

Date of Hearing: April 19, 2023

ASSEMBLY COMMITTEE ON ELECTIONS
Isaac G. Bryan, Chair
AB 1539 (Berman) – As Amended March 23, 2023

SUBJECT: Elections: double voting.

SUMMARY: Prohibits a person from voting in an election in California and in an election in another state on the same date. Specifically, **this bill:**

- 1) Provides that a person who votes or attempts to vote in an election held in this state and in an election held in another state on the same date is guilty of a misdemeanor.
- 2) Provides that this bill does not prohibit a voter from voting in an election held in this state and an election held in another state on the same date if one of the elections is an election in a landowner voting district or any other district for which an elector is not required to be a resident of the district.

EXISTING STATE LAW:

- 1) Defines “election,” for the purposes of the Elections Code, as any election including a primary that is provided for under the Elections Code. (Elections Code §318)
- 2) Provides that every person is guilty of a crime punishable by imprisonment for 16 months or two or three years, or in a county jail not exceeding one year, who does any of the following:
 - a) Not being entitled to vote at an election, fraudulently votes or fraudulently attempts to vote at that election.
 - b) Being entitled to vote at an election, votes more than once, attempts to vote more than once, or knowingly hands in two or more ballots folded together at that election.
 - c) Impersonates or attempts to impersonate a voter at an election. (Elections Code §18560)
- 3) Requires an affidavit of voter registration to include the voter's place of residence, among other information. (Elections Code §2150) Defines "residence" for voting purposes as a person's domicile. (Elections Code §349(a))
- 4) Provides that for the purposes of the state's election laws, the domicile of a person is that place in which the person’s habitation is fixed, wherein the person has the intention of remaining, and to which, whenever the person is absent, the person has the intention of returning. Provides that at a given time, a person may have only one domicile. (Elections Code §349(b))
- 5) Provides that a person who is qualified and registered to vote may vote at any election held within the territory within which the person resides and the election is held. (Elections Code §2000(a))

- 6) Provides that except in cases where a different punishment is prescribed by any law of this state, every offense declared to be a misdemeanor is punishable by imprisonment in the county jail not exceeding six months, by a fine not exceeding \$1,000, or both. (Penal Code §19)

EXISTING FEDERAL LAW provides that whoever votes more than once in an election, as specified, shall be fined not more than \$10,000 or imprisoned not more than five years, or both. Provides that this prohibition applies with respect to any general, special, or primary election held solely or in part for the purpose of selecting or electing any candidate for the office of President, Vice President, presidential elector, Member of the United States Senate, Member of the United States House of Representatives, Delegate from the District of Columbia, Guam, or the Virgin Islands, or Resident Commissioner of the Commonwealth of Puerto Rico. (52 USC §10307(e))

FISCAL EFFECT: Unknown. State-mandated local program; contains a crimes and infractions disclaimer.

COMMENTS:

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

Voter fraud is exceedingly rare and it is vitally important that any instances not be used to promote baseless claims to undermine confidence in our elections. Nevertheless, it recently came to my attention that the Santa Clara County District Attorney discovered that a couple residing in the county had voted in both California and Oregon in November 2010, 2012, 2014, 2016, and 2018. After discovering this pattern of multi-state double voting, the District Attorney also found that California law does not prohibit this conduct. Thirteen other states currently prohibit such conduct and AB 1539 would add California to the list of states where someone cannot vote or attempt to vote in two elections that are occurring on the same day.

- 2) **Double Voting:** As described by the author above, the situation that was the impetus for this bill involved a couple who, on multiple instances between 2010 and 2018, voted in elections held on the same day in both California and Oregon. While it is likely against the law in most cases for a person to vote in an election held in California and in an election held in another state on the same day, it is not necessarily the case that such conduct would violate *California law*, depending on the domicile of the person involved.

Under California law, a person generally is eligible to vote in an election only if that person resides in the territory where the election is held. State law defines residence for voting purposes in a manner such that a person can have only one residence at a time. Other states generally also require a person to reside in the state in order to vote in elections in the state. Furthermore, while state laws vary in their definitions of “residence” for voting purposes, states generally do provide that a person can have only one residence for voting purposes at a time. Accordingly, it is unlikely that a person would be considered a legal resident of two different states at the same time for voting purposes.

For example, under California and Oregon's election laws, a person could legally be a resident of California, or a resident of Oregon, but not both at the same time. Furthermore, both California and Oregon make it a crime for a person to vote in an election if the person is not entitled to do so. As a result, if a person votes in an election held on the same day in both California and Oregon, and that person is legally a resident of California, then that person likely has violated Oregon law by voting in an election in Oregon while not being a resident of that state. On the other hand, if the person is legally a resident of Oregon, then the person likely violated California law by voting in an election in California while not a resident of the state.

While it is a felony under California law for a person to vote more than once or to attempt to vote more than once in an election, it appears that this law does not cover a situation where a person votes in California and in another state in elections held on the same day. As detailed above, California law defines the term "election" as "any election...provided for under the Elections Code." Accordingly, an election held in another state likely would not be considered an "election" under state law, and a person who voted in California and another state on the same day likely would not be considered to have voted more than once in an election for the purpose of California law. Oregon law, on the other hand, expressly prohibits a person from voting or attempting to vote both in an election held in that state and in another state on the same date (Oregon Revised Statutes 260.715). A violation of that prohibition is a felony (Oregon Revised Statutes 260.993). The language in this bill is similar to the language in the Oregon statute.

3) **Other States:** According to information from the National Conference of State Legislatures (NCSL), while state laws generally prohibit a person from voting more than once in the same election, the statutory language varies from state-to-state. For example, some states explicitly make it a crime for a person to vote in more than one state; other states prohibit voting twice in the same election, but don't expressly state whether voting in elections in two different states that are held on the same day would be considered voting twice in the same election. NCSL summarizes state laws related to "voting more than once" as follows:

- 13 states explicitly prohibit voting in more than one state: Alabama, Arizona, Colorado, Kansas, Kentucky, Maine, Missouri, New Hampshire, Oregon, South Dakota, Virginia, Washington and West Virginia.
- Seven states prohibit voting twice within the state or for the same office: Alabama, Delaware, Hawaii, Illinois, Maryland, Mississippi and West Virginia.
- 32 states and Washington, D.C., prohibit voting twice in the same election: Alaska, Arkansas, California, Connecticut, Florida, Georgia, Idaho, Iowa, Louisiana, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, West Virginia, Wisconsin and Wyoming.
- In Indiana voting twice is not explicitly mentioned, but a person may not knowingly apply for or receive a ballot in a precinct other than the precinct in which the person is

entitled to vote. And, registering to vote more than once is a misdemeanor.

- 4) **Federal Prohibition:** As detailed above, existing federal law—as part of the federal Voting Rights Act—prohibits voting more than once in an election. NCSL notes, however, that it “has been unable to find a prosecution of any person under that statute for voting in multiple states at the same time (for instance, voting for state and federal offices in the 2016 election in State X and for state offices in State Y, when the voter owns residences in both states),” and concludes that “the question of whether federal law prohibits such voting practices remains unresolved.”

The Elections Crimes Branch of the Public Integrity Section of the United States Department of Justice (USDOJ) publishes a periodic *Federal Prosecution of Election Offenses Manual* that is designed to “assist[] federal prosecutors and investigators to discharge the responsibility of the Department of Justice in attacking corruption of the election process with all available statutes and theories of prosecution.” The most recent edition of that manual, published in December 2017, discusses the federal prohibition against voting more than once in an election not in the context of a person who casts multiple ballots under the person’s own name in a single election. Instead, the manual identifies the prohibition as “most useful as a statutory weapon against frauds that do not involve the participation of voters in the balloting acts attributed to them.” Specifically, the manual states that “[m]ost cases prosecuted under the multiple-voting statute have involved defendants who physically marked ballots outside the presence of the voters in whose names they were cast – in other words, without the voters’ participation or knowledge.” The manual further notes that the federal prohibition “may also be applied successfully to schemes when the voters are present but do not participate in any way, or otherwise consent to the defendant’s assistance, in the voting process.” In light of this discussion, it is unclear whether the USDOJ views the federal prohibition against voting more than once in an election as providing a basis for prosecuting a person who votes under the person’s own name in more than one state at the same federal election.

- 5) **Elections in Landowner Voting Districts:** As detailed above, state law generally requires a person to be a resident of a jurisdiction in order to vote in elections in that jurisdiction. The one notable exception is for elections in landowner voting districts, where only landowners in the district are eligible to vote in district elections. For some landowner voting districts, a landowner is not required to reside in the district in order to be eligible to vote in district elections.

State law authorizes the creation of landowner voting districts in recognition of the fact that certain special districts with limited powers have a disproportionate effect on landowners. In some landowner voting districts, the economic burden and benefit of the district's operation may be entirely limited to landowners. In such a situation, landowners may be willing to form a special district (and thus to bear the costs of operating the district) only if they are guaranteed to have operational control over the district. The United States Supreme Court has found that landowner voting districts can be constitutionally permissible only where a district does not “exercise what might be thought of as ‘normal governmental’ authority, but its actions disproportionately affect landowners.” *Salyer Land Co. v. Tulare Water District* (1973) 410 US 719. In California, levee districts, water storage districts, reclamation

districts, and some water districts are landowner voting districts.

Because a person does not necessarily need to be a resident of landowner voting district in order to be eligible to vote in the district's elections, it is possible that a person could be legally entitled to vote in an election in a landowner voting district in California while residing in another state and voting in an election in that state on the same day. To account for that scenario (and for elections in similar districts in other states), this bill provides that it does not apply to a situation where a person votes in elections in California and another state on the same day, but one of the elections is in a district for which an elector is not required to be a resident of the district.

- 6) **Arguments in Support:** The sponsor of this bill, the Santa Clara County District Attorney's Office, writes in support:

Voter fraud is exceedingly rare. However, the scenario covered by the bill recently came to light in Santa Clara County when it was discovered that a couple who own property in California and Oregon cast ballots in both states in the November 2010, 2012, 2014, 2016, and 2018 elections. Their adult child also cast ballots in both states in the November 2016 and 2018 elections. Because existing California law does not explicitly prohibit the alleged conduct, the Santa Clara County District Attorney's Office could not bring charges. Fortunately, Oregon law does not have this loophole, so we deferred prosecution to Oregon officials, as Oregon has a law that unambiguously outlaws multi-state double voting. AB 1539 provides California with the tools to combat this scenario should it arise again, and we strongly encourage your support.

REGISTERED SUPPORT / OPPOSITION:

Support

Santa Clara County District Attorney's Office (Sponsor)

Opposition

None on file.

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