

SUPREME COURT OF COLORADO

Armstrong v. Davidson

10 P.3d 1278 (Colo. 2000) · No. 00SA298 · Decided October 30, 2000

SUMMARY

The Colorado Supreme Court held that proponents of a ballot initiative may circulate petitions after the Title Board has taken final action on the ballot titles and summary, even while an appeal of that action is pending. If the court affirms the Title Board, the Secretary of State may count signatures collected during the appeal. The court therefore affirmed the district court's decision upholding the Secretary of State's sufficiency determination and certification of the initiative to the ballot.

CASE DETAILS

COURT	Supreme Court of Colorado
WRITING FOR THE COURT	Justice Hobbs
JURISDICTION	Colorado
DECIDED	October 30, 2000
DOCKET	00SA298
DISPOSITION	affirmed
PROCEDURAL POSTURE	Armstrong appealed the Denver District Court's order upholding the Secretary of State's determination that a proposed initiative had sufficient valid signatures for certification to the ballot.
STANDARD OF REVIEW	The court reviewed the district court's decision concerning a registered elector's protest of the Secretary of State's sufficiency determination under section 1-40-119, C.R.S. The court applied statutory-construction and administrative-law principles and reviewed the Title Board's action with a presumption of validity, deferring to its language unless clearly misleading.
PRECEDENTIAL VALUE	Published, precedential opinion of the Supreme Court of Colorado, decided en banc.
PARTIES	Ari Armstrong v. Donetta Davidson, in her official capacity as Secretary of State

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QUESTIONS PRESENTED

1. Whether initiative proponents may circulate a petition for signatures after the Title Board has taken final action on the initiative's titles and summary but while an appeal of that action is pending in the Colorado Supreme Court.
2. Whether signatures gathered during the pendency of the appeal may be counted if the Supreme Court affirms the Title Board's action.
3. Whether sections 1-40-107(5) and 1-40-108, C.R.S. prohibit petition circulation until the Supreme Court's appellate decision is final.

HOLDINGS

1. An initiative proponent may circulate a petition for signatures once the Title Board's action fixing and determining the titles and summary becomes final, which occurs upon denial of a rehearing petition or expiration of the time for filing one.
2. The Secretary of State may count signatures obtained while an appeal of the Title Board's action is pending if the Supreme Court affirms that action.
3. Section 1-40-107(5) addresses the time for filing a signed petition with the Secretary of State, not the time for beginning circulation or gathering signatures.

KEY QUOTATIONS

“We determine in this case that the proponents of an initiative may commence circulating their petition for signatures after the Title Board has taken its final action in regard to the ballot titles and summary, pursuant to section 1-40-107(1) and (5), 1 C.R.S. (2000), and while that action is before us on appeal pursuant to section 1-40-107(2), 1 C.R.S. (2000).” (1280)

“Accordingly, we hold that a proponent may circulate a petition once (1) the Title Board has denied the petition for rehearing, or (2) the time for filing a petition for rehearing under section 1-40-107(1) expires.” (1282-1283)

“Thus, section 1-40-107(5) does not prohibit circulating a petition during an appeal of the Title Board's action.” (1283)

FACTUAL BACKGROUND

The Colorado Title Board set the titles and summary for Initiative 1999-2000 #255 on April 19, 2000, and denied petitions for rehearing. While an appeal of the Title Board's action was pending in the Colorado Supreme Court, initiative proponents circulated petitions and submitted approximately 108,000 signatures to the Secretary of

State. After random sampling, the Secretary determined that 85,438 signatures were valid and certified the initiative, which concerned background checks at gun shows, to the November 7, 2000 ballot.

PROCEDURAL HISTORY

The Secretary of State determined that the petition for Initiative 1999-2000 #255 contained 85,438 valid signatures and certified it to the November 7, 2000 general-election ballot. Armstrong filed a complaint challenging the inclusion of signatures gathered while an appeal concerning the initiative's ballot titles and summary was pending. The district court treated the Secretary's motion to dismiss as a motion for summary judgment and upheld the sufficiency determination and certification. The Colorado Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- In re Ballot Title 1999-2000 #255, 4 P.3d 485 (Colo. 2000)
- In re Ballot Title 1999-2000 #200A, 992 P.2d 27 (Colo. 2000)
- In re Ballot Title 1999-2000 #245(b), 245(c), 245(d) & 245(e), 1 P.3d 720 (Colo. 2000)
- Havens v. Board of County Commissioners, 924 P.2d 517 (Colo. 1996)
- In re Ballot Title "W.A.T.E.R.", 831 P.2d 1301 (Colo. 1992)
- In re Ballot Title 1999-2000 #265, 3 P.3d 1210 (Colo. 2000)
- In re Ballot Title 1999-2000 #235(a), 3 P.3d 1219 (Colo. 2000)
- In re Ballot Title 1999-2000 #25, 974 P.2d 458 (Colo. 1999)
- In re Proposed Initiative for 1999-2000 #104, 987 P.2d 249 (Colo. 1999)
- In re Proposed Initiatives for 1999-2000 ##172-175, 987 P.2d 243 (Colo. 1999)
- In re Ballot Title 1999-2000 ##227 & 228, 3 P.3d 1 (Colo. 2000)
- In re Ballot Title 1997-98 #30, 959 P.2d 822 (Colo. 1998)
- In re Ballot Title 1999-2000 #246(e), 8 P.3d 1194 (Colo. 2000)
- In re Ballot Title 1999-2000 #258(A), 4 P.3d 1094 (Colo. 2000)
- In re Ballot Title 1999-2000 #219, 999 P.2d 819 (Colo. 2000)