
VETO

Bill No: SB 660
Author: Newman (D), et al.
Amended: 6/23/21
Vote: 27

SENATE ELECTIONS & C.A. COMMITTEE: 3-2, 4/12/21

AYES: Hertzberg, Leyva, Newman

NOES: Glazer, Nielsen

SENATE JUDICIARY COMMITTEE: 8-2, 4/20/21

AYES: Umberg, Durazo, Gonzalez, Hertzberg, Laird, Stern, Wieckowski, Wiener

NOES: Borgeas, Jones

NO VOTE RECORDED: Caballero

SENATE APPROPRIATIONS COMMITTEE: 5-2, 5/20/21

AYES: Portantino, Bradford, Kamlager, Laird, Wieckowski

NOES: Bates, Jones

SENATE FLOOR: 28-11, 5/24/21

AYES: Archuleta, Atkins, Becker, Bradford, Cortese, Dodd, Durazo, Eggman,
Gonzalez, Hertzberg, Hueso, Hurtado, Kamlager, Laird, Leyva, Limón,
McGuire, Min, Newman, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg,
Wieckowski, Wiener

NOES: Bates, Borgeas, Caballero, Dahle, Glazer, Grove, Jones, Melendez,
Nielsen, Ochoa Bogh, Wilk

NO VOTE RECORDED: Allen

SENATE FLOOR: 26-11, 9/8/21

AYES: Archuleta, Atkins, Becker, Bradford, Cortese, Dodd, Durazo, Gonzalez,
Hertzberg, Hueso, Hurtado, Kamlager, Laird, Leyva, Limón, McGuire, Min,
Newman, Pan, Portantino, Roth, Rubio, Skinner, Umberg, Wieckowski, Wiener

NOES: Bates, Borgeas, Caballero, Dahle, Glazer, Grove, Jones, Melendez,
Nielsen, Ochoa Bogh, Wilk

NO VOTE RECORDED: Allen, Eggman, Stern

ASSEMBLY FLOOR: 51-18, 9/2/21 - See last page for vote

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

SOURCE: Author

DIGEST: This bill prohibits a person from paying money or providing any other thing of value based on the number of signatures obtained on a state or local initiative, referendum, or recall petition. The bill permits the Attorney General (AG) or a private person, acting as a qui tam plaintiff, to bring a civil action for a violation of this prohibition and imposes a monetary penalty, as specified.

ANALYSIS:

Existing law:

- 1) Permits any person who is 18 years of age or older to circulate a state or local initiative, referendum, or recall petition.
- 2) Requires, for a state or local initiative, referendum, or recall petition for which the circulation is paid for by a committee, that a disclosure be made on the petition or on a separate sheet that identifies the top contributors to the committee, as specified.
- 3) Requires a state or local initiative petition to contain a notice to the public that the petition may be circulated by a paid signature gatherer or a volunteer, and that a person has the right to ask.
- 4) 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 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 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.
- 5) 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 a 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.
- 6) Provides that upon conviction of the conduct described in 4) or 5), 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 AG may bring a civil action against a person for violating this prohibition.
- 4) Provides that a person, referred to as the qui tam plaintiff, may bring a civil action for a violation of this prohibition to recover the fine described above. Requires the qui tam plaintiff to serve the AG with a copy of the complaint and disclose substantially all material evidence, as specified. Provides that, within 60 days after receiving the complaint, the AG may elect to intervene and proceed with the action.
- 5) Provides that a filed action may be dismissed only with the written consent of the court and the AG, as specified, and prohibits any private person from waiving or releasing any claim for a violation of this prohibition, except if the action is part of a court approved settlement.

- 6) 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 (PSFA), established in the General Fund. Provides that moneys in the PSFA shall be available, upon appropriation, for use by the AG to support the investigation and prosecution of fraud related to the initiative, referendum, or recall process, as specified.
- 7) 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.
- 8) Provides that the portion of the recovery not distributed as described above in 6) or 7) shall be deposited into a Petition Signature Fraud Voter Education Subaccount (PSFVES), established in the PSFA. Provides that moneys in the PSFVES shall be available, upon appropriation, for use by the Secretary of State (SOS) to support voter registration and education efforts.
- 9) Provides that if the state, through the AG, or the qui tam plaintiff, prevails in or settles an action under this bill, the AG and qui tam plaintiff shall each receive an amount for reasonable expenses, costs, and attorney's fees, as specified. All expenses, costs, and fees shall be awarded against the defendant and under no circumstances shall they be the responsibility of the state.
- 10) 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.
- 11) Provides that a qui tam plaintiff shall be entitled to all relief necessary to make themselves 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 their 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 the prohibitions in this bill.
- 12) 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.

13) 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.

14) Makes findings and declarations.

Background

Per-Signature Bans in Other States. 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. In 2015, Nebraska 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 states (Colorado, Idaho, Maine, Mississippi, Ohio, and Washington) have been invalidated by courts. Alaska prohibits per-signature payments greater than \$1 per signature, but does not ban them.

Signature Gathering Restrictions Litigation. In 1988, the United States Supreme Court ruled that a Colorado prohibition against using paid circulators for initiative petitions infringed on First Amendment free speech rights. The Court held 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. However, the Court did not address whether a state may regulate the manner in which circulators are paid.

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 and arrived at different legal conclusions. The Second, Eighth, and Ninth Circuit Courts of Appeals have upheld per-signature payment bans. Notably, the Ninth Circuit Court of Appeals ruled that an Oregon law prohibiting payment to signature gatherers on a piece-work or per-signature basis did not violate the First Amendment. *Prete v. Bradbury* (9th Cir. 2006), 438 F.3d 949. The Court held that the restriction did not impose a “severe burden” on free speech rights and that the Oregon law was reasonably related to an “important regulatory interest in preventing fraud and its appearances in its electoral processes.”

On the other hand, the Sixth Circuit Court of Appeals struck down an Ohio law prohibiting paying petition signature gatherers on any basis other than time worked. *Citizens for Tax Reform v. Deters* (6th Cir. 2008), 518 F. 3d 375. The

Court noted that, while 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 observed that “[t]here is little dispute that operating under a per-time-only system will increase the costs” of qualifying an initiative on the ballot. Federal district courts have also struck down per-signature payment bans in other states, including in Colorado, Maine, Mississippi, and Washington.

Petition Fraud. According to information from the SOS, between 2016 and 2021, the SOS opened 20 cases investigating potential petition fraud, of which six cases were referred for prosecution. These figures do not include petition fraud investigations that may have been conducted by other law enforcement agencies. Between 2012 and 2016, the SOS estimates that there were 10 convictions resulting from SOS referrals. However, this may be an undercount as prosecutors do not always report to the SOS whether they prosecute a case or its outcome.

Comments

According to the author, 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. These states include Colorado, Montana, North Dakota, Oregon, and South Dakota. California should do the same. California should do the same. Our democracy and governance will be the better for it.

Related/Prior Legislation

AB 1451 (Low, 2019) would have prohibited paying 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 a nonprofit. 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 1394 (Newman, 2018) was very similar to this bill. It was held in the Assembly.

AB 1947 (Low, 2018) and SB 168 (Corbett, 2011) both would have prohibited paying petition circulators on a per-signature basis, similar to this bill. Governor Brown vetoed both bills.

SB 34 (Corbett, 2009) would have prohibited paying petition circulators on a per-signature basis. Governor Schwarzenegger vetoed the bill.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

SUPPORT: (Verified 10/11/21)

California Professional Firefighters

OPPOSITION: (Verified 10/11/21)

California Chamber of Commerce

Howard Jarvis Taxpayers Association

League of Women Voters of California

Southwest California Legislative Council

ARGUMENTS IN SUPPORT: In a letter supporting SB 660, the California Professional Firefighters stated, in part, the following, “While it is currently a misdemeanor action to compensate someone directly for their signature on a petition, loopholes exist in current law that allow groups to compensate their employees, contractors, or volunteers in a manner that is directly related to the number of signatures that they obtain. This provides explicit incentive to those individuals to obtain as many signatures in their time working as possible, encouraging potentially dishonest or otherwise fraudulent methods to ensure a higher payout. California’s referendum system is too important to allow for financial motivation to influence what measures are placed before the voters, and for these reasons, we urge your support of this important measure.”

ARGUMENTS IN OPPOSITION: In a letter opposing SB 660, the League of Women Voters of California stated, in part, the following, “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. ... 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.”

GOVERNOR'S VETO MESSAGE:

This bill prohibits a person from paying money or providing any other thing of value based on the number of signatures obtained on a state or local initiative, referendum, or recall petition. The bill permits the Attorney General or a private person, acting as a qui tam plaintiff, to bring a civil action for a violation of this prohibition and imposes a monetary penalty.

As I stated in a veto message on similar legislation in 2019, I appreciate the intent of this bill to incentivize grassroots support for the initiative, referendum, and recall process. However, payment per signature remains one of the most economical methods to qualify for the ballot. This measure could therefore make the qualification of many initiatives cost-prohibitive for all but the wealthiest interests, thereby having the opposite effect. For this reason, I cannot sign this bill.

ASSEMBLY FLOOR: 51-18, 9/2/21

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bloom, Boerner Horvath, Bryan, Burke, Calderon, Carrillo, Cervantes, Chau, Chiu, Cooper, Frazier, Friedman, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Lee, Levine, Low, Maienschein, McCarty, Medina, Mullin, Muratsuchi, Petrie-Norris, Quirk, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Stone, Ting, Villapudua, Ward, Akilah Weber, Wicks, Wood

NOES: Bigelow, Chen, Choi, Cunningham, Megan Dahle, Davies, Flora, Fong, Gallagher, Kiley, Lackey, Mathis, Patterson, Seyarto, Smith, Valladares, Voepel, Waldron

NO VOTE RECORDED: Cooley, Daly, Gabriel, Mayes, Nazarian, Nguyen, O'Donnell, Quirk-Silva, Ramos, Rendon

Prepared by: Nicolas Heidorn / E. & C.A. / (916) 651-4106
10/18/21 10:39:21

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