Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

BUCKLEY, SECRETARY OF STATE OF COLORADO *v.* AMERICAN CONSTITUTIONAL LAW FOUNDATION, INC., ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 97–930. Argued October 14, 1998– Decided January 12, 1999

Colorado allows its citizens to make laws directly through initiatives placed on election ballots. The complaint in this federal action challenged six of the State's many controls on the initiative-petition process. Plaintiffs-respondents, the American Constitutional Law Foundation, Inc., and several individuals (collectively, ACLF), charged that the following prescriptions of Colorado's law governing initiative petitions violate the First Amendment's freedom of speech guarantee: (1) the requirement that petition circulators be at least 18 years old, Colo. Rev. Stat. §1–40–112(1); (2) the further requirement that they be registered voters, *ibid.*; (3) the limitation of the petition circulation period to six months, §1–40–108; (4) the requirement that petition circulators wear identification badges stating their names, their status as "VOLUNTEER" or "PAID," and if the latter, the name and telephone number of their employer, §1–40–112(2); (5) the requirement that circulators attach to each petition section an affidavit containing, *inter alia*, the circulator's name and address, §1–40–111(2); and (6) the requirements that initiative proponents disclose (a) at the time they file their petition, the name, address, and county of voter registration of all paid circulators, the amount of money proponents paid per petition signature, and the total amount paid to each circulator, and (b) on a monthly basis, the names of the proponents, the name and address of each paid circulator, the name of the proposed ballot measure, and the amount of money paid and owed to each circulator during the month, §1–40–121. The District Court struck down the badge requirement and portions of the disclosure requirements, but upheld the age, affidavit, and registration requirements,

and the six-month limit on petition circulation. The Tenth Circuit affirmed in part and reversed in part. That court properly sought guidance from this Court's recent decisions on ballot access, see, *e.g.*, *Timmons* v. *Twin Cities Area New Party*, 520 U. S. 351, and on handbill distribution, see, *e.g.*, *McIntyre* v. *Ohio Elections Comm'n*, 514 U. S. 334. The Tenth Circuit upheld, as reasonable regulations of the ballot-initiative process, the age restriction, the six-month limit on petition circulation, and the affidavit requirement. The court struck down the requirement that petition circulators be registered voters, and also held portions of the badge and disclosure requirements invalid as trenching unnecessarily and improperly on political expression. This Court agreed to review the Court of Appeals dispositions concerning the registration, badge, and disclosure requirements. See 522 U. S. ___.

Precedent guides this review. In *Meyer* v. *Grant*, 486 U. S. 414, this Court struck down Colorado's prohibition of payment for the circulation of ballot-initiative petitions, concluding that petition circulation is "core political speech" for which First Amendment protection is "at its zenith." *Id.*, at 422, 425. This Court has also recognized, however, that "there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order . . . is to accompany the democratic processes." *Storer* v. *Brown*, 415 U. S. 724, 730; see *Timmons*, 520 U. S., at 358; *Anderson* v. *Celebrezze*, 460 U. S. 780, 788.

Held: The Tenth Circuit correctly separated necessary or proper ballot access controls from restrictions that unjustifiably inhibit the circulation of ballot-initiative petitions. Pp. 7–22.

(a) States have considerable leeway to protect the integrity and reliability of the ballot-initiative process, as they have with respect to election processes generally. "[N]o litmus-paper test" will separate valid ballot-access provisions from invalid interactive speech restrictions, and this Court has come upon "no substitute for the hard judgments that must be made." *Storer*, 415 U. S., at 730. But the First Amendment requires vigilance in making those judgments, to guard against undue hindrances to political conversations and the exchange of ideas. See *Meyer*, 486 U. S., at 421. The Court is satisfied that, as in *Meyer*, the restrictions in question significantly inhibit communication with voters about proposed political change, and are not warranted by the state interests (administrative efficiency, fraud detection, informing voters) alleged to justify those restrictions. This judgment is informed by other means Colorado employs to accomplish its regulatory purposes. Pp. 7–8.

(b) Beyond question, Colorado's registration requirement drastically reduces the number of persons, both volunteer and paid, avail-

able to circulate petitions. That requirement produces a speech diminution of the very kind produced by the ban on paid circulators at issue in *Meyer*. Both provisions "limi[t] the number of voices who will convey [the initiative proponents'] message" and, consequently, cut down "the size of the audience [proponents] can reach." *Meyer*, 486 U. S., at 422, 423.

The ease with which qualified voters may register to vote does not lift the burden on speech at petition circulation time. There are individuals for whom, as the trial record shows, the choice not to register implicates political thought and expression. The State's strong interest in policing lawbreakers among petition circulators by ensuring that circulators will be amenable to the Secretary of State's subpoena power is served by the requirement, upheld below, that each circulator submit an affidavit setting out, among several particulars, his or her address. ACLF did not challenge Colorado's right to require that all circulators be residents, a requirement that more precisely achieves the State's subpoena service objective. Assuming that a residence requirement would be upheld as a needful integrity-policing measure– a question that this Court, like the Tenth Circuit, has no occasion to decide because the parties have not placed the matter of residence at issue– the added registration requirement is not warranted. Pp. 8–13.

(c) The Tenth Circuit held the badge requirement invalid insofar as it requires circulators to display their names. The District Court found from evidence ACLF presented that compelling circulators to wear identification badges inhibits participation in the petitioning process. Colorado's interest in enabling the public to identify, and the State to apprehend, petition circulators who engage in misconduct is addressed by the requirement that circulators disclose their names and addresses on affidavits submitted with each petition section. Unlike a name badge worn at the time a circulator is soliciting signatures, the affidavit is separated from the moment the circulator speaks, when reaction to the message is immediate and may be the most intense, emotional, and unreasoned. Because the badge requirement compels personal name identification at the precise moment when the circulator's interest in anonymity is greatest, it does not qualify for inclusion among "the more limited [election process] identification requirement[s]" to which this Court alluded in *McIntyre*, 514 U. S., at 353. Like the Tenth Circuit, this Court expresses no opinion on the constitutionality of the additional requirements that the badge disclose whether the circulator is paid or volunteer, and if paid, by whom. Pp. 13–16.

(d) The Tenth Circuit invalidated the requirement that ballot-initiative proponents file a final report when the initiative petition is

submitted insofar as that requirement compels disclosure of each paid circulator by name and address, and the total amount paid to each circulator. That court also rejected compelled disclosure in monthly reports of the name and address of each paid circulator, and the amount of money paid and owed to each circulator during the month in question. In ruling on these disclosure requirements, the Court of Appeals looked primarily to this Court's decision in *Buckley* v. *Valeo*, 424 U. S. 1. In *Buckley*, the Court stated that "exacting scrutiny" is necessary when compelled disclosure of campaign-related payments is at issue, but nevertheless upheld, as substantially related to important governmental interests, the reporting and disclosure provisions of the Federal Election Campaign Act of 1971. Mindful of *Buckley*, the Tenth Circuit did not upset Colorado's disclosure requirements as a whole. Notably, the Court of Appeals upheld the State's requirements for disclosure of *payors*, in particular, proponents' names and the total amount they have spent to collect signatures for their petitions. Disclosure of the names of initiative sponsors, and the amounts they have spent to gather support for their initiatives, responds to Colorado's substantial interest in controlling domination of the initiative process by affluent special interest groups. 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, has not been demonstrated. This Court expresses no opinion whether other monthly report prescriptions regarding which the Tenth Circuit identified no infirmity would, standing alone, survive review. Pp. 16–20.

(e) Through less problematic measures, Colorado can and does meet the State's substantial interest in regulating the ballot-initiative process. To deter fraud and diminish corruption, Colorado retains an arsenal of safeguards. To inform the public about the source of funding for ballot initiatives, the State legitimately requires sponsors of ballot initiatives to disclose who pays petition circulators, and how much. 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. Furthermore, in aid of efficiency, veracity, or clarity, Colorado has provided for an array of process measures not contested here by ACLF. P. 21.

120 F. 3d 1092, affirmed.

GINSBURG, J., delivered the opinion of the Court, in which STEVENS, SCALIA, KENNEDY, and SOUTER, JJ., joined. THOMAS, J., filed an opinion concurring in the judgment. O'CONNOR, J., filed an opinion concurring in the judgment in part and dissenting in part, in which BREYER, J., joined. REHNQUIST, C. J., filed a dissenting opinion.