

Date of Hearing: April 5, 2017

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Evan Low, Chair

AB 1367 (Berman) – As Introduced February 17, 2017

SUBJECT: Improper signature-gathering tactics.

SUMMARY: 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 or permits the person to make 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.

EXISTING LAW provides that any person who makes any false affidavit concerning any initiative, referendum, or recall petition, or the signatures appended thereto, is punishable by a fine not exceeding \$5,000, or by imprisonment in the state prison for 16 months or two or three years or in a county jail not exceeding one year, or by both the fine and imprisonment.

FISCAL EFFECT: Unknown. State-mandated local program; contains a crimes and infractions disclaimer.

COMMENTS:

1) **Purpose of the Bill:** According to the author:

Under existing law, only signature gatherers face stiff penalties for making false statements on the declaration attached to the petitions they are circulating. However, those who oversee the signature gatherer can knowingly direct or permit these people to make false declarations without consequence. AB 1367 would ensure that if there is unscrupulous activity, such as false statements on declarations, all of those involved may be able to be held accountable. By making this change, the bill will strengthen the initiative process consistent with its populist roots.

2) **History of the Initiative Process:** Californians adopted the initiative process on October 10, 1911, becoming the tenth state to adopt this form of direct democracy. Citizens' initiatives started as a revolt against Legislatures that were perceived to be beholden to railroads and special interests. Direct democracy was intended as a way for people to enact new laws or repeal existing statutes they believed were unfair. According to the Secretary of State's records, between 1912 and 2016, a total of 1952 initiatives have been circulated for signature, of which 376 have qualified for the ballot, and 132 have been approved by the voters.

According to a Los Angeles Times report from August 2016, temporary workers hired by a handful of private firms collect millions of signatures to qualify initiatives for the ballot. The report indicates that according to campaign finance records filed with the Secretary of State, in 2016 alone, groups in California spent \$45.8 million gathering signatures for the 15

measures that qualified by petition, an average of \$4 a signature.

- 3) **Enforcement of State Laws Governing Signature Gathering:** Twenty-four states allow voters to enact laws through ballot initiatives. Courts have ruled that states cannot prohibit the use of paid circulators to collect signatures on a petition, concluding that such a restriction would violate the First Amendment's right of free speech (*Meyer v. Grant* (1988), 486 U.S. 414). As a result, it is not uncommon for petition drives to employ paid signature gatherers to collect the number of signatures necessary to qualify a measure for the ballot.

While some petition circulators are paid on an hourly or salaried basis, it is common for petition circulators to be paid based on the number of signatures that they collect. While these per-signature payments may create incentives for circulators to collect more signatures, they also may create financial incentives to commit fraud, since circulators are only paid for the signatures they collect. Under current law, when 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, those circulators may face criminal penalties. It is unclear, however, whether that misconduct can result in signatures being invalidated. Furthermore, state law generally does not create liability for the supervisors of petition circulators when those circulators violate the law.

Since state law does not explicitly provide for supervisors to be responsible for the misconduct of the petition circulators that they supervise, and since state law does not explicitly provide for signatures to be disqualified when those signatures are obtained through improper means, it could be argued that state law lacks sufficient incentives for supervisors of signature gathering drives to ensure that their circulators are collecting signatures in accordance with state law. By holding the employers and supervisors accountable for knowingly allowing misconduct by the signature gatherers under their supervision, AB 1367 may help improve accountability and enforcement of the state's laws governing the collection of signatures on petitions. Holding the employers of signature gatherers accountable may enable easier tracking and subsequent prosecution, especially in cases when the signature gatherers are from out of state.

- 4) **Misleading Voters:** In the past few years, there have been reported cases of deliberate efforts to mislead voters by signature gatherers, but committee staff is unaware of any recent situations in which signature gatherers were prosecuted for misleading voters. According to an investigative report by *The Mercury News* in 2015, the California Apartment Association reportedly paid signature gatherers as much as \$12 per signature for an anti-rent control initiative in Richmond. The report indicated that paid petition gatherers – many flown from out of state – who canvassed the East Bay area were willfully misleading voters by characterizing their campaign as “pro renter.”

The same report also cites two other cases. In 2014, signature gatherers for a Waste Management-sponsored petition that gave the company exclusive rights to haul Oakland's garbage and recycling were reported to be misrepresenting the benefits of the proposed initiative by saying a competing plan by the city would raise rates. Another reported case of voter misinformation involved petitioners for the 2014 statewide initiative to divide California into six states falsely claiming that the initiative would keep the state intact in

order to gather signatures.

- 5) **Previous Legislation:** SB 1094 (Hernandez) of 2016, would have made numerous significant changes to provisions of state law governing state initiatives, including providing 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. SB 1094 was vetoed by Governor Brown.

AB 857 (Fong) of 2013, would have made numerous significant changes to provisions of state law governing state initiatives similar to those proposed by SB 1094. AB 857 was vetoed by Governor Brown.

AB 1914 (Torrico) of 2008, would have made a proponent of an initiative, referendum, or recall civilly liable for unlawful conduct by circulators of the initiative, referendum, or recall petition unless the proponent notified the elections official when becoming aware of that unlawful conduct. AB 1914 was held on the Senate Appropriations Committee's suspense file.

SB 1686 (Denham) of 2008, which was substantially similar to this bill, was approved unanimously by both houses of the Legislature, but was vetoed by Governor Schwarzenegger. The Governor's veto message did not express any policy objections to the bill, but instead stated that due to "[t]he historic delay in passing the 2008-2009 State Budget," he was "only signing bills that are the highest priority for California," and that SB 1686 "[did] not meet that standard."

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association

Opposition

None on File.

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