

Date of Hearing: May 10, 2017

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

AB 894 (Frazier) – As Amended May 3, 2017

SUBJECT: Candidates' statements: false statements.

SUMMARY: Requires a candidate in an election, or an incumbent in a recall election, who is convicted of knowingly making a false statement of a material fact in a candidate's statement, to forfeit office in addition to paying a fine not to exceed one thousand dollars.

EXISTING LAW provides that a candidate in an election, or an incumbent in a recall election, who knowingly makes a false statement of a material fact in a candidate's statement, is punishable by a fine not to exceed one thousand dollars.

FISCAL EFFECT: None. This bill is keyed non-fiscal by the Legislative Counsel.

1) **COMMENTS:**

Purpose of the Bill: According to the author:

AB 894 will protect voters and taxpayers that are misled by candidates for public office that intentionally misrepresent their background in candidate statements. The bill creates a strong deterrent to misrepresenting one's background in a candidate statement. AB 894 is a good government, transparency bill to protect fair and open elections for the benefit of voters and taxpayers.

- 2) **History of State Law Prohibiting False Statements in Candidate's Statements:** The provision of existing law that provides for a fine of up to \$1,000 for a candidate who knowingly makes a false statement of a material fact in the candidate's statement was first enacted through the passage of AB 1021 (Rogers), Chapter 57, Statutes of 1982. When AB 1021 was introduced, it proposed to make it a misdemeanor for a candidate or incumbent to knowingly make a false statement with the intent of misleading voters, punishable by a maximum penalty of six months in jail or a fine of \$500 or both. AB 1021 was subsequently amended to remove the misdemeanor penalties, and instead to provide that violations were to be punishable by a fine of up to \$1,000. The legislative history of AB 1021 suggests that those amendments may have been taken to address opposition to the introduced version of the bill.
- 3) **Contra Costa Board of Education Case:** A candidate for the Contra Costa Board of Education was found to have misrepresented his educational qualifications on his candidate statement while running for office in 2014. In 2015 the Contra Costa District Attorney's office started an investigation about whether the candidate had knowingly made a false statement in his candidate statement. In 2016, the candidate made a statement in court saying that he had indeed incorrectly stated his educational qualifications in his original candidate statement, but had done so believing the statements to be true. The candidate was sentenced to twenty hours of community service.

- 4) **Candidate's Statements:** Existing law gives candidates for local nonpartisan office the option of submitting a candidate's statement that appears in the voter information guide. Candidate statements may include the candidate's name, age, and occupation and a brief description, of no more than 200 words, of the candidate's education and qualifications expressed by the candidate himself or herself. The governing body of the local agency can also authorize an increase in the limitations on the words for the statement from 200 to 400 words. The candidate statement cannot include the party affiliation of the candidate, or membership or activity in any partisan political organizations.

Existing law also requires that a copy of the candidate's statements be made available for public examination, not less than ten calendar days before local ballot pamphlets and other specified election materials are submitted for printing. During the ten calendar day examination period, any voter is allowed to seek a writ of mandate or an injunction, upon specified grounds, requiring the amendment or deletion of any or all of the materials.

- 5) **Recall Petitions:** Citizens can use the recall petition process to remove and replace a public official before the end of a term of office. This direct democracy procedure has been a fundamental part of the California governmental system since 1911 and can be used by voters to express their dissatisfaction with their elected representatives.
- 6) **Forfeiture of Office as a Punishment:** Under existing law, a public official who is convicted of a felony or of an offense that involves a violation of the person's official duties is required to forfeit office. Knowingly making a false statement of a material fact in a candidate's statement, however, is not currently a crime. Instead, it is an infraction—a public offense that is not punishable by imprisonment. A person who is charged with an infraction is not entitled to a trial by jury, and is not entitled to have a public defender or other counsel appointed at public expense to represent him or her, except as specified. Committee staff is not aware of any other infractions that are punishable by forfeiture of office.
- 7) **Arguments in Opposition:** In opposition to this bill, the American Civil Liberties Union of California writes, "AB 894 appears to be a solution in search of a problem. We know of no evidence of widespread misrepresentations on candidate statements in California elections. Your office has put forth only one instance of such an offense, for which the offender was prosecuted. If there was further evidence, we would be happy to consider it."

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

American Civil Liberties Union California

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