
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: AB 1451 **Hearing Date:** July 9, 2019
Author: Low
Version: February 22, 2019
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Petition Circulators*

HISTORY

Source: Author

Prior Legislation: SB 1394 (Newman) not heard in the Assembly 2018
AB 1947 (Low) Vetoed 2018

Support: California Professional Firefighters

Opposition: California Business Roundtable; California Chamber of Commerce; California Clean Money Campaign; California Public Interest Research Group; California Taxpayers Association; Courage Campaign; Endangered Habitats League; GMO Free California; Howard Jarvis Taxpayers Association; Lodi Chamber of Commerce; Money Out Voters In; North Orange County Chamber of Commerce; Oxnard Chamber of Commerce; Rancho Cordova Chamber of Commerce; Santa Maria Valley Chamber of Commerce; Torrance Area Chamber of Commerce; League of Women Voters of California

Assembly Floor Vote: 56 - 19

PURPOSE

The purposes of this bill is to make it a misdemeanor to pay a signature collector based upon the number of signatures collected and to make other changes regarding the circulation of a petition for an initiative.

Existing law allows electors to propose statutes and amendments to the California Constitution and to adopt or reject them through the initiative process. (Article II, Section 8 of the California Constitution)

Existing law permits voters to approve or reject statutes or parts of statutes approved by the Legislature, except as specified, by referendum. (Article II, Section 9 of the California Constitution)

Existing law permits voters to remove an elective officer from state or local office before the end of the term of office, as specified, by recall. (Article II, Section 13-19 of the California Constitution)

Existing law permits any person who is 18 years of age or older to circulate a state or local initiative, referendum, or recall petition. (Elections Code § 102)

Existing law requires a state or local initiative petition to contain the following notice in 12-point type before the portion of the petition for voters' signatures:

NOTICE TO THE PUBLIC

THIS PETITION MAY BE CIRCULATED BY A PAID SIGNATURE GATHERER OR A VOLUNTEER. YOU HAVE THE RIGHT TO ASK. (Elections Code § 101)

Existing law requires a state initiative petition to also contain, in the same location and type size described above, the following notice:

“THE PROPONENTS OF THIS PROPOSED INITIATIVE MEASURE HAVE THE RIGHT TO WITHDRAW THIS PETITION AT ANY TIME BEFORE THE MEASURE QUALIFIES FOR THE BALLOT.” (Elections Code § 101)

Existing law establishes penalties for fraudulent activity related to signature gathering. (Elections Code §§ 18600-18614)

Existing law makes it a misdemeanor for a person to do any of the following:

- a) While circulating a state or local initiative, referendum, or recall petition, intentionally misrepresent or intentionally make a false statement concerning the contents, purport, or effect of the petition to any person who signs or is requested to sign the petition. (Elections Code § 18600)
- b) Willfully and knowingly circulate, publish, or exhibit any false statement or misrepresentation concerning the contents, purport, or effect of a state or local initiative, referendum, or recall petition for the purpose of obtaining any signature to, or persuading or influencing any person to sign, that petition. (Elections Code § 18600)
- c) While circulating a state or local initiative petition, intentionally make a false statement in response to an inquiry by a voter as to whether the circulator is paid or a volunteer. (Elections Code § 18600)

Existing law provides that a person, company, organization, company official, or other organizational officer in charge of a person who circulates an initiative, referendum, or recall petition who knowingly directs a circulator to make a false affidavit or who knows or reasonably should know that a circulator has made a false affidavit concerning an initiative, referendum, or recall petition or the signatures appended thereto is punishable by a fine not exceeding \$5,000, by imprisonment in a county jail not exceeding one year, or by both the fine and imprisonment. (Elections Code § 18660)

Existing law provides that upon conviction of any of the conduct described above in 8) or 9), among other conduct, a court may order as a condition of probation that the convicted person be prohibited from receiving money or other valuable consideration for gathering signatures on an initiative, referendum, or recall petition. (Elections Code § 18604)

This bill makes it a misdemeanor for a person or organization to pay money or any other thing of value to another person based on the number of signatures obtained on a state or local initiative, referendum, or recall petition. Provides that a violation is punishable by a fine of up to \$25,000, imprisonment in a county jail for up to a year, or by both the fine and imprisonment.

This bill specifies that it does not prohibit the payment for signature gathering that is not based, either directly or indirectly, on the number of signatures obtained on a state or local initiative, referendum, or recall petition.

This bill requires at least 10 percent of the signatures collected to qualify a proposed state initiative measure for the ballot to be collected by individuals who did not receive money or other valuable consideration exclusively or primarily for the specific purpose of soliciting signatures of electors on the petition, as specified ("10 percent requirement"), as follows:

- a) Provides that signatures on a petition qualify toward meeting the 10 percent requirement if they are collected by a person who is an employee or member of a non-profit organization, other than an organization with the primary purpose of soliciting signatures on initiative petitions, who receives money or other valuable consideration from the organization and as part of that employment or membership solicits signatures for the qualification of an initiative measure, unless a primary purpose of that employment or membership is to solicit signatures on an initiative petition.
- b) Defines "member" for the purposes of this provision, to include, someone who pays membership dues to a tax exempt organization and union members, among others.
- c) Provides that signatures solicited by registered voters or employees of a political party who receive money or other valuable consideration from the political party for soliciting signatures on an initiative petition do not qualify toward meeting the 10 percent requirement.
- d) Provides that signatures solicited through direct mail do not count towards the 10 percent requirement unless the person soliciting the signatures through direct mail, and any other person who organizes, pays, or arranges for the direct mail, is eligible to solicit signatures that qualify toward meeting the 10 percent requirement, as described above. Provides that this provision shall not preclude an organization that has a primary purpose other than soliciting signatures on initiative petitions from soliciting signatures from its members through direct mail and relying on those signatures for the purposes of satisfying the 10 percent requirement.
- e) Provides that nothing in this bill shall be construed to preclude signatures that are solicited by a person who receives nominal, non-monetary benefits, including food, transportation, or lodging, from qualifying toward meeting the 10 percent requirement.
- f) Provides that verification of a petition that contains a declaration pursuant to the provisions of this bill is prima facie evidence that the signatures satisfy the 10 percent requirement.

- g) Specifies that if a qualified voter signs a petition for an initiative both on the petition section that qualifies for the 10 percent requirement and on a petition section that does not qualify for that requirement, the voter's signature on the petition that meets the 10 percent requirement shall count, and the other signature shall not.
- h) Prohibits a person who receives money or other valuable consideration for the specific purpose of soliciting signatures on a state initiative petition from circulating a petition to collect signatures that qualify towards the 10 percent requirement for the same initiative measure.

This bill requires, in addition to the aforementioned existing notices, a petition for a proposed state initiative measure that is circulated by a person such that it will qualify toward meeting the 10 percent requirement to be printed on white paper in a contrasting color ink and to include the following notice printed in 12-point boldface type immediately prior to the portion of the petition for voters' signatures:

"NOTICE TO THE PUBLIC: THIS PETITION IS BEING CIRCULATED BY A VOLUNTEER OR AN EMPLOYEE OF A NONPROFIT ORGANIZATION. YOU ARE ENCOURAGED TO READ THE CONTENTS OF THIS PETITION BEFORE SIGNING."

This bill requires, in addition to the aforementioned existing notices, a petition for a proposed state initiative measure that is circulated by a person such that it will not qualify toward meeting the 10 percent requirement to be printed on paper of a color other than white in a contrasting color ink and to include the following notice printed in 12-point boldface type immediately prior to the portion of the petition for voters' signatures:

"NOTICE TO THE PUBLIC: THIS PETITION IS BEING CIRCULATED BY A PERSON PAID TO OBTAIN YOUR SIGNATURE. YOU ARE ENCOURAGED TO READ THE CONTENTS OF THIS PETITION BEFORE SIGNING."

This bill requires the circulating title and summary prepared by the Attorney General (AG) to be placed on the first page of each section of the petition in the one-inch space across the top of the page in 18-point roman boldface type.

This bill requires a person who solicits signatures on a petition that qualify toward meeting the 10 percent requirement to sign an affidavit that declares all of the following:

- a) That the person did not receive money or other valuable consideration for the specific purpose of soliciting signatures of electors pursuant to the requirements of this bill; and,
- b) That to the best of their knowledge, the signatures on the petition sections circulated by them should be counted towards the 10 percent requirement.

This bill makes corresponding changes to the process for elections officials to verify signatures submitted on a state initiative petition. Increases the number of days that elections officials have to count and verify signatures on state initiative petitions, as specified. Requires the Secretary of State (SOS) to adopt regulations consistent with these provisions and permits the initial regulations to be adopted as emergency regulations.

This bill provides that the signatures on a state initiative petition section are invalid if they are solicited and submitted by a person who engages in intentional fraud, misrepresentation, or other illegal conduct concerning the circulation of the petition, as specified. Provides that the Secretary of State (SOS), the Attorney General (AG), any district attorney, or any city attorney of a city having a population in excess of 750,000, may enforce this provision by a civil action in which the plaintiff has the burden of showing a violation by clear and convincing evidence. Prohibits a petition section from being invalidated after the SOS has certified that the measure has qualified for the ballot. Requires the local elections official, if he or she is notified of or discovers any conduct described above, to promptly notify the SOS. Provides that a local elections official who is notified of or discovers any conduct described above is not permitted to refuse to examine or to stop the examination of the petition or petition sections.

This bill provides that the provisions of this bill do not apply to any initiative measure for which the AG issues a circulating title and summary before January 1, 2020.

This bill makes various findings and declarations about the initiative process and the influence that special interests and paid circulators have on that process.

This bill makes other clarifying, corresponding, and technical changes.

COMMENTS

1. Need for This Bill

According to the author:

AB 1451 helps maintain the integrity of the initiative process by eliminating the incentive for paid signature gatherers to obtain signatures by whatever means necessary. In addition, AB 1451 will require that 10% of the signatures gathered for an initiative are gathered by unpaid activists, or those whose primary job duty is not to collect signatures. By ensuring that a fraction of the signatures are gathered by those who truly believe in the policy behind an initiative petition, AB 1451 will help curb abuses of the initiative process by special interests.

Many Californians have anecdotes of having been approached by aggressive signature gatherers, and many refuse to engage with signature gatherers due to having been misled or harassed during previous interactions. By eliminating payment-per-signature, we will remove much of the incentive to commit fraud or gather signatures aggressively. The effects may not be immediate, but we hope that within a few election cycles public trust will be restored, and it will not be so difficult for signature gatherers to find people willing to engage.

Though some question the constitutionality of banning payment-signature, bans in Oregon and North Dakota have withstood court challenges.

2. Signature Requirements

Article II, Section 8 (b) of the California Constitution provides that an initiative measure may be proposed by presenting to the SOS a petition that sets forth the text of the proposed statute or amendment to the Constitution and is certified to have been signed by electors equal in number to 5% in the case of a statute, and 8% in the case of an amendment to the Constitution, of the votes for all candidates for Governor at the last gubernatorial election. According to the SOS, initiative statutes currently require 623,212 valid signatures and initiative constitutional amendments currently require 997,139 valid signatures for qualification.

3. Misdemeanor for per Signature Basis

According to information from the National Conference on State Legislatures (NCSL), at least five states (Arizona, Montana, North Dakota, Oregon, and South Dakota) limit the ability of initiative or referendum proponents to pay signature gatherers on a per-signature basis. One state (Nebraska) recently repealed a state law that prohibited petition circulators from being paid on a per-signature basis, while another state (Wyoming) recently repealed a state law that restricted *initiative* proponents from paying signature gatherers on a per-signature basis while continuing to ban payments on a per-signature basis for *referendum* petitions. Laws to ban per-signature payments in at least six other states (Colorado, Idaho, Maine, Mississippi, Ohio, and Washington) have been invalidated by courts. Alaska does not ban payments that are made on a per-signature basis, but prohibits any such payment that is greater than \$1 per signature.

This bill provides that a person who pays a person money or other thing of value based on the number of signatures obtained on a state or local initiative, referendum, or recall petition is guilty of a misdemeanor punishable by a fine not to exceed \$25,000 and/or imprisonment in the county jail not to exceed one year. With the approximately 310% penalty assessments attached to a fine, the fine will be approximately \$102,500. Is this penalty appropriate?

4. Case law

In 1988, the United States Supreme Court ruled that a Colorado prohibition against the use of paid circulators for initiative petitions violated the First Amendment's right of free speech. Writing for a unanimous court, Justice Stevens noted that "[t]he State's interest in protecting the integrity of the initiative process does not justify the prohibition because the State has failed to demonstrate that it is necessary to burden appellees' ability to communicate their message in order to meet its concerns" (*Meyer v. Grant* (1988), 486 U.S. 414). In 1999, the United States Supreme Court examined a Colorado law that provided a number of other restrictions on the signature collection process for ballot initiatives. In that case the court ruled that there must be a compelling state interest to justify any restrictions on initiative petition circulation (*Buckley v. American Constitutional Law Foundation* (1999), 525 U.S. 182).

Although the United States Supreme Court has not ruled on the constitutionality of prohibiting payment for signature collection on a per-signature basis, a number of federal courts have considered challenges to such laws, with the courts reaching different conclusions about the constitutionality of per-signature payment bans. In light of the differing opinions reached by various federal courts on the constitutionality of laws that prohibit payments on a per-signature basis for signature gathering on petitions, it is unclear whether this bill, if enacted, would be upheld in a court challenge.

5. 10% of Signatures to be Unpaid

Under the provisions of this bill, in order for a state initiative measure to qualify for the ballot, at least 10 percent of the signatures gathered on the petition for that measure would have to be collected on petition sections that were circulated by a person who does not receive money or other valuable consideration exclusively or primarily for the specific purpose of soliciting signatures of electors on the petition, as specified. This "10 percent requirement" does not apply to state referendum or recall petitions, nor does it apply to local initiatives, referenda, or recalls.

While signatures collected by volunteers will count toward meeting this 10 percent requirement, the language of the bill does not require the signatures to be gathered by volunteers in order to qualify to meet the 10 percent requirement. Instead, in certain circumstances, signatures collected by individuals who were paid for their time *could* count toward meeting the 10 percent requirement provided that the person wasn't paid *exclusively or primarily* for the specific purpose of soliciting signatures. This bill provides that signatures will count toward the 10 percent requirement if they are collected by employees and members of nonprofit organizations who receive compensation from that organization and solicit signatures as a part of their employment or membership, as long as the nonprofit organization is not primarily focused on soliciting signatures on petitions. In the case of signatures solicited by direct mail, those signatures would apply toward the 10 percent requirement if the person soliciting the signatures through direct mail and all persons that organize, pay for, and arrange the direct mail are persons who were eligible to solicit signatures that counted toward the 10 percent requirement. Additionally, signatures solicited by direct mail would count toward the 10 percent requirement if they are collected by an organization that is soliciting signatures through direct mail from its members, as long as the organization has a primary purpose other than collecting signatures.

6. Invalidation of Signatures

Existing law is silent on the issue of whether violations of state law prohibiting improper signature-gathering tactics will result in the signatures on those petitions being invalidated. In at least one case, however, a court invalidated signatures gathered to qualify an initiative for the ballot due to improper signature-gathering tactics by the proponents of the measure. In *San Francisco Forty-Niners v. Nishioka* (1999), 75 Cal.App.4th 637, the California Court of Appeals for the First District, Division One, prohibited an initiative measure from appearing on the ballot because the initiative petition included false statements intended to mislead voters, in violation of Section 18600 of the Elections Code. In this case, the false statements appeared on the text of the petition itself. As a result, every person who was asked to sign the petition was exposed to these false statements that were intended to mislead voters.

In a case where petition circulators make false or misleading statements about a proposed ballot measure, or engage in other illegal signature-gathering tactics in an attempt to get voters to sign a petition, it is unclear whether that misconduct can result in signatures being invalidated.

This bill explicitly provides that signatures on a petition section are invalid if the signatures were solicited and submitted by a person who intentionally engages in fraud, misrepresentation, or other improper signature-gathering tactics, as specified. In order for signatures to be invalidated under this provision, the Secretary of State, the Attorney General, a district attorney, or a city

attorney would have to file a civil action, and would have the burden of showing a violation by clear and convincing evidence, as specified.

7. Argument in Support

The California Professional Firefighters support this bill stating:

California's initiative process dates back to 1911, when then-Governor Hiram Johnson proposed a series of constitutional amendments to give Californians the right to recall elected officials, repeal laws by referendum and enact statewide laws by initiative. Voters approved the amendments and have since enacted over 130 ballot measures. Gone are the days when the initiative process was driven by average Californians compelled to act when legislators wouldn't. Instead, Governor Johnson's vision of an empowered citizenry has been hijacked in recent years by wealthy individuals and corporations that exploit the initiative process to further their own parochial and often extreme agenda.

Petition circulators were once almost universally unpaid, and signature gathering campaigns failed most often from a lack of volunteers. An inability to qualify was simply a sign that proponents needed more time to recruit an army of volunteers with which to cultivate enough grassroots support. Without both public support and devoted volunteers, campaigns couldn't generate the required number of petition signatures. The system, on its own, eliminated proposals that weren't ready to become law.

The activists who once organized widespread support by devoting time, energy and passion towards a cause have been replaced-often by anti-worker, anti-consumer, anti-environment forces that crowd the ballot with deceptively written measures designed to maximize corporate profits and confuse voters. In some cases, petition circulators have been paid up to \$7 or more for each signature and many circulators openly mislead potential signers.

This deception, sadly, is all but encouraged by our existing regulatory framework....

The result of the current practice is a system in which wealthy individuals and powerful corporations dominate the debate, paid circulators openly profit from deception and fraud, and voters struggle to assess the true nature of often intentionally misleading ballot measures. In short the system has devolved into the exact opposite of what Governor Johnson intended to create over a century ago.

8. Argument in Opposition

The League of Women Voters opposes this bill stating:

The League believes that California should have a system of registration and training for signature gatherers and supports a compensation system for time and dedication to civic service. This bill dramatically changes a long-established democratic process and could result in unintended consequences. Those include

promoting inequity by driving up costs of the initiative process in a manner that favors wealthy interests and protracted, unnecessary litigation to support a prohibition that has been historically disfavored by the judicial system. Such consequences may be significantly worse than the abuses the bill aims to prevent.

The California Business Roundtable; California Taxpayers Association; Lodi Chamber of Commerce; North Orange County Chamber; Oxnard Chamber of Commerce; Rancho Cordova Chamber of Commerce; Santa Maria Valley Chamber of Commerce; and the, Torrance Area Chamber of Commerce oppose this bill stating:

It appears that the goal of AB 1451 is to prevent voter-registration fraud. While this is a worthy goal, AB 1451 would have the unintended consequence of limiting the public's role in the ballot process. Per Article II, Section 1 of the California Constitution, "All political power is inherent in the people. Government is instituted for their protection, security, and benefit, and they have the right to alter or reform it when the public good may require." This bill limits the people's power in exercising their rights of direct democracy.

Additionally, AB 1451 imposes a fine of \$25,000 or criminal liability for the organization that pays signature gatherers on a per-signature basis. Thus, by outlawing payment for signature collection on a per signature basis, AB 1451 would make it prohibitively expensive to sponsor an initiative or a recall and next to impossible to do a referendum.

Yet, there is no compelling evidence that there is rampant fraud with this type of payment. According to the Secretary of State's Election Fraud Investigation Unit (EFIU), between 1994 and 2010, the EFIU opened 240 cases for falsifying petitions, of which 46 were sent to district attorneys for prosecution, resulting in 33 convictions. During that same timeframe, over 100 initiatives were placed on the ballot requiring *millions* of signatures. Opening 240 cases resulting in 33 convictions is hardly an indication of rampant fraud.

Furthermore, it is unclear how limiting the payment type for signatures will ensure that the public will receive better information when petitioners approach them. Indeed, AB 1451 is likely to limit how far and wide these important election materials are disseminated and even exclude certain areas as petitioners attempt to reach as many California voters as possible.

The current process serves as a check and balance on government. By making it harder to qualify ballot measures, this bill would result in denying Californians the right to address grievances with government through initiatives, referenda and recalls. The people cherish direct democracy, and this would eliminate that opportunity.