

Date of Hearing: March 13, 2019

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

AB 334 (Obernolte) – As Introduced January 31, 2019

SUBJECT: California Republican Party: county central committees.

SUMMARY: Repeals requirements that members of a county central committee of the California Republican Party (CRP) do the following:

- 1) Assume office and hold their first meeting during the month of December or January following a general election.
- 2) Hold office for a two-year term commencing with that first meeting held in December or January following a general election.

EXISTING LAW:

- 1) Requires the Legislature, pursuant to the California Constitution, to provide for partisan elections for political party central committees.
- 2) Permits a political party to choose to have the members of its county central committees be elected in each county at every presidential primary election.
- 3) Requires the members of a county central committee of the CRP to assume office and hold their first meeting during the month of December or January following a general election. Requires a member to hold office for a two-year term commencing with that first meeting held in December or January following a general election.
- 4) Establishes rules governing the organization, operation, and function of the political party known as the CRP. Provides for the establishment of a county central committee of the CRP in each county of the state. Requires each county central committee to have charge of the party campaign under the general direction of the state central committee of the CRP, or the executive committee selected by the state central committee.
- 5) Permits a county central committee of the CRP, in accordance with the rules and regulations adopted by the committee, to determine the number, the district allocation, and the manner of election of its members at any time by holding a caucus or convention, or by using any other method approved by the committee.

FISCAL EFFECT: None. This bill is keyed non-fiscal by the Legislative Counsel.

COMMENTS:

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

AB 334 is a simple clean-up measure to align a section of code that was inadvertently missed by SB 1272 (Kehoe). That bill allowed for county central

committee elections to be held every four years and to be done at any time by convening a caucus or convention. This change was made due to the creation of the top-two open primary system by Prop 14 (2010), in which there are no longer partisan primary ballots in non-presidential elections. As a result, if central committee elections were to be held during those years, special partisan ballots would have to be printed at taxpayer expense solely for that purpose. To provide more flexibility to central committees and to keep costs down, this bill would repeal subdivision (b) of Section 7441 of the Elections Code, aligning this section with changes made by SB 1272 (Kehoe) by matching the term of office with the dates on which the committee member is elected.

- 2) **County Central Committees and Public Elections:** Notwithstanding the fact that political party central committee members are not public officials, the state constitution explicitly recognizes political party central committees and explicitly requires the Legislature to provide for partisan elections for those offices. Specifically, Proposition 14, which was approved by the voters on the June 2010 statewide primary election ballot, is best known as the measure that implemented a “top two” primary election system in California for most elective state and federal offices. However, in addition to establishing the top two primary system, Proposition 14 also amended Article II, Section 5 of the California Constitution to provide that “[t]he Legislature shall provide for partisan elections for...party central committees.”

Prior to the passage of Proposition 14, California had a “semi-closed” primary election system, under which each political party held a primary election to choose its nominee who appeared on the general election ballot. Because each political party had its own primary election, there was a separate primary election ballot for each political party at every statewide primary election. Accordingly, political party county central committees generally were elected using those ballots, and members were elected to two-year terms.

With the approval of Proposition 14, however, primary elections in California no longer serve as a mechanism for political parties to nominate candidates that appear on the ballot for congressional and state office at the general election. Instead, the primary election for congressional and state offices serves to narrow down the number of candidates who will appear on the ballot at the general election. As a result, under the “top two” system, all voters, regardless of political party, can use the same ballot to vote on candidates for congressional and state offices. Since the passage of Proposition 14, the only publicly-conducted partisan elections in the state are presidential primary elections and elections for county central committees. As a result, after the approval of Proposition 14, the only partisan elections that were scheduled to be held at gubernatorial primary elections were elections for political party county central committees.

In an effort to reduce the complexity and costs of conducting gubernatorial primary elections, SB 1272 (Kehoe), Chapter 507, Statutes of 2012, provided that public elections for political party county central committee would be held only in presidential election years, instead of at every statewide primary election. SB 1272 also expressly provided that political parties may select central committee members at any time by holding a caucus, convention, or other method approved by the party, and made various conforming changes to provisions of state

law governing the timing and conduct of county central committee elections.

As detailed above, however, one provision of state law governing county central committees of the CRP requires that central committee members hold office for a two-year term, and imposes requirements for when central committee members shall assume office and hold their first meeting. SB 1272 did not modify or update those requirements, but they generally are inconsistent with the flexibility provided to political parties by that bill.

- 3) **Internal Governance of Political Parties:** In *Eu v. San Francisco County Democratic Central Committee* (1989), 489 U.S. 214, the United States Supreme Court examined the right of a state to impose laws relating to the internal affairs of political parties. The Court found that laws burdening the associational rights of political parties and their members must serve a compelling state interest. Therefore, because a state has a compelling interest in preserving the integrity of its election process, it may properly enact laws that interfere with a political party's internal affairs when necessary to ensure that elections are fair and honest. (For example, a state may properly impose certain eligibility requirements for voters in the general election where such requirements are necessary to ensure that elections are fair and honest, even though those requirements limit the ability of political parties to garner support and members.) However, a state cannot justify regulating a party's internal affairs without showing that such regulation is necessary to ensure an election that is orderly and fair.

In *Eu*, the Court reiterated that a political party's determination of the structure which best allows it to pursue its political goals is protected by the Federal Constitution (*Tashjian v. Republican Party of Connecticut* (1986), 479 U.S. 208 at 224) and further held that freedom of association also encompasses a political party's decisions about the identity of, and the process for electing, its leaders. Thus, unless the state can show that the particular internal party structure would interfere with the integrity of the electoral process or some other compelling state interest, the political parties have a constitutional right to be free from state regulations in the matter of their internal affairs.

In 2009, the California Court of Appeals for the Second District, reaffirmed the Supreme Court's holding in *Eu* in the case of *Wilson v. San Luis Obispo County Democratic Central Committee* (2009) 175 Cal. App. 4th 489. The *Wilson* case dealt with a situation where the San Luis Obispo County Democratic Central Committee had adopted bylaws regarding the removal of central committee members and the membership of the central committee that were in conflict with provisions of the Elections Code. The court in *Wilson* ruled in favor of the San Luis Obispo County Democratic Central Committee, finding that it had the right to adopt those conflicting bylaws pursuant to *Eu*.

In light of the constitutionally protected rights of political parties, the Legislature frequently has changed provisions of the Elections Code at the request of political parties to reflect those parties' desired methods of electing members to party central committees (see "Previous Legislation" below).

- 4) **Previous Legislation:** AB 1148 (B. Gaines), Chapter 111, Statutes of 2015, required Republican county central committee members in Placer County to be elected by supervisorial district, and provided for seven members to be elected from each district.

AB 1200 (Ma), Chapter 8, Statutes of 2012, changed the manner in which Republican county central committee members are elected in the City and County of San Francisco, and the manner in which Democratic county central committee members are elected in Alameda and Sacramento counties and the City and County of San Francisco, among other provisions.

AB 1396 (Torres), Chapter 392, Statutes of 2009, repealed various provisions of the Elections Code governing the membership and operations of the state central committee of the Democratic Party of California, and instead required that the standing rules and bylaws of the Party govern the membership and operations of the state central committee.

AB 965 (Anderson), Chapter 60, Statutes of 2007, provided that the membership of the state central committee of the CRP shall be as set forth in the standing rules and bylaws of the CRP, among other provisions.

REGISTERED SUPPORT / OPPOSITION:**Support**

None on file.

Opposition

None on file.

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