

# SENATE BILL REPORT

## ESSB 6449

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As Passed Senate, February 15, 2010

**Title:** An act relating to signature gatherers.

**Brief Description:** Regarding signature gatherers for petitions.

**Sponsors:** Senate Committee on Government Operations & Elections (originally sponsored by Senators McDermott, Fairley, Keiser, Kohl-Welles and Kline).

**Brief History:**

**Committee Activity:** Government Operations & Elections: 1/21/10, 2/02/10 [DPS, DNP].  
Passed Senate: 2/15/10, 29-19.

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### SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

**Majority Report:** That Substitute Senate Bill No. 6449 be substituted therefor, and the substitute bill do pass.

Signed by Senators Fairley, Chair; Oemig, Vice Chair; McDermott and Pridemore.

**Minority Report:** Do not pass.

Signed by Senators Roach, Ranking Minority Member; Benton and Swecker.

**Staff:** Sharon Swanson (786-7447)

**Background:** The Legislature adopted initiative and referendum processes 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.

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*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.

Initiative and referendum processes are protected as free speech under the First Amendment. 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 stated 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) (*Buckley*), 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 Engrossed Substitute Bill:** All businesses in Washington that are engaged in collecting signatures for state or local initiative, referendum, or recall petitions and that are using paid signature gatherers must register with the Public Disclosure Commission (PDC). In addition, the paid signature gatherers must also register with the PDC. Volunteer signature gatherers are not required to register.

A paid signature gatherer's 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 petition must obtain a separate registration number for each petition.

In order to register with the PDC, an individual must provide: his or her full name and assumed name, if any; residential street address; a signature; a list of the state or local initiative, referendum, or recall petitions on which the registrant will gather signatures; and a signed statement attesting that in the past five years, the registrant has not been convicted of a criminal offense involving fraud, forgery, or identification theft, has not been convicted of an election related offense, has not been found in violation of election law, and the individual is not a convicted sex offender. In addition, an individual must provide: 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 registrant's head, neck, and shoulders appropriate for copying and processing by the PDC; and a statement signed by the prime sponsor 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.

In order to register with the PDC, a business must provide: the name of the business and any trade names; the street address of the main office, the mailing address if different, the office phone number and the business email address; the full name of the business owners and any assumed names; and a signature of the business owner or owners. In addition, the business must provide a signed statement that in the past five years the owners have not been convicted of a criminal offense involving fraud, forgery, or identification theft, has not been convicted of an election related offense, has not been found in violation of election law, and that person is not a convicted sex offender; a signed statement acknowledging the registrant has read and understands the applicable Washington law; and evidence that the applicant has completed the required training. The business must also submit a list of the state or local initiative, referendum, or recall petitions on which the business will utilize paid signature gatherers.

A person, including a business owner, is ineligible for registration if the person: has been convicted of a criminal offense involving fraud, forgery, or identification theft in any jurisdiction in the past five years; has been convicted of an election related crime under chapter 29A.84 RCW, or its equivalent in another jurisdiction, in the past five years; has been found in violation of election law under chapter 29A.84 RCW or its equivalent in another jurisdiction, in the past five years; or is a convicted sex offender.

When gathering signatures, a paid signature gatherer must carry on his or her person evidence of registration. If requested, the signature gatherer must produce the evidence of registration.

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 be subject to a full signature check by the Office of the Secretary of State. If a business required to register under this act fails to register, the failure will result in a full signature check by the Secretary of State of the signatures gathered by the business and

the business will be subject to penalties up to \$10,000.

If a registered paid signature gatherer knowingly submits fraudulent signatures, the signature gatherer will have his or her registration revoked and is prohibited from obtaining future permits. If the PDC is informed that a paid signature gatherer has been convicted of an election related criminal offense, found in violation of election law under chapter 29A.84, or has submitted false information on his or her registration application, the paid signature gatherer's registration is revoked and is prohibited for reapplying for registration for five years. If the PDC is informed that a paid signature gatherer has been convicted of any sex offense, he or she will have his or her registration number permanently revoked.

Lines for the signature gatherer's signature, date, name, and address are added to the declaration on the back of each petition sheet. Language is added that signing the declaration constitutes an oath and subjects the signatory to the penalty of law. Each declaration must be individually signed by the signature gatherer after the sheet has been signed by petitioners, but before the petition is submitted to the Secretary of State (Secretary). Each prime sponsor or sponsors of an initiative or referendum petition must check each petition sheet to ensure the declaration is signed. The prime sponsor or sponsors must sign an affidavit that he or she verified that the declaration on each petition sheet was completed and signed prior to submission to the Secretary. Failure to sign and date the declaration is grounds for the Secretary to refuse to file the petition sheet.

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

Prime sponsor or sponsors is defined as the registered voter or voters who complete the affidavit for proposed initiative or referendum or files a recall petition under chapter 29A.56 RCW as well as any persons who hold themselves out publicly as the sponsor of an initiative, referendum, or recall petition.

A volunteer signature gatherer means an individual who is not compensated through payments of money or other valuable consideration to obtain signatures on a state or local initiative, referendum, or recall petition and is not required to register under this act.

The PDC is given rulemaking authority to implement this act.

The act is null and void if not funded in the state budget.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** The bill takes effect on January 1, 2011.

**Staff Summary of Public Testimony on Original Bill:** PRO: In regard to confusion about the requirement that a signature gatherer sign the petition, this legislation clarifies that the declaration must be signed by the signature gatherer. This closes a loop hole that has existed. The oversight and transparency related to the signature gathering process in Washington State is lacking. This legislation helps bring legitimacy to the signature gathering process. Currently, the process creates a huge incentive for fraud. Signature gatherers are paid by the signature and there is nothing directly impacting them if they provide false signatures. This legislative provides accountability to the initiative process. Signature gathering is a lucrative business that has become an industry. This legislation raises the industry standard. In some states people who get paid to register people to vote need to be licensed. How is this process different from that?

CON: Adding the additional requirements that paid signature gatherers need to register is simply a precursor to establishing criteria to having a license. We would not be asking for this legislation if we weren't setting up a higher tier than that proposed here. This legislation is not the kind that facilitates the initiative process, this hinders the legislative process. The 9th circuit has previously found similar legislation unconstitutional. The requirements of this bill chill political speech. Signature gathering is core political speech and is protected by the 1st Amendment. Innocent people will have their signatures invalidated through no fault of their own. If the entire process is in need of standards, why does this bill only address paid signature gatherers? Why aren't volunteer signature gatherers in need of the same training and oversight? Existing laws are enough to deal with unscrupulous groups. The State should see that existing laws are enforced rather than taking the approach of added impediments to the process. There is no need for this legislation. Out of the millions of signatures turned into the Secretary of State, there have been no documented cases of forgery. The state needs to use its resources to go after the bad actors, not regulate the process to death. Adding the additional requirements that paid signature gatherers need to register is simply a precursor to establishing criteria to having a license. We would not be asking for this legislation if we weren't setting up a higher tier than that proposed here.

**Persons Testifying:** PRO: Lewis Granofsky, Fieldworks, LLC; Kristina Logsdon, Ballot Initiative Network; Clifford Traisman, Washington Conservation Voters/Washington Environmental Council; Diane McDaniel, Ballot Initiative Network; Andrew Villeneuve, Northwest Progressive Institute; Katie Blinn, Secretary of State; Arthur West, citizen.

CON: Senator Pam Roach; Edward Agazarm, Citizen Solutions; Tim Eyman, Save the 2/3's; Shankar Narayan, ACLU; Shawn Newman, Initiative & Referendum Institute.