
**SENATE COMMITTEE ON
ELECTIONS AND CONSTITUTIONAL AMENDMENTS**
Senator Steven Glazer, Chair
2021 - 2022 Regular

Bill No:	SB 660	Hearing Date:	4/12/21
Author:	Newman		
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Urgency:	No	Fiscal:	Yes
Consultant:	Nicolas Heidorn		

Subject: Initiative, referendum, and recall petitions: compensation for signatures

DIGEST

This bill makes it unlawful for a person to pay or to receive money or any other thing of value based on the number of signatures obtained on a state or local initiative, referendum, or recall petition.

ANALYSIS

Existing law:

- 1) Allows electors to propose amendments to the California Constitution, statutes, and local ordinances or resolutions and to adopt or reject them through the initiative process.
- 2) Permits voters to approve or reject statutes approved by the Legislature and to approve or reject resolutions and ordinances approved by a local governing board, except as specified, by referendum.
- 3) Permits voters to remove an elective officer from state or local office before the end of the term of office, as specified, by recall.
- 4) Permits any person who is 18 years of age or older to circulate a state or local initiative, referendum, or recall petition.
- 5) Requires, for a state or local initiative, referendum, or recall petition for which the circulation is paid for by a committee, as specified, that an "Official Top Funders" disclosure be made, either on the petition or on a separate sheet, that identifies the name of the committee, any qualifying top contributors and the month and year during which the Official Top Funders disclosure is valid. This disclosure must include the three highest contributors whose cumulative contributions are \$50,000 or more, as specified.
- 6) Requires a state or local initiative petition to contain the following notice in 11-point type before the portion of the petition for voters' signatures:

"THIS PETITION MAY BE CIRCULATED BY A PAID SIGNATURE GATHERER OR A VOLUNTEER. YOU HAVE THE RIGHT TO ASK."

- 7) 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.”

- 8) Establishes penalties for fraudulent activity related to signature gathering.
- 9) 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, or the petition’s Official Top Funders disclosure, to any person who signs or is requested to sign the petition.
 - 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, or the petition’s Official Top Funders disclosure, for the purpose of obtaining any signature to, or persuading or influencing any person to sign, that petition.
 - 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.
- 10) 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.
- 11) Provides that upon conviction of any of the conduct described above in 9) or 10), 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.

This bill:

- 1) Provides that it is unlawful for a person to pay money or any other thing of value based on the number of signatures obtained on a state or local initiative, referendum, or recall petition.
- 2) Provides that a violation of this prohibition is punishable by a civil penalty equal to the greater of \$25,000 or \$50 times the number of signatures gathered in exchange for compensation.

- 3) Provides that the Attorney General (AG) may bring a civil action against a person for violating this prohibition.
- 4) Provides that a person may bring a civil action for a violation of this prohibition to recover the fine described above, as follows:
 - a) The person bringing the action shall be referred to as the qui tam plaintiff.
 - b) Once filed, the action may be dismissed only with the written consent of the court and the AG, taking into account the best interests of the parties involved and the public purposes behind this prohibition. A claim for a violation of this prohibition shall not be waived or released by any private person, except if the action is part of a court approved settlement.
 - c) On the same day as the complaint is filed the qui tam plaintiff shall serve by mail with "return receipt requested" the AG with a copy of the complaint and a written disclosure of substantially all material evidence and information the person possesses.
 - d) Within 60 days after receiving a complaint and written disclosure of material evidence and information alleging violations of this prohibition, the AG may elect to intervene and proceed with the action.
- 5) Provides that if the AG initiates an action or assumes control of an action initiated by a qui tam plaintiff, the office of the AG shall receive a fixed 33 percent of the proceeds of the action or settlement of the claim, which shall be deposited in a Petition Signature Fraud Account, established in the General Fund. Provides that moneys in the Account shall be available, upon appropriation by the Legislature, for use by the AG to support the investigation and prosecution of fraud.
- 6) Provides that if a qui tam plaintiff initiates an action, the qui tam plaintiff shall receive at least 17 percent, but not more than 50 percent, of the proceeds of the action or settlement of the claim, depending on the extent to which the qui tam plaintiff substantially contributed to the prosecution of the action.
- 7) Provides that the portion of the recovery not distributed as described above in 5) or 6) shall be deposited into a Petition Signature Fraud Voter Education Subaccount, established in the Petition Signature Fraud Account. Provides that moneys in the Subaccount shall be available, upon appropriation by the Legislature, for use by the Secretary of State to support voter registration and education efforts.
- 8) Provides that if the state, through the AG, or the qui tam plaintiff, prevails in or settles an action under this bill, the qui tam plaintiff shall receive an amount for reasonable expenses that the court finds to have been reasonably incurred, plus reasonable costs and attorney's fees. All expenses, costs, and fees shall be awarded against the defendant and under no circumstances shall they be the responsibility of the state.
- 9) Provides that if the AG does not proceed with the action and the qui tam plaintiff conducts the action, the court may award to the defendant its reasonable attorneys'

fees and expenses against the party that proceeded with the action if the defendant prevails in the action and the court finds that the claim was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

- 10) Provides that a qui tam plaintiff shall be entitled to all relief necessary to make him or her whole, if that qui tam plaintiff is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of his or her employment because of lawful acts done by the qui tam plaintiff, or associated others, in furtherance of an action under this bill or other efforts to stop one or more violations of this prohibition.
- 11) Provides that if a person brings such an action no other person may bring a related action based on the facts underlying the pending action.
- 12) States that the provisions of this bill do not prohibit the payment for signature gathering not based, either directly or indirectly, on the number of signatures obtained on a state or local initiative, referendum, or recall petition.
- 13) Makes the following findings and declarations:
 - a) The communication of accurate information by signature gatherers is important to the integrity of the electoral process.
 - b) Signature gatherers frequently communicate inaccurate information to voters in order to obtain their signatures on petitions, and that deception undermines the integrity of the electoral process.
 - c) It is the intent of the Legislature to prohibit the compensation of signature gatherers in a manner that gives signature gatherers an incentive to deceive voters in order to obtain their signatures and to provide an enforcement mechanism that is applicable to anyone who in violation of this prohibition pays individual signature gatherers or pays, directly or indirectly, for signatures obtained from such individual signature gatherers in order to ensure compliance.

BACKGROUND

Initiative, Referendum, and Recall & Other States. According to information from the National Conference on State Legislatures (NCSL), 24 states, including California, allow voters through the initiative to propose laws, constitutional amendments, or both through a petition process. Twenty-three states, including California, allow voters through the referendum process to petition to demand a popular vote on a new law passed by the Legislature. Nineteen states, including California, permit state officers to be removed from office before the end of the term of office through the recall process.

At least seven states (Arizona, Florida, Montana, North Dakota, Oregon, South Dakota, and Wyoming) 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. Laws to ban per-signature payments in at least six other states (Colorado, Idaho, Maine, Mississippi, Ohio, and Washington) have been invalidated by courts (additional details

are available below). 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.

Payment for Signature Gathering and Constitutional Issues. 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. The *Meyer* court, however, did not address the issue of whether a state may regulate the manner in which circulators are paid.

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. In *Buckley*, the court invalidated Colorado's requirement that paid petition circulators wear a badge identifying themselves and identifying that they are paid circulators. The court stated that the requirement to wear badges inhibits participation in the petitioning process.

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 February 2001, the Eighth Circuit Court of Appeals ruled that a North Dakota law prohibiting payment for signature collection on a per-signature basis was consistent with the United States Constitution and with the Supreme Court's rulings in *Buckley* and *Meyer*. In reaching this decision, the court noted that the state "produced sufficient evidence that the regulation is necessary to insure the integrity of the initiative process," and also noted that no evidence was presented "that payment by the hour, rather than on commission, would in any way burden [the] ability to collect signatures." *Initiative & Referendum Institute v. Jaeger* (2001), 241 F.3d 614.

In February 2006, the Ninth Circuit Court of Appeals ruled that an Oregon law that prohibited payment to electoral petition signature gatherers on a piece-work or per-signature basis did not impose a severe burden under the First Amendment, and therefore did not unconstitutionally burden core political speech. The court found that Oregon had an "important regulatory interest in preventing fraud and its appearances in its electoral processes," and that prohibiting the payment of signature gatherers on a per-signature basis was reasonably related to that interest. *Prete v. Bradbury* (2006), 438 F.3d 949.

In October 2006, the Second Circuit Court of Appeals upheld a New York law that prohibited payment of any compensation to individuals hired to circulate electoral petitions if that compensation is contingent on the number of signatures obtained. Because New York does not have the initiative process, the law applies only to nomination petitions for candidates and to petitions to qualify a new political party. In its

decision upholding the law, the Court referenced the decisions in the Eighth and Ninth Circuits, and noted that "[l]ike our sister circuits, we find the record presented to us provides insufficient support for a claim that the ban on per-signature payment is akin to the complete prohibition on paying petition circulators that was deemed unconstitutional in *Meyer*, or that the alternative methods of payment it leaves available are insufficient." *Person v. New York State Board of Elections* (2006), 467 F.3d 141.

On the other hand, the Sixth Circuit Court of Appeals struck down an Ohio law that made it a felony to pay anyone for gathering signatures on election-related petitions on any basis other than time worked. In its decision, the Court noted that while Ohio's interest in eliminating election fraud is a compelling state interest, "there is no evidence in the record that most, many, or even more than a de minimis number of circulators who were paid by signature engaged in fraud in the past." The court further noted that "[t]here is little dispute that operating under a per-time-only system will increase the costs of both proposing an initiative and qualifying it for the ballot," and cited evidence presented that professional coordinators and circulators were less interested in working under a per-time-only system. At the same time, however, the Court discussed the rulings in the Second, Eighth, and Ninth Circuits, noting that unlike the laws that were upheld in North Dakota, Oregon, and New York, the Ohio law was more restrictive and had harsher criminal sanctions for violations.

A number of federal district courts have struck down bans on per-signature payments in other states, as well. In 1994, a federal district court struck down a Washington law that made it illegal to pay gatherers of signatures on initiative and referendum petitions on a per-signature basis, noting in its decision that the state had failed to provide any "proof of fraud stemming specifically from the payment per signature method of collection." *Limit v. Maleng* (1994), 874 F.Supp. 1138. In 1997, a district court struck down a similar Mississippi law, citing evidence presented that the "payment of a flat daily rate to Mississippi circulators had yielded poor results," and concluding that the state had failed to prove "actual fraud or threat to citizens' confidence in government posed by...circulators who were paid per signature." *Term Limits Leadership Council, Inc. v. Clark* (1997), 984 F.Supp. 470. Federal district courts also struck down similar laws in Maine. *On Our Terms '97 PAC v. Secretary of State of State of Maine* (1999), 101 F.Supp.2d 19. More recently, a Colorado court issued a permanent injunction against a Colorado law that prohibited a petition circulator from being paid more than twenty percent of his or her compensation on a per-signature basis. *Independence Institute v. Gessler* (2013), 936 F.Supp.2d 1256.

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.

Petition Fraud. According to information from the Secretary of State's office, between 1994 and March 2021, the office opened 292 cases investigating potential petition fraud, of which 55 cases were referred for prosecution. These figures do not include petition fraud investigations that may have been conducted by other law enforcement agencies around the state.

COMMENTS

- 1) According to the author: California's constitutional provisions for the initiative, referendum, and recall processes can and should play an essential role in our state's politics and governance. Under the current system, which is driven by per-signature payments to qualify measures for the ballot, there are scant prospects for deterring bad actors who would willfully mislead voters at the expense of the public good. ...

[C]oordinated and well-financed groups have become increasingly adept at using the initiative, referendum, and recall processes for their benefit, and an "arms race" of sorts has ensued around the tactics employed to place an issue on the ballot. In response, a highly sophisticated mini-economy has grown up around signature gathering. At its center, a small number of specialized firms with expertise in signature gathering dominate, offering their services to proponents seeking to place a measure on the ballot.

One of the principal tactics used by these specialized signature-gathering firms is the deployment of well-trained, professional signature gatherers. Typically, these signature gatherers are paid on a per-signature or commission basis, also known as a bounty, at a rate determined by the market as it is assessed at the time. ... Against this backdrop, the determining factor for getting a particular measure on the ballot too often has less to do with its merits and more to do with the depth of the pockets of its proponents. By virtue of the compensation structure under which they work, professional signature gatherers have powerful incentives to traffic in misleading information and outright falsehoods in order to induce as many voters as possible to sign in the minimum amount of time.

This collision, between economic self-interest and the public interest, has a direct and damaging impact on the integrity of direct democracy in our state. Other US states have recently examined the issues surrounding petitions and paid signature gatherers and adopted legislation prohibiting per-signature bounties... California should do the same. Our democracy and governance will be the better for it.

- 2) Argument in Opposition. In a letter opposing SB 660, the League of Women Voters of California stated, in part:

The League believes that impeding compensation for signatures gathered for initiative, referendum, or recall petitions could interfere with and have a chilling effect on citizens' right of direct legislation through the initiative and referendum process. We are concerned that it would promote inequity by driving up costs of the initiative process in a manner that favors wealthy interests. Finally, we support a system of registration and training for signature gatherers and compensation for time and dedication to civic service. This bill dramatically changes a long-established democratic process with the rationale that it is necessary to protect against fraud. There is, however, no compelling evidence of significant fraud resulting from a per-signature payment system.

- 3) Double Referral. This bill has been double-referred to the Senate Judiciary Committee.

RELATED/PRIOR LEGISLATION

AB 1451 (Low) of 2019, would have prohibited paying initiative, referendum, or recall petition circulators on a per-signature basis, similar to this bill, and would have required that 10% of the signatures on a state initiative petition be collected by either unpaid circulators or employees or members of nonprofit organizations. Governor Newsom vetoed the bill, stating:

While I appreciate the intent of this legislation to incentivize grassroots support for the initiative process, I believe this measure could make the qualification of many initiatives cost-prohibitive, thereby having the opposite effect. I am a strong supporter of California's system of direct democracy and am reluctant to sign any bill that erects barriers to citizen participation in the electoral process.

SB 47 (Allen), Chapter 563, Statutes of 2019, required, among other things, for specified state and local initiative, referendum, or recall petitions, that an Official Top Funders disclosure be made either on the petition itself or on a separate sheet that identifies the name of the committee and any qualifying top contributors.

SB 1394 (Newman) of 2018, which had many identical provisions to this bill, would have made it unlawful for a person to pay or to receive money or any other thing of value based on the number of signatures obtained on a state or local initiative, referendum, or recall petition. SB 1394 was held in the Assembly.

AB 1947 (Low) of 2018 would have prohibited a person or organization that pays circulators to collect signatures on an initiative, referendum, or recall petition from paying those circulators on a per-signature basis, similar to this bill. Governor Brown vetoed this bill, stating:

As I stated in my veto message of an almost identical bill—SB 168 of 2011—‘per signature payment is often the most cost-effective method for collecting the hundreds of thousands of signatures needed to qualify a ballot measure. Eliminating this option will drive up the cost of circulating ballot measures, thereby further favoring the wealthiest interests.’ While I understand the potential abuses of the current per-signature payment system, my perspective has not changed since 2011.

SB 168 (Corbett) of 2011 would have made it a misdemeanor for a person to pay or to receive money or any other thing of value based on the number of signatures obtained on a state or local initiative, referendum, or recall petition. The bill was vetoed by Governor Brown.

SB 34 (Corbett) of 2009, which was vetoed by Governor Schwarzenegger, was identical to SB 168. In his veto message, the Governor stated that “prohibitions on per-signature payments will make it more difficult for grassroots organizations to gather the necessary signatures and qualify measures for the ballot.”

AB 2946 (Leno) of 2006 also would have prohibited paying petition circulators on a per-signature basis and was also vetoed by Governor Schwarzenegger.

POSITIONS

Sponsor: Author

Support: None received

Oppose: California Chamber of Commerce
League of Women Voters of California

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