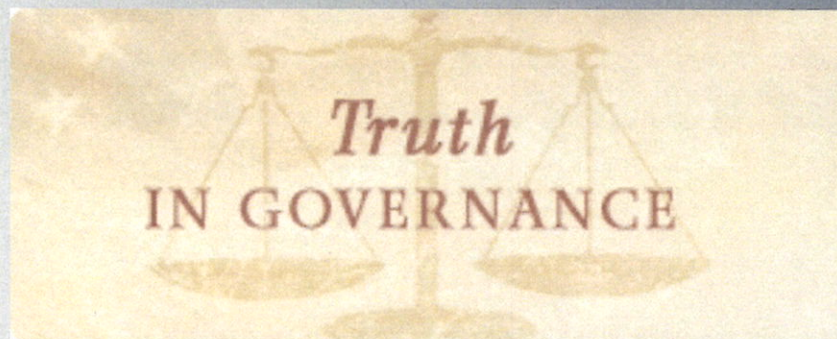


Is the “F-Word” Overused?



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A Truth in Governance Report on Petition Signature Fraud


Executive Summary

In recent years, widespread allegations of petition signature fraud have been used as justification for a number of legislative changes to the citizen initiative process. These changes have in turn sparked controversy, culminating in court challenges over regulations that initiative proponents contend are unconstitutionally restrictive. As a result, a number of these laws have already been enjoined by federal courts or overturned as violating the First Amendment rights of citizens.

In hopes of better informing the debate over initiative and petition process reform, this *Truth in Governance Report* seeks to assess the degree to which signature fraud can be verified in the 26 states in which citizens enjoy a statewide petition process for placing initiatives and/or referendums on the ballot.

In the 20 states that responded to re-

quests for information under state open records and freedom of information laws, there were 17 cases of individuals convicted of forgery or fraud in the initiative and referendum petition process in five states between 1999 and 2008. The rarity of convictions for fraud or forgery in the initiative petition process (1.7 per year) only tells us so much, but the data certainly suggest that to the extent there is a problem with petition fraud, the first step would be to enforce laws already on the books.

Though more research needs to be done, the evidence thus far shows that cases of verified fraud or forgery are not pervasive in initiative or referendum petitions. Furthermore, many of the “reforms” passed by state legislatures to address fraud have shown no positive results. Virtually all the verified instances of fraud have been found in states with such laws in place. 

Is the “F-word” Overused?

A Truth in Governance Report on Petition Signature Fraud

Petition signature fraud is everywhere, or so one might conclude from glancing at media clippings. The headline of a 2008 Associated Press story in Oregon reads: “Group alleges petition signatures riddled with fraud.” North Dakota’s *Bismarck Tribune* hollered that same year: “N.D. tax measure approved for ballot despite possible fraud.” In 2008, a Colorado website reported, “Woman alleging fraud a prominent diversity activist,” which was followed the next year by a *Denver Post* headline: “[Governor] Ritter signs bill targeting petition fraud.”

With increasing frequency, the “F-word” — fraud — is hurled at efforts by citizens to put initiatives or people’s veto referendums on the ballot.

The consequences go well beyond the success or failure of any given ballot measure. In recent years, allegations of fraud have been used as justification for a number of legislative changes to the citizen initiative process.

These legislative acts have in turn sparked controversy, culminating in court

challenges over regulations initiative proponents contend are unconstitutionally restrictive. As a result, a number of these laws have already been enjoined by federal courts or overturned as violating the First Amendment rights of citizens.

Fraud is a serious charge. But it is a core American principle that charges must be verified, that people remain innocent until proven guilty. In hopes of better informing the debate over initiative petition reform, this *Truth in Governance* report seeks to assess the degree to which signature fraud has been verified in the 26 states where citizens enjoy a statewide petition process for placing initiatives and/or referendums on the ballot.

The data from 1999 through 2008, a ten-year period, may surprise you. The 20 states that have thus far substantially responded to requests for information under state open records and freedom of information laws, reported a total of 17 cases, all in just five states, wherein individuals petitioning for initiatives or referendums were convicted of forgery or fraud. For context,

in these same states during this same period, more than 81 million petition signatures were submitted to election officials — meaning an average of less than one fraud conviction for every 4.7 million petition signatures submitted.

Most of the states that have thus far provided substantial information (15 of 20) had no cases of verified fraud during this entire ten-year period.

It should be noted that six states have not substantially complied with the request for information, accounting for 23 percent of the states being surveyed. Meanwhile, though California’s Secretary of State has not reported any cases of verified fraud, the office did disclose that there are currently cases under investigation.

Nonetheless, such a relatively low number of convictions in so few states over a decade indicates that the F-word may indeed have been overused.

Still, any fraud is too much fraud. Moreover, there may be fraud that goes undetected or unprosecuted.

Whatever the actual degree of fraudulent behavior, the data certainly suggests that to the extent there is a problem with petition fraud, a first step might be to more aggressively enforce the laws currently on the books. After reviewing testimony and evidence about fraud in a recent court case in Colorado, Federal Judge Philip Brimmer found that “very few resources have been devoted to enforcing such laws and very few prosecutions have taken place,” declar-

ing, “It is reasonable to conclude that more enforcement would lead to more deterrence of fraud and therefore less fraud in the ballot initiative process.”

In that case, *Independence Institute v. Buescher*, Judge Brimmer imposed a preliminary injunction against enforcing a restriction that no more than 20 percent of pay for circulating a petition can be tied to how many signatures are collected. The judge concluded that “pay-per-signature compensation is no more likely than pay-per-hour compensation to induce fraudulent signature gathering or to increase invalidity rates.”

Eight states ban or restrict payment by the signature for initiative campaigns. Federal courts have struck down such

bans in five different states, not counting the likelihood that Colorado’s law will be ultimately overturned. Fifteen states refuse to count signatures collected by non-resident circulators. Banning out-of-state petition circulators has been ruled unconstitutional in ten different states. In each case, courts have found that such restrictions infringe on First Amendment rights by reducing the amount of political speech available to initiative supporters.

A 2008 decision by a unanimous three judge panel of the federal 10th Circuit Court of Appeals struck down an Oklahoma law mandating that petition circulators be state residents, concluding that “the record does not support the district court’s conclusion that non-resident circulators as a class engage in fraudulent activity to a greater

Verified fraud or forgery is not at all pervasive in initiative petition campaigns. There was only one fraud conviction for every 4.7 million petition signatures submitted.

degree than resident circulators.”

The vast majority of the verified cases of fraud or forgery (during this period) were reported by states that limited petition circulation to state residents (Idaho, Maine, Ohio, North Dakota), and/or banned payments to petition circulators based on the number of signatures they collect (Ohio, North Dakota). Only Nebraska, with a single instance of fraud, had neither a residency requirement nor a ban on per-signature payments during this period. (Nebraska now has both laws, passed by its unicameral legislature in 2009.) These two restrictions are popular “reforms” enacted by state legislators to prevent fraud, but both have been found unconstitutional in a number of federal courts, and now appear to correlate with increased fraud.

An astonishing 94 percent of verified cases of fraud (16 of 17) concerned state residents, not circulators from another state. Additionally, the state with the most fraud convictions — North Dakota — prohibits paying petition circulators by the signature. A pay-per-signature ban in Ohio — which also had several fraud cases — was ruled unconstitutional in 2008. Whether this correlation means that residency requirements and restrictions on per-signature pay tend to increase fraudulent behavior, it certainly seems clear that these legislative measures do little if anything to reduce such activity.

More research needs to be done, but thus far the evidence indicates that verified fraud or forgery is simply not at all perva-

sive in initiative or referendum petitions. Moreover, enforcing existing laws against fraud and forgery is likely to be a far more effective approach than legislation that has already been enacted or is being debated in many initiative petition states.

What is Petition Signature Fraud?

Twenty-six states allow citizens to place state laws, people’s veto referendums or amendments to the state constitution on their statewide ballot by collecting a sufficient number of signatures from registered voters on a petition. By signing such a petition, a voter simply indicates that he or she would like the opportunity

Very few resources have been devoted to enforcing laws against fraud and very few prosecutions have taken place.

— Federal Judge Philip Brimmer

to have a statewide vote on the matter.

Even with public support, qualifying a ballot measure through the petition process is difficult, requiring tens of thousands of voter signatures in the smallest population states and hundreds of thousands in larger states — over a million total signatures are usually submitted to state officials to secure a proposition’s place on the ballot in California and Florida.

By requiring a certain minimum number of signatures before placing a question on the ballot, state governments ensure that only issues with a reasonable degree of public interest appear on the ballot. But signature requirements are high enough that the vast majority of attempts to put questions on statewide ballots by petition fail to garner enough signatures.

When petition fraud or forgery occurs, it can deceive state officials into believing



there is more support for a question appearing on the ballot than is actually the case. It can also mislead initiative proponents into believing they have enough valid signatures on a petition, when they do not, potentially undermining the success of their campaign. Even when initiative supporters catch signatures they believe are fraudulent, they have often already paid for them and are thus still defrauded.

Therefore, it is in the interest of state governments, voters and initiative leaders to establish clear rules and open, transparent and diligent enforcement of those rules against fraudulent activity.

It is important, however, to distinguish *alleged* fraud from *actual* fraud. An allegation must not be equated with a conviction.

Oftentimes, the F-word is misapplied to mix-ups in paperwork, to obtaining more invalid signatures than usual, or to accidental violations of petition laws that cannot qualify as attempts to deceive elections officials about the validity of signatures. These are, instead, honest mistakes, not attempts to defraud.

Examples of fraudulent actions include forging signatures, paying voters to sign, coercing voters into signing, and tricking people into signing a petition. It is also fraud to fill out a legal petition form in a purposely dishonest, misleading way — whether done by a petition circulator or a notary public or a campaign worker.

Forging a signature on a ballot petition or fraudulently collecting a signature is a purposeful attempt to deceive elections of-

ficials or initiative proponents into accepting a signature as that of a registered voter who supports the issue in question appearing on the ballot, when that is untrue.

Method

Every one of the 26 states that have some form of statewide initiative or referendum has laws against forgery of petition signatures or fraud in the process. The best way to measure the extent of the problem is to discover the number of verifiable instances of fraud, i.e. those prosecuted *and convicted* under these laws.

If fraud is occurring and authorities rightly seek to combat it, they should be making full use of the existing laws to go after the perpetrators.

Using state open records, or "Sunshine" laws, Citizens in Charge Foundation sent a formal request to officials in the 26 states with an initiative and/or referendum process and asked for the following information:

"Pursuant to the state open records law, [citation of open record statute], I write to request access to and a copy of records of any and all instances in which your office and a court of law have verified forgery or fraud of signatures submitted for initiatives and referenda between 1999-2008. I would also like to know how many total signatures for initiatives and referenda were submitted for each year during the same time period. If your agency does not maintain these public records, please let me know who does and include the proper custodian's name and address."

If fraud is occurring, authorities should be making full use of the existing laws to go after the perpetrators.



Because states differ as to which office is responsible for verifying signatures or prosecuting election crimes, Citizens in Charge Foundation sent requests to both Secretaries of State and Attorneys General. In some cases, those offices then referred us to others, such as state boards of elections or local officials, who would likely retain records of petition signature fraud.

In order to differentiate between instances where fraud was merely alleged and where it had actually been proven, we used the justice system as our guide. By asking for instances where a court of law had verified the fraud — i.e., had found someone guilty — Citizens in Charge Foundation focused only on instances where state fraud laws were proven to be violated.

To make the survey sufficiently broad, Citizens in Charge Foundation captured data from the 2000, 2002, 2004, 2006 and 2008 election cycles.

Responses

We initially requested records from 52 offices — 26 Secretaries of State and 26 Attorneys General. Forty-six offices sent complete responses as of the time of publication. In three states — Nevada, Oklahoma and Oregon — Secretaries of State failed to provide complete responses.

In four states — Florida, Idaho, Montana, and Ohio — we were referred to county-level authorities, with whom we subsequently filed records requests. In Illinois and Maryland, our requests to the Secretary of State were forwarded to the state Boards of Elections.

The overall response from six states — Florida, Massachusetts, Montana, Nevada, Oklahoma, and Oregon — has been incomplete. Citizens in Charge Foundation is fol-

lowing up with all state and county offices that have not fully responded according to state open record laws, and this report will be updated as additional data is received.

Cases of forgery or fraud have so far been reported in five states — Idaho, Maine, Ohio, Nebraska, and North Dakota — with a total of 17 convictions. California’s Secretary of State indicated that investigations were pending, and as such documents could not be obtained under state law.

Many states did not keep full records of the number of signatures that were turned in by various petition campaigns. Several states only count the number of signatures that officials verified — meaning they stop counting once the number needed to qualify a petition is reached. Many states keep records on file for less time than the scope of our inquiry. Very few states count the number of signatures collected for petitions that fail to qualify for the ballot. Therefore, Citizens in Charge Foundation used the best data available from various state officials to ascertain an absolute minimum number of signatures that were collected during the time of our survey. It is reasonable to assume many millions of additional signatures had been submitted during the studied ten years.

Results: A Widespread Lack of Verified Signature Fraud

The responses from state officials showed a widespread lack of signature fraud, with a national average of 1.7 cases per year. Twelve states — Alaska, Arkansas, Arizona, Colorado, Illinois, Maryland, Michigan, Mississippi, Missouri, South Dakota, Utah, and Washington — reported that they had no records of verified forgery or fraud of signatures on petitions. California also



reported no convictions for petition signature fraud, but investigations are ongoing. Records of fraud were returned from five states — Idaho, Maine, Nebraska, Ohio and North Dakota. Two states — New Mexico and Wyoming — did not have any petitions turned in between 1999 through 2008.

Idaho

Idaho's Secretary of State indicated that records of forgery or fraud would lie with the county clerks. With 40 of the 44 counties responding, a total of two fraud convictions have been reported. In both cases those convicted were Idaho residents, and minimum sentences of one year in prison and minimal court costs were imposed.

Maine

The office of the Maine Attorney General indicated that one instance of fraud and aggravated forgery was on file. One individual, a state resident, was convicted of turning in forged signatures in twelve counties for a 2005 initiative. A punishment of 45 days in jail and \$25 in costs was imposed upon conviction.

Ohio

Ohio's Secretary of State indicated that the responsibility for verifying forgery or fraud lie with the county boards of election. With 73 of 88 counties responding to the request, a total of six fraud convictions were reported from four counties. In all six cases, the perpetrators were Ohio residents. Fines ranged from \$50 to in excess of \$1000, and punishments of up to six months in prison for each of multiple counts were meted out. Further, the courts barred some defendants from ever collecting signatures for a petition.

Nebraska


Records of the Attorney General indicate that one individual, a resident of the state, was convicted in 2005 for placing two signatures "other than her own" on two different petitions. A fine of \$400 (\$200 per offense) was imposed.

North Dakota

North Dakota's Attorney General returned records on seven verified cases of forgery and fraud on initiative petitions from 2006 and 2008. Six of the individuals convicted were state residents; the other one was from Minnesota. Penalties included probation, fines and court costs in excess of \$1000, and one individual was restricted from owning firearms.

Putting the F-word in Perspective

Citizens in Charge Foundation has received substantial responses to our open records requests from 20 of the 26 states surveyed. During the ten years between 1999 and 2008, the responses document at least 81,635,847 petition signatures were submitted to election officials and there were 17 verifiable cases of petition signature fraud. All 17 fraud convictions took place in just five of those 20 states, with three-fourths of the states reporting no instances of fraud related to initiative petitions.

Citizens in Charge Foundation will continue to collect data from several states, and more cases of verified fraud may be returned. However, with most of the data reported and most states having no cases of verified fraud or forgery, it seems clear that the F-word has been overused. 

Status of Study on Verified Signature Fraud

State	Compliance SoS AG		Status
Alaska	✓	✓	Fully responded with no reports of fraud
Arizona	✓	✓	Fully responded with no reports of fraud
Arkansas	✓	✓	Fully responded with no reports of fraud
California	✓	✓	Fully responded with no reports of fraud
Colorado	✓	✓	Fully responded with no reports of fraud
Florida	✓	✓	Awaiting responses from county officials
Idaho	✓	✓	37 of 44 counties responded with one instance of fraud
Illinois	✓	✓	Fully responded with no reports of fraud
Maine	✓	✓	Fully responded with one instance of fraud
Maryland	✓	✓	Fully responded with no reports of fraud
Massachusetts	✓		Failed to respond, further request issued to AG
Michigan	✓	✓	Fully responded with no reports of fraud
Mississippi	✓	✓	Fully responded with no reports of fraud
Missouri	✓	✓	Fully responded with no reports of fraud
Montana	✓	✓	23 of 56 counties responded with no reports of fraud
Nebraska	✓	✓	Fully responded with one instance of fraud
Nevada			Failed to respond, further request issued to AG and SoS
New Mexico	✓	✓	Fully responded with no reports of fraud
North Dakota	✓	✓	Fully responded with no reports of fraud
Ohio	✓	✓	73 of 88 counties responding with five instances of fraud
Oklahoma			Failed to respond, further request issued to AG and SoS
Oregon		✓	Failed to respond, further request issued to SoS
South Dakota	✓	✓	Fully responded with no reports of fraud
Utah	✓	✓	Fully responded with no reports of fraud
Washington	✓	✓	Fully responded with no reports of fraud
Wyoming	✓	✓	Fully responded with no reports of fraud



Is the “F-word” Overused?

A Truth in Governance Report on Petition Signature Fraud

Signature Fraud: State-by-State



Alaska

0 cases of fraud reported
783,582 signatures processed
Status: Fully Responded

In response to our inquiry about forgery or fraud, both the Office of the Lieutenant Governor and the Attorney General indicated that after extensive searches of both offices no records of forgery or fraud were found.

Arkansas

0 cases of fraud reported
1,021,879 submitted
Status: Fully Responded

In response to our inquiry about forgery or fraud, the Secretary of State indicated that they did not have records of verified fraud on file. The Attorney General indicated that his office does not maintain any records that fall within the description we seek.



Arizona

0 cases of fraud reported
7,911,726 signatures submitted
Status: fully responded

In response to our inquiry about forgery or fraud, Arizona’s Secretary of State indicated that any such records would be with the Attorney General, and the Attorney General indicated that if any records existed they would be with that Secretary of State.

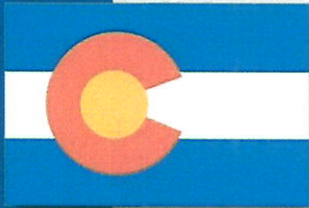
California

0 cases of fraud reported
26,541,044 signatures verified
Status: Fully Responded

In response to our inquiry about forgery or fraud, California’s Secretary of State informed us that they did have records responsive to our request, but those records were part of an ongoing investigation by the Secretary’s Election Fraud Investigation



Unit and as such were exempt from public records law. Citizens in Charge Foundation is following up with the Election Fraud Investigation Unit to determine if charges will be filed related to incidents of fraud during the time we surveyed. The Attorney General indicated the records of fraud would not be housed with the Department of Justice.



Colorado

0 cases of fraud reported
4,913,257 signatures submitted
Status: Fully Responded

In response to our inquiry about forgery or fraud, the Secretary of State gave the following reply, "Our office has not identified any instances of forgery of fraud." The Attorney General indicated that they would not be the custodian of such records.

of signatures submitted would be maintained by the county clerks. We forwarded our request on to Idaho's 44 county clerks, 37 of which had responded at the time of publication. Records of two fraud convictions were returned. In both cases the convicted were Idaho residents, and minimum sentences of one year in prison and minimal court costs were imposed. The Attorney General had no documents related to verified forgery or fraud.



Illinois

0 cases of fraud reported
444,226 signatures validated
Status: Fully Responded

In response to our inquiry about forgery or fraud, the Secretary of State gave the following response: "neither the state board of elections nor a court of law have verified any instances of forgery or fraud." The Attorney General indicated that such records would not be maintained in that office.



Florida

0 cases of fraud reported
10,349,730 signatures submitted
Status: Awaiting further data

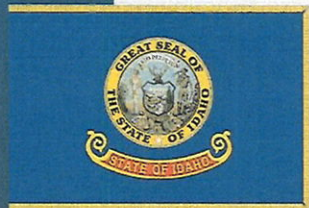
In response to our inquiry about forgery or fraud, the Secretary of State indicated that if any such records did exist they would be housed with county elections supervisors. Citizens in Charge Foundation in the process of contacting election supervisors in Florida's sixty-seven counties. Florida's Attorney General indicated that they were not the custodian of the records we are seeking.

Maine

1 instance of fraud
Status: Awaiting further data



In response to our inquiry about forgery or fraud, the Attorney General was only able to identify only one case responsive to your request in which a Maine court ruled that voter signatures on a citizen initiative petition had been forged. At the time of publication Maine's Secretary of State had not responded to our request.



Idaho

2 cases of fraud reported
161,276 signatures validated
Status: 37 out of 44 counties responded

In response to our inquiry about forgery or fraud, the Secretary of State indicated that records of any instances of forgery or fraud

Maryland

0 cases of fraud reported
Status: Fully Reported



Maryland's Secretary of State forwarded our inquiry about forgery or fraud to the state



Board of Elections, who's Director of Election Management said that "To the best of my knowledge the state Board of Elections has never referred any petition signatures to prosecuting authorities." The Attorney General indicated that their office was not the custodian of those records.

Massachusetts



0 cases of fraud reported
2,675,794 signatures filed
Status: Awaiting further data

In response to our inquiry about forgery or fraud, the Secretary of State indicated that their office did not have the jurisdiction to pursue fraud cases, and that any records of verified forgery or fraud would be with the Attorney General. Despite multiple attempts to contact Massachusetts's Attorney General, we have not received a response at the time of publication.

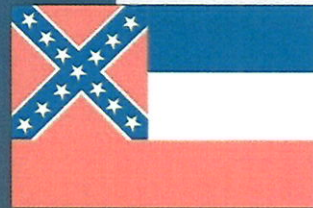
Michigan



0 cases of fraud reported
7,453,341 signatures filed
Status: Fully Reported

In response to our inquiry about forgery or fraud, the Secretary of State said that "To the best of my knowledge no instances fitting those criteria are on record." The Attorney General indicated that after a search of their records they do not poses any documents related to verified fraud.

Mississippi



0 cases of fraud reported
Status: Fully Reported

In response to our inquiry about forgery or fraud, the Secretary of State indicated that the authority to prosecute fraud lies with the Attorney General. The Attorney General

indicated that their office possesses no records of fraud.

Missouri



0 cases of fraud reported
2,595,894 signatures submitted
Status: fully reported

In response to our inquiry about forgery or fraud, the Secretary of State indicated that their "review did not reveal any instances of fraud." The Attorney General's office indicated that they had no records of fraud.

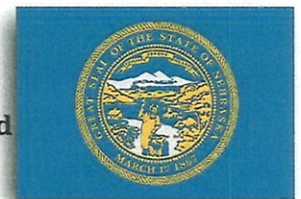
Montana



0 cases of fraud reported
540,691 signatures submitted
Status: 23 out of 56 counties reporting

In response to our inquiry about forgery or fraud, the Secretary of State indicated that the any records of fraud would be held by the county elections officials. At the time of publication 23 of the state's 26 counties had responded with no reports of verified fraud. The Attorney General indicated that they did not have any records responsive to our request.

Nebraska



1 case of fraud reported
1,381,305 signatures turned
Status: Fully Reported

In response to our inquiry about forgery or fraud, the Secretary of State indicated that their office does not prosecute any criminal activity. The Attorney General was only able to find one instance of verified forgery or fraud on a petition.





Nevada

0 cases of fraud reported
Status: Awaiting further data

Despite multiple attempts to contact Nevada's Secretary of State, we have not received a response at the time of publication. Nevada's Attorney General sent a letter indicating their intention to complete the request, however at the date of publication the Attorney General had not fulfilled our request.

In response to our inquiry about forgery or fraud, the Secretary of State and Attorney General indicated that under Ohio law, county boards of election verify signatures. With 74 of the state's 88 counties reporting, five cases of fraud have been identified.

Oklahoma

0 cases of fraud reported
1403709 signatures submitted

Status: Awaiting further data



Both Oklahoma's Attorney General and Secretary of State returned replies that did not answer or address our request for records of forgery or fraud in their offices, and follow up requests are being sent.

Oregon

0 cases of fraud reported
Status: Awaiting further data



In response to our inquiry about forgery or fraud, the Attorney General gave the following indicated that the Department of Justice is not the custodian of the records. At the time of publication Oregon's Secretary of State had not completed fulfillment of our request.

South Dakota

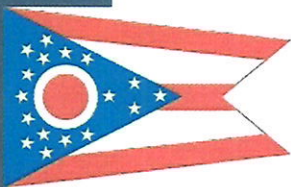
0 cases of fraud reported
122738 signatures submitted
Status: Fully reported



In response to our inquiry about forgery or fraud, the Secretary of State indicated that their office did not have any such records on file. The Attorney General replied that "This office does not have any record of verified forgery or fraudulent signatures submitted for initiatives and referendums between 1999-2008."

Ohio

5 cases of fraud reported
2233224 signatures submitted
Status: 74 of 88 counties reporting



New Mexico

0 cases of fraud reported
0 signatures turned in
Status: fully reported

New Mexico's Secretary of State indicted that no petitions for referendum (New Mexico does not have any form of initiative) had been received by the state between 1999 and 2008.

North Dakota

7 cases of fraud reported
209,799 signatures submitted
Status: Fully Reported

In response to our inquiry about forgery or fraud, the Secretary of State indicated that there had been two instances of fraud during the time period in question, and that records would be housed with the Attorney General. The Attorney General provided records indicating a total of seven prosecutions for petition fraud.



Utah Wyoming

0 cases of fraud reported
437,006 signatures verified
Status: Fully Reported

In response to our inquiry about forgery or fraud, the Office of the Lieutenant Governor indicated that they had no records of verified forgery or fraud. The Attorney General replied that "I have been unable to find any records within the Attorney General's Office that fit within your request. Nor am I aware of any other agency that has such records."

0 signatures submitted
0 cases of fraud reported
Status: Fully reported



In response to our inquiry about forgery or fraud, the Secretary of State indicated that there had been no signatures turned in during that time. The Attorney General "found no records of any investigated allegations."



Washington



0 cases of fraud reported
9,909,602 signatures submitted
Status: Fully reported

In response to our inquiry about forgery or fraud, the Secretary of State said that "We have found no verified forgery or fraud for initiatives or referendums." The Attorney General indicated that any such records would be housed by the Secretary of State.

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Citizens in Charge Foundation is the only national transpartisan voter rights group dedicated to protecting and expanding the ballot initiative and referendum process.

For more information visit: www.CitizensInChargeFoundation.org

