
**State Government & Tribal
Affairs Committee**

HB 2018

Brief Description: Requiring the licensing of paid initiative signature-gatherers.

Sponsors: Representatives McDermott, Ormsby, Appleton, Miloscia, Hunt, Hasegawa and Conway.

Brief Summary of Bill

- Requires businesses engaged in the activity of collecting signatures for initiative petitions to obtain a license from the Department of Licensing.
- Requires such businesses to obtain permits on behalf of employees who collect signatures for the business, including contract employees.

Hearing Date: 2/9/07

Staff: Colleen Kerr (786-7168).

Background:

Initiative and Referendum in Washington.

The Legislature adopted processes for initiative and referendum in 1912. The law as enacted allows:

- Initiatives to the People, where if petitions are certified to have a sufficient number of signatures by registered voters, the issue is submitted for a vote of the people at the next state general election;
- Initiatives to the Legislature, where if petitions are certified to have a sufficient number of signatures by registered voters, the issue is submitted to the Legislature at its next regular session;
- Referendum Measures, where laws recently passed by the Legislature are placed on the ballot after certification of petitions signed by registered voters; and
- Referendum Bills, where voters adopt laws proposed by the Legislature.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Under the State Constitution, initiative petitions require signatures from 8 percent of the total number of votes cast for the Office of Governor at the last regular gubernatorial election; referendum petitions require 4 percent.

From 1912 - 2006 there were 957 initiatives to the people; 129 were certified to the ballot and 64 passed into law. During this same period there were 381 Initiatives to the Legislature; 28 were certified to the ballot and 18 passed into law.

Constitutional Considerations.

Initiative and referendum processes are protected as free speech under the First Amendment. Indeed, in *Meyer v. Grant*, 486 U.S. 414 (1988), the United States Supreme Court (Court) held that petition circulation is core political speech. Because petition circulation involves interactive communication regarding political change, the Court opined that First Amendment protection is "at its zenith". Nonetheless, it is established law that elections, including initiative and referendum processes, can be substantially regulated in order to maintain that they are "fair and honest". *Storer v. Brown*, 415 U.S. 724 (1974).

In *Buckley v. American Constitutional Law Foundation*, 525 U.S. 182 (1999), the Supreme Court further defined the parameters of First Amendment protection for petition circulation and signature gathering. The *Buckley* Court held that states have considerable discretion to protect the integrity of the initiative and referendum process and while there is "no litmus-paper test" for alleged violations of the First Amendment, there are some bright-line rules for the signature gathering process:

- States may not require that signature-gatherers be registered voters. Such a regulation would eliminate non-registered voters from participating in the political process, and there are less burdensome methods of meeting the states interests in administrative efficiency, fraud detection, and providing voter with information on the process.
- Requiring that signature-gatherers wear identification is impermissible insofar as such a requirement would entail signature-gatherers to display their names. Such a requirement discourages participation in the political process by forcing name identification at the time they are delivering their political message and when reaction "may be the most intense, emotional, and unreasoned". In contrast, affidavits are not instantly accessible, and are not prohibited under the First Amendment.

In *Buckley*, the Supreme Court set the standard of review for First Amendment rights as they relate to petition circulation and signature gathering. For purposes of determining whether a state election regulation violates an individual's First Amendment Right, the Court:

- weighs the character and magnitude of the burden the State's regulation imposes on those rights against the interests the State contends justify that burden; and
- considers the extent to which the State's concerns make the burden necessary.

Regulations that impose severe burdens must be narrowly tailored to advance a compelling state interest. Lesser burdens require a less exacting review and a state's important regulatory interest may justify reasonable, nondiscriminatory regulations. *Timmons v. Twin Cities Area New Party*, 520 U.S. 351 (1997).

Summary of Bill:

Businesses who are engaged in the activity of collecting signatures for initiative and referendum petitions must apply to the Department of Licensing (DOL) for a license to conduct such business in the state.

These businesses must apply to the DOL for a permit for every individual it employs to collect signatures, whether they are regular or contract employees. Upon application, the business must show proof that the employee has completed training on the laws and rules governing the petition process in the state. Such training must be conducted in consultation with the Secretary of State. Permits are valid for only one permit process. In the event an employee gathers signatures for more than one petition, a separate permit is required for each petition.

Signature gatherers are required to display the permit while collecting signatures. If that individual submits fraudulent signatures, the permit will be revoked and that person is prohibited from obtaining future permits.

The DOL is granted rule-making authority over this licensing and permit process.

Appropriation: None.

Fiscal Note: Requested on February 8, 2007.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.