

Date of Hearing: April 26, 2017

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING  
Marc Berman, Chair  
AB 777 (Harper) – As Introduced February 15, 2017

**AS PROPOSED TO BE AMENDED**

**SUBJECT:** Vote by mail ballots: fraudulent signatures.

**SUMMARY:** Increases the maximum fine against persons for fraudulently signing a vote by mail (VBM) ballot envelope, from \$1,000 to \$5,000.

**EXISTING LAW** provides that any person who applies for, or who votes or attempts to vote, a VBM ballot by fraudulently signing the name of a fictitious person, or of a regularly qualified voter, or of a person who is not qualified to vote, is guilty of a felony punishable by imprisonment for 16 months or two or three years, by a fine not exceeding one thousand dollars (\$1,000), or by both that fine and imprisonment.

**FISCAL EFFECT:** Unknown

**COMMENTS:**

1) **Author's Amendments:** After the committee's deadline for pre-committee author's amendments, the author proposed amendments to reduce the increase in fines that is proposed by this bill such that the maximum fine for fraudulently signing a VBM ballot would increase from \$1,000 to \$5,000 per violation, instead of increasing the maximum fine to \$10,000 as proposed by the introduced version of this bill. This analysis reflects those proposed author's amendments.

2) **Purpose of the Bill:** According to the author:

Cases of organized VBM ballot fraud have been noted in recent years in Orange County and the cities of Compton, Bell, and East Hollywood, California...

Unfortunately, California has only minimal protections against such fraud, as current law provides that a person who forges a voter's signature on a VBM ballot envelope is subject to a fine of no more than \$1,000, instead of or in addition to imprisonment. By contrast, those who interfere with a voter trying to return his or her VBM ballot are subject to a fine of up to \$10,000, and/or imprisonment, and persons who circulate or file initiative petitions containing forged signatures are subject to fines of up to \$5,000...

Assembly Bill 777 will help protect California's voters by increasing the fine for forging a voter's signature on a VBM ballot envelope, to a maximum of \$5,000.

3) **VBM Ballot Signature Fraud:** While the author has indicated that there have been allegations of VBM ballot fraud in certain jurisdictions, the committee has not been provided with any information to substantiate those allegations. Committee staff is not aware of any cases of VBM signature fraud that have been prosecuted.

The author alleges that there have been cases of organized voter fraud in Orange County in recent years. To address accusations of voter fraud, the Orange County Grand Jury recently conducted a thorough review of their local voting process. In their 2017 report titled *No Voter Fraud Here: The Transparent Election Process*, they conclude that "the Orange County Registrar of Voters operations assure that the right to vote is protected for county citizens, with effective mechanisms in place to prevent fraud. Allegations of voter fraud, vote rigging and illegal voters casting ballots have been found to be without merit in Orange County." While this wasn't a study of VBM ballots and VBM ballot fraud specifically, it did include those categories in a holistic review of the election process in Orange County. According to the Orange County Registrar of Voters' website, over 1.2 million Orange County voters cast ballots in the 2016 presidential elections, of which more than half of those ballots were VBM ballots.

- 4) **Increased Fine as a Deterrent:** According to the author, the maximum monetary fine to penalize fraudulent signatures on VBM ballots was initially set in 1976 and has not been updated since. If the intent of the bill is to deter fraudulent signatures, merely increasing the dollar amount of the fine might not achieve the desired outcome. Indeed, criminological research suggests that the severity of punishment alone is not very likely to deter an offender. According to a 2010 report titled *Deterrence in Criminal Justice: Evaluating Certainty Versus Severity of Punishment*, "in order for sanctions to deter, potential offenders must be aware of sanction risks and consequences before they commit an offense. In this regard, research illustrates that the general public tends to underestimate the severity of sanctions generally imposed. This is not surprising given that members of the public are often unaware of the specifics of sentencing policies. Potential offenders are also unlikely to be aware of modifications to sentencing policies, thus diminishing any deterrent effect."

To the extent that potential offenders are unaware of current sentencing policies and penalties, it is unclear whether an increase in the maximum monetary fine from \$1,000 to \$5,000 will serve to deter VBM ballot fraud.

- 5) **Arguments in Support:** In support of this bill, the Election Integrity Project, California, Inc. (EIP), writes:

EIP has aggressively opposed the incremental move away from in-person voting in California. Any form of voting other than in person carries significantly more risk of vote fraud. The initial step in 1998 of moving from the Absentee Ballot, a viable and necessary protection for voters with absolute need, to an optional permanent vote by mail status opened up multiple avenues for vote theft, from ballot harvesting to ballot sale, registration fraud, multiple voting, voter impersonation and voter intimidation....

While voting by mail continues to grow in California, partly because the population has been kept ignorant of the risks and lulled into a sense of security by an appeal to the very human tendency to opt for ease and convenience, and partly because the progression of laws is basically forcing all Californians to that mode of voting, it seems wise for California to keep pace of other states in enacting commensurate penalties for mail ballot fraud.

- 6) **Arguments in Opposition:** In opposition to this bill, the American Civil Liberties Union of California writes:

AB 777 is a solution in search of a problem. There is no evidence that the type of fraud AB 777 seeks to combat is anything but an anomaly, or that increasing the fine would be an effective deterrent against this conduct. Recent studies have found that certainty of punishment (in other words, the fact that someone will be punished for a particular crime) has a greater deterrent effect than the severity of the punishment itself. Since the conduct contemplated by this legislation is already punishable by a felony and a \$1,000 fine, this bill appears to be unwise and unwarranted.

**REGISTERED SUPPORT / OPPOSITION:****Support**

Election Integrity Project, California, Inc.

**Opposition**

American Civil Liberties Union of California

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