

Date of Hearing: May 10, 2017

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

AB 469 (Cooper) – As Amended March 23, 2017

SUBJECT: Candidates: nomination documents.

SUMMARY: Reduces the number of days in which a candidate may collect signatures on an in-lieu-filing fee petition from 55 to 40 days. Deletes the authorization that allows a candidate to submit a supplemental petition to cover any deficiency, and instead only permits the candidate to pay a pro rata portion of the filing fee. Specifically, **this bill:**

- 1) Moves the deadline for a candidate to submit a petition containing the signatures of registered voters in lieu of a filing fee, from 15 days before the close of the nomination period to 30 days before the close of the nomination period.
- 2) Deletes the authorization that allows a candidate to submit a supplemental petition to cover any deficiency in the number of signatures required on an in-lieu-filing-fee petition.
- 3) Requires the candidate to pay a pro rata portion of the filing fee to cover the deficiency when he or she obtains the nomination forms.

EXISTING LAW:

- 1) Requires candidates for specified offices, other than write-in candidates, to pay a filing fee or to submit, at least 15 days before the close of the nomination period, a petition containing signatures of registered voters in lieu of a filing fee. Permits candidates to submit signatures to cover all or any portion of the filing fee. Requires the elections official to issue nomination papers provisionally upon receipt of the minimum number of in-lieu-filing-fee signatures required, or a sufficient combination of signatures and a pro rata filing fee.
- 2) Requires the elections official, within 10 days after receiving the in-lieu-filing-fee petition, to notify a candidate of any deficiency with the petition. Requires the candidate, if a deficiency is found, to either submit a supplemental in-lieu-filing-fee petition or pay a pro rata portion of the filing fee to cover the deficiency.
- 3) Provides that a candidate may submit a petition containing signatures of registered voters in lieu of a filing fee as follows:
 - a) For the office of California State Assembly, 1,500 signatures.
 - b) For the office of California State Senate and the United States House of Representatives, 3,000 signatures.
 - c) For candidates running for statewide office, 10,000 signatures.
 - d) For all other offices for which a filing fee is required, if the number of registered voters in the district in which he or she seeks nomination is 2,000 or more, a candidate may submit a petition containing four signatures of registered voters for each dollar of the

filing fee, or 10 percent of the total of registered voters in the district in which he or she seeks nomination, whichever is less.

- e) For all other offices for which a filing fee is required, if the number of registered voters in the district in which he or she seeks nomination is less than 2,000, a candidate may submit a petition containing four signatures of registered voters for each dollar of the filing fee, or 20 percent of the total of registered voters in the district in which he or she seeks nomination, whichever is less.
- 4) Provides that any registered voter may sign an in-lieu-filing-fee petition for any candidate for whom he or she is eligible to vote.
 - 5) Requires that if an in-lieu-filing-fee petition is circulated for an office in more than one county, the candidate shall submit the signatures to the elections official in the county in which the petition was circulated. Requires the elections official, at least two days after verifying the signatures on the petition, to notify the Secretary of State (SOS) of the total number of valid signatures. Requires the SOS, if the number of signatures is insufficient, to notify the candidate and the elections officials of the fact. Permits the candidate to submit the necessary number of valid signatures at any time prior to the close of the period for circulating nomination papers.
 - 6) Provides that each candidate may submit a greater number of signatures to allow for subsequent losses due to invalidity of some signatures as specified.
 - 7) Requires every candidate for judicial office, except a candidate for the Supreme Court or for an appeals court, to file a declaration of his or her intention to become a candidate for that office not more than 14 or less than five days prior to the first day on which his or her nomination papers may be circulated. Requires the declaration of intention to include the specific judicial office which the candidate intends to seek.
 - 8) Specifies that no candidate's name shall be printed on the ballot to be used at the direct primary unless the following nomination documents are delivered for filing to the county elections official:
 - a) Declaration of candidacy as specified; and,
 - b) Nomination papers as specified.
 - 9) Permits signatures on an in-lieu-filing-fee petition to be counted towards the number of voters required to sign a nomination paper as specified.

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

COMMENTS:

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

AB 469 would make clear the nomination process for candidates running for elected office. Currently, there is confusion whether signatures obtained for the in-lieu-filing petition can be used in place of qualifying signatures for nomination.

Candidates who want to run for office can obtain a certain amount of signatures in place of paying a fee to submit nomination papers. During the last Assembly election cycle, there were three candidates who failed to submit by the deadline qualifying signatures for their nomination papers and instead submitted signatures they had obtained for their in-lieu-filing fee petition. The local election officials in each candidate's district originally refused the paperwork since the candidates had submitted the wrong forms and missed the deadline. The candidates took their case to court where the judge ruled in their favor and required two of the candidates' names to appear on the ballot. AB 469 will resolve future confusion and will ensure that county election officials can give clear instructions to candidates about the nomination process.

- 2) **Fifteen Fewer Days and No Supplemental Petition and Possible Amendment:** Under existing law, a non-judicial candidate for elective office is required to pay a prescribed filing fee or to submit, at least 15 days before the close of the nomination period, a petition containing signatures of registered voters in lieu of the filing fee. Existing law requires the elections official, within 10 days after receiving the in-lieu-filing-fee petition, to notify the candidate of any deficiency with the petition. If a deficiency is found, the candidate is required to either submit a supplemental in-lieu-filing-fee petition or pay a pro rata portion of the filing fee to cover the deficiency.

Under existing law every candidate for a judicial office, except a candidate for Supreme Court or for appeals court, is required to file a written and signed declaration of his or her intention to become a candidate for that office, not more than 14 nor less than five days prior to the first day on which his or her nomination papers may be circulated. Filing fees are required to be paid when the candidate obtains his or her nomination documents however candidates for judicial office do not have a supplemental signature in lieu period.

If a candidate submits an in-lieu-filing-fee petition as specified, any or all signatures appearing on the petition, which would be valid on his or her nomination papers as specified, are eligible to be counted towards the number of voters required to sign a nomination paper. If an in-lieu-filing-fee petition contains a requisite number of valid signatures to satisfy signature requirements for nomination papers, the candidate is not required to file nomination papers, but may request the elections official to accept the petition instead of filing nomination papers.

Currently judicial candidates have 40 days to circulate signature in-lieu-filing-fee petitions with no supplemental period. The signature in-lieu period for non-judicial candidates is 55 days and provides that the candidate may submit a supplemental petition if the elections official determines there is a deficiency in the number of valid signatures.

This bill proposes to reduce the signature in lieu circulation period from 55 to 40 days for non-judicial candidates and eliminate the supplemental signature in lieu period.

In light of the proposed reduction in the number of days that candidates have to collect signatures on an in-lieu-filing-fee petition, and given that this bill would eliminate the ability of candidates to replace deficient signatures with a supplemental petition, the committee may want to consider reducing the number of signatures required accordingly.

- 3) **Alternative to a Filing Fee:** California law requires candidates for many elective offices to pay a filing fee at the time they obtain nomination papers from the elections official. Filing fees are intended, in part, to help cover the administrative costs of conducting the election, but also serve as a means of limiting the size of the ballot in order to reduce voter confusion, prevent overwhelming voting systems, and allow the electorate to focus attention on a smaller number of candidates in order that elections may better reflect the will of the majority. Courts have long recognized that states have a legitimate interest in regulating the number of candidates on the ballot for these reasons.

At the same time, courts have also found that a state cannot require candidates to pay a filing fee in order to appear on the ballot unless the state also provides a reasonable alternative means of ballot access. In *Lubin v. Panish* (1974) 415 U.S. 709, the United States Supreme Court found that a California law that required certain candidates for office to pay a filing fee in order to appear on the ballot was unconstitutional because the law did not provide an alternate means of qualifying for the ballot for indigent candidates who were unable to pay the fee. In finding California's filing fee law to be invalid, the court noted that there were other "obvious and well known means of testing the 'seriousness' of a candidacy which do not measure the probability of attracting significant voter support solely by the neutral fact of payment of a filing fee," including a requirement for a candidate who cannot pay the filing fee to "demonstrate the 'seriousness' of his candidacy by persuading a substantial number of voters to sign a petition in his behalf."

In response to the Supreme Court's decision in *Lubin*, the Legislature enacted and the Governor signed AB 914 (Ray Gonzales), Chapter 454, Statutes of 1974, an urgency measure that permitted candidates to file petitions containing the signatures of a specified number of registered voters in lieu of paying a filing fee.

- 4) **Arguments in Support:** In support of this bill, the California Association of Clerks and Elections Officials writes:

Under the current law candidates may obtain in-lieu petitions that can be circulated to obtain signatures to off-set all or part of the candidate's filing fee. These in-lieu petitions can be obtained starting at E-158 and must be turned in by E-103. Also under current law, these in-lieu signatures can be also be applied toward the nomination signature requirement, but the candidate still must return the in-lieu petitions by E-103 and notify the election official of their intent to use these signatures for that purpose.

Current law also states that nomination papers can start being obtained at E-113 and must be filed by E-88. Filing fees are due when picking up the nomination papers. If a candidate is using in-lieu petitions, the election official has a period of time to determine their validity and adjust the filing fee. Presently there is an overlap of 11 days when in-lieu petitions are still able to be circulated and nomination papers are available to be filed. This overlap creates confusion and room for error for candidates and counties alike.

AB 469 offers clarity to this confusing process by changing the time periods for the in-lieu petitions and the nomination period to separate events that no longer overlap. Your proposal also eliminates the supplemental in-lieu petitions which

creates another layer of confusion and an opportunity for error. This will provide a clear and concise calendar that will be easier for candidates to understand and easier for counties to explain.

5) **Argument in Opposition:** In opposition to this bill, the Peace and Freedom Party writes:

This proposed legislation would amend California Election Code 8106, which certainly needs amending, but in our view AB 469 amends it in a way that makes it more difficult for candidates, especially poor and working class candidates, to participate in the electoral process. This bill reduces the number of days to collect signatures in lieu of filing fees, and it eliminates the supplemental signatures in lieu of filing fees.

Reducing the period from 55 days to 40 days would reduce the number of possible signatures gathered by approximately 27.3% (if signatures were collected at the same rate over the signature-gathering period). Further, eliminating the possibility of an additional 15 days in which to collect make-up signatures would reduce the number of valid signatures collected by up to approximately 21.4% (if signatures were collected at the same rate over the make-up signature-gathering period). Combining the effects of these two provisions, the number of signatures that could be collected, is greatly reduced.

The proposed changes in time frames and procedures for gathering signatures in lieu may make the verification process easier for elections officials, but if this were to be done without making it more difficult for candidates to collect signatures in lieu of filing fees, then the number of signatures required would need to be reduced by over 40% . . .

These signature requirements are most likely unconstitutional because they are not reasonable alternatives to California's filing fees are required by the U.S. Supreme Court decision in *Lubin v Panush*. We should encourage and expand participation in our electoral system not restrict it.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Clerks and Elections Officials (sponsor)
California State Association of Counties
Secretary of State Alex Padilla

Opposition

Peace and Freedom Party

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