



## FAIR POLITICAL PRACTICES COMMISSION

P.O. Box 807 • 428 J Street • Sacramento, CA 95812-0807  
(916) 322-5660 • Fax (916) 322-0886

February 16, 1999

Russell H. Miller  
Law Office of Russell H. Miller  
20 Park Road, Suite E  
Burlingame, California 94010-4443

**Re: Your Request for Advice  
Our File No. I-99-014**

Dear Mr. Miller:

This letter is in response to your request for advice regarding the provisions of the Political Reform Act (the "Act").<sup>1</sup>

### QUESTION

In light of the recent Supreme Court case *Buckley v. American Constitutional Law Foundation, Inc.*, what type of disclosure is required concerning paid circulators of initiative petitions?

### CONCLUSION

The Commission is prohibited by Article III, §3.5 of the California Constitution from declaring a state statute unconstitutional or unenforceable. Until section 84211(r) of the Act is amended by legislation or invalidated by a court, you should continue to disclose the name, address, and amount paid to individual petition circulators. However, staff plans to recommend that the Commission pursue legislation deleting this requirement of the Act in the near future.

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<sup>1</sup> Government Code sections 81000 - 91014. Commission regulations appear at title 2, sections 18109 - 18995, of the California Code of Regulations. Because your letter requests general advice about campaign reporting, we are treating it as a request for informal assistance, indicated by the file number prefix "I." Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice.

“If the campaign statement is filed in connection with the qualification of a measure, it shall contain the information required by paragraphs (1) to (4), inclusive, of subdivision (j) [name, address, amount of expenditure, and description of consideration] for each person who has directly, indirectly, or through an intermediary received payments cumulatively totaling one hundred dollars (\$100) or more for the circulation of petitions to qualify a measure for the ballot.”

In *Buckley v. American Constitutional Law Foundation, Inc.*, 119 S.Ct. 636 (1999), the Supreme Court affirmed a Tenth Circuit decision that upheld three restrictions on the ballot-initiative process (age restriction, six-month limit on petition circulation, and affidavit requirement), and struck down three others (voter registration, identification badge, and certain disclosure requirements).

The Supreme Court struck down the requirement that in addition to being residents of Colorado, petition circulators must be registered voters. The Court found that this requirement cut down the number of message carriers in the ballot-access arena without impelling cause. *Id.* at 645. The Court also struck down the requirement that petition circulators wear name identification badges when gathering signatures, finding that this could expose petition circulators to harassment and would discourage people from participating in the petitioning process. *Id.* at 646.

Finally, the Court struck down the Colorado law’s requirement that ballot initiative proponents who pay circulators disclose the name and address of each paid circulator and the total amount of money paid to each circulator. The Court found that “the added benefit of revealing the names of paid circulators and amounts paid to each circulator, the lower courts fairly determined from the record as a whole, is hardly apparent and has not been demonstrated.” *Id.* at 647. Agreeing with the 10<sup>th</sup> Circuit, the Court stated that:

“Listing paid circulators and their income from circulation ‘forc[es] paid circulators to surrender the anonymity enjoyed by their volunteer counterparts’ [citation om.]; no more than tenuously related to the substantial interests disclosure serves, Colorado’s reporting requirements, to the extent that they target paid circulators, ‘fail exacting scrutiny.’” *Id.* at 648, quoting *American Constitutional Law Foundation, Inc. v. Meyer*, 120 F.3d 1092, 1105 (10<sup>th</sup> Cir. 1997).

The Court emphasized that the decision did not affect Colorado’s requirements for disclosure of payors, and in particular, of initiative proponent’s names and the total amount they have spent to collect signatures for their petitions. *Id.* at 647.

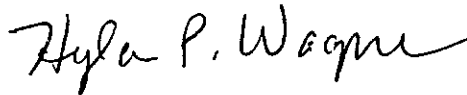
You question the impact of the *Buckley v. ACLF* decision on section 84211(r), California's requirement that the names, addresses, and amounts paid to petition circulators, be disclosed. Under the State Constitution, the Commission is prohibited from declaring a statute unenforceable or unconstitutional. The California Constitution provides that an administrative agency may not "declare a statute unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional." (CAL CONST., art. III, §3.5.)

Prior to the Supreme Court's decision in *Buckley v. ACLF*, Commission staff recommended that the requirement for reporting individual petition circulators' names, addresses, and the amount paid to each of them, be eliminated, as part of a reporting simplification project. The *Buckley v. ACLF* decision provides further impetus and rationale for eliminating this requirement. Commission staff plans to recommend that the Commission pursue legislation deleting section 84211(r) from the Act in the near future.

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Steven G. Churchwell  
General Counsel



By: Hyla P. Wagner  
Staff Counsel, Legal Division

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