

Where can you gather signatures?

Montana Codes Annotated 13-27-210 protects your right to gather signatures. It provides:

Physical prevention of obtaining signatures or physical intimidation of signature gatherers prohibited.

- A person may not knowingly or purposefully physically prevent an individual from obtaining signatures or attempting to obtain signatures on a petition for a ballot issue or physically intimidate another individual when that individual is obtaining or attempting to obtain signatures on a petition for a ballot issue.
- A person who violates this section is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$500, by imprisonment for not more than 90 days, or by both a fine and imprisonment.

MCA § 13-27-210, a 2007 statute, has not been interpreted yet by the Montana Supreme Court and I know of no Montana state district court decisions. However, see *Ariz. Students' Ass'n v. Ariz. Bd. of Regents*, 824 F.3d 858 (9th Cir., 2016) for a § 1983 case where students were retaliated against for, among other things, signature gathering.

The rules are different for government and private facilities:

Generally, **the government must allow petitioning in places that are usually public.** You should be OK in the **parking lot of a government facility** if you are not obstructing traffic or creating a hazard.

However, there are exceptions. Government can prevent collection if its rule preventing collection is content neutral. (Saying you can't collect signatures because someone might not like I-184 is not content neutral.) Content-based regulations are "presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." *Reed v. Town of Gilbert*, [135 S. Ct. 2218](#), 2226 (2015). Second, because traditional public forums are vital places for speech, even a content-neutral public-forum regulation is subjected to additional First Amendment scrutiny to determine whether it is a reasonable time, place, and manner restriction "narrowly tailored to serve a significant governmental interest" that "leave[s] open ample alternative channels for communication." *Ward v. Rock Against Racism*, [491 U.S. 781](#), 791 (1989).

So, you are **ok in public parks, streets, and most sidewalks** (except if a **Post Office** decides to say you can't be on its internal sidewalk because you are interfering with postal business—something that does not bother most post offices if you are not interfering with postal business or accosting customers. Politely asking if they want to sign probably is not accosting). The courts have ruled **you have a right to be on external sidewalks outside a post office.** <http://aclu-nca.org/sites/default/files/docs/docket/IRI%20v%20USPS.pdf> <http://aclu-nca.org/docket/right-to-circulate-petitions-on-post-office-sidewalks>

The government creates a designated public forum where it opens its property for use by the public as a place for expressive activity. *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45, 103 S.Ct. 948, 74 L.Ed.2d 794 (1983). Thus, if the **Museum of the Rockies** is a government facility and it holds a forum, you have a right to collect signatures inside or at some other reasonable location. It could place some restrictions on where you collect, but they couldn't make you collect them in the dark outside (as was done recently) or restrict you to fewer hours of signature gathering than the time taken by the public forum it hosted. Under a 2004, 6th Circuit case that may or may not apply in Montana, they could restrict you to areas of the building where a public forum is taking place and prevent you from accessing hallways or private areas adjacent to the forum if the restriction was content neutral. The case

more likely to apply in Montana is *American Civ. Lib. Union, Nv v. City of Las Vegas*, 333 F.3d 1092 (9th Cir., 2003)

Fair grounds often limit signature gathering to designated areas and that practice has been upheld.

Some libraries are allowing signature gathering inside entry points. They are complying with the law. Other libraries are not in compliance. They could limit signature gathering to certain places to maintain silence, etc., but likely could not shut you out completely. You likely do not want to argue with them, but once they are aware of their duty to make space available (show them this memo), that may be enough to gain access. Small libraries may have difficulty providing space.

You may collect signatures at a **polling place** (do not slow down the process of allowing folks to vote. So, it would be best to talk with them after they vote unless they approach you first upon seeing your sign.) If a church is a polling place, it would be proper to have a table to collect signatures at that church polling place unless space is limited and then outside would be where you'd have to go. Check in advance with the county election administrator.

Likely a **church** does not have to allow signature collecting within a building unless it is acting as a polling place. Then it would only have to allow signature collecting on election day. And, if a church is not acting as a polling place, the rule allowing churches to restrict signature gathering may be different if the church is making space available to the public generally as a public forum--especially if it is charging for use of its space. Then it likely would be required to make space available without regard to the content of the petition. In addition, if the church buys an area that was previously a public forum (like a street in front of its buildings, it has been held the church cannot restrict free speech (petitioning) there. See *First Unitarian Church of Salt Lake v. Salt Lake*, 308 F.3d 1114 (10th Cir., 2002) which also discussed the nature of **publicly-owned senior centers, airports and school board meetings** open to the public where restrictions would have to be narrowly constructed.

One way to approach this would be to ask the church whether you could collect signatures if you put up a sign at the signature collection table reading, "The management and members of this facility do not express a position on this I-184 initiative, but allow you to express your position as a part of exercising your 1st amendment right to petition your government."

Attorney for Montana's Secretary of State opined in April of 2010 (and thus the opinion is not totally current):

There are no black and white provisions for the right to gather signatures. Although **schools** (in conjunction with the school as a polling place) are public property, the school district has a right to limit access if it is reasonable for maintaining the integrity of classes and does not interfere with the election process. Post offices can restrict access on their quasi-public, government-owned property if solicitation interferes with the business of the mails. **Shopping centers** generally must open their property to solicitors.

The case related to shopping centers is *PruneYard Shopping Center v. Robins*, (1980) 447 U.S. 74, 100 S.Ct. 2035, 64 L.Ed.2d 741

In some states the **smaller stand-alone groceries** (Raley's) do not have to allow you to collect signatures in their parking lot. However, some businesses like **Home Depot have a policy** of setting a designated signature gathering area in a space outside of and to one side of its entrance. If a business won't let you collect, you might ask whether they would like to adopt a policy like that of Home Depot. And offer to put up a sign like the one suggested above, i.e., "The management and members of this facility ...etc."

If you have questions, please call Russ Doty, 406-696-2842

Initiative 172 v. Western Washington Fair Assoc., 88 Wn. App. 579, 945 P.2d 761 (1997).