

Date of Hearing: July 3, 2019

**ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING**

Marc Berman, Chair

SB 47 (Allen) – As Introduced December 3, 2018

**SENATE VOTE:** 31-5

**SUBJECT:** Initiative, referendum, and recall petitions: disclosures.

**SUMMARY:** Requires that individuals who are asked to sign state or local initiative, referendum, or recall petitions to be provided with information about the committee that is paying for the petition to be circulated, if any, and the top campaign contributors to that committee, as specified. Specifically, **this bill:**

- 1) Requires, when a campaign committee pays for the circulation of a state or local initiative, referendum, or recall petition, as specified, that an Official Top Funders disclosure be made, either on the petition itself, or on a separate sheet that is presented to prospective signers of the petition. Requires the disclosure to identify the name of the committee, any qualifying top contributors, the month and year during which the Official Top Funders disclosure is valid, and an address to a webpage that includes the most recent Official Top Funders disclosure, as specified. Requires the disclosure to include the three highest contributors whose cumulative contributions are \$50,000 or more, as specified.
- 2) Requires the committee to create an Official Top Funders sheet that contains the information described above that is included in the Official Top Funders disclosure, along with the title of the initiative, referendum, or recall and, in the case of a state initiative petition, the official title and summary of the measure prepared by the Attorney General (AG). Requires the sheet to comply with specified font type and size and formatting requirements. Requires the committee to submit the sheet and any updates to the Secretary of State (SOS). Requires the SOS to post the Official Top Funders sheet on its website along with the previous versions the committee submitted.
- 3) Permits the committee to include, as a part of the Official Top Funders disclosure, a list of up to three endorsers, as specified. Defines an “endorser,” for these purposes, as any of the following:
  - a) A business that has been in existence for at least two years and has had at least one full-time staffer during that period.
  - b) A non-profit organization that was not originally created for the purposes of serving as a committee, that has been in existence for at least two years, and either has received contributions from more than 50 donors in that period or has had at least one full-time staffer during that period.
  - c) A political party.
  - d) An individual, whose name may include their title if they are an elected official or represent one of the organizations described above.

- 4) Requires both of the following, if the Official Top Funders disclosure is made on a separate sheet rather than on the petition itself:
  - a) Requires the petition to include the following text in boldface font and no smaller than 11-point type:

YOU HAVE THE RIGHT TO SEE AN “OFFICIAL TOP FUNDERS” SHEET.
  - b) Requires each section of the petition to include a certification by the circulator under penalty of perjury that the circulator showed each petition signer a valid “Official Top Funders” sheet.
- 5) Requires, if the Official Top Funders disclosure is made on the petition itself, that the petition disclosure statement have a solid white background, be in a printed or drawn box with a black border, and appear before that portion of the petition for voters’ signatures, as specified.
- 6) Reduces, from 12-point to 11-point, the font size required for the title and summary and specified existing notices that are required to appear on petitions.
- 7) Repeals an existing requirement that the circulating title and summary prepared by the AG must appear on each section of a petition for a state measure preceding the text of the measure.
- 8) Provides that signatures collected on an initiative, referendum, or recall petition are not invalid solely because the information required by this bill was absent or inaccurate.
- 9) Specifies that local elections officials are not required to verify the accuracy of the information required in the Official Top Funders disclosure, nor are they required to re-approve any petition when the committee updates the Official Top Funders disclosure.
- 10) 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 a signature.
- 11) 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.
- 12) Makes other formatting changes to affected petitions, as specified, and requires that the Official Top Funders disclosures required by this bill appear in specified font types and sizes and comply with various formatting requirements.

- 13) Provides that the pages of a petition may be bound together by any reasonable method, including the use of staples.
- 14) Contains a severability clause.

**EXISTING LAW:**

- 1) Prescribes requirements regarding the form, content, and presentation of initiative and referendum petitions.
- 2) 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 the circulator 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.
- 3) 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.
- 4) Requires state initiative petitions to contain 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.”
- 5) Requires political 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.
- 6) Requires advertisements that support or oppose candidates or ballot measures to include disclosure statements in specified circumstances. These required statements may include a disclosure of the committee that is paying for the advertisement and a disclosure of the top contributors of \$50,000 or more to the committee paying for the advertisement.

**FISCAL EFFECT:** According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs. State-mandated local program; contains a crimes and infractions disclaimer; contains reimbursement direction.

**COMMENTS:**

- 1) **Purpose of the 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) **Existing Disclosure Requirements:** As noted above, 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 are 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 when deciding whether to sign a petition to place that measure on the ballot, the voter typically will be able to get that information from campaign disclosure reports.

On the other hand, 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, as detailed above, existing law requires specified campaign advertisements to include a disclosure statement identifying the three largest contributors of \$50,000 or more to the committee that is paying for the advertisement.

- 3) **Speaker's Commission on the California Initiative Process:** In 2000, then-Assembly Speaker Robert M. 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 make the process more responsive to voter concerns. In its final report, the Commission states that when deciding whether or not to sign an initiative petition, voters should have information available about an initiative's sponsors to fully inform their decision. The Commission made 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's 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 web site. Information on the location of the web site shall be made available to the potential signer. Committees must request volunteer petition circulators to provide the same information.

- 4) **Voter Support for Public Disclosure:** In a 2013 report titled "Reforming California's Initiative Process," the Public Policy Institute of California found that 78% of adults and 84% of likely voters favor increasing public disclosure of funding sources for signature gathering and initiative campaigns. This support is across the political spectrum with 81% of Democrats, 80% of Republicans, and 85% of independents supporting increased disclosure.
- 5) **Arguments in Support:** A coalition letter sent by a number of organizations supporting this bill including the sponsor, the California Clean Money Campaign, states:

SB 47 makes a commonsense improvement to California's current campaign disclosure laws by requiring initiative signature gatherers to show voters the top three funders of the committee paying for the petition circulation before they sign. They can do so either by showing voters an easily-printable "Official Top Funders Sheet" or by listing the top three funders on the initiative signature page itself. Committees can optionally also list up to 3 endorsing individuals, corporations, or non-profit organizations.

The top funders must be calculated the same way that the California DISCLOSE Act (AB 249, now in effect) calculates funders 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.

- 6) **Arguments in Opposition:** In opposition to this bill, the Howard Jarvis Taxpayers Association (HJTA) writes:

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 Funded" 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 [Fair Political Practices Commission'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 (AB 400, Fong).

- 7) **Related Legislation:** AB 1451 (Low), which is pending in the Senate Public Safety Committee, prohibits 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, and makes numerous other significant changes to provisions of state law governing state initiatives, as specified. AB 1451 and this bill both propose to amend Section 9008 of the Elections Code. AB 1451 was approved by this committee on a 5-2 vote.
- 8) **Previous Legislation:** SB 651 (Allen) of 2017-18, was similar in intent to this bill. SB 651 was approved by this committee on a 5-0 vote, but was moved to the inactive file on the Assembly Floor on the last day of the 2017-18 Legislative Session.

AB 400 (Fong) of 2014, which was vetoed by Governor Brown, would have required an initiative, referendum, or recall petition that is circulated by a paid circulator to include a statement identifying the five largest contributors of \$10,000 or more in support of the measure. In his veto message, Governor Brown said "It is not practical to include contributor information on petitions as signatures are being gathered. The brief time allotted to collect hundreds of thousands of signatures does not provide flexibility for a proponent to reprint petitions each time there is a change in the top five contributors." He further noted that voters can inspect the top 10 contributors on the Fair Political Practices Commission's website.

SB 469 (Bowen) of 2005, would have required an initiative, referendum, or recall petition to include a statement identifying the five largest contributors in support of the measure, among other provisions. SB 469 was vetoed by Governor Schwarzenegger.

AB 1500 (Hertzberg) of 2002, would have required any person who circulates an initiative petition for signatures to make available to potential signers the names of the top five contributors to the committee and the cumulative amount contributed by each as disclosed on the committee's most recent campaign report, among other provisions. AB 1500 died on the inactive file on the Senate Floor.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Clean Money Campaign (sponsor)  
California Alliance for Retired Americans  
CALPIRG, California Public Interest Research Group  
Common Cause - California  
Consumer Federation of California  
Consumer Watchdog  
Franciscan Action Network  
Greenpeace USA  
Indivisible CA: StateStrong  
League of Women Voters of California  
Los Angeles County Democratic Party  
Maplight  
Money Out Voters In  
Peace and Freedom Party of California  
Public Citizen

**Opposition**

Howard Jarvis Taxpayers Association

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