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# **Report**

## **California Initiative Signature Campaigns - Empowerment or Impediment?**

By

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## I. Introduction

Was the original intent of the initiative really to help average citizens against railroad-sized special interests, or is that a romanticized idea? Upon the backdrop of rampant corruption in all levels of government, the people of California added the initiative, referendum, and recall as protective measures. Colloquially, the initiative is described as a check upon abusive and corrupt government that “the people” are able to swiftly utilize. Upon closer inspection, the initiative is not an easily accessible arrow in the quiver of the people’s political power. Focusing on the petition gathering requirements and the initiative-industrial-complex that has grown in modern times, the initiative has become a tool for moneyed interests and out of reach for the average citizen.

The requirement of obtaining over half a million valid signatures presents an issue that may frustrate the purpose of the initiative. Filing fees, drafting and legal fees, focus groups and polling, potential litigation regarding title and summary, field consultants, printing costs, paid signature gathering, and potential opposition efforts amount to significant costs of qualifying initiatives, to say nothing of the campaign expenses once an initiative is on the ballot. This political environment, especially paid signature gathering industries, represent an expensive barrier where labor unions, corporations, or ultra-wealthy single donors form and finance political issue committees to support and oppose initiatives, potentially drowning out the political voice of “the people” as envisioned by Governor Johnson and the Progressive movement.

## II. History

The democratic principles of California’s current constitution reflect a long-held distrust of elected legislative bodies. The modern birth of the electoral recall for instance, can be traced to the Charter of Los Angeles in 1903.<sup>1</sup> The corruption and influence by the railroad industry over California’s state and local government in the 19th century motivated financially equipped activists to launch grand jury investigations against elected officials and corporate officers.<sup>2</sup> Among the prosecution team was a young lawyer named Hiram Johnson.<sup>3</sup> Nonpartisan committees within California attempted to free the state from the railroad’s control, focusing on local and state elections on non-railroad candidates.<sup>4</sup> Hiram Johnson was elected Governor in 1910 and has been called “the emissary of the cataclysm that smashed California’s long-entrenched political corruption and brought into being the state’s unique political patterns of today.”<sup>5</sup> The California Constitution was amended in 1911 in the surge of the progressive movement that was sweeping the nation, adding the powers of the initiative, recall and referendum processes to the people of California.<sup>6</sup>

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<sup>1</sup> Gladwin Hill, *The Dancing Bear: an inside look at California Politics* 46 (The World Publishing Company 1968)

<sup>2</sup> *Id.* at 45.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 46.

<sup>5</sup> *Id.* at 41.

<sup>6</sup> J. Fred Silva, *The California Initiative Process: Background and Perspective*, [http://www.ppic.org/content/pubs/op/OP\\_1100FSOP.pdf](http://www.ppic.org/content/pubs/op/OP_1100FSOP.pdf) (2000) (last visited Feb. 22, 2012)

At the same time, a constitutional convention was underway, and Governor Johnson took the opportunity to lock out “political machines or special interests.”<sup>7</sup> On January 3 1911, in Governor Johnson’s first inaugural address, he stated there is “one sovereign and master, the people,” and asked the question how “best can we arm the people to protect themselves” against individuals supported by “big business.”<sup>8</sup> The answer was given in the subsequent November election, where the voters approved of Governor Johnson’s and the Progressive movement’s ideas of the initiative, recall, and referendum.<sup>9</sup>

The motivating force behind adding tools of direct democracy to California, the Progressive Party, was a split from the Republican Party that inherited a level of organization and finance that allowed for coordinated campaigns on even federal level elections.<sup>10</sup> Therefore, the scenario of a concerned citizen gathering the requisite number of signatures for an initiative was most likely never envisioned by Governor Johnson or other contemporary Progressives. Instead, groups of citizens with financial support, like Progressive Party leader Theodore Roosevelt waging war on the Republican Party with \$2,500,000 in contributions from a few U.S. Steele stockholders, was more likely the model envisioned for local progressive activists in California.<sup>11</sup>

With the original intent of the initiative to give the people of California a political tool to directly enact protective legislation, it is worth comparing the historic and modern initiative requirements. The original requirements to place an initiative on the ballot called for 85,574 signatures for a constitutional amendment, and 53,484 signatures for a statutory initiative.<sup>12</sup> The requirements as of February 2012 stand at 807,615 signatures for a constitutional amendment and 504,760 signatures for a statutory initiative.<sup>13</sup> In 1910 there were 725,000 eligible voters compared to 23,551,699 in November 2010.<sup>14</sup> While the explosion in population may at first present an issue of access to reach the required number of signatures, population densities have increased as well, from just fewer than 6 persons per kilometer in 1910 to just over 93 persons per kilometer in 2011.<sup>15</sup> Additionally, a successful statutory initiative required approximately 7% of the voting population in 1910 and 2% of the voting population in 2010. These figures however still do not ease the daunting task of collecting not only the statutorily necessary signatures, but

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<sup>7</sup> Hill, *supra* at 52.

<sup>8</sup> California Governor Hiram Johnson Inaugural Address January 3, 1911 <http://governors.library.ca.gov/addresses/23-hjohnson01.html> (last visited Feb. 22, 2012).

<sup>9</sup> Hill, *supra* at 53.

<sup>10</sup> Hill, *supra* at 53.

<sup>11</sup> *The Financial World*, Volume XIX, No. 1, The Guenther Publishing Co. July 6, 1912.

[http://books.google.com/books?id=nRRAAAAAYAAJ&printsec=frontcover&source=gbs\\_ge\\_summary\\_r&cad=0#v=onepage&q&f=false](http://books.google.com/books?id=nRRAAAAAYAAJ&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false) (accessed Feb. 2012).

<sup>12</sup> *History of California Initiatives*, California Secretary of State, [http://www.sos.ca.gov/elections/init\\_history.pdf](http://www.sos.ca.gov/elections/init_history.pdf) (last visited Feb. 22, 2012).

<sup>13</sup> *Statewide Ballot Initiative Guide*, California Secretary of State, <http://www.sos.ca.gov/elections/ballot-measures/how-to-qualify-an-initiative.htm> (last visited Feb. 22, 2012).

<sup>14</sup> *Historical Voter Registration and Participation in Statewide General Elections 1910-2010*, <http://www.sos.ca.gov/elections/sov/2010-general/04-historical-voter-reg-participation.pdf> (last accessed Mar. 2012).

<sup>15</sup> U.S. Census Bureau, <http://quickfacts.census.gov/qfd/states/060001k.html> (accessed Feb. 2012).

also collecting the signatures above the requirement to ensure validity, especially since the eligible voting population has increased at nearly twice the rate of population density growth.<sup>16</sup>

### III. Current Requirements and Statutes

The basis of authority for the initiative process was added to the California Constitution in 1911 as Article II, Section 8, which states, “The initiative is the power of the electors to propose statutes and amendments to the Constitution and to adopt or reject them.”<sup>17</sup> This section of the Constitution also outlines the minimum signatures required to enact a statute (5% of the votes cast from the last gubernatorial election) and an amendment to the constitution (8% of the votes cast from the last gubernatorial election).<sup>18</sup> The section also mandates that initiatives be placed on the ballot at least 131 days after it qualifies, embrace only one subject, be applied equally to all political subdivisions of the state, and pass or fail in its entirety.<sup>19</sup>

Language for initiatives is either written with the assistance of the Office of the Legislative Counsel, or is written by private professional legal counsel.<sup>20</sup> If a proponent desires assistance of the Office of the Legislative Counsel, the proponent must submit the idea in writing with 25 or more elector signatures and have the Legislative Counsel determine that there is a “reasonable probability that the measure will be submitted to the voters.”<sup>21</sup> Proposed language and a \$200 fee are then submitted to the Attorney General, where a title for the petition and a summary of the “purpose and points of the initiative” are prepared.<sup>22</sup> Any fiscal impact to the State is taken into consideration and if a change to State finances is believed to occur, the California Department of Finance, and the Joint Legislative Budget Committee will prepare an estimate to be included in the initiative.<sup>23</sup>

After meeting certain drafting requirements for the petition, proponents of an initiative have up to 150 days to circulate the petition and collect the required number of signatures.<sup>24</sup> In order to have the initiative be placed on the next ballot, it must qualify at least 131 days before the date of the next election.<sup>25</sup> Signatures must then be delivered to the county in which the signatures were collected to begin the verification process.<sup>26</sup> The elections officials then transmit the number of signatures gathered to the Secretary of State so that the minimum number of signatures required is confirmed.<sup>27</sup> Election officials in each county then take 500 signatures or random samples of

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<sup>16</sup> *Historical Voter Registration Participation*, California Secretary of State, <http://www.sos.ca.gov/elections/sov/2010-general/04-historical-voter-reg-participation.pdf> (last accessed Feb. 2012).

<sup>17</sup> Cal. Const. art. II, § 8 (West 2012).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Statewide Initiative Guide*, California Secretary of State, <http://www.sos.ca.gov/elections/ballot-measures/pdf/initiative-guide.pdf> (accessed Feb. 2012)

<sup>21</sup> Cal. Govt. Code § 10243 (West 2012).

<sup>22</sup> Cal. Elec. Code § 9002 (West 2012).

<sup>23</sup> Cal. Elec. Code § 9005 (West 2012).

<sup>24</sup> Cal. Elec. Code § 9014 (West 2012).

<sup>25</sup> Cal. Const. art. II, § 8 (West 2012).

<sup>26</sup> Cal. Elec. Code § 9030 (West 2012).

<sup>27</sup> *Id.*

3% of the total signatures gathered, whichever is greater, and verify the validity of the signatures.<sup>28</sup>

The number of valid signatures is then sent to the State where if the validity rates fall below 95% of the total signatures gathered, the initiative shall be deemed to have failed to qualify.<sup>29</sup> If the total number of valid signatures from the samples checked equal more than 110% of the total signatures gathered, the initiative shall be deemed to have qualified.<sup>30</sup> If the valid signatures represent a number between 95% and 110%, then each signature shall be checked to see if the requisite number of signatures to pass has been collected.<sup>31</sup> Upon the event an initiative passes the signature check, a copy of the initiative shall be given to the State Assembly and the State Senate in order for public policy hearings to take place on the initiative as long as the election is not within the next 30 days.<sup>32</sup> The legislature has no authority to alter the initiative – the hearing is for informational purposes only.<sup>33</sup>

#### **IV. Paid Signature Campaigns**

##### **A. Proponent Costs**

An inescapable fact of initiatives in California is that collecting over 500,000 signatures requires a large amount of money. Initiatives that have qualified for the primary and general elections of 2012 offer some insight into costs of California initiatives. There are two measures on the June 5, 2012, primary ballot.<sup>34</sup> Proposition 28 adjusts term limits for California Legislators and has three committees in support and none in opposition.<sup>35</sup> The “Californians for a Fresh Start” committee, which made the most significant expenditures of all three supporting committees, reports \$409,655.50 in total expenditures for 2011<sup>36</sup>, and \$1,569,427.06 in total expenditures for 2010<sup>37</sup>.

Expenditures were made for polling, campaign consulting, legal services, and information and technology costs. However, a \$1,624,087.73 expenditure to Kimball Petition Management, Inc., for signature gathering represents the most significant cost for the Proposition 28 initiative campaign.<sup>38</sup> The grand total of \$1,979,082.56 from one committee for a proposition that makes a

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<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> Cal. Elec. Code § 9031 (West 2012).

<sup>32</sup> Cal. Elec. Code § 9034 (West 2012).

<sup>33</sup> *Id.*

<sup>34</sup> *Qualified State Ballot Measures*, CA Secretary of State, <http://www.sos.ca.gov/elections/ballot-measures/qualified-ballot-measures.htm> (last visited Feb. 22, 2012).

<sup>35</sup> Cal-Access, CA Secretary of State, <http://cal-access.sos.ca.gov/Campaign/Measures/Detail.aspx?id=1323006&session=2011> (last visited Feb. 22, 2012).

<sup>36</sup> Cal-Access, CA Secretary of State, <http://cal-access.sos.ca.gov/Campaign/Committees/Detail.aspx?id=1322596&session=2011&view=general> (last visited Feb. 22, 2012).

<sup>37</sup> Cal-Access, CA Secretary of State, <http://cal-access.sos.ca.gov/Campaign/Committees/Detail.aspx?id=1322596&type=nonmonetary&session=2009&view=general> (last visited Feb. 22, 2012).

<sup>38</sup> *Id.*

minor change to term limits, which is arguably not as controversial as other initiatives such as the legalization of marijuana, sets the tone for the costs of initiatives in California.

There are several factors that typically impact the cost of initiative signature gathering. Each signature gathered is a commodity in an actual nationwide signature gathering market, where professional petition circulators travel across the country to gather signatures.<sup>39</sup> There are several firms that operate on a national basis with the sole purpose of facilitating signature gathering for initiative campaigns.<sup>40</sup> Some campaigns however, rely on volunteer signature gatherers, typically conducted by labor unions with membership volunteering their time to circulate petitions.<sup>41</sup> Volunteer based campaigns still require large amounts of funding for logistical needs and professional staff to train volunteers.<sup>42</sup> When a committee is at the stage to collect signatures, that committee may contract with a signature-gathering firm to manage independent area coordinators that hire professional signature gatherers based on geographic and temporal constraints.<sup>43</sup> Petition-management firms, like Kimball Petition Management Inc. in the above example of Proposition 28, operate with few full-time employees, and contract fieldwork out to independent contractors who manage crew chiefs that coordinate the professional signature gatherers that specialize in specific locations.<sup>44</sup>

The amount of signatures required, combined with the statutory time restraints to have the initiative be on the next available election sets the level of urgency, which raises and lowers the price per signature.<sup>45</sup> Signature gathering campaigns are mostly field-oriented with the majority of expenses going towards petition circulator wages or commissions.<sup>46</sup> The labor of professional signature gatherers is also subject to supply and demand, since signature-gathering firms compete with other initiative efforts to attract signature gatherers across the country with high wages or commissions.<sup>47</sup> Kimball Petition Management Inc., reports signature price rates as low as forty cents per signature, and as high as five dollars per signature.<sup>48</sup> This last point may provide an interesting tactical advantage for opposition campaigns by creating additional costs for proponents through counter initiatives.

## **B. Opponent-Created Costs**

Opponents of initiatives have few options to challenge the proponents of an issue campaign during the signature gathering process. Opponents may either wait to see if proponents are not able to gather the required amount of signatures in hopes that a long ballot measure campaign is avoided, or opponents may manipulate the signature market to drive up costs. One

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<sup>39</sup> Phone interview with Fred Kimball, Kimball Petition Management, Inc. February 10, 2012.

<sup>40</sup> *Dangerous Democracy? The Battle Over Ballot Initiatives In America* 116 (Larry Sabato, et al. eds., Rowman & Littlefield Publishers, Inc. 2001).

<sup>41</sup> Phone interview with Fred Kimball, Kimball Petition Management, Inc. February 10, 2012.

<sup>42</sup> *Dangerous Democracy? The Battle Over Ballot Initiatives In America* 119 (Larry Sabato, et al. eds., Rowman & Littlefield Publishers, Inc. 2001).

<sup>43</sup> Phone interview with Fred Kimball, Kimball Petition Management, Inc. February 10, 2012.

<sup>44</sup> *Dangerous Democracy? The Battle Over Ballot Initiatives In America*, 121 (Larry Sabato, et al. eds., Rowman & Littlefield Publishers, Inc. 2001).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

method to drive up signature costs for proponents of an initiative is to introduce counter-initiatives to the signature-gathering market.<sup>49</sup> Counter-initiatives are designed to force proponents of one initiative to split their resources to fight off a second initiative.<sup>50</sup> Not only will proponents need to spend money on viability of the counter-initiative (polling, focus groups, legal opinions, etc.), but the counter-initiative could be set with a high price-per-signature, leading signature gatherers away from the original initiative unless the price for the original initiative is raised as well.<sup>51</sup> Other considerations such as language in the counter-initiative that effectively undermines and trumps the original initiative or will force the proponents to spend more money on future ballot measure campaigns, thus creating incentives for a higher price-per-signature.<sup>52</sup>

The second method for raising the costs of initiatives is conducting anti-qualification, or field opposition campaigns.<sup>53</sup> Field opposition campaigns utilize grassroots networks to identify signature gatherers in the field and dispatch activists to dissuade potential signatories from signing the petition.<sup>54</sup> In some instances, this method can be effective in preventing a campaign from obtaining the required number of signatures. For instance, “Hands of Washington” a coalition of gay rights activists sent “Bigot Busters” to locations where petition gatherers were collecting signatures for an anti-gay rights initiative, and prevented the initiative from qualifying.<sup>55</sup> Unless field opposition campaigns are started early on in the process however, well-financed proponents will most likely be able to meet the required number of signatures.<sup>56</sup>

A November 2012 ballot measure in California is an example of a massive field opposition campaign. A yet-unnumbered ballot measure (as of February 2012) titled as “Prohibits political contributions by payroll deductions. Prohibitions on contributions to candidates. Initiative Statute” lists three committees in support and one in opposition.<sup>57</sup> The initiative is facing major opposition by the “Alliance for a Better California 2012, No on Paycheck Deception, Sponsored by Educators, Firefighters, School Employees, Health Care Givers, and Labor Organizations” a coalition of labor groups that collected over \$800,000 in 2011.<sup>58</sup> The alliance spent \$369,752.89 in 2011, mostly on research and legal services.<sup>59</sup>

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<sup>49</sup> *Dangerous Democracy? The Battle Over Ballot Initiatives In America*, 124 (Larry Sabato, et al. eds., Rowman & Littlefield Publishers, Inc. 2001).

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* at 125.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 122.

<sup>54</sup> *Id.* at 123.

<sup>55</sup> *Id.* at 122.

<sup>56</sup> Phone interview with Fred Kimball, Kimball Petition Management, Inc. February 10, 2012.

<sup>57</sup> Cal Access, CA Secretary of State, <http://cal-access.sos.ca.gov/Campaign/Measures/Detail.aspx?id=1338955&session=2011> (last visited Feb. 22, 2012).

<sup>58</sup> Cal Access, CA Secretary of State, <http://cal-access.sos.ca.gov/Campaign/Committees/Detail.aspx?id=1340076&session=2011&view=received> (last visited Feb. 22, 2012).

<sup>59</sup> Cal Access, CA Secretary of State, <http://cal-access.sos.ca.gov/Campaign/Committees/Detail.aspx?id=1340076&session=2011&view=expenditures> (last visited Feb. 22, 2012).



Terra Strategies, working with the California State Council of the Service Employee International Union (“SEIU”), conducted the field opposition campaign.<sup>60</sup> The California State Council of SEIU expenditure reports for 2011 show \$1,397,992 in total to Terra Strategies.<sup>61</sup> While Terra Strategies implemented the field opposition campaign to dispatch activists to provide counter-narratives and dissuade voters from signing the initiative, the proponents were able to obtain enough signatures to qualify for the November 2012 ballot.<sup>62</sup> In order to qualify however, “Californians Against Special Interests” spent \$935,886.50<sup>63</sup> and the “Citizen Power Campaign” spent \$235,000<sup>64</sup> for a total of \$1,170,886.50 to the petition management firm, Bader & Associates, Inc.

Field opposition campaigns can drastically increase the costs of initiatives; however, they may not prevent an initiative from qualifying altogether. Industry experts suggest a more effective strategy is to focus on counter-initiatives, possibly in other states, to consume the supply of professional signature gatherers.<sup>65</sup> Counter-initiatives that pay a premium fee will also give professional signature gatherers an incentive to focus their attention on the high-paying petitions and less on others.<sup>66</sup> Regardless of the fact that the initiative qualified, proponents raised their signature price, spent more time in the field, and paid a higher cost of trying to pass initiatives in California.<sup>67</sup>

## V. Judicial Cases On Paid Petition Gathering

Perhaps the most influential case on paid petition gathering is the 1988 Supreme Court decision of *Meyer v. Grant*. That case arose after the state of Colorado made the act of paying a petition circulator a felony.<sup>68</sup> The District Court held that the restriction on paid signature gatherers was not a restriction of proponents’ speech, and for the sake of argument, the burden of not allowing paid petition circulators ensured a broad base of volunteer support to warrant placement on the ballot and to protect the integrity of the political process.<sup>69</sup> The Tenth Circuit, en banc, reversed.<sup>70</sup> The Supreme Court agreed with the reversal of the District Court, relying on First Amendment protections of political expenditures as defined by *Buckley v. Valeo*, 424 U.S. 1

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<sup>60</sup> Phone interview with Jim Kottmeyer, Terra Strategies, February 10, 2012.

<sup>61</sup> Cal Access, CA Secretary of State, <http://cal-access.sos.ca.gov/Campaign/Committees/Detail.aspx?id=1067655&session=2011&view=expenditures> (last visited Feb. 22, 2012).

<sup>62</sup> *Qualified State Ballot Measures*, CA Secretary of State, <http://www.sos.ca.gov/elections/ballot-measures/qualified-ballot-measures.htm> (Accessed Feb. 2012).

<sup>63</sup> Cal Access, CA Secretary of State, <http://cal-access.sos.ca.gov/Campaign/Committees/Detail.aspx?id=1337891&session=2011&view=expenditures> (last visited Feb. 22, 2012).

<sup>64</sup> Cal Access, CA Secretary of State, <http://cal-access.sos.ca.gov/Campaign/Committees/Detail.aspx?id=1322497&session=2011&view=expenditures> (last visited Feb. 22, 2012).

<sup>65</sup> Phone interview with Fred Kimball, Kimball Petition Management, Inc. February 10, 2012.

<sup>66</sup> *Dangerous Democracy? The Battle Over Ballot Initiatives In America*, 122 (Larry Sabato, et al. eds., Rowman & Littlefield Publishers, Inc. 2001).

<sup>67</sup> Interview with Alma Hernandez, Political Director California State Council SEIU, February 8, 2012.

<sup>68</sup> *Meyer v. Grant*, 486 U.S. 414, 417 (West 2012).

<sup>69</sup> *Id.* at 418-419.

<sup>70</sup> *Id.* at 419.

(1976).<sup>71</sup> In *Buckley*, the Supreme Court held that speech as protected by the First Amendment in the form of political expression, including a political expenditure, is subject to “exacting scrutiny.”<sup>72</sup>

In scrutinizing the limitation on paid petition circulators in *Meyers*, the Supreme Court found that circulators persuade voters to believe that an issue is worth consideration by the electorate, making this type of communication “core political speech.”<sup>73</sup> By refusing to allow proponents of an initiative the ability to pay circulators, the Supreme Court found that Colorado was limiting the size of the audience that proponents could reach and limiting their ability to place the issue on the ballot.<sup>74</sup> The state’s argument that the burden on the proponent’s First Amendment right is acceptable because other avenues of expression existed was not persuasive to the Court.<sup>75</sup> The Court identified initiative proponent’s right to select a method of paying petition circulators by stating, “The First Amendment protects appellees’ right not only to advocate their cause but also to select what they believe to be the most effective means for so doing.”<sup>76</sup> Solidifying the expansion of *Buckley* to paid signature gathering, the Court stated that the principle of *Buckley* “applies equally to the discussion of political policy generally or advocacy of the passage or defeat of legislation.”<sup>77</sup> This landmark decision effectively established protection for the professionally-paid initiative signature gathering industry as political speech, spurring the multi-million dollar industry.

Another far-reaching Supreme Court case regarding paid signature gathering efforts is *Buckley v. American Constitutional Law Foundation*<sup>78</sup>. In this case, the Supreme Court heard several issues concerning paid signature gatherers. First, Colorado required circulators to be registered to vote.<sup>79</sup> In line with the Court’s decision in *Meyers*, requiring paid petition circulators to be registered to vote and hold residence in state had the effect of restricting the supply of circulators, which restricted the proponents’ political speech.<sup>80</sup> The State claimed the requirements aided in policing lawbreakers amongst circulators. However, circulators already signed affidavits authenticating their residency, thus ensuring State subpoena power, and the impact of forced voter registration on the supply of circulators did not justify the burden on political expression.<sup>81</sup>

The second issue discussed in *Buckley* dealt with Colorado’s requirement that paid circulators wear identification badges so that the names of circulators could be known to help fight petition fraud.<sup>82</sup> The Court reaffirmed that the First Amendment’s guarantee of free speech protects anonymous political speech.<sup>83</sup> Again, the affidavits that circulators sign sufficiently identify the circulators to help prevent or prosecute fraud, and evidence from the District Court

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<sup>71</sup> *Id.* at 420.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* at 421-422.

<sup>74</sup> *Id.* at 423.

<sup>75</sup> *Id.* at 424.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.* at 428.

<sup>78</sup> *Buckley v. American Constitutional Law Foundation* 525 U.S. 182, 193 (West 2012).

<sup>79</sup> *Id.* at 193.

<sup>80</sup> *Id.* at 194.

<sup>81</sup> *Id.* at 197.

<sup>82</sup> *Id.* at 198.

<sup>83</sup> *Id.* at 199.

showed that wearing name badges discouraged participation in the petition circulation process.<sup>84</sup> The Court also stated that the need for anonymity is at its greatest at the time of persuading a voter to sign a petition.<sup>85</sup> Colorado lacked sufficient cause to burden the proponents' Constitutional rights.<sup>86</sup>

Finally, the Supreme Court also reviewed Colorado's requirement that paid circulators report their name, address and total amount paid in a monthly disclosure.<sup>87</sup> The Supreme Court recognized the valid State interest of disclosure of contributors to political campaigns, so that electors could evaluate "those who seek their vote."<sup>88</sup> While respecting the State interest of political disclosures, the Court found that targeting paid circulators and leaving volunteer circulators unaffected failed exacting scrutiny<sup>89</sup>, and leaving the reports showing contributor activity protected the check against "domination of the initiative process by affluent special interest groups."<sup>90</sup> Colorado had not proved that the three regulations furthered any substantial State interest under exacting scrutiny that outweighed the burden the State imposed on political speech, which is why the Court rejected the restraints placed on the initiative process.

In 2006, the 9th Circuit Court of Appeals upheld a limit banning the practice of petition management firms paying on a fee-per-signature basis in Oregon. In *Prete v. Bradbury*<sup>91</sup>, the Court of Appeals reviewed the effect that Measure 26, an Oregon constitutional amendment that banned the practice of paying petition circulators for each signature gathered.<sup>92</sup> The appellate court followed the principles provided by the *Meyers* and *Buckley* decisions by reaffirming petition gathering as "core political speech" and that states have "leeway to protect the integrity and reliability of the initiative process."<sup>93</sup> In *Meyers*, the court recognized the right to pay petition circulators, as it was political speech protected by the First Amendment.<sup>94</sup> The issue in *Prete*, however, was not whether to allow paid petition circulators, but rather how petition circulators would be paid.<sup>95</sup>

In *Meyers*, the prohibition on paid petition circulators was a significant or severe burden while in *Prete* the Court found Plaintiffs did not prove a severe burden since paid petition circulators could be paid in other methods. Additionally, the Court stated that a lesser burden was "reasonably related and justified by the state's interest in preventing fraud in the initiative process."<sup>96</sup> The Plaintiffs were not able to prove any effect on the supply of paid petition circulators in Oregon, nor could the Plaintiffs prove an effect on the cost of signatures or any adverse effects on signature validity rates if petition circulators were paid in a non fee-per-

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<sup>84</sup> *Id.* at 200.

<sup>85</sup> *Id.* at 199.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.* at 201.

<sup>88</sup> *Id.* at 202.

<sup>89</sup> *Id.* at 204.

<sup>90</sup> *Id.* at 202.

<sup>91</sup> *Prete v. Bradbury* 438 F.3d 949, 952 (West 2012).

<sup>92</sup> *Id.*

<sup>93</sup> *Id.* at 961.

<sup>94</sup> *Meyers*, 486 U.S. at 428.

<sup>95</sup> *Prete*, 438 F.3d at 962.

<sup>96</sup> *Id.* at 963.

signature payroll scheme.<sup>97</sup> On the other hand, the defense was able, under a burden of the “lesser variety,” rather than the exacting scrutiny of *Meyers*, to show an “important regulatory interest in preventing fraud and forgery,” and the Court affirmed the ruling, holding the constitutional amendment banning fee-per-signature payment methods as not contrary to the First Amendment.<sup>98</sup>

## VI. Conclusion

The tools of direct democracy were added to the California constitution in an era following massive corporate corruption of the state and local government. The Progressive movement sought out a revised government where the people would be able to utilize the recall, referendum, and initiative, to circumvent a corrupt or neglectful Legislature. However, even at the time of the Progressive Revolution, it was a large burden for a small or volunteer-based political committee to gather the necessary signatures to use the initiative process.

The initiative process in California is a long, expensive, and extensive process that may be just as difficult, if not more, than traditional legislating. The requirements of initiatives, combined with the amount of political expenditures on signature gathering campaigns (both in support and opposition), and the judicial balance between protecting political speech and state’s police powers make any initiative undertaking incredibly difficult. This daunting labyrinth says nothing about the larger political environment and post-qualification campaign that surrounds the initiative process.

That environment suggests that proponents ideally will acquire proper advice on initiative language, both legally and through polling or focus groups, and be prepared for legal issues surrounding title and summary of the initiative to ensure the time and money invested into the signature gathering is worthwhile. Furthermore, proponents usually will face an intense ballot measure campaign after collecting signatures to have the measure pass into law. This only exacerbates the costs and challenges for “the people” to utilize the initiative process. Although, taking into perspective the level of organization the Progressive Party had when adding these tools of direct democracy, perhaps it is fair to say that the difficulties in the initiative process serve as a check against rampant tyranny of small political minorities legislating above “the people’s” elected representatives.

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<sup>97</sup> *Id.* at 964-966.

<sup>98</sup> *Id.* at 971.