

Date of Hearing: June 27, 2018

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

SB 1250 (Bradford) – As Amended May 7, 2018

SENATE VOTE: 31-2

SUBJECT: Voting: domicile.

SUMMARY: Specifies, for the purposes of determining the domicile of a Member of the Legislature or a Representative in Congress for voting purposes, that the existence of certain conditions at one of the person's residences do not override an existing conclusive presumption that establishes the person's domicile. Specifically, **this bill** provides, for the purposes of a provision of law that creates a conclusive presumption that the domicile of a Member of the Legislature or a Representative in Congress is the residence address indicated on the person's current affidavit of registration, that the presumption applies as long as the address is a residence of the person, notwithstanding that the member or representative may have another residence at which any of the following apply:

- 1) A child for whom the member or representative is a parent, step-parent, foster parent, guardian, or caretaker is enrolled in school.
- 2) The spouse, domestic partner, or intimate partner of the member or representative is located for employment.
- 3) The member or representative receives mail or other postal or parcel deliveries.
- 4) The member or representative owns, leases, or rents a dwelling.
- 5) The member or representative claims a homeowner's exemption or any other similar claim for tax purposes.
- 6) The member or representative maintains accounts or pays for utilities, cable or satellite television, Internet service, home security service, home or landscape maintenance, or other similar services.
- 7) The member or representative registers a vehicle or boat.
- 8) The member or representative maintains policies of insurance.
- 9) The member or representative has items of personal property.

EXISTING LAW:

- 1) Requires a voter's affidavit of voter registration to include the voter's place of residence, among other information. Defines "residence" for voting purposes as a person's domicile.
- 2) Provides that for the purposes of the state's election laws, the domicile of a person is that place in which his or her habitation is fixed, wherein the person has the intention of remaining, and to which, whenever he or she is absent, the person has the intention of

returning. Provides that at a given time, a person may have only one domicile.

- 3) Provides that the domicile of a Member of the Legislature or a Representative in the Congress of the United States is conclusively presumed to be at the residence address indicated on that person's currently filed affidavit of registration.
- 4) Provides that a person is not eligible to be elected or appointed to an elective office unless that person is a registered voter and otherwise qualified to vote for that office at the time that nomination papers are issued to the person or at the time of the person's appointment, unless otherwise specifically provided by law.
- 5) Permits a person who is qualified and is registered to vote to vote at any election held within the territory within which he or she resides and the election is held.

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 establishes a voter's residence as the place where they primarily live, and where they intend to continue living. Because legislators are required to work both in the Capitol as well as their districts, California law was amended in 1984 to make clear that the primary home, or domicile, of a member of the Legislature is the residence at which they registered to vote. Ever since, this forthright standard has set a clear standard that everyone can understand.

Unfortunately, some of our courts have allowed other information to be considered in evaluating where an elected official may reside. Despite the precise standard set out in Elections Code § 2026, they have allowed attorneys to go on fact-finding missions that contradict existing law. This allows for an uneven interpretation of the law.

SB 1250 does not expand residency requirements for incoming candidates, nor does this bill encourage candidates to run if they do not represent the best interests of their constituents. This bill is about allowing all legislators, who must travel and live in our state capital, to be effective leaders for our respective districts' without the fear of being targeted by overzealous prosecutors or political adversaries.

- 2) **Domicile and Residency:** Determining the domicile for voting purposes of most Californians is relatively straightforward; for any person who has only one residence as defined by state law, that person's residence will also be the person's domicile. For people who have more than one residence, however, the determination of which of those residences is the person's domicile will depend on a number of factors. Among other provisions, state law provides that factors that are relevant in determining a person's domicile include where that person's family resides; the address at which the person claims a homeowner's property tax exemption or a renter's tax credit; the address on the person's driver's license, identification card, or vehicle registration; and whether or not the person has physically resided at the residence in the preceding year.

State law also recognizes, however, that there may be unique circumstances which result in a person's absence for an extended period of time from a residence, which nonetheless do not mean that the residence is no longer the person's domicile. State law, for example, provides that a person does not gain or lose a domicile solely by reason of his or her presence or absence from a place while employed in the service of the United States or the State of California. Similarly, state law provides that students do not gain or lose a domicile solely by reason of their presence or absence from a place while at an institution of learning, but also provides that a student may qualify as an elector in the locality where he or she domiciles while attending the institution if the student has abandoned his or her former domicile.

Similarly, in 1984, the Legislature approved and the Governor signed AB 1798 (W. Brown), Chapter 21, Statutes of 1984. AB 1798 provided that for the purposes of determining the domicile of a Member of the Legislature or a Representative in the Congress of the United States, it is *conclusively presumed* that the residence address indicated on that person's currently filed affidavit of registration is the person's domicile. AB 1798 was approved in recognition of the fact that sitting members of the Legislature and Congress face special circumstances because of the nature of their jobs, and that those circumstances could create situations where a consideration of the factors traditionally used to determine a person's domicile could create an inaccurate impression of the true domicile of a member of the Legislature or of Congress. For example, members of the Legislature and of Congress may spend long periods of time away from the districts that they represent in order to serve their constituents in Sacramento or in Washington, D.C., respectively. Similarly, incumbent Legislators and members of Congress may be forced to relocate involuntarily due to redistricting in order to continue to represent their constituents. As the analysis of AB 1798 by the Assembly Committee on Elections, Reapportionment, and Constitutional Amendments noted, "[b]ecause of the nature of their position, changing conditions in housing, employment and schooling, and other factors, including, but not limited to, nonstop reapportionment, Representatives in Congress and Members of the Legislature are finding themselves to be in a ... situation with other classes of people requiring a separate determination of domicile."

Since the enactment of AB 1798, however, at least one California court looked beyond the conclusive presumption created by that bill and engaged in a weighing of evidentiary factors to determine where a member of the Legislature was domiciled. In *People v. Superior Court (Wright)* (2011) 197 Cal.App.4th 511, a state appellate court reviewed allegations that a member of the Legislature was not, in fact, domiciled at the address he gave on his affidavit of voter registration. Applying the conclusive presumption, the trial court had dismissed the relevant charges based on the allegation that the legislator was not domiciled where he voted.

The appellate court, however, overturned the trial court's decision. It ruled that, for the conclusive presumption of domicile to apply, the address at which a legislator or Congressional representative is registered to vote has to be one of the official's "legal residences," meaning a place that the official inhabits at least sometimes, even if the official does not intend to remain there. To decide whether a location was a legal residence of a legislator or Congressional representative, the appellate court concluded that it is appropriate for a court to consider evidence regarding things like how often the legislator or Congressional representative visits the place, how long he or she stays at the location, whether the official receives mail at the location, and whether the location is listed as the

official's address in governmental records—in short, much of the same evidentiary analysis by which a person's domicile is determined.

The California Supreme Court declined to review the *Wright* decision and no subsequent cases have addressed the issue. As a result, according to the proponents of this bill, the legislators and Congressional representatives of California are left without clarity as to when, how, and if the conclusive presumption will be applied.

- 3) **Previous Legislation:** SB 163 (Bradford) of 2017, would have provided that the "domicile" of a legislator or Congressional representative shall be determined *solely* by the operation of the conclusive presumption created by AB 1798, and not by criteria included elsewhere in the Elections Code for establishing a person's domicile for voting purposes. SB 163 was never heard in the Senate Judiciary Committee after the scheduled hearings were canceled at the request of author.

AB 31 (C. Garcia) of 2015, would have specified that the conclusive presumption created by AB 1798 applies only if the address indicated on that person's currently filed affidavit of voter registration is a place in which the person's habitation is fixed for some period of time, among other provisions. AB 31 died in this committee after the scheduled hearing was canceled at the request of author.

REGISTERED SUPPORT / OPPOSITION:

Support

California State Conference of the National Association for the Advancement of Colored People

Opposition

None on file.

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