

COURT OF APPEALS FOR THE TENTH CIRCUIT

Semple v. Griswold

Semple v. Griswold, 934 F.3d 1134 (10th Cir. 2019) · Decided August 20, 2019

SUMMARY

The Tenth Circuit reversed a permanent injunction against Colorado's Amendment 71, which requires ballot initiative proponents to collect signatures from 2% of registered voters in each state senate district. The court held that the requirement does not violate the Equal Protection Clause because Colorado's senate districts are equally populous in total population, and **Evenwel v. Abbott** permits states to use total population rather than registered-voter population for such signature thresholds. The court also rejected First Amendment challenges, ruling that the signature-distribution requirement is a permissible process law that does not regulate speech, and that the failure of an initiative is not a government penalty supporting a compelled-speech claim.

CASE DETAILS

COURT	Court of Appeals for the Tenth Circuit
JURISDICTION	Federal
DECIDED	August 20, 2019
DISPOSITION	reversed
PROCEDURAL POSTURE	Appeal from a permanent injunction entered after the district court denied defendant's motion to dismiss and ordered show cause.
STANDARD OF REVIEW	De novo
PRECEDENTIAL VALUE	Published
PARTIES	Griswold v. Semple

TOPICS

equal protection

first amendment

fourteenth amendment

free speech

constitutional law

PRACTICE AREAS

Constitutional Law

Election Law

QUESTIONS PRESENTED

1. Whether Section 2.5 of Amendment 71 violates the Equal Protection Clause of the Fourteenth Amendment under the one-person-one-vote principle.
2. Whether Section 2.5 violates the First Amendment by unduly burdening the initiative process.
3. Whether Section 2.5 compels speech in violation of the First Amendment.

HOLDINGS

1. *Evenwel v. Abbott* controls and defeats the equal protection claim because Colorado's state senate districts are equally populous in total population, and the equal protection clause does not require equalization of registered voter populations.
2. Section 2.5 is a process requirement that does not regulate communicative conduct and therefore does not implicate the First Amendment under *Walker*.
3. The failure of a ballot initiative is not an adverse government action sufficient to establish compulsion element of a compelled speech claim.

KEY QUOTATIONS

“Although Evenwel involved the right to vote, not the right to sign a ballot initiative petition, its reasoning governs the outcome of Plaintiffs' equal protection claim. Section 2.5 requires that signatures be obtained from a sub-group of the total population in each state legislative district. Just as in Evenwel, Plaintiffs allege this sub-group varies in size from district to district. Thus, Plaintiffs' equal protection claim is the same as that of the plaintiffs in Evenwel - that the population of either eligible or registered voters, not the total population, in each state senate district must be equal or voting power is diluted.” (1140)

“Walker controls the issue presented here because Section 2.5 merely determines the process by which initiative legislation is enacted in Colorado. Like the supermajority requirement addressed by the en banc court in Walker, Section 2.5 is not content-based. Thus, even assuming Section 2.5 makes it more difficult and costly to amend the Colorado constitution because it requires Plaintiffs to collect signatures from all districts in the state, that process requirement does not give rise to a cognizable First Amendment claim.” (1142)

FACTUAL BACKGROUND

Amendment 71 to the Colorado Constitution added a requirement that initiative proponents collect signatures from at least two percent of registered voters in each of Colorado's thirty-five state senate districts, in addition to the existing statewide signature requirement. The plaintiffs alleged that the number of registered voters varies significantly among districts, causing vote dilution because the two-percent threshold requires more signatures in districts with more registered voters.

PROCEDURAL HISTORY

Plaintiffs filed a federal complaint challenging a Colorado constitutional amendment requiring initiative proponents to collect signatures from two percent of registered voters in each state senate district. The district court denied defendant's motion to dismiss, ordered show cause, and entered a permanent injunction. Defendant appealed.

DISPOSITION

reversed

REMAND INSTRUCTIONS

Remanded to the district court with instructions to grant judgment in favor of Defendant on all claims raised in Plaintiffs' complaint.

CASES CITED

- Evenwel v. Abbott, 136 S. Ct. 1120 (2016)
- Initiative & Referendum Inst. v. Walker, 450 F.3d 1082 (10th Cir. 2006) (en banc)
- Reynolds v. Sims, 377 U.S. 533 (1964)
- Angle v. Miller, 673 F.3d 1122 (9th Cir. 2012)
- Libertarian Party of Va. v. Davis, 766 F.2d 865 (4th Cir. 1985)
- Libertarian Party v. Bond, 764 F.2d 538 (8th Cir. 1985)
- Save Palisade FruitLands v. Todd, 279 F.3d 1204 (10th Cir. 2002)
- Meyer v. Grant, 486 U.S. 414 (1988)
- Wooley v. Maynard, 430 U.S. 705 (1977)
- Cressman v. Thompson, 798 F.3d 938 (10th Cir. 2015)
- Axson-Flynn v. Johnson, 356 F.3d 1277 (10th Cir. 2004)
- Phelan v. Laramie Cty. Cmty. Coll. Bd. of Trs., 235 F.3d 1243 (10th Cir. 2000)
- Anderson v. Celebrezze, 460 U.S. 780 (1983)

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