

To Petition or Not to Petition

By Isabel Santa



“Once upon a time you could participate in politics without a battery of attorneys. Once upon a time you could lose an election without fear that one’s opponents would use the power of their office to imprison you. No more.”

— Paul Jacob



Paul Jacob is a father of three who has worked tirelessly to advance liberty over the past several decades. His radio program, “Common Sense,” runs on 150 radio stations in 48 states. He has been called a “rising star in politics” by *Campaigns & Elections* magazine and dubbed one of “The Best and The Rightest” by the *National Journal*.

To Drew Edmondson, however, Jacob is a conspirator against the state of

Oklahoma. Edmondson is the attorney general of Oklahoma, and he thinks Jacob should go to jail for 10 years. Jacob’s alleged offense: violating laws against using non-residents to collect signatures in a petition drive for a Taxpayers Bill of Rights.

Jacob is an activist, organizer, and advocate for legislative term limits, initiative and referendum rights, and limited government in the United States. One thing he is not is a conspirator.

THE STORY

In 2005, Paul Jacob and Susan Johnson, who is president of the Michigan-based petition management firm National Voter Outreach, helped Rick Carpenter, the leader of Oklahomans in Action—better known as the Oklahoma 3—organized a petition drive that gathered 300,000 signatures to place a Taxpayer Bill of Rights (TABOR) measure on the state ballot. The constitutional amendment



Paul Jacob

would have capped Oklahoma government spending growth by annual population growth and rate of inflation, and allowed the cap to be overridden only with voter approval.

During the petition drive, National Voter Outreach confirmed with state officials that people could move to the state, immediately declare residency, and thus qualify to begin circulating a petition.

To confirm the state officials’

response, organizers referred to a 2001 Oklahoma Supreme Court decision in which the court stated that circulators had to be over 18, *bona fide* residents of the state, and qualified electors. The only requirement the court defined was qualified electors: Circulators don’t have to be registered voters to petition.

Thus, Jacob, Johnson, and Carpenter hired and re-located professional petition circulators who became residents and began circulating.

However, a coalition of Oklahoma’s most powerful political players sued to block the measure from appearing on the ballot.

The Oklahoma Supreme Court sided with the challenge and created a much stricter definition of what constitutes a resident. Under the new definition, one must intend to “permanently” reside in the state to be considered a resident.

On October 2, 2007, the attorney general convinced a multi-county grand jury to indict



Jacob and two of his colleagues for violating state law in the petition process, but the grand jury dismissed the charges.

Everyone thought it was over.

However, on December 6, 2007, the attorney general re-indicted Paul and his colleagues. Edmondson contends that Paul and his team broke the state's residency requirement to petition, claiming they didn't use state residents.

On January 28, 2008, before the Oklahoma 3 pled not guilty, their supporters rallied outside the courthouse denouncing the political attacks on the defendants.

PROSECUTION'S PROBLEM

The main problem with the attorney general's criminal suit is that he is retroactively charging the Oklahoma 3 for a crime they never committed, because the law at the time was ambiguous and didn't mention a resident's intent to permanently live in the state.

Imagine you're a motorist who travels at the posted speed limit of 70 miles per hour. Then the state lowers that limit to 60 mph, and retroactively cites you a ticket for speeding. In effect, that is what the attorney general is seeking to do.

While Jacob and the Oklahoma 3 operated within the limitations of the law when the campaign was run, the attorney general is applying the Oklahoma Supreme Court ruling and law change that came after the fact in his prosecution.

CONSTITUTIONALITY OF THE RESIDENCY REQUIREMENT

Currently, Yes on Term Limits, an Oklahoma-based group seeking to place a constitutional amendment on the ballot, filed suit in federal court to overturn the state's residency requirement. The group argues that the requirement violates a petitioners First Amendment right to freely engage in political

speech and petition the government. Federal Judge Timothy Leonard upheld the state's ban on out-of-state petition circulators. The case, *Yes on Term Limits v. Secretary of State Savage*, is now on appeal before the U.S. Court of Appeals for the 10th Circuit.

HYPOCRISY OF THE ESTABLISHMENT

Attorney General Edmondson believes that only Oklahomans should circulate petitions to change state laws, because they are the only ones vested in state matters. But those in the Oklahoma political establishment often use out-of-state resources to advance political goals. For example, campaign contributions and volunteers from out-of-state are routinely used in Oklahoma. Out-of-state private law firms are even solicited to pursue lawsuits on behalf of the Oklahoma government. Those who criticize petition drives for using out-of-state signature gatherers should look at their own political use of out-of-state resources.

There are eight states that have similar residency requirements in relation to their petition process. The result of this decision could have an impact on the abilities of citizens to petition their government, not just in Oklahoma but around the country.

Jacob, Johnson, and Smith fought to give Oklahomans more freedom and control over how the government taxes them. Although they abided by the rules of the state at the time, the Oklahoma 3 face a potential jail sentence of 10 years. What hangs in the balance is more than just their freedom. It is the ability of the people to have a voice in their government.

If you're interested in learning more about Paul Jacob and this case, please visit www.freepauljacob.com.

Ms. Santa is press secretary for the Sam Adams Alliance, an educational network supporting citizens seeking political reform.