

Date of Hearing: June 25, 2013

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Paul Fong, Chair
SB 213 (Galgiani) – As Amended: May 28, 2013

SENATE VOTE: 38-0

SUBJECT: Election petitions: circulators.

SUMMARY: Repeals various requirements that an individual must be qualified to register to vote in order to circulate election petitions and nomination papers. Specifically, this bill:

- 1) Repeals a requirement that a person must be qualified to register to vote in order to circulate an initiative or referendum petition. Repeals a requirement that a person must be a voter in the city or qualified to register to vote in the city in order to circulate a city initiative or referendum petition. Repeals a requirement that a person must be a voter in the district or qualified to register to vote in the district in order to circulate a district initiative petition.
- 2) Repeals a requirement that a person must be a voter in the electoral jurisdiction of an officer sought to be recalled in order to circulate a recall petition for that officer.
- 3) Repeals a requirement that a person must be a voter in the district or political subdivision in which a candidate is to be voted on in order to circulate nomination papers for that candidate.
- 4) Repeals a requirement that a person must be a registered voter of the district or political subdivision in which a candidate is to be voted on in order to circulate an in-lieu-filing-fee petition for that candidate. Repeals a requirement that a person can circulate an in-lieu-filing-fee petition only in a county in which he or she resides.
- 5) Requires a person to be 18 years of age or older in order to circulate a state or local initiative, referendum, or recall petition, an in-lieu-filing-fee petition, or a nominating paper.
- 6) Makes corresponding and technical changes.

EXISTING LAW:

- 1) Requires a person to be a voter or qualified to register to vote in the state in order to circulate an initiative or referendum petition.
- 2) Requires a person to be a voter in the electoral jurisdiction of an officer sought to be recalled in order to circulate a recall petition for that officer.
- 3) Requires a person to be a voter in the city or qualified to register to vote in the city in order to circulate a city initiative or referendum petition.
- 4) Requires a person to be a voter in the district or qualified to register to vote in the district in order to circulate a district initiative petition.

- 5) Requires a person to be a voter in the district or political subdivision in which a candidate is to be voted on in order to circulate nomination papers for that candidate.
- 6) Permits a candidate to submit a petition containing signatures of registered voters in lieu of paying a filing fee, as specified. Requires a person to be a registered voter of the district or political subdivision in which a candidate is to be voted on in order to circulate an in-lieu-filing-fee petition for that candidate. Provides that a person can circulate an in-lieu-filing-fee petition only in a county in which he or she resides.
- 7) Requires each section of an elections petition or paper that is submitted to the elections official to have a circulator's declaration attached to it with all of the following information:
 - a) The printed name of the circulator;
 - b) The residence address of the circulator;
 - c) The dates between which the signatures on the petition or paper were obtained;
 - d) A statement that the circulator circulated that section and witnessed the signatures being written; and,
 - e) A statement 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.
- 8) Requires a circulator to certify to truth and correctness of the content of the circulator's declaration, as described above, under penalty of perjury.

FISCAL EFFECT: This bill is keyed non-fiscal by the Legislative Counsel.

COMMENTS:

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

Federal case law (*Nader v. Brewer*) holds that ballot petitions or candidate papers may be circulated by a person regardless of whether he or she resides in the state or jurisdiction where the petitions or papers must be circulated. California state law is not in accordance with this federal court decision. Last year, 19 California counties were sued because they enforced state laws preventing non-California residents from circulating papers or petitions.

The U.S. Supreme Court has struck down statutes that require petition circulators to be registered voters. (*Buckley v. American Constitutional Law Foundation, Inc.* (1999) 525 U.S. 182.) Other federal courts have struck down statutes that require petition circulators to reside within the state or locality affected by a petition, especially where requiring circulators to submit to jurisdiction by agreement would achieve the same end and would be more narrowly tailored to further the state's interest in preventing fraud. (See, e.g., *Nader v. Brewer* (9th Cir. 2008) 531 F.3d 1028; *Krislov v. Rednour* (7th Cir. 2000) 226 F.3d 851; *Lerman v. NYC*

Board of Elections (2d Cir. 2000) 232 F.3d 135; and Chandler v. Arvada (10th Cir. 2002) 292 F.3d 1236.)

The Secretary of State is constitutionally constrained from declaring a state statute invalid, and Elections Code section 8106, subdivision (b), subsection (4) has not been declared unconstitutional by any state or federal court in California.

However, given the similarities between this statute and the provisions struck down in the foregoing cases, the Secretary of State does not recommend or support the enforcement of this statute against any petition circulator, especially where the petition circulator agrees to submit to local jurisdiction.

- 2) Non-Resident Circulators and Pending Litigation: In 2008, the United States Court of Appeals for the Ninth Circuit ruled in Nader v. Brewer (2008), 531 F.3d 1028, that it was unconstitutional for states to prevent non-residents from circulating petitions. In 2009, the United States Supreme Court declined to hear the case on appeal, so the Ninth Circuit opinion stands.

In 2010, the Libertarian Party of Los Angeles filed a lawsuit against the Secretary of State (SOS) in federal court challenging provisions of the California Elections Code that require people who circulate nomination papers on behalf of a candidate to be voters in the district or political subdivision in which the candidate is to be voted on. The district court dismissed the complaint on the grounds that the Libertarian Party lacked standing to sue, but a panel of the United States Court of Appeals for the Ninth Circuit held that the district court erred in dismissing the case. The SOS filed a petition requesting that the case be reheard before the entire Court of Appeals for the Ninth Circuit, but that petition was denied. Further proceedings in the case were delayed by the district court pending a potential appeal by the SOS to the United States Supreme Court.

In the latter half of 2012, a number of California counties were sued in federal court because their county clerks were allegedly enforcing state laws that prevent non-Californians from circulating initiatives and/or nomination papers. Proceedings in that case, which are pending in district court, have been stayed pending the decision in the Libertarian Party case.

In light of the court's ruling in Nader, this bill repeals residency requirements for individuals who circulate initiative, referendum, or recall petitions, in-lieu-filing-fee petitions, and nomination papers.

- 3) Arguments in Support: In support of this bill, Secretary of State Debra Bowen writes:

Under state law, only Californians may circulate state or local ballot measure petitions, recall petitions, or nomination papers for signature, but several recent federal court decisions have deemed those statutes unconstitutional. In 2012, 19 California counties—unaware of federal court decisions—were sued for upholding these state laws.

SB 213 brings California's Elections Code in line with recent federal court decisions and will save local elections officials from unwittingly creating grounds for costly lawsuits against them. The bill permits people who live outside of California to circulate state or local ballot measure petitions, recall petitions, or

nominating papers for signature...

I am sponsoring SB 213 to spare local election officials from unnecessary litigation.

REGISTERED SUPPORT / OPPOSITION:

Support

Secretary of State (Sponsor)
California Association of Clerks and Election Officials (prior version)
Rural County Representatives of California

Opposition

None on file.

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