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OPINION NO. 96-06

TO: Janice L. Graziano, City Clerk
FROM: Stephen M. Kemp, City Attorney
DATE: September 3, 1996
SUBJECT: Circulation of Petitions on City Property

QUESTION:

You have inquired as to whether a candidate may solicit signatures on a nominating Petition on City property.

OPINION:

The starting point for this Opinion is a recognition that the solicitation of signatures on a nominating petition is protected "First Amendment" speech under the United States and Arizona Constitutions. As such, the City must demonstrate that any regulation of such speech is necessary to serve a compelling state interest and narrowly tailored to serve that end. Schad v. Borough of Mount Ephraim, 452 U.S. 61 (1981).

Any regulation of such speech must be "content neutral." That is, that the regulation must not censor or ban protected speech, based on its content. Additionally, the regulation must serve a substantial governmental interest unrelated to speech and allow reasonable alternative avenues of communication. City of Renton v. Playtime Theaters, 475 U.S. 41 (1986).

This is even more true in a designated public forum with traditional "first amendment" speech such as political and social

comment. In this context, speech may only be regulated under the compelling state interest test. A public forum is those areas that have been opened to public access and public use on a regular and consistent basis.

Applying this to the question above, those areas of the Municipal Complex, such as the front plaza and the City Council Chamber Foyer would constitute a public forum. As such, solicitation of signatures may not be prohibited without a compelling state interest.

The interior of the City buildings with the exception of the City Council foyer, is generally not open to unrestricted public access. The facilities are locked after hours to restrict access and must be rented for non-City use. The United States Supreme Court addressed the application of speech restrictions in Lamb's Chapel v. Center Moriches Union Free School District, 113 S.Ct 2141 (1993).

In Lamb's Chapel the Supreme Court held that control over access to a non-public forum can be based on subject matter and speaker identity provided that the distinctions drawn are reasonable in light of the purpose served by the forum and are viewpoint neutral.

Unrestricted access to public offices by persons seeking petition signatures would substantially impact on City operations by detracting employees from their duties and interfering with the public's access to services. Under the powers granted by the City Charter, the City Manager could issue a directive prohibiting the solicitation of signatures on nominating petitions inside City buildings, with the exception of the City Council Chambers Foyer, provided that such rules are universally applied to all candidates and do not discriminate based on the content of the speech.

As to the City Council Chambers foyer and the outside plaza areas adjacent to the Complex, the City could impose reasonable time, place and manner restrictions on the solicitation of signatures for nominating petitions. These restrictions could include such items as preventing the blocking of entrances and exits to the buildings and parking garages, preventing the blocking of access points to the complex and imposing reasonable time restrictions.

Therefore, it is our opinion that solicitation of petition signatures may occur in those portions of the City Complex that constitute a public forum, subject to reasonable time, place and manner restrictions. If you should have any questions, please do not hesitate to contact me.

cc: Honorable Mayor and Council

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