

Date of Hearing: July 1, 2015

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Sebastian Ridley-Thomas, Chair

SB 589 (Block) – As Amended June 18, 2015

SENATE VOTE: 27-10

SUBJECT: Voting: voter registration: individuals with disabilities and conservatees.

SUMMARY: Authorizes an individual with a disability who is otherwise qualified to vote to complete an affidavit of registration with reasonable accommodations as needed and requires that a person be presumed mentally competent to vote, regardless of his or her conservatorship status, if the court finds that the person can communicate, with or without reasonable accommodations, a desire to participate in the voting process. Specifically, **this bill:**

- 1) Contains findings and declarations that federal disability nondiscrimination laws, including Title II of the federal American with Disabilities Act (ADA), entitle people with disabilities to reasonable accommodations, as needed, to participate in public activities such as voting. Contains further findings and declarations that by explicitly adding the concept of reasonable accommodation to California law on voter qualification, this bill brings the state into compliance with federal standards.
- 2) Expressly provides that an individual with a disability who is otherwise qualified to vote may complete an affidavit of registration with reasonable accommodations as needed.
- 3) Expressly provides that an individual with a disability who is under a conservatorship may be registered to vote if he or she has not been disqualified from voting.
- 4) Provides that a person is presumed competent to vote regardless of his or her conservatorship status.
- 5) Deletes provisions of law that require a person to be deemed mentally incompetent, and therefore disqualified from voting, if a court or jury, as specified, finds that the person is not capable of completing an affidavit of voter registration in accordance with existing law, and instead requires a person to be deemed mentally incompetent, and therefore disqualified from voting, if a court or jury, as specified, finds by clear and convincing evidence that the person cannot communicate, with or without reasonable accommodations, a desire to participate in the voting process.
- 6) Deletes provisions of law that require a court, if an order establishing conservatorship is made and in connection with that order it is found that the person is not capable of completing an affidavit of voter registration, to forward the order and determination to the county elections official of the person's county of residence, and instead requires a court to forward the order to the county elections official if it is found by clear and convincing evidence that the person cannot communicate, with or without reasonable accommodations, a desire to participate in the voting process.

- 7) Prohibits a person from being disqualified from voting on the basis that the person completed the affidavit of voter registration with reasonable accommodations.
- 8) Deletes provisions of law that require a court investigator, during a yearly or biennial review of certain conservatorships, to review the person's capability of completing an affidavit of voter registration in accordance with existing law, and instead requires the court investigator to review, as specified, the person's capability of communicating, with or without reasonable accommodations, a desire to participate in the voting process. Requires a court investigator, if the conservatee's capability of communicating a desire to participate in the voting process has changed, to inform the court and requires the court to hold a hearing regarding the capability, as specified.
- 9) Makes other technical, conforming changes.

EXISTING FEDERAL LAW:

- 1) Prohibits a citizen from being denied the right to vote in any federal, state, or local election conducted in any state or political subdivision of a state because of his or her failure to comply with any test or device. Defines a "test or device" to include, among other things, any requirement that a person demonstrate the ability to read, write, understand, or interpret any matter.
- 2) Provides for voters who need assistance to vote by reason of blindness, disability, or inability to read or write to be given assistance by a person of the voter's choice.
- 3) Requires a public entity to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

EXISTING STATE LAW:

- 1) Permits a person who is a United States citizen, a resident of California, and at least 18 years of age at the time of the next election to register to vote.
- 2) Provides that the Legislature shall prohibit improper practices that affect elections and shall provide for the disqualification of electors while mentally incompetent or imprisoned or on parole for the conviction of a felony.
- 3) Requires a person, who desires to vote, to complete and submit, as specified, an affidavit of registration, and provides that a properly executed registration is deemed effective if it is received on or before the 15th day before an election to be held in the registrant's precinct.
- 4) Permits an individual to receive assistance from another person when completing an affidavit of registration. Requires any person that assists an individual in completing the affidavit, to sign and date the affidavit below the signature of the affiant.
- 5) Requires an individual to certify the content of the affidavit of voter registration as to its truth and correctness, under penalty of perjury, with a signature and the date of signing. Permits

an individual that is unable to write, to sign with a mark or cross or use a signature stamp, as specified.

- 6) Regulates the terms and conditions of conservatorships and creates various requirements for a court and a court investigator with regard to informing a proposed conservatee that he or she may be disqualified from voting if he or she is not capable of completing an affidavit of voter registration. Requires a person be deemed mentally incompetent and disqualified from voting if a court finds that he or she is not capable of completing an affidavit of voter registration, as specified.
- 7) Prohibits a person, including a conservatee, from being disqualified from voting on the basis that the person signs the affidavit of voter registration with a mark or a cross, signs the affidavit of voter registration with a signature stamp, or completes the affidavit of voter registration with the assistance of another person.
- 8) Requires a court investigator, during yearly or biennial reviews of certain conservatorships, to review the person's capability of completing an affidavit of voter registration. Requires a court investigator, if the person had been disqualified from voting by reason of being incapable of completing an affidavit of voter registration, to determine if the person has become capable of completing the affidavit. Requires a court, if the investigator finds that the person is capable of completing the affidavit, to hold a hearing to determine whether the person is in fact capable of completing the affidavit. Requires a court, if the person had not been found incapable of completing an affidavit of voter registration, and the court investigator determines that the person is no longer capable of completing the affidavit, to hold a hearing to determine whether the person is capable of completing the affidavit, and to disqualify the person from voting if the court determines that the person is not so able.
- 9) Requires the court, whenever an order establishing a conservatorship is made and in connection with the order it is found that the person is not capable of completing an affidavit of voter registration, to forward the order and determination to the county elections official of the person's county of residence.
- 10) Requires the court clerk to issue a citation directed to the proposed conservatee that includes, among other things, a statement that the proposed conservatee may be disqualified from voting if he or she is not capable of completing an affidavit of voter registration.

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:

Under current law adults with developmental disabilities under conservatorships are routinely being disenfranchised at extremely high levels. A review of 61 conservatorship cases involving adults with developmental disabilities in Los Angeles County found that close to 90% of conservatees in those cases had been disqualified from voting due to their actual or perceived inability to complete the voter registration affidavit. Furthermore,

this review found that probate attorneys are being trained to disqualify adults under conservatorships from voting when he/she are not able to sign a registration affidavit.

SB 589 will allow disabled individuals under conservatorship to retain their right to vote unless it is shown by clear and convincing evidence that the individual cannot communicate, with or without reasonable accommodations, a desire to participate in the voting process. This is the standard recommended by the American Bar Association. This crucial shift will improve the protections of these adults to maintain their voting rights in California.

Protecting the rights of adults with developmental disabilities is critical in maintaining and encouraging an inclusive and diverse electorate. If an adult under conservatorship can convey their desire to engage in the elections system, we should do everything in our power to ensure that they keep their voting rights. SB 589 will be a significant step forward in ensuring that adults under conservatorships don't slip through the cracks in our democracy.

- 2) **Voter Registration Assistance:** Article II, Section 2 of the California Constitution permits a person who is a United States citizen, a resident of California, and at least 18 years of age at the time of the next election, to register to vote. Additionally, Article II, Section 4 of the California Constitution provides that the Legislature shall prohibit improper practices that affect elections and shall provide for the disqualification of electors while mentally incompetent or imprisoned or on parole for the conviction of a felony. Moreover, Section 208 of the federal Voting Rights Act (VRA) provides that voters who need assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice. Section 201 of the VRA provides that no citizen shall be denied the right to vote in any federal, state, or local election conducted in any state or political subdivision of a state because of his or her failure to comply with any test or device. The VRA defines a "test or device" to include, among other things, any requirement that a person demonstrate the ability to read, write, understand, or interpret any matter.

Current state law permits an individual to receive assistance from another person when completing an affidavit of voter registration and requires the person that assists the individual in completing the affidavit to sign and date the affidavit, as specified. Additionally, state law requires an individual to certify the content of the affidavit of voter registration as to its truth and correctness, under penalty of perjury, with a signature and the date of signing and provides that if the individual is unable to write he or she may instead sign with a mark or cross or use a signature stamp, as specified.

- 3) **Voting Rights of Conservatees:** In California, if an adult is unable to manage his or her medical and personal decisions, a conservator of the person may be appointed. While a conservator of the person has charge of the care, custody and control of the conservatee, that power is not absolute. According to a form adopted by the Judicial Council entitled *Notice of Conservatee's Rights*, when a person becomes a conservatee, he or she does not necessarily lose the right to take part in important decisions affecting his or her property and way of life. After appointment of a conservator, the conservatee keeps specified rights including the right to vote unless the court has limited or taken that right away.

Last year the Disability and Abuse Project of Spectrum Institute filed a formal complaint with the United States Department of Justice's Civil Rights Division against the Los Angeles Superior Court regarding their application of existing state law deeming conservatees ineligible to register to vote if they are not capable of completing an affidavit of voter registration. The complaint asserted that this practice constitutes a violation of the federal VRA's prohibition on use of a test or device as a prerequisite for voter registration.

That complaint was the impetus for AB 1311 (Bradford), Chapter 591, Statutes of 2014, which clarified the voting protections for conservatees. Specifically, AB 1311 prohibited a person, including a conservatee, from being disqualified from voting on the basis that he or she signs the affidavit of voter registration with mark or a cross, signs the affidavit of voter registration with a signature stamp, or completes the affidavit of registration with the assistance of another person. AB 1311 ensured federal and state laws related to voter registration assistance are applied equally to any individual who seeks to register to vote.

According to the author and proponents of this bill, while AB 1311 was helpful in clarifying current law to explicitly permit certain accommodations in completing the voter registration affidavit, it did not, however, modify the standard for determining when a disabled, conserved individual is not competent to participate in the voting process. This bill builds upon AB 1311 by further clarifying conservatee voting rights and modifying the standard for determining when a disabled, conserved individual is not competent to participate in the voting process. Specifically, this bill prohibits disqualifying a conservatee from voting if he or she completes an affidavit of voter registration with reasonable accommodations. In addition, this bill provides that a person is presumed competent to vote regardless of his or her conservatorship status and clarifies the judicial procedures through which an individual with a disability or under a conservatorship would lose his or her ability to vote. Finally, this bill requires a court, in order to deem a person mentally incompetent and disqualified from voting, to make a finding of clear and convincing evidence that the person cannot communicate, with or without reasonable accommodations, a desire to participate in the voting process, as specified.

- 4) **Federal Law:** The ADA was signed into law on July 26, 1990, by President George H. W. Bush. This law forbids discrimination in both public and private settings against anyone with disabilities. In short, the ADA covers anyone with an impairment that substantially limits any major life activity. Local and state governments, private sector employers, transportation programs, and public and privately owned accommodations are all subject to its rulings.

Title II of the ADA provides that discrimination by state or local government agencies is prohibited by the ADA and requires that all governmental services or activities be made available and accessible to people with disabilities. These services include communication and public transportation systems. Under Title II, a "public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity." According to the proponents, California probate courts have typically made a *pro forma* judicial finding that an individual is unable to complete a voter registration affidavit and there are often no specific findings regarding competency to vote, and no consideration of reasonable accommodations that would enable a disabled individual to complete the voter registration affidavit.

5) **American Bar Association:** In 2007, the American Bar Association (ABA) submitted a report to the ABA House of Delegates urging "federal, state, local, and territorial governments to improve the administration of elections to facilitate voting by all individuals with disabilities, including people with cognitive impairments..." The report outlines a series of recommendations adopted by the ADA that, among others, defines and assesses the capacity to vote, such as a presumption of the right to vote, an assessment of a person's ability to communicate their desire to participate in the voting process, and a clear and convincing evidence standard. Proponents argue that California law falls short of ABA's recommended standards by: 1) not presuming a person's right to vote regardless of conservatorship status; 2) relying on the ability to complete a voter registration affidavit rather than an assessment of whether a person can communicate a specific desire to participate in the voting process; and 3) not requiring that a person's disqualification from voting be established by clear and convincing evidence.

6) **Arguments in Support:** The sponsor of this bill, the American Civil Liberties Union of California, writes:

SB 589 will align California with the due process protections and standard for assessing competency to vote recommended by the American Bar Association. Under SB 589, conservatees will retain their right to vote unless it is shown by clear and convincing evidence that the individual cannot communicate a desire to participate in the voting process. SB 589 will also conform California law to federal law by stating that people with disabilities are entitled to reasonable accommodations while registering to vote. These important shifts will help protect the voting rights of disabled conservatees.

The current process for assessing whether disabled conservatees keep their right to vote is inadequate, does not comply with federal law, and places disabled individuals at risk of being disenfranchised without the due process protections we would expect with a fundamental right at stake. California judicial courts have typically made a pro forma judicial finding that an individual is unable to complete a voter registration affidavit. A conservatee can be disqualified from voting without any specific finding regarding competency to vote, and without consideration of reasonable accommodations that would enable the conservatee to complete the voter registration affidavit.

7) **Double Referral:** This bill is double referred to the Assembly Judiciary Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

American Civil Liberties Union of California (sponsor)

AIDS Legal Referral Panel

Association of Regional Center Agencies

Autistic Self Advocacy Network of Los Angeles

Disability Rights California

League of Women Voters of California

Secretary of State Alex Padilla

State Council on Developmental Disabilities

Opposition

None on file.

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