

Judge pauses petition collection site rules

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A federal judge has granted a preliminary injunction that prevents Minnehaha County from enforcing designated areas and check-ins for petition circulators as part of what opponents called an overly restrictive policy at the county's administration building in central Sioux Falls.

The petition policy, recommended by County Auditor Leah Anderson and passed unanimously by the Minnehaha County Commission on May 2, came in response to what some county employees and customers characterized as increasingly aggressive behavior from circulators and counter-protestors as signatures are sought for a proposed ballot amendment to enshrine the right to abortion in the South Dakota Constitution.

The rules restricted petition circulation to two designated rectangular areas: one about 50 feet from the main entrance to the building in the parking lot off Minnesota Avenue, and the other southeast of the main entrance to the courthouse.

The policy mandated that circulators check in at Anderson's

office prior to conducting political activity "to permit the placement of safety markers and to verify space availability within the designated areas."

Dakotans for Health, the organization behind the proposed abortion amendment, responded with a lawsuit in U.S. District Court and was granted a temporary restraining order May 11. The group claimed that the new policy "prohibits speech in 99.3% of the outdoor space that was available for First Amendment activity before the new policy was implemented."

In his June 13 ruling, U.S. District Court Judge Roberto Lange wrote that Dakotans for Health representatives "have shown a likely violation of their First Amendment rights, and the public interest is served by protecting these rights." He added that his ruling restrains the county from enforcing any part of the policy that requires "check-in" with Anderson's office or restricts petition circulators to "designated areas."

The ruling does not prevent the county from enforcing its previous policy's rules regarding the behavior of petition circulators, Lange wrote, noting that the

county already had provisions in place requiring signature gatherers to conduct themselves in a "polite, courteous and professional manner" and not "obstruct individuals as they enter and exit the building."

"The public ... has an interest to enter and leave the county buildings without undue traffic flow problems that overly aggressive petition circulators or those protesting these petitions might create," Lange wrote. "But enforcement of the prior policy should blunt such behavior by petition circulators."

Judge Lange wrote that the county could "develop a different policy that passes constitutional muster if they wish."

Another option would be to appeal the decision to the Eighth Circuit within the next 30 days. Anderson didn't immediately respond to a request for comment from News Watch about the ruling.

The legal tussle over the county's petition policy was viewed as crucial to the battle over South Dakota's abortion ban and whether reproductive rights should be decided by voters in 2024.

"This is a very important decision," Jim Leach, the Rapid City

lawyer who represents Dakotans for Health, told News Watch. "It recognizes the people's First Amendment right to circulate petitions and recognized that the government has severe restrictions on what it can do to try to impair those rights. While Dakotans for Health brought this case, it's significant for everyone in South Dakota who might want to sign a petition or have the opportunity to vote on these issues."

Dakotans for Health needs to collect a minimum of 35,017 signatures to place the abortion constitutional amendment on the ballot, and the goal is to submit 60,000 or more to ensure that ballot access isn't foiled by invalidated signatures or other technicalities. The deadline to submit signatures is May 7, 2024.

Called the "gold standard" of petition circulation by groups soliciting signatures for ballot measures, the county administration building features a steady flow of foot traffic from the parking lot to its main entrance, where circulators are often stationed with clipboards and requests for support of their political cause.

Some of the petition circulators have clashed with volunteers from

the anti-abortion Life Defense Fund, whose founders call the proposed amendment "a grave threat to life in our state." The group aims to thwart petitioners through its "Decline to Sign" campaign.

Much of the debate focused on the yellow-striped rectangular box in the parking lot that was a designated area under the new policy. Dakotans for Health claimed it would force circulators to shout at potential signers to go out of their way and potentially walk through parking-lot traffic to engage in conversation.

"All we're saying is that people should have an unimpeded right to decide whether to sign petitions and then to vote on issues that affect them," said Leach.

If passed, the abortion measure would enshrine the right to abortion in the South Dakota Constitution and supersede a 2005 state trigger law that took effect when *Roe vs. Wade* was overturned and made it a Class 6 felony to perform an abortion except to save the life of the mother.

This article was produced by South Dakota News Watch, a non-profit journalism organization located online at sdnewswatch.org.