

Date of Hearing: July 3, 2019

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

SB 696 (Umberg) – As Amended June 24, 2019

**AS PROPOSED TO BE AMENDED**

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

**SUBJECT:** Elections: political parties.

**SUMMARY:** Prohibits a political party from including “no party preference,” “decline to state,” or “independent” in its name. Requires any existing political party that uses any of these terms in its name to change its name or to lose its qualification as a political party. Specifically, **this bill:**

- 1) Prohibits a group of electors who desires to qualify a new political party from designating a party name that includes the phrase “no party preference” or “decline to state,” or that includes the word “independent,” or any variation of that word or those phrases.
- 2) Requires the Secretary of State (SOS) to notify any political party that is qualified to participate in elections in the state but whose name includes any variation of the phrase “no party preference” or “decline to state,” or the word “independent,” that the party is legally required to change its name.
- 3) Requires any existing political party whose name includes any variation of the phrase “no party preference” or “decline to state,” or the word “independent,” to file a change of name notice with the SOS no later than December 1, 2019.
  - a) Requires the SOS, if the SOS approves the change of name, to update any form, list, notice, ballot, publication, or database containing the names of political parties by January 1, 2020. Provides that a registration made on a form containing the prior name of the party shall continue to be accepted and a party preference expression made for the party using the prior name will remain valid until changed by the voter.
  - b) Requires the SOS to disqualify the party on January 1, 2020 if it does not submit a change of name notice by December 1, 2019. Requires the SOS to remove the name of the party from any form, list, notice, ballot, publication, or database containing the names of political parties. Requires any voter registered as preferring the party to be reclassified as a no party preference voter until the voter provides a different party preference.
- 4) Requires the SOS to notify each voter registered as preferring a political party whose name includes any variation of the phrase “no party preference” or “decline to state,” or the word “independent,” as follows:
  - a) If the party changes its name as provided by this bill, a notification of the party’s new name and that the voter shall continue to be registered as preferring the political party, but under its new name.

- b) If the party does not change its name by the deadline provided in this bill, a notification that the party has lost its qualification under state law, that the voter may select a new party preference, and that the voter will be considered a no party preference if the voter fails to select a new party preference.
- 5) Contains the following findings and declarations:
- a) When a political party's name includes the phrase "no party preference" or "decline to state" or the word "independent," it inherently misleads voters and creates voter confusion for voters who wish not to register with any political party and stay independent of political parties.
  - b) The state has a compelling interest to avoid voter confusion in the electoral process.
  - c) Voter education is ineffective in remedying this voter confusion and thus it is necessary for the Legislature to restrict the use of the phrase "no party preference" or "decline to state" or the word "independent" in the name of political parties.
- 6) Declares the intent of the Legislature that this bill be interpreted in a manner to reduce the burden on parties and voters to the maximum extent possible, without compromising the bill's goal of eliminating voter confusion.
- 7) Contains an urgency clause, allowing this bill to take effect immediately upon enactment.

**EXISTING LAW:**

- 1) Requires a group of electors that seeks to qualify a new political party to form a political body by doing both of the following:
  - a) Holding a caucus or convention at which temporary officers are elected and a party name designated.
  - b) Filing formal notice with the SOS that the political body has organized, elected temporary officers, and declared an intent to qualify a political party, as specified.
- 2) Prohibits the designated name of a political body from being so similar to the name of an existing party so as to mislead the voters, or from conflicting with the name of any existing party or political body that has previously filed notice of an intention to qualify to participate in elections in the state.
- 3) Permits a voter, when registering to vote, to disclose the name of the political party that the voter prefers. Voters who do not choose a political party preference are commonly referred to as "no party preference" voters.
- 4) Permits a no party preference voter 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 no party preference voter to vote in its primary election.

**FISCAL EFFECT:** Unknown

**COMMENTS:**

- 1) **Author's Amendments:** The author has proposed amendments to add an urgency clause to this bill so that it may be implemented on a timeline that reduces the potential for confusion that could interfere with voters' choices in the 2020 elections. Amendments to add an urgency clause to a bill, however, cannot be adopted through pre-committee author's amendments. Accordingly, this bill is being heard in committee today as proposed to be amended by the author to add an urgency clause. This analysis reflects those proposed author's amendments.

In accordance with Joint Rule 58, the Assembly Rules Committee approved the addition of an urgency clause to this bill at its hearing on June 24, 2019.

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

When a political party's name includes the word "independent" it creates voter confusion especially amongst those voters who wish to not register with any party and stay independent of political parties. Contrary to what the name would have you believe, The American Independent Party (AIP) is in fact an ultraconservative group.

Today the AIP has over half a million-registered members, more than all of California's other minor parties combined. Part of the reason for the large amount of registered AIP members is that California's voter registration card lists possible parties in alphabetical order. As a result, the AIP is the first choice that an individual sees. A poll conducted by the Los Angeles Times found that fewer than 4% of registered AIP voters could correctly identify their own registration as a member of the AIP. The same poll noted that more than 50% of registered AIP members wanted to leave the AIP once they were read excerpts of their platform.

Unlike voters registered as 'No Party Preference' (true independents), individuals who are registered with the AIP are prevented from casting votes in the Democratic presidential primary. Even the [former] Chairman of the AIP, Mark Seidenberg, acknowledged this voter confusion by saying, "A lot of people just don't understand what they're doing when they fill out a form." Mr. Seidenberg went on to say that one reason the AIP does not want to change its name is that the party would be forced "to get new voters and that's expensive."

In 2016, a Santa Clara County District Judge ordered elections officials to change an individual voter's registration to 'no party preference' so that her ballot could be counted in the Democratic presidential primary after she had petitioned that she had mistakenly registered with the AIP. California voters should not have to sue in order to vote.

- 3) **What's In a Name?** Since at least 1917, California law has allowed a voter to choose a political party as a part of the voter registration process. Until 2010, voters who selected a political party when registering to vote were deemed to have affiliated with the political party that they selected. Voters who did not select a political party during the voter registration process were referred to as "decline to state" voters, since they declined to state on the voter

registration form the name of a political party with which they intended to affiliate.

In 2010, voters approved Proposition 14, which implemented a top two primary election system in California for most elective state and federal offices. Among other changes, one piece of implementing legislation for Proposition 14—SB 6 (Maldonado), Chapter 1, Statutes of 2009—specified that individuals who select a political party when registering to vote were no longer considered to be affiliating with that party, but instead were declaring a preference for that political party. Relatedly, the terminology used to describe voters who did not select a political party when registering to vote changed from “decline to state” voters to “no party preference” voters. (More recently, changes in state law required voter registration records to distinguish between voters who affirmatively indicated that they did not want to register with a political party and voters who left the political party section of the voter registration blank. Voters who leave the political party section blank are now identified as having an “Unknown” party preference, but otherwise are treated as “no party preference” voters under state law.)

Regardless of the official terminology used to describe voters who do not select a political party when registering to vote, these voters often have been informally described as “independent” voters. In fact, there has been at least one prior legislative effort to use the term “independent” as the official terminology for describing these voters (see “Previous Legislation,” below).

Aside from the informal use of the term “independent” to describe voters who did not select a political party when registering to vote, the term “independent” also has a more formal meaning in California’s electoral process. Specifically, at elections for partisan offices (other than county central committee), there are two ways that a candidate can qualify to appear on the ballot: by party nomination or by the independent nomination process. Under the party nomination process, each political party that has qualified to participate in California elections has the right to nominate a candidate who appears on the general election ballot. In that situation, the candidate so nominated by a party is that party’s representative on the ballot. By contrast, under the independent nomination process, a candidate qualifies to appear on the general election ballot without receiving the nomination of any political party. Instead, if a candidate collects a specified number of signatures from voters on a petition, that candidate automatically appears on the ballot in the general election.

When a political party chooses a candidate for partisan office as the party’s nominee to appear on the general election ballot, the name of the political party appears with the candidate’s name to signify that the candidate is that party’s representative on the ballot. By contrast, when a candidate for partisan office qualifies for the general election ballot through the independent nomination process, the word “Independent” is printed on the ballot next to the candidate’s name where the name of a political party otherwise would appear. That word identifies the fact that the candidate qualified for the ballot independently of being nominated by a political party that has qualified to have a nominee appear on the ballot. In this context, the word “Independent” has no connection whatsoever with the candidate’s political party affiliation or preference; a candidate is eligible to qualify for the general election ballot using the independent nomination process *even if* that candidate is registered with a political party that is eligible to have its nominee appear on the ballot.

Until recently, the independent nomination process was available to candidates running for

most elective federal and state offices. With the passage of the “top two” primary system in 2010, however, most elective state and federal offices are now designated as “voter-nominated” offices rather than “partisan” offices. As a result, the independent nomination process currently applies only to candidates for President seeking to appear on the general election ballot.

In proposing to limit the use of certain words and phrases in the names of political parties and political bodies that are seeking to qualify as political parties, this bill targets those words and phrases that commonly have been used to describe voters and processes that are detached from political parties and their nomination procedures.

- 4) **American Independent Party and Los Angeles Times Investigation:** Although the provisions of this bill apply broadly to any political party (or political body seeking to qualify as a party) whose name uses certain words or phrases, the immediate effect of this bill would exclusively affect one political party—the American Independent Party. No other political party or political body that currently is seeking to qualify as a political party uses any of the words or phrases that this bill proposes to restrict, though certain political parties and bodies have used such words or phrases in their names in the past.

According to information from the SOS, the American Independent Party first qualified to participate in California elections in 1968, and it has maintained its status as a qualified political party in the state since that time. Approximately 2.59% of California voters are registered as preferring the American Independent Party based on the most recent voter registration figures released by the SOS, making it the third largest political party in California after the Democratic Party (43.11%) and the Republican Party (23.57%). Voters with “no party preference” and voters classified as having an “unknown” party preference make up about 28.60% of California voters.

In April 2016, the *Los Angeles Times* released an investigation in which it found—based on a survey of voters registered with the American Independent Party—that “a majority of [the party’s] members have registered with the party in error,” and that “[n]early three in four people did not realize they had joined the party.” The *Times* article noted that of the 500 voters registered with the American Independent Party that it surveyed as part of its poll, “fewer than 4% could correctly identify their own registration as a member of the American Independent Party.” The *Times* article did not indicate the extent to which voters registered with other political parties were able to identify their party registrations correctly. A month later, the *Times* reported that in the two weeks after it released its initial story, the number of voters registered with the American Independent Party dropped by 6.7% of the party’s total registration, compared to a drop of less than 0.3% over the same period of time for the Democratic and Republican Parties.

- 5) **Constitutional Issues:** By limiting the use of certain words and phrases that may be used in the names of political parties, and by requiring one existing political party to change its current name, this bill could be interpreted as a violation of the rights of free speech and association guaranteed by the First and Fourteenth Amendments to the United States Constitution.

In examining challenges to state election laws based on First and Fourteenth Amendment rights, the United States Supreme Court has developed a flexible balancing standard: A court

must weigh “the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments” against the “interests put forward by the State as justifications for the burden imposed by its rule,” taking into consideration the extent to which the State interests make the burden necessary. *Burdick v. Takushi*, 504 U.S. 428, 434 (1992). State regulations “imposing severe burdens on plaintiffs’ rights must be narrowly tailored and advance a compelling state interest.” *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997). “Lesser burdens, however, trigger less exacting review, and a State’s ‘important regulatory interests’ will usually be enough to justify ‘reasonable, nondiscriminatory restrictions.’” *Id.* (quoting *Burdick* at 434).

Some of the constitutional issues presented by this bill also were relevant in a recent federal lawsuit brought against Secretary of State Alex Padilla. Specifically, in February 2016, the “Independent Party”—a political body that was seeking to qualify as a political party in California—filed a complaint in the United States District Court for the Eastern District of California after Secretary Padilla denied the political body’s application to use the name Independent Party. In denying that application, Secretary Padilla determined that the name Independent Party was too similar to the name of the American Independent Party, and thus did not comply with the requirements of Section 5001 of the Elections Code. In the lawsuit, the plaintiffs alleged that the Secretary’s denial of the use of the name Independent Party violated their First and Fourteenth Amendment rights of free speech, association, ballot access, and equal protection.

In response to a motion for judgment on the pleadings filed by Secretary Padilla, the District Court dismissed the Independent Party’s complaint with prejudice. In its decision, the court found that the burden on plaintiff’s First Amendment rights was not severe, and thus did not demand heightened scrutiny. The court’s decision noted that “members of the Independent Party are still free to run for office, campaign, express their political ideas, and endorse other candidates,” and while Secretary Padilla’s decision “prevents candidates from having an ‘Independent Party’ designation on the presidential election ballot, ballots serve to “elect candidates, not as forums for political expression.” *Independent Party v. Padilla*, 184 F.Supp.3d 791, 795 (2016) (quoting *Timmons* at 363). The court also found that the state has “important, if not compelling, interests” that justify the denial of the use of the name “Independent Party,” noting both that the name was similar enough to the name of the American Independent Party that “voters might be confused and misled,” and that allowing a party to use the name Independent Party could create a “significant risk of confusion” with the independent nomination process for candidates for President. *Id.* at 796. The District Court’s decision in *Independent Party v. Padilla* was appealed to the Ninth Circuit Court of Appeals, which affirmed the lower court’s ruling in an unpublished opinion.

The party name restrictions imposed by this bill, however, are considerably broader than the limitation that was before the court in *Independent Party*. In fact, in reaching its decision, the *Independent Party* court noted that Secretary Padilla had approved a different political body’s use of the name “Independent California Party.” Accordingly, in concluding that the burden imposed on the plaintiff in that case was slight, the court noted that it was “possible for plaintiffs to become a qualified political party under a different name that still includes the word independent.” *Id.*

Because this bill prohibits the use of the word “independent” or its variants entirely (or the phrases “decline to state” or “no party preference” or their variants), the burden that this bill

imposes on constitutionally protected rights is more significant than the burden imposed on the Independent Party when it was prohibited from using its chosen name in its effort to become a qualified political party in California. The burden imposed by this bill on the American Independent Party is even more significant, as the party effectively would be forced by this bill to change the name that it has been using for more than 50 years. Forcing the American Independent Party to change its longstanding identity—an identity that the party presumably believes is an effective expression of the party’s political point of view—could significantly interfere with the party’s ability to accomplish its political goals. That’s especially true given the relatively short time frame under which the party would be required to change its identity; there is just over five months between the date this bill first appeared in print and the deadline for the party to change its name under this bill. Furthermore, the deadline for the party to change its name falls just three months before the presidential primary election—the type of election for which a voter’s political party preference is of greatest importance under California law.

- 6) **Presidential Primary Elections:** 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, a voter who is registered with the Green Party receives a ballot containing the Green Party candidates for President. No party preference voters (and voters who registered with a political body that is attempting to qualify as a party) either receive a nonpartisan ballot that does not list the candidates for president, or they can 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 type of ballot is commonly referred to as a “crossover” ballot. For the June 2016 presidential primary election, the Democratic Party, American Independent Party, and Libertarian Party allowed voters who were not registered with a political party to participate in their presidential primary elections.

The author of this bill argues and the *Los Angeles Times* investigation seems to suggest that a significant number of voters are registering with the American Independent Party mistakenly, when those voters actually do not want to be registered with *any* political party. For voters who make that mistake, their ability to vote in the presidential primary election of their choice may be significantly limited: instead of having the ability to choose between the ballots of the political parties that allow for “crossover” voting, those voters will only be eligible to receive the ballot of the American Independent Party. While pending legislation (see “Related Legislation,” below) seeks to make it easier for voters to change their party preference on election day, and thus to give those voters the ability to receive the presidential primary election ballot that they prefer, that legislation likely will have a limited impact for the large number of voters who automatically receive a ballot in the mail before each election. In that situation, a voter who mistakenly registered with the American Independent Party would automatically receive that party’s presidential primary election ballot in the mail, and the voter would need to request and receive a replacement ballot to be able to vote in the political party primary of their choice.

- 7) **Arguments in Opposition:** In opposition to this bill, the American Independent Party of California writes:

The American Independent Party objects to a forced name change on its own behalf and on behalf of many of those, who no doubt chose to register with our Party, liking both the designations “American” and “Independent,” especially

when they thought those to be positive attributes and moreover applicable to them personally.

Our Party name is no recent invention. It dates back to 1967 when we applied for party formation with that name and according to the procedures then in effect. Since 1968 our party has appeared on ballots and other voter materials.

When the State compels any action, it is a serious matter, which should in this instance, and in all others have a serious reason, and moreover be within its authority. This proposed legislation fails on both counts.

It prohibits the use in party names of two phrases (“no party preference” and “decline to state) and one word, “independent” and variations thereof. No one in their right mind except for mischievous purposes would want either of these two phrases as any part of a party name... THEN we come to “independent” the only plausible reason for this ill-conceived bill since it is not only a plausible component of a party name, but there actually is already a party with “independent” in its name for about 52 years!...

This legislation contains the remarkable (and inherently insulting to voters) assertion that:

(3) Voter education is ineffective in remedying this voter confusion and thus it is necessary for the Legislature to restrict the use of the phrase “no party preference” or “decline to state” or the word “independent” in the name of qualified political parties.

The “Voter education” to which this legislation no doubt refers are prolonged campaigns by the LA Times and others to reduce American Independent Party registration by trying to convince voters that they have been duped and therefore need to change their registration. These have all failed to achieve their goal to any significant degree and our registration numbers have continued to increase.

And in fact, in 1967, we were guided by the self-perception of those supporting our movement in the selection of our name. The wife of our founder, William Shearer, Elaine Shearer, quizzed every supporter she could find and asked how they would characterize their political position. They typically answered "American Independent." So we adopted the name, American Independent Party of California, which is our official name according to Elections Code Section:

7500.

This part shall apply to the organization, operation, and functions of that political party known as the American Independent Party of California.

- 8) **Related Legislation:** SB 72 (Umberg), requires conditional voter registration (a.k.a., “same day” registration) to be available at all polling places on election day. SB 72 was approved by this committee on a 5-2 vote on June 19, and is pending in the Assembly Appropriations Committee.



AB 681 (Gonzalez), which was scheduled to be heard in the Senate Elections & Constitutional Amendments Committee the day before this committee's scheduled hearing on this bill, allows a voter to update their political party preference without the need to complete a new voter registration affidavit during the period of time between the voter registration deadline for an election and election day, among other provisions. AB 681 previously was approved by this committee, but the provisions that allow for a voter to update their political party preference without completing a new voter registration affidavit were not included in the bill at that time.

- 9) **Previous Legislation:** AB 2504 (Umberg) of 2006 proposed to change the terminology used to describe those voters who did not select a political party when registering to vote from "decline to state" voters to "independent" voters, among other provisions. AB 2504 was approved by this committee on a 5-2 vote, but subsequently was held on the Assembly Appropriations Committee's suspense file.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

None on file.

**Opposition**

American Independent Party of California

Libertarian Party of California

1 individual

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