

Date of Hearing: April 13, 2016

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Shirley Weber, Chair

AB 2466 (Weber) – As Amended April 6, 2016

**SUBJECT:** Voting: felons.

**SUMMARY:** Conforms state law to a recent Superior Court ruling in *Scott v. Bowen*, in which the court found that individuals on post-release community supervision (PRCS) and mandatory supervision are eligible to vote under Section 2, Article II of the California Constitution, as specified. Makes other significant changes to voter eligibility provisions of law, as specified. Specifically, **this bill:**

- 1) Provides that a person who is *not imprisoned* or on parole for the conviction of a felony, instead of a person who is *not in prison* or on parole for the conviction of a felony, is eligible to register to vote, as specified. Provides that the following definitions apply to these provisions:
  - a) Defines "imprisoned" to mean currently serving a state or federal prison sentence.
  - b) Defines "parole" to mean a term of supervision by the Department of Corrections and Rehabilitation (CDCR).
  - c) Provides that "conviction" does not include a juvenile adjudication made pursuant existing law.
- 2) Makes changes to statements required to be included in printed literature and media announcements used in county programs designed to encourage registration of electors and requires the statements to state that a person entitled to register to vote must be a United States citizen, a California resident, at least 18 years of age at the time of the election, and not currently in state or federal prison or on state parole for the conviction of a felony, instead of not in prison or on parole for the conviction of a felony,
- 3) Makes changes to statements required to be sent to county elections officials, on the basis of records from the courts, that shows the names, addresses, and dates of birth of all persons who have been convicted of felonies since the clerk's last report, and instead requires the statement to show the names, addresses, and dates of birth of all persons who have been committed to state prison as a result of the conviction of a felony since the clerk's last report.

**EXISTING LAW:**

- 1) Permits a person who is a United States citizen, a resident of California, not in prison 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 county elections official to cancel the affidavits of registration of those persons who are imprisoned or on parole for the conviction of a felony.

- 3) Requires the Legislature to provide for the disqualification of electors while imprisoned or on parole for the conviction of a felony.
- 4) Requires the clerk of the superior court in each county to furnish the chief elections official of the county, not less frequently than the first day of April and the first day of September of each year, with a statement showing the names, addresses, and dates of birth of all persons who have been convicted of felonies since the clerk's last report.
- 5) Requires a program adopted by a county that is designed to encourage the registration of electors to print literature and media announcements made in connection with these programs that contain the following statement, "A person entitled to register to vote must be a United States citizen, a California resident, not in prison or on parole for the conviction of a felony, and at least 18 years of age at the time of the election." Permits a county elections official to continue to use existing materials before printing new or revised materials required by any changes to these provisions.

**FISCAL EFFECT:** Unknown. State-mandated local program: contains reimbursement direction.

**COMMENTS:**

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

The Criminal Justice Realignment Act of 2011 (CJRA) created three new categories of sentencing for people convicted of low-level felonies: mandatory supervision, post-release community supervision, and a term in county jail. These new categories caused confusion for local elections officials and voters. Last year, in *Scott v. Bowen*, the issue of the voting rights of people sentenced under the first two categories of local supervision was finalized, and with the support of the Secretary of State, more than 50,000 people under mandatory and post-release community supervision had their voting rights restored.

AB 2466 amends the Elections Code to reflect the decision in *Scott v. Bowen* and clarifies that the third category of CJRA sentencing – a term in county jail – likewise does not strip people of their constitutional right to vote. This clarification completes the restoration of the law prior to the CJRA: only those serving a state-prison sentence or on parole and under CDCR supervision lose the right to vote.

Finally, civic participation can be a critical component of re-entry and has been linked to reduced recidivism. No eligible voter should be kept from fulfilling their responsibility and civic duty due to ambiguity in the law.

- 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 in prison 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. While it would seem that the determination of whether an individual is eligible to vote is fairly straightforward, there has been a great deal of confusion about what constitutes being "imprisoned" for the conviction of a felony.

For instance, it is not uncommon for a person who has been convicted of a felony to be ordered to serve time in county jail as a condition of probation. To the extent that a person is serving time in county jail as a condition of probation, that person is not considered to be "imprisoned" for the conviction of a felony under California law, and thus, that person remains eligible to vote, even while he or she is in the county jail.

On the other hand, due to a variety of reasons, a person who has been convicted of a felony and sentenced to serve time in state prison may nonetheless serve part or all of his or her sentence in a county or city jail due to a contractual agreement with the state. In such a circumstance, that person is not eligible to vote, and the elections official should cancel that person's registration, since he or she is not on probation – but rather has been convicted of a felony and was sentenced to state prison. The fact that the individual is serving that prison time in a local jail under a contractual arrangement is not relevant in determining whether that person has the ability to register to vote or to vote.

These interpretations of California's disenfranchisement laws were affirmed by the Court of Appeal for the State of California, First Appellate District, Division One, in *League of Women Voters of California v. McPherson* (2006), 145 Cal.App.4th 1469. In that case, the court noted that "where a probationer is ordered to serve time in a local facility because either imposition or execution of sentence has been suspended, he or she has not been imprisoned for the conviction of a felony, but has been confined as a condition of probation."

- 3) **Criminal Justice Realignment & Inmate Voting Eligibility:** In 2011, California passed a series of bills known as the CJRA. Although prior to realignment, some felony sentences were served in county or city jails, most felony sentences were served in state prison. Under realignment, certain lower-level felony offenders, who would have been sentenced to state prison, are now sentenced to serve their time in custody in county jail. Additionally, after release from custody and depending on the offense and sentence, realignment changed the state's parole system and created the option for an inmate to be released to a term of "post-release community supervision (PRCS)" (under the control of the local probation department) or mandatory supervision. Thus, the enactment of the CJRA has caused an even greater deal of confusion and raised questions about the eligibility to vote for convicted felons sentenced to these new programs. Specifically, the question arose as to whether individuals on PRCS and mandatory supervision were considered "on parole" and whether person serving a felony sentence in county jail were "imprisoned" for the purposes of Section 4, Article II of the California Constitution and Section 2101 of the Elections Code.

According to court documents, the Secretary of State's (SOS) office, at the request of county elections officials, issued a memorandum on December 5, 2011 which analyzed CJRA and its effect on voter eligibility. The SOS's office concluded that realignment "does not change the voting status of offenders convicted of CJRA-defined low-level felonies, either because

they serve their felony sentences in county jail instead of state prison or because the mandatory supervision that is a condition of their release from prison is labeled something other than 'parole.' Offenders convicted of CJRA-defined low-level felonies continue to be disqualified from voting while serving a felony sentence in county jail, while at the discretion of the court serving a concluding portion of that term on county-supervised probation, or while they remain under mandatory 'post release community supervision' after release from state prison."

Voting rights groups filed a lawsuit against the SOS arguing that realigned individuals have a right to vote. In March of 2012, a lawsuit was filed in the First District Court of Appeal to clarify that people who have been sentenced for low-level, non-violent offenses under the CJRA are entitled to vote in the 2012 elections and beyond (*All of Us or None et al. v. Bowen et al.* (2012) No. A134775). On May 17, 2012, the First District Court of Appeal summarily denied the petition, meaning that it refused to hear the case or issue an opinion. In response, petitioners filed another lawsuit in the California Supreme Court to review the case and decide the case on an expedited basis (*All of Us or None v. Bowen* (2012) No. S202885). The Supreme Court, which has the discretion to either hear the case, order the Court of Appeal to decide it, or deny review, denied review on July 25, 2012.

In February of 2014, a lawsuit was filed in the Alameda Superior Court challenging the SOS's memorandum, claiming that individuals on PRCS and mandatory supervision are eligible to vote under Article II, Section 4 of the California Constitution (*Scott et al. v. Bowen* (2014) No. RG14-712570).

In May of 2014, the Superior Court issued a final judgment rejecting the interpretation of Realignment in SOS's memorandum. The Superior Court held "as a matter of law that California Constitution Article II, Section 2 and Elections Code 2101, require the State of California to provide all otherwise eligible persons on [mandatory supervision and PRCS] the same right to register to vote and to vote as all otherwise eligible persons." The court concluded that restoring voting rights of persons under PRCS and or mandatory supervision is consistent with the Realignment policy goal to promote reintegration of low-level offenders back into the community. In addition, the court relied upon the long-held principle in California law requiring courts "to give every reasonable presumption in favor of the right of people to vote" and to "not engage in any construction of an election law that would disenfranchise any voter if the law is reasonably susceptible of any other meaning." The Superior Court decision, however, did not address the conclusion in SOS's memorandum that persons convicted of a felony and serving time in county jail under Realignment are ineligible to vote.

This bill conforms state law to the Superior Court ruling and makes other significant changes to voter eligibility provisions of law. First, this bill codifies the meaning of the term parole as determined by the Superior Court ruling. Specifically, this bill defines "parole" to mean a term of supervision by the Department of Corrections and Rehabilitation.

Secondly, this bill makes changes to Elections Code Section 2101, the implementing statute for Article II, Section 4 of the California Constitution that states "[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." Specifically, this bill permits a person who is a United States citizen, a resident of

California, at least 18 years of age at the time of the next election, and not imprisoned, instead of in prison, or on parole for the conviction of a felony, to register to vote. This bill defines the term "imprisoned" to mean currently serving in a state or federal prison sentence and provides that the term "conviction" does not include a juvenile adjudication made pursuant existing law. These changes to voter eligibility provisions of law seek to address the questions not discussed in the court ruling of whether a person serving a felony sentence in county jail were "imprisoned" for purposes of Section 4, Article II of the California Constitution and Section 2101 of the Elections Code and persons convicted of a felony and serving time in county jail under Realignment are ineligible to vote.

- 4) **Updated Secretary of State Memorandum:** In June of 2014, the Superior Court issued a writ of mandate ordering the SOS to withdraw the previous memorandum concerning voting rights of persons subject to sentencing under the CJRA and to notify elections officials that it had been withdrawn.

In August of 2015, Secretary of State Alex Padilla announced an end to the appeal of *Scott v Bowen* and complied with the Superior Court decision pursuant to a settlement of the case with the plaintiffs. In accordance with the writ of mandate, the SOS sent out a new memorandum, which served as notification to elections officials that the previous memorandum had been withdrawn. Additionally, according to the new memorandum, the SOS also prepared new language for the paper and online affidavit of voter registration and updated the language contained in other voting materials and voter education materials consistent with the Superior Court ruling and settlement. The revised voter materials specify the voting rights of persons subject to two categories of county-supervised non-custodial post-imprisonment release programs under Realignment as follows:

Post Release Community Supervision (PRCS): A person released from prison on or after October 1, 2011, for a conviction of a crime defined by Realignment as a low-level felony, and who is released from state prison to county-supervised PRCS, is eligible to register and vote.

Mandatory Supervision: At the time a judge sentences a person to county jail for the conviction of a specified low-level felony, Realignment authorizes a judge to order that the person be released and supervised by a probation officer for a specified, concluding portion of the term. Following release from county jail and during the period of supervision, this person is eligible to register and vote.

- 6) **Changes to Printed Materials:** Current law requires a program adopted by a county that is designed to encourage the registration of electors to print literature and media announcements made in connection with these programs that contain the following statement, "A person entitled to register to vote must be a United States citizen, a California resident, not in prison or on parole for the conviction of a felony, and at least 18 years of age at the time of the election." County elections officials are permitted to continue to use existing materials before printing new or revised materials required by any changes to these provisions.

Existing law also requires the clerk of the superior court in each county to furnish the chief elections official of the county, not less frequently than the first day of April and the first day of September of each year, with a statement showing the names, addresses, and dates of birth

of all persons who have been convicted of felonies since the clerk's last report.

This bill makes changes to these materials. Specifically, this bill requires the statements included in printed literature and media announcements used in county programs designed to encourage registration of electors to state that a person entitled to register to vote must be a United States citizen, a California resident, not currently in state or federal prison or on state parole for the conviction of a felony, instead of not in prison or on parole for the conviction of a felony, and at least 18 years of age at the time of the election. Additionally, this bill requires statements sent to county elections officials from the clerk of the superior court to show the names, addresses, and dates of birth of all persons who have been committed to state prison as a result of the conviction of a felony since the clerk's last report instead of showing the names, addresses, and dates of birth of all persons who have been convicted of felonies since the clerk's last report.

- 5) **Arguments in Support:** One of the sponsors of this bill, American Civil Liberties Union of California, writes:

The meaning of the terms “imprisoned” and “parole,” however, has been the subject of ongoing litigation and confusion, particularly as criminal justice reforms and sentencing laws have evolved. Most recently, voter eligibility was the subject of litigation following the passage of the Criminal Justice Realignment Act of 2011 (CJRA), which created three new categories of sentencing for people convicted of low-level felonies: mandatory supervision, post-release community supervision, and a term in county jail.

While courts have consistently interpreted the constitutional provision in favor of the enfranchisement of voters, California’s voter eligibility laws cannot be subject to change, litigation, and clarification every time a sentencing reform is enacted. Elections officials and the Secretary of State need guidance and clarity in order to ensure consistent application of voter eligibility law and accurate maintenance of the voter file. Without clarification, the state is left with the potential for county-by-county interpretations, widespread confusion, and the actual and de facto disenfranchisement of voters.

AB 2466 would thus amend the Elections Code to codify the recent decision in *Scott v. Bowen*, ensuring that more than 50,000 people under mandatory and post-release community supervision can vote. AB 2466 also clarifies that the third category of CJRA sentencing – a term in county jail – likewise does not strip people of their right to vote. Finally, AB 2466 would clarify the information courts provide to elections officials.

- 6) **Arguments in Opposition:** In opposition, the California State Sheriff's Association writes:

Longstanding California law has provided that imprisoned felons are excluded from voting. The people have consistently determined that by virtue of a felon's crime he or she is temporarily denied the right to participate in elections. The notion that felons have shown a disregard for the laws and their disobedience should exclude them from political decision-making.

Unfortunately, AB 2466 disregards this thought process and allows certain incarcerated felons to vote. This bill "restores" a convicted felon's voting rights if he or she happens to be serving time in a county jail. When Realignment altered where thousands of felons would be housed, it did not change the felony status of their crimes. A felony is still a felony regardless of where the felon is housed. As such, to allow the restoration of a convicted felon's voting rights based on his or her custodial location is not only inconsistent but insulting to law-abiding citizens.

- 7) **Previous Legislation:** AB 938 (Weber) from 2014, was amended after passing out of Assembly Elections Committee to address a different issue.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

All of Us or None (co-sponsor)  
 American Civil Liberties Union of California (co-sponsor)  
 Asian Americans Advancing Justice – California (co-sponsor)  
 Lawyers' Committee for Civil Rights of the San Francisco Bay Area (co-sponsor)  
 Legal Services for Prisoners with Children (co-sponsor)  
 League of Women Voters of California (co-sponsor)  
 Mexican American Legal Defense and Educational Fund (co-sponsor)  
 Alliance of Californians for Community Empowerment  
 Anti-Defamation League  
 Brennan Center for Justice  
 California Association of Nonprofits  
 California Calls  
 California Catholic Conference of Bishops  
 California Coalition for Women Prisoners  
 California Immigrant Policy Center  
 California Public Defenders Association  
 Californians for Safety and Justice  
 Californians United for a Responsible Budget  
 Center on Juvenile and Criminal Justice  
 Chinese for Affirmative Action  
 Friends Committee on Legislation of California  
 Further The Work  
 Homeboy Industries  
 Justice Not Jails  
 Law Foundation of Silicon Valley  
 Mi Familia Vota  
 NAACP Legal Defense and Educational Fund, Inc.  
 National Council of La Raza  
 A New PATH  
 PICO California  
 Pillars of the Community  
 Project Vote  
 Public Defender of the City and County of San Francisco Jeff Adachi  
 Rock the Vote

Root & Rebound  
Rubicon Programs  
San Diego La Raza Lawyers Association  
Voto Latino  
Youth Law Center

**Opposition**

California State Sheriff's Association

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