

Date of Hearing: April 26, 2017

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

AB 837 (Low) – As Amended April 19, 2017

SUBJECT: No party preference voters: partisan primary elections.

SUMMARY: Makes significant changes to partisan primary election processes and procedures to improve the voting process for voters that decline to disclose a political party preference.

Specifically, **this bill:**

- 1) Requires the Secretary of State (SOS), for a partisan primary election, to prepare and print posters or other materials that contain all of the following:
 - a) A statement that a voter who has declined to disclose a political party preference may vote in a political party's partisan primary election if the political party, by party rule duly noticed to the SOS, authorizes a voter who has declined to disclose a political party preference to vote in its next ensuing partisan primary election;
 - b) The name of each political party that authorizes a voter who has declined to disclose a political party preference to vote in its partisan primary; and,
 - c) A statement that a voter who has declined to disclose a political party preference may request the ballot of one of the political parties that authorizes a voter who has declined to disclose a political party preference to vote in its partisan primary election.
- 2) Requires the SOS to supply the posters or other materials described above to each elections official who shall furnish the materials to the precinct officers in accordance with current law.
- 3) Requires the SOS to include in the state voter information guide information pertaining to partisan primary elections, including a statement explaining that a voter who has declined to disclose a political party preference may not vote in a political party's primary election unless the political party has authorized a voter who has declined to disclose a political party preference to vote in its primary election.
- 4) Requires the SOS to make all of the following information available on the SOS's Internet Web site:
 - a) A statement that a voter who has declined to disclose a political party preference may vote in a political party's partisan primary election if the political party, by party rule duly noticed to the SOS, authorizes a voter who has declined to disclose a political party preference to vote in the next ensuing partisan primary election;
 - b) The name of each political party that authorizes a voter who has declined to disclose a political party preference to vote in the partisan primary election; and,

- c) A statement that a voter who has declined to disclose a political party preference may request the ballot of one of the political parties that authorizes a voter who has declined to disclose a political party preference to vote in the partisan primary election.
- 5) Requires a county elections official to include all the information listed above in a nonpartisan county voter information guide prepared for a partisan primary election pursuant to current law, and to make the information available on the official's Internet Web site.
- 6) Requires a county elections official to send an email to the email address of a voter who has declined to disclose a political party preference notifying the voter that he or she may request a political party's ballot at the next ensuing partisan primary election if the political party has so authorized.
- 7) Requires a county elections official to provide the notice to a voter who has declined to disclose a political party preference by text message if the voter has provided written consent to receive text messages from the county elections official.
- 8) Requires a county elections official, for each nonpartisan vote by mail (VBM) ballot that is sent to a voter who has declined to disclose a political party preference, to include a notice informing the voter that he or she may request a political party's ballot at the next ensuing partisan primary election if the political party has so authorized.
- 9) Permits a voter who has declined to disclose a political party preference to request the ballot of a political party that has authorized a voter who has declined to disclose a political party preference to vote in its partisan primary election as follows:
 - a) In his or her VBM application pursuant to current law;
 - b) By telephone in accordance with existing law;
 - c) Over the Internet if available pursuant to current law; or,
 - d) By email or by facsimile transmission if permitted by the county elections official.
- 10) Allows a voter, not later than seven days before the date of a partisan primary election, who has declined to disclose a political party preference and who has received a nonpartisan VBM ballot to return his or her unvoted ballot to the county elections official and request and receive the ballot for a political party if the political party has authorized a voter who has declined to disclose a political party preference to vote in its partisan primary election.
- 11) Requires a poll worker, at a partisan primary election, before providing a voter who has declined to disclose a political party preference with a nonpartisan ballot or before the voter enters the voting booth, to provide a uniform notification to the voter informing him or her that he or she may request a political party's ballot and the name of each political party that has authorized a voter who has declined to disclose a political party preference to vote in its ballot.
- 12) Requires a county elections official to train poll workers regarding their duties described above.

EXISTING LAW:

- 1) Permits a person to choose a political party preference when registering to vote. Voters who do not choose a political party preference are commonly referred to as "No Party Preference" (NPP) voters.
- 2) Permits a voter who has declined to disclose a political party preference to request the ballot of a political party at a partisan primary election if the political party, by party rule duly noticed to the SOS, authorizes a voter who has declined to disclose a political party preference to vote in its primary election.
- 3) Requires the SOS to supply county elections officials with copies of the Voter Bill of Rights to be posted both inside and outside every polling place.
- 4) Requires, at a presidential primary election, that a NPP voter be furnished only a nonpartisan ballot, unless he or she requests a ballot of a political party and that political party, by party rule noticed to the SOS, authorizes NPP voters to vote the ballot of that political party. Requires the nonpartisan ballot to contain only the names of candidates for nonpartisan offices, voter-nominated offices, and measures to be voted for at the primary election. Requires each voter registered as preferring a political party participating in the election to be furnished only a ballot of the political party for which he or she disclosed a party preference, as specified, and the nonpartisan ballot, both of which are printed together as one ballot.
- 5) Requires a county elections officials, prior to each partisan primary election, to mail to every voter who has declined to disclose a preference for a political party and whose name appears on the permanent VBM voter list a notice and application regarding voting in the primary election. Requires the notice to inform the voter that he or she may request a VBM ballot for a particular political party for the primary election, if that political party adopted a party rule, duly noticed to the SOS, authorizing these voters to vote in their primary, as specified.
- 6) Requires the application to contain a checkoff box with a conspicuously printed statement that reads substantially similar to the following: "I have declined to disclose a preference for a qualified political party. However, for this primary election only, I request a vote by mail ballot for the ____ Party." Requires the name of the political party to be personally affixed by the voter.

FISCAL EFFECT: Unknown. State-mandated local program; contains reimbursement direction.

COMMENTS:

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

Last year's Presidential primary election exposed a number of barriers that exist for participation by voters who are registered as No Party Preference (NPP) voters.

Procedures and timelines vary significantly from county-to-county for how NPP voters can request and receive a ballot to vote in the Presidential primary election of their choice. Some counties are proactive and present NPP voters with a menu card, poster, or sign that explains the different ballot options available to non-affiliated voters. Other counties strictly interpret the law and only provide a NPP voter with ballot options and information materials upon request.

Media accounts from last year's primary election suggest that this lack of standardization led to voter confusion about the options available to NPP voters. Furthermore, elections officials received complaints about poll workers who did not know the proper protocol for dealing with NPP voters.

NPP voters are the fastest growing segment of the California electorate – representing over 24% of the registered voters in California. These voters deserve to be made aware of their right to choose a crossover ballot.

AB 837 streamlines and standardizes procedures to ensure non-affiliated voters are informed of their rights when casting a ballot. Specifically, this bill establishes clear requirements for the Secretary of State, county elections officials and poll workers to notify and educate NPP voters of the different ballot options available to them.

- 2) **Presidential Primary Election Options:** Under California's presidential primary system, a voter who is registered with a political party receives a ballot for that party's presidential primary election. For example, voters who are registered with the Democratic, Republican, American Independent, Green, Libertarian, or Peace and Freedom Party received the primary election ballot for their respective parties. At the same time, voters who declined to disclose a political party preference (also known as NPP voters) received a nonpartisan ballot that does not list the candidates for president. Under current law, however, a NPP voter may request the ballot of any political party that has notified the SOS that it will allow those voters to participate in its presidential primary election. This is commonly referred to as a "crossover" ballot.

For the 2016 statewide presidential primary election, the American Independent Party, Democratic Party, and Libertarian Party all indicated that they would allow voters who are not registered with a party to participate in their presidential primary elections.

- 3) **Poll Worker Guidelines:** Serving as a poll worker is an important and challenging job as there are many rules and regulations that must be followed. In practice the SOS prepares and updates poll worker guidelines and standards, and provides them to elections officials to help them train their poll workers on how to best perform their duties. However, due to the diversity of the state's population, geography, voting systems and more, training methods and materials prepared by the elections officials vary by county. As a result, there is no uniform statewide standard or training method for poll workers.

According to the SOS's 2016 poll worker guidelines, county elections officials should train poll workers on how to use and distribute NPP voter information materials, including but not

limited to, signs, posters, and written information, to inform NPP voters that they may request a ballot of a political party that has authorized a NPP voter to "crossover" and vote the ballot of that political party. Additionally, the guidelines state that a poll worker should provide information to the NPP voter in a way that avoids any advocacy towards a particular party's ballot.

- 4) **Voter Confusion:** Last year's Presidential primary election significantly underscored the lack of uniform statewide procedures and timelines for how a NPP voter can request and receive a ballot to vote in the Presidential primary election. There were a significant number of media articles and complaints from voters across the state that reported they were not provided information on how to vote as an NPP voter and that poll workers were not knowledgeable about the process to obtain a crossover ballot.

Some counties were proactive in educating NPP voters about their option to obtain a crossover ballot and provided written notification informing NPP voters of their option to choose a crossover ballot. Other counties, however, strictly interpreted the law and only provided a NPP voter with ballot option information upon request.

This bill makes significant changes to election procedures and processes for partisan primary elections to ensure NPP voters are properly informed of their ballot options. Specifically, this bill establishes clear requirements for the SOS, county elections officials, and poll workers to notify and educate voters about their right to choose a crossover ballot, as specified.

- 5) **NPP Vote by Mail Voters:** Under current law, county elections officials are required, prior to each partisan primary election, to mail to every voter who has declined to disclose a preference for a political party and whose name appears on the permanent VBM voter list a notice and application that alerts the NPP voter of their option to request a VBM ballot of a political party that has authorized NPP voters to vote in its primary election. In contrast, a voter who decides to vote by mail for a certain primary election is informed of their option to request a partisan VBM ballot only when they fill out his or her VBM application. In practice, many VBM voters inadvertently do not choose a ballot or dismiss the notice and end up receiving a nonpartisan ballot for presidential primary election that does not list any presidential candidates. This bill improves and increases the notification provided to NPP VBM voters.
- 6) **Increased Accessibility to Crossover Ballots:** This bill makes significant changes to modernize and make election information more accessible to NPP voters. Specifically, this bill requires a county elections official to notify a NPP voter about their option to choose a crossover ballot by email or text, as specified. Additionally, this bill authorizes a NPP voter to request a crossover ballot by telephone, email, facsimile, or through a county elections official's Internet web site, as specified. Furthermore, this bill requires county elections officials to send a notice with a VBM ballot sent to a NPP voter informing the voter of their option to request a crossover ballot, as specified.

- 7) **Arguments in Support:** The sponsor of this bill, Secretary of State Alex Padilla, writes in support:

In California, the primary ballot for Presidential candidates is different from the primary ballot [for] state and congressional candidates. A voter can vote for any state and congressional candidate regardless of party. However, for President a voter can only vote for the candidates for President of the party for which they are registered. If a voter is registered as "No Party Preference" (NPP) they can request the Presidential primary ballot from political parties that allow it under their party rules. This is known as "crossover voting."

The 2012 Presidential primary was the first election to be conducted under these rules. That year President Barack Obama was uncontested in the Democratic Primary and Governor Mitt Romney's Republican Party did not allow for crossover voting. Few NPP voters had a reason to cast crossover votes. However, the 2016 Presidential primary experienced an increase in crossover voting. One of the top messages my office received from voters was in regards to confusion about crossover voting. Unfortunately, current state law insufficiently addresses how the public will be notified and educated about crossover voting.

AB 837 will establish clear requirements for the Secretary of State, county election officials, and poll workers to notify and educate voters about crossover voting.

- 8) **Arguments in Opposition:** In opposition, the Independent Voter Project (IVP) writes:

AB 837 does not solve the constitutional issues with California's current presidential primaries:

- The California Constitution calls for an "open presidential primary."
- After *California Democratic Party v. Jones* invalidated the old blanket primary in 2000, the state reverted back to a semi-closed system.
- AB 837 would leave the semi-closed primary structure in place and merely provide voters with information on how to participate in what is still an unconstitutional primary.

The bill also fails to address the issues that IVP brought to Secretary of State's attention two years ago:

- 24.51% of voters in California are registered as No Party Preference (NPP).
- The semi-closed structure makes voting in primary elections cumbersome and confusing for NPP voters, as they can only vote in certain parties' primaries and often register with the American Independent Party on accident, making them ineligible to vote in a party primary of their choice.
- IVP supported ACR 145 (introduced 2/29/16) which would have addressed many of the above issues more constructively than AB 837, which provides only cosmetic education.

Every voter has a fundamental right to participate at all critical stages of the election process without being forced to join a political party. It is this same fundamental right of non-association that the Court recognized in *Democratic Party v Jones*.

The opposition asserts that California's current presidential primary system is inconsistent with the state Constitution because the state conducts a "semi-closed" presidential primary rather than an "open" presidential primary. This assertion, however, appears to be based on misunderstanding of the meaning of the phrase "open presidential primary" as it is used in the state Constitution. Article II, Section 5 of the California Constitution requires the Legislature to "provide for partisan elections for presidential candidates...including an open presidential primary whereby the candidates on the ballot are those found by the Secretary of State to be recognized candidates throughout the nation..." The Assembly Elections & Redistricting Committee analysis for ACR 145 (Olsen) from 2016 states that the language referring to an "open presidential primary" was added to the Constitution through the adoption of Proposition 4 at the June 1972 statewide primary election, which was placed on the ballot by the Legislature through the adoption of SCA 3 (Alquist), Resolution Chapter 274, Statutes of 1971. Based on news reports, legislative history, and the ballot arguments for and against Proposition 4, it is clear that the effect and intent of the constitutional amendment was to require the SOS to place on the ballot the names of recognized candidates for President of the US without the need for those candidates (or for delegates who were pledged to support those candidates) to circulate petitions. In this context, the term "open presidential primary" referred to the fact that the primary was open to any person who was generally recognized as a candidate for president, as opposed to being limited to candidates who were backed by a slate of delegates who had circulated petitions to appear on the ballot. California's current process for conducting presidential primary elections is wholly consistent with that requirement.

- 9) **Previous Legislation:** AB 2953 (Feuer) of 2008, would have required poll workers to provide written notification, as specified, informing to each unaffiliated voter that he or she may request a partisan ballot at a primary election. AB 2953 was vetoed by Governor Schwarzenegger and in his veto message the Governor stated, "The historic delay in passing the 2008-2009 State Budget has forced me to prioritize the bills sent to my desk at the end of the year's legislative session. Given the delay, I am only signing bills that are the highest priority for California. This bill does not meet that standard and I cannot sign it at this time."

REGISTERED SUPPORT / OPPOSITION:

Support

Secretary of State Alex Padilla (Sponsor)

Opposition

Independent Voter Project

Analysis Prepared by: Nichole Becker / E. & R. / (916) 319-2094