

Date of Hearing: April 25, 2018

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

AB 2552 (Berman) – As Amended April 18, 2018

SUBJECT: Elections: ballot contents.

SUMMARY: Requires ballot instructions that state the number of candidates to be nominated or elected to be printed in boldfaced type or in a contrasting color, as specified. Specifically, **this bill** requires the words "vote for one" or "vote for no more than two," or more, according to the number of candidates to be nominated or elected, to be printed in boldfaced type or in a contrasting color that is not black or gray.

EXISTING LAW:

- 1) Requires a ballot to contain the title of each office, the names of all qualified candidates, as specified, ballot designations, as specified, titles and summaries of measures submitted to voters, and instructions to voters, among other items.
- 2) Requires a ballot to follow certain formatting requirements, such as the order offices must appear on the ballot, the numbering of ballot measures, instructions to voters, font type, font size, margin widths, spacing of contests, voting square size, and write-in spaces, among other requirements.
- 3) Permits a county elections official to make ballot formatting changes to accommodate the limitations of a voting system or vote tabulating device, as specified.

FISCAL EFFECT: Unknown. State-mandated local program; contains reimbursement direction.

COMMENTS:

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

The design of a ballot plays a critical role in ensuring a voter's ballot is counted. According to the Center for Civic Design, a ballot is a form that represents perhaps the most important interaction between a government and its citizens. A well designed ballot must be accessible to everyone – voters vary in levels of literacy, quality of vision, and learning style.

Thousands of votes, however, are lost in elections every year because of poorly designed ballots. According to a report from the Brennan Center for Justice, entitled "Better Design, Better Elections," for the most part, ballot design problems that cause lost votes fall into two broad categories – overvotes and undervotes.

Some designs mislead voters into choosing more than the number of allowed candidates, also known as overvotes. Overvotes tend to be mistakes that do not

reflect the real intent of the voter and therefore provide a useful view as to whether voters were confused by the ballot or the instructions.

Other designs make it difficult for voters to distinguish between contests, and they accidentally skip the race, also known as undervotes. Undervotes tend to occur when a voter does not make any choices in a contest or did not cast the maximum number of votes permitted. The lack of cues on the ballot, such as the use of shading and bold text, can lead to these problems.

One of many important elements of ballot design is the reading ease of the ballot instructions. According to the Brennan Center for Justice, "Voting should not be the equivalent of building furniture from IKEA. It should be easy for all voters to understand."

AB 2552 would improve ballot instructions to ensure a voter is able to find, read, and follow instructions accurately. Specifically, this bill would make changes to ballot instructions and would require certain instructions to be bolded or printed in a contrasting color to improve readability and ensure voters clearly understand how to mark their ballot when making selections for more than one candidate.

- 2) **June 7, 2016 Presidential Primary Election:** The June 7, 2016 Presidential primary election was significant for two main reasons: the ballot had one of the largest number of candidates to appear on a ballot for the same office in California since the 2003 gubernatorial recall election and it was one of the first prominent statewide offices to be filled under the top two primary voting rules that require all candidates, regardless of political party, to appear on the primary ballot with the top two vote getters advancing to the general election.

The 2015 retirement announcement by U.S. Senator Barbara Boxer resulted in 34 candidates running to fill the U.S. Senate seat. According to media reports and studies, fitting 34 candidates for one office on the presidential primary election ballot posed a serious ballot design challenge for county elections officials. Due to the high number of candidates for the U.S. Senate contest, some county elections officials had to list candidates for the same office in multiple columns on the ballot. Studies have found that when candidates for the same office are listed in one column, voters see that they are grouped together for the same task. However, when candidates for the same office are listed in multiple columns, voters get confused and mistakenly assume that a new column of candidates indicates a new task. Consequently, listing candidates for the same office in more than one column generates notably higher rates of overvotes and spoiled ballots.

Although many ballots contained instructions reminding voters to vote for only one candidate or reminding voters that candidates for the same office continued onto the next column, the ballot designs and the overwhelming number of candidates proved to be confusing for voters and it was estimated that over 200,000 voters had their votes disqualified in the U.S. Senate race because of overvoting. In comparison, the overvote totals for both Republican and Democratic candidates running for President was estimated to be close to 6,000 in total overvotes.

According to one university study, 33 counties listed the Senate candidates in more than one column and the remaining counties listed the 34 Senate candidates in a single column on one

ballot page. The study concludes that the overvote rate in counties using the multiple column format was of 3.6% and counties that listed the candidates in one single column had an overvote rate of 0.8%.

Studies also point out that other factors may have contributed to voter confusion and higher overvote rates. Moreover, some studies contend that certain voting equipment could have helped to prevent overvoting. For instance, the use of electronic voting systems and polling place ballot tabulators are designed to prevent overvotes and have the capability to alert a voter when there is an overvote on his or her ballot. One university study found that the overvote rate for ballots cast in counties using central tabulation was 4.1% while the overvote rate for counties that tabulated ballots at polling places was 1.1%.

- 3) **Media Articles and June 5, 2018 Gubernatorial Primary Election:** According to the Secretary of State's website there are 27 candidates running for Governor and 32 candidates running for U.S. Senator in the June 5, 2018 gubernatorial primary election. Recent media articles are raising concerns that there might be a significant number of overvotes and spoiled ballots due to the large number of candidates and complicated ballot designs similar to the June 2016 Presidential primary election. Media articles state in some counties the candidates will stretch over three columns. In other words, the voters might find that a contest starts on one side of the page and continues on the other.
- 4) **National Conference of State Legislatures (NCSL) Ballot Design Report:** According to a 2011 report by the NCSL, good design doesn't mean making ballots pretty, it means making a ballot easy to understand, use, and count. Good ballot design encompasses wording, images, color, layout, spacing, typeface, and usability and applies to polling place signs, ballots, absentee ballot envelopes, voter information cards, voter registration applications—every piece of paper, image, or webpage about an election. However, the report acknowledges that good design is also a moving target and what was state-of-the-art in 1920 may be hard-to-read now. Back then, ballot designers had few options to make words stand out, so many states mandated by statute that large blocks of text be centered or that uppercase letters be used for candidate names or for the full text of various parts of the ballot. Research has since proven that centered text and uppercase letters are actually hard to read.

The NCSL report suggests the following to improve ballot design: 1) ask state election officials for a review of existing laws to identify archaic or overly prescriptive language and to suggest potential improvements; 2) review all legislative proposals to ensure they promote flexibility in design, rather than hard-and-fast rules that may become cumbersome later on; 3) adopt “plain language” requirements for ballots; 4) use a design checklist; 5) require, or at least encourage, usability testing of ballots; 6) consult the National Institute of Standards and Technology's publications on language, style, color, clear writing, and usability for election design; or, 7) fund a “design fellow” position in a state's elections office.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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