

Date of Hearing: April 19, 2023

ASSEMBLY COMMITTEE ON ELECTIONS
Isaac G. Bryan, Chair
AB 292 (Pellerin) – As Amended April 12, 2023

SUBJECT: Primary elections: ballots.

SUMMARY: Requires a nonpartisan ballot provided to a voter who has declined to disclose a political party preference (commonly referred to as a No Party Preference (NPP) voter) for use in a presidential primary election to include a space on or enclosed with the ballot that allows the voter to write in the name of a candidate for President of the United States (US), as specified. Permits an NPP voter to send a text message to request the ballot of a political party that has authorized a NPP voter to vote in its partisan primary election, as specified. Specifically, **this bill:**

- 1) Requires a space to be provided on or enclosed with a nonpartisan ballot provided to an NPP voter for use in voting in a presidential primary election for the voter to write in the name of a candidate for President of the US who is nominated by a party that authorizes NPP voters to vote in the party's primary election. Provides that if the voter writes in the name of a candidate who is nominated by a party that does not authorize NPP voters to vote in the party's primary election, the vote for that candidate shall not be counted.
- 2) Requires the nonpartisan ballot provided to an NPP voter to be accompanied by a separate document that does all of the following:
 - a) Contains a list of political parties that have authorized an NPP voter to vote that party's ballot, and next to each party's name, a box to mark indicating that the voter wishes to vote that party's ballot.
 - b) Instructs the voter that the list of candidates for whom the voter is eligible to vote can be viewed in the voter information guide.
 - c) Requires the voter to provide personal identifying information that matches the information contained on the voter's affidavit of registration, including their first and last name, home address, and date of birth.
 - d) Requires the voter to sign the document.

Requires a voter who writes in the name of a presidential candidate pursuant to the provisions of this bill to mark the box indicating the party of the candidate for whom they voted, and complete, sign, and return the document with the voter's ballot.

- 3) Deletes provisions of law that require a specified statement to be included on the notice and application mailed to an NPP voter regarding voting in a partisan primary election, and instead requires the application to contain a list of political parties that have authorized an NPP voter to vote that party's ballot, and next to each party's name, a box to mark indicating that the voter wishes to vote that party's ballot. Requires the application to require the voter to provide personal identifying information that matches the information contained on the voter's affidavit of registration, including their first and last name, home address, and date of

birth, and requires the voter to sign the application.

- 4) Requires the notice or application to instruct the voter that they may request a vote by mail (VBM) ballot for the party they select by submitting the completed application to the appropriate county elections official in person, by mail, email, or facsimile transmission, or by other electronic means made available by the county elections official.
- 5) Permits an NPP voter to send a text message to the appropriate elections official to request the ballot of a political party that has authorized an NPP voter to vote in its partisan primary election, if the county has established a system for processing such a request. Provides that the voter's signature is not required.
- 6) Requires an NPP voter who is requesting a ballot of a political party over the internet, by written statement, or by text, to provide personal identifying information that matches the information contained on the voter's affidavit of registration, including their date of birth, home address, and first and last name. Provides that a voter's signature is not required for a request made by an application over the internet. Requires a voter's request made by a written statement application to include the voter's signature.
- 7) Makes other technical and conforming changes.

EXISTING LAW:

- 1) Requires a county elections official to mail a ballot to every active registered voter for every election in which the voter is eligible to participate, and provides that the distribution of VBM ballots to registered voters does not prevent a voter from voting in person at a polling place, vote center, or other authorized location. (Elections Code §3000.5)
- 2) Permits a person to choose a political party preference when registering to vote. Voters who do not choose a political party preference are commonly referred to as "NPP" voters. (Elections Code §2151)
- 3) Permits an NPP 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 Secretary of State (SOS), authorizes an NPP voter to vote in its primary election. (Elections Code §§13102(b), 13102(c))
- 4) Requires, at a presidential primary election, that an NPP voter be furnished only a nonpartisan ballot, unless they request a ballot of a political party and that political party, by party rule noticed to the SOS, authorizes NPP voters to vote the ballot of that political party. Requires the nonpartisan ballot to contain only the names of candidates for nonpartisan offices, voter-nominated offices, and measures to be voted for at the primary election. (Elections Code §13102(b))
- 5) Permits a political party to adopt a party rule that authorizes an NPP voter to vote the ballot of that political party at the next ensuing partisan primary election. Requires the political party to notify the party chair immediately upon adoption of that party rule and requires the party chair to provide written notice of the adoption of that rule to the SOS not later than the 135th day before the partisan primary election at which the vote is authorized. (Elections

Code §13102(c)

- 6) Requires a county elections official to maintain a record of which political party's ballot was requested, or whether a nonpartisan ballot was requested, by each NPP voter. Requires the record to be made available to any person or committee who is authorized to receive copies of the printed roster for primary and general elections under existing law. (Elections Code §13102(d))
- 7) Requires a county elections official, with each nonpartisan VBM ballot that is sent to an NPP voter, to include a notice informing the voter that the voter may request a political party's ballot at the next ensuing partisan primary election if the political party has so authorized. (Elections Code Section 13502(a))
- 8) Requires a county elections official, prior to each partisan primary election, to mail to every NPP voter a notice and application informing the voter that they may request a VBM ballot for a particular political party for the primary election, if that political party adopted a party rule, duly noticed to the SOS, authorizing NPP voters to vote in their primary election. Requires the notice to contain a printed statement that reads substantially similar to the following: "I have declined to disclose a preference for a qualified political party. However, for this primary election only, I request a vote by mail ballot for the ____ Party." Permits this application to be submitted to the appropriate county elections official in person, or by mail, email, or facsimile transmission. (Elections Code Section 13502(b))
- 9) Allows an NPP voter to request the ballot of a political party that has authorized an NPP voter to vote in its partisan primary election as follows:
 - a) By telephone pursuant to all of the following procedures:
 - i) Requires a voter, when requesting a party's ballot by telephone, to provide to the elections official personal identifying information that matches the information contained on the voter's affidavit of registration, including first and last name, home address, and date of birth. The voter's signature shall not be required.
 - ii) Prohibits a person from requesting a party's ballot pursuant to this section using the name of, or on behalf of, another person.
 - iii) Requires a voter requesting a party's ballot, prior to being asked for personal identifying information, to be advised as follows: "Only the registered voter themselves may request a ballot from a political party. A request for a party's ballot that is made by any person other than the voter is a criminal offense."
 - b) On an application over the internet if available.
 - c) By a written statement application submitted in person, or by mail, email, or facsimile transmission. (Elections Code Section 13502(c))
- 10) Permits an NPP voter who has received a nonpartisan VBM ballot to return their unvoted ballot to the county elections official and request and receive the ballot for a political party if

the political party has authorized an NPP voter to vote in its partisan primary election. (Elections Code Section 13502(d))

- 11) Requires the SOS to prepare and distribute to county elections officials a uniform application format for a voter to request a political party's ballot at the next ensuing partisan primary election if the political party has so authorized. (Elections Code Section 13502(e))
- 12) Requires a poll worker, at a partisan primary election, before providing an NPP voter with a nonpartisan ballot or before the voter enters the voting booth, to provide a uniform notification to the voter informing them that they may request a political party's ballot and the name of each political party that has authorized an NPP voter to vote its ballot. (Elections Code §14227.5)

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

COMMENTS:

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

Voters who are registered to vote as No Party Preference (NPP) voters often do not realize that they cannot vote in a presidential primary without requesting a partisan ballot from a political party which allows crossover voting. Despite current requirements for notices to be sent to NPP voters prior to a Presidential Primary election, many voters fail to request a party ballot. With the statewide expansion of vote-by-mail, more voters are waiting until Election Day to open, vote, and return the ballot mailed to them. This means that many NPP voters will not realize that their ballot does not have the option to vote in a Presidential Primary until Election Day. Our bill would ensure that NPP voters who wish to crossover vote are not prevented from doing so by the lack of the appropriate ballot.

- 2) **Political Parties and NPP Voter History:** Since January 1, 2001, California has had a "modified" closed primary system for presidential primaries that permits an NPP voter to participate in a party's primary election if authorized by the individual party's rules and duly noticed to the SOS. If authorized by a party, NPP voters are allowed to vote for the office of US President for that party. This is commonly referred to as a "crossover" ballot. The SOS maintains a list of the history of the political parties who adopted a party rule permitting NPP voters to request a party ballot in recent primary elections for partisan offices on its website. For the March 3, 2020, presidential primary election and the June 7, 2016, presidential primary election the following parties allowed NPP voters to obtain a crossover ballot: American Independent Party, Democratic Party, and Libertarian Party. Current law requires a political party to notify the SOS no later than the 135th day before election day. The deadline for the March 5, 2024 presidential primary election is anticipated to be October 30, 2023.
- 3) **No Party Preference Voters (NPP) Voters and Previous Legislation:** News articles have reported that previous presidential primary elections have been complicated and confusing for NPP voters to navigate. For instance, during the 2016 presidential primary election there were a significant number of media articles and complaints from voters across the state that reported they were not provided information on how to vote as an NPP voter and that poll

workers were not knowledgeable about the process to obtain a crossover ballot. Some counties were proactive in educating NPP voters about their option to obtain a crossover ballot and provided written notification informing NPP voters of their option to choose a crossover ballot. Other counties, however, only provided an NPP voter with ballot option information upon request.

NPP voter experiences during the 2016 presidential primary election called attention to the lack of uniform statewide procedures and timelines for how an NPP voter can request and receive a ballot to vote in the Presidential primary election. In response, the Legislature approved and Governor Brown signed AB 837 (Low), Chapter 819, Statutes of 2018, which streamlined and standardized procedures to ensure non-affiliated voters are informed of their rights when casting a ballot. Specifically, AB 837 established clear requirements for the SOS, county elections officials and poll workers to notify and educate voters about their right to choose a crossover ballot, as specified.

Moreover, in December 2019, in preparation for the March 1, 2020 presidential primary election, all California county elections officials mailed postcards to every NPP voter who was registered to vote by mail. The postcard provided NPP voters with their presidential primary voting options and encouraged NPP voters to complete and return the postcard with their selection in order to receive a VBM ballot listing presidential candidates from one of the parties. Additionally, then-Secretary of State Alex Padilla sent emails to NPP voters reminding them of the presidential primary rules and their options for requesting a ballot with presidential candidates.

- 4) **Logistical Questions:** As mentioned above, current law requires voters who are not registered with a political party to be provided only with a nonpartisan ballot that does not list candidates for the office of the US President. In order for an NPP voter to obtain a crossover ballot, they must fill out an application to *request* the political party ballot. Current law permits an NPP voter to make this request in person, by written statement, by telephone, or an application over the internet, as specified. This bill additionally permits an NPP voter to cast a vote for the office of US President using the nonpartisan ballot sent to them. Specifically, this bill requires the nonpartisan ballot to provide a space on the ballot or enclosed with the ballot for an NPP voter to write in the name of a candidate for the office of US President. According to the author, this eliminates one of the procedural hurdles present for crossover voting for NPP voters and ensures NPP voters who wish to crossover are not prevented from doing so by lack of the appropriate ballot. Because an NPP voter is allowed to use the nonpartisan ballot to vote for the office of US President, the voter is no longer applying for a political party ballot and casting their vote on that ballot. It is unclear if a political party will recognize the votes cast in this manner as being valid for the purpose of the party's presidential primary election.

Additionally, this bill requires an extra document to be included with the nonpartisan ballot mailed to the voter and requires the voter to mark the box next to the political party name indicating the voter wishes to vote that party ballot. It seems this document is meant to serve as the voter's "request and application" for a crossover ballot. Current law requires a county elections official to maintain a record of which political party's ballot was requested by each NPP voter, and record this information in the voter's record. To comply with this provision, this bill contains provisions that require an NPP voter to additionally provide specified personal identifying information on the extra document included with the nonpartisan VBM

ballot to help ensure county elections officials have a way to record the voter's request for that party's ballot.

However, it is unclear what happens if an NPP voter does not include the extra document when they mail back their nonpartisan ballot or if an NPP voter does not provide all of the personal identifying information required on the extra document. Will the voter's vote for US President still be counted? Does an NPP voter have any recourse available to fix this mistake?

- 5) **Voter Registration Data:** According to the SOS's February 10, 2023 odd-numbered year report of registration, California has 21,980,768 million registered voters (82.27%). Out of that, 10,305,901 (46.89%) are registered with the Democratic Party; 5,236,952 (23.83%) are registered with the Republican Party, 4,941,314 (22.48%) are registered as NPP, and 1,496,601 (6.81%) are registered with other parties, or with political bodies that are seeking to qualify as political parties.
- 6) **Colorado:** In 2016, Colorado voters voted to open their primary elections and allow unaffiliated voters to vote for candidates in any party's election. According to the Colorado SOS's website, the major parties are required to allow unaffiliated voters to vote in their primary election, however, minor parties may refuse to allow unaffiliated voters to vote in their primary. An unaffiliated voter may obtain a political party ballot for a primary election by selecting a party preference on a voter registration form, or they may receive a packet containing the ballots of *all* participating major parties. According to the website, most unaffiliated voters will receive the ballots of both major political parties during a primary election which allows an unaffiliated voter to choose which party's primary they will vote in. However, an unaffiliated voter may only return one party's ballot and returning two voted ballots will result in neither ballot counting.
- 7) **Amendments Requested:** With a support if amended position on this bill, the California Association of Clerks and Election Officials (CACEO) state that processing votes for write-in candidates requires county elections officials to review each ballot individually and manually enter the write-in votes into the tally system. This would add cost, time, and risk to the processing of these non-partisan ballots. As an alternative, the CACEO suggests that AB 292 be amended to require the non-partisan ballot to include the Presidential contest with the names of candidates of all parties that have authorized no party preference voters to vote to nominate the party's candidate for President.
- 8) **Arguments in Support:** With a support position on this bill, California Common Cause writes:

With all voters now receiving a mail ballot, the potential for confusion by an NPP voter has only increased. NPP voters up to and on Elections Day can still go to an in-person voting location to request a crossover ballot or update their party registration. However, if they fail to act ahead of time, they will only have available the nonpartisan mail ballot with no listed candidates, which will keep the voter from expressing their preferences in the presidential race and may lead to misimpressions of voter disenfranchisement.

AB 292 would make it easier for NPP voters to request their preferred ballot ahead of time, and institute a fail-safe of a write-in spot on the nonpartisan ballot to maximize the potential of NPP voters to cast a vote for their preferred candidate. As of October 2022, there were over 4.9 million Californians registered to vote with no party preference, according to the Secretary of State, meaning that AB 292 will help millions of Californians more easily vote for their candidate of choice in our presidential primaries.

REGISTERED SUPPORT / OPPOSITION:**Support**

California Common Cause
California Association of Clerks and Election Officials (if amended)
League of Women Voters of California

Opposition

None on file.

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