

Date of Hearing: May 1, 2012

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Paul Fong, Chair

AB 1626 (Yamada) – As Introduced: February 9, 2012

SUBJECT: Election materials: public examination: writ of mandate: elections official.

SUMMARY: Authorizes the elections official to seek a writ of mandate or injunction to amend or delete elections materials for district and school district elections. Specifically, this bill:

- 1) Provides that in the case of district or school district elections, the elections official in the jurisdiction in which the election is being held, during the 10-calendar-day public examination period, is authorized to seek a writ of mandate or injunction requiring the amendment or deletion of any or all of the following election materials concerning a measure that will appear on the ballot:
 - a) Text of the proposed measure;
 - b) Arguments for and against the proposed measure;
 - c) Rebuttal arguments; and,
 - d) Any analysis of the measure prepared by county counsel or district attorney.
- 2) Provides that in any case where an elections official seeks a writ of mandate or injunction pursuant to this bill, the board of supervisors of the county shall be named as the respondent and the person or official who authored the material in question shall be named as a real party in interest.

EXISTING LAW:

- 1) Requires the elections official administering a county, municipal, district or school district election, immediately following the filing deadline for submission of specified election materials and for a period of 10-calendar-days, to make a copy of those materials available for public examination.
- 2) Provides that any person may obtain a copy of specified election materials from the elections official for a fee not to exceed the actual cost incurred to provide the copy.
- 3) Provides that during the 10-calendar-day public examination period for county or municipal elections, any voter of the jurisdiction in which the election is being held, or the elections official, himself or herself, may seek a writ of mandate or an injunction requiring any material to be amended or deleted.
- 4) Provides that for county or municipal elections, the elections official shall be named as respondent and the person or official who authorized the material in question shall be named as a real party in interest. Provides that in the case of the elections official bringing the

mandamus or injunctive action, the board of supervisors of the county shall be named as the respondent and the person or official who authored the material in question shall be named as the real party in interest.

- 5) Provides that during the 10-calendar-day public examination period for district or school district elections, any voter of the jurisdiction in which the election is being held may seek a writ of mandate or an injunction requiring any material to be amended or deleted.
- 6) Provides that for district or school district elections, the elections official shall be named as respondent and the person or official who authored the material in question shall be named as a real party in interest.
- 7) Provides that writ of mandate or injunction requests must be filed no later than the end of the 10-calendar-day public examination period.
- 8) Requires a preemptory writ of mandate or an injunction to be issued only upon clear and convincing proof that the material in question is false, misleading or inconsistent with current law, and that issuance of the writ or injunction will not substantially interfere with the printing or distribution of official election materials.

FISCAL EFFECT: Keyed non-fiscal by the Legislative Counsel.

COMMENTS:

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

For each election, a county elections official provides each voter with a sample ballot that contains arguments for or against measures on the ballot. In state, county and city elections any voter in the jurisdiction, OR the elections official, may seek a writ of mandate or injunction to prevent the inclusion of false or misleading statements or omission of fact, in a ballot argument. However, in special district or school district elections, only a voter within that jurisdiction may attempt to stop the dissemination of misleading voter materials, not the elections official.

This issue recently received attention with a local Yolo County school district parcel tax measure. While the law allows opinions in ballot arguments and the author can discuss any issue they wish, the county elections official believed that the argument submitted to the official for inclusion in the sample ballot contained incorrect and misleading information about all-mailed ballot elections. However, the law did not allow the Yolo County Elections office to contest the false statements. To ensure the dissemination of information based on fact, the official had to find a qualified voter willing to go to court on behalf of the county in time to meet legal deadlines. A court ultimately struck portions of the argument proven incorrect.

In smaller electoral communities, which are most commonly school districts or special districts, it is often the Elections Official who is the first to spot any issues with the ballot argument. In order to encourage timeliness and efficiency, the elections official should be able to ask the courts directly to rectify any issues that arise as soon as possible. AB

1626 would allow county elected officials to perform a well-established function of office and create an equal standard to contest ballot arguments at all levels of elections.

- 2) Argument in Support: The Yolo County Clerk/Recorder, who is the Sponsor of this measure, writes:

In elections for these small districts frequently it is the Election Official who is the first to notice any issues with the ballot arguments provided by the proponent and opposition groups. Twice in recent months a ballot statement has been ordered corrected in Yolo County through the courts, in one case by the intervention of a former Election Official who intervened on behalf of the actual Election Official who was barred from requesting action.

Changing the law to allow Election Officials to act in all local elections serves the voters of California by ensuring that arguments presented to them are accurate and honest. The allowance for timely action of those Officials who are most aware of the content will save the counties and districts the cost of reprinting materials as errors are discovered later.

- 3) Creating Consistency: During the 10-calendar-days immediately following the filing deadline for the submission of specified elections materials, elections officials are required to make copies of those materials available for public examination. If during the public examination period either a voter from that jurisdiction or the elections official himself or herself raises questions about the validity of the ballot arguments submitted, they may seek a writ of mandate or injunction with the court to have the materials amended or deleted, as long as the request is filed no later than the end of the 10-calendar-day public examination period. However, this rule does not apply to a district or school district election.

Existing law provides that for district or school district elections the elections official shall be named the respondent and the person or official who authored the material in question shall be named as a real party in interest, however, the elections official is not authorized to request a writ of mandate or injunction.

This bill would create consistency in current law and authorize the elections official to seek a writ of mandate or injunction, during the 10-calendar-day public examination period, for a district or school district election. Additionally, this bill also requires, in the case of the elections official bringing the mandamus or injunctive action, the board of supervisors of the county to be named as the respondent and the person or official who authorized the material in question to be named a real party in interest.

REGISTERED SUPPORT / OPPOSITION:

Support

Yolo County Clerk/Recorder (Sponsor)
American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO
California Special Districts Association
Orchard Dale Water District
Rowland Water District

Opposition

None on file.

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