

SUPREME COURT OF THE UNITED STATES

In the Matter of:)	
)	
NATALIE MEYER, COLORADO SECRETARY)	
OF STATE, AND DUANE WOODARD,)	
COLORADO ATTORNEY GENERAL,)	
)	
Appellants,)	
)	
v.)	No. 87-920
)	
PAUL K. GRANT, et al.)	

Pages: 1 through 41

Place: Washington, D.C.

Date: April 25, 1988

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1 IN THE SUPREME COURT OF THE UNITED STATES

2 -----X
3 NATALIE MEYER, COLORADO SECRETARY :
4 OF STATE, AND DUANE WOODARD, :
5 COLORADO ATTORNEY GENERAL, .:
6 Appellants, :

7 v. :

No. 87-920

8 PAUL K. GRANT, ET AL. :
9 -----X

10 Washington, D.C.

11 Monday, April 25, 1988

12 The above-entitled matter came on for oral argument
13 before the Supreme Court of the United States at 10:03 a.m.

14 APPEARANCES:

15 MAURICE G. KNAIZER, ESQ, Denver, Colorado
16 on behalf of the Appellants.

17 WILLIAM C. DANKS, ESQ, Denver, Colorado
18 on behalf of Appellees.

C O N T E N T S

ORAL ARGUMENT OF

PAGE

MAURICE G. KNAIZER, ESQ.

on behalf of the Appellants

3

WILLIAM C. DANKS, ESQ.

on behalf of the Appellees.

24

MAURICE G. KNAIZER, ESQ.

on behalf of the Appellants - Rebuttal

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1 P R O C E E D I N G S

2 (10:03 a.m.)

3 CHIEF JUDGE REHNQUIST: We'll hear argument first
4 this morning in No. 87-920, Natalie Meyer v. Paul K. Grant.

5 Mr. Knaizer, you may proceed whenever you are ready.

6 ORAL ARGUMENT BY MAURICE G. KNAIZER, ESQ.

7 ON BEHALF OF APPELLANTS

8 MR. KNAIZER: Mr. Chief Justice, and may it please
9 the Court:

10 The issue before the Court today is whether the State
11 of Colorado may prohibit payment to persons who are circulating
12 petitions to get an initiative measure on the ballot so long as
13 it does not otherwise prohibit payment or otherwise limit the
14 amount of money which proponents may spend.

15 The purpose of the initiative in Colorado is to
16 provide an alternative means through which the popular will may
17 be expressed. It is an addition to the already existing right
18 to petition the government. It is not a limit on the right,
19 but in fact extensive inherently. It provides a means by which
20 the public may pass, actually pass legislation when the
21 legislature, because of the influence of special interests, has
22 ignored the public will.

23 The initiative provisions provided for in the State
24 Constitution and by Colorado statute are designed to ensure
25 that the initiative remains a true alternative through which

1 the collective will may be expressed, and to ensure that the
2 integrity of the process remains in tact.

3 In order to secure the purposes, the people of the
4 State of Colorado, through both its constitute and its
5 statutes, have set forth procedures which must be followed
6 before a petition can get access to the ballot.

7 The petition circulator in this process plays an
8 absolutely crucial role which is in part set forth by the
9 constitution. He is not only the person who circulates the
10 petition, but by constitutional provision he is also the one
11 who transforms the petition into prima facie evidence that the
12 signatures on the petition are in fact true and correct, and
13 that the signatories are also registered electors of the State
14 of Colorado.

15 QUESTION: What qualifications does he have to have
16 under state law?

17 MR. KNAIZER: To be a petition circulator?

18 QUESTION: Right, for that august function?

19 MR. KNAIZER: Well, the only qualification that he
20 needs is to be a registered elector which in Colorado means
21 that he must be a resident of the State of Colorado, and
22 actually registered to vote.

23 QUESTION: Can he be a convicted felon?

24 MR. KNAIZER: If he is a registered elector, then
25 even if he is a convicted felon, yes, he can be permitted to

1 conduct the petition circulation.

2 QUESTION: I suppose he could also be at it if he had
3 been convicted of election fraud, too.

4 MR. KNAIZER: If he is allowed to vote. I believe
5 under Colorado law that if you are convicted, you may not be
6 allowed to vote, but, frankly, I am not sure of that. But if
7 he is allowed to vote and if he is registered, yes, indeed, he
8 can do that.

9 QUESTION: Mr. Knaizer, there is, I take it, a state
10 law in Colorado prohibiting and making a criminal offense the
11 use of forged signatures on these initiative measures?

12 MR. KNAIZER: That is correct. There is a forgery
13 provision in the state statutes.

14 QUESTION: And there is a requirement that every
15 person signing the initiative measure must be a qualified
16 voter?

17 MR. KNAIZER: Every person signing the initiative
18 must be a registered voter; that is correct.

19 I think there is one important point here. The issue
20 involved in this case is not necessarily just one of
21 prohibiting forgery. One of the reasons for the genesis of
22 this particular statute wasn't the fact that it was forgery.
23 It was the fact that it was difficult to determine whether or
24 not the people who were signing the petitions were in fact
25 qualified people.

1 What had happened historically was that, at least
2 between 1910 and 1941, was that Colorado had no prohibition on
3 petition circulators, that is, paying them. In the late '30s,
4 though, it became apparent that there were some abuses which
5 occurred. And basically what happened was that petition
6 circulators, in order to enhance the income that they were to
7 obtain from the circulation process, started to allow the
8 petitions to circulate without actually observing the
9 signatures being made.

10 In fact, those facts were outlined in the case of
11 Brownlow v. Wunsch which we had cited in our brief.

12 So the legislature felt that the process was itself
13 being undermined by the fact that nobody really knew who was
14 signing. It wasn't necessarily just a question of forgery.

15 QUESTION: Does the form of the initiative
16 circulation require the circulator to verify under oath that
17 everyone signed in his presence?

18 MR. KNAIZER: Yes, the voters who are signing the
19 petition don't have to sign an affidavit.

20 QUESTION: No, but the petition circulator has to.

21 MR. KNAIZER: The petition circulator must --

22 QUESTION: And it would be a criminal offense to
23 falsely swear that people had signed in the circulator's
24 presence if that were not the case.

25 MR. KNAIZER: It would be a criminal offense to

1 falsely swear, that is true.

2 I would like to add, though, that the criminal
3 offense may not be enough in this case to satisfy the
4 particular problem. As this Court noted in Buckley v. Valeo
5 when it was discussing the question of whether or not criminal
6 sanctions were sufficient with regard to contributions, the
7 Court noted that only in blatant sorts of cases would the
8 criminal offenses be sufficient.

9 There was some concern expressed by the Court in
10 Buckley about a prophylactic sort of measure in certain
11 instances to avoid corruption or the appearance of corruption,
12 and we believe that's what has occurred in this particular
13 case.

14 QUESTION: Are there any other states that have this
15 particular provision prohibiting the use of paid circulators?

16 MR. KNAIZER: There were, but the courts have fairly
17 frequently repealed, or not repealed, but declared the statutes
18 to be unconstitutional.

19 QUESTION: Do you know of any other state presently
20 that makes use of the initiative which has such a law?

21 MR. KNAIZER: I believe Washington may. Nebraska did
22 until about a month ago, and for the last three or four years
23 those have really been the only states which have had the
24 prohibition.

25 QUESTION: The election in question here, the

1 initiative measure was for a constitutional amendment having to
2 do with removal of motor carriers from the jurisdiction of the
3 Public Service Commission?

4 MR. KNAIZER: That's right. It was deregulating the
5 transportation industry in general.

6 QUESTION: And the election has long since passed.

7 MR. KNAIZER: The election has long since passed,
8 that is correct.

9 QUESTION: Has that provision ever been enacted, the
10 change, the proposed change?

11 MR. KNAIZER: Oh, the deregulation.

12 No, it has not.

13 QUESTION: And is it still an issue? The case is not
14 moot, in your view?

15 MR. KNAIZER: Well, no. In our view, it is not,
16 because in Colorado this question arises every general
17 election. It arises every two years.

18 So, for example, in Colorado now there are two or
19 three measures which people are trying to get on the ballot.
20 And so for us it's an issue that comes up every two years, and
21 we feel it's the sort of issue that is capable of repetition
22 yet evading review.

23 QUESTION: Mr. Knaizer, was there some basis for the
24 legislature singling out petitions that were circulated by
25 people who were hired to do it as opposed to volunteers?

1 Were they considered to be a greater cause of this
2 evil of not being sure that you've got registered voters to
3 sign it?

4 MR. KNAIZER: Yes. As I understand the legislative
5 history, the legislative -- the prohibition was designed
6 specifically to take care of a problem which in fact existed.
7 As I had mentioned in the case --

8 QUESTION: Well, you described the problem as being
9 the fact that the circulators did not really pay any attention
10 to who was signing.

11 Did the legislature focus in some way on the fact
12 that they thought paid circulators were more guilty of this
13 type of activity than unpaid?

14 MR. KNAIZER: There was no legislative history that I
15 could find at the time. The only connection that we could make
16 was between that case of Brownlow v. Wunsch, which outlined the
17 facts, and the fact that in the next legislative session the
18 legislature prohibited paid petition circulators.

19 In that Brownlow v. Wunsch case, the Supreme Court
20 made specific mention of the potential abuses that could occur
21 because of paid petition circulators. The Court itself singled
22 it out, and in the next legislative session, and in that time
23 it was held biannually, the Court took care of the problem by
24 singling out paid petition circulators.

25 QUESTION: Could you spell out those abuses?

1 MR. KNAIZER: Well, the abuses that were --

2 QUESTION: You speak generally of abuses. I would
3 like to know what they were.

4 MR. KNAIZER: Okay. The abuses were essentially --
5 well, let me back up a little bit.

6 One of the concerns that Colorado has is that there
7 be a significant modicum of support for each measure. And, of
8 course, that is determined by the number of signatures that you
9 get.

10 And so if the measure is circulated, you really
11 don't, and the petition circulator is not there to observe, you
12 really don't have an idea if the people are reading the
13 provision, have read the provision, understand it.

14 There also is the possibility of fraud but, frankly,
15 that wasn't -- as far as I could tell in Brownlow v. Wunsch,
16 that was not an issue in that case.

17 QUESTION: Isn't that true with respect to volunteer
18 solicitors, too?

19 MR. KNAIZER: There has been no indication at least
20 in Colorado that it was true.

21 Can it happen? Yes, it can happen. To our
22 knowledge, it hasn't occurred, at least in the State of
23 Colorado.

24 QUESTION: Don't you think it's more likely to
25 happen. It seems to me the legislature's judgment is

1 absolutely counter-intuitive. Let's assume I am running a
2 business, petition circulators, and I get paid for circulating
3 petitions and getting signatures.

4 Don't you think that I would be much more concerned
5 about having my petition thrown off the ballot because of too
6 many signatures that weren't valid than would, you know,
7 innumerable volunteers who just go around and get signatures?

8 I would think that there is a market incentive for
9 the paid circulator to be sure that he's getting proper
10 signatures. And what incentive is there for the volunteer?

11 MR. KNAIZER: Well, I would think that the opposite
12 in fact may be true, because the volunteer, at least conceived
13 under the Colorado law, really has an interest in getting the
14 measure on the ballot, and wants to make sure the measure stays
15 on the ballot. So he would have more of an interest in making
16 sure that the process is handled correctly so that his measure
17 can ultimately succeed. Whereas the paid circulator is really
18 just interested in getting the money, and perhaps maybe hopeful
19 that he doesn't get caught by padding the petitions.

20 QUESTION: You think he doesn't care if it's grown
21 out? It seems unlikely to me.

22 MR. KNAIZER: I'm sorry, I didn't hear the last part.

23 QUESTION: It seems unlikely to me that a paid
24 circulator would not care.

25 Do you know whether these paid -- are there any

1 businesses of paid petition circulators, or is it the case that
2 most of the paid circulators are people who in fact favor the
3 measure but they just can't afford to take a day off from their
4 jobs? So the organization that furthers the measure says, you
5 know, we have some funds and we'll pay you half of what your
6 salary is if you take the day off to circulate on behalf of the
7 cause.

8 MR. KNAIZER: It's really both. There is a growing
9 industry where firms are actually paid to circulate petitions.
10 In fact, in California, it's my understanding that it's a
11 multi-million dollar industry.

12 However, there are circumstances such as existed in
13 this case where basically it is people who want to take a day
14 off, or want to pay somebody to substitute for them. So you
15 really do get a combination of both. There is no question
16 about that.

17 QUESTION: May I ask if it's a violation of the
18 statute for a person to say ask his son or daughter to go
19 around the neighborhood getting signatures of the people that
20 the family knows, and then the person who makes the affidavit
21 says, to the best of his or her knowledge, these signatures are
22 registered voters and so forth. That wouldn't violate the
23 statute, would it?

24 MR. KNAIZER: No, if the daughter was a registered
25 elector --

1 QUESTION: No, the daughter is not. My assumption is
2 that the parent is a registered elector, and the parent will
3 sign the statement and the affidavit that will ask the kids in
4 the family to take them to people that the parent reasonably
5 believes to be electors.

6 Would that violate the statute?

7 MR. KNAIZER: That would violate the statute.

8 QUESTION: Because it just says -- as you read and
9 describe in your brief, you say they sign an affidavit saying
10 that each signature is a signature, to the best of their know,
11 is the person whose name it purports to be, and that to the
12 best of their knowledge and belief each person is --

13 MR. KNAIZER: Well, really what that is geared to is
14 the --

15 QUESTION: But I do not think the statute requires
16 that you witness the signatures, does it?

17 MR. KNAIZER: Well, there was -- I believe in that
18 same Brownlow v. Wunsch case, there was an -- well, that was
19 before --

20 QUESTION: Well, that was before that was enacted.

21 MR. KNAIZER: But there hasn't been any case that
22 interpreted that particular statute. But the whole purpose is
23 to make sure that the person who is signing his name is the one
24 who he purports to --

25 QUESTION: No, in the circular it says, to the best

1 of my knowledge and belief, he is registered.

2 MR. KNAIZER: Right.

3 QUESTION: So I assume normally what happens is you
4 meet somebody on the street and you say, are you a registered
5 voter. He says, yes, and you can sign him up.

6 MR. KNAIZER: No, our belief is that sending your
7 daughter out would violate the statute. You are really
8 supposed to witness the signature.

9 The earlier cases of Brownlow v. Wunsch did say that
10 if you actually recognize the signature, you could -- that
11 would be satisfactory. But I think the passage of this statute
12 takes care of that. And as far as I know, the practice has
13 been to require the petition circulator to actually observe the
14 signing of the petition.

15 QUESTION: Of course, that is the safest, but I am
16 not sure the language of the statute commands that.

17 MR. KNAIZER: Well, that is the way the Secretary has
18 interpreted it over the years.

19 QUESTION: Now, how has it been interpreted? Has
20 this been a lot of litigation interpreting this statute?

21 MR. KNAIZER: No, in fact --

22 QUESTION: Have there been many cases interpreting
23 the statute?

24 MR. KNAIZER: One, but not interpreting this
25 particular provision. There was a case of Urevich v. Woodard

1 which addressed the question of the word "inducement" in that
2 statute. And in that particular case, the Colorado Supreme
3 Court said that the term "inducement" was overbroad and
4 therefore declared that portion of the statute
5 unconstitutional. The rest of it remained.

6 And to my knowledge, that is the only reported case
7 involving the statute, either criminal, or declaratory, or
8 otherwise.

9 Let me just address briefly the issue of why a
10 registered elector is necessary. The registered elector, as I
11 said, is both the person who is a citizen of the State of
12 Colorado and registered to vote. That provision was put in
13 there by the people of the State of Colorado in 1980.

14 It used to be that there was -- that the only person
15 who could circulate the petition was a qualified elector. A
16 qualified elector was just basically a resident of the state
17 who in fact may or may not want to vote, and may or may not
18 have been registered.

19 The people of the State of Colorado, in the
20 constitution in 1980, determined that they wanted to basically
21 upgrade the position of the petition circulator by making him a
22 registered elector. And our belief is that they did that
23 because they really wanted to establish not only ties to the
24 community, but also ties to the election process. They really
25 believed that it was important that the registered elector be a

1 person who was a believer and actually tied into --

2 QUESTION: But a paid elector has to meet -- a paid
3 circulator has to meet that requirement, too, doesn't it?

4 MR. KNAIZER: A paid circulator has to meet that
5 requirement. But the problem with the paid circulator is that
6 there is an inducement -- there is basically another God, if
7 you will, another boss. He is a representative, that is, the
8 petition circulator is a representative of the people, but he
9 is also, in essence, an employee of the person who is paying
10 him. And we believe that under those circumstances you end up
11 with a situation where the person -- when you end up creating
12 an appearance of corruption, or at least an appearance of undue
13 influence.

14 The purpose of the petition circulator is to verify
15 signatures. That's set out in the constitution itself. By
16 paying him at that point, you perhaps give people the
17 impression that he may not be concentrating on his job of
18 verifying signatures, but may in fact be adding signatures in
19 order to increase the income he could have from the circulation
20 of the petition.

21 QUESTION: What would happen if you gave him lunch
22 money?

23 MR. KNAIZER: In Colorado, you can't do that. You
24 cannot be paid period.

25 QUESTION: Can't give them anything.

1 MR. KNAIZER: No, he is not -- in Nebraska, for
2 instance, --

3 QUESTION: He couldn't get bus fare either?

4 MR. KNAIZER: Couldn't get bus fare either, that's
5 correct.

6 QUESTION: Whereas you do have an impartial
7 adjudicator of the petitions if the person is not being paid,
8 but is a zealous, fiery-eyed proponent of the legislation that
9 is being proposed. That poses no problem. Only money can
10 corrupt; not ideology, is that the theory of the legislature?

11 MR. KNAIZER: I'm not sure it's as black and white as
12 that. But basically --

13 QUESTION: Is it even gray? I mean, why does one
14 think that there is any less incentive on the part of someone
15 who is being paid to get a certain number of valid petitions?
16 He is certainly not being paid to get invalid petitions. Why
17 would he have less incentive than the zealous advocate of the
18 measure on the ballot?

19 MR. KNAIZER: Well, the experience in Colorado was in
20 fact that paid petition circulators weren't as careful about
21 the collection of signatures.

22 QUESTION: I thought you said before there was no
23 evidence as to --

24 MR. KNAIZER: No, there was evidence -- there was an
25 evidence of fraud. There was evidence that in fact the

1 petition circulators had not properly circulated petitions.

2 QUESTION: Was there evidence that they were more
3 careless than the fire-eyed zealots were?

4 MR. KNAIZER: There was evidence that -- well, there
5 was no evidence regarding the fiery-eyed zealots. There was
6 evidence regarding the paid petition circulators.

7 QUESTION: That they were careless, but then
8 everybody may have been careless as far as the legislature
9 knew.

10 MR. KNAIZER: Well, as far as the legislature knew
11 everybody wasn't careless. The paid petition circulators were
12 more so.

13 QUESTION: Why was not everybody careless? Why did
14 the legislature know that? Was there evidence that when the
15 proponent of the measure himself gets the signatures there,
16 they are all okay?

17 MR. KNAIZER: There wasn't evidence that when the
18 proponent obtained it, they were all okay. But there was
19 evidence that the process was more abused by the paid petition
20 circulators.

21 QUESTION: When you say more, there was evidence that
22 it was abused. What evidence was there that it was more
23 abused? You can't establish that it was more abused without
24 knowing either that it was not at all abused, or that it was
25 less abused by others. Was there any such evidence?

1 I thought you said there wasn't.

2 MR. KNAIZER: There wasn't any that was in that case.

3 QUESTION: So the only evidence really was that it
4 was abused.

5 MR. KNAIZER: That's correct.

6 QUESTION: And we don't know whether it was any more
7 abused by the paid circulators or not.

8 MR. KNAIZER: That's correct.

9 QUESTION: Would you say in this particular case the
10 abused did result from the activities of paid circulators?

11 MR. KNAIZER: The abuse did result from the
12 activities of paid circulators; that is correct.

13 Basically it is our position in this case that what
14 is regulated is in fact conduct. The paid petition circulator
15 is the verifier of the signatures. That is conduct. It is not
16 speech. It is true that petition circulators can advocate.
17 They are not prohibited from advocating. The only thing that
18 they cannot do is tie in their advocacy to payment for
19 circulating the petitions themselves.

20 So we believe that really all there is is conduct in
21 this particular case.

22 QUESTION: Well, what about the fund raising cases?
23 How about the charity drives?

24 MR. KNAIZER: Okay. In Village of Schaumburg and
25 Munson, for example, the two cases that come to mind, in those

1 cases there were absolute prohibitions. For example --

2 QUESTION: Well, I know, but the cases -- the cases
3 don't say that because the circulator or the fund raiser not
4 only advocates but takes money, that he isn't protected by the
5 First Amendment.

6 MR. KNAIZER: That's correct.

7 QUESTION: Taking the money is like getting the
8 signature, isn't it? Conduct.

9 MR. KNAIZER: If you look at it in that context,
10 that's correct. But I think what you are really looking at
11 here is -- you have to look at it in the election context
12 itself.

13 This person is performing a function, really a quasi-
14 public function on behalf of the State of Colorado, and the
15 people of the State of Colorado in the sense that he is
16 verifying signatures. It's really no different in that
17 particular sense from an election judge who signs you in when
18 you in fact go into vote.

19 So in that sense, it's conduct. I think what the
20 election judge is doing when he signs you in is conduct, and
21 what is happening with the petition circulator, at least with
22 regard to the verification of the petitions, is also conduct.

23 QUESTION: Well, but they also have to express the
24 point of view of the people seeking the change particularly to
25 get a signature on an initiative.

1 Isn't speech required in a very core area of First
2 Amendment protection here?

3 MR. KNAIZER: Speech --

4 QUESTION: Political issues, and issues of public
5 concern, and what's at stake here is whether the person putting
6 this measure, proposing to put it on the ballot can expend
7 money to have that message carried to the voters?

8 MR. KNAIZER: The people in Colorado can expend money
9 in any fashion to bring that message to the voters. The amount
10 of money is unlimited, and the types of things that you can
11 spend the money on --

12 QUESTION: Well, they want to spend it on paying
13 people to offer to voters the petitions.

14 MR. KNAIZER: The people who circulate the petitions
15 can't speak, they cannot be paid. It is true that the people
16 in this case want to pay the petitioners. However, the people
17 of the State of Colorado, in passing the constitutional
18 amendment regarding initiative, said that the petition
19 circulator has to be the verifier. It is the general will of
20 the people that the verification process becomes the primary
21 function.

22 Now the proponents of a particular election can
23 choose to mesh the two. But if there is a conflict, then the
24 primary function set out by the statute is in fact the one that
25 has to take precedence.

1 QUESTION: Counsel, when the petition circulator
2 accosts somebody on the sidewalk and says, are you a registered
3 voter, and the man says, yes, how does he verify that?

4 MR. KNAIZER: He just takes the word of the
5 registered elector.

6 QUESTION: Well, what's the difference whether he's
7 paid or not?

8 MR. KNAIZER: Well, the elector also has certain
9 other functions other than to verify that it's a registered
10 elector. He has to verify in fact that the person who signs
11 the petition is the one who -- is the one who actually signed
12 it; that is, nobody sign for him. So there are more functions.

13 QUESTION: Nobody verified that he's a voter.

14 MR. KNAIZER: Nobody verifies that he's a voter.

15 QUESTION: The problem of my own experience in that
16 sort of work is not that a lot of people from New York would
17 sign this petition in Colorado, but that a circulator is going
18 to open up the phone book and just write a bunch of names and
19 addresses out of the phone book in kind of phony handwriting
20 that nobody -- that no one ever signed.

21 Now is that part of the evil?

22 MR. KNAIZER: That's part of the evil. I can tell
23 you that that was a fact that was found by the courts, but in
24 fact I think that's part of the concern. That's a more blatant
25 aspect of it, but it definitely is part of the concern.

1 QUESTION: But there are forgery statutes out there
2 making it what, a felony?

3 MR. KNAIZER: There are forgery statutes which makes
4 it a classified felony for the -- yes, a classified felony,
5 that's correct.

6 QUESTION: Mr. Knaizer, I am frankly not bowled over
7 by the more significant danger of the paid circulator as
8 opposed to the volunteer circulator, but you made another
9 argument in your brief which was that the initiative after all
10 is a device that was a product of the populist era, and it was
11 directed against monied interest and it's contrary to the whole
12 spirit of the thing to have the monied interests running the
13 initiative.

14 You have dropped that argument, or do you still think
15 it's a --

16 MR. KNAIZER: Well, I think it's an underlying
17 argument. We weren't trying to say that money wasn't a part of
18 the process, or could not be a part of the process.

19 However, we didn't want money to reach the point
20 where it overwhelmed the entire purpose of the initiative in
21 the first place.

22 QUESTION: Don't the monied interests do better in
23 the legislature than they do in the -- you know, I mean don't
24 the money interest have full-time lobbyists at the legislature
25 and isn't it better to be able to use a little bit of money to

1 counteract that through an initiative?

2 MR. KNAIZER: It depends on the issue. Sometimes in
3 Colorado the experience has been that in fact money interests
4 don't get what they want from the legislature, and attempt to
5 influence the process by flooding the political market.

6 QUESTION: Where were the monied interests in this
7 case?

8 MR. KNAIZER: In this case, there weren't monied
9 interests.

10 QUESTION: There weren't?

11 MR. KNAIZER: As far as we could tell.

12 QUESTION: The trucking industry that's regulated in
13 the state was sort of neutral on this? It didn't care whether
14 entry was open or not.

15 MR. KNAIZER: I'm just speaking from the record.

16 QUESTION: Oh, I see.

17 MR. KNAIZER: And I have to admit from the record
18 that we couldn't tell.

19 QUESTION: What was the group that was circulating
20 the petition? It was the Libertarian Party?

21 MR. KNAIZER: I'm sorry?

22 QUESTION: Was it Libertarian Party?

23 MR. KNAIZER: Well, actually it was the corporate
24 side, as I understand it, of the Libertarian Party, something
25 called Coloradans for Free Enterprise.

1 If you are asking me to speak from the record, there
2 wasn't any indication in the record that there was a lot of
3 money involved, but certainly I think the surmise is correct
4 that the trucking industry, at least in part, would have been
5 happy with the deregulation of the industry.

6 I'd like to reserve -- I'm sorry.

7 QUESTION: Well, I had raised my eyebrows. I wasn't
8 necessarily going to ask a question.

9 MR. KNAIZER: Okay.

10 QUESTION: Again, my own experience is that a lot of
11 the trucking industry wouldn't have been at all happy with the
12 deregulation. That some of the people who wanted to get into
13 the industry would, and the people who are already there
14 generally like it regulated.

15 MR. KNAIZER: What I would like to do is to reserve
16 the remainder of my time for rebuttal.

17 CHIEF JUSTICE REHNQUIST: Thank you, Mr. Knaizer.

18 We will hear now from you, Mr. Danks.

19 ORAL ARGUMENT BY WILLIAM C. DANKS, ESQ.

20 ON BEHALF OF APPELLEES

21 MR. DANKS: Mr. Chief Justice, and may it please the
22 Court:

23 I appear before you today representing five
24 individuals and a corporation. My brother from the Colorado
25 Bar, the Assistant Attorney General, appears representing two

1 state elected officials. There is a certain irony, however,
2 though in our respective representations.

3 Mr. Knaizer appears as a paid advocate, whereas I,
4 more by circumstance than by choice, appears as an unpaid
5 advocate.

6 (Laughter.)

7 I trust that any remarks I make in favor of paid
8 versus unpaid will not be applied to my situation.

9 In this case, the same five individuals incorporation
10 which have sent me to Court today to argue before the highest
11 Court in our land, and try to convince you of the merit of
12 their cause, also wished to hire advocates to go on the streets
13 of the State of Colorado and to approach registered voters with
14 their petitions, and ask these registered voters if they would
15 sign the petition.

16 They were involved in a basic First Amendment right,
17 the right of free speech, and they were talking about certain
18 fundamental political issues. They were advocating a
19 deregulation of the motor carrier industry. And in this case,
20 I submit that my clients were a grass roots campaign. They
21 were seeking to change the status quo, and it was the status
22 quo that, by and large, was opposed by the trucking industry;
23 not entirely though. Certain trucking companies, for example,
24 Acme Delivery Service, had service throughout the metropolitan
25 Denver, but wished to have statewide authority. Certain other

1 trucking industries wanted to be free from price regulation.

2 These are the types of arguments which petition
3 advocates would go before the voters and say, these are the
4 reasons why we wish you to sign our petition, and they would
5 engage the voter in a dialogue. And it was often a painful
6 process. To approach someone cold on the street is not an easy
7 task. There is testimony in the record that it's a difficult
8 task, but the petitioner circulator who does this for several
9 hours, and is turned away, often without even given the chance
10 to articulate his views, gets discouraged.

11 The testimony was that money motivates people to
12 work. And while the volunteer motivated, money can also
13 motivate someone. And in order for my clients, the five
14 individuals in the corporation to get this issue on the ballot,
15 they had to obtain some 46,000 plus signatures. Those five
16 individuals couldn't do the job by themselves. They either had
17 to get someone else to volunteer their time, or they had to get
18 other advocates to go out there.

19 Now the question has been raised, is there -- you
20 know, is there a split between a volunteer versus a paid. Is
21 it completely one or the other. I would submit the record is
22 different, that you get a combination of the two in the typical
23 campaign. What you get are volunteers that are interested in
24 the measure, but who could also be motivated by a certain
25 amount of compensation, and money, at least enough to make it

1 worth their while to go out on the street in this type of a
2 fashion.

3 QUESTION: Mr. Danks, do you pay them by the
4 signature?

5 MR. DANKS: Were we going to -- I don't know the
6 answer to that question. We hadn't decided whether we were
7 going to pay them by the signature or flat rate. The statute,
8 though, would prevent either a flat rate or payment based upon
9 the number of signatures.

10 And a statute more narrowly drawn to cover that
11 problem might state that payment based upon productivity or the
12 number of signatures would be prohibited, but this statute
13 covers both.

14 QUESTION: Well, Mr. Danks, do you concede that there
15 is a valid state interest in regulating the conduct of petition
16 circulators?

17 MR. DANKS: For purposes of preventing fraud? I
18 think that there are other state statutes.

19 QUESTION: And the purposes that the state is urging.
20 Do you concede that that is -- those interests are valid state
21 interests?

22 MR. DANKS: I concede that there is a valid state
23 interest in having petitions that do not contain forged
24 signatures, and I concede that there is a valid state interest
25 in having a modicum of support.

1 QUESTION: And if there were some regulation to the
2 effect that you couldn't pay them by the number of signatures
3 obtained, would you say that might be valid?

4 MR. DANKS: It might be valid. It presents a
5 different or more difficult question.

6 Certainly attorneys or other advocates are paid based
7 upon productivity, and they are not always paid strictly on an
8 hourly basis, and our system rewards productivity.

9 Now the concept of paying someone, and therefore they
10 are going to violate the law because they are paid, I don't
11 accept. And it seems to me that if someone were adequately
12 paid -- as a matter of fact, the better paid persons are
13 probably the more competent and more careful in their work.

14 QUESTION: Could the state require paid petition
15 circulators to be licensed?

16 MR. DANKS: I believe they could. They could go
17 through training sessions. If their concern was really to make
18 sure that the circulators do a good job, they could be more
19 careful in their screening of the types of individuals that are
20 selected for petition circulators. They could have training
21 programs and more of an educational function.

22 QUESTION: Well, you may not accept yourself the
23 notion that pay encourages a violation of the law, but let's
24 assume that the legislature thought that it did. They found
25 that there was this problem.

1 We don't have to disagree with the legislature to
2 rule for you, do we?

3 MR. DANKS: Justice White, you wrote on that point, I
4 believe, in Monroe. And I would consider this a different type
5 of case. I don't consider this a ballot access case, but
6 rather, I consider this a free speech case.

7 QUESTION: Well, but even if there is a problem like
8 the legislature identified, that doesn't mean that you lose the
9 case. That just means the speech interest overrides the
10 interest the legislature identified.

11 MR. DANKS: I believe I would agree that they have to
12 show there is a compelling state interest, and that they have a
13 heavy burden to meet that this is the most exacting, or the
14 easiest way to meet their problem.

15 I might also point out that this issue of fraud was
16 not an argument that was raised by the State of Colorado in the
17 trial court. This issue of fraud specifically was denied as
18 being a purpose by the Attorney General who tried the case, who
19 was a different Attorney General from the one that appears
20 before you today.

21 But in closing arguments, the Attorney General stated
22 as follows in the transcript that appears at Page 111. "The
23 Plaintiffs argue that the only arguable state interest at stake
24 in this case is to prevent fraud, and we disagree. That is not
25 the state interest that we ask this court to consider."

1 So before the trial court, their position was that
2 this statute was not designed to prevent fraud.

3 QUESTION: And your position was that it was designed
4 to prevent fraud.

5 MR. DANKS: Well, we were struggling to find out what
6 their interest was. I was struggling. If you read the
7 closing arguments, the closing arguments are not included in
8 the joint appendix; we have only included the testimony. But
9 in the closing argument there was a dialogue with the trial
10 court as to what is the state interest. And I was struggling
11 to figure out now what is this. They keep talking about the
12 integrity of the process; does this mean fraud or what does it
13 means. And there was a dialogue, and the state Attorney
14 General says quite flatly that they are not trying to state
15 that the statutes are there to prevent fraud.

16 QUESTION: Mr. Danks, I am a little concerned about
17 your response to Justice O'Connor's last question. I sort of
18 find it surprising that a man who is here on behalf of a group
19 that wanted to deregulate trucking favors, or says it's
20 perfectly okay to regulate petition circulation.

21 I mean you understand what will happen if you require
22 petition circulators to be licensed and to undergo training
23 courses as you say, and so forth. It will be more expensive to
24 hire petition circulators, just as I assume you said to the
25 voters of Colorado, it was more expensive to hire truckers.

1 Do you think that's perfectly okay to have
2 petitioner circulators licensed the way you have a real estate
3 broker's license, or a barber's license or something like that?

4 You are sure that is all right as far as you are
5 concerned.

6 MR. DANKS: I see the point you are raising.

7 QUESTION: Your group will be spending a lot more
8 money.

9 MR. DANKS: All right. I am an advocate, and I am
10 attempting to have this statute declared unconstitutional. And
11 from my perspective today, I am arguing that there are other
12 ways to get at these problems.

13 If one of the problems is that the petition
14 circulator is not well trained, then perhaps the state
15 legislature should attack that problem directly.

16 I don't know, and I haven't given that maybe careful
17 enough study, but it seems to me that there are other methods
18 to attack a problem directly. In my mind, there is no
19 correlation between being paid versus unpaid and the quality of
20 the petition circulator.

21 My argument today is that in fact a paid circulator
22 is probably going to be a better circulator than the unpaid
23 circulator.

24 QUESTION: That's fine. I just hope you are not
25 inviting an opinion that says it's okay because you could

1 license petition circulators after all.

2 MR. DANKS: No, sir, I am not.

3 QUESTION: May I ask you what the state interest the
4 state relied on in the trial court was if it wasn't fraud?

5 MR. DANKS: They argued two points. They would talk
6 about the integrity of the process. And I had difficulty
7 pinning down what integrity means. In essence, I believe they
8 were arguing that there must be some sort of a grass roots
9 campaign, and that by paying petition circulators you are going
10 to be violating that. And that is the integrity they were
11 talking about.

12 The other aspect of their state interest was that
13 they felt there was some sort of correlation between the number
14 of volunteers and the ultimate success on the merits, and this
15 goes to their modicum of support. Somehow that if you have
16 sufficient fiery-eyed petition circulators to go out and gather
17 these signatures, then probably you are going to have enough
18 votes at the general election to have the thing passed.

19 Those were the two arguments that were raised at that
20 time.

21 And regarding the modicum of support, Colorado, of
22 course, has a provision in the constitution that requires 5
23 percent of the electors who voted in the last Secretary of
24 State's election who must sign this petition. So we are
25 talking about, in our case, 46,000 plus signatures, and this

1 establishes that modicum of support.

2 I would submit that there is a state interest in
3 making sure that the ballot is not cluttered with issues that
4 have no chance of passing. But this interest is protected by
5 having a 5 percent petition signature requirement.

6 QUESTION: Mr. Danks, is there any reason why you
7 think this same issue is going to arise between you and the
8 state in the future?

9 MR. DANKS: Well, the issue of deregulation is still
10 a lively topic in Colorado. The motor carrier industry is
11 gradually being deregulated; household goods one session;
12 another session, the taxicab drivers. It is a recurring issue.

13 This petition drive certainly was hurt by our
14 inability to pay petition circulators. We did not qualify for
15 the ballot. But there is certainly an interest among my
16 Plaintiffs to pursue this matter, and in fact are pursuing this
17 matter.

18 QUESTION: You mean by pursuing it, undertake another
19 initiative?

20 MR. DANKS: Yes, that is within the realm of
21 possibility. I am not saying that we have one organization
22 that's ready to go tomorrow, but it's certainly one of the
23 methods of approach. And if we were successful in this, that
24 would certainly be a boost to us.

25 The trouble with our issue is it's not the kind of

1 issue that raises emotions. Deregulation of motor carriers,
2 while it's of interest to me and it's certainly bothers certain
3 small businessmen who have gone and applied for authority and
4 have been turned down, while they can get excited about it, the
5 general public does not get excited on this issue. And to be
6 able to pay petition circulators in our case would certainly
7 help us a great deal.

8 QUESTION: Mr. Danks, may the state forbid paying
9 people to sign?

10 MR. DANKS: May the state --

11 QUESTION: You go around, a person collecting
12 signatures goes around and is in the neighborhood, and
13 acquaints a person with what the issue is, and says, by the
14 way, \$5.00 if you sign.

15 MR. DANKS: Yes, the state statute -- no, you can't
16 pay someone to --

17 QUESTION: Well, is it legal for the state to forbid
18 that?

19 MR. DANKS: Yes, I'm sure that it's also in the
20 constitution, although now that you ask --

21 QUESTION: Well, I know that it may be, but I just
22 wondered if it would be constitutional to forbid paying a
23 person to sign.

24 MR. DANKS: Yes, I think -- in other words, would it
25 be constitutional under the First Amendment, not just under our

1 Colorado Constitution?

2 Well, certainly it would, because the state can have
3 an interest in guaranteeing, you know, 5 percent of the
4 populace support this. And if you have forged signatures,
5 obviously you are not going to have your 5 percent.

6 The state had an interest in preventing -- certainly
7 the state can regulate conduct that defeats that 5 percent
8 modicum of support.

9 QUESTION: Well, what if a circular just goes out and
10 offers \$2.00 to everyone who will sign if you are a registered
11 voter and otherwise qualified, can the state prohibit the
12 offering of money for perfectly good signatures?

13 MR. DANKS: I believe it can, because the goal is to
14 have 5 percent of the people sign, and by signing they are
15 stating that they want this issue on the ballot.

16 QUESTION: Well, presumably if they sign, they are
17 doing whatever the state says they should do to have the issue
18 on the ballot, but they are also getting two bucks for it.

19 MR. DANKS: Well, they may be, but then you have a
20 factual issue as to whether they signed it for the \$2.00 or in
21 order to get it on to the ballot.

22 QUESTION: So you say the state could prohibit the
23 payment of money to people as a consideration for their
24 signing.

25 MR. DANKS: Yes, and then we get into a balancing

1 test I believe as well. That's a direct method of dealing with
2 a problem. In other words, a prohibition directly against
3 paying someone to sign the petition, whereas this is a very
4 indirect method in which we are somehow saying that by paying
5 someone as an advocate they are more likely to go that extra
6 step and then pay the person for actually signing the petition.
7 It's that second leap that I am arguing is not proper; that the
8 statute can deal with the problem directly.

9 QUESTION: Mr. Danks, I'm sorry to come back to this,
10 but it's a point that's very important to me. I am afraid it's
11 really not enough for me that it's within the realm of
12 possibility that one of these Plaintiffs might be involved in
13 another initiative.

14 Do you think it's probable, likely that any of them
15 would? Isn't one of the individual Plaintiffs an officer in
16 the Libertarian Party?

17 MR. DANKS: He was at that time.

18 QUESTION: At that time.

19 MR. DANKS: Nancy Bigbee, one of the Plaintiffs, is a
20 transportation lawyer, and that's a very important issue to
21 her. She represents clients that continually are going before
22 the Public Utilities Commission. And I can represent to you
23 that Nancy Bigbee would be interested in -- as a probability
24 would be interested in going forward with the initiative.

25 Some of the other -- all right, we're talking about

1 Paul Grant. We're talking about a case that was four years
2 ago, and I'm not trying to say that this case is moot. But
3 when we were unable to pay petition circulators, this hurt our
4 effort, and it took a lot of momentum out of the movement.

5 Nancy Bigbee I would say is probably the principal
6 mover behind this issues at today's date, and she wishes to go
7 forward with it.

8 Thank you very much.

9 CHIEF JUSTICE REHNQUIST: Thank you, Mr. Danks.
10 Mr. Knaizer, you have two minutes remaining.

11 ORAL ARGUMENT BY MAURICE G. KNAIZER, ESQ.

12 ON BEHALF OF APPELLANTS - REBUTTAL

13 MR. KNAIZER: I would just like to make a brief
14 comment. I think when reviewing this case, we would like the
15 Court to understand and to review what the initiative process
16 really is, and the fact that the whole process and the way it
17 was designed by the people of the State of Colorado was to
18 provide for additional public discourse. And that the people
19 of the State of Colorado, through its legislature, believed
20 that this prohibition is designed to provide exactly that; it's
21 a narrowly drawn prohibition that was designed to attack one
22 problem, the problem that in fact existed in the legislature's
23 eyes, and that is all that is prohibited.

24 QUESTION: You still say as of now fraud is the
25 purpose.

1 MR. KNAIZER: Fraud is --
2 QUESTION: I mean is fraud in or out of the case as
3 of now?
4 MR. KNAIZER: I'm sorry, I didn't hear that.
5 QUESTION: Is fraud in or out?
6 MR. KNAIZER: Fraud is in as an underlying purpose.
7 I do agree with Mr. Danks that there was a statement made at
8 the hearing in the district court that fraud was not an issue.
9 I would also like to point out, though, that in the district
10 court's opinion, Judge Moore's opinion, he indicated a concern
11 for the integrity of the process because of padding of
12 petitions, and there was a statement in the case regarding
13 padding of petitions by the expert for the State of --
14 QUESTION: Isn't that fraud or not?
15 MR. KNAIZER: Not necessarily, and that's the
16 distinction.
17 QUESTION: That's the whole point. I thought that in
18 your initial presentation you said fraud wasn't -- perhaps
19 wasn't as important as something else, which I take it you
20 think isn't fraud, if you paid the --
21 MR. KNAIZER: Let me see if I can make the
22 distinction again.
23 The petitioner circulator may -- may I answer the
24 question?
25 QUESTION: Yes, you may.

1 MR. KNAIZER: The petition circulator may be in a
2 position where he decides to pass the petition around.

3 QUESTION: Yes.

4 MR. KNAIZER: And he doesn't see who signs it.

5 QUESTION: But you say that he is supposed to witness
6 the signatures.

7 MR. KNAIZER: He is supposed to witness --

8 QUESTION: And if he turns in his certification
9 representing that he did, isn't that fraud?

10 MR. KNAIZER: Well, that is fraud, but I was talking
11 about the signature of the electors themselves.

12 QUESTION: Okay.

13 MR. KNAIZER: Thank you.

14 CHIEF JUSTICE REHNQUIST: Thank you, Mr. Knaizer.

15 The case is submitted.

16 (Whereupon, at 10:50 o'clock a.m., the case in the
17 above-entitled matter was submitted.

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REPORTER'S CERTIFICATE

DOCKET NUMBER: 87-920

CASE TITLE: Natalie Meyer, Colorado Secretary of State, and
Duane Woodard, Colorado Attorney General v. Paul K. Grant, et
HEARING DATE: April 25, 1988

LOCATION: Washington, D.C.

I hereby certify that the proceedings and evidence
are contained fully and accurately on the tapes and notes
reported by me at the hearing in the above case before the
Supreme Court of the United States.

Date: 4-28-88

Margaret Daly

Official Reporter

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