

Date of Hearing: July 3, 2019

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

SB 288 (Wiener) – As Amended June 19, 2019

**SENATE VOTE:** (vote not relevant)

**SUBJECT:** Democratic Party of California: county central committee members and delegates to the state central committee.

**SUMMARY:** Allows a person who is not a United States (US) citizen to serve on a Democratic county central committee, notwithstanding the fact that the person is not registered to vote as a Democrat. Specifically, **this bill:**

- 1) Provides that a person who is not a US citizen is eligible to serve as a member of a county central committee or as a delegate to the state central committee of the Democratic Party of California, provided that the rules and bylaws of the Democratic Party of California permit the person to serve in that capacity.
- 2) Requires a county central committee of the Democratic Party to allow a person who is not a US citizen to serve on the county central committee if the rules and bylaws of the Democratic Party of California permit such a person to serve as a member of a county central committee or as a delegate to the state central committee.

**EXISTING LAW:**

- 1) Requires the Legislature, pursuant to the California Constitution, to provide for partisan elections for political party central committees.
- 2) Permits a political party to choose to have the members of its county central committees be elected in each county at every presidential primary election.
- 3) Prohibits a declaration of candidacy for membership on a county central committee of a political party from being filed by a candidate unless both of the following are true:
  - a) At the time of presentation of the declaration and continuously for not less than three months immediately prior to that time, or for as long as the candidate has been eligible to register to vote in the state, the candidate is shown by their affidavit of registration to be affiliated with that political party.
  - b) The candidate has not been registered as affiliated with any other qualified political party within 12 months.

Permits a county central committee of a political party, notwithstanding this law and subject to the bylaws of the state central committee, to establish the length of time that a candidate for membership on that committee must be shown by the candidate's affidavit of registration to be affiliated with the political party of that committee, and may establish the length of time that a candidate for membership on that committee must not have been registered as affiliated with a qualified political party other than the political party of that committee.

- 4) Provides that a person is not eligible to be appointed or elected to a county central committee of the Democratic Party of California if the person is not registered as affiliated with the Democratic Party at the time of the person's appointment or election.

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

**COMMENTS:**

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

Senate Bill 288 will ensure that DREAMers and other undocumented immigrants are able to serve in official positions with the California Democratic Party (CDP), including as county central committee members and delegates to the statewide central committee.

While existing law does not explicitly require that CDP delegates and central committee members be U.S. citizens, it does specify that, in order to be elected or appointed to a position with the CDP, a person must already be registered or affiliated with the party (Elections Code §7209). Registered voters' party preference is shown on their affidavits of registration at the time they register to vote. Since the affidavit must show the facts necessary to establish voter eligibility, including that the registrant is a U.S. citizen, it is impossible for an undocumented immigrant to register, and, by extension, serve as a delegate or central committee member in the CDP.

SB 288 simply allows DREAMers and other undocumented immigrants to take on both state and local leadership roles in the CDP. This important measure will help ensure that, in a party committed to empowering immigrants, DREAMer and immigrant perspectives will have a seat at the table.

- 2) **County Central Committees and Public Elections:** Notwithstanding the fact that political party central committee members are not public officials, the state constitution explicitly recognizes political party central committees and requires the Legislature to provide for partisan elections for those offices. Specifically, Proposition 14, which was approved by the voters on the June 2010 statewide primary election ballot, is best known as the measure that implemented a "top two" primary election system in California for most elective state and federal offices. However, in addition to establishing the top two primary system, Proposition 14 also amended Article II, Section 5 of the California Constitution to provide that "[t]he Legislature shall provide for partisan elections for...party central committees."
- 3) **Internal Governance of Political Parties:** In *Eu v. San Francisco County Democratic Central Committee* (1989), 489 U.S. 214, the US Supreme Court examined the right of a state to impose laws relating to the internal affairs of political parties. The Court found that laws burdening the associational rights of political parties and their members must serve a compelling state interest. Therefore, because a state has a compelling interest in preserving the integrity of its election process, it may properly enact laws that interfere with a political party's internal affairs when necessary to ensure that elections are fair and honest. (For example, a state may properly impose certain eligibility requirements for voters in the general election where such requirements are necessary to ensure that elections are fair and

honest, even though those requirements limit the ability of political parties to garner support and members.) However, a state cannot justify regulating a party's internal affairs without showing that such regulation is necessary to ensure an election that is fair and orderly.

In *Eu*, the Court reiterated that a political party's determination of the structure which best allows it to pursue its political goals is protected by the Federal Constitution (*Tashjian v. Republican Party of Connecticut* (1986), 479 U.S. 208 at 224) and further held that freedom of association also encompasses a political party's decisions about the identity of, and the process for electing, its leaders. Thus, unless the state can show that the particular internal party structure would interfere with the integrity of the electoral process or some other compelling state interest, the political parties have a constitutional right to be free from state regulations in the matter of their internal affairs.

In 2009, the California Court of Appeals for the Second District reaffirmed the Supreme Court's holding in *Eu* in the case of *Wilson v. San Luis Obispo County Democratic Central Committee* (2009) 175 Cal. App. 4th 489. The *Wilson* case dealt with a situation where the San Luis Obispo County Democratic Central Committee had adopted bylaws regarding the removal of central committee members and the membership of the central committee that were in conflict with provisions of the Elections Code. The court in *Wilson* ruled in favor of the San Luis Obispo County Democratic Central Committee, finding that it had the right to adopt those conflicting bylaws pursuant to *Eu*.

In light of the constitutionally protected rights of political parties, the Legislature frequently has changed provisions of the Elections Code at the request of political parties to reflect those parties' desired methods of electing members to party central committees, and generally has removed unnecessary provisions of state law that otherwise could interfere with the internal structure of political parties (see "Related and Previous Legislation" below).

- 4) **County Central Committee Membership of Persons who are not US Citizens:** According to information provided by the author's office, this bill came about in part after a person who is not a US citizen was appointed to the San Francisco Democratic Central Committee in January of this year. While the action of appointing that person to the county central committee appears to be prohibited by existing state law (since, as described above, state law provides that a person is not eligible to be appointed to a county central committee of the Democratic Party of California if the person is not registered as affiliated with the Democratic Party at the time of the person's appointment, and a person must be a US citizen in order to register to vote), the bylaws of the San Francisco Democratic Central Committee permit a person who is ineligible to vote to serve on the committee if the person "has declared [their] intention to register as a Democrat upon becoming eligible to register as a voter." Committee staff is not aware of any challenge being made to that appointment. Furthermore, in light of *Eu* and related case law, it could be argued that a state law requiring a person to be registered to vote with the Democratic Party in order to be *appointed* to a Democratic county central committee is unconstitutional or otherwise unenforceable where the county central committee wishes to permit individuals who are not eligible to register to vote to serve on the committee.

State law also requires a person to be registered with the Democratic Party in order for that person to be eligible to be *elected* to a county central committee. While this requirement has the potential to interfere with the county central committee's determination of the structure

which best allows it to pursue its political goals, having statutory eligibility requirements for being elected to a county central committee also serves a necessary purpose. Specifically, county central committees typically do not run their own elections to elect central committee members; instead, county central committees generally choose to have those elections conducted by county elections officials. That being the case, county elections officials need a mechanism to determine whether a candidate for an office that will appear on the ballot is eligible to be elected to that office. Furthermore, since county central committee elections are consolidated with elections for public office, the elections officials need to be able to conduct the election in a manner that is fair and honest, and that protects the integrity of the election.

The requirements that currently exist under state law for a person to run as a candidate for a political party's county central committee make it relatively easy for the elections official to determine whether a person is eligible to be a candidate for central committee. Specifically, Section 8001 of the Elections Code prohibits a person from being a candidate for membership on a county central committee of a political party unless that person has been registered to vote with that political party for a specified period of time (three months, in most cases), and has not been registered with any other political party during the last 12 months (though central committees have some leeway to establish different time periods through their bylaws). Additionally, as noted above, Section 7209 of the Elections Code prohibits a person from being elected to a Democratic county central committee unless that person is affiliated with the Democratic Party at the time of the person's election. Since county elections officials maintain voter registration lists and have access to a voter's registration history, the elections official can determine whether a person is eligible to be a candidate for a party's county central committee using records that are readily available to the elections official. This allows the elections official to make that determination easily, and without unnecessary entanglement into the internal affairs and operations of the political party.

By contrast, it would be much more difficult for an elections official to determine whether a person was eligible to be a candidate for central committee under this bill. As currently in print, this bill permits a person who is not a US citizen to serve as a member of a county central committee if the rules and bylaws of the Democratic Party of California permit the person to serve in that capacity. This provision is potentially problematic for a couple of reasons. First, the rules and bylaws of the Democratic Party of California do not establish eligibility requirements for serving on a Democratic county central committee, since county central committees are independent organizations and are not subject to the control of the state party. In fact, allowing the state party to have this type of control over the operations and membership of county central committees could jeopardize the status of county central committees as independent organizations under federal campaign finance law.

Second, it is unclear how an elections official would know whether a person who is not a US citizen is eligible to file as a candidate for county central committee under this bill. Nothing in this bill requires political parties to notify county elections officials of whether their bylaws permit people who are not US citizens to serve on county central committees. Even if such a requirement were added to this bill, county elections officials still would need a mechanism for determining whether a specific person who is not a US citizen meets any eligibility requirements established by the party in order to determine whether the person is eligible to file as a candidate. To the extent that such eligibility requirements are subjective (e.g., if the party allowed a person who is not a US citizen to serve on the central committee

only if the person supported and promoted the goals of the party), requiring the county elections official to make a determination of whether a particular person is eligible to be a candidate for central committee would result in a significant entanglement of the government in the internal operations of a political party. Establishing eligibility requirements that are objective would avoid that entanglement, but the elections official would still need to know what those eligibility requirements are, and would need a mechanism that is not overly burdensome for verifying whether a person meets those eligibility requirements.

Furthermore, the language of this bill potentially presents other challenges. This bill would *require* a Democratic county central committee to allow a person who is not a US citizen to serve on the county central committee if the rules and bylaws of the Democratic Party of California permit such a person to serve as a member of a county central committee or as a delegate to the state central committee. As indicated above, however, county central committees are independent of the state party, and requiring them to comply with membership eligibility rules established by the state party could jeopardize their status as independent organizations under federal campaign finance law. Additionally, this bill seeks to establish statutory criteria governing eligibility for serving as a delegate to the *state* central committee of the Democratic Party. Nothing in state law, however, governs eligibility for serving as a delegate to the state central committee, and since the government does not conduct elections to elect delegates to the state central committee, there is no obvious governmental interest in having statutory eligibility criteria for serving as a member of a private organization such as the state central committee. In fact, the lack of a state interest in regulating the internal conduct of the state central committee was the rationale given for previously-adopted legislation (AB 1396 (Torres), Chapter 392, Statutes of 2009, which is described in more detail below) that eliminated provisions of the Elections Code that governed the membership and operations of the state central committee.

- 5) **Federal Campaign Law:** Generally speaking, the primary purposes and activities of political party county central committees is to promote voter registration with the political party, to encourage turnout among members of the party, and to participate in elections in an effort to promote the party's candidates and values in the electoral process. As a result, membership on a county central committee often involves participation in various electoral activities. In at least some cases, such electoral involvement by a person who is not a US citizen and who is not lawfully admitted for permanent residence in the country could subject the person to federal legal liability.

For example, according to the Federal Election Commission, federal law prohibits campaigns from soliciting or accepting contributions from foreign nationals. The term "foreign national" is defined to include any individual who is not a US citizen and not lawfully admitted for permanent residence. Federal law prohibits contributions, donations, expenditures and disbursements solicited, directed, received or made directly or indirectly by or from foreign nationals in connection with any election — federal, state or local. This prohibition includes contributions or donations made to political committees.

In light of this federal prohibition, it may be illegal for a person who is not a US citizen and who is not lawfully admitted for permanent residence in the country to participate in actions that commonly are undertaken by central committee members. For example, such a person would be unable to make financial contributions to the party or to solicit funds on behalf of the party. In some cases, membership dues that are required to be paid by members of

political party central committees can be considered campaign contributions. In such a situation, a person who is not a US citizen and who is not lawfully admitted for permanent residence in the country would be unable to legally pay their required central committee dues.

While nothing in state law or in this bill *requires* that political party central committee members pay dues or make campaign contributions, it is possible that messaging surrounding legislation to make it legal for a person who is not a US citizen to run for and serve on political party central committees could create a mistaken impression that it is legal for a person who is not a US citizen and is a member of a political party central committee to participate in all customary central committee activities. In light of that concern, and the potential criminal and civil (including immigration) consequences for violations of federal law, if state law is amended to allow individuals who are not US citizens to be candidates for political party central committees, it may be appropriate to require that candidates be provided with information about these and other relevant provisions of federal law that may otherwise limit the central committee activities in which they are able to legally participate.

- 6) **Eligibility to Vote in Central Committee Elections:** While this bill seeks to allow people who are not US citizens to be candidates for Democratic county central committees, nothing in this bill would permit a person who is not a US citizen to *vote* in such elections or otherwise change the eligibility for voting in any type of publicly-conducted election in the state. Changing the eligibility rules for voting in publicly-conducted elections would present additional policy considerations that are not addressed in this analysis.
- 7) **Potential Amendments for a Path Forward:** Because county central committee elections are scheduled to take place at the presidential primary election next March, the author of this bill has expressed a desire to make necessary changes to state law in time to allow individuals who are not US citizens to be candidates for the Democratic county central committees at that election, if permitted by the central committees. Candidate filing for the March presidential primary election ends later this year, so any change in eligibility rules for that election not only would need to be enacted this year, but also likely would need to be enacted in an urgency measure to ensure that the new eligibility rules are in place before the candidate filing deadline.

As detailed in this analysis, however, the current version of the bill may fail to accomplish the author's intended goal while presenting a number of other policy questions and concerns. In order to facilitate further discussions on the policy questions presented by this bill without advancing bill language that could create complications for election administration, the author and the committee may wish to consider amending this bill to replace the current contents of the bill with the following language:

SECTION 1. Section 7209 of the Elections Code is amended to read:

7209. A person shall not be eligible for ~~appointment or~~ election to a committee who is not registered as affiliated with this party at the time of ~~his or her~~ appointment or the person's election.

As noted above, because the government has no role in the process of people being *appointed* to county central committees, imposing statutory eligibility criteria for a person to be

appointed to the Democratic county central committee arguably is unconstitutional or otherwise unenforceable if it is inconsistent with rules adopted by the committee. Accordingly, this language could help avoid situations where state law improperly seeks to regulate the internal affairs of political parties in a manner that is inconsistent with case law. Additionally, this language has the benefit of directly addressing the provision of state law at issue in the situation that was the impetus for this bill. That is, this language would allow a county central committee to permit the appointment of a person who is not registered to vote as a Democrat to the committee without raising questions about the legal permissibility of such an appointment. This change in law would not, however, *require* a Democratic county central committee to permit the appointment of people who are not registered to vote with the Democratic Party; instead, it would only remove a statutory prohibition against such an appointment.

Approving the bill in this proposed amended form would not prevent further policy discussions from occurring between relevant stakeholders—including elections officials and central committees—about how best to implement a policy to allow people who are not US citizens to be *candidates* for county central committees. To the extent that such discussions take place and the relevant policy issues can be worked-out, this bill could be amended and re-referred to this policy committee if appropriate for consideration of those amendments.

8) **Arguments in Support:** In support of this bill, the California Immigrant Policy Center writes:

SB 288 is essential for providing qualified immigrants with the opportunity to serve their communities and ensure that outdated, discriminatory laws are updated to reflect California's values of inclusivity. The California Legislature has already taken significant steps towards advancing immigrant integration in our state by enacting laws that have removed the bar on qualified and trained undocumented immigrants applying for professional licenses, provided equal access to in-state tuition and many public grants regardless of immigration status, and created eligibility for drivers licenses for all Californians. This bill represents a sensible next step on the path towards bringing California closer to full immigrant inclusion and integration by enabling all Californians to serve on a public board or commission or run for public office. Diversity and equal representation in leadership lead to better outcomes by promoting creative thinking that leads to better solutions that more accurately respond to the needs of an immigrant-rich society. In addition, recognizing all Californians as citizens of our state promotes civic engagement and strengthens our democratic institutions.

By granting all Californians the right to serve in local and state leadership roles in the California Democratic Party, we can promote civic engagement and directly strengthen our democratic institutions.

9) **Related and Previous Legislation:** AB 334 (Obernolte), Chapter 6, Statutes of 2019, repeals requirements that members of a county central committee of the California Republican Party shall assume office and hold their first meeting during the month of December or January following a general election, and hold office for a two-year term commencing with that first meeting held in December or January following a general election. This committee approved AB 334 on consent by a 7-0 vote on March 13, 2019.

AB 1148 (B. Gaines), Chapter 111, Statutes of 2015, required Republican county central committee members in Placer County to be elected by supervisorial district, and provided for seven members to be elected from each district.

AB 1200 (Ma), Chapter 8, Statutes of 2012, changed the manner in which Republican county central committee members are elected in the City and County of San Francisco, and the manner in which Democratic county central committee members are elected in Alameda and Sacramento counties and the City and County of San Francisco, among other provisions.

AB 1396 (Torres), Chapter 392, Statutes of 2009, repealed various provisions of the Elections Code governing the membership and operations of the state central committee of the Democratic Party of California, and instead required that the standing rules and bylaws of the Party govern the membership and operations of the state central committee.

AB 965 (Anderson), Chapter 60, Statutes of 2007, provided that the membership of the state central committee of the California Republican Party (CRP) shall be as set forth in the standing rules and bylaws of the CRP, among other provisions.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

California Immigrant Policy Center  
California Young Democrats Latino Caucus  
San Francisco Latino Democratic Club  
11 individuals

##### **Opposition**

None on file.

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