

A RESOLUTION

**Proposed Resolution
19-1124**

**See Emergency Act
D.C. Act 19-587
20 DCSTAT 303**

**Board of Elections
Petition Circulation
Requirements
Emergency
Declaration
Resolution of 2012**

To declare the existence of an emergency with respect to the need to amend the District of Columbia Election Code of 1955 to amend the current election laws governing circulators of petitions for the purposes of placing initiative and referendum measures on the ballot, nominating candidates for elected office, and recalling elected officials.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Board of Elections Petition Circulation Requirements Emergency Declaration Resolution of 2012".

Sec. 2. (a) There exists an arguable conflict between current election laws governing circulators of petitions and certain decisions of the United States Supreme Court and various United States Courts of Appeals concerning conditions placed on the ballot-initiative process and restrictions on ballot petition circulators.

(b) In *Buckley v. American Constitutional Law Foundation, Inc.*, No. 97-930, 525 U.S. 182 (1999), the United States Supreme Court declared unconstitutional, on First Amendment grounds, a Colorado statutory requirement that initiative-petition circulators be registered voters.

(c) Subsequently, a number of U.S. Courts of Appeal have extended this reasoning to invalidate registration requirements for circulators of candidate-nominating petitions and, further, to hold that even residency requirements on circulators of initiatives and candidate-nominating petitions are impermissible. *See, e.g., Krislov v. Rednour*, 226 F.3d 852 (7th Cir. 2000), *cert. denied sub. nom., McGuffage v. Krislov*, 531 U.S. 1147 (2001) (striking registration and residency requirements); *Nader v. Blackwell*, 545 F.3d 459 (6th Cir. 2008); *Nader v. Brewer*, 531 F.3d 1028 (9th Cir. 2008), *cert. denied*, 129 S.Ct. 1580 (2009); *Yes on Term Limits v. Savage*, 550 F.3d 1023 (10th Cir. 2008); *see also Daien v. Ysursa*, 711 F.Supp.2d 1215 (D.Idaho 2010).

(d) Currently, initiative-petition circulators as well as circulators of petitions for the purposes of nominating candidates for elected office and recalling elected officials are required to be qualified registered electors of the District of Columbia. (D.C. Official Code §§ 1-1001.08(b)(2), 1-1001.16(h)(5), 1-1001.16(k)(1)(E), 1-1001.17(f)(5), and 1-1001.17(i)(6). This requirement is in apparent conflict with the Supreme Court's decision in *Buckley v. American Constitutional Law Foundation, Inc.*).

(e) Further well-reasoned decisions by a number of United States Courts of Appeals strongly suggest that the residency requirement on petition circulators, even in the absence of a registration requirement, could be successfully challenged on First Amendment grounds.

(f) Plaintiffs in the civil action, *Libertarian Party, et al. v. Deborah Nichols, et al.*, 12-cv-01248 (CKK), currently pending in the United States District Court for the District of Columbia,

challenge both the registration and the residency requirements imposed upon ballot- petition circulators by the District of Columbia Election Code of 1955.

(g) The amendments to the District of Columbia Election Code of 1955 abolishing the registration and residency requirements for initiative-petition circulators and for circulators of petitions for the purposes of nominating candidates for elected office and recalling elected officials would conform District of Columbia election law concerning petition circulation requirements to legal precedent requiring that jurisdictions reasonably minimize restrictions on core political speech while protecting the integrity of the electoral process. These amendments would also require non-resident petition circulators to register with the Board of Elections and consent to being subject to the subpoena power of the District of Columbia.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Board of Elections Petition Circulation Requirements Emergency Amendment Act of 2012 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.