

RESOLUTION 15-01-2019

DIGEST

Government: Expanding Prohibition on State-Sponsored Travel

Amends Government Code section 11139.8 to prohibit California-sponsored travel to states with laws that diminish voting rights of United States citizens.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Government Code section 11139.8 to prohibit California-sponsored travel to states with laws that diminish voting rights of United States citizens. This resolution should be approved in principle because government sponsored actions that dilute or suppress voting rights are inconsistent with California values.

Limiting the time and place where voters may cast their ballots, requiring specified proof of identity, purging voting rolls, and allowing voting districts to be redrawn to weight a vote, all contribute to limiting the voting rights of United States citizens. A person's right to vote means little if they have to overcome procedural hurdles to simply cast a ballot.

Because California values the right to vote, the California Constitution was amended to require that the Citizens Redistricting Commission consider numerous factors in redistricting. This ensures that there is an open and transparent process enabling full public consideration of and comment on the drawing of district lines. (Cal. Const., art. XXI, § 2, subd. (b).) California also enacted the Voter's Choice Act to increase voting options and accessibility for all voters. However, not all states have such procedures and safe-guards.

In 2017, through the enactment of Government Code section 11139.8, California prohibited most state-sponsored travel to states that enacted laws that allowed for the discrimination of persons on the basis of sexual orientation, gender identity, or gender expression. Government Code section 11139.8 was enacted because such discrimination is inconsistent with California's values. (Assembly, Concurrence in Senate Amendments, Assem. Bill No. 1887, (2015-2016 Reg. Sess.), August 18, 2016.)

This resolution simply expands the existing prohibition to states that dilute and suppress voting rights. Moreover, the resolution provides that the Attorney General has discretion to determine which states would be subject to the prohibition, just as the Attorney General has the discretion with the current prohibition regarding discrimination. This allows for the prohibition to adapt to changes in other state's laws, and ensures that the prohibition is applied consistently with California's values. Because governmental conduct that diminishes voting rights is inconsistent with California's values, just as discrimination is, California funds should not be contributed to states that actively hinder the right to vote.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Government Code section 11139.8 to read as follows:

1 §11139.8

2 (a) The Legislature finds and declares all of the following:

3 (1) California is a leader in protecting civil rights and preventing discrimination.

4 (2) California's robust nondiscrimination laws include protections on the basis of
5 sexual orientation, gender identity, ~~and~~ gender expression, race, ethnicity, and national origin,
6 among other characteristics.

7 (3) Religious freedom is a cornerstone of law and public policy in the United States,
8 and the Legislature strongly supports and affirms this important freedom.

9 (4) The exercise of religious freedom should not be a justification for discrimination.

10 (5) California must take action to avoid supporting or financing discrimination against
11 lesbian, gay, bisexual, and transgender people.

12 (6) California must take action to avoid supporting or financing the suppression or
13 dilution of voting rights based upon race, ethnicity, national origin of United States citizens,
14 or political party affiliation.

15 ~~(6) (7)~~ It is the policy of the State of California to promote fairness and equality and to
16 combat discrimination.

17 (b) A state agency, department, board, authority, or commission, including an agency,
18 department, board, authority, or commission of the University of California, the Board of
19 Regents of the University of California, or the California State University, and the
20 Legislature shall not do ~~either~~ any of the following:

21 (1) Require any of its employees, officers, or members to travel to a state that, after
22 June 26, 2015, has enacted a law that voids or repeals, or has the effect of voiding or
23 repealing, existing state or local protections against discrimination on the basis of sexual
24 orientation, gender identity, or gender expression or has enacted a law that authorizes or
25 requires discrimination against same-sex couples or their families or on the basis of sexual
26 orientation, gender identity, or gender expression, including any law that creates an
27 exemption to antidiscrimination laws in order to permit discrimination against same-sex
28 couples or their families or on the basis of sexual orientation, gender identity, or gender
29 expression.

30 (2) Approve a request for state-funded or state-sponsored travel to a state that, after
31 June 26, 2015, has enacted a law that voids or repeals, or has the effect of voiding or
32 repealing, existing state or local protections against discrimination on the basis of sexual
33 orientation, gender identity, or gender expression, or has enacted a law that authorizes or
34 requires discrimination against same-sex couples or their families or on the basis of sexual
35 orientation, gender identity, or gender expression, including any law that creates an
36 exemption to antidiscrimination laws in order to permit discrimination against same-sex
37 couples or their families or on the basis of sexual orientation, gender identity, or gender
38 expression.

39 (3) Require any of its employees, officers, or members to travel to a state that, after
40 January 1 26, 2020, has a law or regulation in effect, or has taken any executive action, that
41 has the substantial effect of causing the suppression or dilution of voting rights based upon
42 race, ethnicity, national origin of United States citizens, or political party affiliation.

43 (4) Approve a request for state-funded or state-sponsored travel to a state that, after
44 January 1 26, 2020, has a law or regulation in effect, or has taken any executive action, that

45 has the substantial effect of causing the suppression or dilution of voting rights based upon
46 race, ethnicity, national origin of United States citizens, or political party affiliation.

47 (5) For purposes of this section, “suppression of voting rights” shall include, but shall
48 not be limited to, poll taxes, literacy tests, photo identification requirements, purging of voter
49 rolls, permitting a material inequality in the allocation of resources to particular polling
50 places, requiring a person with a physical address within the state to also have a mailing
51 address within the state, or any other requirement or action that materially prevents or
52 impedes otherwise eligible voters from registering or exercising their right to vote.

53 (6) For purposes of this section, “dilution of voting rights” shall include, but shall not
54 be limited to, the dividing of a state, county or other territory into election districts so as to
55 give a majority to one group in more districts while concentrating the voting strength of
56 another group into fewer districts.

57 c) Subdivision (b) shall not apply to travel that is required for any of the following
58 purposes:

59 (1) Enforcement of California law, including auditing and revenue collection.

60 (2) Litigation.

61 (3) To meet contractual obligations incurred before January 1, 2017 with respect to
62 subdivisions (b)(1) or (2), or before January 1, 2020 with respect to subdivisions (b)(3) or (4).

63 (4) To comply with requests by the federal government to appear before committees.

64 (5) To participate in meetings or training required by a grant or required to maintain
65 grant funding.

66 (6) To complete job-required training necessary to maintain licensure or similar
67 standards required for holding a position, in the event that comparable training cannot be
68 obtained in California or a different state not affected by subdivision (b).

69 (7) For the protection of public health, welfare, or safety, as determined by the
70 affected agency, department, board, authority, or commission, or by the affected legislative
71 office, as described in subdivision (b).

72 (d) The prohibition on state-funded travel described in this section shall continue
73 while any law specified in subdivision (b) remains in effect.

74 (e)(1) The Attorney General shall develop, maintain, and post on his or her Internet
75 Web site a current list of states that, after June 26, 2015, have enacted a law that voids or
76 repeals, or has the effect of voiding or repealing, an existing state or local protection against
77 discrimination on the basis of sexual orientation, gender identity, or gender expression, or
78 have enacted a law that authorizes or requires discrimination against same-sex couples or
79 their families or on the basis of sexual orientation, gender identity, or gender expression,
80 including any law that creates an exemption to antidiscrimination laws in order to permit
81 discrimination against same-sex couples or their families or on the basis of sexual orientation,
82 gender identity, or gender expression.

83 (2) The Attorney General shall develop, maintain, and post on his or her Internet Web
84 site a current list of states that, after January 1, 2020, has a law or regulation in effect, or has
85 taken any executive action, that has the substantial effect of causing the suppression or
86 dilution of voting rights based upon race, ethnicity, national origin of United States citizens,
87 or political party affiliation.

88 ~~(2)~~ (3) It shall be the responsibility of an agency, department, board, authority, or
89 commission described in subdivision (b) to consult the list on the Internet Web site of the
90 Attorney General in order to comply with the travel and funding restrictions imposed by this
91 section.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Bar Association of San Francisco

STATEMENT OF REASONS

The Problem: A number of states have engaged in gerrymandering or voter suppression based upon race, ethnicity, national origin of United States citizens, or political party affiliation. The politicians in these states are permitted to choose their voters rather than the other way around. And they are doing so by diluting or outright denying their citizens one of the most fundamental rights guaranteed to United States citizens – the right to hold politicians accountable at the ballot box. The actions of Congress have in some instances had a disproportionate impact on California (e.g. the limitation on state income taxes for federal tax purposes). Additionally, California should not be using tax dollars to support or finance discrimination and the denial of fundamental civil rights.

The Solution: This resolution would prevent California tax dollars from supporting the economies of states that engage in the systematic dilution or denial of the right to vote based upon race, ethnicity, national origin of United States citizens, or political party affiliation. Additionally, it provides a way to ensure that California state employees will not have to travel for work to states with discriminatory laws.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

IMPACT STATEMENT

The proposed resolution does not affect any other law, statute or rule.

AUTHOR AND/OR PERMANENT CONTACT: James P. Lamping, The Law Office of James P. Lamping, 100 Pine Street, Suite 1250; San Francisco, CA 94111; (415) 992-3100; jim@jimlamping.com.

RESPONSIBLE FLOOR DELEGATE: Alicia M. Gamez

RESOLUTION 15-02-2019

DIGEST

Elections: Mandatory Submission of Ballots

Adds Elections Code section 2350 to impose sanctions for failure of a registered voter to cast a ballot.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

Similar to Resolution 10-01-2018, which was withdrawn.

Reasons:

This resolution adds Elections Code section 2350 to impose sanctions for failure of a registered voter to cast a ballot. This resolution should be approved in principle because it would increase voter participation.

Voter participation in California, like voter participation nationwide, is dismally low. Countries that have adopted mandatory voting, such as Australia, have increased voter turnout dramatically. Conversely, countries that have discontinued mandatory voting, such as Venezuela and the Netherlands, have seen drops in voter turnout of 20-30%.

Like the statutes in countries that have successfully implemented “mandatory voting,” this resolution requires submission of a ballot, rather than the actual recording of a vote; in other words, the ballot can remain blank. Thus, the resolution does not present a “forced speech” concern under the First Amendment. Nor does the resolution violate the Constitution by forcing the exercise of a right, because a positive right to do something does not necessarily imply a corresponding negative right to be free from exercise of that right. For example, the fact that all children in the United States have a federal right to a free and adequate public education (29 U.S.C. § 794), does not prevent states from requiring school attendance or enforcing truancy laws.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to add Elections Code section 2350, to read as follows:

- 1 §2350
- 2 (1) It shall be the duty of every registered voter to submit a ballot at each state-wide
- 3 election.
- 4 (2) Within 30 days after each state-wide election, each County Elections Officer must
- 5 prepare a list of the names and addresses of the voters registered in that county who appear to
- 6 have failed to submit a ballot at the election.

7 (3) Subject to subsection (4), below, within 90 days after any state-wide election, each
8 County Elections Officer must send a penalty notice by first class mail to the last known address
9 of each registered voter whose name appears on the list prepared under subsection (2).

10 (4) The County Elections Officer is not required to send a penalty notice if she or he is
11 satisfied that the voter is dead, was ineligible to vote at the election; or had a good cause for
12 failing to submit a ballot.

13 (5) A penalty notice is a notice in a form to be provided by the Secretary of State
14 notifying the registered voter that:

15 (a) the registered voter appears to have failed to submit a ballot at the election; and

16 (b) it is an offense to fail to submit a ballot at an election without a valid and sufficient
17 reason for the failure; and

18 (c) the voter must respond to the County Elections Officer within 30 days of the date of
19 the notice in one of the following ways:

20 (i) give the County Elections Officer a statement, under penalty of perjury, specifically
21 identifying the location or manner in which the voter's ballot was submitted; or

22 (ii) give the County Elections Officer a statement, under penalty of perjury, showing
23 good cause for any failure to submit a ballot. Good cause shall be defined expansively and shall
24 include, but not be limited to: voter's physical or mental condition impairing his or her ability to
25 understand the ballot or travel to or from the polls; voter's inability to travel to or from the polls
26 on election day; voter's language or education impairing voter's ability to understand the ballot,
27 the election process, or the requirement to submit a ballot; voter's need to provide care or
28 support to another; voter's work obligations; voter's familial obligations; and any other adequate
29 or substantial grounds or reason to fail to submit a ballot.

30 (iii) pay the County Elections Officer a penalty of \$50.00.

31 (d) If a voter is unable, by reason of absence from his or her place of residence or
32 physical incapacity, to respond to a penalty notice within the prescribed time, any other person
33 who has a personal knowledge of the facts may respond to the notice within that time, and such
34 response is to be treated as compliance with the notice.

35 (6) For any registered voter who responds to a penalty notice in any manner permitted in
36 subparagraph (5)(c)(i), (ii) or (iii), the County Elections Officer shall take no further action.

37 (7) Within 180 days after each state-wide election, each County Elections Officer must
38 submit to the Secretary of State a list of the names and addresses of the voters registered in that
39 county who did not respond to a penalty notice in the manner indicated in subparagraph (5)(c)(i),
40 (ii) or (iii).

41 (8) Any person who did not respond to a penalty notice in the manner indicated in
42 subparagraph (5)(c)(i), (ii) or (iii) shall be required to pay a penalty of \$100.00. The court with
43 authority to hear and rule upon traffic violations in the county where the voter is registered shall
44 have discretion to waive the penalty upon a showing of good cause, which may include the
45 registered voter's financial circumstances.

46 (9) Nothing in this section is intended to require any person to complete the ballot being
47 submitted, nor is anything in this section intended to affect the secrecy of ballots.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Contra Costa County Bar Association

STATEMENT OF REASONS

The Problem: The California Secretary of State's most recent report of Voter Registration, dated February 10, 2017, reported that more than 20% of the persons eligible to vote in California were not registered. With the exception of the November 2016 elections, which included a presidential election, voter turnout has declined steadily, with primaries and general elections in years without a presidential election hitting record lows. In the June 2014 primary, turnout was only 25% and the November 2016 general election turnout of 42% was a record low for a general election. Between the 2008 presidential election and the 2014 elections, primary turnout declined 33 points and general election turnout declined 37 points. The 2018 elections did see higher turnout, but only 27.5% of eligible voters ages 18 to 24 cast ballots in the 2018 election.

The Solution: This resolution makes submitting ballots in state-wide elections mandatory. Voters who do not submit ballots are given notice and the opportunity to show good cause for any failure to vote or pay a modest fine, less than the cost of an expired parking meter ticket in Los Angeles. Voters who fail to respond to the notice will be required to pay a larger fine. Many countries, including Australia and Belgium, have compulsory voting and enjoy a substantially higher voter turnout, in excess of 90%.

IMPACT STATEMENT

The resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

AUTHOR AND/OR PERMANENT CONTACT: Margaret J. Grover, Wendel Rosen Black & Dean, LLP, 1111 Broadway, 24th Floor, Oakland, California 94607, (510) 834-6000, mgrover@wendel.com.

RESPONSIBLE FLOOR DELEGATE: Margaret J. Grover

COUNTERARGUMENTS BY BAR ASSOCIATIONS AND CLA SECTIONS

BANSDC

The proponent appears to equate turn out with full, meaningful participation in the voting process. Although the goal should be to have as many people vote as possible, only people who desire to sufficiently educate themselves to make knowing and intelligent choices should do so. Sanctioning people for failing to participate may enhance the numbers, but is no guarantee that the additional participation would do anything except enhance the statistics. At the same time, such a requirement would enhance the significance of political advertising, as persons required to vote but not invested in the process would likely use such advertising as a means of making their selections, or, as another possibility, vote entirely down party lines or based on the name or perceived ethnicity of the candidate.

SDCBA

The SDCBA Delegation recommends Disapproval of Resolution 15-02-2019. We share the author's intention for higher turnout and a better-informed electorate, but this is a cure worse than the disease. There is a saying that the best argument against democracy is a 5-minute conversation with the average person. When people are apathetic, they should not be voting. An abstained vote is better than a badly thought out vote. Likewise, refusing to vote in an election can be an equally powerful message of protest against the available choices in a given election. People should not be forced to vote, or go through the exercise of returning a ballot if they choose to not vote.

Second, although the author cites the fine of \$100 as less than a parking ticket in Los Angeles, all systems of enforcement can only function with an ultimate sanction. The only way that \$100 can be enforced is by threatening greater fines, jail time, or community service if one does not pay.

California law prohibits coercing people into voting (Pen. Code, § 18540, subd. (a).) It does not just prohibit coercing them into voting a certain way, but into voting. It is for good reason; people should vote because they want to, not because they are forced to. This proposal would do to everyone on a grand scale what is criminalized on an individual scale.

Finally, this resolution creates an enormous burden and unnecessary expense on county registrars. It means that registrars must process and account for ballots returned and uncompleted. They would then need to expend time figuring out who did not vote, incur the costs of generating and mailing out penalty notices, receive and process responses to the penalty notices. This creates a bunch of unnecessary paperwork for registrars and would deplete budgetary resources better spent on improved voting systems and voting system security.

RESOLUTION 15-03-2019

DIGEST

Elections: Publicized Notification of Assistance for Initiative Drafters

Amends Government Code sections 10243 and 12172 and Elections Code section 9018 to provide that available assistance for initiative drafters shall be publicized.

RESOLUTIONS COMMITTEE RECOMMENDATION DISAPPROVE

History:

No similar resolutions found.

Reasons:

This resolution amends Government Code sections 10243 and 12172 and Elections Code section 9018 to provide that available assistance for initiative drafters shall be publicized. This resolution should be disapproved because the Secretary of State already prominently features the services offered by the Legislative Counsel on its website and in its publication entitled “2020 California Secretary of State Statewide Initiative Guide.”

The proponent asserts that the Secretary of State does not adequately publicize the available of services available by the Legislative Counsel to drafters of California Initiatives, and seeks a change to the Government Code to require the availability services to be more prominently featured on the Secretary of State’s website and publications.

However, the resolution is unnecessary because the Secretary of State already prominently features on its website and publications. For example, page 1 of the *2020 Statewide Initiative Guide* published by the Secretary State states:

“The proposed initiative measure’s proponent(s) may also obtain assistance from the Office of Legislative Counsel in drafting the language of the proposed law. Proponents must submit a written request signed by 25 or more electors. If the Legislative Counsel determines that there is a reasonable probability the proposed initiative measure will eventually be submitted to the voters, the Legislative Counsel will draft the proposed law. (Government Code, § 10243.) Additionally, the proponent(s) can request the Secretary of State to review the provisions of the proposed initiative measure after it is prepared and prior to its circulation. Upon this request, the Secretary of State will review the measure with respect to form and language clarity and will request and obtain a statement of fiscal impact from the Legislative Analyst’s Office. (Government Code, § 12172.)”

Finally, on the Secretary of State’s website, under the tab “How to qualify an Initiative,” a reference to the Initiative Guide is prominently displayed along with a link to the documents. Accordingly, the Secretary of State already publicizes the availability of assistance of the Legislative Counsel as well as the Office of the Secretary of State to initiative drafters on its website and in its publications.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Association recommends that legislation be sponsored to amend Government Code sections 10243 and 12172 and Elections Code section 9018 to read as follows:

1 §10243

2 The Legislative Counsel shall cooperate with the proponents of an initiative measure in
3 its preparation when:

4 (a) Requested in writing so to do by 25 or more electors proposing the measure; and

5 (b) In the judgment of the Legislative Counsel there is reasonable probability that the
6 measure will be submitted to the voters of the State under the laws relating to the submission of
7 initiatives.

8 The Secretary of State shall prominently feature the services offered by the Legislative
9 Counsel on its website and in any handbook or publication describing the initiative process.

10

11 §12172

12 The Secretary of State shall, upon the request of the proponents of an initiative measure,
13 which is to be submitted to the voters of the state, review the provisions of the initiative measure
14 after it is prepared prior to its circulation. In conducting the review, the Secretary of State shall
15 do both of the following:

16 (a) Analyze and comment on the provisions of the measure with respect to form and
17 language clarity.

18 (b) Request and obtain a statement of fiscal impact from the Legislative Analyst.

19 The Legislative Analyst shall furnish the Secretary of State with a statement of fiscal
20 impact with respect to the initiative measure within 25 working days after being requested to do
21 so by the Secretary of State pursuant to subdivision (b).

22 In the preparation of the statement of fiscal impact, the Legislative Analyst may use the
23 fiscal estimate or the opinion prepared pursuant to Section 9005 of the Elections Code.

24 The review performed pursuant to this section shall be for the purpose of suggestion only
25 and shall not have any binding effect on the proponents of the initiative measure.

26 The Secretary of State shall prominently feature this service and the services offered by
27 the Legislative Counsel, under Section 10243 of the Government Code, on its website and in any
28 handbook or publication describing the initiative process.

29

30 §9018

31 The Secretary of State shall prepare and provide to any person, upon request, a pamphlet
32 describing the procedures and requirements for preparing and circulating a statewide initiative
33 measure and for filing sections of the petition, and describing the procedure used in determining
34 and verifying the number of qualified voters who have signed the petition. The pamphlet shall
35 prominently mention that the Secretary of State and the Legislative Counsel may provide advice
36 and counsel to those persons drafting state initiatives.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem: One of the most underused services available to initiative drafters is assistance by Legislative Counsel and the Secretary of State's office. Such a function can ensure better statutory and constitutional language put before voters and prevent unintended results. The problem is likely more that drafters are unaware of the service than their desire not to use it.

The Solution: This resolution ensures the assistance by Legislative Counsel and the Secretary of State's office is well publicized to initiative drafters.

IMPACT STATEMENT

The impact of this resolution is uncertain. It probably would not require any new statutory or regulatory changes but would require the Legislative Counsel and Secretary of State edit their public materials.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

AUTHOR AND/OR PERMANENT CONTACT:

Ben Rudin, 3830 Valley Centre Dr., Ste. 705 PMB 231, San Diego, CA 92130, (858) 256-4429, ben_rudin@hotmail.com.

RESPONSIBLE FLOOR DELEGATE: Ben Rudin

RESOLUTION 15-04-2019

DIGEST

Elections: Proponent-Controlled Option to Remove Initiative from Ballot

Amends California Constitution, article II, section 8 to provide that initiative proponents may remove the measure from the ballot under certain circumstances.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends California Constitution, article II, section 8 to provide that initiative proponents may remove the measure from the ballot under certain circumstances. This resolution should be approved in principle because it would benefit the proponent as well as the voters if a proponent had the ability to withdraw their initiative after it has been placed on the ballot.

In a special election held on October 10, 1911, California became the tenth state to adopt the initiative process. The initiative process allows California citizens a tool to adopt laws and Constitutional amendments without the support of the Governor or Legislature. The purpose of the initiative process is to place more control of California politics directly into the hands of the people by allowing them to recall elected officials, the right to repeal laws by referendum, and the ability to enact state laws by initiative. The initiative process is the power of the people of California to propose statutes and propose amendments to the California Constitution.

An initiative is placed on the ballot after its proponent(s) successfully satisfies the requirements set forth in Division 9 of the Elections Code. Some of these requirements are: (1) A proponent must first submit their proposed initiative to the Attorney General (AG) to prepare a circulating title and summary of the proposed initiative. (Elec. Code, § 9001.) (2) The AG must initiate a public review process for 30-day period for public comment. (Elec. Code, § 9002.) (3) After public comment period, the AG must prepare an official circulating title and summary of the initiative and submit it to the Senate and Assembly. (Elec. Code, §§ 9004, 9007.) (4) The proponent(s) has 180 days from official summary date to collect requisite signatures. (Elec. Code, § 9014.) (5) Upon collection of 25 percent of the required number of signatures, the proponent is required to notify the Secretary of State, who then submits the initiative to the Senate and Assembly who designate it to the appropriate committee of each house who shall hold public hearings no later than 131 days before the next general election. (Elec. Code, § 9034.) (6) After the collection of signatures, signatures are submitted by the proponent to elections officials who then determine if the requisite number of signatures have been collected by qualified voters and, if so, then a certificate is sent to the Secretary of State that the initiative qualified for the ballot. (Elec. Code, § 9030.) (7) On the 131st day prior to the date of the next general election, the Secretary of State shall issue a certificate the initiative qualified for the ballot and notify the proponent(s). (Elec. Code, § 9033.)

Under Elections Code section 9604, a proponent can engage in good faith bargaining between competing interests and the Legislature and, as a result of these negotiations, withdraw their initiative at any time before filing with the appropriate elections official or before the Secretary of State certifies that the initiative has qualified for the ballot. The withdrawal of the initiative is effective upon receipt by the Secretary of State of a written notice of withdrawal, which must be signed by all proponents. Once the initiative is certified for qualification for the ballot by the Secretary of State, which must be done 131 days prior to the next general election, the proponent is unable to withdraw their initiative. Based on the time from which an initiative must be certified by the Secretary of State to qualify for the ballot, if a proponent wishes to qualify an initiative for the 2020 election on November 3, 2020, the initiative must be certified by the Secretary of State no later than June 25, 2020, approximately four months prior to the election.

As we all know, negotiations on a proposed resolution can go on until the “11th hour” and a reasonable solution can be reached by the parties with opposing views. As it has been shown by the examples provided by the proponent of this resolution, being unable to withdraw an initiative after it has been certified by the Secretary of State can actually harm the proponent who has been able to work with special interest groups and/or the Legislature to come up with a reasonable solution to the issue addressed by the initiative. But, instead of being able to withdraw the initiative from the ballot, now a measure must be prepared and submitted by the Legislature so the initiative submitted by the proponent will not be voted into law. If the proponent were simply allowed to withdraw their initiative, this whole other process would not be necessary. It seems a reasonable solution would be to add additional guidelines that allow a proponent to withdraw an initiative once it has been certified by the Secretary of State. After all, if the California Supreme Court can order that an initiative be withdrawn from the ballot after it has been certified by the Secretary of State, over the objections of the proponent, it seems the proponent should be able to do the same thing, especially where the proponent would benefit from the withdrawal of the initiative.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Association recommends that legislation be sponsored to amend California Constitution article II, section 8 to read as follows:

- 1 Art. II, §8
- 2 (a) The initiative is the power of the electors to propose statutes and amendments to the
- 3 Constitution and to adopt or reject them.
- 4 (b) An initiative measure may be proposed by presenting to the Secretary of State a
- 5 petition that sets forth the text of the proposed statute or amendment to the Constitution and is
- 6 certified to have been signed by electors equal in number to 5 percent in the case of a statute, and
- 7 8 percent in the case of an amendment to the Constitution, of the votes for all candidates for
- 8 Governor at the last gubernatorial election.
- 9 (c) Following certification by the Secretary of State that an initiative has qualified for the
- 10 ballot, the proponent of the initiative may take one of the following actions: (1) By ten (10) days
- 11 before the deadline to provide a ballot pamphlet copy to the state printer, withdraw the initiative
- 12 from the ballot if the Legislature enacts and the Governor signs the measure as drafted. The

13 proponent may condition withdrawal on the signed measure including limitations on amending
14 the measure that are acceptable to the proponent; (2) By five (5) days before the deadline for
15 ballot arguments to be submitted, withdraw the initiative from the ballot if the legislature enacts
16 and the Governor signs an alternative measure acceptable to the proponent, or places the
17 alternative measure on the ballot. The proponent may condition withdrawal on the signed
18 measure, or new ballot measure, including limitations on amending the measure that are
19 acceptable to the proponent; or (3) Place the original version of the initiative on the ballot if the
20 Legislature fails to enact the initiative, enacts an alternative unacceptable to the proponent, or
21 places a version of the initiative on the ballot that is unacceptable to the proponent. In that case,
22 ~~t~~The Secretary of State shall then submit the measure at the next general election held at least
23 131 days after it qualifies or at any special statewide election held prior to that general election.
24 The Governor may call a special statewide election for the measure.

25 (d) An initiative measure embracing more than one subject may not be submitted to the
26 electors or have any effect.

27 (e) An initiative measure may not include or exclude any political subdivision of the State
28 from the application or effect of its provisions based upon approval or disapproval of the
29 initiative measure, or based upon the casting of a specified percentage of votes in favor of the
30 measure, by the electors of that political subdivision.

31 (f) An initiative measure may not contain alternative or cumulative provisions wherein
32 one or more of those provisions would become law depending upon the casting of a specified
33 percentage of votes for or against the measure.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem: Unlike legislation, initiatives are close to a one-and-done deal: once circulated, signed, and certified for the ballot, it has to be voted on as is; no changes are allowed. It avoids the deliberations, debate, and give-and-take necessary for a constitutional republic. Once approved, they can usually only be changed through another ballot measure. The incentive is to write to the extreme, pay the signature gatherers, appeal to emotions and win an election. Only if they have not submitted signatures can they negotiate (albeit informally) with the legislature and opponents on a compromise.

One example was in 2004, Proposition 65 (protect local government revenue from the state taking it) got the needed signatures. The legislature negotiated with the proponents an alternative, Proposition 1A, that incorporated much of 65 but not all. The proponents were ok with 1A, but not allowed to withdraw Proposition 65. 1A passed, and 65 failed, but only after those who previously supported Proposition 65 raised about \$9 million to campaign against 65 and for 1A. If the proponents could have withdrawn 65, that could have been avoided. A similar thing happened in 2005-2006 regarding protecting fuel tax revenues for transportation.

Another problem is that an initiative can include a fatal flaw but otherwise be a decent measure. An example is Proposition 5 in 2008, which would have done plenty to require treatment instead

of incarceration for drug use, but included a fatal flaw that supposedly would have let people escape punishment for crimes by claiming their drugs made them do it. Even if the legislature had negotiated a measure without that part, Proposition 5 still would have gone on the ballot if signatures had been submitted.

The Solution: Compromise between the proponents and the Legislature will further be enabled by allowing proponents to withdraw an initiative after it has been certified for the ballot if the Legislature enacts and the Governor signs the measure as drafted or an alternative acceptable to the proponents or place such alternative on the ballot. Examples of what that could do can be shown with the only way the initiatives can currently be used to negotiate with the legislature, which is before turning in signatures. In 2004, the California Chamber of Commerce (and Gov. Schwarzenegger) circulated a workers' compensation reform initiative. That initiative got the legislature to compromise by enacting a reform (SB 899) that did not give the proponents everything the initiative would, but was still acceptable to them. They never turned in the signatures. The same is true in 1998: an initiative that made initiating a charter school easier was circulated and ready to qualify. Rather than fight it out with the California Teachers Association, they agreed to support legislation that would enact it provided, among other things, it required charter school teachers to have a state credential. The bill passed (AB 544), and signatures were not submitted. This resolution would enable such compromises to occur more often by allowing them after the initiative has been certified for the ballot.

IMPACT STATEMENT

This resolution may require additional statutory changes.

CURRENT OR PRIOR RELATED LEGISLATION

SB 1253 (2014).

AUTHOR AND/OR PERMANENT CONTACT: Ben Rudin, 3830 Valley Centre Dr., Ste. 705 PMB 231, San Diego, CA 92130, (858) 256-4429, ben_rudin@hotmail.com.

RESPONSIBLE FLOOR DELEGATE: Ben Rudin

RESOLUTION 15-05-2019

DIGEST

Elections: Allowing Submission of Downloaded Petitions

Adds Elections Code section 9019 to allow initiative petitions to be available to download and sign.

**RESOLUTIONS COMMITTEE RECOMMENDATION
DISAPPROVE**

History:

No similar resolutions found.

Reasons:

This resolution adds Elections Code section 9019 to allow initiative petitions to be available to download and sign. This resolution should be disapproved because there is no evidence that the current system of collecting signature is flawed, or that the system should allow for easier methods of collecting signatures.

Under current law a person can only sign an initiative petition that is being circulated in his or her county of registration. (Elec. Code, § 9020.)

The resolution is premised on the idea that it would be advantageous to allow easier ways to collect sufficient signatures to qualify an initiative for the ballot. However, there is no evidence that the current system impedes proponents from collecting signatures. If the internet were used to promote initiatives and collect signatures, then arguably the signature requirement should be reviewed. It may be that a much larger number of signatures should be required, if collection of signatures by way of the internet is allowed. This also would increase the risk of fraud and unduly burden the verification process since downloads would be available world-wide. Physical signatures at least require the signing person to be physically present in California.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Association recommends that legislation be sponsored to add Election Code section 9019, to read as follows:

- 1 §9019
- 2 The Secretary of State shall implement procedures that permit initiative petitions to be
- 3 downloaded from its website so voters can sign such petitions and submit them by mail.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem: Signing an initiative petition is not as easy as one would think. Currently, it all goes through the proponents. The proponents need to find people to sign, or those who wish to sign need to find the proponents. No central database exists where anyone can download any initiative petition, sign it, and mail it in.

The Solution: This resolution requires the Secretary of State to make initiative petitions available online. This creates a central database for all initiative petitions where anyone can download any petition they like, sign it, and mail it in.

IMPACT STATEMENT

This resolution may require additional statutory changes. It might require changes to how local registrars of voters accept signed petitions.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

AUTHOR AND/OR PERMANENT CONTACT: Ben Rudin, 3830 Valley Centre Dr., Ste. 705 PMB 231, San Diego, CA 92130, (858) 256-4429, ben_rudin@hotmail.com.

RESPONSIBLE FLOOR DELEGATE: Ben Rudin

RESOLUTION 15-06-2019

DIGEST

Elections: Allow Ranked-Choice Voting in Local Elections

Adds Elections Code sections 10050-10054 to allow cities and counties to conduct elections with ranked-choice voting.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution adds Elections Code sections 10050-10054 to allow cities and counties to conduct elections with ranked-choice voting. This resolution should be approved in principle because it simply provides city and county election boards another way to determine the winner of an election.

As of January 4, 2019, four California counties use ranked-choice voting (RCV): Oakland, San Francisco, San Leandro, and Berkeley. (See [https://ballotpedia.org/Ranked-choice_voting_\(RCV\)](https://ballotpedia.org/Ranked-choice_voting_(RCV)) (as of January 4, 2019).) In 2019, the State of Maine adopted RCV for both state and federal elections. As the proponent notes, RCV ensures that candidates with the most votes and broadest support win. RCV empowers independent and third-party candidates by eliminating the “wasted vote” argument or the “Nader effect.”

Those opposed to RCV argue that the system is too complicated and that there is value in having a run-off election with the top two candidates to delineate opposing views. Whether RCV should be an option in California is matter for debate in the Legislature, and this resolution proposes that option in a clear and concise matter. Because it is optional and not mandatory, this resolution should be approved.

This resolution is substantially similar to Senate Bill No. 212 (2019-2020 Reg. Sess.), which has been introduced in the current legislative session and would permit ranked-choice voting in the nominating process for officers for general law cities and cities, counties, school districts, community college districts, and county boards of education.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Association recommends that legislation be sponsored to add Elections Code sections 10050-10054 to read as follows:

- 1 CHAPTER 3. RANKED-CHOICE VOTING
- 2 §10050

3 (a) Any city or county may conduct a local election using ranked-choice voting in
4 which voters rank the candidates for office in order of preference. Ranked-choice voting
5 elections may be used for single-winner elections, such as Mayor or City Attorney, or for
6 elections that elect multiple candidates to office, such as city council. Ranked-choice voting
7 elections are tabulated in rounds as specified in Section 10051 for single-winner elections and
8 Section 10052 for multiple-winner elections. General provisions for both single-winner elections
9 and multiple-winner elections are specified in this section.

10 (b) As used in this chapter, the following definitions shall apply:

11 (1) "Ranked-choice voting" means an election method in which voters rank the
12 candidates for office in order of preference, and the ballots are counted in rounds that, in the case
13 of a single-winner election, simulate a series of runoffs until only two candidates remain, with
14 the one having the greater number of votes being declared the winner, or in the case of multiple-
15 winner elections, until all seats to be elected have been filled.

16 (2) "Qualified candidate" means any candidate listed on the ballot for this election or
17 any write-in candidate qualified for participation in this election.

18 (3) "Ranking" for a candidate on a voter's ballot is the number assigned to that
19 candidate by the voter to express their preference for that candidate, with the "highest ranking"
20 being the one with the lowest numerical value for a qualified candidate, in which a first choice
21 ranking indicates a greater preference for a candidate than a second choice ranking, and "highest
22 continuing ranking" for a candidate on a voter's ballot is the ranking with the lowest numerical
23 value for a continuing candidate. The "highest ranking" and "highest continuing ranking" are
24 those rankings already advanced past blank choices or marks for unqualified write-in candidates
25 as specified in (f) and (g) below.

26 (4) (A) "Continuing ballot" means a ballot that counts towards some candidate.

27 (B) "Continuing candidate" means a qualified candidate that has not been elected or
28 eliminated.

29 (C) "Majority of votes" means more than 50 percent of the votes coming from
30 continuing ballots.

31 (c) A voting method authorized by this section may be adopted by any of the following:

32 (1) By approval of a ballot measure submitted to the voters by the governing body of
33 the city or county at an election under Division 9 (commencing with Section 9000).

34 (2) By initiative ordinance or charter amendment adopted under Division 9
35 (commencing with Section 9000).

36 (d) Any city or county using a Ranked-choice voting method shall conduct a voter-
37 education and outreach campaign to familiarize voters with Ranked-choice voting in English and
38 in every language that a ballot is required to be made available under this code and the federal
39 Voting Rights Act of 1965 (42 U.S.C. Sec. 1973aa-1).

40 (e) The Ranked-choice voting ballot shall allow voters to rank as many choices as there
41 are candidates. If the voting equipment cannot feasibly accommodate the number of rankings on
42 the ballot equal to the number of candidates, the elections official may limit the number of
43 choices a voter may rank to the maximum number allowed by the equipment. This limit shall
44 never be less than three.

45 (f) The ballot shall not interfere with a voter's ability to rank at least two write-in
46 candidates. For this section, a mark for an unqualified write-in candidate shall not be considered
47 a mark for a candidate.

48 (g) In the first or any round, in the event that any ballot reaches a ranking with no
49 candidate indicated, that ballot shall immediately be advanced to the next ranking. In the event of
50 a mark for an unqualified write-in candidate as covered in subdivision (f) of Section 10050, that
51 ballot shall be advanced to the next ranking.

52 (h) In the event that two or more candidates tie for the smallest number of votes, the
53 candidate to eliminate shall be chosen by lot in a manner similar to that described by subdivision
54 (a) of Section 15651, except that subdivision (b) of Section 15651 shall not apply and the
55 candidate chosen by lot shall be eliminated.

56 (i) After each round, any ballot that is not continuing is an undervote, overvote, or
57 exhausted ballot, under this subdivision. Any ballot that has no candidates indicated at any
58 ranking shall be declared an "undervote." If any ballot reaches a ranking with more than one
59 candidate indicated, that ballot shall immediately be declared an "overvote." If any ballot cannot
60 be advanced because no further candidates are ranked on that ballot, that ballot shall immediately
61 be declared "exhausted." Any ballot that has been declared an undervote, overvote, or exhausted
62 shall remain so and shall not count towards any candidate in that round or subsequent rounds.

63 (j) A city or county may not conduct a local election using Ranked-choice voting unless
64 that election is conducted on a voting system that is capable of conducting the election using
65 Ranked-choice voting and that has been approved by the Secretary of State under Division 19
66 (commencing with Section 19001), or by another procedure that has been approved by the
67 Secretary of State, which, at least includes detailed specifications for counting, auditing, and
68 reporting of results.

69
70 §10051

71 A voting method enacted under Section 10050 for an election to elect a single
72 candidate to office shall be known as "ranked-choice voting" and shall be conducted in the
73 following manner:

74 (a) The ballots shall be counted in rounds under all of the following order:

75 (1) In the first round, every ballot shall count as a vote towards the candidate indicated
76 by the highest continuing ranking on that ballot.

77 (2) After every round, if a candidate receives a majority of votes from the continuing
78 ballots, that candidate shall be declared elected.

79 (3) If no candidate receives a majority, the candidate receiving the smallest number of
80 votes shall be eliminated, and every ballot counting towards that candidate shall be advanced to
81 the next-ranked continuing candidate on the ballot. If there is a tie between two or more
82 candidates for the smallest number of votes, the tie shall be resolved by lot. All the ballots shall
83 be counted again in a new round.

84 (4) If only two candidates are remaining, and those two candidates have the same
85 number of votes from the continuing ballots, the tie shall be resolved by lot.

86 (b) During the elimination stage of any round, in the event that any candidate has more
87 votes than the combined vote total of all candidates with fewer votes, but less than a majority of
88 votes, all the candidates with fewer votes than this candidate shall be eliminated simultaneously,
89 and those ballots advanced to the next-ranked continuing candidate.

90
91 §10052

92 A voting method enacted under Section 10050 for an election to elect two or more
93 candidates to office shall be known as "ranked-choice voting" and shall be conducted in the same
94 manner as Section 10051 with the following exceptions:

95 (a) A voter may give as many candidates a highest ranking as there are seats available.
96 For example, if the election is for two seats, a voter may give two candidates the highest ranking,
97 one candidate the second-highest ranking, one candidate the third-highest ranking, and so forth.

98 (b) The elimination process, as described in Section 10051(a)(3), shall end when twice
99 as many candidates remain as there are seats available, with the candidates who have received
100 the greatest number of votes elected. For example, if the election is for two seats, the elimination
101 process shall end when four candidates remain and the top two vote-getters shall be elected. This
102 is notwithstanding Section 10051(b).

103 104 §10053

105 The instructions to the voters for an election that uses ranked-choice voting shall read
106 substantially as follows: "To vote in this election, indicate by selecting or marking a '1' in the
107 voting square to the right of your first choice, a '2' in the voting square to the right of your second
108 choice, a '3' in the voting square to the right of your third choice, and so on. Do not give the same
109 number to more than one candidate, unless it is a multi-seat race (as specified), in which case
110 you may mark as many candidates with a '1' as there are seats available but still only one '2',
111 '3', and so forth. You may rank as many or as few of the candidates as you choose, up to the
112 limit specified, if any. Your second choice will not hurt your first choice; your third choice will
113 not hurt your first two choices, and so on. You may include one or more qualified write-in
114 candidates in your rankings by writing each person's name in one of the blank spaces provided
115 for that purpose after the names of the other candidates for the same office, and then writing the
116 desired ranking in the voting square to the right of that name." The instructions may be modified
117 as appropriate for the specific voting equipment used, as long as the intent is preserved.

118 119 §10054

120 Summary, ballot image, and comprehensive reports shall be made available after each
121 ranked-choice voting election, as follows:

122 (a) The "summary report" for a race means a report that lists the candidate vote totals in
123 each round, along with the cumulative numbers of undervotes, overvotes, and exhausted ballots
124 in each round.

125 (b) The "ballot image report" for a race means a report that lists, for each ballot, the
126 candidate or candidates indicated at each ranking, the precinct of the ballot, and whether the
127 ballot was cast absentee. In the report, the ballots shall be listed in an order that does not permit
128 the order in which they were cast in each precinct to be reconstructed.

129 (c) The "comprehensive report" on a race means a report that breaks the numbers in the
130 summary report down by precinct. The report shall list, for each round, the number of ballots
131 cast in each precinct that count as votes for each candidate in that round, that have been declared
132 undervotes, that have been declared overvotes up to that point, and that have been declared
133 exhausted up to that point.

134 (d) Mode and manner of release. Preliminary versions of the summary report and ballot
135 image report shall be made available as soon as possible after the commencement of the official
136 canvass of the vote under Section 15301 and prior to the 1 percent manual tally under Section
137 15360. The summary report, ballot image report, comprehensive report, and preliminary versions

138 of the summary report and ballot image report shall be made available to the public during the
 139 canvass via the Internet and by other means. The ballot image report and preliminary versions of
 140 the ballot image report shall be made available in a plain text electronic format.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem (including Existing Law): Under existing law, cities and counties (except charter) are prevented from using ranked-choice voting. They are then stuck in a difficult situation. They can either adopt a plurality system, which enables spoilers to frustrate the will of the people (aka the spoiler or “Nader” effect). Alternatively, they can adopt a runoff system, where people vote to nominate candidates, then the top vote-getters face off in another election. Although that better reflects the will of the people in regular elections, it requires an additional election with additional time, money, and energy that could be better spent. With special elections, the problem is even worse. Elections should be decided when the most turnout occurs; for regular elections, that’s November, for special elections, it’s the first election. A special runoff election usually has lower turnout than the special regular election.

The Solution: This resolution allows all cities and counties to implement ranked choice voting for their elections. Ranked choice voting can be implemented in a one- or two-round system; for special elections, it might make sense to do one round because turnout is higher. For regular elections, it might make sense to do a primary then a regular election; either or both could be done with ranked-choice voting. An illustration of ranked-choice voting preventing the Nader effect is as follows:

First, voters select their first choice, and if so desired, their second choice and more:

RANK CANDIDATES IN ORDER OF PREFERENCE.
 FILL IN ONE CIRCLE PER CANDIDATE AND ONE
 CIRCLE PER CHOICE.

	1 ST CHOICE	2 ND CHOICE	3 RD CHOICE
CANDIDATE A	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
CANDIDATE B	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
CANDIDATE C	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

1

¹ <http://www.rcvmaine.com/faq>

Next, all the first-choice votes are counted, and if someone gets a majority of votes (over 50%), that person wins, and it is just like a regular plurality election. The difference occurs when nobody gets over 50%, such as the following:

A: 48.73%
B: 2.63%
C: 48.64%

In that situation, the last-placed candidate, B, is eliminated, and the votes for B are distributed to those voters' second choices. Of B's 2.63%, let's assume that 2% went to C and 0.63% went to A:

A: 48.73% + 0.63% = 49.36%
C: 48.64% + 2% = 50.64%

C is the winner. What occurred is akin to having one election after another until someone gets over 50%, minus the hassle of having to vote again; the information needed for the subsequent elections was already inputted at the first. Everyone got one vote per round. This system prevents the Nader effect, and unlike other ranked voting systems, no harm is done to one's first choice by ranking other choices.

IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule. It allows, but does not require, non-charter cities to adopt Ranked-Choice Voting, which would change their statutes if adopted.

CURRENT OR PRIOR RELATED LEGISLATION

SB 1288 (2016), AB 1121 (2009), AB 2732 (2009), SB 1346 (2009), AB 1294 (2007), SB 596 (2005).

AUTHOR AND/OR PERMANENT CONTACT: Ben Rudin, 3830 Valley Centre Dr., Ste. 705 PMB 231, San Diego, CA 92130, (858) 256-4429, ben_rudin@hotmail.com.

RESPONSIBLE FLOOR DELEGATE: Ben Rudin