

Date of Hearing: April 17, 2012

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Paul Fong, Chair

AB 2191 (Norby) – As Introduced: February 23, 2012

SUBJECT: Political Reform Act of 1974: economic interest disclosure.

SUMMARY: Excludes candidates for political party central committees from the requirements to file campaign disclosure reports. Specifically, this bill:

- 1) Excludes membership on a county central committee of a political party from the definition of an "elective office" in the Political Reform Act (PRA).
- 2) Provides that an entity primarily formed to support or oppose a person seeking election to a county central committee of a political party is not considered a "committee" for the purposes of the PRA.
- 3) Prohibits a local government agency from imposing any filing requirements on elected members of, or candidates for election to, a county central committee of a political party or on entities primarily formed to support or oppose a person seeking election to a county central committee of a political party.
- 4) Prohibits a local jurisdiction from imposing contribution limitations or prohibitions on elected members of, or candidates for election to, a county central committee of a political party, or on an entity primarily formed to support or oppose a person seeking election to a county central committee of a qualified political party.
- 5) Requires the Secretary of State to submit the provisions of this bill to the voters at the next statewide election occurring at least 131 days after the adoption of this bill.

EXISTING LAW:

- 1) Defines "elective office," for the purposes of the PRA, as any state, regional, county, municipal, district, or judicial office that is filled at an election, and provides that the term "elective office" includes membership on a county central committee of a qualified political party and membership through election on the Board of Administration of the Public Employees' Retirement System or the Teachers' Retirement Board.
- 2) Defines the term "committee" for the purposes of the PRA as any person or combination of persons who directly or indirectly does any of the following:
 - a) Receives contributions totaling \$1,000 or more in a calendar year;
 - b) Makes independent expenditures totaling \$1,000 or more in a calendar year; or,

- c) Makes contributions totaling \$10,000 or more in a calendar year to or at the behest of candidates or committees.
- 3) Requires the Legislature to provide for partisan elections for party central committees, among other offices.
- 4) Requires elected officers, candidates for elective office, and committees to file periodic campaign disclosure reports.
- 5) Permits local government agencies to adopt ordinances that affect campaign contributions and expenditures, subject to certain limitations. Permits local jurisdictions to adopt contribution limitations and other prohibitions on campaigns, subject to certain limitations.
- 6) Provides that any amendment to the PRA that does not further the purposes of the PRA may become effective only when approved by voters.

FISCAL EFFECT: Unknown. Although this bill is keyed non-fiscal by the Legislative Counsel, this Committee has been instructed by the Assembly Rules Committee to re-refer it to the Assembly Appropriations Committee upon approval by this Committee, due to the costs associated with submitting a measure to the voters.

COMMENTS:

- 1) Purpose of the Bill: According to the author:

As written, the Political Reform Act (PRA) places a costly and time consuming burden on thousands of political party volunteers in California. The PRA defined any person who appears on the ballot as someone running for "elective office." The intent of this action was to capture all governmental elected officials, and it succeeded. This action also lumped in thousands of political party volunteers into new expensive and cumbersome reporting requirements.

Political volunteers serve no governmental function. They do not handle any public money, they don't vote on policy or budget issues, and they conduct no public business.

Additionally, earlier this year AB 1200 (Ma) was signed by the Governor and this bill also moved away from treating central committee members as elected officials. AB 1200 no longer requires a public officer to administer their oath. In fact, political volunteers are no longer entitled to a governmental "certificate of election."

AB 2191 would revise the Political Reform Act definition of "elective office" to include membership on a county central committee of a qualified party.

- 2) Membership on a Central Committee is Not a Public Office: Although elections for county central committee for political parties are publicly conducted elections, state courts have held that the elective offices of political parties are not public offices, because those offices do not

involve the exercise of the sovereign functions of government. (See Moore v. Panish (1982), 32 Cal.3d 535, 545, Azevedo v. Jordan (1965), 237 Cal.App.2d 521, 528, and Stout v. Democratic County Central Committee (1952), 40 Cal.2d 91, 94.) Instead, county central committees of political parties generally are charged with conducting those parties' political campaigns under the general direction of the state central committee (See Elections Code Sections 7240, 7440, 7690, and 7880).

The fact that central committees are not public offices, and do not exercise the sovereign power of the government, raises the question of whether there is a reason to require such candidates to file campaign disclosure reports. Generally, the campaign disclosure requirements of the PRA are designed to ensure that public officials perform their official duties in an impartial manner and to protect against disproportionate influence over governmental decisions by large contributors to election campaigns. Because central committee members do not make governmental decisions, however, these purposes do not appear to be served by requiring candidates for central committee to comply with the campaign disclosure provisions of the PRA.

- 3) But Central Committee Elections are Constitutionally Guaranteed: On the other hand, while membership on a county central committee is not a public office that exercises the sovereign power of the government, political party central committees are bodies that are recognized in the state constitution, and the constitution explicitly requires that the Legislature provide for partisan elections for those offices. Proposition 14, which was approved by the voters on the June 2010 statewide primary election ballot, is best known as the measure that implemented a top two primary election system in California for most elective state and federal offices. However, in addition to establishing the top two primary system, Proposition 14 also amended Article II, Section 5 of the California Constitution to provide that "[t]he Legislature shall provide for partisan elections for . . . party central committees."

Even though central committees do not exercise governmental powers, the fact that these offices are constitutionally recognized and the fact that the Constitution guarantees publicly conducted elections for these offices seems to weaken the argument that candidates for such offices shouldn't be subject to the same requirements as all other candidates who appear on the ballot in California at a publicly-conducted election.

- 4) Central Committee Campaigns and Possible Amendment: Although, there are hundreds of candidates for county central committees statewide in each even-numbered year, it is relatively rare for candidates for county central committees to raise and spend more than a nominal amount of money for their campaigns. Even candidates who do not raise or spend large amounts of money on their campaigns, however, are required to file certain campaign disclosure documents. Specifically, all candidates for elective office in California must file a Form 501—a statement of intention to be a candidate—before raising or spending any money in connection with the election (the only exception is that a candidate may use personal funds to pay a filing fee or for the costs of a candidate statement prior to filing a Form 501). Candidates who raise or spend less than \$1,000 in a calendar year must also file a "short form" campaign statement once a year, while candidates who raise or spent \$1,000 or more in a calendar year have more extensive reporting requirements. Because of the number of candidates statewide for county central committee, these requirements can result in hundreds of pages of campaign disclosure reports being filed in each election year that disclose little or

no campaign activity.

In at least a few situations, however, candidates for central committees have raised and spent significant amounts of money. For instance, at the June 2010 primary election, at least six candidates for central committee in San Francisco made expenditures of over \$30,000, while several other candidates made expenditures of over \$10,000. In many cases, candidates who raised and spent significant amounts of money on their campaigns for central committee also ran for other elective offices in San Francisco within a year of the campaign for central committee. This may suggest that, in some cases, candidates for central committee in San Francisco are using their campaigns to help raise their profiles for subsequent campaigns for public office. If that is the case, there may be a strong rationale for requiring candidates for central committee to comply with the disclosure requirements in the PRA, since people may be making contributions to candidates for central committee with the intention of helping those candidates get elected to public office at a subsequent election.

In light of the foregoing, if the intent of this bill is to minimize the burden imposed on typical central committee candidates who raise and spend very little money in connection with their elections, and to minimize the burden on county clerks who must process disclosure reports that are filed by these candidates, there may be a way to significantly reduce those burdens while ensuring that candidates for central committee who raise and spend large amounts of money are still required to file campaign disclosure reports under the PRA. Specifically, the committee may wish to consider amending this bill to provide that candidates for central committee that raise or spend less than \$1,000 in a calendar year are not subject to the reporting requirements of the PRA, while still requiring candidates who raise or spend more than \$1,000 to comply with the PRA's disclosure requirements.

- 5) Previous Legislation: Among other provisions, AB 1200 (Ma), Chapter 8, Statutes of 2012, eliminated the requirement for elections officials to issue a certificate of election to each elected member of a political party's county central committee, and authorized central committee officials to administer the oath of office to central committee members. A primary purpose of these changes was to reduce the workload for county elections officials to conduct central committee elections, and part of the justification for these changes was that central committees are not public offices.
- 6) Related Legislation: SB 1272 (Kehoe) provides for central committee elections to be conducted every four years, at the presidential primary election, instead of every two years, at the statewide direct primary election, and specifies that a county central committee may select its members at any time by holding a caucus or convention, or by using any other method of selection approved by the committee. SB 1272 is pending in the Senate Committee on Elections & Constitutional Amendments.
- 7) Political Reform Act of 1974: California voters passed an initiative, Proposition 9, in 1974 that created the Fair Political Practices Commission and codified significant restrictions and prohibitions on candidates, officeholders, and lobbyists. That initiative is commonly known as the PRA. Amendments to the PRA by the Legislature must further the purposes of the proposition and require a two-thirds vote of each house of the Legislature, or the Legislature may propose amendments to the proposition that do not further the purposes of the act by a majority vote, but such amendments must be approved by the voters to take effect.

Membership on a county central committee has been considered an elective office under the PRA since the Proposition 9 was adopted in 1974. As a result, a strong argument could be made that amending the PRA to exclude membership on a county central committee from the definition of elective office does not further the original purposes of the PRA. As noted above, to the extent that this bill does not further the purposes of the PRA, the Legislature has no authority to enact its policies without submitting it to the voters. In light of that fact, this bill provides for its provisions to be submitted to the voters at the next statewide election occurring at least 131 days after the approval of this bill.

However, to the extent that this bill is amended as suggested in comment #4 of this analysis, a stronger case can be made that the bill furthers the purposes of the PRA, since the bill would significantly reduce burdensome reporting requirements that result in little or no campaign activity being reported, while ensuring that candidates for central committee who have significant amounts of campaign activity will continue to file campaign disclosure reports. As a result, if this bill is amended as suggested in comment #4, the committee may also wish to amend it to provide that the bill will not be submitted to the voters, but instead would be subject to a two-thirds vote of each house of the Legislature.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Clerks and Election Officials
Robert W. Naylor, former Chairman, California Republican Party
Michael Schroeder, former Chairman, California Republican Party
Duf Sundheim, former Chairman, California Republican Party

Opposition

None on file.

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