

Assembly Bill No. 857

Passed the Assembly September 11, 2013

Chief Clerk of the Assembly

Passed the Senate September 10, 2013

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2013, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 101, 9008, 9030, and 9031 of, and to add Sections 9009.5, 9009.6, 9022.5, 9036, and 9037 to, the Elections Code, relating to elections.

LEGISLATIVE COUNSEL'S DIGEST

AB 857, Fong. Initiatives: petition circulators.

(1) The California Constitution and existing statutory law provide for the electors to propose statutes or amendments to the Constitution by initiative. Existing law authorizes a person who is a voter or who is qualified to register to vote in California to circulate an initiative or referendum petition anywhere within the state. Existing law requires that each section of a petition for an initiative or referendum measure have attached thereto the declaration of the person soliciting the signatures that includes specified information.

This bill would require a person who solicits signatures for a proposed initiative measure and does not receive money or other valuable consideration for the specific purpose of soliciting signatures of electors to make additional declarations, as specified.

(2) Existing law requires local elections officials to perform various duties with respect to statewide initiative petitions including, within 8 days after the filing of a petition, determining the total number of signatures affixed to the petition. Existing law also requires an elections official, within 30 days of notification from the Secretary of State that a petition has received 100% or more of the signatures needed to declare the petition sufficient, to determine the number of qualified voters who signed the petition. Upon order of the Secretary of State, existing law requires an elections official, within 30 days, to verify each signature on a petition, as specified.

This bill would extend the time a local elections official is required to determine the total number of signatures affixed to a petition to 10 days, and would extend the time a local elections official is required to determine the number of qualified voters who signed the petition to 35 days after receiving notice from the Secretary of State that the petition has received the signatures

needed to declare the petition sufficient. The bill also would extend the time that an elections official is required to verify the signatures on a petition to 35 days.

This bill would require at least 10% of the signatures that are required to qualify an initiative measure to be solicited by a person who does not receive money or other valuable consideration for the specific purpose of soliciting signatures of electors, and would require that the declaration of such a person include additional content, as specified. The bill would require an elections official who determines the total number of signatures affixed to a petition and an elections official or registrar of voters who verifies signatures on petitions to also determine the total number of signatures submitted by persons who do not receive money or other valuable consideration for the specific purpose of soliciting signatures of electors, as specified.

The bill would include specified findings and declarations of the Legislature in support of these policies.

(3) Existing law requires that, if the statistical sampling shows that the number of valid signatures on a petition is within 95 to 110% of the number of signatures of qualified voters needed to declare the petition sufficient, the Secretary of State shall order the examination and verification of each signature filed, and shall so notify the elections officials.

This bill, with regard to an initiative petition for which the statistical sampling shows that the number of valid signatures for all signatures submitted is more than 110% of the number of qualified voters needed to find the petition sufficient, but the number of valid signatures submitted for purposes of the 10% requirement described above is within 95 to 110% of the number of signatures needed to satisfy that requirement, would require the Secretary of State to only order an examination and verification of each signature filed that would satisfy the 10% requirement.

(4) Existing law requires every proposed initiative measure, prior to circulation, to include on the petition, among other things, the circulating title and summary prepared by the Attorney General and a heading for the initiative measure, as specified. Existing law also requires a petition for a proposed initiative or referendum measure to be presented in sections, as specified.

This bill would provide that its provisions do not apply to any initiative petition for which the Attorney General issued a

circulating title and summary before January 1, 2014, and would require a petition for a proposed initiative measure to have printed in the one-inch space across the top of the first page of each section of the petition, in 18-point roman boldface type, the circulating title for the measure prepared by the Attorney General. The bill would additionally require a petition for a proposed initiative measure that is circulated by persons who do not receive money or other valuable consideration for the purpose of obtaining signatures of electors to be printed on white paper in a contrasting color ink. The bill also would require a petition for a proposed initiative measure that is circulated by persons who do receive money or other valuable consideration for the purpose of obtaining signatures of electors to be printed on paper of a color other than white in a contrasting color ink.

(5) Under existing law, an initiative petition must contain specified language advising the public of its right to ask whether the person circulating the petition is a paid signature gatherer or a volunteer.

This bill would additionally require a statewide initiative, referendum, or recall petition to include a disclosure notifying the public that the petition circulator is receiving money or other valuable consideration for the specific purpose of soliciting signatures of electors, as specified.

(6) Existing law provides that a person who engages in specified conduct in connection with the collection of signatures on any statewide initiative or referendum petition is guilty of a misdemeanor.

This bill would require a statewide initiative or referendum petition section to be deemed invalid, and would prohibit use of the petition section for the purpose of determining whether the initiative or referendum measure qualifies for the ballot, if the signatures are solicited and submitted by a person who engages in fraud, misrepresentation, or any of the specified conduct for which he or she may be found guilty of a misdemeanor. The bill would authorize specified persons to enforce this provision by a civil action upon a showing of clear and convincing evidence.

(7) Because this bill would impose new requirements on local elections officials relative to calculating and verifying signatures on a petition, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) The power of the initiative is a fundamental right reserved for the voters of California and must be protected as a means of governing through direct democracy.

(2) The voters amended the California Constitution to reserve for themselves the power of the initiative because financially powerful interests, including railroad companies, exercised a corrupting influence over state politics.

(3) The purpose of reserving the initiative power was to provide individuals, communities, and coalitions a means to protect the general interests of the State of California.

(4) For the past 30 years, a disturbing trend in the state's political process has undermined the original intent of the initiative power.

(5) The presence of an initiative measure on the ballot is no longer necessarily viewed as an expression of a minimum amount of public support, but, instead, is often viewed as the result of a special interest willing to pay the necessary amount of money to qualify an initiative measure for the ballot. As a result, the integrity of the initiative process is threatened by a crowded ballot with confusing proposals and the perception of fraud and misrepresentation in the signature gathering phase.

(6) Whereas initiative petitions circulated by volunteer and grassroots organizations demonstrate significant public support for a proposed law, well-funded individuals and organizations that promote narrow interests may rely exclusively on paid circulators to qualify an initiative measure that does not have broad community support. In many cases, the individuals and organizations

supporting an initiative petition do not reside in the state and will not be subject to the laws that they propose.

(7) As has been the case since the initiative power was created, initiatives that have broad public support continue to qualify for the ballot through the efforts of volunteers and grassroots organizations, but the availability of paid circulators has led to an excess of complex proposals that lack a broad level of public support. Paid circulators gather as many signatures as possible in the least amount of time, and may not provide electors with a full explanation of the true purpose and effect of the proposed initiative measure. Without a better measure of public support, special interests may qualify an initiative measure for the ballot regardless of the actual content of the proposal.

(8) Improving the measure of public support for a proposed initiative measure will increase the public's confidence and protect the integrity of the initiative process. A volunteer and grassroots effort to qualify an initiative measure for the ballot demonstrates a significant level of public support.

(9) The Legislature is responsible for providing the manner in which initiative petitions are circulated, presented, and certified. Consistent with this constitutional duty, the Legislature must provide for laws that are consistent with the intent of the voters in reserving the power of the initiative; protect the integrity of the initiative process; and prevent the occurrence of fraud and misrepresentation in the circulation, presentation, and certification of initiative petitions.

(b) Therefore, it is the intent of the Legislature to do all of the following:

(1) Preserve and protect the integrity of California's initiative process.

(2) Ensure that initiative petitions have sufficient public support from informed voters to be placed on the ballot.

(3) Protect access to the initiative process and preserve the constitutional right of voters in California to engage in direct democracy.

SEC. 2. Section 101 of the Elections Code is amended to read:

101. Notwithstanding any other provision of law, any local initiative petition required to be signed by voters shall contain in 12-point type, prior to that portion of the petition for voters'

signatures, printed names, and residence addresses, the following language:

“NOTICE TO THE PUBLIC

THIS PETITION MAY BE CIRCULATED BY A PAID SIGNATURE GATHERER OR A VOLUNTEER. YOU HAVE THE RIGHT TO ASK.”

SEC. 3. Section 9008 of the Elections Code is amended to read:

9008. Each proposed initiative measure, prior to circulation, shall have placed across the top of the petition all of the following:

(a) The Attorney General’s unique numeric identifier, in 12-point or larger roman boldface type, placed before the circulating title and summary upon each page where the circulating title and summary is to appear.

(b) (1) The circulating title and summary prepared by the Attorney General, in 12-point or larger roman boldface type, upon each page of the petition on which signatures are to appear.

(2) The circulating title and summary prepared by the Attorney General, in 12-point or larger roman boldface type, upon each section of the petition preceding the text of the measure.

(3) Notwithstanding Section 9013, on the first page of each section of the petition, the circulating title prepared by the Attorney General shall be placed in the one-inch space across the top of the page in 18-point roman boldface type.

(c) The circulating title and summary prepared by the Attorney General, as required by paragraph (2) of subdivision (b), shall be preceded by the following statement in 12-point or larger roman boldface type: “Initiative measure to be submitted directly to the voters.”

SEC. 4. Section 9009.5 is added to the Elections Code, to read:

9009.5. (a) A petition for a proposed initiative measure that is circulated by a person who does not receive money or other valuable consideration for the purpose of soliciting signatures of electors, for purposes of Section 9036, shall be printed on white paper in a contrasting color ink.

(b) A petition for a proposed initiative measure that is circulated by a person who receives money or other valuable consideration

for the purpose of soliciting signatures of electors shall be printed on paper of a color other than white in a contrasting color ink.

SEC. 5. Section 9009.6 is added to the Elections Code, to read:

9009.6. Notwithstanding any other provision of law, a petition for a proposed initiative measure that is circulated by a person who receives money or other valuable consideration for the specific purpose of soliciting signatures of electors, except as provided by paragraph (1) of subdivision (b) of Section 9036, shall include the following statement immediately prior to the portion of the petition for voters' signatures, printed names, and residence addresses, printed in 12-point boldface type:

“NOTICE TO THE PUBLIC: THIS PETITION IS BEING CIRCULATED BY A PERSON PAID TO OBTAIN YOUR SIGNATURE. YOU ARE ENCOURAGED TO READ THE CONTENTS OF THIS PETITION BEFORE SIGNING.”

SEC. 6. Section 9022.5 is added to the Elections Code, to read:

9022.5. In addition to the information required by Sections 104 and 9022, the declaration of a person who solicits signatures for a proposed initiative measure and does not receive money or other valuable consideration for the specific purpose of soliciting signatures of electors pursuant to Section 9036 shall declare all of the following:

(a) The person does not receive money or other valuable consideration for soliciting signatures of electors for purposes of subdivision (a) of Section 9036.

(b) To the best of his or her knowledge, the signatures on the petition sections circulated by him or her should be counted towards the requirement set forth in subdivision (a) of Section 9036.

SEC. 7. Section 9030 of the Elections Code is amended to read:

9030. (a) Each section of the petition shall be filed with the elections official of the county or city and county in which it was circulated, but all sections circulated in any county or city and county shall be filed at the same time. Once filed, no petition section shall be amended except by order of a court of competent jurisdiction.

(b) Within 10 days after the filing of the petition, excluding Saturdays, Sundays, and holidays, the elections official shall

determine the total number of signatures affixed to the petition and, in the case of an initiative petition, the total number of signatures submitted for purposes of subdivision (a) of Section 9036. The elections official shall transmit this information to the Secretary of State. If the total number of signatures filed with all elections officials is less than 100 percent of the number of qualified voters required to find the petition sufficient or, in the case of an initiative petition, the number of signatures submitted for purposes of subdivision (a) of Section 9036 is less than the total number needed to satisfy the requirement of that subdivision, the Secretary of State shall so notify the proponents and the elections officials, and no further action shall be taken with regard to the petition.

(c) If the number of signatures filed with all elections officials is 100 percent or more of the number of qualified voters needed to declare the petition sufficient and, in the case of an initiative petition, the number of signatures submitted for purposes of subdivision (a) of Section 9036 is equal to or greater than the total number needed to satisfy the requirement of that subdivision, the Secretary of State shall immediately so notify the elections officials.

(d) (1) Within 35 days after this notification, excluding Saturdays, Sundays, and holidays, the elections official shall determine the number of qualified voters who have signed the petition and the number of qualified voters who have signed a section of the petition that satisfies the requirement of subdivision (a) of Section 9036.

(2) (A) If more than 500 names have been signed on sections of the petition filed with an elections official, the elections official shall use a random sampling technique for verification of signatures, as determined by the Secretary of State. The random sample of signatures to be verified shall be drawn from all petition sections in such a manner that every signature filed with the elections official shall be given an equal opportunity to be included in the sample.

(B) For initiative petitions, a second random sample of signatures shall be drawn from all petition sections submitted to satisfy subdivision (a) of Section 9036 and verified according to the procedures set forth by the Secretary of State. The verification of signatures that are submitted for purposes of subdivision (a) of

Section 9036 shall be consistent with subdivision (g) of that section.

(C) In each case, the random sampling shall include an examination of at least 500 or 3 percent of the signatures on the respective petitions or sections of petitions, whichever is greater.

(3) In determining from the records of registration the number of qualified voters who have signed the petition, the elections official may use the duplicate file of affidavits of registered voters or the facsimiles of voters' signatures, provided that the method of preparing and displaying the facsimiles complies with law.

(e) The elections official, upon the completion of the examination, shall immediately attach to the petition, except the signatures thereto appended, a properly dated certificate showing the result of the examination and shall immediately transmit the petition and the certificate to the Secretary of State. A copy of this certificate shall be filed in the elections official's office.

(f) If the certificates received from all elections officials by the Secretary of State establish that the number of valid signatures does not equal 95 percent of the number of qualified voters needed to find the petition sufficient or, in the case of an initiative petition, that the number of valid signatures submitted for purposes of subdivision (a) of Section 9036 does not equal 95 percent of the number of qualified voters needed to satisfy the requirement of that subdivision, the petition shall be deemed to have failed to qualify, and the Secretary of State shall immediately so notify the proponents and the elections officials.

(g) If the certificates received from all elections officials by the Secretary of State total more than 110 percent of the number of qualified voters needed to find the petition sufficient and, in the case of an initiative petition, the number of valid signatures submitted for purposes of subdivision (a) of Section 9036 total more than 110 percent of the number of qualified voters needed to satisfy the requirement of that subdivision, the petition shall be deemed to qualify as of the date of receipt by the Secretary of State of certificates showing the petition received more than 110 percent of the qualified voters needed, and the Secretary of State shall immediately so notify the proponents and the elections officials.

(h) The Secretary of State shall adopt regulations consistent with this section. The initial regulations may be adopted as emergency regulations in accordance with Chapter 3.5

(commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and shall be deemed necessary for the immediate preservation of the public peace, health, safety, or general welfare.

SEC. 8. Section 9031 of the Elections Code is amended to read:

9031. (a) (1) If the statistical sampling shows that the number of valid signatures on all petition sections, including those submitted to satisfy subdivision (a) of Section 9036, is within 95 to 110 percent of the number of signatures of qualified voters needed to declare the petition sufficient, the Secretary of State shall order the examination and verification of each signature filed, and shall so notify the elections officials.

(2) In the case of an initiative petition, if the statistical sampling shows that the number of valid signatures for all signatures submitted is more than 110 percent of the number of qualified voters needed to find the petition sufficient, but the number of valid signatures submitted for purposes of subdivision (a) of Section 9036 is within 95 to 110 percent of the number of signatures needed to satisfy the requirement of that subdivision, the Secretary of State shall only order an examination and verification of each signature filed to satisfy the requirement of subdivision (a) of Section 9036.

(b) (1) Within 35 days, excluding Saturdays, Sundays, and holidays, after receipt of the order, the elections official or registrar of voters shall determine from the records of registration the number of qualified voters who have signed a section of the petition that is subject to examination under subdivision (a) and, if necessary, the board of supervisors shall allow the elections official or registrar additional assistance for the purpose of examining the petition and provide for their compensation. In determining from the records of registration the number of qualified voters who have signed the petition, the elections official or registrar of voters may use any file or list of registered voters maintained by his or her office, or the facsimiles of voters' signatures, provided that the method of preparing and displaying the facsimiles complies with law.

(2) The examination of signatures that are submitted to satisfy subdivision (a) of Section 9036 shall be made pursuant to subdivision (g) of that section.

(c) The elections official or registrar, upon the completion of the examination, shall immediately attach to the petition, except the signatures thereto appended, an amended certificate properly dated, showing the result of the examination and shall immediately transmit the petition, together with the amended certificate, to the Secretary of State. A copy of the amended certificate shall be filed in the elections official's office.

(d) (1) If the amended certificates establish the petition's sufficiency, the petition shall be deemed to be filed as of the date of receipt by the Secretary of State of certificates showing the petition to be signed by the requisite number of voters of the state.

(2) If the amended certificates received from all elections officials by the Secretary of State establish that the petition has still been found insufficient, the Secretary of State shall immediately so notify the proponents and the elections officials.

(e) The Secretary of State shall adopt regulations consistent with this section. The initial regulations may be adopted as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and shall be deemed necessary for the immediate preservation of the public peace, health, safety, or general welfare.

SEC. 9. Section 9036 is added to the Elections Code, to read:

9036. (a) At least 10 percent of the signatures required under Section 9035 shall be presented on a petition or section of a petition that was circulated by a person who does not receive money or other valuable consideration exclusively or primarily for the specific purpose of soliciting signatures of electors on the petition.

(b) (1) A person who is an employee or member of a nonprofit organization, other than an organization with the primary purpose of soliciting signatures on initiative petitions, who receives money or other valuable consideration from the organization and as part of that employment or membership solicits signatures for the qualification of an initiative measure shall be deemed to be a person who, for purposes of subdivision (a), does not receive money or other valuable consideration for the specific purpose of soliciting signatures of electors, unless the primary purpose of that employment or membership is to solicit signatures on an initiative petition.

(2) For purposes of this subdivision, “member” means any of the following:

(A) A person who, pursuant to a specific provision of an organization’s articles of incorporation or bylaws, has the right to vote directly or indirectly for the election of a director or directors, or an officer or officers, or on a disposition of all or substantially all of the assets of the organization, or on a merger or a dissolution.

(B) A person who is designated in an organization’s articles of incorporation or bylaws as a member and, pursuant to a specific provision of the articles of incorporation or bylaws, has the right to vote on changes to the articles of incorporation or bylaws.

(C) A person who pays or has paid membership dues in an amount predetermined by the organization, provided the organization is tax exempt under Section 501(c) of the Internal Revenue Code.

(3) For purposes of this subdivision, a member of a local union is a member of any national or international union of which the local union is a part and of any federation with which the local, national, or international union is affiliated.

(4) For purposes of this subdivision, a person is not a member of a nonprofit organization solely by virtue of being on a mailing or contact list of the organization.

(5) For purposes of this subdivision, whether an organization, or a member or employee of an organization, has the primary purpose of soliciting signatures on an initiative petition shall be determined based on the totality of the circumstances.

(c) Signatures that are solicited by a person who is a registered voter of a political party, a member of a political party committee as defined in Section 85205 of the Government Code, or an employee of a political party or a political party committee and who receives money or other valuable consideration for soliciting signatures on an initiative petition from the political party or political party committee do not count towards the number of signatures needed to satisfy the requirement of subdivision (a).

(d) (1) Signatures on an initiative petition that are solicited through direct mail do not count towards the number of signatures needed to satisfy the requirement of subdivision (a) if the person soliciting the signatures through direct mail, or any other person who organizes, pays for, or arranges for the direct mail, receives money or other valuable consideration primarily for the purpose

of soliciting signatures of electors, unless the person is an employee or member of a nonprofit organization as described in subdivision (b).

(2) This subdivision shall not be construed to preclude an organization that has a primary purpose other than soliciting signatures on initiative petitions from soliciting signatures from the organization's members through direct mail and relying on those signatures for purposes of satisfying the requirement set forth in subdivision (a).

(e) This section shall not be construed to preclude a person who receives nominal benefits other than money, such as food, transportation, or lodging, from qualifying under this section as a person who does not receive money or other valuable consideration exclusively or primarily for the specific purpose of soliciting signatures of electors on a petition for a proposed initiative measure.

(f) Verification of a petition that contains a declaration pursuant to Section 9022.5 shall be prima facie evidence that the signatures thereon satisfy the requirement of subdivision (a).

(g) For purposes of verifying signatures under Sections 9030 and 9031 and the procedures set forth by the Secretary of State, if the signature of a qualified voter appears once on a petition or section of a petition submitted to satisfy subdivision (a) of this section, and the same voter's signature appears on a petition or section of a petition that does not satisfy subdivision (a), the qualified voter's signature shall only be counted once and shall be counted towards satisfying subdivision (a).

(h) A person who receives money or other valuable consideration for the specific purpose of soliciting signatures on an initiative petition shall not circulate a petition or a section of a petition for purposes of satisfying the requirement of subdivision (a) for the same initiative measure.

SEC. 10. Section 9037 is added to the Elections Code, to read:

9037. (a) The signatures on an initiative petition section shall be deemed invalid and shall not be used for the purpose of determining whether the initiative measure qualifies for the ballot if the signatures thereon were solicited by a person who, in connection with the circulation of the initiative petition, intentionally engages in fraud, misrepresentation, or any conduct described in Section 18600, 18601, or 18602, or by a person who

falsely claims to have not received money or other valuable consideration for the specific purpose of soliciting signatures of electors pursuant to Section 9036.

(b) This section may be enforced by a civil action brought by the Secretary of State, the Attorney General, a district attorney, a city attorney of a city with a population greater than 750,000, or any elector. The signatures on a petition section shall be invalidated only upon a showing, by clear and convincing evidence, that the person who solicited or obtained the signatures did so through intentional fraud, misrepresentation, or other conduct described in Sections 18600, 18601, and 18602, or that the person falsely claims to have not received money or other valuable consideration for the specific purpose of soliciting signatures of electors pursuant to Section 9036. Any civil action brought pursuant to this section shall have priority over all other civil matters.

(c) The relief provided for in subdivision (a) shall not be available after the Secretary of State has certified that an initiative petition has qualified for the ballot.

(d) If a local elections official is notified of or discovers any conduct described in subdivision (a), the local elections official shall promptly notify the Secretary of State.

(e) This section does not permit a local elections official who is notified of or discovers any conduct described in subdivision (a) to refuse to examine or to stop the examination of the petition or petition sections.

SEC. 11. The provisions of this act do not apply to an initiative petition for which the Attorney General issued a circulating title and summary before January 1, 2014.

SEC. 12. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

Approved _____, 2013

Governor