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Ballot initiatives bill could spur litigation against backers

Governor mulls law to force initiative backers to use volunteers to collect names

By Paul Jones

SACRAMENTO - A bill before Gov. Jerry Brown requiring ballot measure backers to use volunteers to gather signatures would also create a right for anyone to sue by alleging fraud was used to get the signatures, potentially allowing opponents to file cases to eat up time and resources.

However, legal experts said that much of the law would likely be thrown out as unconstitutional.

AB 857 is sponsored by California Labor Federation and California Professional Firefighters - two major unions - and carried by Assemblyman Paul Fong, D-Cupertino. It mandates at least 10 percent of signatures for a ballot initiative be gathered by volunteers.

Steve Smith, a spokesman with the California Labor Federation, said the bill is a response to a trend of monied interests backing initiatives for gain. The state's initiative process was meant to be a grassroots effort, but "now we have paid signature gatherers, used almost exclusively in some campaigns," he said.

Sources were quick to point out that AB 857 has language that would allow unions and other nonprofits to pay or otherwise compensate members in return for collecting signatures. Smith said that was fair because other groups could call on activists to support their cause, but Randall Keen, a California election law expert with Manatt, Phelps & Phillips LLP, said it would be difficult for private interests to organize people.

"It would definitely work toward union-backed measures and against people without the [volunteers] to make the requirement," Keen said.

Additionally, several law professors said the bill was likely unconstitutional and would probably be challenged if signed.

"The Supreme Court has been pretty adamant about this," said Michael Salerno, a professor at UC Hastings College of the Law. "They said you can't ban paid circulators."

Meyer v. Grant, 486 U.S. 414 (1988), found that blocking paid signature gatherers violated the First Amendment. A legislative analysis suggests that AB 857 is somewhat different from the law in that case, but Richard Hasen, a professor at UC Irvine School of Law, said the substance of the bill still ran counter to that case and a

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subsequent one.

"This seems to be to be just a warmed-over version of that same requirement," he said.

Another concern about the bill raised by critics, such as the Howard Jarvis Taxpayers Association, is its creation of a right to sue over allegedly fraudulent signature gathering. Smith with the labor federation said the problem was a product of some signature gatherers lying because they're paid more for collecting more signatures. For example, he said union members had been lied to about Proposition 32, a 2012 ballot measure to reduce union money in politics.

"We had union members come up and say, 'Hey, I signed that because they said it would do something else,'" he said.

Keen said proving fraud would be difficult. But Colleen McAndrews, an election law specialist with Bell, McAndrews & Hiltachk LLP, said it would still be easy for opponents to file frivolous challenges to bleed initiatives.

"You get these bounty-hunter people who can create a lot of mischief and create a lot of cost for people," she said.

Phillip Ung, a spokesman for Common Cause, said sometimes signature gatherers are targeted by activists who try to trip them up.

"Campaigns have a history of asking very complex questions of these [signature gatherers] and secretly filming the conversations," he said.

Jessica Levinson, an election law specialist and professor at Loyola Law School in Los Angeles, said despite AB 857's "incremental" approach, there still exists a need to reform the state's initiative process.

"The process meant to guard against special interests is now their handmaiden," she said. "The thing you need now is not manpower; it's money."

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