

Date of Hearing: June 28, 2017

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

SB 235 (Allen) – As Amended May 16, 2017

AS PROPOSED TO BE AMENDED

SENATE VOTE: 34-1

SUBJECT: Elections: ballot designation requirements.

SUMMARY: Limits the ballot designations that candidates for judicial office are permitted to use, as specified. Specifically, **this bill:**

- 1) Permits a candidate for judicial office to only use one of the following ballot designations, as specified:
 - a) Words designating the city, county, district, state, or federal office held by the candidate at the time of filing the nomination papers;
 - b) The word "incumbent" if the candidate is a candidate for the same office that he or she holds at the time of filing the nomination papers; or,
 - c) No more than three words designating the current principal professions, vocations, or occupations of the candidate, or the principal professions, vocations, or occupations of the candidate during the calendar year immediately preceding the filing of nomination documents.
- 2) Requires the ballot designation for a candidate for judicial office who is an active member of the State Bar employed by a city, county, district, state, or by the United States to appear as either of the following:
 - a) Words designating the actual job title, as defined by current law, charter, or other governing instrument; or,
 - b) One of the following ballot designations: "Attorney," "Attorney at Law," "Lawyer," or "Counselor at Law," as his or her ballot designation. Permits the words "Attorney," or "Lawyer," to also be used in combination with one other current principal profession, vocation, or occupation of the candidate, or the principal profession, vocation, or occupation of the candidate during the calendar year immediately preceding the filing of nomination documents.
- 3) Requires a ballot designation that uses words designating the office or job title to contain the following relevant qualifiers:
 - a) Requires the name of the city, if the candidate is an official or employee of a city, to appear preceded by the words "City of."
 - b) Requires the name of the county, if the candidate is an official or employee of a county, to appear preceded by the words "County of."

- c) Requires the full name of the agency to be included if the candidate performs quasi-judicial functions for a governmental agency.
- 4) Requires a candidate for superior court judge who is an active member of the State Bar and practices law as one of his or her principal professions to use one of the following ballot designations: "Attorney," "Attorney at Law," "Lawyer," or "Counselor at Law," as his or her ballot designation. Allows the words "Attorney," or "Lawyer," to also be used in combination with one other current principal profession, vocation, or occupation of the candidate, or the principal profession, vocation, or occupation of the candidate during the calendar year immediately preceding the filing of nomination documents.
- 5) Makes corresponding changes.

EXISTING LAW:

- 1) Permits a candidate, including a candidate for judicial office, to use only one of the following designations immediately below his or her name on the ballot, as specified:
 - a) Words designating the elective city, county, district, state, or federal office which the candidate holds at the time of filing the nomination documents to which he or she was elected by a vote of the people, or to which he or she was appointed, in the case of a superior court judge;
 - b) The word "incumbent" if the candidate is a candidate for the same office that he or she holds at the time of filing nomination papers, and was elected to that office by a vote of the people, or, in the case of a superior court judge, was appointed to that office;
 - c) No more than three words designating the current principal professions, vocations, or occupations of the candidate, or the principal professions, vocations, or occupations of the candidate during the calendar year immediately preceding the filing of nomination documents, as specified; or,
 - d) The phrase "appointed incumbent" if the candidate holds an office other than a judicial office by virtue of appointment, and the candidate is a candidate for election to the same office, or, if the candidate is a candidate for election to the same office or to some other office, the word "appointed" and the title of the office, as specified.
- 2) Permits a candidate to use the ballot designation "community volunteer" provided it is not used in combination with any other principal profession, vocation, or occupation designation, the candidate's community volunteer activities constitute his or her principal profession, vocation, or occupation, and the candidate is not engaged concurrently in another principal profession, vocation, or occupation.
- 3) Defines "profession" to mean a field of employment requiring special education or skill and requiring knowledge of a particular discipline. Provides that the labor and skill involved in a profession is predominantly mental or intellectual, rather than physical or manual.
- 4) Defines "vocation" to mean a trade, a religious calling, or the work upon which a person, in most but not all cases, relies for his or her livelihood and spends a major portion of his or her

time.

- 5) Defines "occupation" to mean the employment in which one regularly engages or follows as the means of making a livelihood.
- 6) Defines "principal" to mean a substantial involvement of time and effort such that the activity is one of the primary, main or leading professional, vocational or occupational endeavors of the candidate. Provides that the term "principal" precludes any activity which does not entail a significant involvement on the part of the candidate and provides that involvement which is only nominal, pro forma, or titular in character does not meet the requirements.
- 7) Prohibits the Secretary of State (SOS) or any other elections official from accepting a candidate ballot designation for which any of the following would be true:
 - a) It would mislead voters.
 - b) It would suggest an evaluation of a candidate, such as outstanding, leading, expert, virtuous, or eminent.
 - c) It abbreviates the word "retired" or places it following any word or words which it modifies.
 - d) It uses a word or prefix, such as "former" or "ex-," which means a prior status. The only exception is the use of the word "retired."
 - e) It uses the name of any political party, whether or not it has qualified for the ballot.
 - f) It uses a word or words referring to a racial, religious, or ethnic group.
 - g) It refers to any activity prohibited by law.
- 8) Requires a candidate who submits a ballot designation to file a ballot designation worksheet that supports the use of that ballot designation by the candidate, as specified. Provides that if a candidate fails to file a ballot designation worksheet, no designation shall appear under the candidate's name on the ballot.
- 9) Permits an elector to challenge the validity of a candidate's ballot designation by seeking a writ of mandate. Provides that a peremptory writ of mandate shall be issued only upon proof that the error, omission, or neglect is in violation of the Elections Code or the California Constitution and that issuance of the writ will not substantially interfere with the conduct of the election.

FISCAL EFFECT: This bill is keyed non-fiscal by the Legislative Counsel.

COMMENTS:

- 1) **Author's Amendments:** After the committee's deadline for pre-committee author's amendments, the author proposed amendments to add additional requirements to candidates for judgeships who are practicing attorneys. Specifically, the author's amendments require a

candidate employed by a public entity who is an active member of the State Bar to use one of the following ballot designations: 1) words designating the actual job title (as defined by statute, charter, or other governing instrument), 2) one of four ballot designations (“Attorney”, “Attorney at Law,” “Lawyer,” or “Counselor at Law”), or 3) the word “Attorney” or “Lawyer”, used in combination with one other principal profession, vocation, or occupation. Additionally, the author's amendments require a candidate not employed by a public entity who is an active member of the State Bar and practices law as one of his or her principal professions to use one of the following ballot designations: 1) one of four ballot designations (“Attorney”, “Attorney at Law,” “Lawyer,” or “Counselor at Law”), or 2) the word “Attorney” or “Lawyer”, used in combination with one other principal profession, vocation, or occupation, as defined. The analysis reflects those proposed author's amendments.

2) **Purpose of the Bill:** According to the author:

SB 235 prevents misleading ballot designations among candidates for judicial office who are practicing attorneys.

California law allows candidates for judicial office to write their own ballot designations using three words. According to code, these words should describe the candidate’s “principal professions, vocations, or occupation.” The designations are especially consequential in judicial races because those elections are nonpartisan and the candidates are often among the least known on the ballot.

California’s Code of Judicial Ethics prohibits candidates for judicial office from engaging in any campaign activity that is inconsistent with the integrity of the judiciary. Integrity is defined as fairness, honesty, and soundness of character. Nevertheless certain candidates for judicial office have chosen designations that emphasize and indeed exaggerate their purported experience in punishing criminals, so as to demonstrate that they are “tough on crime.”

According to research conducted by Los Angeles County Superior Court Judge Randolph Hammock, between 2006 and 2016 in LA County, there were 41 Deputy District Attorneys (DDA) who were candidates for superior court judge. Only once did a DDA utilize the straightforward ballot designation of “Deputy District Attorney” (2006). The other 40 times the [DDAs] used one of the following designations or some variant thereof:

“Hardcore Gang Prosecutor,” “Sex Crimes Prosecutor,” “Gang Homicide Prosecutor,” “Criminal Gang Prosecutor,” “Gang Murder Prosecutor,” “Major Narcotics Prosecutor,” “Criminal Murder Prosecutor,” “Criminal Homicide Prosecutor,” “Child Molestation Prosecutor,” “Government Corruption Prosecutor,” “Violent Crimes Prosecutor,” or “Sexual Predator Prosecutor”

Disingenuous and histrionic ballot designations do a disservice to public interest. Unfortunately, such designations are also effective in winning elections. Out of these 41 DDAs cited above, who ran in a total of 37 separate races, they won an astounding 86% of the time, including in [a] race that un-seated a sitting judge.

The litigating of ballot designations itself is becoming a common occurrence. In [one] recent judicial election three out of five candidates were forced to change their titles after rivals claimed the designations misled voters. Such cases are expensive for both candidates and the court system while not necessarily providing voters any better information. For instance, a recent ruling merely required a candidate to change his designation from “gang murder prosecutor” to “gang homicide prosecutor.”

Nothing in statute or in SB 235 prevents flashy mailers or “shock and awe” TV ads on behalf of judicial candidates. But when voters are presented with official ballot materials in nonpartisan judicial elections, they deserve more accurate and less deceptive representations of the candidates than current law provides.

SB 235 is not perfect, but by limiting ballot designations among candidates for judicial office who are practicing attorneys, it strikes a better balance on behalf of the public interest than that provided under current law.

- 3) **Judicial Candidates:** Justices of the California Supreme Court and Courts of Appeal serve 12 year terms and appear on the ballot for retention only. As a result, they do not have opponents who can run against them. If a majority of voters vote against retention of one of these justices, the Governor makes an appointment to fill the vacancy subject to confirmation by the Commission on Judicial Appointments. On the other hand, superior court judges serve six year terms and are elected by county voters at a general election and may be challenged by qualified candidates. The state Constitution requires a candidate for superior court judge to have been an attorney admitted to practice law in California or have served as a judge of a court of record in this state for at least 10 years immediately preceding the election. Most incumbent superior court judges are unopposed when running for reelection and as a result, the incumbent judge is declared elected and his or her name does not appear on the ballot.
- 4) **Arguments in Support:** In support of a prior version of the bill, the San Diego County Bar Association wrote:

Under existing law, non-incumbent candidates for judicial office are permitted to write their own three-word ballot designations describing their “principal professions, vocations, or occupation.” These ballot designations are especially important in judicial races because the elections are nonpartisan, are rarely well funded, and the candidates are among the least-known on the ballot. This combination of factors provides a perverse incentive for candidates for judicial office to create emotion-gripping ballot designations that exaggerate their experiences – particularly their experience prosecuting the worst kind of criminals. Thus ballot designations of “Criminal Gang Prosecutor,” “Violent Crimes Prosecutor,” “Child Molestation Prosecutor,” “Human Trafficking Attorney,” and the like abound – even if the candidate’s ties to the designation are tenuous, at best.

Ballot designations also provide little information about whether the included job description is current or full-time. Current law permits an individual with a law license who hasn’t practiced actively in 10 or 20 years to designate herself as an

attorney immediately upon payment of the higher “active” licensing fee, and permits a once-a-month law school lecturer to designate herself as a “law professor.” The decision as to what is and is not permitted is up to the county registrar of voters or a local court – provided an opponent is willing to make the challenge, which many sitting judges believe is inconsistent with judicial ethics.

The end result is that too often, judicial candidates with few qualifications and “unqualified” recommendations from their local bar associations, but with a talent for self-promotion, have been able to rise to the bench over arguably much better-qualified candidates, largely on the strength of misleading ballot designations. Whether such candidates attain the bench because of the will of informed voters is one thing. But it is essential that the voters be truly informed, not misled by deceptive and misleading ballot designations.

SB 235 will put an end to this kind of deception by requiring government attorneys running for judicial office to use their job description (even if more than the current three words) as their ballot designation, rather than permitting creative aggrandizement, so that a Deputy District Attorney will be designated as such – not as a Human Trafficking Prosecutor because she was involved in such a case a decade ago. The bill also would prohibit persons licensed to practice law to call themselves “Attorney” on the ballot designation unless they have been truly and actively engaged in the practice of law during the year preceding their candidacy.

SB 235 does not limit a judicial candidate’s ability to present to the voters an accurate description of his or her qualifications for office. Rather, the bill will ensure that the ballot designation, which is often the only candidate description the voters see, provides an accurate, unembellished, description of the candidate for the voters’ consideration. It is a reasonable and much-needed bill that deserves to be signed into law.

- 5) **Concerns Raised:** In a letter referencing a prior version of the bill, the Sutton Law Firm raises the following concerns in part:

As frustrating as it is for some – whether candidates, the media, the voters, or others – to have to determine what “Gang Homicide Prosecutor,” “Child Molestation Prosecutor,” “Violent Crimes Prosecutor” and similar terms really mean, from our perspective such designations, if accurate and not misleading, are better than requiring common and less descriptive denominators (such as “Deputy District Attorney” or “Assistant United States Attorney”).

It is generally agreed that judicial elections are considered low visibility races and that ballot designations often make or break one’s candidacy. Most candidates cannot afford the tens of thousands of dollars required to have a candidate statement (as permitted by Elections Code section 13307) printed in the voter information pamphlet. Although some judicial candidates can afford slate mailers, newspaper ads, and other means of publicizing their candidacies, the election often is decided based on the candidate’s name and ballot designation. Restricting this important tool by which candidates can distinguish themselves from other candidates not only raises constitutional free speech issues, but also is

likely to lead to a less informed electorate and more random judicial election outcomes.

- 6) **Previous Legislation:** AB 1090 (Spitzer), Chapter 505, Statutes of 2007, required every candidate who submits a ballot designation, when filing their declaration of candidacy, to also file a ballot designation worksheet, in a format prescribed by the SOS, supporting the use of the candidate's ballot designation, as specified.
- 7) **Double-Referral:** This bill is double-referred to the Assembly Judiciary Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Conference of Bar Associations (sponsor)
California Judges Association
Los Angeles County Bar Association (prior version)
San Diego County Bar Association (prior version)
Two individuals

Opposition

None on file

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