

Date of Hearing: June 14, 2017

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

SB 665 (Moorlach) – As Amended May 3, 2017

**SENATE VOTE:** 38-0

**SUBJECT:** Elections: ballot measures.

**SUMMARY:** Requires an organization or association that submits an argument for or against a ballot measure to submit additional information to the applicable elections official to enable that official to determine if the organization or association qualifies as a bona fide association of citizens, as specified. Specifically, **this bill:**

- 1) Requires an organization or association submitting an argument for or against a state, county, city, or school district ballot measure to submit with its argument a copy of one of the following:
  - a) Its articles of incorporation, articles of association, partnership documents, bylaws, or similar documents;
  - b) Letterhead containing the name of the organization and its principal officers; or,
  - c) If the organization or association is a primary formed committee established to support or oppose the measure, its statement of organization filed pursuant to existing law.
- 2) Prohibits the Secretary of State (SOS), the county or city elections official, or the person conducting the election, from considering the type of documentation submitted or the form of the association when selecting an argument from among bona fide associations of citizens.

**EXISTING LAW:**

- 1) Permits any voter or group of voters to prepare and file with the SOS an argument for or against any state measure for which arguments have not been prepared or filed, as specified. Prohibits the argument from exceeding 500 words in length.
- 2) Prohibits a state ballot argument from being accepted unless it is accompanied by all of the following:
  - a) The name, business or home address, and telephone number of each person submitting the argument;
  - b) If the argument is submitted on behalf of an organization, the name, business address, and telephone number of the organization and at least two of its principal officers;
  - c) The name, business or home address, and telephone number of a contact person for each individual or organization submitting the argument;

- d) If the argument is signed by anyone other than the proponent or legislative author, the name and official title of the person or persons authorized by the proponent to sign the argument; and,
  - e) A signed proponents' statement, as specified.
- 3) Prohibits a person signing an argument for or against a state measure, or a rebuttal to an argument for or against a state measure, from identifying himself or herself in reference to that signature as a candidate for any office.
  - 4) Requires the SOS, if more than one argument for or against a state measure is filed within the time prescribed, to select one of the arguments for printing in the county voter information guide. Requires the SOS, in selecting the arguments, to give preference and priority in the following order:
    - a) In the case of a measure submitted by the Legislature, Members of the Legislature.
    - b) In the case of an initiative or referendum measure, the proponent of the measure.
    - c) Bona fide associations of citizens.
    - d) Individual voters.
  - 5) Permits the county board of supervisors or any member or members of the board, or an individual voter who is eligible to vote on the measure, or a bona fide association of citizens, or a combination of these voters and associations, to file a written argument for or against a county measure, as specified.
  - 6) Requires the county elections official, if more than one argument for or argument against any county measure is submitted to the county elections official within the time prescribed, to select one of the arguments in favor and one of the arguments against the measure for printing and distribution to the voters. Requires the county elections official in selecting the argument to give preference and priority in the following order:
    - a) The board of supervisors or a member or members of the board.
    - b) The individual voter, or bona fide association of citizens, or combination of voters and associations, who are the bona fide sponsors or proponents of the measure.
    - c) Bona fide associations of citizens.
    - d) Individual voters who are eligible to vote on the measure.
  - 7) Permits, for a municipal measure placed on the ballot by petition, the persons filing an initiative petition to file a written argument in favor of the ordinance and permits the legislative body to submit an argument against the ordinance. Allows, for measures placed on the ballot by the legislative body, the legislative body or a member or members of the legislative body authorized by that body, or an individual voter who is eligible to vote on the measure, or a bona fide association of citizens, or a combination of voters and associations,

to file a written argument for or against any city measure, as specified.

- 8) Requires the city elections official, if more than one argument for or argument against any city measure is submitted to the city elections official within the time prescribed, to select one of the arguments in favor and one of the arguments against the measure for printing and distribution to the voters. Requires the city elections official in selecting the argument to give preference and priority in the following order:
  - a) The legislative body, or a member or members of the legislative body authorized by that body.
  - b) The individual voter, or bona fide association of citizens, or combination of voters and associations, who are the bona fide sponsors or proponents of the measure.
  - c) Bona fide associations of citizens.
  - d) Individual voters who are eligible to vote on the measure.
- 9) Permits the governing board of a school district or a member or members of the governing board, or an individual voter who is eligible to vote on the measure, or a bona fide association of citizens, or a combination of these voters and associations, to file a written argument for or against any school measure, as specified.
- 10) Requires the person conducting the election, if more than one argument for or argument against any school measure is submitted within the time prescribed, to select one of the arguments in favor and one of the arguments against the measure for printing and distribution to the voters. Requires the person conducting the election, in selecting the arguments, to give preference and priority in the following order:
  - a) The governing board of the district, or a member or members of the board.
  - b) The individual voter, or bona fide association of citizens, or combination of voters and associations, who are the bona fide sponsors or proponents of the measure.
  - c) Bona fide associations of citizens.
  - d) Individual voters who are eligible to vote on the measure.
- 11) Prohibits a county, city, or school district ballot argument from being accepted unless it is accompanied by the printed name and signature or printed names and signatures of the author or authors submitting it, or, if submitted on behalf of an organization, the name of the organization and the printed name and signature of at least one of its principal officers who is the author of the argument.

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

**COMMENTS:**

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

When a measure is placed on the ballot, elected officials, bona fide associations of citizens, or individual voters may submit arguments for or against the measure to be placed in the voter pamphlet.

Only one argument for each side is chosen for the voter pamphlet, and election officials use the following predetermined hierarchy when selecting the argument:

1. The appropriate legislative body or member or members of the legislative body authorized by that body.
2. The individual voters or bona fide associations of citizens who are the bona fide sponsors or proponents of the measure.
3. Bona fide association of citizens.
4. Individual voters who are eligible to vote on the measure.

However, where there are no submissions by the first or second groups on the hierarchy, problems can arise when two or more groups or individuals submit arguments either in favor or against a measure where at least one claims to be a bona fide association of citizens. Current law provides very little guidance for election officials on the criteria for qualifying as a bona fide association of citizens.

SB 665 provides this clarity by requiring one of the following forms of documentation when submitting an argument as a bona fide association of citizens:

- a. Articles of incorporation, articles of association, partnership documents, bylaws, or similar documents;
- b. Letterhead containing the name of the organization and its principal officers; or
- c. If the organization or association is a primarily formed committee established to support or oppose the measure, its statement of organization filed pursuant to Section 84101 of the Government Code.

This will provide county election officials with clearly defined criteria for determining a bona fide association of citizens, as well as clarity for all who are interested in creating such an association.

2) **Ballot Measure Arguments and Bona Fide Association:** When arguments are submitted for or against ballot measures, existing law generally contains a priority order that is to be followed for selecting the arguments to be printed if multiple arguments are submitted.

Generally, current law gives arguments submitted by bona fide associations of citizens preference over arguments submitted by individual voters. There is no definition in current law, however, for what constitutes a bona fide association of citizens with respect to selecting arguments for ballot measures, and existing law is silent when multiple organizations simultaneously file written arguments for or against a measure. In practice when multiple arguments are filed, the county elections official chooses the argument by random draw.

Research conducted by the committee staff shows that some counties provide guidelines for submitting local ballot measures and some of those guidelines provide guidance as to what constitutes a bona fide association of citizens. For example, the Orange County Registrar of Voter's handbook for submitting arguments and rebuttal arguments for countywide measures states that a bona fide association is "a recognized authentic or genuine group of citizens bound together, without intent of fraud or deceit, by a common interest or cause." Moreover, the 2016 Contra Costa County Elections Division guide to filing arguments for county, city, school district, and special district measures states that a "bona fide association of citizens is a recognized group of citizens bound together by a common interest or cause such as: 1) A group or organization primarily formed as a ballot measure committee to support or oppose a measure, [or] 2) an organization that meets on a regular basis."

According to background materials provided by the author's office, last year in Orange County, two ballot arguments were submitted simultaneously by separate individuals opposing Measure S, a local school bond measure on the November general election ballot. The Orange County Registrar of Voters determined both arguments had been submitted by bona fide associations of citizens and conducted a random drawing to determine which argument would be placed in the voter information guide. The losing association filed a lawsuit in the Orange County Superior Court against the Orange County Registrar of Voters challenging the decision. The plaintiff contended that the other organization did not represent a bona fide association of citizens and that the selected argument deprived voters of their right to receive meaningful information, and requested the court to change the wording of the argument. The defendants argued that under current law, the Registrar of Voters is unable to make content-based determinations of which argument should receive priority and be printed in the voter information guide.

On August 31, 2016, Orange County Superior Court Judge Andrew Banks dismissed the case arguing that a content-based determination for the ballot was not authorized under existing law, and not appropriate in light of the First Amendment.

- 3) **Technical Amendment:** The author has agreed to accept the following minor technical amendment to correct an error in a section of existing law that this bill proposes to amend:

On page 2, in line 6, strike "county" and insert "state."

- 4) **Previous Legislation:** AB 2796 (Elections and Redistricting Committee), Chapter 401, Statutes of 2010, repealed a requirement that a member or members of a school board be authorized by the board in order to file a written argument for or against any school measure, among other provisions.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Orange County Board of Supervisors (sponsor)  
California School Boards Association  
California State Association of Counties  
Howard Jarvis Taxpayers Association  
League of California Cities  
Rural County Representatives of California  
Urban Counties of California

**Opposition**

None on file.

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