

Date of Hearing: April 19, 2023

ASSEMBLY COMMITTEE ON ELECTIONS

Isaac G. Bryan, Chair

AB 421 (Bryan) – As Amended April 12, 2023

**SUBJECT:** Elections: initiatives.

**SUMMARY:** Requires 10% of the signatures needed to qualify a state referenda or a state initiative that amends or repeals recently enacted legislation to be collected by volunteers or employees of nonprofit organizations, as specified, and reduces the period for collecting signatures on petitions for such a state initiative to 90 days. Requires paid signature gatherers who collect signatures on petitions for such measures to register with the Secretary of State (SOS) and complete training. Provides for the disqualification of signatures on petitions for such measures due to misconduct by petition circulators and in situations where petition signers fail to provide all required information. Specifically, **this bill:**

- 1) Requires the Attorney General (AG), when preparing a circulating title and summary for a proposed state initiative measure, to make a public determination about whether the measure proposes to modify recent legislation, other than legislation that went into effect immediately, by doing either of the following within two years of the January 1 following the enactment date of a statute by the Legislature:
  - a) Directly or indirectly repeal the statute or a portion of it.
  - b) Directly or indirectly amend the statute or a portion of it in a manner that does not further the purposes of the statute.

(For clarity and simplicity, this analysis hereinafter refers to a measure that the AG determines would do either of the things above as an initiative that “overturns recent legislation.”)

- 2) Prohibits the AG’s determination about whether an initiative overturns recent legislation from being set aside by a court except upon clear and convincing proof that it is in error.
- 3) Reduces, from 180 days to 90 days, the period for the circulation of a petition for a state initiative that overturns recent legislation.
- 4) Requires at least 10% of the signatures needed to qualify a proposed state referendum measure or a state initiative measure that overturns recent legislation to be collected by individuals who did not receive compensation primarily for the specific purpose of soliciting signatures on the petition, as specified (“10% requirement”).
  - a) Provides that signatures qualify toward the 10% requirement if they are collected by an employee or individual member of a nonprofit organization, as specified, who receives compensation from the organization and as part of that employment or membership solicits signatures for the qualification of a state ballot measure, unless the primary

purpose of the employment or membership is to solicit signatures.

- b) Provides that signatures solicited through direct mail do not count towards the 10% requirement unless every person who solicits signatures or organizes, pays for, or arranges for the direct mail, is eligible to solicit signatures that qualify toward the 10% requirement, as described above.
  - c) Provides that a person's receipt of nominal benefits such as food, transportation, or lodging does not prevent signatures solicited by that person from counting toward the 10% requirement.
  - d) Specifies that a person who is required to be registered as a petition circulator under this bill cannot collect signatures that count toward the 10% requirement.
  - e) Requires a person who solicits signatures on a petition that qualifies toward the 10% requirement to sign an affidavit, on the petition section that the person circulated, that declares both of the following:
    - i) That the person did not receive compensation to solicit signatures on the petition; and,
    - ii) That to the best of the person's knowledge, the signatures on the petition sections circulated by that person should count towards the 10% requirement.
  - f) Requires a petition that will qualify toward the 10% requirement to be printed on white paper with contrasting color ink, and to include the following notice, as specified:

"THIS PETITION IS BEING CIRCULATED BY A VOLUNTEER OR AN EMPLOYEE OF A NONPROFIT ORGANIZATION. YOU ARE ENCOURAGED TO READ THE CONTENTS OF THIS PETITION BEFORE SIGNING."

Requires a petition that will not qualify toward the 10% requirement to be printed on yellow paper with contrasting color ink, and to include the following notice, as specified:

"THIS PETITION IS BEING CIRCULATED BY A PERSON PAID TO OBTAIN YOUR SIGNATURE. YOU ARE ENCOURAGED TO READ THE CONTENTS OF THIS PETITION BEFORE SIGNING."
- 5) Requires the SOS to develop and administer a training and registration program for paid circulators who collect signatures on a petition for a state referendum or a state initiative that overturns recent legislation, and for persons who pay those circulators.
- a) Defines "paid circulator" as a person who receives compensation to circulate a petition, excluding reimbursement for reasonable meals and travel associated with circulation.
  - b) Requires the training program to include information about petition circulator registration requirements and laws governing petition circulation, including acts that constitute

prohibited conduct for circulators.

- c) Prohibits a circulator from receiving compensation to obtain signatures on a petition unless the circulator registers and completes the training program, as specified.
  - i) Requires a registration application to include the applicant's name, residential address, signature, a list of the measures for which the applicant will gather signatures, a signed acknowledgment that the applicant read and understands state law applicable to the circulation of state ballot measure petitions, certification that the applicant has completed the training program administered by the SOS, and a photograph of the applicant, as specified.
  - ii) Requires the SOS to process an applicant's registration within 10 business days of submission of the application by assigning a unique registration number and providing a certificate of registration.
  - iii) Provides that a circulator's registration is valid through the end of the election cycle for which it is obtained. Defines "election cycle," for these purposes, as the period beginning January 1 of an odd-numbered year and ending December 31 of the following even-numbered year.
  - iv) Requires a circulator to amend their registration to identify any measure for which the person is gathering signatures that was not identified in the initial registration.
- d) Requires a person to register with the SOS if that person pays a petition circulator who is required to register. Requires the registration application to include all of the following:
  - i) The name and address of the person.
  - ii) The name of one or more individuals representing the person who will complete the training program, and a signed statement by each such individual identified that includes both of the following:
    - (1) An acknowledgment that the individual has read and understands state law applicable to the circulation of state ballot measure petitions.
    - (2) A declaration that the person operates in compliance with the law relating to the circulation of petitions, as specified.
- e) Provides that a circulator or person who pays a circulator loses registration status and is ineligible for registration for five years if either of the following occur:
  - i) The circulator or person is convicted of a criminal offense involving fraud, forgery, or identity theft in any jurisdiction.
  - ii) A determination is made in an enforcement proceeding that the circulator or person violated any law relating to the circulation of a ballot measure petition, including a

- ballot measure other than a state referendum or state initiative that overturns recent legislation.
- f) Prohibits information submitted to the SOS by someone who is applying for registration from being provided to any person other than a public officer or employee involved in processing the registration. Permits a superior court to order the information made available to a person who is bringing an action to disqualify signatures or to otherwise enforce laws related to the circulation of petitions, as specified.
- 6) Requires the disqualification of petition signatures gathered by a petition circulator who is required to be registered, but who is not properly registered when gathering the signatures.
- 7) Requires a petition circulator who is required to register under this bill to do all of the following:
- a) Comply with the requirements of this bill with respect to any other statewide measure for which the circulator gathers signatures during the same election cycle, including any measure for which the circulator is not paid to gather signatures. Requires the disqualification of signatures gathered by the circulator if the circulator fails to comply with this provision.
  - b) Wear a badge that is visible to prospective petition signers that includes the words “PAID CIRCULATOR” and the circulator’s registration number in at least 24-point boldface type when circulating a petition for signature.
  - c) Include the circulator’s registration number on any petition circulated by the person.
- 8) Requires all of the following for petitions for a state referendum or a state initiative that overturns recent legislation:
- a) Requires the “official top funders” disclosure that existing law requires to appear on an initiative, referendum, or recall petition, or on a separate sheet that is presented to prospective petition signers under specified circumstances, to be made on the petition itself. Requires the disclosure of top funders on the petition to be in larger type than is generally required by existing law.
  - b) Requires the “official top funders” disclosure to be updated within five business days of any change in the top contributors, instead of being updated monthly as required by existing law.
  - c) Requires the petitions to be designed such that each petition signer must date the petition and initial that they have reviewed the “official top funders” disclosure.
  - d) Requires any signatures to appear on the first page of a petition section only.
  - e) Requires the disqualification of signatures collected on such a petition if specified required information is absent or inaccurate, if the date a petition was signed by a voter is

not included or is more than five business days from a change in the top contributors, or if the voter does not initial to indicate that they reviewed the “official top funders” disclosure.

- f) Requires signatures on the petition to be disqualified if any of the signatures were solicited by a person who engages in fraud, misrepresentation, or other illegal conduct concerning the circulation of the petition, as specified. Permits the AG, SOS, a district attorney, a city attorney of a city with a population greater than 750,000, or any elector to enforce this provision by a civil action in which the plaintiff has the burden of showing a violation by clear and convincing evidence. Provides that any civil action brought under this provision has priority over all other civil matters.
- 9) Requires the ballot question for a state referendum measure to be in the following form:

“Should California keep or overturn a law passed in [enter year statute was enacted] [followed by no more than 15 words stating the general subject or nature of the law]?,” followed by a condensed version of the ballot title and summary of no more than 50 words containing the chief purposes and points of the measure, followed by a list of the top contributors for and against the measure as of the date the measure qualifies for the ballot, as specified.
- 10) Requires, for a state referendum measure, that voters be asked to choose between the options “Keep the law” or “Overturn the law” rather than being asked to vote “Yes” or “No.”
- 11) Makes corresponding changes to the process for elections officials to verify signatures submitted on a petition for a state referendum or a state initiative that overturns recent legislation. Extends the time for elections officials to count and verify signatures on state initiative and referendum petitions. Requires the SOS to adopt regulations consistent with these provisions and permits the initial regulations to be adopted as emergency regulations.
- 12) Requires the SOS to prescribe a system for numbering the sections of a petition circulated by a paid circulator for a state referendum or a state initiative that overturns recent legislation. Requires the proponents of the measure, at specified times, to submit specified information about the person who circulated each section of the petition. Provides that failure to substantially comply with these requirements shall be cause for the SOS to invalidate any section of the petition for which the identity of the petition circulator cannot be verified.
- 13) Makes various findings and declarations about the initiative and referendum process and the influence that special interests and paid circulators have on that process.
- 14) Provides that this bill applies only to a proposed initiative or referendum for which the official summary date occurs on or after the effective date of this bill.
- 15) Makes technical and conforming changes.
- 16) Contains a severability clause.

**EXISTING LAW:**

- 1) Allows electors to propose statutes and amendments to the Constitution and to adopt or reject them through the initiative process. (California Constitution Article II, §8) Allows electors to approve or reject statutes or parts of statutes, except as specified, through the referendum process. (California Constitution Article II, §9)
- 2) Requires that a state or local initiative, referendum, or recall petition 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 a paid gatherer or volunteer. (Elections Code §101)
- 3) Establishes criminal penalties for fraudulent activity and other misconduct related to the circulation of petitions. (Elections Code §§18600-18671)
- 4) Requires a petition with signatures for a proposed state initiative measure to be filed with the county elections official no later than 180 days from the official summary date, as specified. (Elections Code §9014) Requires a petition with signatures for a proposed state referendum measure to be filed with the county elections official no later than 90 days from the date the legislative bill was chaptered by the SOS, as specified. (Elections Code §9014; California Constitution Article II, §9)

**FISCAL EFFECT:** Unknown. State-mandated local program; contains reimbursement direction.

**COMMENTS:**

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

Now is the time to re-empower everyday voters choosing to participate in our democracy. Today, the participatory democracy system is being subverted and weaponized against the collective decision making authority of everyday Californians. Currently, what was a people driven process is now powered by unlimited campaign spending, deceptive practices, outright lies and purposeful confusion. AB 421 takes a reasonable, measured approach to restoring voter choice, authority, and agency, while uplifting genuine grass roots support over undertrained self-interested operatives.

Voters deserve the protections AB 421 provides – a stronger and more accountable process that centers the voice of the people in our policy making process. Voters deserve a process that provides them with clear choices on the ballot, and tools to more completely understand who is behind a measure. Voters deserve the confidence that those collecting signatures are well-trained, working in compliance with the law, and have the goal of sharing truthful information.

- 2) **Referenda vs. Initiatives that Overturn Recent Legislation:** The sponsor of this bill describes its provisions as “establish[ing] much needed reforms in the referendum process to curb against widespread fraud and abuse.” This bill, however, does not apply solely to

referendum measures. As detailed above, it also applies to certain proposed state initiative measures that seek to repeal or amend recently enacted legislation. (The provisions of this bill generally do not apply to recalls, or to local initiatives or referenda.) In explaining the rationale for making this bill applicable to certain state initiative measures, the sponsor argues that the bill must be applicable to those initiatives “to close a possible loophole allowing referendum proponents to circumvent [the requirements of this bill] by circulating an initiative instead of a referendum.”

Notwithstanding the fact that the motivation for initiative measures targeted by this bill may be broadly similar to the motivation for referendum measures (attempting to undo a recent action taken by the Legislature), the legal effect when a referendum qualifies for the ballot is different than the legal effect when an initiative qualifies for the ballot. In areas where state law imposes different rules on referenda than the rules that apply to initiatives, those differences often are designed to account for the different legal effects of the different types of measures.

Notably, the qualification of a state referendum measure for the ballot has the effect of staying the operation of a duly enacted state law until voters have the opportunity to decide whether to approve or reject that law. Because state referenda generally appear on the ballot only at statewide general elections, the qualification of a referendum measure for the ballot can prevent the operation of a state law—even if the voters subsequently approve that law—for up to two years. The fact that the mere *qualification* of a state referendum for the ballot alters the operation of state law—even before the electorate has a chance to vote on that ballot measure—is an important difference from the state initiative process. The fact that state law gives referendum proponents only 90 days to collect sufficient signatures to qualify the referendum for the ballot reflects this difference in the legal effect of the qualification of a referendum; that 90-day period aligns with the fact that state statutes generally go into effect on the January 1 next following a 90-day period from the statute. (For related reasons, the referendum process is not available for statutes that go into effect immediately, including urgency statutes and statutes calling elections.)

By contrast, the qualification of an initiative measure for the ballot does not have any direct effect on the operation of state law simply by virtue of the fact that it has qualified. In the case of an initiative that seeks to undo a recently enacted legislative change, the proponents cannot stop or delay the operation of that law simply by qualifying the measure for the ballot. Rather, the only way that an initiative measure affects the operation of a recently enacted legislative change is if the voters ultimately approve that measure when it appears on the ballot.

- 3) **10 Percent Signature Requirement:** Under the provisions of this bill, in order for a state referendum measure or a state initiative measure that overturns recent legislation to qualify for the ballot, at least 10% of the signatures gathered on the petition for that measure would have to be collected on petition sections that were circulated by a person who does not receive compensation primarily for the specific purpose of soliciting signatures of electors on the petition, as specified. This "10% requirement" does not apply to state initiatives that do not seek to overturn recent legislation or to state recall petitions, nor does it apply to local initiatives, referenda, or recalls.

While signatures collected by volunteers will count toward meeting this 10% requirement, the language of the bill does not *require* the signatures to be gathered by volunteers in order to qualify toward the 10% requirement. Instead, in certain circumstances, signatures collected by individuals who were paid for their time *could* count toward meeting the 10% requirement provided that the person wasn't paid *primarily* for the specific purpose of soliciting signatures. This bill provides that signatures will count toward the 10% requirement if they are collected by employees and members of nonprofit organizations who receive compensation from that organization and solicit signatures as a part of their employment or membership, as long as the nonprofit organization is not primarily focused on soliciting signatures on petitions. In the case of signatures solicited by direct mail, those signatures would apply toward the 10% requirement if the person soliciting the signatures through direct mail and all persons that organize, pay for, and arrange the direct mail are persons who were eligible to solicit signatures that counted toward the 10% requirement.

In 1988, the United States (US) Supreme Court ruled that a Colorado prohibition against the use of paid circulators for initiative petitions violated the First Amendment's guarantee 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. It could be argued that the 10% requirement imposed by this bill could be susceptible to a court challenge in light of the US Supreme Court's ruling in *Meyer*. However, the 10% requirement in this bill is distinguishable from the law struck down in *Meyer* in a number of different ways, and thus may be more likely to withstand constitutional scrutiny.

Unlike the law considered by the court in *Meyer*, the 10% requirement in this bill does not apply to *all* signatures gathered to qualify a measure for the ballot, but only a portion of the signatures. Furthermore, as discussed above, the signatures that are gathered to meet that 10% requirement do not necessarily have to be collected by individuals who are unpaid if they are gathered by members and employees of a nonprofit organization in furtherance of that nonprofit's objectives.

- 4) **Invalidation of Signatures:** Existing law generally is silent on the issue of whether violations of state law prohibiting improper signature-gathering tactics will result in the signatures on those petitions being invalidated. In at least one case, however, a court invalidated signatures gathered to qualify an initiative for the ballot due to improper signature-gathering tactics by the proponents of the measure. In *San Francisco Forty-Niners v. Nishioka* (1999), 75 Cal.App.4<sup>th</sup> 637, the California Court of Appeal for the First District, Division One, prohibited an initiative measure from appearing on the ballot because the initiative petition included false statements intended to mislead voters, in violation of Section 18600 of the Elections Code. In this case, the false statements appeared on the text of the petition itself. As a result, every person who was asked to sign the petition was exposed to these false statements that were intended to mislead voters.

In a case where 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, it is unclear whether that misconduct can result in signatures being invalidated. Committee staff is not aware of any court cases that have addressed this issue.

This bill expressly provides that signatures on a petition for a state referendum or for a state initiative that overturns recent legislation are deemed invalid if the signatures were solicited and submitted by a person who engages in fraud, misrepresentation, or other improper signature-gathering tactics, as specified. In order for signatures to be invalidated under this provision, the AG, the SOS, a county district attorney, a city attorney in a city with a population greater than 750,000, or an elector would have to file a civil action, and would have the burden of showing a violation by clear and convincing evidence.

This bill additionally provides for the invalidation of signatures on a petition for a state referendum or for a state initiative that overturns recent legislation, without requiring a court action, in any of the following circumstances:

- a) If the signatures were gathered by a circulator who was required to be registered with the SOS under this bill, and either of the following are true:
  - i) The circulator was not properly registered when the signatures were gathered; or,
  - ii) The circulator otherwise failed to comply with the requirements of this bill for circulators who are required to be registered with the SOS, including when the circulator is gathering signatures on a petition that is for a state measure other than a referendum or a state initiative that overturns recent legislation.
- b) If the signatures are on a section of the petition for which the identity of the circulator cannot be verified because the proponents of the measure failed to substantially comply with requirements to submit specified information to the SOS about the person who circulated each section of the petition.
- c) If information that is required to appear on the petition is absent or inaccurate, if the date a petition was signed by a voter is not included or is more than five business days from a change in the top contributors, or if the voter does not initial to indicate that they reviewed the “official top funders” disclosure.

While these provisions appear to be designed to ensure compliance with the requirements of this bill, the committee may wish to consider whether the disqualification of electors signatures’ on petitions is an appropriate remedy, particularly in situations where the lack of compliance with state law was out of the control of the elector who chose to sign the petition, and where appropriate compliance with the law would not have affected the person’s decision whether to sign the petition.

Furthermore, for some of the provisions of this bill, it is unclear whether the author’s intent is to require the invalidation only of those signatures that were gathered in a manner that does not comply with this bill or existing law, or whether the author intends that *all* the signatures collected for a ballot measure be invalidated if *any* of the signatures were gathered in a manner that does not comply with this bill or existing law. For example, previous related

legislation (as described in more detail below) included provisions that would have allowed a court to invalidate signatures on a petition section if the court determined that the signatures thereon were solicited by a person who engaged in specified misconduct. By contrast, this bill allows the court to invalidate signatures on a petition (rather than a petition *section*) when it makes such a determination. It is unclear whether that change is intentional, as subsequent provisions of the bill refer to the invalidation of signatures on a petition section. Committee staff recommends that this bill be amended to clearly reflect the author's and the committee's intent.

- 5) **Registration and Training of Paid Signature Gatherers & Badge Requirement:** This bill requires individuals who receive compensation for the specific purpose of soliciting signatures on a state referendum petition, or on a petition for a state initiative that seeks to overturn recent legislation, to register with the SOS and complete a training program designed by the SOS. The training program would focus primarily on instructing circulators about the requirements of state law when circulating petitions, while the registration requirements appear to be designed primarily to assist in the enforcement of this bill and of other provisions of state law. This bill additionally requires individuals who receive compensation for the specific purpose of soliciting signatures on an initiative or referendum petition, when circulating a petition, to wear a badge that contains the person's registration number.

In 1999, the US Supreme Court examined a Colorado law that provided a number of 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 badges identifying themselves and identifying that they are paid circulators. The court stated that the requirement to wear badges inhibits participation in the petitioning process because it "compels personal name identification at the precise moment when the circulator's interest in anonymity is greatest." The *Buckley* court did not rule on the validity of the requirement that a circulator wear a badge stating whether a petition circulator was paid or a volunteer.

It could be argued that this bill's requirements for certain circulators to wear a badge could be susceptible to a court challenge in light of the ruling in *Buckley*. Unlike the badge required by the Colorado law at issue in *Buckley*, however, the badge required by this bill does not "compel personal name identification," or otherwise compromise the anonymity of the circulator because it does not require the circulator's name to appear on the badge. Instead, the badge would contain that circulator's registration number issued by the SOS and a notification that the person is a paid circulator. Requiring circulators to wear this badge can help facilitate enforcement of this bill's provisions and of existing law by allowing voters who are asked to sign a petition to verify that the person circulating the petition is registered in accordance with the law, and to report misconduct by petition circulators by referencing the registration number of a circulator who violates the law.

- 6) **Referendum Question:** Because the referendum process gives voters the ability to overturn an action taken by the Legislature, the meaning of a “yes” vote and a “no” vote on a referendum may not be completely clear. Counterintuitively, the *proponents* of a referendum measure are those who are asking voters to vote “no,” thereby rejecting the statute enacted by the Legislature.

This bill seeks to reduce the potential for confusion when electors vote on a state referendum measure by changing the question that voters are asked so that they are asked whether they want to “keep the law” passed by the Legislature or if they want to “overturn the law” that the Legislature enacted.

While this approach may help reduce confusion when electors are asked to vote on a state referendum measure, nothing in this bill changes the ballot question for *local* referendum measures. If the presentation of referenda to voters on the ballot is confusing enough to justify changing the question that voters are asked about state referendum measures, the committee may wish to consider whether the same adjustments should be made for local referenda.

- 7) **Campaign Contributors on the Ballot:** For the first time, this bill requires the identities of certain campaign contributors to be listed on the ballot. Specifically, the top contributors for and against a state referendum would be required to be listed on the ballot following a brief description of the subject of the referendum.

Existing law requires a ballot to comply with a variety of laws that dictate its form and content. For example, existing law requires a ballot to contain the title of each office, the names of all qualified candidates, as specified, ballot designations, as specified, titles and summaries of measures submitted to voters, and instructions to voters, among other things. Moreover, existing law requires a ballot to be printed in a certain form. Once all of these requirements are met, there is limited space left on the ballot to accommodate further requirements. Consequently, it is common practice to include other important election information in the state or local voter information guides.

Furthermore, it is unclear whether including information on the ballot about the top contributors for and against a state referendum measure will provide the voters with accurate, meaningful, and balanced information. For statewide elections, county elections officials generally begin printing ballots shortly after the SOS certifies the list of qualified candidates for office who will appear on the ballot, a step that is required to occur no later than the 68th day before the election. Counties then begin mailing ballots out to overseas and military voters 60 days before the election. As a result, any listing of campaign contributors that is printed on the ballot will reflect only those campaign expenditures that are made more than two months before the election. Any change in the top contributors for or against a state referendum measure during the last two months before the election—when the bulk of campaign communications are likely to occur—would not be reflected in the information that is printed on the ballot. As a result, the information printed on the ballot may give voters a misleading impression about the entities that are responsible for the campaign communications that they are receiving for and against a measure.

Additionally, in the case of a state referendum, it is likely that most of the campaign spending that will have occurred by the deadline for including information on the ballot is spending in connection with gathering signatures to qualify the measure for the ballot. In other words, the proponents of a state referendum (those who are urging voters to “overturn the law”) likely will have made significant campaign expenditures more than two months before the referendum appears on the ballot, but it is considerably less likely that opponents of the measure (those who are urging voters to “keep the law”) will have made significant expenditures at that point. Is providing voters with information about the major campaign contributors on one side of a state referendum, but not about contributors on the other side of the same measure, equitable, or likely to lead to a more informed electorate?

- 8) **Circulator Restrictions:** The training and registration requirements for petition circulators that are enacted by this bill apply only to circulators who are paid to collect signatures on a petition for a state referendum or a state initiative that overturns recent legislation; circulators who are paid to collect signatures on other types of petitions—including state initiatives that do not seek to overturn recent legislation—are not required to register under this bill. For circulators who *are* required to register, however, this bill requires those circulators to comply with all of this bill’s provisions for *every* statewide petition the person circulates. For instance, a circulator who is required to be registered under this bill would be required to wear a badge that includes the circulator’s registration number and the words “PAID CIRCULATOR” even if the person was volunteering to collect signatures on a petition for a state initiative that *does not* seek to overturn recent legislation. Requiring registered petition circulators to comply with more stringent conditions for *every* statewide petition that they circulate, even if it is not for a type of measure that is the focus of this bill, could create a disincentive for circulators to be willing to work on petition drives for state referenda and state initiatives that overturn recent legislation.
- 9) **Arguments in Support:** The sponsor of this bill, the California State Council of Service Employees International Union, writes in support:

The Legislature must act to strengthen the laws to promote accountability and ensure integrity in the referendum process -- once again making the referendum power one that an instrument of the people of benefits the people of California, rather than wealthy corporate interests...

AB 421, which enacts the California Petition Circulator Accountability Act of 2023 (the “Act”), is necessary to provide the Secretary of State and California Attorney General the means to enforce the State’s existing circulator laws. The agencies have a strong disadvantage when attempting to investigate complaints documenting petition circulators misleading voters about the substance of the petition to obtain signatures. This is because circulators are extremely mobile, and investigators do not have a means of tracking circulators other than canvassing their last known location. The inability to enforce our State’s circulator law fosters no accountability and creates an industry where the standard operating procedure is to get signatures at any cost – including misrepresenting the contents of a petition to voters...

AB 421 requires referendum proponents to collect a minimum of 10 percent of petition signatures using volunteers and non-profit organization employees. Courts recognize that state has a valid “interest in making sure that an initiative has sufficient grass roots support to be placed on the ballot.”...Given that the latest statewide referendum efforts have clearly been spearheaded by large corporations to protect their pecuniary interests, such a requirement is needed to ensure that referendums are truly supported by California voters, rather than a few wealthy corporations...

Lastly, AB 421 changes the phrasing of the referendum ballot label so that voters know whether they are voting to “Keep the law” or to “Overturn the law.” The existing framework of casting a “Yes” vote to enact the legislation but opposing the referendum, and a “No” vote to overturn the legislation but support the referendum, is inherently confusing to voters and must be updated.

AB 421 also proposes to list the top contributors of \$50,000 or more to the committees making the most expenditures supporting and opposing a referendum on the ballot label to ensure voters have information about the primary financial backers at the critical time before they cast their vote.

**10) Arguments in Opposition:** In a joint letter of opposition submitted by the California Chamber of Commerce and joined by many of the organizations listed below in opposition to this bill, the organizations write:

AB 421 would constrain the public’s role in the ballot process. By requiring at least 10% of signature collection to be done by volunteers, AB 421 would make it prohibitively expensive and thus next to impossible to qualify a referendum or certain initiatives except by the wealthiest of special interests...

*Changing the Vote Question is a Solution in Search of a Problem*

Currently, a referendum that qualifies for the ballot asks voters to step in the shoes of the Legislature to consider the proposed statute...AB 421 makes the vote about the Legislature’s action, not about the proposed statute itself. This is a profound difference from the historic intent and function of the referendum. Any such change, which we believe would be ill-advised, could likely only be made with a constitutional amendment...

*Creates Shorter Time Frame to Collect Signatures for Some Types of Initiatives with No Rationale*

The proposal seeks to limit the amount of time that the proponents of some types of initiatives have to gather signatures to 90 days, while other types of initiatives would remain at 180 days from when they file their intended paperwork with the Secretary of State. There is no substantive reason to distinguish between different subjects of initiatives...

*Sets Up Arbitrary Bureaucratic Deadlines for Updating Paperwork That Will Make It Impossible to Qualify a Referendum or Certain Initiatives*

Under the proposal, the petitions that are used to collect signatures for referenda or certain initiatives would have to follow a strict template – stricter than for initiatives under the current law. The new formatting requirements will likely limit the number of signatures to one per petition “section,” significantly increasing printing costs. In addition to signing their names and addresses to the petition, voters would have to initial and date that they reviewed the current top funders for the referendum effort. Signatures of voters who don’t complete every field on the petition would be invalidated. Referendum campaigns would also have to update petitions to reflect any changes to their top funders within 5 days. Signatures on out-of-date petition sheets would be invalidated... This will make it impossible to gather the requisite number of signatures in the now shortened time frame of 90 days.

11) **Related Legislation:** SB 386 (Newman), which is pending in the Senate Elections & Constitutional Amendments Committee, doubles the amount of time that elections officials have to complete a full check of signatures on a ballot measure petition, from 30 business days to 60 business days, among other provisions.

12) **Previous Legislation:** AB 857 (Fong) of 2013, would have made numerous significant changes to provisions of state law governing state initiatives, including a 10% requirement similar to the one in this bill, and expressly providing for the disqualification of signatures on a state initiative petition section that were solicited and submitted by a person who engages in intentional fraud, misrepresentation, or other illegal conduct concerning the circulation of the petition. Unlike this bill, however, AB 857 applied to *all* state initiative measures, and did not apply to state referenda. AB 857 was vetoed by Governor Brown. In his veto message the Governor stated “Requiring a specific threshold of signatures to be gathered by volunteers will not stop abuses by narrow special interests - particularly if ‘volunteer’ is defined with the broad exemptions as in this bill. Efforts to make the system fairer and more reflective of sound government should be considered. But this measure falls short of returning to the citizen-driven system originally envisioned in 1911.”

SB 1094 (Hernandez) of 2016 was similar to AB 857 of 2013, except that it required 5% of signatures—rather than 10%—to be collected by volunteers or employees or members of nonprofit organizations. SB 1094 was also vetoed by Governor Brown. In his veto message, the Governor wrote “This bill is virtually identical to AB 857, which I vetoed in 2013. Lowering the percentage from 10 percent to 5 percent does not change my view that this measure will not keep out special interests or favor volunteer signature gathering.”

AB 1451 (Low) of 2019 was similar to AB 857 of 2013, but it also 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, as specified. AB 1451 was vetoed by Governor Newsom. In his veto message, the Governor wrote “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.”

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California State Council of Service Employees International Union (SEIU California) (Sponsor)  
American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO (prior version)  
California Conference Board of the Amalgamated Transit Union (prior version)  
California Conference of Machinists (prior version)  
California Environmental Justice Alliance Action, a Project of Tides Advocacy  
California Environmental Voters (formerly CLCV)  
California Federation of Teachers AFL-CIO (prior version)  
California Labor Federation, AFL-CIO (prior version)  
California Professional Firefighters (prior version)  
California School Employees Association (prior version)  
California State Legislative Board, Sheet Metal, Air, Rail and Transportation Workers -  
Transportation Division (SMART-TD)  
California Teamsters Public Affairs Council (prior version)  
Catalyst California  
Consumer Attorneys of California (prior version)  
Disability Rights California (prior version)  
Elders Climate Action, NorCal and SoCal Chapters (prior version)  
Engineers and Scientists of California, IFPTE Local 20, AFL-CIO (prior version)  
Greenpeace USA (prior version)  
Indivisible CA Statestrong (prior version)  
Smart Justice California (prior version)  
State Building and Construction Trades Council of CA (prior version)  
UNITE-HERE, AFL-CIO (prior version)  
Utility Workers Union of America (prior version)  
1 individual

**Opposition**

Agricultural Council of California  
Auto Care Association  
California Building Industry Association  
California Business Properties Association  
California Business Roundtable  
California Chamber of Commerce  
California Hotel & Lodging Association  
California Life Sciences  
California Manufacturers & Technology Association  
California Metals Coalition

California Restaurant Association  
California Retailers Association  
CAWA - Representing the Automotive Parts Industry  
Chino Valley Chamber of Commerce  
Citrus Heights Chamber of Commerce  
Coalition of California Chambers – Orange County  
Dana Point Chamber of Commerce  
El Dorado County Chamber of Commerce  
El Dorado Hills Chamber of Commerce  
Elk Grove Chamber of Commerce  
Escondido Chamber of Commerce  
Family Business Association of California  
Folsom Chamber of Commerce  
Fontana Chamber of Commerce  
Fresno Chamber of Commerce  
Greater Coachella Valley Chamber of Commerce  
Greater High Desert Chamber of Commerce  
Greater Irvine Chamber of Commerce  
Howard Jarvis Taxpayers Association  
Industrial Environmental Association  
International Franchise Association  
LA Canada Flintridge Chamber of Commerce  
Laguna Niguel Chamber of Commerce  
Lake Elsinore Valley Chamber of Commerce  
Lincoln Area Chamber of Commerce  
Murrieta Wildomar Chamber of Commerce  
Orange County Business Council  
Palm Desert Area Chamber of Commerce  
Palos Verdes Peninsula Chamber of Commerce  
Plastics Industry Association  
Rancho Cordova Area Chamber of Commerce  
Rocklin Area Chamber of Commerce  
Roseville Area Chamber of Commerce  
San Jose Chamber of Commerce  
San Juan Capistrano Chamber of Commerce  
San Marcos Chamber of Commerce  
Santa Barbara South Coast Chamber of Commerce  
Santa Clarita Valley Chamber of Commerce  
Santa Maria Valley Chamber of Commerce  
Shingle Springs/Cameron Park Chamber of Commerce  
Vacaville Chamber of Commerce  
Western Electrical Contractors Association  
Western Growers Association  
Yuba Sutter Chamber of Commerce

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