this statutory scheme, neither Ms. Ferrell nor Mr. Dondero will come to Oklahoma to circulate term limits petitions even though they are willing to do so to support the political issues represented by the petition. But for the restrictive statutory scheme, both Ms. Ferrell and Mr. Dondero would come to Oklahoma to circulate term limits petitions in the summer and fall of 2007. If the statutory scheme were in fact declared unenforceable, both Ms. Ferrell and Mr. Dondero would come to Oklahoma to circulate term limits petitions in the summer and fall of 2007. The rights that both Ms. Ferrell and Mr. Dondero assert as Plaintiffs in this action are personal and individual both in their status as non-residents of Oklahoma wanting to travel to Oklahoma to exercise First Amendment rights and engage in an otherwise lawful profession permitted only for Oklahoma residents, and as citizens of the United States wanting to exercise their federal rights as national citizens in the State of Oklahoma.

GENERAL ALLEGATIONS

12. Article V, Section 1 of the Oklahoma Constitution reserves to the people the power to propose laws and amendments to the Constitution, and to enact or reject the same, independent of the state legislature. The Oklahoma Constitution and statutes govern the procedure by which initiative petitions are promulgated, circulated, and submitted to the Oklahoma Secretary of State for inclusion on the ballot.

13. All circulators of petition drives in Oklahoma are subject to certain statutory provisions (the “Statutes”) that require them to be Oklahoma residents. The Statutes state as follows:

**34 Okla. Stat. § 3.1
Circulation of petition by other than qualified elector unlawful--
Penalty**

It shall be unlawful for any person other than a qualified elector of the State of Oklahoma to circulate any initiative or referendum petition to amend, add to, delete, strike or otherwise change in any way the Constitution or laws of the State of Oklahoma, or of any subdivision of the State of Oklahoma. Every person convicted of a violation of this section shall be punished by a fine of not to exceed One Thousand Dollars (\$1,000.00), or by imprisonment in the county jail for not to exceed one (1) year, or by both said fine and imprisonment.

**34 Okla. Stat. § 6.
Verification of signatures**

Each sheet of every such petition containing signatures shall be verified on the back thereof, in substantially the following form, by the person who circulated said sheet of said petition, by his or her affidavit thereon and as a part thereof:

State of Oklahoma,)
) ss.
County of _____)

I, _____, being first duly sworn, say: That I am a qualified elector of the State of Oklahoma and that (Here shall be legibly written or typewritten the names of the signers of the sheet), signed this sheet of the foregoing petition, and each of them signed his name thereto in my presence; I believe that each has stated his name, post office address, and residence correctly, and that each signer is a legal voter of the State of Oklahoma and county of _____ or of the city of _____ (as the case may be). (Signature and post office address of affiant.) Subscribed and sworn to before me this _____ day of _____ A.D. 19____.

(Signature and title of the officer before whom oath is made, and his post office address.)

34 Okla. Stat. § 6.1.

Physical count of signatures--Signatures not included

A. The Secretary of State shall make or cause to be made a physical count of the number of signatures on the petitions. In making such count, the Secretary of State shall not include in such physical count:

1. All signatures on any sheet of any petition which is not verified by the person who circulated the sheet of the petition as provided in Section 6 of this title;
2. All signatures of nonresidents;
3. All signatures on a sheet that is not attached to a copy of the petition;
4. All multiple signatures on any printed signature line;
5. All signatures not on a printed signature line;
6. Those signatures by a person who signs with any name other than his own or signs more than once; and
7. All signatures on any sheet on which a notary has failed to sign, the seal of the notary is absent, the commission of the notary has expired or the expiration date is not on the signature sheet.

B. The Secretary of State shall notify the Attorney General of any and all violations of this title of which he has knowledge.

14. Article 3, § 1 of the Oklahoma Constitution defines “qualified electors” as “bona fide residents” of the State:

Subject to such exceptions as the Legislature may prescribe, all citizens of the United States, over the age of eighteen (18) years, who are bona fide residents of this state, are qualified electors of this state.

15. Read in conjunction with the Oklahoma Constitution, the Statutes provide, in sum, that not only will Oklahoma refuse to recognize otherwise valid signatures collected by circulators who are not bona fide residents of Oklahoma (i.e., circulators who are not “qualified electors”), it will also subject such circulators to severe criminal penalties.

16. In December 2006, the Oklahoma Supreme Court invalidated a petition for an initiative limiting government spending. In its decision, the Court found that Initiative Petition No. 379 contained an unquantifiable number of signatures obtained by “non-resident” circulators. The Court interpreted Oklahoma’s residency requirement as follows:

The terms residency and domicile are interchangeable and synonymous... A bona fide resident for purposes of art. 3, §1 is equated with a person’s honest intent to make a place one’s residence or domicile, a conscious decision to make a location an individual’s home. Physical presence, as in merely crossing the Oklahoma state line, will not constitute residency. Residency requires a person to have a true, fixed, permanent home to which the individual, when absent, expects to return. It is where a person lives. Although an individual may have multiple dwellings, a natural person has but one residence. The dominant element in determining legal residence is the intention to abandon a former domicile and to acquire another without any intention of returning – present abode, in an of itself, is not conclusive.

In re Initiative Petition No. 379, 155 P.3d 32, 41 (Okla. 2006).

17. The Court explained Oklahoma's justification for the residency requirement as follows: "Residency requirements ensure that when such issues [verifying whether or not a particular voter signed the petition] arise, the circulators will be Oklahoma residents who may be located within state lines and be subject to service for appearance in Oklahoma Courts." *Id.* at 42.

18. The Court referred to the "importation of out-of-state residents" for circulating petitions as "unsettling." *Id.* at 47.

19. Given the strong language in the Court's ruling, circulators prosecuted in Oklahoma, may be subject to the most severe criminal penalties. Violation of Section 3.1 is a felony.

20. The statutes and the 379 case make it reasonable to believe that non-resident petition circulators will be subject to arrest and prosecution. In addition, on many occasions during the Initiative Petition No. 379 campaign during 2005 and 2006, police stopped circulators to ask for identification for purposes of determining their place of residence. Upon information and belief, police informed circulators on numerous occasions that they would be arrested and go to jail if they were circulating petitions in violation of Section 3.1.

21. Plaintiff Committee is a not-for-profit corporation and political committee which intends to circulate an initiative petition in the summer and fall of 2007 for placing a term limits question on the ballot for a vote by the citizens of Oklahoma. Because such petitions are subject to protest and validation proceedings after circulation and filing, it is

crucial to begin such initiatives well ahead of the election date in order to ensure that the circulation and validation of the petition are timely completed.

22. As part of its planning, the Committee has contacted several professional petition circulators to determine their availability for the upcoming campaign. The Committee has determined that it would be able to meet its goal of staffing the campaign with professional circulators, most of whom would necessarily be from out of state. However, because of an objectively reasonable belief that it and any such individuals will be subject to prosecution if it uses any non-resident circulators, and because circulators themselves are unwilling to travel to Oklahoma for fear of prosecution under such Statutes, the Committee has had to initiate planning for using only Oklahoma residents as circulators.

23. Restrictions limiting Plaintiffs to using only resident circulators will have a serious and unreasonable adverse impact on their ability to project their political speech to the wide audience necessary to obtain sufficient signatures to qualify their term limits measure for the ballot. There is no compelling reason for such restrictions which unduly burden Plaintiffs' ability to place their proposal on the ballot and engage in First Amendment speech and association. The First Amendment rights of the individual Plaintiffs are similarly impacted, in that the proposed non-resident circulators Plaintiffs are prevented from exercising First Amendment rights to gather signatures in the State of Oklahoma, an otherwise lawful activity for resident circulators.

24. Placing an initiative on the ballot is no small task. Article V, Section 2 of the Oklahoma Constitution provides as follows:

The first power reserved by the people is the initiative, and eight per centum of the legal voters shall have the right to propose any legislative measure, and fifteen per centum of the legal voters shall have the right to propose amendments to the Constitution by petition, and every such petition shall include the full text of the measure so proposed... The ratio and per centum of legal voters hereinafter stated shall be based upon the total number of votes cast at the last general election for the State office receiving the highest number of votes at such election.

25. Further, the executed initiative petition must be filed with the Secretary of State no later than 90 days after the date the petition was opened for signatures. See 34 Ok. Stat. § 2.

26. In In re Petition No. 379, 155 P.3d at 47-48 and n. 88, it was noted that 219,564 signatures were necessary to place a constitutional amendment on the ballot. This represented 15% of the votes cast for the state office receiving the highest number of votes at the last general election preceding the filing of the petition. Based upon public records for the November 2006 general election, Plaintiffs will need to gather the signatures of 138,970 Oklahoma voters in only 90 days. As a practical matter, this means that 180,000 signatures will actually need to be collected to ensure there are enough valid signatures on the petition. An excess number of signatures is needed because often, through no fault of petition circulators, signers will provide incorrect information, sign the petition multiple times, or do something else to disqualify their signatures.

27. A key problem facing Plaintiffs in this task is that, to run a successful state-wide campaign, professional circulators are needed. These individuals, who are usually paid by the signature, have experience in performing the difficult task of signature gathering. They have typically gained their experience through a wide array of signature-gathering situations in various states and cities across the country. Experience

and professionalism is needed because of the many practical difficulties facing signature-gatherers. While challenging even for professionals, these difficulties can be overwhelming for volunteers. They include: (1) difficulties in gaining access to public areas where a sufficient flow of registered voters can be approached, and dealing with property owners and law enforcement officers; (2) difficulties in knowing and understanding legal requirements relating to public access, the form of petitions, circulator requirements, and similar matters; (3) the difficulty of clearly and concisely articulating to passers-by why they should be interested in hearing about and signing the petition; (4) the difficulty of dealing with and finding ways to work around professional “blockers” from in-state and out-of-state who are hired by petition opponents to keep voters from approaching petitioners and signing petitions; (5) the difficulty of committing to full-day schedules and maintaining a consistent effort throughout the signature-gathering period, despite frustrations with many of the problems mentioned above; and (6) the difficulty of volunteers to channel their zeal for the issue to focus on their overall goal of obtaining the maximum number of valid signatures. For example, volunteers motivated solely by their passion for the underlying cause may fruitlessly attempt to overcome the objections of a single vocal skeptic when it would be more productive and more rational to focus on gathering the signatures of numerous passers-by who are more likely to sign the measure. Professional circulators are able to deliver more valid signatures than volunteers in part because their experience makes them more adept at overcoming or dealing with these difficulties.

28. Signature gathering is especially difficult for measures that seek to limit government or advocate against well-financed interests in which a large, organized force

from both in-state and out-of-state can be deployed to oppose the measure. Such groups can swarm petitions with “blockers,” attempting to physically keep potential signatories from approaching signature gatherers. Blockers and other petition opponents are also instructed (as was the case in 2005 and 2006 in Oklahoma) to contact the managers of malls, stores, or other places of public accommodation where they notice circulators, to complain that the petitioners are “bothering” them and to ask that such petitioners be removed.

29. Except in very unusual circumstances, individual citizen-volunteers who are confronted with such difficult tactics do not have the additional time it takes (or ability to miss work or forego gainful employment) to gather signatures. Paid, professional signature gatherers are therefore the only practical method for the Committee and many other proponents.

30. Aside from their superior knowledge and experience in overcoming the difficulties of signature-gathering, professional signature-gatherers are also motivated to gather valid signatures. Their professional reputation depends on their ability to deliver high validity rates. If they are found to have been careless in gathering signatures or, worse, to have committed fraud, they are not likely to be employed in future signature drives, depriving them of their professional livelihood.

31. Professional circulators, including Plaintiffs Ferrell and Dondero, are also motivated by their belief in the issue presented by the particular petition or by their belief in direct democracy. Thus, most professionals, including Plaintiffs Ferrell and Dondero, are engaging in their own political speech –not just the speech of the ballot measures’

proponets—when they circulate petitions. But for the statutory scheme, Ferrell and Dondero will travel to Oklahoma to engage in a profession which may otherwise be lawfully practiced by residents of the State of Oklahoma and which Plaintiffs, as citizens of the United States, want to exercise as federal rights.

32. Finally, professional circulators are motivated by the fact that signature-gathering is their profession and they are being paid for their efforts. The high opportunity cost of spending day after day gathering signatures (and thus the temptation to stop working) is met or exceeded by professionals' pay. Additionally, most professionals are paid a fixed amount for each signature they submit, motivating them to actually approach passers-by and fill their petitions with valid signatures while they are working in a particular area. Volunteers or less experienced circulators who are paid by the hour, in contrast, have no or lesser such incentive or motivation.

33. The State of Oklahoma does not have an adequate number of professional signature gatherers to run an effective initiative campaign. Accordingly, the participation of out-of-state professionals is critical to the success of an initiative petition. Sweeping statutory provisions which limit signature-gatherers to qualified in-state electors create a severe burden on Plaintiffs' exercise of their First Amendment and other constitutional rights without a compelling state interest in such limitations.

34. Moreover, there is no substantial reason for the difference in treatment and such discrimination practiced against nonresidents bears no substantial relationship to the State's objective, whatever that may be, in requiring only state residents to circulate petitions. There is also a significant burden imposed on the individual plaintiffs in their

interstate travel and otherwise exercise of interstate commerce in the practice of an otherwise lawful profession for state residents within Oklahoma.

35. By having to use only local volunteers, or those few inexperienced residents who will nonetheless have the time and desire to earn money for their work, the ability of the Committee and Mr. Murphy to communicate their message to voters and ultimately place the measure on the ballot will be substantially burdened.

36. First, there will be a sheer shortage of manpower –even after resorting to volunteers and paid non-professionals. This will substantially limit the ability of the Committee and Mr. Murphy to broadcast and communicate their political speech to the voters.

37. Second, experience demonstrates that volunteers or individuals who are not professionals but are nonetheless paid, collect fewer signatures per day. As a group, such persons lack either the persistence or know-how of professional signature gatherers. This will further limit the ability of the Committee and Mr. Murphy to broadcast and communicate their political speech to the voters.

38. Third, volunteers and paid non-professional signature gatherers are less adept at gathering valid signatures, and their petition pages typically exhibit lower validity rates. This requires Plaintiffs to gather even more signatures, in anticipation of the fact that a higher than usual percentage of signatures will be ultimately be invalidated. This further stretches the already scarce resources of groups like Yes on Term Limits, Inc.

39. Fourth, the inherent unpredictability of efforts undertaken by non-professional signature gatherers increases the difficulties for groups like the Plaintiff to budget their drives, set benchmarks, and encourage potential donors to give money to a well-managed, winning effort. This further limits Plaintiffs' ability to broadcast and communicate their political speech to the voters.

40. Oklahoma's residency requirement for petition circulators thus places a severe burden on Plaintiffs' political association and exercise of free political expression, and there is no compelling reason for such burden.

41. Oklahoma's interest in the residency requirement is minimal. Its professed concern for ensuring that circulators can be served with process and questioned in the event any fraud is suspected is not compelling compared to the direct and severe effect the statute has on limiting Plaintiff's core speech and association rights. Further, the Statutes are not the least restrictive alternative to achieve the State's objective in such limitations. Oklahoma's professed concern could be met in other, less restrictive ways, such as by the exercise of Oklahoma's long-arm jurisdiction or by requiring that out-of-state circulators sign an affidavit consenting to service of process and submitting to the jurisdiction of Oklahoma courts and election authorities.

42. Oklahoma's recent history of enforcing the unconstitutional residency requirement, and the severe criminal sanctions that apply to a violation of that requirement, have chilled all Plaintiffs' political speech and association. But for Oklahoma's residency requirement, the Committee and Mr. Murphy would already have begun laying the groundwork for using out-of-state circulators in Oklahoma by, among

other things, entering into contracts with out-of-state circulators and/or firms who manage the circulation of petitions by professionals. Plaintiffs Dondero and Ferrell would have already agreed to come to Oklahoma in the summer and fall of 2007 for the petition drive. For the reasons stated above, the lack of this option significantly burdens Plaintiffs' political speech and right to associate without any compelling, countervailing state interest, rendering the Oklahoma requirements unconstitutional.

43. Because of Oklahoma's requirement that petition circulators be qualified Oklahoma electors, the individual Plaintiffs who are professional petition circulators are threatened with criminal prosecution if they travel to Oklahoma to practice their profession and exercise their own First Amendment rights of speech and association. Their fundamental constitutional right to travel to Oklahoma and enjoy the privileges and immunities of citizenship is therefore chilled.

44. The Oklahoma requirement that petition circulators be Oklahoma electors constitutes a hiring preference for Oklahoma residents and against residents of other states, unconstitutionally discriminating against interstate commerce in petition circulation.

45. If Plaintiffs do not obtain immediate judicial relief, they will be forced to undertake their initiative campaign with inadequate resources and their First Amendment rights will be violated. The deprivation of First Amendment rights for even minimal periods constitutes irreparable harm. When a loss of First Amendment rights occurs for even minimal periods of time, irreparable harm is presumed. Community Communications, Inc., v. City of Boulder, Colorado, 660 F.2d 1370, 1376 (10th Cir.,

1981), citing Elrod v. Burns, 427 U.S. 347, 373, 96 S.Ct. 2673, 2689, 49 L.Ed.2d 547 (1976).

46. The operation of state law and the authority, acts, and conduct of the Defendants in their individual and official capacity are intentional acts and conduct under color of state law. Defendants are liable for any such actions which violate Plaintiffs' constitutional rights. 42 U.S.C. § 1983 establishes such liability and provides in pertinent part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress...

COUNT I
VIOLATIONS OF THE FIRST AMENDMENT
42 U.S.C. § 1983

47. The foregoing allegations are incorporated by reference as if fully set forth herein.

48. A justiciable controversy exists as to the violation of certain constitutional rights of the Plaintiffs under federal law as alleged herein.

49. Oklahoma's ban on out-of-state circulators significantly burdens Plaintiffs' First Amendment rights to engage in political association and speech in promulgating their views within Oklahoma, making it less likely that their term limits

proposal will come before the voters. There is no compelling state interest justifying the blanket restriction on out-of-state petition circulators. Accordingly, the statutory requirement that only Oklahoma residents may circulate petitions is unconstitutional.

50. The likely and expected enforcement of Oklahoma's ban on out-of-state circulators will chill and is chilling Plaintiffs' exercise of their First Amendment rights to engage in political association and speech and make their views known.

51. A blanket ban on out-of-state petitioner circulators sweeps into otherwise constitutionally protected activity and is substantially overbroad. Less restrictive means exist to satisfy Oklahoma's interest in the prevention of fraud.

52. This is an actual case or controversy warranting judicial attention and oversight. Both Plaintiffs and Oklahoma's electoral and law enforcement officials require a clear determination as to the constitutionality of the Statutes. Plaintiffs are entitled to declaratory relief from this court.

53. An order from this Court enjoining the enforcement of the non-resident provisions of the Statutes will protect Plaintiffs' First Amendment rights.

54. For the reasons stated above, Plaintiffs are likely to prevail on the merits of this case. The Oklahoma residency requirement severely burdens their First Amendment rights, but the state has little or no legitimate interest in a residency requirement per se. Thus, the Statutes will likely be held unconstitutional. At the very least, however, Plaintiffs have shown sufficiently serious questions on the merits to make the case fair grounds for litigation, while the balance of hardships weighs heavily in their

favor. Without immediate injunctive relief, Plaintiffs will completely and irrevocably lose the right to defend their constitutional speech and association rights. For Defendants, in contrast, granting relief will create little or no immediate hardship.

55. Plaintiffs are entitled to preliminary and permanent injunctive relief precluding Defendants and their successors and agents from attempting to enforce the nonresident provisions of the Statutes.

COUNT II
VIOLATIONS OF PLAINTIFF FERRELL'S
AND DONDERO'S PRIVILEGES AND IMMUNITIES UNDER
ARTICLE IV, § 2, AND THE FOURTEENTH AMENDMENT, § 1:
THEIR RIGHTS TO TRAVEL TO OKLAHOMA TO ENGAGE IN POLITICAL
ASSOCIATION AND SPEECH, AND THEIR RIGHTS TO TRAVEL TO
OKLAHOMA TO EARN A LIVELIHOOD
42 U.S.C. § 1983

56. The foregoing allegations are incorporated by reference as if fully set forth herein.

57. Plaintiffs Ferrell and Dondero have a right under the United States Constitution to travel to Oklahoma and enjoy the privileges and immunities of citizenship of a citizen of the state of Oklahoma under Article V, Section 2 of the United States Constitution, and the privileges and immunities of a national citizen under Section 1 of the Fourteenth Amendment. Specifically, the privileges and immunities which Ferrell and Dondero have a right to enjoy are: (1) the fundamental right to engage in political speech and political association; and (2) the fundamental right to ply their trade, professional petition circulation.

58. Oklahoma's residency requirement for petition circulators completely bars citizens of other states from traveling to Oklahoma to practice their profession of petition circulation, a profession which Oklahoma reserves exclusively for Oklahoma residents and is unconstitutional. See Hicklin v. Orbeck, 437 U.S. 518 (1978).

59. Oklahoma's residency requirement completely bars citizens of other states from traveling to Oklahoma to engage in political speech and association by circulating petitions and gathering valid signatures for purposes of placing ballot measures before Oklahoma voters.

60. The exercise of First Amendment rights as a petition circulator is an occupation important to the national economy and therefore a "privilege" under the "privileges and immunities" clause of Article IV, Section 2 of the United States Constitution.

61. There is no substantial reason for the difference in treatment for Oklahoma to limit circulators to only residents. The discrimination practiced against the individual Plaintiffs Ferrell and Dondero bears no substantial relationship to the State's objective and violates their federal rights of privileges and immunities. See Supreme Court of New Hampshire v. Piper, 470 U.S. 274 (1985)

62. The constitutional right to travel to a state and enjoy the privileges and immunities of a citizen of that state is a fundamental right, and Oklahoma has no substantial or compelling reason for a blanket preclusion of non-residents from acting as petition circulators. Alternatively, less restrictive alternatives than blanket preclusion

exist which meet any interest the state may have in the selection and identity of petition circulators.

63. There is no significant evidence, if any, that petition circulators who maintain a residence out of state are more likely to submit invalid petition signatures than in-state signature gatherers. In fact, for all the reasons discussed above, professional petition circulators (who must necessarily come primarily from out of state, because of the fact that there is an inadequate number of professional circulators in Oklahoma) are more likely to be successful, articulate, and efficient circulators. Thus, the operation of the blanket restriction in the Statutes excludes non-Oklahoma citizens from practicing their profession in Oklahoma and expressing their political viewpoints and/or engaging in political association with Oklahomans. It unconstitutionally burdens Plaintiffs' exercise of their rights to speech, association, travel, and work.

64. Oklahoma's concern that out-of-state circulators will not be subject to its courts' jurisdiction where fraud is alleged can easily be addressed by Oklahoma's long-arm jurisdiction or by a requirement that out-of-state circulators, before circulating petitions, affirm that they will be subject to the service of process and will submit to Oklahoma courts' jurisdiction. A blanket ban on out-of-state petition circulators, in contrast, sweeps into otherwise constitutionally protected activity.

65. Accordingly, the Statutes are unconstitutional under the Privileges and Immunities Clauses of the United States Constitution. Enforcement of the Statutes violates the Privileges and Immunities Clauses. So long as the Statutes are in effect,

individual Plaintiffs Ferrell and Dondero cannot travel to Oklahoma to practice their profession or engage in political speech and association.

66. This is an actual case or controversy warranting judicial attention and oversight. Both Plaintiffs and Oklahoma's electoral and law enforcement officials require a clear determination as to the constitutionality of the Statutes. Plaintiffs are entitled to declaratory relief from this Court.

67. An order from this Court enjoining the enforcement of the non-resident provisions of the Statutes will protect Plaintiffs' constitutional rights under the Privileges and Immunities Clauses and the First Amendment.

68. For the reasons stated above, Plaintiffs are likely to prevail on the merits of this case. Without immediate injunctive relief, Plaintiffs will completely and irrevocably lose the right to defend their constitutional speech and association rights. They will be unable to travel to Oklahoma to practice their profession or engage in political speech and association during the upcoming petitioning season. For Defendants, in contrast, granting relief will have little or no immediate impact.

69. Plaintiffs are entitled to preliminary and permanent injunctive relief precluding Defendants and their successors and agents from attempting to enforce the Statutes.

COUNT III
VIOLATION OF THE DORMANT COMMERCE CLAUSE,
ARTICLE I, § 8, CLAUSE 3
42 U.S.C. § 1983

70. Professional petition circulators engage in interstate commerce when, in return for compensation, they travel from state to state to gather signatures for ballot measures they have chosen to support.

71. Oklahoma's Statutes not only discriminate against such interstate commerce, they are a complete embargo and substantial burden on interstate commerce involving the otherwise constitutionally protected activities of political association and speech. On their face, they reserve the trade of gathering signatures for pay to Oklahoma residents alone.

72. Insofar as they prohibit out-of-state petition circulators, the Statutes are therefore virtually *per se* unconstitutional. Oklahoma cannot show by concrete evidence that nondiscriminatory alternatives to the Statutes are unworkable. As discussed above, Oklahoma could require out-of-state circulators to provide consent to service of process and the jurisdiction of Oklahoma courts as a precondition to circulating petitions. Numerous other means to combat and investigate fraud are available to Oklahoma short of an outright ban on all out-of-state circulators.

73. Accordingly, the Statutes substantially burden and discriminate against interstate commerce and are unconstitutional under the Commerce Clause of the United States Constitution. So long as the Statutes are in effect, all interstate commerce in paid petition circulation will be barred in Oklahoma even though "paid petition circulation" is an otherwise legal activity when practiced by in-state electors.

74. This is an actual case or controversy warranting judicial attention and oversight. Both Plaintiffs and Oklahoma's electoral and law enforcement officials require a clear determination as to the constitutionality of the Statutes. Plaintiffs are entitled to declaratory relief from this Court.

75. An order from this Court enjoining the enforcement of the non-resident provisions of the Statutes will protect Plaintiffs' constitutional rights.

76. For the reasons stated above, Plaintiffs are likely to prevail on the merits of this case. The Oklahoma residency requirement facially discriminates against, and in fact bans, interstate commerce in petition circulation within the state of Oklahoma. Oklahoma has numerous other means to address the issue of fraudulent petition signatures. Thus, the Statutes will likely be held unconstitutional. At the very least, however, Plaintiffs have shown sufficiently serious questions on the merits to make the case fair grounds for litigation, while the balance of hardships weighs heavily in their favor. Without immediate injunctive relief, Plaintiffs will completely and irrevocably lose the right to defend their rights. For Defendants, in contrast, granting relief will have little or no immediate impact.

77. Plaintiffs are entitled to preliminary and permanent injunctive relief precluding Defendants and their successors and agents from attempting to enforce the Statutes.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request this Court grant the following relief:

- (1) DECLARATORY JUDGMENT: Plaintiffs pray for a declaratory judgment that the non-resident provisions of the Statutes are unconstitutional.
- (2) INJUNCTIVE RELIEF: Plaintiffs pray for a preliminary and permanent injunction restraining Defendants, their successors in office, agents, employees, and all other persons acting in concert or in participation with them, from enforcing the non-resident provisions of the Statutes.
- (3) COSTS AND REASONABLE ATTORNEYS' FEES: Pursuant to 28 U.S.C. § 1988, Plaintiffs pray for the reasonable costs and attorneys' fees they have expended to safeguard their constitutionally protected rights.

Respectfully Submitted,

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