

Date of Hearing: April 17, 2012

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Paul Fong, Chair

AB 2479 (Donnelly) – As Introduced: February 24, 2012

SUBJECT: Voter registration: proof of citizenship.

SUMMARY: Requires a person to provide proof of citizenship in order to register to vote. Specifically, this bill:

- 1) Prohibits a person from being registered as a voter unless that person provides proof of citizenship.
- 2) Provides that “proof of citizenship,” as required by this bill, may be established by any of the following:
 - a) A birth certificate;
 - b) A United States passport;
 - c) United States naturalization documents;
 - d) Documents or methods of proof established by the Immigration Reform and Control Act of 1986; or,
 - e) A Bureau of Indian Affairs card number, tribal treaty card number, or tribal enrollment number.
- 3) Provides that a person seeking to register to vote may submit a legible photocopy of a form of proof of citizenship prescribed by this bill or present the original to a person designated by the elections official or the voter registration agency.
- 4) Provides that this bill does not invalidate a voter registration completed before January 1, 2013, or require a registered voter to meet the requirements prescribed in this bill upon a change of address.

EXISTING LAW:

- 1) Requires a person who desires to register to vote to sign an affidavit of registration, under penalty of perjury, attesting that the person is a citizen.
- 2) Authorizes a member of the precinct board to challenge the ability of a person to vote on various grounds, including that the voter is not the person whose name appears on the index, is not a precinct resident, is not a U.S. citizen, has already voted on that day, or is on parole for the conviction of a felony.

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

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

The right to vote is arguably one of the greatest and most sacred rights granted to citizens of our state by the Constitution. Consequently, the administration of that right and the verification of the registration of voters should be held to the highest standards. By requiring proof of citizenship in order to register to vote, the State is ensuring that elections – the backbone of a democratic society – are secure. It also ensures that each vote accurately reflects the will of the people for whom our election system is intended.

2) Burden on Voters Who Cannot Prove Their Citizenship: This bill could make it exceedingly difficult for someone to register to vote if he or she is not currently registered to vote. Under the provisions of this bill, any person who is registered to vote as of January 1, 2013, is deemed to have provided evidence of citizenship, and such a person does not need to provide proof of citizenship.

However, any new registrant would have to provide “proof of citizenship,” as defined by the bill, before his or her registration would become effective. For the vast majority of people, the only documents that could be used as “proof of citizenship” would be a passport, a birth certificate (if the person was born in the United States), or a naturalization document. A November 2006 survey by Brennan Center for Justice found that as many as 7% of United States citizens cannot easily produce documentation to prove their citizenship. To the extent that this figure is reflective of the California electorate, it is possible that a significant number of Californians who are eligible to register to vote do not have the requisite documentation to meet the requirements of this bill. This same survey also demonstrated that certain groups – primarily those with low incomes – are less likely to possess documentation proving their citizenship. Additionally, the same survey found that many individuals who had documentation of citizenship did not have documentation that reflects their current name.

Furthermore, the cost to obtain a copy of one of the required forms of documentation prescribed by this bill could be financially burdensome and prevent people from registering to vote. Depending on the county, it can cost between \$15 to \$25 to replace a birth certificate, while the cost to obtain a passport book is \$135 and the cost to renew a passport book is \$110.

3) Is There a Problem? Notwithstanding the author's sentiment that "the right to vote is arguably one of the greatest and most sacred rights granted to citizens of our state by the Constitution," the author has provided little evidence to demonstrate that voting by non-citizens is a problem in California, and has provided no evidence of voting by non-citizens in the state in the last decade.

Under state law, when a person registers to vote, that person attests under penalty of perjury that he or she is a U.S. citizen. Additionally, a person who registers to vote while knowing that he or she is not entitled to registration is guilty of a wobbler – a crime that can be charged as a misdemeanor or a felony. Any person who votes or attempts to vote at an election when he or she is not entitled to vote is guilty of a felony. Under federal law, a non-

citizen who votes at a federal election faces fines and prison time of up to one year. Additionally, non-citizens who vote in violation of state or federal laws can face removal from the country (also known as deportation). As a result, a non-citizen who registered to vote and voted at a state election would be guilty of at least two felonies (perjury for filing a false voter registration form and voting in an election in which a person was not entitled to vote) and a third crime (registering to vote while not being entitled to register) that can be charged as a misdemeanor or a felony. Such a person could also face removal from the country. If a non-citizen voted in a federal election, he or she would also be subject to federal prison time. Given the lack of evidence that voting by non-citizens is a problem, it may be the case that the steep penalties that exist for voting by non-citizens are sufficient to protect against such unlawful conduct.

- 4) Voting Rights Act of 1965: To the extent that the “proof of citizenship” requirements in this bill disproportionately impacts racial and language minorities, this bill could be subject to legal challenge under the federal Voting Rights Act of 1965.
- 5) This Bill May Conflict With Federal Law: The National Voter Registration Act of 1993 (Public Law 103-31), also known as “Motor Voter,” requires every state to accept a uniform voter registration application developed by the Elections Assistance Commission by mail. Because that application does not provide for a person to submit “proof of citizenship,” it is likely that the state will continue to receive hundreds of thousands of voter registration forms without “proof of citizenship.” This bill appears to conflict with Motor Voter; it is not clear that California has the option of refusing to accept an application made on this form because it lacks “proof of citizenship.”
- 6) Few States Have Proof of Citizenship Laws: According to Brennan Center for Justice report on "Voting Law Changes in 2012," only five states have enacted "proof of citizenship" laws. The first state to adopt a "proof of citizenship" law was Arizona. Arizona voters approved Proposition 200 at the November 2004 general election. Among its provisions, Proposition 200 requires state and local governments to verify the immigration status of every applicant for public benefits "that are not federally mandated," and requires voters to provide "proof of citizenship" in order to register to vote. The provisions of this bill are substantially similar to, and seem to be based upon, the provisions of Proposition 200. However, Proposition 200 specifies that a person's driver's license is sufficient to constitute "proof of citizenship" – a document that is not sufficient as "proof of citizenship" under this bill.

Despite voter's approval in 2004, Proposition 200 has been challenged in federal court and has been wrapped up in litigation ever since and is still unresolved. In October of 2010, the U.S. Court of Appeals for the Ninth Circuit held that the "proof of citizenship" requirement violates federal law – specifically, the National Voter Registration Act of 1993. In June of 2011, the Ninth Circuit agreed to rehear the case *en banc* and has not yet issued its decision.

Georgia became the second state that sought to require "proof of citizenship" for voter registration. In 2009, Georgia passed legislation requiring prospective voters to provide "proof of citizenship" in order to register to vote. The Department of Justice ultimately approved Georgia's "proof of citizenship" law in April of 2011, however, the state has not yet put the law into effect.

Last year, Alabama, Kansas, and Tennessee passed "proof of citizenship" laws. Both Kansas' and Tennessee's laws went into effect immediately, however Alabama is still awaiting approval by the U.S. Department of Justice or federal court as required by the federal Voting Rights Act. The "proof of citizenship" laws in Georgia, Alabama, and Kansas are substantially similar to Arizona's law, which require prospective voters to provide "proof of citizenship" in order to register to vote and specifies that a person's driver's license or non-driver's ID card are sufficient to constitute "proof of citizenship."

7) Arguments in Opposition: NALEO Educational Fund writes in opposition:

According to an analysis by the Brennan Center for Justice, an estimated 7% of all adults eligible to vote do not presently have qualifying proof of their U.S. citizenship, and Latinos are particularly likely to be in this situation. In the 1920s, 30s, and 40s, for example, registration of birth was not yet uniform and standard, but rather an emerging practice. During this period, children born to families with the least amount of access to formal health care – including Native Americans and Latinos – were significantly less likely than others to have their births recorded by the government. Today, many of these people who never had birth certificates are not able to obtain alternate documents because no observers of their births survive. Such individuals risk permanent disenfranchisement if legislation like AB 2479 is enacted. Another group of Americans who are disproportionately likely to lack proof of their citizenship are those who earn less than \$25,000 a year. These individuals are more than twice as likely as their counterparts to not possess qualifying documentation, and in California, they are disproportionately likely to be Latino.

8) State Mandates: The 2011-2012 state budget included the suspension of various state mandates as a mechanism for cost savings. Included on the list of suspensions were all six existing elections-related mandates. All the existing elections-related mandates have been proposed for suspension again by the Governor in his budget for the 2012-2013 fiscal year. The Committee may wish to consider whether it is desirable to create new election mandates when current elections-related mandates are suspended.

9) Previous Legislation: AB 2317 (Walters) of 2008, which is substantially similar to this bill, failed passage in this committee.

AB 934 (Wyland) of 2005, was similar to this bill, except that AB 934 required a person to provide proof of identity before casting a vote, in addition to requiring a person to provide proof of citizenship before registering to vote. AB 934 failed passage in this committee twice, both times on a 2-3 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

American Civil Liberties Union of California
Asian Americans for Civil Rights & Equality
California Immigrant Policy Center
California Teachers Association
League of Women Voters of California
Mexican American Legal Defense and Educational Fund
NALEO Educational Fund
Service Employees International Union of California

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