
**State Government & Tribal
Affairs Committee**

HB 2601

Brief Description: Regarding signature gatherers for petitions.

Sponsors: Representatives Hunt, Hasegawa, Hudgins, Ormsby, Chase and Simpson.

Brief Summary of Bill

- Requires businesses engaged in the collection of signatures for state or local initiative, referendum or recall petitions and using paid signature gatherers to register with the Public Disclosure Commission (PDC).
- Requires the employees of businesses engaged in the collection of signatures for state and local initiatives, referendum or recall petitions using paid signature gatherers to register with the PDC.
- Requires all signature-gatherers to sign initiative and referendum petitions.

Hearing Date: 1/18/08

Staff: Tracey Taylor (786-7196).

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;

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.

- 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.

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 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 voters 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 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:

All businesses in Washington that are engaged in collecting signatures for state or local initiative, referendum, or recall petition and that are using paid signature gatherers must register with the Public Disclosure Commission (PDC). In addition, the employees of these businesses must also register with the PDC. Volunteer signature gatherers are not required to register.

Registration is only valid for one state or local initiative, referendum, or recall petition; therefore, an individual engaged in gathering signatures for more than one state or local initiative, referendum or recall petitions must obtain a separate registration number for each petition. A paid signature gatherer must display proof of registration, including registration number and photograph, when gathering signatures.

In order to register with the PDC, an individual must provide: his or her full name or assumed name; residential street address; a signature; a list of the state or local initiative, referendum, or recall petitions on which the registrant will gather signatures; a signed statement attesting that the registrant has not been convicted of a criminal offense involving fraud, forgery, or identification theft and is not a convicted sex offender; a signed statement acknowledging the registrant has read and understands the applicable Washington law; evidence that the applicant has completed the required training; a conventional photograph showing the registrants's head, neck and shoulders appropriate for copying and processing by the PDC; and a statement signed by the chief petitioner of each state or local initiative, referendum, or recall petition upon which the applicant will gather signatures acknowledging the chief petitioner is liable for violations of law or rule committed by the applicant.

If an individual who receives money or other valuable consideration for obtaining signatures on a petition was not registered with the PDC at the time the signatures were obtained, the signatures collected will not be counted for the purpose of determining whether the state or local initiative, referendum or recall petition contains the required number of elector signatures. If a registered paid signature gatherer submits fraudulent signatures, he or she will have his or her registration revoked and is prohibited from obtaining future permits.

Lines for the signature gatherer's signature, date, name and address are added to the declaration on the back of each petition. Language is added that signing the declaration constitutes an oath and subjects the signatory to the penalty of law. Failure to sign the declaration is grounds for the Secretary of State to refuse to file the petition.

A "paid signature gatherer" is defined as a person who is compensated through payments of money, as an independent contractor, to obtain signatures on a state or local initiative, referendum, or recall petition.

The PDC is given rule-making authority.

Appropriation: None.

Fiscal Note: Requested on January 13, 2008.

Effective Date: The bill takes effect on January 1, 2009.