

Date of Hearing: June 30, 2021

ASSEMBLY COMMITTEE ON ELECTIONS
Marc Berman, Chair
SB 714 (Caballero) – As Amended April 27, 2021

ANALYSIS REVISED JUNE 28, 2021 AT 5:45PM

SENATE VOTE: 27-1

SUBJECT: Democratic Party: county central committees: appointment and election.

SUMMARY: Repeals a requirement that a person must be a registered Democrat in order to run for or be appointed to a county central committee of the Democratic Party of California (Democratic Party), and instead requires such a person to have a recognized affiliation with the Democratic Party, as defined by the Democratic Party. Specifically, **this bill:**

- 1) Repeals a requirement that a person must be registered as affiliated with the Democratic Party in order for that person to be eligible to be appointed or elected to a county central committee of the Democratic Party. Provides instead that a person must have recognized affiliation with the Democratic Party, as defined by the Democratic Party, in order for that person to be eligible to be appointed or elected to a county central committee of the Democratic Party.
- 2) Requires the Democratic Party to provide information regarding eligibility requirements to the appropriate elections officials.
- 3) Requires an elections official to provide a certificate attached to a declaration of candidacy, as specified, that certifies the eligibility of a person seeking election to a county central committee if the person is unable to register to vote and express a party preference if the person satisfies the eligibility requirements established by the Democratic Party. Requires the certificate to state that the candidate meets those eligibility requirements.

EXISTING LAW:

- 1) Requires the Legislature, pursuant to the California Constitution, to provide for partisan elections for political party central committees.
- 2) Permits, but does not require, a political party to choose to have the members of its county central committees be elected in each county at every presidential primary election.
- 3) Requires a person to be a US citizen in order to be eligible to register to vote. Permits a person to disclose the name of the political party that the person prefers at the time the person registers to vote. Provides, for the purposes of provisions of state law governing central committee elections, that references to a voter's party affiliation refers to the party preference disclosed by the voter when the voter registered to vote.
- 4) Prohibits a declaration of candidacy for membership on a county central committee of a political party from being filed by a candidate unless both of the following are true:

- a) At the time of presentation of the declaration and continuously for not less than three months immediately prior to that time, or for as long as the candidate has been eligible to register to vote in the state, the candidate is shown by their affidavit of registration to be affiliated with that political party.
- b) The candidate has not been registered as affiliated with any other qualified political party within 12 months.

Permits a county central committee of a political party, notwithstanding this law and subject to the bylaws of the state central committee, to establish the length of time that a candidate for membership on that committee must be shown by the candidate's affidavit of registration to be affiliated with the political party of that committee, and may establish the length of time that a candidate for membership on that committee must not have been registered as affiliated with a qualified political party other than the political party of that committee.

- 5) Provides that a person is not eligible to be appointed or elected to a county central committee of the Democratic Party of California if the person is not registered as affiliated with the Democratic Party at the time of the person's appointment or election.
- 6) Provides, generally, that a political party's county central committee shall have charge of the party campaign under the general direction of the state central committee or of the executive committee selected by the state central committee.

FISCAL EFFECT: According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

COMMENTS:

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

California has been a leader in championing immigrant rights and in the past has recognized that immigrants are the essence of what makes us the Golden State. However, there is still work to be done to fully integrate immigrants into our democratic system to achieve full civic participation. An existing barrier to meaningful inclusion is the inability of aspiring citizens to run for membership in county central committees. Democracy depends on everyone, and it is strengthened when there is diverse and meaningful inclusion of all communities. It is important that immigrants such as DREAMers can have a seat at the table and be allowed to serve in central committees that shape their communities. SB 714 would ensure all Democrats have an opportunity to run for election regardless of their nation of origin.

- 2) **County Central Committees and Public Elections:** Notwithstanding the fact that political party central committee members are not public officials, the state constitution explicitly recognizes political party central committees and requires the Legislature to provide for partisan elections for those offices. Specifically, Proposition 14, which was approved by the voters on the June 2010 statewide primary election ballot, is best known as the measure that implemented a "top two" primary election system in California for most elective state and federal offices. In addition to establishing the top two primary system, however, Proposition 14 additionally amended Article II, Section 5 of the California Constitution to provide that

“[t]he Legislature shall provide for partisan elections for . . . party central committees.”

- 3) **Internal Governance of Political Parties:** In *Eu v. San Francisco County Democratic Central Committee* (1989), 489 U.S. 214, the US Supreme Court examined the right of a state to impose laws relating to the internal affairs of political parties. The Court found that laws burdening the associational rights of political parties and their members must serve a compelling state interest. Therefore, because a state has a compelling interest in preserving the integrity of its election process, it may properly enact laws that interfere with a political party’s internal affairs when necessary to ensure that elections are fair and honest. (For example, a state may properly impose certain eligibility requirements for voters in the general election where such requirements are necessary to ensure that elections are fair and honest, even though those requirements limit the ability of political parties to garner support and members.) However, a state cannot justify regulating a party’s internal affairs without showing that such regulation is necessary to ensure an election that is fair and orderly.

In *Eu*, the Court reiterated that a political party’s determination of the structure which best allows it to pursue its political goals is protected by the Federal Constitution (*Tashjian v. Republican Party of Connecticut* (1986), 479 U.S. 208 at 224) and further held that freedom of association also encompasses a political party’s decisions about the identity of, and the process for electing, its leaders. Thus, unless the state can show that the particular internal party structure would interfere with the integrity of the electoral process or some other compelling state interest, the political parties have a constitutional right to be free from state regulations in the matter of their internal affairs.

In 2009, the California Court of Appeals for the Second District reaffirmed the Supreme Court’s holding in *Eu* in the case of *Wilson v. San Luis Obispo County Democratic Central Committee* (2009) 175 Cal. App. 4th 489. The *Wilson* case dealt with a situation where the San Luis Obispo County Democratic Central Committee had adopted bylaws regarding the removal of central committee members and the membership of the central committee that were in conflict with provisions of the Elections Code. The court in *Wilson* ruled in favor of the San Luis Obispo County Democratic Central Committee, finding that it had the right to adopt those conflicting bylaws pursuant to *Eu*.

In light of the constitutionally protected rights of political parties, the Legislature frequently has changed provisions of the Elections Code at the request of political parties to reflect those parties’ desired methods of electing members to party central committees, and generally has removed unnecessary provisions of state law that otherwise could interfere with the internal structure of political parties (see “Related and Previous Legislation” below). It should be noted, however, that California does not *require* political parties to use public elections for the purpose of choosing members of the party’s central committees. To the extent that a political party does not wish to comply with the requirements that the state has established for publicly-conducted central committee elections, that party is free to conduct its own election or caucus, or to choose any other method to select party officers, including central committee members.

- 4) **County Central Committee Membership of Persons who are not US Citizens:** According to information provided by the author’s office, the intent of this bill is to allow aspiring citizens to be appointed or elected to county central committees. Similar legislation was introduced in 2019 (see “Previous Legislation” below) after a person who is not a US citizen

was appointed to the San Francisco Democratic Central Committee in January of that year. While the action of appointing that person to the county central committee appears to be prohibited by existing state law (since, as described above, state law provides that a person is not eligible to be appointed to a county central committee of the Democratic Party of California if the person is not registered as affiliated with the Democratic Party at the time of the person's appointment, and a person must be a US citizen in order to register to vote), the bylaws of the San Francisco Democratic Central Committee permit a person who is ineligible to vote to serve on the committee if the person "has declared [their] intention to register as a Democrat upon becoming eligible to register as a voter." In light of *Eu* and related case law, however, it could be argued that a state law requiring a person to be registered to vote with the Democratic Party in order to serve on a Democratic county central committee is unconstitutional or otherwise unenforceable where the county central committee wishes to permit individuals who are not eligible to register to vote to serve on the committee.

State law also requires a person to be registered with a political party in order for that person to be eligible to be *elected* to that party's central committee. While this requirement has the potential to interfere with the county central committee's determination of the structure which best allows it to pursue its political goals, having statutory eligibility requirements for being elected to a county central committee also serves a necessary purpose. Specifically, county central committees typically do not run their own elections to elect central committee members; instead, county central committees generally choose to have those elections conducted by county elections officials. That being the case, county elections officials need a mechanism to determine whether a candidate for an office that will appear on the ballot is eligible to be elected to that office. Furthermore, since central committee elections are consolidated with elections for public office, the elections officials need to be able to conduct the election in a manner that protects the integrity of those elections.

The requirements that currently exist under state law for a person to run as a candidate for a political party's county central committee make it relatively easy for the elections official to determine whether a person is eligible to be a candidate for central committee. Specifically, Section 8001 of the Elections Code prohibits a person from being a candidate for membership on a central committee of a political party unless that person has been registered to vote with that political party for a specified period of time (three months, in most cases), and has not been registered with any other political party during the last 12 months (though central committees have some leeway to establish different time periods through their bylaws). Additionally, as noted above, Section 7209 of the Elections Code prohibits a person from being elected to a Democratic county central committee unless that person is affiliated with the Democratic Party at the time of the person's election. Since county elections officials maintain voter registration lists and have access to a voter's registration history, the elections official can determine whether a person is eligible to be a candidate for a party's county central committee using records that are readily available to the elections official. This allows the elections official to make that determination easily, and without unnecessary entanglement into the internal affairs and operations of the political party.

As currently drafted, this bill provides that a person is not eligible to be elected or appointed to a county central committee of the Democratic Party unless the person has a "recognized affiliation" at the time of the person's appointment or election. The bill further requires "the party [to] provide information regarding eligibility requirements to the appropriate elections officials." It is unclear, however, whether this bill contains sufficient details to be

implemented effectively by the elections officials who are responsible for conducting central committee elections. Furthermore, the provisions of this bill are broader than necessary to accomplish the author's goal of allowing aspiring citizens to be appointed or elected to county central committees, and may create unanticipated challenges for the conduct of central committee elections in the future.

Notably, the provisions of this bill are not limited to allowing aspiring citizens to be candidates for county central committees of the Democratic Party, but rather allow any person with a "recognized affiliation" with the Party to be a candidate for county central committee. For example, this bill could require a county elections official to permit a 16-year-old, or a person who lived outside the country, to run for county central committee if that person met the party's definition of having a "recognized affiliation" with the Party. Such an expansion of eligibility to be a candidate in a publicly-conducted election may present additional public policy considerations

Furthermore, the provisions of this bill do not specify whether the state or county Democratic Party would establish the definition of a "recognized affiliation" with the Party, does not identify the specific eligibility information that the Party must provide to county elections officials, and does not establish a process for county elections officials to be able to determine whether a person is eligible to be a candidate for county central committee.

In order to accomplish the author's goal of permitting aspiring citizens to be candidates for county central committee, to protect the constitutional rights of political parties, and to protect the integrity of the electoral process by ensuring that elections officials can effectively administer county central committee elections, the author and the committee may wish to consider amendments that replace the current contents of this bill with the following language:

Section 7209 of the Elections Code is amended to read:

7209. ~~(a) A person shall not be~~ is not eligible for ~~appointment or election to a committee who is not registered as affiliated with~~ if the person's affidavit of registration does not state a political party preference for this party at the time of his or her appointment or the person's election.

(b) Notwithstanding subdivision (a) or Section 8001, a person who is not a United States citizen, but who would be eligible to register to vote if the person were a United States citizen, is eligible for election to a committee if all of the following conditions are met:

(1) The bylaws of the committee permit a person who is not a United States citizen, but who would be eligible to register to vote if the person were a United States citizen, to serve as a member of the committee.

(2) The person meets all other eligibility requirements for election to the committee that are imposed by the bylaws of the committee or this Code.

(3) The committee, not later than the 172nd day preceding the presidential primary election, does both of the following:

(A) Notifies the county elections official that its bylaws permit a person who is not a United States citizen, but who would be eligible to register to vote if the person were a United States citizen, to be elected to, and to serve as a member of, the committee.

(B) Provides the county elections official with a list of the eligibility requirements in its bylaws for a person to be elected to, and to serve on, the committee.

(4) At the time the person files a declaration of candidacy, the person also files a notarized declaration of eligibility with the county elections official. The county elections official shall attach the list of eligibility requirements provided by the committee in accordance with subparagraph (B) of paragraph (3) to the blank declaration of eligibility. The declaration of eligibility shall be substantially as follows:

DECLARATION OF ELIGIBILITY

I hereby declare that I have filed a declaration of candidacy for nomination to the office of _____ to be voted for at the primary election to be held _____, 20____, and declare the following to be true:

My name is .

I have reviewed the attached list of eligibility requirements to be elected to, and to serve on, the county central committee, and I meet those requirements.

Dated this _____ day of _____, 20____.

Signature of candidate

State of California)

County of) ss.

)

Subscribed and sworn to before me this _____ day of _____, 20____.

Notary Public (or other official)

Examined and certified by me this _____ day of _____, 20____.

County Elections Official

(c) The elections official shall accept a completed declaration of eligibility filed by a candidate pursuant to subdivision (b) as a certification that the person is eligible for election to the committee. This section shall not be construed to permit or require the elections official to verify independently whether a candidate who has filed a declaration of eligibility satisfies the eligibility requirements provided by the committee in accordance with

subparagraph (B) of paragraph (3). In lieu of attaching a certificate to a candidate's declaration of candidacy in accordance with subdivision (b) of Section 8001, the elections official shall attach a candidate's completed declaration of eligibility to the candidate's completed declaration of candidacy, and shall preserve both documents in accordance with Section 17100.

- 5) **Federal Campaign Law:** Generally speaking, the primary purposes and activities of political party central committees are to promote voter registration with the political party, to encourage turnout among members of the party, and to participate in elections in an effort to promote the party's candidates and values in the electoral process. As a result, membership on a central committee often involves participation in various electoral activities. In at least some cases, such electoral involvement by a person who is not a US citizen and who is not lawfully admitted for permanent residence in the country could subject the person to federal legal liability. Furthermore, certain activities commonly undertaken by candidates for office may violate federal law when undertaken by a person who is not a US citizen and who is not lawfully admitted for permanent residence in the country.

For example, according to the Federal Election Commission, federal law prohibits campaigns from soliciting or accepting contributions from foreign nationals. The term "foreign national" is defined to include any individual who is not a US citizen and not lawfully admitted for permanent residence. Federal law additionally prohibits foreign nationals from making contributions, donations, expenditures and disbursements in connection with any election — federal, state or local. Finally, federal law prohibits foreign nationals from participating in the decision-making process of a person, such as a corporation, labor organization, political committee, or political organization, with regards to that person's election-related activities, including decisions concerning the making of contributions, donations, expenditures, or disbursements in connection with elections for federal, state, or local office.

In light of this federal prohibition, it may be illegal for a person who is not a US citizen and who is not lawfully admitted for permanent residence in the country to participate in actions that commonly are undertaken by central committee members. While nothing in state law or in this bill *requires* that political party central committee members make campaign contributions or participate in decisions concerning the making of contributions and expenditures, the fact that county central committee members commonly engage in those activities could present legal risks to certain non-citizens who become members of a county central committee if this bill is enacted.

- 6) **Eligibility to Vote in Central Committee Elections and to Sign Nomination Papers:** While this bill seeks to repeal the requirement that a person must be registered as affiliated with the Democratic Party in order for that person to be eligible to be appointed or elected to a county central committee of the Democratic Party, nothing in this bill changes the eligibility for a person to *vote* in such elections or in any other type of publicly-conducted election in the state. Similarly, this bill does not change the eligibility requirements for a person who signs nomination papers for a candidate for county central committee. Changing the eligibility rules for voting in publicly-conducted elections, or for signing nomination papers for candidates in such elections, would present additional policy considerations that are not addressed in this analysis.

- 7) **Arguments in Support:** In a letter of support to a prior version of this bill, the Salinas League of United Latin Americans (LULAC) Council #2055 wrote:

Historically, California has been a leader in advancing immigrant rights, most recently exemplified by fighting against anti-immigrant sentiment at the federal level. California has recognized that immigrants are the very fabric that make our state one of the leading world economies. However, many immigrant communities are still excluded from full participation in our state democratic system. The inability of aspiring citizens such as DREAMers to run for delegate positions in county central committee remains an obstacle to full civic participation.

An estimated 200,000 DREAMers live in California, alongside an immigrant population of over 2.5 million. A DREAMer is a person born in a foreign country who was brought to the U.S. as a baby or young child. Many DREAMers have only known this country as their homeland. DREAMers are active members of their communities, have obtained college degrees, and served in the military. During the pandemic, DREAMers have worked as essential workers in health care, education, agriculture and other food-related jobs.

The pandemic has had devastating consequences for immigrant communities of color. As California looks to its recovery, it is important that we move forward with a more inclusive democratic system to advance an equitable recovery. It is important that immigrant leaders have the opportunity to run for leadership positions that shape their local communities. SB 714 would ensure that regardless of immigration status, every person have an opportunity to a seat at table in the Democratic Party. California is a diverse state and it is time we celebrate that diversity by taking action to remove any systemic barrier to achieve truly diverse leadership.

- 8) **Previous Legislation:** SB 288 (Wiener) of 2019 would have permitted persons who are not US citizens, but who had specified immigration statuses, to be candidates for member of a central committee of the Democratic Party or of the Peace and Freedom Party, if permitted by the bylaws of the respective Party. SB 288 was not heard in this committee in that form, and it subsequently was gutted-and-amended and used for another purpose.

AB 334 (Oberholte), Chapter 6, Statutes of 2019, repealed requirements that members of a county central committee of the California Republican Party shall assume office and hold their first meeting during the month of December or January following a general election, and hold office for a two-year term commencing with that first meeting held in December or January following a general election.

AB 1148 (B. Gaines), Chapter 111, Statutes of 2015, required Republican county central committee members in Placer County to be elected by supervisorial district, and provided for seven members to be elected from each district.

AB 1200 (Ma), Chapter 8, Statutes of 2012, changed the manner in which Republican county central committee members are elected in the City and County of San Francisco, and the manner in which Democratic county central committee members are elected in Alameda and

Sacramento counties and the City and County of San Francisco, among other provisions.

AB 1396 (Torres), Chapter 392, Statutes of 2009, repealed various provisions of the Elections Code governing the membership and operations of the state central committee of the Democratic Party of California, and instead required that the standing rules and bylaws of the Party govern the membership and operations of the state central committee.

AB 965 (Anderson), Chapter 60, Statutes of 2007, provided that the membership of the state central committee of the California Republican Party (CRP) shall be as set forth in the standing rules and bylaws of the CRP, among other provisions.

REGISTERED SUPPORT / OPPOSITION:**Support**

California Latino Legislative Caucus
Chicano Latino Caucus of the California Democratic Party (prior version)
Harvey Milk LGBTQ Democratic Club (prior version)
Monterey County
Napa County Latinx Democratic Club (prior version)
Salinas League of United Latin Americans (LULAC) Council #2055 (prior version)
San Diego Border Dreamers (prior version)
San Francisco Commissions for All (prior version)
San Francisco Latinx Democratic Club (prior version)
San Francisco Latinx Young Democrats (prior version)
6 individuals (prior version)

Opposition

None on file.

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