

**SCR 4013 - Testimony by Dustin Gawrylow, ND Watchdog Network (#266)**

Mr. Chairman and Members of the Committee,

Here we go again, with yet another attempt to hamper, restrict and impair the Powers Reserved to the People. Since 2013, I have opposed efforts to make the initiated measure process as a whole more difficult. The most recent battle was in 2020 where the legislature tried to inject itself in the process with a veto over the people. Fortunately over 60% of voters rejected that idea.

The provisions in this bill attempt to fix a problem that I will admit is there.

Out-of-state influence with money is a problem for initiated measure, as it is for all of politics.

Out-of-state money puts the grassroots without access to sizable budgets, including myself, at an extreme disadvantage.

First to address this bill's provisions:

The legislature's attempts to make the process harder, including in SCR 4013 really only makes it harder for the grassroots with the 67% approval requirement.

The prohibition on paid circulators would likely be challenged in court.

The requirement on circulators being residents for 120 days might have issues if that is a different threshold than for other political activities.

Our opposition is primarily on the basis of the threshold level.

However, I am currently working with Representative Steve Vetter of Grand Forks to develop a compromise ballot measure to be introduced later this session.

I've attached the draft language that Representative Vetter has submitted to legislative council.

I would urge those members of both the House and Senate to consider that approach over this one.

Very briefly: That measure would: create electroning petitioning which eliminates the need for paid circulators, increase the number of signature needed once the electronic petition system is created, require that constitutional measures EITHER get a simply majority during both the Primary and General election, OR 60% during the general election, and prevent future legislative changes to Article III (to change the process signatures would have to be gathered.

If this committee would like to relace the language in SCR 4013 with this concept, I will fully support it.

If you would like to help Representative Vetter with a co-sponsorship of that proposal, I am taking names and keeping a list.

SCR 4013 as is represents another attack on the Powers Reserved To The People, and should be defeated.

## **Proposed Compromise to ARTICLE III POWERS RESERVED TO THE PEOPLE**

**Section 2.** A petition to initiate or to refer a measure must be presented to the secretary of state for approval as to form. A request for approval must be presented over the names and signatures of twenty-five or more electors as sponsors, one of whom must be designated as chairman of the sponsoring committee. The secretary of state shall approve the petition for circulation if it is in proper form and contains the names and addresses of the sponsors and the full text of the measure.

The legislative assembly may provide by law for a procedure through which the legislative council may establish an appropriate method for determining the fiscal impact of an initiative measure and for making the information regarding the fiscal impact of the measure available to the public.

**The legislative assembly shall appropriate to the Secretary of State appropriations necessary to establish a secure electronic petition signature gathering system to be hosted on the Secretary of State's website. The Secretary of State shall procure the technical resources to allow any North Dakota resident with a valid drivers license, or other proof of residency, to electronically sign any and all legal forms of petitions at the state and local level including those for initiated measures, initiated constitutional measures, referendum, recall, or candidate nominations. This provision shall be implemented by December 31<sup>st</sup>, 202X.**

**Section 4.** The petition may be submitted to the secretary of state if signed by electors equal in number to two percent of the resident population of the state at the last federal decennial census. **Upon implementation of an electronic signature collection process, this requirement shall be increased to six-percent of the resident population of the state at the last federal decennial census.**

Section 8. If a majority of votes cast upon an initiated **statutory measure** or a referred measure are affirmative, it shall be deemed enacted. **If a majority of votes cast upon an initiated constitution measure in both the primary and general election, or sixty-percent of the votes cast in the general election, it shall be deemed enacted.** An initiated or referred measure which is approved shall become law thirty days after the election, and a referred measure which is rejected shall be void immediately. If conflicting measures are approved, the one receiving the highest number of affirmative votes shall be law. A measure approved by the electors may not be repealed or amended by the legislative assembly for seven years from its effective date, except by a two-thirds vote of the members elected to each house.

**Section 9.** A constitutional amendment may be proposed by initiative petition. If signed by electors equal in number to four percent of the resident population of the state at the last federal decennial census, the petition may be submitted to the secretary of state. **Upon implementation of an electronic signature collection process, this requirement shall be increased to fifteen-percent of the resident population of the state at the last federal decennial census.** All other provisions relating to initiative measures apply hereto.

**Section 11.** **All changes to these Powers Reserved To The People shall originate within the petitioning powers granted to the people in this Article. Article III of this constitution is hereby exempt from the legislative assembly's Article IV Section 16 powers.**

## **ARTICLE III POWERS RESERVED TO THE PEOPLE**

**Section 1.** While the legislative power of this state shall be vested in a legislative assembly consisting of a senate and a house of representatives, the people reserve the power to propose and enact laws by the initiative, including the call for a constitutional convention; to approve or reject legislative Acts, or parts thereof, by the referendum; to propose and adopt constitutional amendments by the initiative; and to recall certain elected officials. This article is self-executing and all of its provisions are mandatory. Laws may be enacted to facilitate and safeguard, but not to hamper, restrict, or impair these powers.

**Section 2.** A petition to initiate or to refer a measure must be presented to the secretary of state for approval as to form. A request for approval must be presented over the names and signatures of twenty-five or more electors as sponsors, one of whom must be designated as chairman of the sponsoring committee. The secretary of state shall approve the petition for circulation if it is in proper form and contains the names and addresses of the sponsors and the full text of the measure.

The legislative assembly may provide by law for a procedure through which the legislative council may establish an appropriate method for determining the fiscal impact of an initiative measure and for making the information regarding the fiscal impact of the measure available to the public.

**Section 3.** The petition shall be circulated only by electors. They shall swear thereon that the electors who have signed the petition did so in their presence. Each elector signing a petition shall also write in the date of signing and his post-office address. No law shall be enacted limiting the number of copies of a petition. The copies shall become part of the original petition when filed.

**Section 4.** The petition may be submitted to the secretary of state if signed by electors equal in number to two percent of the resident population of the state at the last federal decennial census.

**Section 5.** An initiative petition shall be submitted not less than one hundred twenty days before the statewide election at which the measure is to be voted upon. A referendum petition may be submitted only within ninety days after the filing of the measure with the secretary of state. The submission of a petition shall suspend the operation of any measure enacted by the legislative assembly except emergency measures and appropriation measures for the support and maintenance of state departments and institutions. The submission of a petition against one or more items or parts of any measure shall not prevent the remainder from going into effect. A referred measure may be voted upon at a statewide election or at a special election called by the governor.

**Section 6.** The secretary of state shall pass upon each petition, and if the secretary of state finds it insufficient, the secretary of state shall notify the "committee for the petitioners" and allow twenty days for correction. All decisions of the secretary of state in regard to any petition are subject to review by the supreme court. But if the sufficiency of the petition is being reviewed at the time the ballot is prepared, the secretary of state shall place the measure on the ballot and no subsequent decision shall invalidate the measure if it is at the election approved by a majority of the votes cast thereon. If proceedings are brought against any petition upon any ground, the burden of proof is upon the party attacking it and the

proceedings must be filed with the supreme court no later than seventy-five days before the date of the statewide election at which the measure is to be voted upon.

**Section 7.** All decisions of the secretary of state in the petition process are subject to review by the supreme court in the exercise of original jurisdiction. A proceeding to review a decision of the secretary of state must be filed with the supreme court no later than seventy-five days before the date of the statewide election at which the measure is to be voted upon. If the decision of the secretary of state is being reviewed at the time the ballot is prepared, the secretary of state shall place the measure on the ballot and no court action shall invalidate the measure if it is approved at the election by a majority of the votes cast thereon.

**Section 8.** If a majority of votes cast upon an initiated or a referred measure are affirmative, it shall be deemed enacted. An initiated or referred measure which is approved shall become law thirty days after the election, and a referred measure which is rejected shall be void immediately. If conflicting measures are approved, the one receiving the highest number of affirmative votes shall be law. A measure approved by the electors may not be repealed or amended by the legislative assembly for seven years from its effective date, except by a two-thirds vote of the members elected to each house.

**Section 9.** A constitutional amendment may be proposed by initiative petition. If signed by electors equal in number to four percent of the resident population of the state at the last federal decennial census, the petition may be submitted to the secretary of state. All other provisions relating to initiative measures apply hereto.

**Section 10.** Any elected official of the state, of any county or of any legislative or county commissioner district shall be subject to recall by petition of electors equal in number to twenty-five percent of those who voted at the preceding general election for the office of governor in the state, county, or district in which the official is to be recalled.

The petition shall be filed with the official with whom a petition for nomination to the office in question is filed, who shall call a special election if he finds the petition valid and sufficient. No elector may remove his name from a recall petition.

The name of the official to be recalled shall be placed on the ballot unless he resigns within ten days after the filing of the petition. Other candidates for the office may be nominated in a manner provided by law. When the election results have been officially declared, the candidate receiving the highest number of votes shall be deemed elected for the remainder of the term. No official shall be subject twice to recall during the term for which he was elected.



# Residency requirements for petition circulators


**Residency requirements for petition circulators** are laws that require that petition circulators, also referred to as signature gatherers, legally reside in a particular political jurisdiction if the signatures they collect are to be considered valid.

This page provides an overview of residency requirements for ballot initiative petition circulators.

## States with residency requirements

As of February 2021, seven states out of 26 with statewide initiative or veto referendum processes had residency requirements for ballot initiative and veto referendum petition circulators. An additional three states—Colorado, Maine, and Mississippi—had requirements in statute, but courts had invalidated or blocked the enforcement of the statutes. The map below illustrates which states have residency requirements for ballot initiative and veto referendum petition circulators:

**Ballot law**



**State laws**

- Initiative law
- Recall law
- Changes to law
- Court cases and lawsuits

**Local laws**

- Local ballot measure laws

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**Sec. 15.45.105. Qualifications of circulator.**

To circulate a petition booklet, a person shall be

- (1) a citizen of the United States;
- (2) 18 years of age or older; and
- (3) a resident of the state as determined under AS 15.05.020.

## Idaho

*See also: Laws governing the initiative process in Idaho*

In Idaho, an individual who collects signatures for ballot initiatives must be 18 years of age or older and a resident of the state.<sup>[2]</sup>

**34-1807. Circulation of Petitions**

Any person who circulates any petition for an initiative or referendum shall be a resident of the state of Idaho and at least eighteen (18) years of age. ...

## Maine

*See also: Laws governing the initiative process in Maine*

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Article IV, part 3, section 20, of the state constitution and a 2015 law in Maine required an individual who collects signatures for ballot initiatives to be a state resident who is a registered voter.<sup>[3]</sup>

A district court ruling in 2021 said the provisions of the state constitution and the 2015 law violated the right to political speech. The ruling blocked the enforcement of the law.<sup>[4]</sup>

**§903-A. Circulation**

Petitions issued under this chapter may be circulated by any Maine resident who is a registered voter acting as a circulator of a petition. ...

### **Article IV, part 3, section 20**

"circulator" means a person who solicits signatures for written petitions, and who must be a resident of this State and whose name must appear on the voting list of the city, town or plantation of the circulator's residence as qualified to vote for Governor;

## **Montana**

*See also: Laws governing the initiative process in Montana*

In Montana, an individual who collects signatures for ballot initiatives must be a state resident.<sup>[5]</sup> The requirement was added in 2007, when the legislature passed SB 96.

### **13-27-102. Who may petition and gather signatures.**

(2) A person gathering signatures for the initiative, the referendum, or to call a constitutional convention:

- (a) must be a resident, as provided in 1-1-215, of the state of Montana; and
- (b) may not be paid anything of value based upon the number of signatures gathered.

## **North Dakota**

*See also: Laws governing the initiative process in North Dakota*

In North Dakota, an individual who collects signatures for ballot initiatives must be an elector, which requires them to be a state resident. The United States Court of Appeals for the Eighth District upheld North Dakota's requirement in the case of Initiative & Referendum Institute v. Jaeger.

### **North Dakota Constitution, Article III, Section 3**

The petition shall be circulated only by electors. ...

## **Ohio**

*Main article: Laws governing the initiative process in Ohio*

**P** :

In Ohio, an individual who collects signatures for ballot initiatives must 18 years of age or older and a resident of the state.<sup>[6]</sup>

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### **3503.06 Registration as elector - circulation or signing of petition.**

(C)(1)(a) Except for a nominating petition for presidential electors, no person shall be entitled to circulate any petition unless the person is a resident of this state and is at least eighteen years of age.

## **South Dakota**

*See also: Laws governing the initiative process in South Dakota*

In South Dakota, an individual who collects signatures for ballot initiatives must 18 years of age or older and a resident of the state.<sup>[7]</sup>

### **12-1-3. Definition of terms used in title.**

(1) "Petition circulator," a resident of the State of South Dakota as defined under § 12-1-4, who is at least eighteen years of age who circulates nominating petitions or other petitions for the purpose of placing candidates or issues on any election ballot;

## **Utah**

*Main article: Laws governing the initiative process in Utah*

In Utah, an individual who collects signatures for ballot initiatives must 18 years of age or older and a resident of the state.<sup>[8]</sup>

### **20A-7-205. Obtaining signatures -- Verification -- Removal of signature.**

(2) (a) The sponsors shall ensure that the person in whose presence each signature sheet was signed:

- (i) is at least 18 years old and meets the residency requirements of Section 20A-2-105; and
- (ii) verifies each signature sheet by completing the verification printed on the last page of each initiative packet.

# States without residency requirements

As of February 2021, the following 19 states out of the 26 with statewide initiative or veto referendum processes either did not have a residency requirement, or their residency requirement was overturned or blocked from enforcement by a court ruling.

- Arizona
- Arkansas
- California
- Colorado
- Florida
- Illinois
- Maine
- Massachusetts
- Maryland
- Michigan
- Mississippi
- Missouri
- Nebraska
- Nevada
- New Mexico
- Oklahoma
- Oregon
- Washington
- Wyoming

# Court rulings on residency requirements

The following is a list of court rulings addressing residency requirements for petition circulators.

- *We the People Pac v. Bellows*: On Feb. 16, U.S. District Court Judge John Woodcock enjoined the state from enforcing provisions of the Maine Constitution and a 2015 law requiring petition circulators to be registered voters, and, therefore, state residents. The ruling also said, "The Court framed its opinion as a prelude to a challenge to the Court of Appeals for the First Circuit for a more authoritative ruling."<sup>[9][10]</sup>
- *Yes on Term Limits v. Savage*: On December 18, 2008, the Tenth Circuit Court of Appeals overturned Oklahoma's residency requirement.<sup>[11][12][13]</sup>
- *Bogaert v. Land*: In September 2008, Sixth Circuit Court of Appeals overturned Michigan's residency requirements in recall petition drives.
- *Nader v. Brewer*: On July 7, 2008, a three-judge panel of the Ninth Circuit Court of Appeals overturned Arizona's residency requirement. Brewer filed a petition with the U.S. Supreme Court asking it to hear an appeal of the Ninth Circuit's ruling. The Supreme Court of the United States announced on March 9, 2009, that it was declining to hear an appeal of the case.<sup>[14][15][16]</sup>
- *Preserve Shorecliff Homeowners v. City of San Clemente*: In 2008, the California Court of Appeals overturned a California requirement related to residency.
- *Frami v Ponto*: In 2003, the United States District Court for the Western District of Wisconsin overturned Wisconsin's requirement that petition circulators be residents of

the state.

- *Chandler v. City of Arvada*: In 2002, the 10th Circuit Court of Appeals overturned a residency requirement in Arvada, Colorado.
- *Buckley v. American Constitutional Law Foundation*: In 1999, the U.S. Supreme Court overturned a Colorado requirement related to residency.
- *Initiative & Referendum Institute v. Jaeger*: In 1998, the Eight Circuit Court of Appeals upheld North Dakota's residency requirement.

## Changes to laws governing the initiative process

- Changes in 2009 to laws governing ballot measures
- Changes in 2008 to laws governing ballot measures
- Changes in 2007 to laws governing ballot measures
- Changes in 2010 to laws governing ballot measures
- Changes in 2011 to laws governing ballot measures
- Changes in 2012 to laws governing ballot measures
- Changes in 2013 to laws governing ballot measures
- Changes in 2014 to laws governing ballot measures
- Changes in 2016 to laws governing ballot measures
- Changes in 2015 to laws governing ballot measures
- Changes in 2017 to laws governing ballot measures
- Changes to laws governing ballot measures
- Changes in 2018 to laws governing ballot measures
- Changes in 2019 to laws governing ballot measures
- Changes in 2020 to laws governing ballot measures
- Changes in 2021 to laws governing ballot measures
- Changes in 2022 to laws governing ballot measures



## See also

- Laws governing ballot measures
- Laws governing petition circulators
- History of restrictions on paid circulators

# Footnotes

1. *Alaska Statutes*, "AS 15.45.105," accessed March 13, 2019
2. *Idaho Statutes*, "34.18.1807," accessed March 13, 2019
3. *Maine Revised Statutes*, "21-A §903-A.," accessed March 13, 2019
4. *Bangor Daily News*, "Federal judge puts key Maine referendum law on hold amid GOP lawsuit," February 17, 2021
5. *Montana Code Annotated*, "13-27-102," accessed March 13, 2019
6. *Ohio Laws and Rules*, "3503.06," accessed March 13, 2019

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## Laws governing petition circulators

The initiative states regulate petition circulators in a variety of ways. These include residency requirements, age requirements, requiring circulators to disclose whether they are paid or volunteer circulators, requiring the circulator to personally witness each act of signing the petition, bans on payment of petitioners per signature, and restrictions on where circulators are allowed to collect signatures.

Laws governing petition circulators are an active area of legislative and legal action. In general, proponents of additional restrictions on circulations say that the laws work to guard the integrity of the petition process, while opponents of additional regulations say that the laws are (a) unconstitutional and (b) an attempt by powerful politicians to put a veneer of respectability on recurrent and multi-faceted attempts to squelch the initiative process.

### Ballot law



#### State laws

- Initiative law
- Recall law
- Changes to law
- Court cases and lawsuits

#### Local laws

- Local ballot measure laws

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## Residency requirements

For residency requirements, see [Residency requirements for petition circulators](#)

## Age requirements

In the 1999 U.S. Supreme Court case *Buckley v. American Constitutional Law Foundation*, the Supreme Court upheld the right of Colorado to impose an age restriction on petition circulators.

More than half of the 24 I&R states require that petition circulators be eligible to vote in the state. The requirement that a circulator be eligible to vote also has the consequence that the circulator be at least 18. In states where there is no eligibility requirement, people who are under 18 are allowed to circulate petitions.

## Disclosure of paid status

Seven states require circulators to disclose whether they are a paid or a volunteer circulator to potential petitioners. These states are Arizona, California, Nebraska, Ohio, Oregon and Wyoming--all of which require that a prominent notice be placed on the petition form stating whether the circulator is paid or volunteer--and Missouri, where the circulator must disclose to the Missouri Secretary of State.

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In Oregon, as of January 1, 2008, paid circulators must carry a registration form with them indicating that they have taken the state's mandatory training program for paid circulators. Also as of January 1, 2008, the color of volunteer circulator petition sheets and paid circulator petition sheets is required to be different.

## Identification badges

In *Buckley v. American Constitutional Law Foundation*, the U.S. Supreme Court invalidated a Colorado law that required circulators to wear a badge disclosing their name and status. In its decision, the court wrote:

*District Court found from evidence ACLF presented that compelling circulators to wear identification badges inhibits participation in the petitioning process.*

See also: Badge requirements.

## Witness and affidavit requirements

Eighteen of the 24 initiative states require that circulators must personally witness each petition signature and sign an oath or affidavit stating that he or she personally witnesses the signing of the signature. States with these requirements include Alaska, Arizona, Arkansas, California, Colorado, Idaho, Illinois, Maine, Missouri, Montana, Nebraska, Nevada, North Dakota, Ohio, Oregon, South Dakota, Utah, Washington and Wyoming.

In Florida, the law specifically says that petitions may be signed outside the presence of a circulator.

In *Buckley v. American Constitutional Law Foundation*, the U.S. Supreme Court upheld a Colorado law requiring circulator affidavits on petition forms.

## Signature payment

### Payment-per-signature

In Nebraska,<sup>[1]</sup> North Dakota, Oregon, South Dakota, Montana, and Wyoming initiative sponsors are banned from paying petition circulators per signature. An 2005 Ohio law banning payment-per-signature was struck down by a federal judge in the case of *Citizens for Tax Reform v. Deters*. (Ohio is appealing the decision.)

North Dakota's law banning pay-per-signature was upheld by the 8th circuit court in the case of *Initiative & Referendum Institute v. Jaeger*. Oregon's law was upheld in 2005 by a federal district judge in the case of *Prete v. Bradbury*.

The laws in Nebraska, South Dakota and Montana<sup>[2]</sup> banning pay-per-signature are new in 2007 and 2008 and have not been litigated.<sup>[3]</sup>

### New in 2008

*Main article: Changes in 2008 to laws governing the initiative process*

State legislator DiAnna Schimek sponsored Nebraska Legislative Bill 39, which forbids paying people who circulate petitions for each signature they collect. Vetoed by Gov. Dave Heineman, the Nebraska legislature narrowly overrode the veto. Violating the new law is a Class III misdemeanor punishable with a \$500 fine and three months in jail.

### New in 2009

*Main article: Changes in 2009 to laws governing the initiative process*



HB 2642 was introduced in the Virginia House of Delegates by Robert Orrick, a Republican, to make it illegal to pay petition circulators on a per-signature basis. (This bill doesn't apply to ballot initiatives, since Virginia doesn't allow them. It applies to petition circulation for political candidates.)<sup>[4]</sup>

## Bans found unconstitutional

Pay-per-signature provisions in Idaho, Maine, Mississippi, Ohio and Washington have been struck down as unconstitutional in federal district courts.

## Ceiling on amount that can be paid

In Alaska, the maximum amount that a petition sponsor can pay a circulator per signature is \$1.00.

## Mandatory state-administered training

In Oregon as of January 1, 2008, paid petition circulators must take a government-administered training class before they are allowed to collect signatures.

## See also

- History of restrictions on paid circulators
- Prete v. Bradbury, the U.S. Eighth Circuit judgment upholding Oregon's ban on pay-per-signature.
- Citizens for Tax Reform v. Deters, a November 2006 case that found Ohio's ban on pay-per-signature unconstitutional.
- Idaho Coalition United for Bears v. Cenarrusa, the 2001 federal decision invalidating Idaho's ban on pay-per-signature.
- On Our Terms '97 PAC v. Maine Secretary of State, the 1999 federal decision invalidating Maine's ban.
- LIMIT v. Maleng, the 1994 federal decision invalidating Washington's ban
- Term Limits Leadership Council v. Clark, the judicial decision invalidating Mississippi's ban

## Petitioner access

Although states typically do not have statutory provisions regarding where a circulator is allowed to stand or physically locate himself or herself when soliciting signatures, several of the initiative states have judicial rulings regulating this aspect of the petition process.

### California

In 1979, in the case of *Robins v. Pruneyard Shopping Center*, the California Supreme Court determined that "soliciting signatures for a petition to the government" is an activity protected by the California Constitution. Subsequent cases pulled back from that level of certainty, but in December 2007, by a slim margin in the case of *Fashion Valley Mall v. National Labor Relations Board*, that court appears to have asserted that free speech rights supersede private property rights.

### Washington

In 1999, the Supreme Court of the State of Washington ruled in favor of Waremart, a regional discount grocery chain, against PCI Consultants, Inc. in the case of *Waremart v. PCI Consultants, Inc.*. The ruling enjoined PCI from collecting signatures at Waremart on the grounds that Waremart stores were not the functional equivalent of public gathering places.

## Laws governing paid blockers

Although the initiative states have a number of laws governing petition drives and circulators, there are few if any restrictions governing paid blockers and petition blocking campaigns.



## See also

- Residency requirements for petition circulators
- History of restrictions on paid circulators
- Distribution requirement
- Changes in 2007 to laws governing the initiative process
- Changes in 2008 to laws governing the initiative process
- Changes in 2009 to laws governing the initiative process

## External links

- Free to Speak

## Footnotes

1. A law passed in Nebraska in 2008 forbids pay-per-signature; initiatives that had already been filed for the 2008 ballot were not affected by this new legislation (they were grandfathered in under the old laws).
2. *Montana law forbidding pay-per-signature*
3. *Pay per signatures laws*
4. *Ballot Access News*, "Virginia Bill to Ban Paying Circulators on a Per-Signature Basis," February 4, 2009



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