



POLICY BRIEF

Initiative 517: to Change Washington's Initiative and Referendum process

Jason Mercier
Director, Center for Government Reform

September 2013

Key Findings

1. *I-517 would make several changes to state law concerning signature gathering for initiatives and referendums.*
2. *Of the states that allow ballot initiatives, Washington has a shorter period for signature gathering; I-517 would increase this time.*
3. *I-517 would assure the people's right to vote on initiatives that submit a sufficient number of valid voter signatures.*
4. *It is already against the law to interfere with signature gathering; I-517 would change the current penalty in law.*
5. *I-517 would allow broad access to "public buildings" to gather signatures but the measure doesn't define what a "public building" is.*
6. *I-517 includes a broad provision to allow signature gathering on private property.*
7. *Passage of I-517 would likely lead to lengthy court battles to determine whether its provisions infringe on constitutional property rights.*



POLICY BRIEF

Initiative 517: to change Washington's Initiative and Referendum process

Jason Mercier
Director, Center for Government Reform

September 2013

5	<i>Introduction</i>
5	<i>Text of Initiative 517</i>
5	<i>Legislature did not approve or alter Initiative 517</i>
6	<i>Comparison of current requirements and changes proposed by Initiative 517</i>
6	<i>Increasing the time to collect signatures</i>
7	<i>Signature gathering on public property</i>
8	<i>Access to private property</i>
10	<i>Are new legal protections needed for those who gather and sign petitions?</i>
12	<i>Putting all initiative measures on the ballot</i>
13	<i>Conclusion</i>

Initiative 517: to change Washington's Initiative and Referendum process

by Jason Mercier
Director, Center for Government Reform

Introduction

In November the people of Washington will vote on Initiative 517. The measure would make several changes to state law concerning signature gathering for initiatives and referendums. Initiative 517 would increase the time period for gathering signatures, require that proposals which have an adequate number of valid signatures must proceed to the ballot, change the penalties for interfering with signature gathering, and increase the number of locations, both public and private, where signature gathering can occur.

Text of Initiative 517

According to the ballot title for Initiative 517:¹

“This measure would set penalties for interfering with or retaliating against signature-gatherers and petition-signers; require that all measures receiving sufficient signatures appear on the ballot; and extend time for gathering initiative petition signatures.”

Here is the summary prepared for the legislature of the changes proposed by Initiative 517:²

- Changes the time period for filing an initiative from 10 months to 16 months prior to the election.
- Changes violations for interfering with signature gathering from a gross misdemeanor to a misdemeanor, and such violations are subject to anti-harassment procedures, civil penalties, and prosecution for disorderly conduct.
- Permits signature gathering on sidewalks and walkways in front of store entrances and exits, and inside or outside public buildings.

Legislature did not approve or alter Initiative 517

Initiative 517 was filed as an initiative to the Legislature instead of as a direct initiative to the people. Under Article 2, Section 1 of the Washington Constitution citizens may propose initiatives to the people or to the Legislature. If an initiative to the Legislature is certified lawmakers can approve, reject, or amend the proposal. Since lawmakers did not act on the proposal, the measure was forwarded to the

1 “Proposed Initiatives to the Legislature – 2012,” Office of the Secretary of State, at <http://www.sos.wa.gov/elections/initiatives/Initiatives.aspx?y=2012&t=1>

2 “Bill Report of HI 517,” House Government Operations & Elections Committee, 2013, at <http://apps.leg.wa.gov/documents/billdocs/2013-14/Pdf/Bill%20Reports/House/INITIATIVE%20517%20HBA%20GOE%2013.pdf>

general election ballot for the people to consider. Although the state Senate held a public hearing and took committee action on Initiative 517 during the 2013 regular session, the full Senate and Legislature did not, which is why voters are being asked to vote on the proposal.

Comparison of current requirements and changes proposed by Initiative 517

Here is a comparison of current law and the changes proposed by Initiative 517:

	Current Law	Under I-517
Time to gather signatures	10 months (6 months for initiatives to the people)	16 months (12 months for initiatives to the people)
Signature gathering on private property	Limited to areas deemed to be a “public square,” such as a large shopping mall with a history of public solicitation access.	In front of the exits and entrances of any store regardless of size or prior public solicitation access. “Store” is not defined.
Signature gathering on public property	No standard rule for signature gathering on public property, though most public entities provide some opportunity for signature gathering with certain restrictions.	Inside or outside all public buildings, including government agencies, higher education institutions, K-12 schools, sports stadiums, convention centers and fairs. “Public building” is not defined.
Punishment for interfering with signature gathering	A gross misdemeanor punishable by up to 364 days in jail and/or a fine of up to \$5,000 for interfering with signature gathering process.	A misdemeanor punishable by up to 90 days in jail and/or a fine up to \$1,000 for harassing those circulating or signing a petition.
Treatment of submitted petitions	Only those proposals with an adequate number of valid signatures and deemed to be within the initiative powers of a jurisdiction can proceed to the ballot.	All state and local proposals with an adequate number of valid signature in jurisdictions that allow initiatives would proceed to the ballot.

Increasing the time to collect signatures

Of the states that allow ballot initiatives, Washington tends to have a shorter period for signature gathering. Here is a list of the states that allow initiatives, with the time they permit for gathering signatures:³

- Alaska – 1 year
- Arizona – 2 years
- Arkansas – Unlimited (though under election guidelines two years in practice)

³ Email to author from Wendy Underhill, National Conference of State Legislatures, July 22, 2013, available on request.

- California – 150 days
- Colorado – 6 months
- Florida – 4 years
- Idaho – 18 months
- Illinois – 2 years
- Maine – 18 months
- Massachusetts – 120 days
- Michigan – 180 days
- Mississippi – 1 year
- Missouri – 18 months
- Montana – 1 year
- Nebraska – 1 year
- Nevada – 11 months
- North Dakota – 1 year
- Ohio – Unlimited
- Oklahoma – 90 days
- Oregon – 2 years
- South Dakota – 1 year
- Utah – 1 year
- Washington – 6 months (to the people); 10 months (to the Legislature)
- Wyoming – 18 months

Under Initiative 517, Washington would move from one of the shortest time periods (six months) to the middle of the scale (12 months).

A bill was introduced in the Senate (SB 5499) during the 2013 Regular Session to increase the signature gathering period to 20 months, but it was not acted on by the full Senate.

Signature gathering on public property

Initiative 517 would allow signature gathering “inside or outside public buildings such as public sports stadiums, convention/exhibition centers, and public fairs.”

Public buildings, however, are not defined by the measure. According to the Secretary of State’s office, Department of Enterprise Services, and the Attorney General’s office, there is currently no standard rule for signature gathering on public property, although most public entities provide some opportunity for signature gathering with certain restrictions.

The Office of Superintendent of Public Instruction (OSPI) is concerned about the language proposed in Initiative 517. According to Nathan Olson, communications manager for OSPI:⁴

⁴ Email to author from Nathan Olson, July 29, 2013, available on request.

“I-517 is neither clear nor definitive on whether schools are covered as a public space. The Secretary of State’s office said that rules regarding signature gathering on private property have been developed through case law; they expect the same to happen with public property, should the initiative pass. Both agencies anticipate litigation – possibly significant amounts – if the I-517 passes.”

When asked if K-12 schools would be considered “public buildings” under I-517, the Yes on I-517 campaign said:⁵

“If it is open to and paid for by the public, yes but obviously no voters in K-12 (kindergartners do not vote) but at public colleges, if it is open to and paid for by the public, yes .”

A legal analysis by former Supreme Court Justice Phil Talmadge requested by the No on I-517 campaign came to the following conclusion:

“In my opinion, given the liberal interpretation directive in Section 6 of Initiative 517 and the Initiative’s concern about private interference with signature gathering, a public building is any building open to the public and extends not only to buildings owned by governmental agencies, but private property in which the public is permitted to enter.”

Due to the lack of definition of “public building” in Initiative 517 it is likely the guidelines for the interpretation of this provision will require additional guidance from the courts or lawmakers if Initiative 517 is adopted.

Access to private property

One of the most contentious aspects of Initiative 517 is how its provisions would affect private property rights.

Former Attorney General Rob McKenna is concerned Initiative 517 does not comply with constitutional property rights protections. According to McKenna:⁶

“I-517 as written threatens property owners by guaranteeing signature gatherers unprecedented access to their buildings and grounds. The initiative and referendum processes are crucial to voter control over their state government—but private property rights are essential to individual liberty.”

Former State Auditor Brian Sonntag has expressed similar concerns. Sonntag notes:⁷

“My issue is not expanding opportunities for initiative supporters. Rather, complaints over time from shoppers as well as store management regarding aggressive signature gathering on private property. These concerns are real and need to be considered. People have described harassment tactics that border on assault.”

5 Email to author from Yes on I-517 Campaign, June 20, 2013, available on request.

6 Email to author from Rob McKenna, June 25, 2013, available on request.

7 Email to author from Brian Sonntag, June 25, 2012, available on request.

In a 1989 decision the State Supreme Court upheld an earlier ruling that free speech considerations do not overcome property rights:⁸

“The notion that the free speech provision of the state constitution creates a right that can be wielded by one private individual against another constitutes nothing short of a radical departure from this well understood and accepted constitutional doctrine . . . the holding in Alderwood was simply that people have a right under the initiative provision of the Constitution of the State of Washington to solicit signatures for an initiative in a manner that does not violate or unreasonably restrict the rights of private property owners. We expressly do not here disturb that holding.”

Initiative 517 includes a broad provision to allow signature gathering on private property. According to Section 2 of the Initiative:⁹

“Signature gathering and petition signing for an officially filed and processed initiative or referendum shall be a legally protected activity on public sidewalks and walkways and all sidewalks and walkways that carry pedestrian traffic, including those in front of the entrances and exits of any store, and inside or outside public buildings such as public sports stadiums, convention/exhibition centers, and public fairs.”

Section 2 of the Initiative continues:

“Law enforcement must vigorously protect the rights of the people who want to sign initiative and referendum petitions, and the people who collect voter signatures on initiative and referendum petitions, to ensure they are not inhibited or restricted in any way.”

Currently, the requirement to allow signature gathering on private property is a gray area: “Large regional shopping mall” – yes; all commercial stores – no.¹⁰ Initiative 517 would expand signature gathering to all stores regardless of size. In addition, the Initiative would add new language to state law ensuring signature gatherers are “not inhibited or restricted in any way.” These provisions are at the heart of business and property owner concerns about Initiative 517.

The Yes on I-517 campaign argues the ballot measure would not change anything for private businesses:¹¹

“I-517 supports democracy, promotes respectful speech, and stops bullying. I-517 would deter initiative opponents from doing this [harassment]. The courts have already ruled that signature collection, including on sidewalks and walkways, is subject to reasonable time, place, and manner restrictions and I-517 doesn’t

8 “Southcenter Joint Venture v. NDPC,” Washington State Supreme Court, October 19, 1989 at <http://www.find-laws.com/courtcases/view/washington-113-wn2d-413-southcenter-joint-venture-v-ndpc>

9 “Text of Initiative 517,” 2013, at http://sos.wa.gov/_assets/elections/initiatives/FinalText_269.pdf

10 Letter from Washington Deputy Solicitor General Jeffrey Even to Rep. Skip Priest, May 2, 2007 at http://www.sos.wa.gov/elections/pdf/AGO_on_Political_Activity_at_Shopping_Centers.pdf

11 Email to author from Yes on I-517 Campaign, July 11, 2013, available on request.

change that. It simply discourages bullying. I-517 doesn't say that initiative bullies have to stand 25 feet away; it simply says if they maintain a presence within 25 feet of the signature gathering process, they need to be civil and respectful.”

The No on I-517 campaign, however, argues Initiative 517 would have much larger affect on property rights:¹²

“Initiative 517 takes away the right of customers to enter and exit a retail store without the interference of a petition signature gatherer. The store owner will no longer have the right to control this activity and provide a safe and enjoyable experience for customers on their private property within a 25 foot buffer of the signature gatherer. Further, public sports stadiums including high school stadiums, convention centers and other facilities that host public events are also stripped of their rights to provide a safe and orderly environment within this 25 foot buffer zone protecting signature gatherers.”

Based on these strong and conflicting opinions, the question of Initiative 517's affect on property rights would likely be resolved in court.

Are new legal protections needed for those that gather and sign petitions?

One of the major purposes of Initiative 517 is to provide harassment protection for signature gatherers. The Yes on I-517 campaign points to a 1995 letter by former Secretary of State Ralph Munro that says (in-part):¹³

“As the chief elections officer of the state, I am increasingly concerned about complaints that the rights of our citizens to circulate and sign initiative and referendum petitions are being interfered with. I am writing today to call your attention to the situation, and to an existing law on the subject, as well as to suggest that you consider distributing this information to law enforcement agencies within your county.

Last summer, several initiative sponsors complained to this office that they had been harassed, intimidated and even assaulted by initiative opponents while collecting petition signatures. This year we have again received several complaints. I am very concerned about what may be a growing trend toward using harassment to undermine the rights of the people to the democratic process.”

The No on I-517 campaign, however, says:¹⁴

12 Email to author from No on I-517 Campaign, July 16, 2013, available on request.

13 Letter from Secretary of State Ralph Munro to King County Prosecutor Norm Maleng, May 26, 1995, at <http://yeson517.com/wp-content/uploads/2013/01/Munro-letter-Page1-2.pdf>

14 Statement prepared for the voters' guide by the No on I-517 campaign, 2013, at <https://www.washingtonpolicy.org/sites/default/files/No%20517.pdf>

“Former Secretary of State Sam Reed said that most complaints received in his office were from citizens and businesses who were being harassed by signature gatherers and that laws already exist to protect signature gatherers’ safety.”

According to the Secretary of State’s office statistical information on harassment against or by signature gatherers is not available. Katie Blinn, Co-Director of Elections says:¹⁵

“We do receive many calls each spring from voters who are complaining about signature gatherers harassing them, and signature gatherers misstating the text of the measures. We also receive inquiries from store owners/managers asking how they can remove the signature gatherers from their property.”

The fact that the complaints appear to have been reversed may be due to the success of the 1995 Munro letter, which informed law enforcement about the existing statute protecting the signature gathering process - RCW 29A.84.250 (4) (formerly RCW 29.79.490(4)):¹⁶

“Every person is guilty of a gross misdemeanor who . . . Interferes with or attempts to interfere with the right of any voter to sign or not to sign an initiative or referendum petition or with the right to vote for or against an initiative or referendum measure by threats, intimidation, or any other corrupt means or practice;”

Notwithstanding the current gross misdemeanor charges that exist for interfering with signature gathering, Section 3 of Initiative 517 would add the following to the state’s definition of disorderly conduct (RCW 9A.84.030):¹⁷

“(e) Interferes with or retaliates against a person collecting signatures or signing any initiative or referendum petition by pushing, shoving, touching, spitting, throwing objects, yelling, screaming, being verbally abusive, blocking or intimidating, or other tumultuous conduct or maintaining an intimidating presence within twenty-five feet of any person gathering signatures or any person trying to sign any initiative or referendum petition.”

This type of activity would be punishable as a misdemeanor, a lesser penalty than the existing gross misdemeanor punishment for interfering with signature gathering.

With it already being a gross misdemeanor to interfere with the signature gathering process, it is unclear how the new disorderly conduct misdemeanor language will change the situation. It is already against the law to interfere with signature gathering. The proposed new language would provide additional examples of what constitutes interference, however, as well as making it clear there would be a protected 25-foot buffer.

¹⁵ Email to author from Katie Blinn, June 21, 2013, available on request.

¹⁶ RCW 29A.84.250 (4) at <http://apps.leg.wa.gov/rcw/default.aspx?cite=29A.84.250>

¹⁷ RCW 9A.84.030 at <http://apps.leg.wa.gov/rcw/default.aspx?cite=9A.84.030>

Putting all initiative measures on the ballot

Six counties and 59 cities in Washington provide the right of local initiative to their citizens.¹⁸ Some initiative proposals at the local level, however, have been blocked from being put on the ballot for various legal reasons. Initiative 517 would not expand the number of jurisdictions that have local initiatives, but it would ensure that in those that do, petitions with an adequate number of valid signatures could not be blocked from being put before voters.

In Washington the people, with few exceptions, are considered co-equals with lawmakers in exercising the power of proposing or rejecting new laws. Article 2, Section 1 of Washington's Constitution states, before the Legislature is granted any powers: "The first power reserved by the people is the initiative."¹⁹

This fundamental constitutional power complements Article 1, Section 1 which says:

"All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights."

Despite this, some judges have ruled that in certain circumstances local initiative proposals, even those with the required number of valid signatures, are not allowed to go on the ballot. Section 4 of Initiative 517 would change this. It says in part:

"Any state or local initiative for which sufficient valid voter signatures are submitted within the time period required must be submitted to a vote of the people at the next election date. The people are guaranteed the right to vote on any initiative that obtains the required number of valid voter signatures in the required time frame. Government officials, both elected and unelected, must facilitate and cannot obstruct the processing of any initiative petition and must facilitate and cannot obstruct the public vote of any initiative."

This language is identical to the text of SB 5347 in assuring the people's right to vote on initiatives that submit a sufficient number of valid voter signatures. SB 5347 was considered by the Senate this year but not approved.

It is important to note that the bills drafted by lawmakers generally do not go through a pre-approval legal review before they can be acted on. This is true also for statewide initiatives. The state Supreme Court has made it clear:²⁰

"Preelection review of initiative measures is highly disfavored. The fundamental reason is that 'the right of initiative is nearly as old as our constitution itself, deeply ingrained in our state's history, and widely revered as a powerful check

18 "Cities and Counties That Have Powers of Initiative and Referendum," Municipal Research and Service Center of Washington, July 2012, at <http://www.mrsc.org/subjects/governance/initreflist.aspx>

19 "Washington State Constitution" at <http://www.leg.wa.gov/LAWSANDAGENCYRULES/Pages/constitution.aspx>

20 "Futurewise 775NW V. Reed," Washington State Supreme Court, September 7, 2007 at <http://caselaw.findlaw.com/wa-supreme-court/1321779.html>

and balance on the other branches of government.’ Given the preeminence of the initiative right, preelection challenges to the substantive validity of initiatives are particularly disallowed.

The Court went on to say that judges should not give advisory opinions about proposals, whether legislative bills or popular initiatives, before they become law, calling it “unwarranted judicial meddling with the legislative process.” The Court added, “... preelection review could unduly infringe on the citizens’ right to freely express their view to their elected representatives.”

However, the state Supreme Court has also found that for local initiatives, some measures can be prohibited from reaching the ballot, even if the initiative has enough signatures to go before voters.²¹

Initiative 517 would change this exception by ensuring that all ballot measures that receive enough valid signatures go before voters for consideration. Court challenges after the initiative is enacted, as with laws passed by lawmakers, would still be permitted.

In this section Initiative 517 addresses a real problem; courts blocking local initiatives from going to voters. Although citizens are equal to their elected representatives concerning the power to propose or reject laws, this problem would remain if Initiative 517 is defeated. In that case lawmakers may want to consider a proposal similar to SB 5347.

Conclusion

The people’s right of initiative and referendum should be robustly protected, but signature gathering rules should not be expanded to infringe on the private property rights of business owners who do not want to engage in a given political debate. Based on the text of Initiative 517 and the lack of definition of important terms, such as “store” and “public building,” passage of the Initiative would likely lead to lengthy court battles to determine whether its provisions infringe on constitutional property rights.

In the meantime, property owners would be uncertain about whether they could legally prevent signature gatherers from approaching customers entering or leaving their places of business.

It is already against the law to interfere with the signature gathering process. If a problem continues to persist the solution would be greater enforcement of the existing law, rather than enacting an expanded law. It is unclear how adding new restrictions in

²¹ “Mukilteo Citizens For Simple Government v. City of Mukilteo,” Washington State Supreme Court, March 8, 2012 at <http://statecasefiles.justia.com/documents/washington/supreme-court/84921-8-0.pdf?ts=1370456796>

law would lead to better enforcement of the current legal protections. The fact that lawmakers proposed SB 5499 (increasing time for signature gathering) and SB 5347 (initiatives with valid signatures proceeding to ballot), however, indicates lawmakers are aware of the concerns expressed by supporters of Initiative 517. These changes are relatively non-controversial and would likely be considered again by lawmakers if voters decide to reject Initiative 517.

Washington Policy Center is a non-partisan, independent research organization in Washington state. Nothing here should be construed as an attempt to aid or hinder the passage of any legislation before any legislative body.

Published by
Washington Policy Center
© 2013

washingtonpolicy.org
206-937-9691

Jason Mercier is Director of the Center for Government Reform at Washington Policy Center. He is a contributing editor of the Heartland Institute's *Budget & Tax News*, serves on the board of the Washington Coalition for Open Government, and was an advisor to the 2002 Washington State Tax Structure Committee. In June 2010, former Governor Gregoire appointed Jason as WPC's representative on her Fiscal Responsibility and Reform Panel. Jason holds a Bachelor's degree in Political Science from Washington State University.

