

Date of Hearing: April 9, 2013

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Paul Fong, Chair

AB 1038 (Pan) – As Introduced: February 22, 2013

SUBJECT: Voter registration: paid registration activities.

SUMMARY: Prohibits a person from offering or providing financial compensation or other valuable consideration to another person, either directly or indirectly, to assist another person to register to vote under a certain political party by receiving the completed affidavit of registration. Provides any person who violates the provisions of this bill is guilty of a misdemeanor.

EXISTING LAW:

- 1) Requires any person who accepts money or other valuable consideration in return for assisting with voter registration to sign and affix on the voter registration form his or her full name, telephone number, address, and the name and phone number of the person, company, or organization, if any, that agrees to pay money or valuable consideration for the completed affidavit of registration.
- 2) Requires any person, company, or other organization that agrees to pay money or other valuable consideration to a person for assisting with voter registration to maintain specific records.
- 3) Establishes penalties for fraudulent activity related to signature gathering and voter registration.

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

COMMENTS:

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

Recently reports of organized voter registration fraud taking place in Sacramento County have come to light. Since then we have found that the problem lies with “Bounty Hunters” companies and organizations that pay per-affidavit for switched voter registrations cards. By changing the law so companies can no longer pay based on voter party preference we eliminate an incentive to forge affidavits while protecting the integrity of voters. This will reduce the volume of voter cards that are invalid due to fraud thereby reducing the amount of staff time the county registrars need to spend validating them. Decreasing the backlog and strain on the county registrars can save significant resources for county governments that are struggling in our difficult budget climate.

Jill LaVine, Sacramento County’s Registrar of Voters, reported that her office found “numerous” examples of voters having their political party affiliation switched to “Republican” against their wishes. This and many similar reports have taken place all over California. The Sacramento County Registrar was also inundated by phone calls the

day of the June election, with more victims of voter registration fraud that weren't caught until they actually reached the ballot box. People who went to the polls and received ballots for parties they never signed up for felt that their rights as a voter had been violated. Voter Registration Fraud is a real crime and the victims of these crimes need to have their voices heard.

- 2) Voter Registration Fraud: While some voter registration drives pay employees on an hourly or salaried basis, other voter registration drives pay workers a specified amount of money for each completed voter registration card. In some cases, voter registration drives that pay workers on a per-registration basis only pay workers for voters who register with a specific political party, or pay the workers a larger amount of money for voters who register with a specific political party. While these per-registration payments may create incentives to register voters with a particular political party, they also may create financial incentives for the individuals who are registering voters to commit fraud.

In each of the last four election cycles, complaints have been filed by voters who said they were misled into changing their party affiliations. According to media reports of these complaints, the voter registration workers who were accused of misleading these voters were paid as much as \$15 for each new voter that the worker registered with a particular political party.

In 2006, complaints were reported in Orange, Riverside, and San Bernardino Counties. According to the Orange County Register, 11 individuals were eventually convicted of falsifying voter registrations and other charges in connection with the complaints in Orange County, and eight of those 11 served jail time. In 2008, press reports focused on similar complaints in Los Angeles, Riverside, San Bernardino, and Ventura Counties. In 2010, complaints were filed in Orange and Sacramento Counties. In 2012, complaints were reported once again in Sacramento County. In every instance, media reports of the complaints indicated that the firms that were conducting the voter registration drives or the individuals who were registering voters as part of those drives were being paid on a per-registration basis.

In all, according to the Secretary of State's Election Fraud Investigation Unit (EFIU), between 1994 and 2010, the EFIU opened 960 cases for fraudulent voter registration or fraudulently altering party affiliation on voter registration cards. Out of these, 99 were referred to district attorneys for prosecution, resulting in 64 convictions. Since the EFIU was created in 1994, it has opened more cases, and a larger number of convictions have been obtained, for voter registration fraud than for any other election crime.

- 3) Practical Application of This Bill: The provisions of this bill prohibit a person from paying another person, either directly or indirectly, to register to vote under a certain political party by receiving the completed affidavit of registration. The intention of this bill is to prohibit companies or individuals from being offered or receiving financial compensation for registering voters with particular political parties. For example, this bill would prohibit a person from being paid five dollars to register a voter as a Democrat and ten dollars to register a voter as a Republican. Additionally, this bill prohibits indirect payments, consequently, this bill would prohibit a person from receiving a bonus, whether financial or not, for registering only Democrats.

- 4) Does This Solve the Problem? Last session two bills, SB 205 (Correa) and AB 145 (Pan), would have prohibited a person from paying or receiving payment for registering voters on a per-affidavit basis. Both bills were vetoed by Governor Brown. While the provisions of this bill seem substantially similar to AB 145 and SB 205, they are in fact slightly different. This bill takes a more narrow approach to eliminate voter registration fraud and only prohibits one aspect – prohibiting a person from being paid on a per-affidavit basis to assist voters to register with a specific political party. The author argues that eliminating the incentive to forge affidavits for specific political parties will consequently decrease the likelihood to commit these acts of fraud. The author's goal to decrease fraud is laudable, however because this bill narrowly chips away at the incentive that critics argue encourage fraud, it may not have as much of an impact as an outright ban. Conversely, while this bill may not resolve the matter, any effort to help discourage and potentially decrease these fraudulent activities could help protect election integrity and increase voters' confidence in the democratic process.
- 5) Other States: At least 11 states (Colorado, Florida, Georgia, Iowa, Kentucky, Missouri, Nevada, Pennsylvania, South Dakota, Washington, and Wisconsin) have laws prohibiting payments for registering voters if those payments are based on the number of registrations obtained. Ohio similarly had a law that prohibited payments for registering voters if those payments were based on anything other than time worked. Ohio's law also prohibited payments for collecting signatures on election petitions if the payments were based on anything other than time worked. The Ohio law was struck down by the Sixth Circuit Court of Appeals in Citizens for Tax Reform et al. v. Deters et al. (2008), 518 F.3d 375. However, while the Court struck down the entire Ohio law, including the provisions regarding payments for registering voters, the Court's decision focused on the portion of the law governing payments for collecting signatures on petitions, and did not include substantive discussion about the restrictions on payments for voter registration.
- 6) Arguments in Opposition: In opposition, the American Civil Liberties Union of California writes:

The ACLU believes this legislation raises constitutional concerns. By making it a crime to pay someone to register voters for a particular political party, the bill may violate the First Amendment and parallel state constitutional protections for speech and association. Individuals have a constitutional right to support the political party of their choice, and to do so by paying others to encourage voters to register with a particular party. Cf. *Meyer v. Grant*, 486 U.S. 414 (1988) (circulation of initiative petition involved political speech and prohibition against paying circulators to collect signatures supporting petition violated First Amendment). This bill would make it a crime to pay someone to register voters with a particular party, but it would continue to be lawful to pay someone to register voters in general. In so doing, the bill may be unconstitutionally single out speech in favor of a particular political party.
- 7) Previous Legislation: AB 145 (Pan) of 2012, would have prohibited a person from paying another person or receiving payment for registering voters if that payment is on a per-affidavit basis. Governor Brown vetoed the bill stating, that "[c]urrent California law provides criminal penalties for voter registration fraud. Without more convincing evidence that per-card incentives hurt the democratic process, I am not prepared to ban them."

SB 205 (Correa) of 2011, which is substantially similar to AB 145, would have prohibited a person from paying another person or receiving payment for registering voters if that payment is on a per-affidavit basis. Governor Brown vetoed this bill and in his veto message wrote, "I understand the author's desire to stop fraudulent voter registration. But I don't believe this bill - which makes it a crime to pay people for registering voters based on the number of registrations they secure - will help. Voting is at the heart of our democracy. Efforts to register voters should be encouraged, not criminalized."

AB 2946 (Leno) of 2006, would have prohibited the payment of an individual to register voters if that payment was on a per-registration basis, among other provisions. AB 2946 was vetoed by Governor Schwarzenegger, though his veto message focused on other parts of that bill, and did not address the provisions of the bill that would have prohibited per-registration payments for registering voters.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

American Civil Liberties Union of California
Peace & Freedom Party of California

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