



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 11/17/2020

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Item Creation Date: 11/5/2020

LGL- Petition Circulator Ord

Agenda Item#: 48.

Summary:

ORDINANCE amending Chapter 2, Article I, of the Code of Ordinances, Houston, Texas, recognizing and affirming that certain provisions of Articles VII-a and VII-b of the City of Houston's Charter pertaining to the Qualified Voter Status of Petition Circulators are unconstitutional and unenforceable; containing findings and other provisions relating to the foregoing subject; providing for severability; and declaring an emergency

Background:

The Legal Department recommends that City Council approve an ordinance amending Chapter 2 of the City's Code of Ordinances to provide a petition circulator affidavit form for circulators of petitions under the City of Houston Charter (the "City Charter") who are not registered voters of the City of Houston.

The City Charter authorizes direct legislation by the public through the initiative and referendum petition process (Article VII-b, Sections 2 and 3) and authorizes the removal from office of any holder of public office in the City by recall petition (Article VII-a). Articles VII-a and VII-b of the City Charter provide that each signature on an initiative, referendum, and recall petition must be acknowledged (notarized) or verified with an affidavit by a circulator of the petition. The circulator's affidavit requires the circulator to swear under oath that he or she is a signer of the petition. All signers of a petition must be qualified voters registered to vote in the City of Houston.

In *Buckley v. American Constitutional Law Found., Inc.*, 525 U.S. 182, 119 S.Ct. 636 (1999) ("Buckley"), the United States Supreme Court held, among other things, that a Colorado statute requiring that initiative-petition circulators be registered voters violated the First Amendment free speech guarantee. The Fifth Circuit, in *Pool v. City of Houston*, 19-20828, 2020 WL 6253444 (5th Cir. Oct. 23, 2020), opined that absent Houston City Council action, it is not clear that the City has changed its policy and will comply with *Buckley*.

Because there is dispositive case law prohibiting a requirement that initiative/referendum petition circulators be registered voters, the Legal Department recommends that City Council adopt an ordinance formally recognizing an alternate circulator affidavit for use by circulators who are not registered to vote in the City of Houston and codifying it in the City's Code of Ordinances.

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