

Date of Hearing: June 12, 2024

ASSEMBLY COMMITTEE ON ELECTIONS
Gail Pellerin, Chair
SB 251 (Newman) – As Amended January 3, 2024

SENATE VOTE: 36-0

SUBJECT: Candidates' statements: false statements.

SUMMARY: Increases the maximum fine for knowingly making a false statement of a material fact in a candidate's statement from \$1,000 to \$5,000. Specifically, **this bill** increases the maximum fine, from \$1,000 to \$5,000, for a candidate in an election, or an incumbent in a recall election, who is convicted of violating the law for knowingly making a false statement of a material fact in a candidate statement with the intent to mislead the voters in connection with the candidate's campaign for nomination or election to a nonpartisan office.

EXISTING LAW:

- 1) Permits a candidate for nonpartisan elective office in any local agency, including any city, county, city and county, or district, to prepare a candidate's statement to appear in the county voter information guide. Permits the statement to include the name, age, and occupation of the candidate and a brief description, of no more than 200 words, of the candidate's education and qualifications expressed by the candidate themselves. Prohibits the statement from including the party affiliation of the candidate, or membership or activity in partisan political organizations. (Elections Code §13307)
- 2) Allows an officer whose recall is being sought to file a statement with the elections official to be sent to each voter, together with the voter information guide. (Elections Code §11327)
- 3) Requires a candidate's statement to be limited to a recitation of the candidate's own personal background and qualifications, and prohibits the statement from making reference to other candidates for that office or to another candidate's qualifications, character, or activities and prohibits an elections official from printing, posting on an Internet Web site, or circulating any statement that the elections official determines is not so limited or that includes any reference prohibited. (Elections Code §13308)
- 4) Requires that a copy of the candidates' statements be made available for public examination for a period of 10 calendar days immediately following the filing deadline for submission of those documents, as specified. (Elections Code §13313)
- 5) Allows any voter of the jurisdiction in which the election is being held, or the elections official, to seek a writ of mandate or an injunction requiring any or all of the material in the candidate's statements to be amended or deleted during the 10-calendar-day public examination period. Requires the writ of mandate or injunction request to be filed no later than the end of the 10-calendar-day public examination period. Provides that a peremptory writ of mandate or an injunction shall be issued only upon clear and convincing proof that the material in question is false, misleading, or inconsistent with the requirements of existing law, and that issuance of the writ or injunction will not substantially interfere with the printing or distribution of official election materials. (Elections Code §13313)

- 6) Requires the elections official to send each voter a sample ballot and a voter information guide which contains the written statements of each candidate. (Elections Code §§13307, 13307.5; Government Code §85601)
- 7) Provides that any candidate in an election or incumbent in a recall election who knowingly makes a false statement of a material fact in a candidate's statement, with the intent to mislead the voters in connection with their campaign for nomination or election to a nonpartisan office, is punishable by a fine not to exceed \$1,000. (Elections Code §18351)

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

COMMENTS:

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

Current law provides various guidelines for which a candidate for elected public office must abide when forming their candidate ballot statement. If a candidate intentionally falsifies information on their ballot statement with the intent to mislead voters, the candidate may be punished by a fine not to exceed \$1,000. This fine has not been adjusted since 1993. Many other election crimes carry a much higher penalty in order to deter these crimes from happening.

SB 251 will ensure voters and taxpayers are protected against candidates for public office who intentionally misrepresent their background and mislead voters. Raising the maximum fine from \$1,000 to \$5,000 will provide a stronger deterrent for candidates who intentionally mislead voters. SB 251 is a good governance bill that will help protect our fair and open elections in California.

- 2) **Candidate Statements:** Existing law gives candidates for local nonpartisan office the option of submitting a candidate's statement that appears in the local 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 themselves, but are prohibited from including the party affiliation of the candidate, or membership or activity in any partisan political organizations.

Elections official are required to make a copy of the candidate statement available for public examination in the elections official's office for a period of 10 calendar days immediately following the filing deadline for submission of those documents. During the 10 calendar day public examination period, any voter of the jurisdiction in which the election is being held, or the elections official, may seek a writ of mandate or an injunction requiring any or all of the material in the statement to be amended or deleted. However, a peremptory writ of mandate or an injunction is issued only upon clear and convincing proof that the material in question is false, misleading, or inconsistent with the law, and that an issuance of the writ or injunction will not substantially interfere with the printing or distribution of official election materials as provided by law.

This bill increases the maximum fine for a candidate who knowingly makes a false statement in their candidate statement with the intent to mislead the voters about their qualifications from \$1,000 to \$5,000. It is unclear whether an increased fine will deter this behavior.

According to the Senate Public Safety Committee's analysis of this bill, there are a number of penalty assessments that are applied to every fine in order to raise funds for various purposes. As a result, a \$1,000 fine would be approximately \$4,100 with penalty assessments, and a \$5,000 fine (which this bill proposes) would be approximately \$20,000 with penalty assessments.

- 3) **Recent Examples:** According to the author, current law does not contain a strong enough deterrent to intentional misrepresentation on a candidate statement. As evidence for the need for this bill, the author points to a candidate for the Contra Costa Board of Education who 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.

Additionally, in 2022 multiple media outlets reported that then- United States (US) Representative for New York's 3rd Congressional District George Santos was under investigation and faced numerous allegations of criminal wrongdoing, including wire fraud, money laundering, theft of public funds, and making materially false statements to the House of Representatives, among others. Last October, the US Department of Justice filed a 23-count superseding indictment charging George Santos with one count of conspiracy to commit offenses against the US, two counts of wire fraud, two counts of making materially false statements to the Federal Election Commission (FEC), two counts of falsifying records submitted to obstruct the FEC, two counts of aggravated identity theft, and one count of access device fraud, in addition to the seven counts of wire fraud, three counts of money laundering, one count of theft of public funds, and two counts of making materially false statements to the US House of Representatives that were charged in an original indictment. Furthermore, former US Representative Santos was expelled from the House of Representatives over criminal corruption charges and accusations of mispending campaign money.

- 4) **Arguments in Support:** In support, the California State Association of Counties (CSAC) writes:

Intentional false statements by candidates undermine the will of voters and heighten the risk that unqualified candidates are elected to office, specifically the role of County Auditors. Local elected officials serve an essential and often unappreciated role in their communities. The role of a county auditor, for example, performs vital functions including budget control, financial reporting, and managing disbursements and receipts. Due to the importance of that role, CSAC was proud to support AB 910 (Wilson) in 2023, which provided much-needed clarity for the qualifications for the office of county auditor and expanded the documentation that must be submitted to a county elections official to be a legal candidate for the office. SB 251 builds on those policies and further protects against the dangers of unqualified candidates being elected to office.

Further, the Elections Code Section that includes the fixed penalty amount of \$1,000 has not been updated since 1994 (Statutes of 1994, Chapter 920). The benefits of holding public office may simply outweigh the costs of the existing fine for an unscrupulous individual looking to advance their own interests at the expense of the communities they are intended to serve. While increasing the fine will not guarantee bad behavior will cease, it will help to ensure that our candidates for local office are qualified and properly vetted by their communities.

- 5) **Previous Legislation:** SB 248 (Newman) of 2023 would have required any candidate for elective office to submit a candidate experience disclosure form to disclose their prior education, work, and military service history, as specified. SB 248 was held on suspense in the Assembly Appropriations Committee.

AB 894 (Frazier) of 2017 was substantially similar to this bill. AB 894 was vetoed by Governor Brown, who wrote in his veto message, “I am not convinced this is a widespread problem in California elections or that this bill would be much of a deterrent. The conventional response to resume puffing is exposure by the press or political attack by the opposition.”

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Clerks and Election Officials
California Association of County Treasurers and Tax Collectors
California State Association of Counties
League of California Cities

Opposition

None on file.

Analysis Prepared by: Nichole Becker / ELECTIONS / (916) 319-2094