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OPINION	:	No. 79-914
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of	:	<u>January 18, 1980</u>
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SUBJECT: FUND RAISING MAILING LIST—Section 29770 of the Elections Code precludes a proponent of a ballot measure from using the names and addresses on petition sections to compile a mailing list for fund raising in support of qualifying and securing passage of a measure for the ballot.

The Honorable March Fong Eu, Secretary of State, has requested an opinion on the following questions:

1. Does section 29770 of the Elections Code preclude a proponent of a ballot measure from using the names and addresses on petition sections to compile a mailing list for fund raising and other purposes in support of qualifying the measure for the ballot?

2. Does section 29770 of the Elections Code preclude a proponent of a measure from using the names and addresses on petition sections to compile a mailing list for fund raising and other purposes in support of securing passage of the measure after it has qualified for the ballot?

CONCLUSIONS

1. Section 29770 of the Elections Code precludes a proponent of a ballot measure from using the names and addresses on petition sections to compile a mailing list for fund raising and other purposes in support of qualifying the measure for the ballot.

2. Section 29770 of the Elections Code precludes a proponent of a ballot measure from using the names and addresses on petition sections to compile a mailing list for fund raising and other purposes in support of securing passage of the measure after it has qualified for the ballot.

ANALYSIS

Section 29770 of the Elections Code¹ provides:

“No *circulator* of an initiative, referendum, or recall petition shall permit the list of signatures on the petition to be used for any purpose *other than qualification of the initiative or referendum measure* or recall *question* for the *ballot*. Violation of this section is a misdemeanor.” (Emphasis added.)

Our opinion is requested as to the use of initiative, referendum or recall petitions by a *proponent* of the measure to compile mailing lists (1) before the petition is filed for fund raising and other purposes to aid in qualifying the petition and (2) after it is filed and has qualified for the ballot in order to aid its passage. The basic issue is whether section 29770 of the Elections Code precludes such use by a proponent. As we see it, this basic issue presents two questions within the context of section 29770: (1) is a proponent of a measure a “circulator” thereof; and (2) what is meant by the phrase “qualification of the measure or question for the ballot.”

The Elections Code provides procedures for the exercise of the initiative, referendum and recall by the electors at all levels of government.² For ease of analysis, we will answer the questions presented primarily in the context of a statewide measure, although the general analysis and approach taken would also be applicable to the three types of measures at all levels of government.

¹ All section references are to the Elections Code unless otherwise indicated.

² See generally, sections 3500–3567 (statewide initiative and referendum); sections 3700–3788 (county initiative and referendum); sections 4000–5016 (city initiative and referendum); sections 5150–5353 (district initiative and referendum); sections 27000–27346 (recall provisions, all levels of government) sections 29710–29795 (penal provisions, initiative, referendum and recall).

The term “circulator” is not defined either generally or specifically in the Elections Code, although the term is found in various sections to describe or refer to the individual who actually goes to the voters and solicits their signatures on a petition. (See, e.g., § 42, any voter may circulate a petition; § 44, required affidavit of circulator; § 3517, circulator may sign section of petition he or she circulates.) On the other hand, the proponents of a measure³ may be said to be “circulators” or a petition, in that they cause the petition to be circulated or disseminated. (See, e.g., § 29720: “Every person is guilty of a misdemeanor who: (a) Circulating, as principal or agent, or having charge or control of the circulation of, or obtaining signatures to, any . . . petition. . . .”) Thus, the ultimate question is whether the term “circulator” as used in section 29770 is to be given a strict or a liberal construction.

As to what is meant by the phrase “qualification of the measure or question for the ballot,” we perceive the same problem, that is, one of strict or liberal construction. As used in section 29770 the phrase could mean that the signatures on a petition may be used *only* for the purposes of meeting the signature requirements to qualify the measure for the ballot, a strict construction. On the other hand, it could mean that the signature could be used by the proponents for *any* purpose which would enhance the possibility that the petition would ultimately have sufficient signatures, and thus qualify for the ballot, a liberal construction.

In deciding whether the various portions of section 29770 should be given a strict or a liberal interpretation, we apply the appropriate rules of statutory construction. Since section 29770 is a penal statute, two competing and possibly contradictory rules of construction emerge. As stated recently by the California Supreme Court in *People v.*

³ There is no universal definition contained in the Elections Code of the term “proponents,” although in common parlance, and in the context of the Elections Code, they are the individuals who initially propose and then attempt to qualify a measure for the ballot. (See, e.g., § 3502, prior to circulation thereof, proponents request title and summary from Attorney General; §§ 3520–3521, Secretary of State to notify proponents if insufficient number of signatures obtained; § 3522, only proponents or their authorized agents may file petition or sections thereof.)

However, for purposes of the penal provisions (chapter 7, of Division 17 of the Elections Code), sections 29710 and 29711 provide respectively:

“As used in this chapter, ‘proponent or proponents of an initiative or referendum measure’ means the person or persons who submit a draft of a petition proposing the measure to the Attorney General with a request that he prepare a title and summary of the chief purpose and points of the proposed measure.”

“As used in this chapter, ‘proponent or proponents of a recall petition’ means the person or persons who have charge or control of the circulation of, or obtaining signatures, to such petitions.”

Thus the proponents are “in charge of” qualifying a measure for the ballot, including the circulation thereof.

Superior Court (Douglass) (1979) 24 Cal. 3d 428, 435:

“Generally, the provisions of a penal statute are to be construed according to the fair import of their terms, with a view to effect its objects and to promote justice. (Pen. Code, § 4; *People v. King* (1978) 22 Cal. 3d 12, 23 [148 Cal. Rptr. 409, 582 P. 2d 1000].) When the statute is susceptible of two reasonable constructions, however, the defendant is ordinarily entitled to that construction most favorable to him. (*People King, supra*, 22 Cal. 3d at p. 23; *Bowland v. Municipal Court, supra*, 18 Cal. 3d at p. 488.) . . .”⁴

In our opinion, the first of these two roles is applicable herein. As to the first facet of the problem, the meaning of “circulator,” we believe that an examination of the Legislative history demonstrates that there is only one *reasonable* construction of section 29770, that is, the term “circulator” should include a proponent of a measure. In short, the word “circulator” should be liberally construed “‘in light of the objective sought to be achieved by . . . [the statute], as well as the evil sought to be averted.’” (*In re Andrews* (1976) 18 Cal. 3d 208, 212.)

Section 29770 was added to the Elections Code in 1974 as prior section 29256 (Stats. 1974, ch. 1410, § 9, p. 3106). The addition of this section was one of ten additions or amendments to that Code which clearly were enacted to protect the ‘right of privacy’ of individuals who sign initiative, referendum and recall petitions by assuring their confidentiality and restricting both their use and continued existence. Thus, section 315 (now sec. 319) was amended to provide that the clerk should not make any notations, whether coded or not, on affidavits of registration as to whether the voter has signed a particular petition. It was also amended to require that any memoranda or materials containing such types of information be destroyed as soon as practicable, and that they be available only to the clerk and his staff for the purposes of which they were prepared. Sections 3506, 3755, 4056.5, 5204, 27003, 27205, and 27510.5 (see now, sections 3512, 3756, 4054, 5202, and 27300 respectively) were either amended or added to assure that initiative, referendum and recall petitions at all levels of government were preserved for only a relatively short period of time, and then were to be destroyed as soon as legally practicable.⁵ Finally, section 6253.5 of the Government Code was added to the California

⁴ We note parenthetically that California has abolished the common law rule that penal statutes are always to be strictly construed in favor of the defendant. Thus, Penal Code, section 4 provides:

“The rule of the common law, that penal statutes are to be strictly construed has no application to this Code. All its provisions are so construed according to the fair import of their terms, with a view to effect its objects and to promote justice.”

⁵ For example, section 3756 which had as its predecessor section 3755, as added by Statutes of 1974, Chapter 1410, presently provides:

Public Records Act, which act assures public access to public records at all levels of government *unless excepted therein*, to provide such an exception. Section 6253.5 preserves the confidentiality of election petitions and prohibits public inspection or disclosure of them.⁶

Thus, section 29770, the section under consideration herein is one of a series of sections intended to permit and encourage voters to sign initiative, referendum and recall petitions with the full knowledge that the fact they signed shall not become a matter of public knowledge, and that fact shall be disseminated only to those persons who need to know. Accordingly, voters may sign petitions on any matters, without fear of criticism, censure or reprisal from any quarter. In short, section 29770 is one of a series of sections enacted to guarantee the free and complete exercise of the electoral process while protecting constitutional rights, including the right of privacy and First Amendment rights such as freedom of speech and association. (*Cf.*, e.g., *Bates v. Little Rock*, 361 U.S. 516 (1960) and *N.A.A.C.P. v. Alabama*, 357 U.S. 449 (1958), holding that “there are times and circumstances when States may not compel members of groups engaged in the dissemination of ideas to be publicly identified.” (*Tally v. California* 362 U.S. 60, 65

“An initiative or referendum petition received or filed in the office of the county clerk shall be preserved until eight months after the certification of the results of the election for which the petition qualified or attempted to qualify for placement on the ballot. Public access to any such petition shall be restricted in accordance with the provisions of Section 6253.5 of the Government Code. At the end of the eight-month period, the petition shall be destroyed as soon as practicable unless it is in evidence in some action or proceeding then pending, or unless the clerk has received a written request from the Attorney General, the Secretary of State, the Fair Political Practices Commission, a district attorney, a grand jury, or the governing body of a county, city and county, or district including a school district, that the petition be preserved for use in a pending or ongoing investigation into election irregularities, or in a pending or ongoing investigation into a violation of the Political Reform Act of 1974 as set forth in Title 9 (commencing with Section 81000) of the Government Code.”

⁶ Section 6253.5 presently provides:

“Notwithstanding the provisions of Sections 6252 and 6253, statewide, county, city and district initiative, referendum, and recall petitions and all memoranda prepared by the county clerks in the examination of such petitions indicating which registered voters have signed particular petitions shall not be deemed to be public records and shall not be open to inspection except by the public officer or public employees who have the duty of receiving, examining or preserving such petitions or who are responsible for the preparation of such memoranda provided, however, that the Attorney General, the Secretary of State, the Fair Political Practices Commission, a district attorney, and a city attorney shall be permitted to examine such material upon approval of the appropriate superior court.”

(1959)); *Huntley v. Public Util. Com.* (1968) 69 Cal. 2d 67, author of recorded phone message “Let Freedom Ring” had right to anonymity; compare, e.g., *Lehman v. City and County of San Francisco* (1978) 80 Cal. App. 3d 309, jury lists open to public inspection under Public Records Act despite claims of violation of right to privacy, freedom of association and due process.)

Considering the objects and purposes of section 29770 and its related provisions, it is our opinion that the term “circulator” as used in that section should include the proponents of a measure. Otherwise the objective of the statute could be completely thwarted by prohibiting the actual circulator of a petition or section from disclosing names and addresses of signatories, while at the same time permitting the chief circulators, the proponents, to do so.

We now move to the second facet of the problem, that is, what does the phrase “qualification of the measure or question for the ballot” mean in section 29770 when it is used to determine the parameter; of the proper use of petition signatures? For the same reasons that we concluded “circulator” must be liberally construed to effectuate the purposes of the statute, we believe that the phrase “qualification of the measure or question for the ballot” must be *strictly* construed to further the objects of the statute. In our view the phrase should be construed to permit the least amount of use. Such construction would limit the use of the signatures to presenting these to election officials in order that they may determine their authenticity and whether there are a sufficient number of signatures to qualify the petition for the ballot. Such a strict construction would of necessity preclude any other use by the proponents, even if such use, in the general sense, was to enhance their chances of qualifying the measure for the ballot. (*Cf. Elder v. Anderson* (1962) 205 Cal. App. 2d 326, 330: “This section requires strict interpretation . . . Thus, under no circumstances is any information to be given out by the school or its officials for any other purpose, *whether beneficial or detrimental*, except . . .” when authorized by the Code. Emphasis added.)

In accordance with the above analysis that section 29770 should be construed to effectuate its purposes, that is, to protect the privacy of signatories to election petitions to the fullest extent possible, we conclude as to question one that the section precludes a proponent of a ballot measure as well as the actual circulator of the petition from using the names and addresses on petition sections to compile a mailing list for fund raising or other purposes in support of qualifying the measure for the ballot. Insofar as question two is concerned, that question presents little problem once it is concluded that a proponent is a “circulator.” It asks whether a proponent may make use of the names and addresses on a petition to aid in its passage after it has qualified for the ballot. Such use would clearly be proscribed by section 29970 as a use for purposes other than for qualifying the measure for the ballot.
