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Buckley v. American Constitutional Law Foundation: Can the State Preserve Direct Democracy for the Citizen, or Will it be Consumed by the Special Interest Group?

Ryan K. Manger
mangerrk@slu.edu

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***BUCKLEY V. AMERICAN CONSTITUTIONAL LAW FOUNDATION:
CAN THE STATE PRESERVE DIRECT DEMOCRACY FOR THE
CITIZEN, OR WILL IT BE CONSUMED BY THE SPECIAL
INTEREST GROUP?***

I. INTRODUCTION

The ability of the citizen to directly initiate law within his or her own state is a right that has been fought for and achieved by the people. Direct democracy places the power to initiate law into the hands of the citizen through the ballot box. In *Buckley v. American Constitutional Law Foundation [ACLF]*,¹ the United States Supreme Court invalidated Colorado's attempt to place controls, designed to prevent fraud and ensure efficiency on the state's direct democracy system, because the controls directly hindered the freedom of political speech. The challenged regulations were found to unconstitutionally burden core political speech, without narrowly promoting a compelling state interest. The Court's opinion, emphasizing freedom of political speech over the state's legitimate interest of protection, however, could serve to undercut the objective of direct democracy: to provide the citizen with greater control in the political system. The Court has furthered the ability of special interest groups to consume the process by using their large pocketbooks to promote legislation advantageous to their private concerns, effectively shutting out smaller grassroots concerns. Seeking to prevent fraud and corruption by big-money out-of-state special interest groups, Colorado failed in its attempt to restrict the process to allow better information to be provided to voters when such groups are sponsoring referendums.

This paper will examine the policy behind direct democracy, its influence in state government, and how the decision in *Buckley v. ACLF* has affected the ability of states to place controls on the process. The author's view is that although the exact level of scrutiny to apply after the Court's decision is uncertain, it can provide a state some guidance to regulate the initiative process. To prevent special interest groups from overwhelming the direct democracy system, states have found it necessary to place controls to keep the system open for the grass roots initiatives for which the system was originally envisioned. The states, however, may not impede political speech in attempting to preserve the grass roots objectives of direct democracy. Section

1. 119 S. Ct. 636 (1999).

II provides a background to the theories underlying direct democracy, how it has developed through our nation's history, and the response by state legislatures. Section III contains the procedural posture for *Buckley v. ACLF*. In this section, the author will examine through the arguments of the majority, concurring, and dissenting opinions the three Colorado provisions struck down by the Court, namely the registered voter restriction, the identification badge restriction, and the financial disclosure provisions. Section IV contains the author's analysis of the Court's varying opinions on the proper level of scrutiny to the registered voter and financial disclosure requirements. Since the identification badge requirement was unanimously found by the Court to be unconstitutional,² it will be discussed briefly. This section also analyzes the balance between the state's ability to safeguard the direct democracy process, without interfering with the freedom of political speech, as well as the possible implications that this ruling may have on the state and the citizen. Section V will conclude the author's view. The constitutionality of certain propositions sought through direct democracy means will not be discussed in this paper. Many questions arise toward the variety of discriminatory laws that find their way to implementation through the ballot box,³ however that issue is beyond the scope of analyzing the direct democracy process itself. Nor will this paper discuss the corrupt use of campaign contributions and lobbying by special interest groups within the legislature to promote beneficial legislation,⁴ other than how it has contributed to the necessity of alternative methods

In order to ensure a reliable and efficient system, states have found it necessary to place controls on the process. Restrictions on direct democracy are a necessary protection to ensure voters are well informed of not only the issue in the initiative, but the sources behind it. Core political speech is a fundamental right protected by the First Amendment, however it is not absolute. If the objectives of direct democracy are to be obtained, the process itself must be safeguarded to ensure the citizen, and not just the group with the largest pocketbook, has the power to initiate law. Although the Court in *Buckley v. ACLF* struck down the state imposed restrictions, it serves as a

2. See *id.* at 646, 651 (Thomas, J., concurring), 654 (O'Connor, J., concurring in the judgment in part and dissenting in part), 662 (Rehnquist, C.J., dissenting).

3. One problem that has arisen with initiatives is the occasional use of the system to "restrict the services provided or rights accorded to a relatively unpopular group." CITIZENS AS LEGISLATORS: DIRECT DEMOCRACY IN THE UNITED STATES 229 (Shaun Bowler, et. al., eds., 1998). For instance, the State of Nebraska voted by an overwhelming majority of 70% in support of initiative 416, recognizing marriage as only between a man and a woman. Stephen Buttry & Leslei Reed, *Same Sex Marriage Ban Passes Overwhelmingly*, OMAHA WORLD HERALD, Nov. 8, 2000, at A1.

4. See Donald L. Barlett & James B. Steele, *How the Little Guy Gets Crunched*, TIME, Feb. 7, 2000, at 38 (discussing how powerful interests pour in millions of dollars in campaign contributions to get laws passed advantageous to them and hurtful for those who are not able to contribute similar amounts of money).

guide to allow the state the ability to safeguard the direct democracy process, while ensuring its citizens the freedom to political speech.

II. DIRECT DEMOCRACY

Direct democracy provides the “opportunity for groups and individuals to draft legislation directly, to overturn laws adopted by legislatures, and to recall defective representatives.”⁵ It allows for citizens who are not part of the legislative process to draft their own laws through grassroots efforts.⁶ However, changes in the contemporary era might have removed the “citizen” from the grassroots.⁷ Throughout the development of democratic forms of government, direct democracy have existed to allow the people to have a direct, although minimal, voice in the government.⁸ Even prior to democratic rule, many ancient societies recognized the right of ordinary citizens to petition the government, including the right to suggest specific changes in legislation.⁹ The early uses of direct democracy, however, differ from today.¹⁰ Modern forms of direct democracy available in the United States include the initiative, referendum, and the recall.¹¹ The initiative provides the people the right to introduce legislation through popular vote by allowing the citizens, through the collection of voter signatures, to propose legislation and make it law through a vote of the electorate.¹² The initiative is found in two forms throughout the United States. A direct initiative can be either a constitutional amendment or a statute that is proposed through a petition and then submitted directly to the voters for approval or rejection, without any action by the legislature.¹³ Once the initiative has been voted and approved by the electorate, the initiative has the force and effect of a constitutional amendment or statute. In comparison, the indirect initiative allows statutes to be proposed by a petition that is first submitted to the state legislature who then debates and votes on the petition in

5. CITIZENS AS LEGISLATORS, *supra* note 3, at 2.

6. *Id.* at 3.

7. *Id.* at 19.

8. “Ancient Athens, Saxon tribes, Thirteenth Century Swiss cantons, and numerous other peoples from earlier times all regularly made governmental decisions through some form of face-to-face meeting.” DAVID MAGLEBY, DIRECT LEGISLATION: VOTING ON BALLOT PROPOSITIONS IN THE UNITED STATES 31-33 (1984).

9. PHILIP L. DUBOIS & FLOYD FEENEY, LAWMAKING BY INITIATIVES: ISSUES, OPTIONS, AND COMPARISONS 7 (1998).

10. *Id.*

11. The referendum is a procedure allowing citizens to force a public vote on statutes adopted by the legislature, while the recall allows citizens to force a vote, through the collection of signatures, as to whether a particular, named elected official shall continue in office. DUBOIS & FEENEY, *supra* note 9, at 7-8.

12. *Id.*

13. MAGLEBY, *supra* note 8, at 35.

a regular session.¹⁴ However, if the statute has not been approved by the legislature after a specified time, or if the legislature has amended the original initiative in a way unacceptable to the original proponents, the proponents may then gather the remaining required signatures and submit the original initiative to the voters as a direct initiative.¹⁵ Some states provide that if the legislature does not approve the indirectly initiated proposal, it may offer a substitute proposal on the same subject to accompany the original one on the next general election ballot.

The use of direct democracy in the United States has been a subject of debate since the establishment of the representative form of government.¹⁶ Numerous arguments against giving direct power to the population have been made since the founding of this country.¹⁷ The authors of the Constitution preferred a system of representative government, rather than leaving control of the country in the hands of the population.¹⁸ They believed the most important political questions were too complicated to be decided by popular vote.¹⁹ The system was designed to allow elected representatives, who would have time to study and understand the laws, to debate the merits of the legislation.²⁰ James Madison feared that “factions” would be controlled by “popular passions” and would force their majority beliefs and ideas over the minority.²¹ A continuing concern that has accompanied the use of direct democracy is the fear that “direct democracy would produce policies hostile to the interests of unpopular

14. *Id.* at 35-6.

15. *Id.*

16. CITIZENS AS LEGISLATORS, *supra* note 3, at 1.

17. Professor Magleby has provided a list of the arguments against direct legislation, including: the true beneficiaries of direct legislation will not be the people but the special interests; direct legislation will result in an unreasonably complex ballot and “frivolous” legislation; voters are ill-equipped to understand complicated proposals and unprepared to grapple with the confusing campaigns and appeals that are a part of the initiative process; the legislative process is a much better way to make public policy; direct legislation will not educate the voters, nor will it increase interest in government; direct legislation will endanger democracy and undermine representative government. MAGLEBY, *supra* note 8, at 29-30.

18. DUBOIS & FEENEY, *supra* note 9, at 2.

19. Philip P. Frickey, *The Communion of Strangers: Representative Government, Direct Democracy, and the Privatization of the Public Sphere*, 34 WILLAMETTE L. REV. 421, 424 (1998).

20. *Id.*

21. *Id.* According to James Madison, a “faction” consists of “a number of citizens, whether amounting to a majority or minority of the whole, who are united and activated by some common impulse of passion, or of intent adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.” *Id.* at 424 (citing THE FEDERALIST PAPERS, No. 10, at 78 (James Madison) (Clinton Rosier ed., 1961), available at <http://www.mcs.net/~knautz/fed/fed10.htm>).

minorities.”²² Madison also believed the control of such a large country could not be left to the population as a whole, but rather decisions should be made by a “relatively small number of people representing the larger population.”²³ Madison wrote that representative government “refine[s] and enlarge[s] public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of our country, and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations.”²⁴ The founding fathers believed that societal problems were too complicated to be resolved by the public through the use of the initiative, and were better left to the legislature to be developed in a well-reasoned analysis.²⁵ Those who opposed the use of direct democracy in the United States successfully prevented its use for the first one hundred years of this nation.

Starting in the late nineteenth and early twentieth century, a movement arose to give greater control to the people. The Populists²⁶ and later the Progressives²⁷ fashioned and promoted the initiative, referendum, and the recall.²⁸ They believed that legislatures and political party machines in the period of economic prosperity had become too dependent on special interests to allow the true needs of the country to be promoted.²⁹ Their objective was not to abolish the representative form of government, but to advance a greater popular participation to bring an end to the corruption.³⁰ Early twentieth century reformers hoped that by gaining more direct access to the legislative process, citizens would be able to control public affairs and thereby “insure responsive as well as responsible government.”³¹ The Progressive movement

22. CITIZENS AS LEGISLATORS, *supra* note 3, at 11. See *supra* note 3 and accompanying text.

23. Frickey, *supra* note 19, at 424 (citing THE FEDERALIST PAPERS, No. 10, *supra* note 21, at 83).

24. THE FEDERALIST PAPERS, No. 10, *supra* note 21, at 82.

25. DUBOIS & FEENEY, *supra* note 9, at 16.

26. The Populists consisted of midwestern farmers and were most aggressive in the late Nineteenth Century. DAVID D. SCHMIDT, CITIZEN LAWMAKERS, THE BALLOT INITIATIVE REVOLUTION 7 (1989).

27. The Progressives were pro-labor Democrats that adopted most of the Populists’ reform agenda including home rule, nonpartisan elections, the commission plan for local government, merit systems, direct election of United States senators, women’s suffrage, and independent regulatory commissions as well as the forms of direct democracy, as their own, drawing their strength and leadership from young, prosperous members of the urban middle class who saw the corruption of the cities and wanted to expose the social problems and government and corporate wrongdoing. *Id.* at 9 (citing RICHARD HOFSTADTER, THE AGE OF REFORM 131, 167 (1956)).

28. DUBOIS & FEENEY, *supra* note 9, at 7-8 and accompanying text.

29. *Id.* at 17.

30. *Id.*

31. CITIZENS AS LEGISLATORS, *supra* note 3, at 1 (citing FREDERIC C. HOWE, THE CITY: THE HOPE FOR DEMOCRACY (1967)).

advanced the ballot initiative as a means of limiting the control of wealthy special interests and restoring electoral power to the voters.³² Direct democracy benefits society by including opportunities for citizens to participate directly in making laws under which they live, creating a well-functioning democracy, increasing the interest and participation in government, reducing citizen alienation, and serving as an antidote for declining voter turnout in elections.³³

Throughout the twentieth century, many of the states implemented a direct democracy process.³⁴ It has been used for a variety of issues of which the citizens believed the legislatures were either unresponsive or unwilling to initiate. For instance, "in 1992 citizens from twelve states adopted term limits for their state legislatures through the initiative process and voted on such matters as health care, the right to die, welfare reform, tax reduction, and government structure."³⁵ It is recognized that direct democracy basically serves one purpose: "to provide another lawmaking outlet for organized interests that fail to get what they want from the legislature."³⁶ The explosion in the use of direct democracy by special interest groups over the past two decades has transformed the process into a big-dollar industry.³⁷ In 1990, the average total expenditure for each ballot measure in Oregon climbed to more than \$900,000.³⁸ In recent years, the initiative and referendum process has come to be more and more influenced by out-of-state interests, which employ professional nationwide firms whom have transformed the grassroots initiative into a big money industry.³⁹ Professor David Magleby has closely examined

32. *Buckley v. ACLF*, 119 S. Ct. 636, 659 (Rehnquist, C.J., dissenting). See also H. CROLY, *PROGRESSIVE DEMOCRACY* 236-37, 248-49, 254-55 (Transaction ed., 1998); H. STEELE COMMAGER, *THE AMERICAN MIND* 338 (1950); Nathaniel A. Persily, *The Peculiar Geography of Direct Democracy*, 2 MICH. L. & POL'Y REV. 11, 23 (1997).

33. MAGLEBEY, *supra* note 8, at 45-51.

34. DUBOIS & FEENEY, *supra* note 9, at 28 tbl.1. Today, 24 states and the District of Columbia have adopted some form of direct democracy. *Id.* States that have enacted the direct initiative are: Arizona, Arkansas, California, Colorado, District of Columbia, Florida, Idaho, Illinois, Missouri, Montana, Nebraska, North Dakota, Oklahoma, Oregon, and South Dakota. States that have enacted the indirect initiative include: Alaska, Maine, Massachusetts, Mississippi, and Wyoming. Both Utah and Washington allow for both direct and indirect initiatives. *Id.*

35. *Id.* at 1.

36. Frickey, *supra* note 19, at 432.

37. *Id.* (citing Elizabeth Garrett, *Who Directs Direct Democracy?*, 4 U. CHI. L. REV. 381, 385 n.15 (1984)).

38. See CITY CLUB OF PORTLAND, *THE INITIATIVE AND REFERENDUM IN OREGON* 13 (1996) (providing the number of initiatives in 1994); Nena Baker, *Need a Hand with Your Ballot?*, THE OREGONIAN (Portland, OR), Oct. 27, 1996, at A1 (providing the number of initiatives for 1996).

39. *Buckley v. ACLF*, 119 S. Ct. at 659 (Rehnquist, C.J., dissenting) (1999); See, e.g., Lowenstein & Stern, *The First Amendment and Paid Initiative Petition Circulators*, 17 HASTINGS

and provided explicit data on the use of direct democracy by different groups today.⁴⁰ He notes that direct democracy has valued public “participation, open access, and political equality,” however, competition between the professional firms to expand the base of their participants have prevented compromise and continuity.⁴¹ Initiative agendas are generally set by the “capacity to hire professional signature-gathering firms or by the dedication of issue activists or single-issue groups” rather than by “issues of prominent concern to the general population.”⁴² Unfortunately, the objectives of increased voter turnout and reduction of alienation of the people have not occurred.⁴³ It has been recognized that overall, “direct legislation is prone to serious biases insofar as participation and representation are concerned.”⁴⁴ Serious concerns continue to exist as to whether the objectives of direct democracy have been met in view of the role special interest groups have played.⁴⁵

State reactions to the use of the initiative process by special-interest groups have been to impose restrictions to prevent abuse. When states regulate the ballot process, questions arise in balancing the heightened protection for political speech under the First Amendment against state interests of ensuring a fair and orderly democratic process. The Supreme Court generally applies a strict scrutiny standard when a fundamental right is involved under the First Amendment,⁴⁶ applicable to the states under the Fourteenth Amendment.⁴⁷ The proper level of scrutiny will be examined in the next section. States have considerable leeway to protect the integrity and reliability of the ballot initiative process similar to the general election process.⁴⁸ The First Amendment requires the courts to be vigilant in guarding against undue hindrances to political conservation and the exchange of ideas.⁴⁹ Unless the

CONST. L.Q. 175, 176 (1989); *Broader, Ballot Battle*, WASH. POST, Apr. 12, 1998, at A1, A6; Slind-Flor, *Election Result: Litigation over Propositions*, NATIONAL L. J., Nov. 16, 1998, at A1, A8.

40. DUBOIS & FEENEY, *supra* note 9, at 18. See MAGLEBY, *supra* note 8, at 181.

41. DUBOIS & FEENEY, *supra* note 9, at 18.

42. *Id.* at 19.

43. *Id.*

44. *Id.*

45. *Id.*

46. “Congress shall make no law respecting an establishment, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” U.S. CONST. amend. I.

47. *Buckley v. ACLF*, 119 S. Ct. at 649 (Thomas, J., concurring). The First Amendment protections of speech, press, and religion have been incorporated into the Fourteenth Amendment. See *Duncan v. Louisiana*, 391 U.S. 145 n.5 (1968) (citing *Fiske v. Kansas*, 274 U.S. 380 (1927)).

48. *Buckley v. ACLF*, 119 S. Ct. at 637.

49. *Id.* See also *Meyer v. Grant*, 486 U.S. 414, 421 (1988).

state can justify regulations that limit free speech by demonstrating a compelling state interest, the court will strike the regulation down.

III. BUCKLEY V. AMERICAN CONSTITUTIONAL LAW FOUNDATION

The Supreme Court found that Colorado, in its attempt to place controls on the abuse of the direct democracy system by large special interest groups, had violated First Amendment protections of political speech. The Court's multi-opinioned decision demonstrates the difficulty in creating regulations on the initiative process without imposing undue burdens on the fundamental right to political speech. The four opinions apply a flexible standard of review, however, the standard differs in each analysis. As a result, the opinions disagree as to the constitutionality of the registered voter requirement and the financial disclosure provision. The identification badge requirement was unanimously found to be an unreasonable restriction on the petitioner's right to anonymity by requiring petitioners to wear a badge identifying their name and if they were paid or a volunteer.

A. *Direct Democracy in Colorado*

Colorado is one of several states to allow its citizens to make law directly through initiatives placed on election ballots through the direct initiative.⁵⁰ The process is designed to give citizens more control over the initiation of laws that they believe the State Legislature has failed to enact. However, the direct approach, as opposed to the indirect, does not allow for the legislature to examine the proposition. Contrary to the grass-roots purpose of direct democracy, it has been used as a tool by special interest groups to enact legislation and bypass the state legislature altogether. In an attempt to curtail this use by special interest groups, the state of Colorado had attempted to restrict direct democracy prior to *Buckley v. ACFL* to allow voters the opportunity to be fully informed of their decisions. In its 1988 decision of *Meyer v. Grant*, the Supreme Court invalidated a Colorado law that prohibited payment to circulators of ballot-initiative petitions.⁵¹ The Court held petition circulation to be "core political speech," which is protected by the First Amendment because it involves "interactive communication concerning

50. See COLO. CONST. art. V, §§1(1), (2); COLO. REV. STAT. §§ 1-40-101 – 133 (1998). The initiative has become an important feature of Colorado government since it was adopted by the state in 1910. DUBOIS & FEENEY, *supra* note 9, at 28 tbl. 1. From its adoption until 1996, Colorado voters have had 153 initiatives on the ballot. *Id.* at 32 tbl. 5. Colorado has the fourth greatest use of the ballot initiative, and has a 39% adoption rate. *Id.* As of 1996, the top three states with the greatest number of initiatives placed on the ballot are Oregon with 292 and a 34% rate, California with 257 and a 33% rate, and North Dakota with 170 and a 45% rate. *Id.* The initiative process in Colorado has been used forty-four times for statutes and 109 times to amend the constitution from its adoption through 1996. DUBOIS & FEENEY, *supra* note 9, at 30 tbl. 3.

51. *Meyer v. Grant*, 486 U.S. 414 (1988).

political change.”⁵² However, the Court also recognized that “there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic process.”⁵³ In recognizing the need for state regulation, the Court invalidated the prohibition of paid circulators because it drastically reduced the number of petitioners available, and made it less likely to acquire the number of signatures necessary to place the issue on the ballot.⁵⁴

B. *Procedural Posture of Buckley v. ACLF*

The complaint in *Buckley v. ACLF* was originally filed in 1993, in response to six state-imposed controls on the Colorado initiative-petition process,⁵⁵ passed by the Colorado State Legislature following *Meyer*. American Constitutional Law Foundation⁵⁶ and individual Colorado residents⁵⁷ filed for declaratory and injunctive relief from restrictions on the circulation and submission of petitions to propose state laws and constitutional amendments. The United States District Court for the District of Colorado validated some restrictions of the Colorado statute and invalidated others as a violation of political speech.⁵⁸

52. *Id.* at 422.

53. *Storer v. Brown*, 415 U.S. 724, 788 (1974); *See also Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997) (upholding Minnesota’s electoral regulations which prohibit an individual from appearing on the ballot as the candidate of more than one political party).

54. *Meyer*, 486 U.S. at 422-23.

55. *Buckley v. ACLF*, 119 S. Ct. at 640.

56. The American Constitutional Law Foundation is a volunteer public interest, membership organization with nearly 300,000 members, dedicated to the principles of constitutional self-government, as incorporated in the First Amendment’s right of the people to peaceably petition the government for redress of grievances. Its membership consisted primarily of individual proponents, organizers, and circulators involved mostly in volunteer petitioning efforts. Mr. Bill Orr is its unpaid Executive Director and Founder. *See Respondent’s Brief, Buckley v. ACLF* (No. 97-930), available in 1998 WL 328326.

57. Individual plaintiffs included: David Aitken, who, as chairman of the Colorado Libertarian Party, had organized the circulation of several initiative petitions; Jon Baraga, statewide petition coordinator for the Colorado Hemp Initiative; Craig Eley and Jack Hawkins, circulators of petitions for the Safe Workplace Initiative and Worker’s Choice of Care Initiative; Lonnie Haynes, an initiative-supporting member of ACLF; Alden Kautz, a circulator of numerous initiative petitions; Bill Orr, executive director of ACLF and a qualified but unregistered voter, who regularly participated in the petition process and wanted to circulate petitions; and William David Orr, a minor who wanted to circulate petitions. *See ACLF, Inc. v. Meyer*, 120 F.3d 1092, 1096-1097 (10th Cir. 1997); *see also* Brief for Respondents David Aitken et al. at 2,3,5,6, *Buckley v. ACLF* (No. 97-930).

58. *ACLF v. Meyer*, 870 F.Supp. 995 (D.Colo. 1994). Among the restrictions the district court found sufficient were the requirements that circulators be registered voters eligible to vote on measures subject to petition, petitions be circulated within a six-month period, and the state had a compelling need for names and addresses of circulators in affidavits attesting to validity of signatures. *Id.* However, the district court found the provisions requiring circulators to wear

The parties cross-appealed, and the Court of Appeals affirmed in part and reversed in part.⁵⁹ The Tenth Circuit upheld some of the state's regulations,⁶⁰ but held that the Colorado statute requiring initiative and referendum petition circulators to be registered electors, the provision requiring circulators for initiative and referendum petitions to wear personal identification badges, and certain provisions requiring disclosure of information regarding paid circulators of initiative and referendum petitions violated free expression under the First Amendment.⁶¹

The Supreme Court granted certiorari.⁶² Justice Ginsburg held that the Tenth Circuit correctly separated necessary or proper ballot access controls from the restrictions the Court believed unjustifiably inhibited the guarantee of freedom of speech in the circulation of ballot-initiative petitions.⁶³ The Supreme Court reviewed the three controls invalidated by the Circuit Court.⁶⁴ Justice Thomas concurred in the judgment, and filed an opinion. Justice O'Connor concurred in the judgment in part and dissented in part, filing a separate opinion joined by Justice Breyer. Chief Justice Rehnquist dissented, also filing a separate opinion.

C. *Level of Scrutiny*

In striking down the prohibition on paid circulators, the Court in *Meyer v. Grant*⁶⁵ held petition circulation was "core political speech" that involved "interactive communication concerning political change," protected by the First Amendment.⁶⁶ However, the state may provide a "substantial regulation" to ensure the process is orderly, fair, and honest.⁶⁷ The majority applies "exacting scrutiny" when the restrictions in question significantly inhibit communication with voters about proposed political change, and are not

identification badges, and the disclosure of monthly reports on paid circulators to be a burden on political liberty, and an invalid restriction on core political speech. *ACLF v. Meyer*, 120 F.3d 1092 (10th Cir. 1997).

59. *ACLF v. Meyer*, 120 F.3d at 1092.

60. *Id.* The restrictions upheld by the Circuit Court as reasonable regulations of the ballot-initiative process were: the requirement that petition circulators be at least 18 years old, COLO. REV. STAT. § 1-40-112(1); the limitation of the petition circulation period to six months, § 1-40-108; and the requirement that circulators attach to each petition section an affidavit containing, inter alia, the circulator's name and address, § 1-40-111(2). *Buckley v. ACLF*, 119 S. Ct. at 637.

61. *ACLF v. Meyer*, 120 F.3d at 1092.

62. *Buckley v. ACLF*, 119 S. Ct. at 636.

63. *Id.*

64. *Id.* at 639.

65. 486 U.S. 414 (1988).

66. *Buckley v. ACLF*, 119 S. Ct. at 639.

67. *Id.* at 640. See *Storer*, 415 U.S. at 730; *Timmons*, 520 U.S. at 358; *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983).

warranted by the state interests alleged to justify those restrictions.⁶⁸ Petition circulation has a political speech component,⁶⁹ for which First Amendment protection for such interaction is “at its zenith.”⁷⁰ Regulations directly burdening the one-on-one, communicative aspect of petition circulation are subject to strict scrutiny.⁷¹ Restrictions on direct democracy can only be upheld if the government can meet a two-prong test.⁷² A state must first demonstrate it has a sufficiently important interest, and secondly, that the means to protect that interest have been “closely drawn to avoid unnecessary abridgement of associational freedoms.”⁷³ The Court has stated that “no litmus-paper test” will separate valid ballot-access provisions from invalid interactive speech restrictions.⁷⁴ However, the Court notes that restrictions in the election process itself would require less exacting scrutiny.⁷⁵ The majority, in affirming the Tenth Circuit’s decision in *Buckley v. ACLF*, found all three controls at issue to be excessively restrictive of political speech and therefore invalid.⁷⁶

Justice Thomas notes, however, that regulations of elections often will directly restrict or otherwise burden core political speech and associational rights.⁷⁷ The framework for assessing the constitutionality, under the First and Fourteenth Amendments, of state election laws has been recently established.⁷⁸ When a state’s rule imposes severe burdens on speech or association, it must be narrowly tailored to serve a compelling interest. Lesser burdens imposed by the state will trigger less exacting review, in which a state’s important regulatory interests will typically justify reasonable restrictions.⁷⁹ When core

68. *Buckley v. ACLF*, 119 S. Ct. at 642.

69. *Id.* at 653 (O’Connor, J., concurring in the judgment in part and dissenting in part).

70. *Id.* (citing *Meyer*, 486 U.S. at 425) (internal quotation marks omitted).

71. *Id.* (citing *Meyer*, 486 U.S. at 420).

72. *Buckley v. Valeo*, 424 U.S. 1, 25 (“Even a ‘significant interference’ with protected rights of political association may be sustained if the state demonstrates a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgement of associational freedoms.”) (quoting *Cousins v. Wigoda*, 419 U.S. 477, 488 (1975)); *NAACP v. Button*, 371 U.S. 415, 431 (1968) (recognizing that “even though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved”); *Shelton v. Thaker*, 364 U.S. 479, 488 (1968).

73. *Buckley v. ACLF*, 119 S. Ct. at 653.

74. *Id.*

75. *Id.* at 646 (citing *McIntyre v. Brown*, 514 U.S. 334, 353 (1995) (recognizing a state’s enforcement interest might justify a more limited identification requirement) (holding that the Ohio statute was not simply an election code provision subject to the lesser scrutiny balancing test set forth in *Burdick*)).

76. *Buckley v. ACLF*, 119 S. Ct. at 640.

77. *Id.* at 649 (Thomas, J., concurring).

78. *Id.*

79. *Id.* (citing *Timmons*, 520 U.S. at 358-59; *Burdick v. Takushi*, 504 U.S. 428, 434 (1992); *Celebrezze*, 460 U.S. at 788-90).

political speech is at issue, the Court has ordinarily applied strict scrutiny without first determining that the statute severely burdens speech.⁸⁰ When a state's election law directly regulates core political speech, the Court has always subjected the challenged restriction to strict scrutiny, and required that the legislation be narrowly tailored to serve a compelling interest.⁸¹ However, Justice Thomas also notes that when a state law indirectly regulates core political speech, the Court has also applied strict scrutiny.⁸² In *McIntyre*, the Court suggested that the sever/lesser burden framework is only resorted to if a challenged election law regulates "the mechanics of the electoral process," and not speech.⁸³ Cases that involve an election law that burdens voting and associational interests are more difficult to predict.⁸⁴

In contrast to Thomas's view, Justice O'Connor finds a broader range of restrictions to be subject to the lesser strict scrutiny standard. In order to allow

80. *Buckley v. ACLF*, 119 S. Ct. at 650 (Thomas, J., concurring).

81. *Id.* See, e.g., *Burson v. Freeman*, 504 U.S. 191, 198 (1992) (Tennessee law prohibiting solicitation of voters and distribution of campaign literature within 100 feet of the entrance of a polling place); *First Nat. Bank of Boston v. Bellotti*, 435 U.S. 765, 768 (1978) (Massachusetts law prohibiting certain business entities from making expenditures for the purpose of affecting referendum votes).

82. *Buckley v. ACLF*, 119 S. Ct. at 649-50. Justice Thomas notes that in *Meyer*, the Court applied strict scrutiny because they determined that initiative petition circulation "of necessity involves both the expression of a desire for political change and a discussion of the merits of the proposed change." See also *Meyer*, 486 U.S. at 421.

83. *Buckley v. ACLF*, 119 S. Ct. at 650 (citing *McIntyre*, 514 U.S. at 345).

84. *Id.* For example, the Court has subjected Connecticut's requirement that voters in any party primary be registered members of that party to strict scrutiny because it burdened the "associational rights of the Party and its members." *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 217 (1986). The Court similarly treated California's laws limiting the term of office of a party chair, and requiring that the chair rotate between residents of northern and southern California because they "burden[ed] the associational rights of political parties and their members." *EU v. San Francisco County Democratic Cent. Comm'n*, 489 U.S. 214, 231 (1989). Although a state indisputably has a compelling interest in preserving the integrity of its election process, the Court invalidated the law under strict scrutiny. *Id.* The Court applied strict scrutiny to California's law denying a ballot position to independent candidates who had a registered affiliation with a qualified political party within a year of the preceding primary election, apparently because it "substantially" burdened the rights to vote and associate. *Storer*, 415 U.S. at 729. In *Norman v. Reed*, 502 U.S. 279 (1992), the Court determined that Illinois' regulation of the use of party names and its law establishing signature requirements for nominating petitions severely burdened association by limiting new parties' access to the ballot, and held both challenged laws, as construed by the State Supreme Court, unconstitutional because they were not narrowly tailored. *Id.* at 288-90, 294.

By contrast, the Court determined that Minnesota's law preventing a candidate from appearing on the ballot as the choice of more than one party burdened a party's access to the ballot and its associational rights, but not severely, and upheld the ban under lesser scrutiny. *Timmons*, 520 U.S. at 363. The Court likewise upheld Hawaii's prohibition on write-in voting, which imposed, at most, a "very limited" burden on voters' freedom of choice and association. *Burdick*, 504 U.S. at 437.

for regulations that ensure elections are fair and honest, the Court has developed a flexible standard to review regulations of the electoral process.⁸⁵ She states the proper inquiry is whether the state's regulations directly and substantially burden the one-on-one, communicative aspect of petition circulation, or whether they primarily target the electoral process, imposing only indirect and less substantial burdens on communication.⁸⁶ The indirect burdens should only be subject to a review for reasonableness.⁸⁷ Each opinion's view on the correct level of scrutiny determines the validity of the restriction in question.

*D. Registered Voter Restriction*⁸⁸

The Colorado statute requiring initiative and referendum petition circulators to be registered electors was found to unconstitutionally infringe on free expression.⁸⁹ By constitutional amendment,⁹⁰ and corresponding statutory change the next year,⁹¹ Colorado added to the requirement that petition circulators not only be residents, but also registered voters.⁹² The State offered as justification that registration demonstrates "commit[tment] to the Colorado law making process" and facilitates verification of the circulator's residence.⁹³ The number of unregistered, but voter-eligible residents in Colorado at the time of the trial was close to 620,000.⁹⁴ The proportion of voter eligible, but unregistered residents to registered residents, is not extraordinary in comparison to other States. Because the registration requirement drastically

85. *Buckley v. ACLF*, 119 S. Ct. at 654 (O'Connor, J., concurring in the judgment in part and dissenting in part) (citing *Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (holding Hawaii's prohibition on write-in voting imposed only a limited burden upon the constitutional rights of voters)).

86. *Buckley v. ACLF*, 119 S. Ct. at 654 (O'Connor, J., concurring in the judgment in part and dissenting in part).

87. *Id.*

88. COLO. REV. STAT. § 1-40-112(1) (1998) ("No section of a petition for any initiative or referendum measure shall be circulated by any person who is not a registered elector and at least eighteen years of age at the time the section is circulated.").

89. *Buckley v. ACLF*, 119 S. Ct. at 640.

90. COLO. CONST. art. V, § 1(6) (1980).

91. See 1981 Colo. Sess. Laws, Ch.56, § 4.

92. The Colorado law similarly provides that only registered voters may circulate petitions to place candidates on the ballot, which was not challenged by the ACLF. *Buckley v. ACLF*, 119 S. Ct. 642 n.13. See COLO. REV. STAT. § 1-4-905(1) (1998) ("eligible elector" defined as "registered elector").

93. *Buckley v. ACLF*, 119 S. Ct. at 643 (citing Transcript of Oral Argument, 10,14 (Attorney General for Colorado)).

94. *Id.* See U.S. Dept. of Commerce, Bureau of Census, Statistical Abstract of the United States 289 tbl.403 (1997).

reduces the number of persons available to circulate petitions, the majority inquires whether the state's concerns warrant the reduction.⁹⁵

In examining the registered voter requirement, the majority opinion written by Justice Ginsburg conducted a balancing test between the state interest, and the reduction in the number of persons available to circulate petitions.⁹⁶ The Court noted the requirement that the circulators be voter-eligible, as well as registered voters, decreases the pool of potential circulators similar to the ban on paid circulators in *Meyer*.⁹⁷ Justice Ginsburg notes the dicta in *Meyer* that the challenged restriction reduces the chances that initiative proponents would gather signatures sufficient in number to qualify for the ballot, thus limiting the proposal's "ability to make the matter the focus of statewide discussion."⁹⁸ This creates an undue imposition on political expression that the state failed to justify.⁹⁹ Ginsburg does not accept the state's argument that registration to vote is very easy because it does not lift the burden on speech at the time the petition is circulated,¹⁰⁰ and some eligible voters choose not to register in order to express their political opinion.¹⁰¹

Justice Thomas, in his concurring opinion, agrees with the majority that the restriction is properly invalidated under *Meyer* because initiative petition circulation is core political speech, and thus subject to strict scrutiny.¹⁰² The aim of a petition is to secure political change, and the First Amendment guards against the state's efforts to restrict free discussions about matters of public concern.¹⁰³ Assuming that the state has a compelling interest in ensuring that all circulators are residents, Justice Thomas notes that a large part of Colorado residents are not registered voters, and the state could more precisely achieve its interest of enforcing its election laws with a residency requirement.¹⁰⁴

95. *Buckley v. ACLF*, 119 S. Ct. at 643 (citing *Timmons*, 520 U.S. at 358).

96. *Id.* at 639-40.

97. *Id.* at 643 (citing *Meyer*, 486 U.S. at 422).

98. *Id.* (citing *Meyer*, 486 U.S. at 423).

99. *Id.* at 644.

100. *Buckley v. ACLF*, 119 S. Ct. at 651 (Thomas, J., concurring).

101. *Id.* A lead plaintiff and long-time active in ballot-initiative support testified that his refusal to register is a "form of . . . private and public protest." (testimony of William Orr, Executive Director of the ACLF). *Id.* (citing 1 Tr. 223).

102. *Buckley v. ACLF*, 119 S. Ct. at 651 (Thomas, J., concurring).

103. *Id.* In fact the briefs indicate that circulators do not discuss the merits of a proposed change by initiate in any great depth. National Voter Outreach, Inc., an Amicus curiae in support of respondents and the largest organizer of paid petition circulation drives in the United States, describes most conversations between the circulator and the prospective petition signer as "brief." Brief for National Voter Outreach, Inc., as Amicus Curiae at 21, *Buckley v. ACLF* (No. 97-930).

104. *Buckley v. ACLF*, 119 S. Ct. at 652 (Thomas, J., concurring). Colorado's law requires that petition circulators be registered electors, and while one must reside in Colorado in order to be a registered voter. See COLO. REV. STAT. § 1-2-101(1)(b), Colorado does not have a separate residency requirement. *Buckley v. ACLF*, 119 S. Ct. at 652 n.4.

The dissent, written by Chief Justice Rehnquist, points out that *Meyer* did not decide that a state is prohibited from imposing reasonable regulations on circulation.¹⁰⁵ Before this decision, a state could have imposed reasonable regulations on the circulation of initiative petitions, so that some order could be established over the inherently chaotic nature of democratic processes.¹⁰⁶ Rehnquist notes that this decision calls into question the validity of any regulation of petition circulation that would fall under the majority's highly abstract and mechanical test of invalidating a restriction that diminishes the pool of petition circulators, or makes a proposal less likely to appear on the ballot.¹⁰⁷

Justice O'Connor also dissents from the majority because she believes the registered voter requirement is a permissible regulation of the electoral process.¹⁰⁸ She notes that the Court has upheld analogous restrictions on qualifications to vote in a primary election, and on candidate eligibility as reasonable regulations of the electoral process.¹⁰⁹ Because the requirement is neutral qualification for participation in the petition process, it only indirectly and incidentally burdens the communicative aspects of petition circulation thus subjecting it to a reasonable test.¹¹⁰ Agreeing with the Chief Justice that this requirement can easily be satisfied, and that it differs from the prohibition on paid circulators invalidated in *Meyer*, she notes the registration requirement does not ban an existing class of circulators, or silence those who are "able and willing" to circulate ballot initiative petitions.¹¹¹ Additionally, the existence and severity of the burden on one-on-one communication is not as clearly established in the record as the majority suggests.¹¹² O'Connor applies her lesser strict scrutiny to require the state to advance a legitimate interest to be a reasonable regulation of the electoral process, as applied in *Burdick*.¹¹³ She

105. *Id.* at 659.

106. *See Timmons*, 520 U.S. at 358.

107. *Buckley v. ACLF*, 119 S. Ct. at 660.

108. *Id.* at 654 (O'Connor, J., concurring in the judgment in part and dissenting in part).

109. *Id.* at 655. *See Rosario v. Rockefeller*, 410 U.S. 752, 756-62 (1973) (upholding qualifications to vote in primary); *Storer*, 415 U.S. at 728-37 (upholding candidate eligibility requirement).

110. *Buckley v. ACLF*, 119 S. Ct. at 655.

111. *Id.*

112. *Id.* Witness Jon Baraga testified that some potential circulators are not registered to vote because they feel the political process is not responsive to their needs, but went on to testify that many of the same people would register to vote if an initiative they supported were placed on the ballot. *ACLF v. Meyer*, 870 F.Supp. at 1001.

113. *Burdick*, 504 U.S. at 428. In upholding Hawaii's prohibition of write-in voting, the Court noted that although the voter's rights are fundamentally significant under the constitutional structure, it did not follow that "the right to vote in any manner and the right to associate for political purposes through the ballot are absolute." *Id.* at 433 (citing *Illinois Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979)).

accepts Colorado's arguments that it is necessary to enforce its laws prohibiting circulation fraud and to guarantee the states ability to exercise its subpoena power over those who violate these laws, as two patently legitimate interests.¹¹⁴ O'Connor would uphold the requirement as a reasonable regulation of Colorado's electoral process.

*E. Identification Badge Restriction*¹¹⁵

The Colorado statute requiring circulators for initiative and referendum petitions to wear personal identification badges was found to have unconstitutionally infringed on the circulators' First Amendment rights.¹¹⁶ The state interest in requiring name badges enables the public to identify, as well as the state to be able to apprehend petition circulators who engage in misconduct.¹¹⁷

The majority found that the badge requirement is invalid as it requires circulators to display their names.¹¹⁸ Justice Ginsburg states that the notarized submission available to law enforcement renders the Colorado's provision for personal names in identification badges less necessary.¹¹⁹ The badges reveal personal information about the circulators when "reaction to the circulator's message is immediate, and may be the most intense, emotional, and unreasoned," whereas the affidavit does not expose the circulator to the risk of

114. *Buckley v. ACLF*, 119 S. Ct. at 656. *See also*, *Timmons*, 520 U.S. at 366-67.

115. COLO. REV. STAT. § 1-40-112(2)(1998). The statute provides:

- (a) "All circulators who are not to be paid for circulating petitions concerning ballot issues shall display an identification badge that includes the words "VOLUNTEER CIRCULATOR" in bold-faced type which is clearly legible and the circulator's name."
- (b) "All circulators who are to be paid for circulating petitions concerning ballot issues shall display an identification badge that includes the words "PAID CIRCULATOR" in bold-faced type which is clearly legible, the circulator's name, and the name and telephone number of the individual employing the circulator."

Id. Colorado enacted the provision five years after the Supreme Court's decision in *Meyer. Buckley v. ACLF*, 119 S. Ct. at 645. A similar requirement that badges disclose whether the circulator is paid or a volunteer, and if paid by whom, was not challenged by the ACLF. *Id.* Colorado does not require identification badges for persons who gather signatures to place candidates on the ballot. *Id.* n.18. *See generally* COLO. REV. STAT. § 1-4-905 (1998) (regulations governing candidate-petition circulators). An unchallenged provision provides that each petition must contain along with the collected signatures of voters, the circulator's name, address, and signature. *Buckley v. ACLF*, 119 S. Ct. at 645.

116. *Buckley v. ACLF*, 119 S. Ct. at 645.

117. Brief for Petitioner at 36-37; *see also*, Reply Brief at 17.

118. *Buckley v. ACLF*, 119 S. Ct. at 646.

119. *Id.* at 645.

the “heat of the moment” harassment.¹²⁰ The name identification inhibits participation in the petitioning process.¹²¹ The two individuals who testified believed that it discourages participation because of the controversial views that such initiatives may include such as legalizing marijuana.¹²² Petition circulators must endeavor to persuade electors to sign the petition. The necessity for the freedom to anonymously speak one’s views is heightened for the petition circulator because the badge requirement compels personal name identification at the precise moment when the circulator’s anonymity is greatest.¹²³

The Court applied the decision of *McIntyre v. Ohio Elections Comm’n*.¹²⁴ *McIntyre* applied “exacting scrutiny” to Ohio’s fraud prevention justifications in holding that the ban on anonymous speech violated the First Amendment.¹²⁵ The complaint in *McIntyre* challenged an Ohio law that prohibited the distribution of anonymous campaigning literature.¹²⁶ Because “circulating a petition is akin to distributing a handbill in invoking one-on-one communication, the Court affirmed the Tenth Circuit’s invalidation under the First Amendment.¹²⁷ The name badge requirement does not qualify under the “more limited [election process] identification requirement alluded to in *McIntyre*.¹²⁸ The Court affirmed the Court of Appeals invalidation of the badge requirement because it discourages participation in the petition circulation process by forcing name identification without sufficient cause.¹²⁹

The other justices unanimously agree that the identification badge requirement is invalid because it directly regulates the content of speech. Justice Thomas would apply a stricter standard than the majority applied.¹³⁰ The requirement is not narrowly tailored, and the state failed to satisfy its

120. *Buckley v. ACLF*, 119 S. Ct. at 645 (citing *ACLF v. Meyer*, 870 F.Supp. at 1004 (observing that affidavits are not instantly accessible, and are therefore less likely to be used “for such purposes as retaliation or harassment”). See also, Brief for Respondent, at 47.

121. *Buckley v. ACLF*, 119 S. Ct. at 645.

122. *Id.* A witness told of the harassment that he personally experienced as a circulator of a hemp initiative petition. See *ACLF v. Meyer*, 870 F.Supp. at 1001. He also testified to the reluctance of potential circulators to face the recrimination and retaliation that bearers of petitions on “volatile” issues sometimes encounter (stating that “with their name on a badge, it makes them afraid” (testimony of Jon Baraga)). *Id.* at 1001-1002.

123. *Buckley v. ACLF*, 119 S. Ct. at 646.

124. 514 U.S. 334 (1995).

125. *Buckley v. ACLF*, 119 S. Ct. at 645-46.

126. *Id.* at 645.

127. *Id.* at 646.

128. *Id.* (citing to *McIntyre*, 514 U.S. at 353) (“We recognize that a State’s enforcement interest might justify a more limited identification requirement, but Ohio has shown scant cause for inhibiting the leafleting at issue here.”); see also *id.* at 358 (Ginsburg, J., concurring).

129. *Buckley v. ACLF*, 119 S. Ct. at 646.

130. *Id.* at 651 (Thomas, J., concurring). See also, *Boos v. Barry*, 485 U.S. 312, 321 (1988).

burden of demonstrating that fraud is a real problem.¹³¹ Justice O'Connor, along with Chief Justice Rehnquist, agrees with the majority that the First Amendment renders the identification badge requirement unconstitutional.¹³² O'Connor notes that the badge imports into the one-on-one dialogue of petition circulation, a message the circulator might otherwise refrain from delivering, and that it deters some initiative petition circulators from disseminating their ideas.¹³³

F. *Financial Disclosure Provision*¹³⁴

Colorado's disclosure provisions were enacted in response to the Court's invalidation of the prohibition of paid circulators in *Meyer*.¹³⁵ The statute requires proponents of petitions, who pay circulators, to file both monthly reports during the circulation period in addition to a final report when the initiative petition is submitted to the Secretary of the State.¹³⁶ Colorado's reasons to enact such restrictions were that public disclosure of the political contributions and expenditures inform voters in making intelligent choices in the election process, and help to combat fraud.¹³⁷ The disclosure deters circulation fraud and abuse by encouraging petition circulators to be truthful

131. *Buckley v. ACLF*, 119 S. Ct. at 651. See also *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 664 (1994); *Colorado Republican Federal Campaign Comm'n v. Federal Election Comm'n*, 518 U.S. 604, 647 (1996) (Thomas, J., concurring in judgment and dissenting in part).

132. *Buckley v. ACLF*, 119 S. Ct. at 654, 662 (O'Connor, J., concurring in judgment in part and dissenting in part) (Rehnquist, C.J., dissenting).

133. *Id.* at 654.

134. COLO. REV. STAT. § 1-40-121(1998). The statute provides in relevant part:

- (1) "The proponents of the petition shall file . . . the name, address, and county of voter registration of all circulators who were paid to circulate any section of the petition, the amount paid per signature, and the total amount to each circulator. The filing shall be made at the same time the petition is filed with the secretary of state . . ."
- (2) "The proponents of the petition shall sign and file monthly reports with the secretary of state, due ten days after the last day of each month in which petitions are circulated. Monthly reports shall set forth the following:
 - (a) The names of the proponents;
 - (b) The name and the residential and business addresses of each of the paid circulators;
 - (c) The name of the proposed ballot measure for which petitions are being circulated by paid circulators; and
 - (d) The amount of money paid and owed to each paid circulator for petition circulation during the month in question."

135. See 1993 Colo. Sess. Laws, Ch.183, § 1.

136. COLO. REV. STAT. § 1-40-121 (1998). Colorado does not require similar disclosure provisions for persons who gather signatures to place candidates on the ballot. See generally COLO. REV. STAT. § 1-4-905 (1998) (regulations governing candidate-petition circulators).

137. See *Buckley v. Valeo*, 424 U.S. at 61-7.

and self-disciplined.¹³⁸ These are among the interests the Court found to be substantial in *Buckley v. Valeo*.¹³⁹ Colorado has a legitimate interest in law enforcement to detect and identify in a timely basis, abusive or fraudulent circulators.¹⁴⁰ Moreover it provides facts useful to voters who are weighing their options by evaluating the sincerity, or the potential bias of any circulator that approaches them.¹⁴¹

The majority opinion looks to *Buckley v. Valeo*¹⁴² for the standard of review to apply to the restriction of disclosing paid circulation.¹⁴³ Justice Ginsburg applies “exacting scrutiny” when compelled disclosure of campaign-related payments is at issue.¹⁴⁴ The Tenth Circuit did not invalidate the Colorado statute “as a whole.”¹⁴⁵ There is a substantial state interest in disclosing names of initiative sponsors, and of the amounts they have spent gathering support for their initiatives.¹⁴⁶ The Tenth Circuit invalidated the provision demanding “detailed monthly disclosures.”¹⁴⁷ The Court rejected compelled disclosure of the name and address of each paid circulator, and the amount of money paid and owed to each circulator during the month.¹⁴⁸ As the Court of Appeals did not identify any infirmities in the required reporting, the majority expressed no opinion whether those monthly report prescriptions would survive review standing alone.¹⁴⁹ Nevertheless, monthly disclosures are no longer required. As for the final report provision, the Tenth Circuit invalidated only the portion that compels disclosure of information specific to each paid circulator.¹⁵⁰ As modified the final report will reveal the amount paid per petition signature, and thus the total amount paid to the circulators.¹⁵¹

138. *Id.* at 67.

139. *Buckley v. ACLF*, 119 S. Ct. at 656 (O’Connor, J., concurring in the judgment in part and dissenting in part). *See also Buckley v. Valeo*, 424 U.S. at 67, 68 (per curiam) (holding that the Government has a substantial interest in requiring candidates to disclose the sources of campaign contributions to provide the electorate with information about “the interests to which a candidate is most likely to be responsive” to “deter actual corruption and avoid the appearance of corruption,” and “to detect violations of the contribution limitations”).

140. *Buckley v. ACLF*, 119 S. Ct. at 647.

141. *Id.*

142. 424 U.S. 1 (1976).

143. *Buckley v. ACLF*, 119 S. Ct. at 647.

144. *Id.* *See Buckley v. Valeo*, 424 U.S. at 64-65.

145. *Buckley v. ACLF*, 119 S. Ct. at 646.

146. *Id.* at 647.

147. *Id.* (citing *Meyer v. ACLF*, 120 F.3d at 1105).

148. *Id.* *See* COLO. REV. STAT. § 1-40-120(2)(b),(d) (1998).

149. *Buckley v. ACLF*, 119 S. Ct. at 647.

150. *Id.* at 646-47. In particular, the Court invalidated the disclosure of the circulator’s names and addresses and the total amount paid to each circulator. *See ACLF v. Meyer*, 120 F.3d at 1104-05.

151. *Buckley v. ACLF*, 119 S. Ct. at 647.

The Court notes that disclosure of the names of initiative sponsors, and the amounts spent gathering support for their initiative responds to the substantial state interests.¹⁵² However, Justice Ginsburg notes that ballot initiatives differ from the disclosure provisions of the money paid to or for the candidates in *Buckley v. Valeo* because the former does not involve the risk of “quid pro quo” corruption.¹⁵³ As stated in *Meyer*, “the risk of fraud or corruption, or the appearance thereof, is more remote at the petition stage of an initiative than at the time of balloting.”¹⁵⁴ Absent evidence to the contrary, the Court is not prepared to assume that a professional circulator is more likely to accept false signatures than a volunteer.¹⁵⁵ The Court believes that Colorado can meet their substantial interests in regulating the ballot-initiative process with the less restrictive measures validated by the Court of Appeals.¹⁵⁶ The statute as it stands leaves in tact the proper ballot access controls that do not unjustifiably inhibit the circulation of ballot initiative petitions.¹⁵⁷

Justice Thomas views the burdens that the reporting requirements impose do not constitute a “severe burden” on core political speech.¹⁵⁸ However, any type of disclosure can seriously infringe on the privacy of association and belief granted by the First Amendment and must pass a “strict test.”¹⁵⁹ Recognizing that the state requires the identification of only paid circulators, and the risk of improper conduct is more remote at the petition stage of an initiative, the law does not serve the state interest of providing a complete picture of how money is being spent to get a measure on the ballot.¹⁶⁰ The provision as rewritten by the lower courts would pass the rigors of strict scrutiny.¹⁶¹ Assuming the state’s interests in having the information available to the press and voters before the initiative is voted is compelling, Justice Thomas finds that the reporting provision as modified by the lower courts

152. *Id.* (citing *ACLF v. Meyer*, 870 F.Supp. at 1003).

153. *See Meyer v. Grant*, 486 U.S. 414, 427-28 (1998) (citing *Bellotti*, 435 U.S. at 790 (“The risk of corruption perceived in cases involving risk of corruption perceived in cases involving candidate elections . . . simply is not present in a popular vote on a public issue.”)); *McIntyre*, 514 U.S. at 352 n.15.

154. *Buckley v. ACLF*, 119 S. Ct. at 648 (citing *Meyer*, 486 U.S. at 427).

155. Justice Ginsburg’s assumption is based on professional circulators may depend on a reputation for competence and integrity for future assignments, whereas a volunteer is motivated entirely by an interest in having the proposition placed on the ballot. *See Meyer*, 486 U.S. at 426.

156. *Buckley v. ACLF*, 119 S. Ct. at 648.

157. *Id.* at 649.

158. *Id.* at 651 (Thomas, J., concurring).

159. *Id.* (citing *Buckley v. Valeo*, 424 U.S. at 64, 66).

160. *Buckley v. ACLF*, 119 S. Ct. at 652.

161. The statute as it stands after this decision provides proponents must disclose the amount paid per petition signature and the total amount paid to each circulator, without identifying each circulator at the time the petition is filed. *Id.* at 653.

ensures the public will receive information regarding the financial support behind the initiative proposal before they can vote.¹⁶²

Chief Justice Rehnquist disagrees that the First Amendment renders the disclosure requirements unconstitutional.¹⁶³ Rehnquist believes the majority's reasoning is illogical because in the portion that the Court left untouched, all circulators, whether paid or volunteer, must surrender their anonymity in the affidavit that was upheld by the Tenth Circuit as not significantly burdening political expression.¹⁶⁴ This is in contrast to the majority's reliance that there is no risk of "quid pro quo" corruption when money is paid to ballot initiatives circulators, and that paid circulators should not have to surrender their anonymity enjoyed by their volunteer counterparts.¹⁶⁵ The only additional piece of information that the disclosure requirement asks is the amount paid to each circulator.¹⁶⁶ Through the affidavit, the identity of the circulators as well as the total amount of money paid will be a matter of public record.¹⁶⁷ This additional requirement is not sufficient to invalidate the disclosure requirements that serve substantial interests and are narrowly tailored to satisfy the First Amendment.¹⁶⁸

Justice O'Connor finds the majority's holding that the disclosure provisions are partially unconstitutional to be most disturbing.¹⁶⁹ She agrees with Rehnquist that the disclosure reports are virtually indistinguishable from the affidavit, which the Court suggests is a permissible regulation of the electoral process.¹⁷⁰ Furthermore, the disclosure reports are a lesser burden than the affidavits because the latter are completed by the petition circulator, while the former are completed by the initiative proponent and are thus a step removed from petition circulation.¹⁷¹ Additionally, the affidavit is not an effective substitute because the affidavits are not completed until after all signatures have been collected, and thus after the time that the information is

162. *Id.*

163. *Id.* at 662.

164. *Id.* (citing *ACLF v. Meyer*, 120 F.3d at 1099). Colorado law requires that each circulator must submit an affidavit that must include the circulator's name, the address at which he or she resides, including the street name and number, the city or town, and the country. COLO. REV. STAT. § 1-40-111(2) (1998). The majority relies on the constitutionality of the affidavit in invalidating the registered voter requirement. *Buckley v. ACLF*, 119 S. Ct. at 644.

165. *Id.* at 662.

166. *Id.*

167. *Id.*

168. *Id.*

169. *Buckley v. ACLF*, 119 S. Ct. at 656 (O'Connor, J., concurring in the judgment in part and dissenting in part).

170. *Id.* See also *id.* at 645-46.

171. *Id.* at 657.

needed.¹⁷² The public would have more access to the monthly disclosure reports, and as the District Court found, the public will have “greater difficulty in finding [the] names and addresses [of petition circulators] in the masses of papers filed with the petitions as compared with the monthly reports.”¹⁷³ Under the flexible strict scrutiny, a regulation of the electoral process with an indirect and insignificant effect on speech such as the disclosure provision should be upheld so long as it advances a legitimate government interest.¹⁷⁴ However, Justice O’Connor would still uphold the disclosure provision even under the more exacting scrutiny applied by the majority and Justice Thomas.¹⁷⁵

IV. ANALYSIS

The restrictions imposed by Colorado were found to significantly inhibit communication with voters about proposed political change, and were not justified by Colorado’s interest in administrative efficiency, fraud detection, or voter education.¹⁷⁶ Although the exact level of scrutiny applied by the Court is debatable, it can be determined that some type of flexible standard will be applied to election regulations as applied by all of the Justices in *Burdick*. The First Amendment hurdle for the state is a difficult one to jump over, but it is clearable. Although the Court has on occasion invalidated state laws that severely burden political speech,¹⁷⁷ it has repeatedly upheld reasonable state regulation of the electoral process.¹⁷⁸ In examining how the Court balanced the state’s interest to enact the voter registration requirement, the identification badge requirement, and the financial disclosure provisions, states may look to *Buckley v. ACLF* to develop an efficient and reasonable direct democracy system, to create a regulatory system that will not overburden the petitioners’ First Amendment rights while achieving the desired protections.

172. *Id.* at 658. See COLO. REV. STAT. § 1-40-111(2) (1998) (“Any signature added to a section of a petition after the affidavit has been executed shall be invalid.”).

173. *Buckley v. ACLF*, 119 S. Ct. at 658 (citing *ACLF v. Meyer*, 870 F.Supp. at 1004).

174. *Id.* at 656.

175. *Id.* at 658.

176. See *id.* at 638.

177. See, e.g., *McIntyre*, 514 U.S. at 334 (invalidating Ohio’s statutory prohibition against distribution of any anonymous campaign literature as violative of the First Amendment); *Celebrezze*, 460 U.S. at 780 (invalidating Ohio’s statute requiring early filing deadline for independent candidates as placing an unconstitutional burden on voting and associational rights of supporters of independent candidates); *Meyer*, 486 U.S. at 414 (invalidating Colorado’s prohibition against paying circulators as violative of the First Amendment).

178. See, e.g., *Timmons*, 520 U.S. at 351 (upholding Minnesota’s antifusion laws prohibiting candidates from appearing on the ballot as candidate of more than one political party); *Burdick*, 504 U.S. at 428 (upholding Hawaii’s prohibition on write-in voting).

A. *What is the Proper Level of Scrutiny?*

Although the Court applied strict scrutiny, it should have given more credence to the state to provide “a substantial regulation of elections if they are to be fair and honest, and if some sort of order, rather than chaos, is to accompany the democratic processes.”¹⁷⁹ The majority opinion was silent as to the exact level of scrutiny, departing from past decisions such as *Meyer*, *McIntyre*, and *Burdick*. Ginsburg’s majority opinion reasoning however more closely follows the opinion by Justice O’Connor, as opposed to Justice Thomas. Although Justice O’Connor is more willing to find regulations to indirectly impact political speech than the Court, the majority examines each restriction to determine if it has a direct or indirect impact. This reasoning is in stark contrast to that of Justice Thomas, who would find almost any restriction on the election process to have an impact on political speech and to render it unconstitutional. No other Justice in this case shares his view that restrictions that indirectly impact the election process are invalid. It is safe to say that the Court will apply a flexible standard, but whether the restriction will fall under the lesser or the stricter standard is still uncertain.

The Court, in justifying the invalidation of the regulations in question, emphasized other restrictions in place that adequately achieve Colorado’s purpose. The Court did not provide its reasons as to why those restrictions not reviewed were any less burdensome than those that were. In fact, as pointed out by Justice O’Connor and Chief Justice Rehnquist, the affidavit that was assumed to be a legitimate restriction in order to justify invalidating the voter-registration requirement, demands almost the same information to be disclosed as required by the financial disclosure statute that was struck down. The logic Justice Ginsburg used to invalidate certain restrictions, noting other restrictions already exist, gives little guidance to a state legislature desiring to meet the need to regulate the direct democracy system.¹⁸⁰ Determining the exact level

179. *Buckley v. ACLF*, 119 S. Ct. at 636 (citing *Storer*, 415 U.S. at 730; *Celebrezze*, 460 U.S. at 788; *Timmons*, 520 U.S. at 358).

180. *Buckley v. ACLF*, 119 S. Ct. at 648. See *Meyer*, 486 U.S. at 426-27; *Meyer v. ACLF*, 120 F.3d, at 1103, 1105; see, e.g., COLO. REV. STAT. § 1-40-130(1)(b) (1998) (making it criminal to forge initiative-petition signatures); § 1-40-132(1) (initiative-petition section deemed void if circulator has violated any provision of the laws governing circulation).

To ensure grass roots support, Colorado conditions placement of an initiative proposal on the ballot on the proponent’s submission of valid signatures representing five percent of the total votes cast for all candidates for Secretary of State at the previous general election. COLO. CONST. art. V, §1(2); COLO. REV. STAT. § 1-40-109(1) (1998); see also *Meyer*, 486 U.S. at 425-26; *Meyer v. ACLF*, 120 F.3d at 1105.

Furthermore, in aid of efficiency, veracity, or clarity, Colorado has provided for an array of process measures not contested here by ACLF. These measures prescribe, inter alia, a single subject per initiative limitation, COLO. REV. STAT. § 1-40-106.5(1)(a) (1998); a signature verification method, § 1-40-116; a large plain-English notice alerting potential signers of petitions

of scrutiny applied by the Court can be difficult because of the departure from its earlier decisions of explicitly stating what the proper scrutiny is to apply. The Court will apply strict scrutiny to any regulation that directly impacts core political speech, but any lesser regulation will be closely scrutinized to determine its impact on the initiative process.

B. Registration Requirements

Colorado attempted to follow the Court's direction in *Meyer*, in drafting legislation that allowed registered voters to circulate initiative-petitions while upholding the goal of protecting the decency of the process. Colorado experienced a surge in the use of paid petition circulators and in the number of abuses reported.¹⁸¹ The Court, by noting the substantial need for regulation, should have given more credit to Colorado's compelling interests and the minimal burden it places on circulators. The Colorado statute does not place any restrictions on the ability to register to vote, nor does it prohibit any person from registering who wants to circulate petitions. In fact, the state has made the process of registering readily available to anyone who qualifies.¹⁸² Colorado law establishes their requirements for voter registration, that a person be 18 years of age, a U.S. citizen, and a resident of the state for at least 30 days.¹⁸³ Registering to vote in Colorado is an exceedingly easy procedure that can be done at the county clerk's office, by postcard, or at a driver's license examination facility.¹⁸⁴

For those who feel the democratic system is not responsive to their political needs, they have the opportunity to have a direct impact by using the initiative process. Those who choose not to vote for political reasons can still express their political views, and register to become circulators. There is no requirement to vote once a citizen has registered. It is those that refuse to register whom prevent themselves from being able to decide the issue they want (or for which they are paid) to promote. There is evidence that a few people specifically do not register out of protest for their political beliefs. These people have the right under the First Amendment to not be forced into participating in the system they differ from ideologically. However, there is no prohibition on unregistered citizens from organizing the initiative, and having volunteers or paid circulators gather signatures. Without the restriction, special interest groups are left to overtake the initiative process from the citizen. While it might make it more burdensome for a few individuals, the

to the law's requirements, § 1-40-110(1); and the text of the affidavit to which all circulators must subscribe, § 1-40-111(2).

181. Amicus Brief at 12, available in Westlaw, 1998 WL 212593.

182. See *id.* at 22.

183. COLO. REV. STAT. § 1-2-101.

184. See *id.* §§ 1-2-202, 208, and 213.

preservation of the system to ensure access to the grass roots proponents as well as the heavily financed special interest groups should give substantial weight to allow certain restrictions. The same forces that caused the need for direct democracy are quickly eradicating its objectives, the ability of the citizen to directly initiate law that the legislature has failed to provide because of the influence of special interest groups. Ironically, those groups are finding it just as easy to influence ballot propositions with large money expenditures as it is to use money to influence the legislatures. As the price tag for putting an initiative on the ballot is driven up through the large pocketbooks of the special interest groups, grassroots efforts with little financial backing effectively become shut out of the system that was originally designed to support those efforts. Granted, protections exist that the courts have not invalidated, however the fact remains that the average citizen who does not have the \$900,000 to combat the spending power of any opposing special interest groups will not have a chance to be heard.

C. *Disclosure Provisions*

As explained in *Buckley v. Valeo*, disclosure provides the electorate with information “as to where political campaign money comes from and how it is spent to aid electors in evaluating those who seek their vote.”¹⁸⁵ Additional disclosure deters actual corruption and avoids the appearance of corruption in exposing large contributions and expenditures.¹⁸⁶ The Court has not provided any justification for the invalidation other than the purpose is served by already served by the affidavit that was presumed valid. As the affidavit and disclosure provisions are similar, it is uncertain how the Court would analyze the affidavit on its own validity. Keeping in line with *Buckley v. Valeo*, the Court should support the state in its effort to shed light into an area typically abused by the big budgeted special interest groups. By providing the voters with accurate information, they will be better equipped to make informed decisions. The Tenth Circuit did keep some disclosure provisions in tact that allow Colorado to achieve part of its goal. The holding however, provides more confusion as to the proper level of disclosure required.

D. *Implications on the State and the Citizen*

As noted by both Chief Justice Rehnquist and Justice O’Connor, Colorado’s registration requirement parallels the requirements in place in at least nineteen other states and the District of Colombia that explicitly require

185. *Buckley v. ACLF*, 119 S. Ct. at 647 (citing *Buckley v. Valeo*, 424 U.S. at 66 (internal quotations marks omitted)).

186. *Id.* at 647 (citing *Buckley v. Valeo*, 424 U.S. at 67); *see also* *Grosjean v. American Press Co.*, 297 U.S. 233, 250 (1936) (observing that an “informed public opinion is the most potent of all restraints in misgovernment).

candidate petition circulators be electors,¹⁸⁷ and at least one other state requires that its petition circulators be state residents.¹⁸⁸ These now are questionable in light of the Court's decision in *Buckley v. ACLF*.

According to the majority, a restriction that significantly inhibits communication with voters about proposed political change will be found unconstitutional under the First Amendment. A state should be confident in passing a regulation on the electoral process itself, and not one that inhibits either voters, or the circulators of petitions. However, as each Justice noted, a residency requirement for circulators would be considered a reasonable regulation in light of the state's compelling interest maintaining jurisdiction over the circulators, and preventing fraud.¹⁸⁹ Six months after *Buckley v. ACLF*, the Southern District Court of Mississippi decided the case *Kean v. Clark*,¹⁹⁰ which challenged the validity of an amendment to the Mississippi Constitution.¹⁹¹ The state imposed restrictions on the circulators of petitions for ballot initiatives.¹⁹² The court held that the residency requirement for circulators of petitions for ballot initiatives did not violate their First Amendment rights.¹⁹³ This regulation differs from the Colorado regulation invalidated in *Buckley v. ACLF*, because it only requires the circulators to be residents, not registered voters. This is the type of regulation the state should

187. *Buckley v. ACLF*, 119 S. Ct. at 661 n.3 (Rehnquist, C.J., dissenting). The states that require candidate petition circulators to be electors are: ARIZ.REV.STAT. ANN. § 16-315 (1996) (Arizona); CAL.ELEC.CODE ANN. § 8106(b)(4) (West 1996) (California); COLO. REV. STAT. § 1-4-905 (1998) (Colorado); CONN. GEN.STAT. § 9-410 (Supp.1998) (Connecticut); D.C.CODE ANN. § 1-1312(b)(2) (1992) (Washington D.C.); IDAHO CODE § § 34-626, 34-1807 (Supp.1998) (Idaho); ILL.COMP.STAT., ch. 10, § § 5/7-10, 5/8-8, 5/10-4 (Supp.1998) (Illinois); KAN.STAT.ANN. § 25-205(d) (1993) (Kansas); MICH.COMP.LAWS § 168.544c(3) (Supp.1998) (Michigan); MO.REV.STAT. § 115.325(2) (1997) (Missouri); NEB.REV.STAT. § 32-630 (Supp.1997) (Nebraska); N.Y.ELEC.LAW § § 6-132, 6-140, 6-204, 6-206 (McKinney 1998) (New York); OHIO REV.CODE ANN. § 3503.06 (1996) (Ohio); 25 PA.CONS.STAT. § 2869 (1994) (Pennsylvania); R.I.GEN.LAWS § 17-23-12 (1996) (Rhode Island); S.D.COMP.LAWS § 12-1-3 (1995) (South Dakota); VA.CODE ANN. § 24.2-521 (Supp.1998) (Virginia); W.VA.CODE § 3-5-23 (1994) (West Virginia); WIS.STAT. § 8.40 (1996) (Wisconsin); Wyo.Stat. § 22-5-304 (1992) (Wyoming).

188. *Id.* n.4 (Rehnquist, C.J., dissenting). See GA.CODE ANN. §§ 21-2-132(g)(3)(A), 21-2170(d)(1) (1993 and Supp. 1997) (Georgia).

189. *Buckley v. ACLF*, 119 S. Ct. at 644, 651-652. Chief Justice Rehnquist and Justice O'Connor found the voter registration requirement in which voters must be residents, to be a reasonable regulation. *Id.* (Rehnquist, C.J., dissenting) (O'Connor, J., concurring in the judgement in part and dissenting in part).

190. 56 F.Supp.2d 719 (S.D. Miss. 1999). The same court has previously invalidated Mississippi's registered-voter requirement as unconstitutional. See *Term Limits Leadership Council, Inc. v. Clark*, 984 F.Supp. 470 (S.D. Miss. 1997).

191. Mississippi adopted the indirect initiative for Constitutional Amendments in 1992. DUBOIS & FEENEY, *supra* note 9, at 28 tbl.1.

192. *Keen*, 56 F.Supp.2d at 721; see MISS. CONST. art. XV, § 273 (12) (1998).

193. *Id.* at 732.

implement in order to achieve the goals of administrative efficiency, fraud detection and prevention, and voter education while imposing the least possible burden on the petition circulators. If this case would reach the Supreme Court, they will most likely uphold the residency requirement following the suggestions made by the Court in *Buckley v. ACLF*.

An overwhelming 84 per cent of California citizens polled agreed that “an average voter cannot make an intelligent choice” with so many initiatives on the ballot posing complex questions.¹⁹⁴ Because the initiative process bypasses the legislative process, safeguards are necessary to provide for an informed electorate. The Court has prevented the state from this objective. The Supreme Court in this decision has made it more difficult for a state to control its own direct democracy process, while providing special interest groups with more leeway for potential abuse. While the restrictions placed minor obstacles to the petition process, it did not initiate any burden that would deny any new group the ability to register. Colorado’s intention was to safeguard the process to ensure the voters knew why the issue is being proposed to make an informative decision. Although the Court has struck down a variety of restrictions imposed by Colorado to regulate its initiative process, states can now develop a statute that will achieve the objectives of creating a fair and ordered system for its direct democracy process.

A good example for the state to follow would be the Mississippi statute.¹⁹⁵ The Court has moved towards accepting restrictions placed by states on their own direct democracy process. Moving from a unanimous decision in *Meyer*, the decision in *Buckley v. ACLF* suggests the Court is willing to give the States more power to control their own affairs. By using a more flexible level of scrutiny, regulations that indirectly impose a burden on the electoral process will be upheld. Through the 1999-2000 term, there are signs of Rehnquist gaining additional support for furthering state rights.¹⁹⁶ A third time may prove to be the charm for the state desiring to protect the direct democracy system for their citizens, and restrict special interest groups from tarnishing an otherwise legitimate attempt to give control to the people of the state.

V. CONCLUSION

The objective of direct democracy was to grant power to the citizen at a time when the legislature was unresponsive to the public’s needs. At a time when corruption and influence from special interest groups hampered the ability of the elected representatives to promote legislation beneficial to the

194. DUBOIS & FEENEY, *supra* note 9, at 4 (citing “Voters Say Initiative Process is Too Complicated, Out of Control,” LOS ANGELES TIMES, Nov. 4, 1990, at A1, A38, A43).

195. *See supra* text accompanying note 192.

196. *See* David G. Savage, *Chief Justice Rehnquist Seems Determined to Limit Federal Authority*, ST. LOUIS POST DISPATCH, Oct. 1, 1999, at A8.

common citizen populist movements looked to direct democracy as a tool to combat such abuses. Direct democracy possesses many benefits, but there are also many risks if the system goes unregulated. While some restrictions do place burdens on the political speech of a few citizens desiring to cause change in their society at the same time as protesting that society, restrictions are a necessary evil to ensure the process is fair, efficient, and free from corruption. Colorado's most recent attempt to provide such restrictions was invalidated by the Supreme Court in *Buckley v. ACLF*. However, the decision did leave some restrictions in tact to meet some of the state's objectives. Furthermore, this case can serve as a guide to states that find it necessary to protect their direct democracy system for their citizens, without placing any undue burdens on the fundamental right to political speech.

RYAN K. MANGER*

* J.D. Candidate, Saint Louis University School of Law, 2001; B.S., Saint Louis University, 1998. The author would like to thank his parents, Ken and Barbara, for their continued support and Professor Alan Howard for his helpful comments.