

Date of Hearing: June 19, 2019

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

ACA 6 (McCarty, et al.) – As Amended June 12, 2019

SUBJECT: Elections: disqualification of electors.

SUMMARY: Permits a person who is on parole for the conviction of a felony to register to vote and to vote. Specifically, **this bill:**

- 1) Deletes a provision of law that requires the Legislature to provide for the disqualification of electors while on parole for the conviction of a felony.
- 2) Provides that an elector disqualified from voting while serving a state or federal prison term shall have their right to vote restored upon the completion of their prison term.
- 3) Makes other technical and conforming changes.

EXISTING LAW:

- 1) Permits a person who is a United States citizen, a resident of California, not imprisoned or on parole for the conviction of a felony, and at least 18 years of age at the time of the next election, to register to vote.
- 2) Requires the Legislature to provide for the disqualification of electors while mentally incompetent or imprisoned or on parole for the conviction of a felony.
- 3) Permits a person who is a United States citizen, a resident of California, not imprisoned or on parole for the conviction of a felony, and at least 16 years of age, to pre-register to vote.
- 4) Defines the following terms described above:
 - a) "Imprisoned" to mean currently serving a state or federal prison sentence.
 - b) "Parole" to mean a term of supervision by the Department of Corrections and Rehabilitation.
 - c) Provides that "conviction" does not include a juvenile adjudication made pursuant existing law.
- 5) Requires the county elections official to cancel a person's affidavit of registration upon proof that the person is presently imprisoned or on parole for the conviction of a felony.

FISCAL EFFECT: Unknown

COMMENTS:

1) **Purpose of the Measure:** According to the author:

ACA 6 places a constitutional amendment on the ballot that will grant individuals on parole the opportunity to vote. People on parole are our colleagues, neighbors, and family members. They work in our communities, pay taxes, send their kids to school, and strive to make California a better place for all residents. In order to fully reintegrate folks returning to our communities, we must restore their right to vote. This is not a partisan issue but rather an issue of having a just and inclusive democracy in this state. States that allow people on parole to vote have lower rates of recidivism; giving people on parole the right to vote gives them a stake in their communities and a voice in the issues that impact their daily lives.

2) **California Disenfranchisement Laws:** Article II, Section 4 of the California Constitution states that "[the] Legislature shall prohibit improper practices that affect elections and shall provide for the disqualification of electors while mentally incompetent or imprisoned or on parole for the conviction of a felony." Elections Code Section 2101 is the statute that implements Article II, Section 4 of the California Constitution. Section 2101 states that "[a] person entitled to register to vote shall be a United States citizen, a resident of California, not imprisoned or on parole for the conviction of a felony, and at least 18 years of age at the time of the next election." Moreover, under California law, any person who is imprisoned or on parole for the conviction of a felony is prohibited from voting and elections officials are required to cancel the voter registrations of such individuals. However, a person who is on probation for conviction of a felony is permitted to vote. Once an individual completes parole, then their right to vote is restored and they can re-register to vote.

3) **Citizen Initiative Effort:** In 2017, Initiate Justice proposed an initiative constitutional amendment, entitled "Eliminates Restrictions on Voting by Felons in Prison or on Parole Initiative Constitutional Amendment and Statute," to change the California Constitution and eliminate existing restrictions on pre-registering to vote, registering to vote, and voting by persons while they are in prison or on parole for the conviction of a felony. Under the California Constitution, in order to qualify for the ballot, a constitutional amendment petition must contain signatures equal to 8 percent of the most recent gubernatorial vote (585,407 signatures were required at the time). The ballot measure did not obtain the necessary signatures and failed to qualify for the ballot.

4) **States and Felony Disenfranchisement:** According to a 2018 report by the National Conference of State Legislatures (NCSL), understanding felony disenfranchisement laws can be challenging as the laws vary tremendously across states. The NCSL report points out that in two states - Maine and Vermont - felons never lose their right to vote, even while they are incarcerated. In 14 states and the District of Columbia, felons lose their voting rights only while incarcerated. In 22 states, felons lose their voting rights during incarceration, and for a period of time after, typically while on parole and/or probation. In 12 states, felons lose their voting rights indefinitely for some crimes, or require a governor's pardon in order for their voting rights to be restored, or face an additional waiting period after completion of sentence (including parole and probation) before voting rights can be restored.

According to NCSL, states that provide for "automatic restoration" of voting rights does not mean that voter registration is automatic. Typically, prison officials inform election officials that an individual's rights have been restored and the person is responsible for re-registering through normal processes. Some states, like California, require that voter registration information be provided to formerly incarcerated people.

The report also points out that the general trend has been toward reinstating the right to vote at some point. Between 1996 and 2008, 28 states passed new laws on felon voting rights:

- Seven repealed lifetime disenfranchisement laws, at least for some ex-offenders.
- Two gave probationers the right to vote.
- Seven improved data-sharing procedures among state agencies.
- Nine passed requirements that ex-offenders be given information and/or assistance in regaining their voting rights at the time they complete their sentence.
- Twelve simplified the process for regaining voting rights, for instance, by eliminating a waiting period or streamlining the paperwork process.

More recently, last year in Florida a citizen initiated constitutional amendment restored the right to vote for those with prior felony convictions, with certain exceptions. Additionally, the New York Governor issued an executive order removing the restrictions on parolees' right to vote and Louisiana passed a bill allowing any person who has not been incarcerated in the last 5 years (those on probation or parole) to be able to vote.

Last month the Nevada Governor signed a bill permitting felons in Nevada the right to vote after being released from prison. Previously, Nevada law required a felon to have their right to vote restored two years after discharge from probation or parole or release from prison, as specified.

- 5) **Initiate Justice Survey:** According to a March 2019 report by Initiate Justice, there are approximately 162,000 citizens in the state (110,000 in state prison, 12,000 in federal prison, and 40,000 on parole) that are currently incarcerated in state prisons or on parole for the conviction of a felony that do not have the right to vote. In 2017, Initiate Justice launched a campaign to restore voting rights to California citizens who are currently incarcerated in state prison or on parole. As part of their campaign, Initiate Justice conducted a survey of its 4,000+ incarcerated members in 35 California state prisons and members on parole to better understand whether those who are incarcerated and on parole want to be able to vote, the political issues they care about most, ways in which they are currently civically engaged despite being denied the right to vote, and their insights on the types of public investments that could prevent incarceration and promote public safety. The survey received 1,085 responses and found that only 37% voted before incarceration and 98% said they would vote if they could because they want to have a voice in society, feel more connected and contribute positively to their community, and have a say in our political system.

6) **Arguments in Support:** In support, the Brennan Center for Justice writes:

California is one of only a handful of states that denies the right to vote to people on parole but allows people on probation to vote. Few people, including election administrators, understand the difference between probation and parole. And as Californians know, those distinctions are becoming increasingly opaque and confusing as new forms of supervision get created. The result is that eligible voters think that they cannot or refrain from voting out of fear that they may be breaking the law, a phenomenon we call “*de facto disenfranchisement*.” By restoring the right to vote for Californians on parole, ACA 6 and AB 646 would offer a clear, bright-line rule: if you are living in the community, you can vote. Both proposals would also reduce the opportunity for erroneous purges of eligible citizens from the voting rolls.

7) **Arguments in Opposition:** In opposition of a prior version, the Election Integrity Project California, Inc. writes:

ACA 6 seeks to restore voting rights, the most fundamental and valuable of American privileges, to those who have not completed making full restitution for their crimes. While on parole, a former criminal’s liberties, such as movement, association, activities and even ownership of certain items are still heavily restricted and regularly monitored by the system. Any misstep results in immediate re-incarceration. In other words, an individual on parole has not regained the full trust of the society at large, nor the privilege to participate as a full member of that society.

It is argued that restoring voting rights during parole may serve to give parolees a sense of participation and belonging, and thus reduce recidivism. There is NO evidence from which to draw that conclusion. In fact, it is counter-intuitive. A period of parole gives the former criminal powerful reminders of what true liberty is by withholding just enough of it to incentivize further appropriate behavior so as to earn the rights just beyond the fingertips.

8) **Related Legislation:** AB 646 (McCarty) is the implementing legislation for ACA 6. AB 646 was approved by this committee on April 10th by a 5-1 vote, and is pending in the Assembly Appropriations Committee.

9) **Approval by Voters:** As a constitutional amendment, this measure requires the approval of the voters to take effect.

REGISTERED SUPPORT / OPPOSITION:

Support

All Of Us Or None (co-sponsor) (prior version)
American Civil Liberties Union of California (co-sponsor)
Anti-Recidivism Coalition (co-sponsor)
Californians United for a Responsible Budget (co-sponsor) (prior version)
Initiate Justice (co-sponsor) (prior version)
League of Women Voters of California (co-sponsor)

Legal Services for Prisoners with Children (co-sponsor) (prior version)
People Over Profits San Diego (co-sponsor)
Secretary of State Alex Padilla (co-sponsor) (prior version)
Alliance for Boys and Men of Color
Anti-Defamation League (prior version)
Asian Americans Advancing Justice – California
Asian Prisoner Support Committee (prior version)
Bend the Arc: Jewish Action
Brennan Center for Justice (prior version)
California Calls
California Coalition for Women Prisoners
California Public Defenders Association
California Voices for Progress
Californians for Safety and Justice
Center for Employment Opportunities (prior version)
Center on Juvenile and Criminal Justice (prior version)
Change Begins With ME (prior version)
Community Coalition
Community Coalition for Substance Abuse Prevention and Treatment (prior version)
Community Housing Partnership (prior version)
Conference of California Bar Associations
Council on American-Islamic Relations, California
Democratic Woman’s Club of San Diego County (prior version)
Dēmos (prior version)
East Bay Community Law Center
Ella Baker Center for Human Rights (prior version)
Fair Chance Project
FairVote California (prior version)
Feminists In Action Los Angeles
Friends Committee on Legislation of California
Homie Universidad Popular (prior version)
Human Impact Partners (prior version)
Indivisible CA: StateStrong a coalition of the following Indivisible groups: (prior version)
 All Rise Alameda
 Audaz – Indivisible District 40
 Building the Base Face to Face
 Cloverdale Indivisible
 Contra Costa MoveOn
 Defending Our Future: Indivisible CA 52
 El Cerrito Progressives
 Feminists in Action Los Angeles
 Indi Squared
 Indivisible 30/Keep Sherman
 Accountable
 Indivisible 36
 Indivisible 41
 Indivisible CA-3
 Indivisible CA29
 Indivisible CA-33

Indivisible CA-37
Indivisible CA-39
Indivisible CA-43
Indivisible East Bay
Indivisible Marin
Indivisible Media City Burbank
Indivisible Normal Heights
Indivisible North Oakland Resistance
Indivisible North San Diego County
Indivisible OC 46
Indivisible OC 48
Indivisible Sacramento
Indivisible San Bernardino
Indivisible San Jose
Indivisible Sausalito
Indivisible Sebastopol
Indivisible SF
Indivisible SF Peninsula and CA-14
Indivisible Sonoma County
Indivisible South Bay LA
Indivisible Stanislaus
Indivisible Suffragists
Indivisible Ventura
Indivisible Windsor
Indivisible Yolo
Indivisible: San Diego Central
Indivisibles of Sherman Oaks
Livermore Indivisible
Mill Valley Community Action Network
Nothing Rhymes with Orange
Orchard City Indivisible
Orinda Progressive Action Alliance
Our Revolution Long Beach
RiseUp
Santa Cruz Indivisible
SFV Indivisible
Tehama Indivisible
The Resistance Northridge
The Resistance Sacramento/Elk Grove
TWW/Indivisible – Los Gatos
Vallejo-Benicia Indivisible
Venice Resistance
Women’s Alliance Los Angeles
Indivisible CA-43 (prior version)
Indivisible East Bay
Indivisible Marin (prior version)
Indivisible Project (prior version)
Indivisible San Diego (prior version)
Indivisibles of Sherman Oaks (prior version)

Indivisible South Bay – LA
Indivisible Stanislaus (prior version)
Indivisible Ventura (prior version)
Institute of Democratic Education and Culture dba SpeakOut (prior version)
Interfaith Council of Contra Costa County (prior version)
Lawyers’ Committee for Civil Rights of the San Francisco Bay Area
LitLab (prior version)
Mi Familia Vota
National Association of Social Work, California Chapter
National Center for Youth Law (prior version)
National Immigration Law Center (prior version)
Our Revolution Long Beach (prior version)
Overpass Light Brigade – San Diego (prior version)
Pacific Beach Democratic Club (prior version)
Pasadenans Empowering Parent Participation in Education Governance (prior version)
Peace and Freedom Party of California (prior version)
Peace Resource Center of San Diego
Project Rebound, California State University Fullerton (prior version)
Public Health Justice Collective (prior version)
Resistance Northridge-Indivisible (prior version)
Rock the Vote (prior version)
Root & Rebound
Rubicon Programs
RYSE Center (prior version)
San Francisco Financial Justice Project
Showing Up for Racial Justice Bay Area (prior version)
Showing Up for Racial Justice at Sacred Heart
Smart Justice California (prior version)
STAND—White Men for Racial, Economic and Gender Justice (prior version)
Terps for Bay Area Resistance (prior version)
The Dream Corps, #cut50 (prior version)
Time for Change Foundation
Together We Will/Indivisible – Los Gatos (prior version)
Torrey Pines Democratic Club (prior version)
University of California Student Association
Vashon-Maury Showing Up for Racial Justice (prior version)
Voice of the Experienced (VOTE) (prior version)
Vote Allies (prior version)
We The People – San Diego (prior version)
White People 4 Black Lives (prior version)
Women’s Building of San Francisco (prior version)
Several hundred Individuals (prior version)

Opposition

Election Integrity Project California, Inc. (prior version)

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