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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2019 - 2020 Regular

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**Bill No:** SB 47                      **Hearing Date:** April 23, 2019  
**Author:** Allen  
**Version:** December 3, 2018  
**Urgency:** No                              **Fiscal:** Yes  
**Consultant:** SJ

**Subject:** *Initiative, Referendum, and Recall Petitions: Disclosures*

## HISTORY

**Source:** California Clean Money Campaign

**Prior Legislation:** SB 651 (Allen), died on Assembly Floor in 2018  
AB 400 (Fong), vetoed in 2014

**Support:** California Alliance for Retired Americans; California Common Cause; California Public Interest Research Group; Consumer Federation of California; Consumer Watchdog; Franciscan Action Network; Greenpeace USA; League of Women Voters of California; Maplight; Money Out Voters In; Public Citizen

**Opposition:** Howard Jarvis Taxpayers Association

## PURPOSE

***The purpose of this bill is to require that an Official Top Funders disclosure identifying the top contributors be made for specified state and local initiative, referendum, or recall petitions, and to make certain misrepresentations and false statements regarding the Official Top Funders disclosure a misdemeanor.***

*Existing law* prescribes requirements regarding the form, content, and presentation of initiative and referendum petitions. (Elec. Code, § 9000 et seq.)

*Existing law* requires every state or local initiative petition to contain a notice alerting voters that the petition may be circulated by a paid signature gatherer or a volunteer, and that voters have the right to ask if a petition circulator is paid or is a volunteer. (Elec. Code, § 101, subd. (a).)

*Existing law* requires state initiative petitions to also contain a notice alerting voters that the proponents of the proposed initiative measure have the right to withdraw the petition at any time before the measure qualifies for the ballot. (Elec. Code, § 101, subd. (b).)

*Existing law* requires petitions to contain a declaration signed by the circulator that includes the circulator's printed name, residence address, the dates between which all the signatures to the petition were obtained, and an attestation that they witnessed the appended signatures being written and that according to the best information and belief of the circulator, each signature is the genuine signature of the person whose name it purports to be. Requires the circulator to

certify the content of the declaration as to its truth and correctness, under penalty of perjury under the laws of the State of California, with the signature of his or her name. (Elec. Code, § 104.)

*Existing law* provides that every person who, having taken an oath that he or she will testify, declare, depose, or certify truly before any competent tribunal, officer, or person, in any of the cases in which the oath may by law of the State of California be administered, willfully and contrary to the oath, states as true any material matter which he or she knows to be false, and every person who testifies, declares, deposes, or certifies under penalty of perjury in any of the cases in which the testimony, declarations, depositions, or certification is permitted by law of the State of California under penalty of perjury and willfully states as true any material matter which he or she knows to be false, is guilty of perjury. (Pen. Code, § 118, subd. (a).)

*Existing law* provides that perjury is punishable by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years. (Pen. Code, § 126.)

*Existing law* provides that every person is guilty of a misdemeanor who:

- Circulating, as principal or agent, or having charge or control of the circulation of, or obtaining signatures to, any state or local initiative, referendum or recall petition, intentionally misrepresents or intentionally makes any false statement concerning the contents, purport or effect of the petition to any person who signs, or who desires to sign, or who is requested to sign, or who makes inquiries with reference to it, or to whom it is presented for his or her signature.
- Willfully and knowingly circulates, publishes, or exhibits any false statement or misrepresentation concerning the contents, purport or effect of any 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.
- Circulating, as principal or agent, or having charge or control of the circulation of, or obtaining signatures to, any state or local initiative, intentionally makes any false statement in response to any inquiry by any voter as to whether he or she is a paid signature gatherer or a volunteer. (Elec. Code, § 18600.)

*Existing law* requires committees, as defined, to periodically report contributions received and expenditures made to support or oppose the qualification or passage of an initiative, referendum, or recall measure. (Gov. Code, § 84202.3.)

*Existing law* requires that for a committee primarily formed to support or oppose a state ballot measure or state candidate that raises \$1,000,000 or more for an election, the Secretary of State (SOS) must maintain, update, and post an accurate list of the committee's top 10 contributors, as specified. Requires the list to be based on the filer's campaign statements and reports. (Gov. Code, § 84223, subd. (a).)

*Existing law* requires, except as provided, that the list of top 10 contributors identify the names of the 10 persons who have made the largest cumulative contributions to the committee and the total amount of each person's contributions, among other things. (Gov. Code, § 84223, subd. (b).)

*Existing law* requires that a committee's top 10 contributor list be updated when specified events occur. (Gov. Code, § 84223, subd. (c)(2).)

*Existing law* requires an advertisement for or against a ballot measure to include a disclosure statement identifying the three highest "Top Contributors," defined as any person whose cumulative contributions are \$50,000 or more, as specified. (Gov. Code, § 84503.)

*This bill* requires a committee that pays for the circulation of a state or local initiative, referendum, or recall petition to create an Official Top Funders sheet, as described.

*This bill* requires the Official Top Funders sheet to include a disclosure statement in a printed or drawn box with a black border. Requires the disclosure statement to include the words "Petition circulation paid for by," followed by the name of the committee as it appears on the most recent Statement of Organization filed. Requires that if the committee has any top contributors, as defined, it be followed by the text "Committee major funding from:".

*This bill* requires the top contributors to be disclosed in boldface text on a separate horizontal line separate from any other text, in descending order, beginning with the top contributor who made the largest cumulative contributions, as defined, on the first line.

*This bill* provides that the committee, in its discretion, may include the underlined text "Endorsed by:", followed by a list, not underlined, of up to three endorsers.

*This bill* requires that the text "Latest Official Top Funders:" followed by either the web page on the SOS's Internet Web site that lists the "Official Top Funders" statements that are reported, or the committee's web page.

*This bill* requires, notwithstanding any other law, that a state or local initiative, referendum, or recall petition that requires voter signatures and for which the circulation is paid for by a committee include either a disclosure statement on the petition that is displayed or the circulator for the petition must present as a separate document the Official Top Funders sheet to a prospective signer of the petition.

*This bill* requires the disclosure statement to have a solid white background and to be in a printed or drawn box with a black border and to appear before that portion of the petition for voters' signatures, printed names, and residence addresses.

*This bill* requires that the top of the disclosure include the text "OFFICIAL TOP FUNDERS. Valid only for", followed by a month and year that starts at most seven days after the date the top contributors were last confirmed. Requires the text "Petition circulation paid for by", followed by the name of the committee as it appears on the most recent Statement of Organization filed. Requires that if the committee has any top contributors, the disclosure must include the text "Committee major funding from:". Requires the top contributors, if any, to each be disclosed, in descending order, beginning with the top contributor who made the largest cumulative contributions, as defined, on the first line.

*This bill* provides that the committee, in its discretion, may include the text "Endorsed by:", followed by a list of up to three endorsers.

*This bill* requires the disclosure include the text “Latest info:” followed by the URL for either the web page on the SOS’s Internet Web site that lists the “Official Top Funders” statements that are reported, or the committee’s Internet Web site.

*This bill* provides that any committee that pays for the circulation of a state or local initiative, referendum, or recall petition may create a page on an Internet Web site that includes both of the following:

- A prominent link to the most recent Official Top Funders sheet.
- A prominent link to the full text of the initiative or referendum.

*This bill* requires that a committee that circulates a state initiative, referendum, or recall petition submit the Official Top Funders sheet, and any updates to that statement, to the SOS, who is required to post that statement on the SOS’s Internet Web site along with the previous versions the committee submitted.

*This bill* provides that signatures collected on an initiative, referendum, or recall petition are not invalid solely because the information required by specified provisions of this bill was absent or inaccurate.

*This bill* includes a number of other formatting and content requirements for the Official Top Funders disclosure.

*This bill* makes it a misdemeanor for a person who while circulating, as principal or agent, or having charge or control of the circulation of, or obtaining signatures to, any state or local initiative, referendum or recall petition, intentionally misrepresents or intentionally makes any false statement concerning the contents, purport or effect of the petition’s Official Top Funders disclosure, to any person who signs, or who desires to sign, or who is requested to sign, or who makes inquiries with reference to it, or to whom it is presented for his or her signature.

*This bill* makes it a misdemeanor to willfully and knowingly circulate, publish, or exhibit any false statement or misrepresentation concerning the contents, purport or effect of any state or local initiative, referendum, or recall petition’s Official Top Funders disclosure, for the purpose of obtaining any signature to, or persuading or influencing any person to sign, that petition.

*This bill* requires each signed declaration submitted by the circulator of a petition to certify, under penalty of perjury, that the circulator showed each signer a valid and unfalsified Official Top Funders sheet if the petition does not include the Official Top Funders disclosure statement.

*This bill* makes other formatting changes to affected petitions, as specified.

*This bill* authorizes the pages of these petitions to be bound together by any reasonable method, including the use of staples.

## COMMENTS

### 1. Need for This Bill

According to the author:

SB 47 requires a signature gatherer to disclose the names of the top three funders of an initiative campaign at the same moment when a petition is placed before a voter with a request that he or she signs it.

Governor Hiram Johnson introduced the initiative, referendum and recall process over a century ago to give regular Californians a fighting chance against powerful interests. However, in the present day only powerful interests with considerable money are generally successful in qualifying initiatives for the ballot.

In California's 2018 general election, 37 statewide initiatives qualified for circulation to the public, and 12 qualified for the ballot. In 2016, a near record 17 statewide initiatives appeared on the general election ballot. Every one of these 29 propositions which qualified by signature gathering did so only after a million dollars or more was spent on paid signature gathering, with signatures from voters who were often in the dark about who was funding those efforts.

Committees supporting or opposing ballot measures must file periodic campaign finance reports, but voters who sign petitions do not have convenient access to this important disclosure when approached by a petition circulator. In fact, circulators today are not required to know or even share this information if asked.

Statewide surveys consistently show voters want more information about who is funding ballot measures. In 2013, the Public Policy Institute of California found 81 percent of Democrats, 80 percent of Republicans, and 85 percent of independents supported increased disclosure.

By arming California's voters with knowledge about who is paying to qualify an initiative, referendum, or recall at the same moment in time when they are contemplating whether to sign a petition, SB 47 makes an overwhelmingly popular, common sense improvement to law that benefits the public interest.

### 2. Background

#### *Existing Disclosure Requirements*

Existing law requires campaign committees to file periodic reports disclosing contributions received and expenditures made to support or oppose the qualification or passage of an initiative, referendum, or recall measure. In most cases, those campaign disclosure reports will be available online if the measure is a state measure. To the extent that having more information about the financial supporters of a measure is an important consideration for a voter, the voter typically will be able to get that information from campaign reports.

Existing law also recognizes an interest in providing voters with information about the contributors to a measure at the time voters are asked to support or oppose that measure. Specifically, existing law requires advertisements for or against ballot measures to include a disclosure statement identifying the largest donors of \$50,000 or more to the committee paying for the advertisement. Additionally, existing law requires a committee that is supporting or opposing one or more ballot measures to name and identify itself using a name that identifies the economic or other special interest of its major donors of \$50,000 or more.

### ***Speaker's Commission on the California Initiative Process***

In 2000, then-Assembly Speaker Robert Hertzberg created a Commission on the California Initiative Process (Commission). The goal of the Commission was to examine the initiative process and recommend changes to improve it, making it more responsive to voter concerns. In the executive summary of its final report, the Commission summarized the theme of its recommendations as “improvement of the existing initiative process by offering additional methods for public review, for refining initiative proposals, and for providing more timely information to the voters.” (Speaker Robert M. Hertzberg, *The Speaker's Commission on the California Initiative Process*, p. 8 <<http://www.iandrinstute.org/docs/CA-Commission-Final-IandR-Report-IRI.pdf>> [as of Apr. 16, 2019].)

One of the primary focuses of the Commission was discussing ways “to improve the quality and transparency of the information presented to the public during the campaign and in ballot materials.” (*Id.* at p. 15.) In order to increase transparency, the Commission proposed several financial disclosure reporting requirements. In addition, the Commission adopted the following recommendations:

- All petitions to qualify a statewide initiative for the ballot shall be accompanied by a written campaign financial disclosure, which may be printed on, attached or bound to the petition. It need not be contiguous. Potential signers would be informed either orally or in writing that financial disclosure information concerning the initiative can be obtained on the SOS website.
- All mass mailings sent by committees urging voters to sign petitions to qualify a statewide initiative must disclose the top five contributors to the committee and the cumulative amount of each one's contributions, as of the committee's most recent campaign report.
- Any committee employee or contractor who circulates a petition to qualify a statewide initiative must make available to potential signers the names and cumulative amounts of the top five contributors to the committee as of the committee's most recent campaign report. This information shall also be made available through the proponent's website. Information on the location of the website shall be made available to the potential signer. Committees must request volunteer petition circulators to provide the same information.

(*Id.* at p. 16.)

### 3. Existing Criminal Penalties Related to Petitions for Ballot Measures

Current law includes a number of provisions that make it a crime for a person to intentionally or knowingly make false statements and misrepresentations while gathering signatures for a proposed ballot measure. Specifically, existing law makes it a misdemeanor for a person to intentionally misrepresent or make any false statement concerning the contents, purport, or effect of a petition for any state or local initiative, referendum, or recall to any person who signs, wants to sign, is requested to sign, or makes an inquiry regarding the petition while the person is circulating or obtaining signatures for the petition. (Elec. Code, § 18600, subd. (a).) Existing law also makes it a misdemeanor to willfully and knowingly circulate, publish, or exhibit any false statement or misrepresentation concerning the contents, purport, or effect of any 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. (Elec. Code, § 18600, subd. (b).)

This bill would make it a misdemeanor to intentionally misrepresent or make any false statement regarding a petition's Official Top Funders disclosure, and to willfully and knowingly circulate, publish, or exhibit any false statement or misrepresentation regarding a petition's Official Top Funders disclosure.

This bill additionally requires each signed declaration submitted by the circulator of a petition to certify, under penalty of perjury, that the circulator showed each signer a valid and unfalsified Official Top Funders sheet if the petition does not include the Official Top Funders disclosure statement.

### 4. Argument in Support

A coalition of organizations, including California Common Cause, CALPIRG, and Consumer Watchdog, writes:

SB 47 makes a commonsense improvement to California's current campaign disclosure laws by requiring initiative signatures gatherers to show voters the top three funders of the committee paying for the petition circulation before they sign.  
...

The top funders must be calculated the same way that the California DICLOSE Act (AB 249, now in effect) calculates finders of political ads about ballot measures, including AB 249's follow-the-money earmarking rules that identify the true source of funds for specific ballot measures even if they pass through multiple front groups. The top funders must be updated monthly.  
...

This kind of disclosure is overwhelmingly popular with the public. ...

Providing Californians with relevant facts about the source of money to qualify an initiative, referendum, or recall, and who endorses it, is a reasonable, important step the legislature can take to help voters make an informed decision about whether or not to sign a petition.

## 5. Argument in Opposition

According to the Howard Jarvis Taxpayers Association:

... HJTA opposes any proposal which would inhibit the ability of Californians to fully participate in an initiative process. While disclosing the “Official Top Funders” of a ballot measure is already existing law, SB 47 seeks to place this information with initiative petition circulators.

While HJTA is not opposed to fiscal transparency within ballot measure campaigns, we are opposed to legislation that doesn't actually advance transparency objectives and appears to be redundant. Such is the case with SB 47. It would place new expensive burdens on petition circulators to keep the “Top Funder” list updated on a regular basis (including the reprinting of petitions) with the additional threat of criminal penalties for failing to comply. Further, the top funded list is already available on both the FPPC's website, which the Secretary of State's office clearly links on their website. This is why Governor Brown vetoed a similar bill to this one in 2014.

-- END --