

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 2841 (Low)
Version: May 19, 2022
Hearing Date: June 28, 2022
Fiscal: Yes
Urgency: No
TSG

SUBJECT

Disqualification from voting

DIGEST

This bill seeks to protect voting rights through two components: (1) expanding procedural protections against erroneous cancellation of voter registration; and (2) a procedural mechanism for properly handling the voter registration status of people entering or emerging from court-ordered conservatorships.

EXECUTIVE SUMMARY

The right to vote is foundational to a functional democracy. However, even having the legal right to votes means little if the necessary administrative mechanisms are not in place to ensure that the legal right can be exercised in practice. This bill proposes two overarching changes to how voter registration is handled in California, both designed to help ensure that those who are eligible to vote remain registered to do so even as those who are no longer eligible are removed from the rolls. First, the bill requires county elections officials to notify voters before cancelling their registration and provide those voters with a simple mechanism for correcting an erroneous cancellation. Second, the bill establishes a system of communication between the courts and elections officials so that people entering or emerging from court-ordered conservatorships remain registered to vote except during times that the courts have ruled them ineligible.

The bill is sponsored by the American Civil Liberties Union of California and the League of Women Voters. Support comes from civil and disability rights advocates who assert that the bill will help preserve voting rights, particularly for individuals at a high risk of lapsed registration. There is no known opposition. The bill passed out of the Senate Elections and Constitutional Amendments Committee by a vote of 4-1. If the bill passes out of this Committee, it will next be heard in the Senate Appropriations Committee.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Requires each state, pursuant to the National Voter Registration Act (NVRA), to make a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of death of the registrant, or a change in the residence of the registrant, as specified. (52 U.S.C. § 20507(a)(4).)
- 2) Prohibits, pursuant to NVRA and the Help America Vote Act (HAVA), the removal of a voter from the list of eligible voters in elections for federal office on the grounds that the registrant has changed residence unless either of the following is true:
 - a) the registrant confirms their change in residence in writing, as specified; or
 - b) the registrant has failed to respond to a specified notice and has not voted or appeared to vote in an election between the time that the notice is sent and the date of the second federal general election after the notice is sent. (42 U.S.C. §§ 1973gg-1 *et seq.*, 15532; 52 U.S.C. § 20901 *et seq.*)
- 3) Permits a person who is a United States citizen, a resident of California, not imprisoned for the conviction of a felony, not found mentally incompetent to vote by a court, and at least 18 years of age at the time of the next election, to register to vote and to vote. (Elec. Code § 2000.)
- 4) Provides that the Legislature shall prohibit improper practices that affect elections and shall provide for the disqualification of electors while mentally incompetent or imprisoned for the conviction of a felony.
- 5) Requires each county elections official to conduct a pre-election residency confirmation of each registered voter pursuant to one of the following procedures prior to each primary election:
 - a) by mailing a non-forwardable postcard to each voter in the county who has not voted at an election in the six months preceding the start of the confirmation procedure;
 - b) by contracting with the United States Postal Service (USPS) or its licensees to obtain use of the postal service change-of-address data such as National Change of Address (NCOA);
 - c) by contracting with a consumer credit reporting agency or its licensees to obtain use of change-of-address data, as specified; or
 - d) by including the return address of the elections official's office along with specified language on the outside of the county voter information guide mailed to the voter for an election conducted within the six months prior to the start of the confirmation process. If an elections official uses this procedure, the official must confirm the addresses of voters who were not eligible to vote at an

election during that six month period using one of the other permitted procedures. (Elec. Code §§ 2220 *et seq.*)

- 6) Provides that the following actions shall be taken with respect to information that the county elections official receives from the USPS or its licensees as a result of the pre-election residency confirmation process:
 - a) if NCOA data indicates that the voter has moved and left no forwarding address, the voter's registration may be made inactive;
 - b) if a postcard or sample ballot is returned as undeliverable and without a forwarding address, the registration of that person may be made inactive, and the elections official must send the voter a forwardable postcard asking the voter to confirm the voter's residence address. If the voter's registration is made inactive, the voter does not reply to the forwardable postcard, and the voter does not vote between the time of that mailing and the second federal general election conducted after that mailing, the voter's registration is canceled; and
 - c) if postal service change-of-address data indicates that the voter has moved to a new address in California, the voter's registration is updated to reflect the new address and the voter is mailed a postcard indicating that the voter's registration will be changed unless the voter notifies the elections official within 15 days that the change-of-address was not a change of the voter's permanent residence. (Elec. Code §§ 2220 *et seq.*)

- 7) Provides that any voter whose registration is inactive and who offers to vote or who notifies the elections official of a continued residency shall be removed from the inactive list and placed on the active voter list. (Elec. Code § 2226(c).)

- 8) Requires the county elections official to cancel a voter's registration in the following cases:
 - a) at the signed, written request of the person registered;
 - b) when the mental incompetency of the person registered is legally established pursuant to existing law;
 - c) upon proof that the person is presently imprisoned for conviction of a felony;
 - d) upon the production of a certified copy of a judgment directing the cancellation to be made;
 - e) upon the death of the person registered;
 - f) upon notification as part of a pre-election residency confirmation procedure that the person has moved, but only after a specified notification is sent to the voter and only if the voter subsequently fails to vote or update their voter registration during the period between the time that notification is mailed and two federal general elections after the date of that mailing, as specified;
 - g) upon official notification that the voter is registered to vote in another state; or
 - h) upon proof that the person is otherwise ineligible to vote. (Elec. Code § 2201(a).)

- 9) Permits the SOS to cancel a voter's registration in the following cases:
 - a) when the mental incompetency of the person registered is legally established pursuant to existing law;
 - b) upon proof that the person is presently imprisoned for the conviction of a felony; or
 - c) upon the death of the person registered. (Elec. Code § 2201(b).)
- 10) Provides that a person is presumed competent to vote regardless of their conservatorship status. (Elec. Code § 2208(a).)
- 11) Requires a person to be deemed mentally incompetent, and therefore disqualified from voting, if a court or jury, as specified, finds by clear and convincing evidence that the person cannot communicate, with or without reasonable accommodations, a desire to participate in the voting process. (Elec. Code § 2208(a).)
- 12) Prohibits a person from being disqualified from voting on the basis that the person did any of the following:
 - a) signed the affidavit of voter registration with a mark or cross pursuant to existing law;
 - b) signed the affidavit of voter registration by means of a signature stamp;
 - c) completed the affidavit of voter registration with the assistance of another person; or
 - d) completed the affidavit of voter registration with reasonable accommodations. (Elec. Code § 2208(d).)
- 13) Requires a court investigator, as part of the process for establishing or reviewing a conservatorship of a person, to review the person's capability of communicating, with or without reasonable accommodations, a desire to participate in the voting process, as specified. Requires a court investigator, if the conservatee's capability of communicating a desire to participate in the voting process has changed, to inform the court and requires the court to hold a hearing regarding the capability, as specified. (Elec. Code § 2209.)
- 14) Requires a court to forward the order to the county elections official and the SOS if it is found by clear and convincing evidence that the person cannot communicate, with or without reasonable accommodations, a desire to participate in the voting process, or that the person can communicate, with or without reasonable accommodations, a desire to participate in the voting process. (Elec. Code § 2209.)

This bill:

- 1) Requires a county elections official, between 15 and 30 days before canceling a person's registration on the grounds that the person is mentally incompetent, imprisoned for a conviction for a felony, or has changed residence, to send a

forwardable notice by first class mail, including a postage-paid and preaddressed return form, to the person.

- 2) Requires the notice to be provided in the person's preferred language if the county is required to provide translated ballots in that language pursuant to the federal Voting Rights Act of 1965 (VRA). Requires the notice to include a statement substantially similar to the following:

"IMPORTANT NOTICE. Your voter registration record is scheduled to be canceled on [date]. This cancellation is due to information the [county name] County elections office has received indicating your ineligibility to vote in that county due to a change of residence, death, mental incapacity to vote, or a prison commitment pursuant to Sections 2208, 2209, 2210, or 2211 of the California Elections Code, as applicable.

If you believe this cancellation is an error, please notify our office within 15 days from the date of this notice either by returning the attached postage-paid postcard or by calling [county elections office phone number] toll free.

If we do not receive your response to this notice, you may be required to reregister to vote in the next election or to vote using a provisional ballot. You can find more information about voter eligibility rules on the Secretary of State's internet website at [URL] or voter hotline at [phone numbers]. You can also check your current registration status at [URL]."

- 3) Requires the return form described above to include all of the following:
 - a) space for the voter to provide their current place of residence;
 - b) space for the voter to provide their current mailing address, if different from the place of residence;
 - c) a box next to a statement substantially similar to the following: "I am not currently serving a state or federal prison term."; and
 - d) space for the voter to provide their signature and the date.
- 4) Permits the elections official to send additional written notices to a voter, and to notify the voter in person, by telephone or email, or by other means of the planned registration cancellation.
- 5) Requires the clerk of the superior court of each county, by the first day of each month, and more frequently if the clerk so chooses, to notify the SOS pursuant to the provisions of this bill of both of the following:

- a) all findings made by the court regarding any person's competency to vote, in accordance with existing law, since the clerk's last report; and
 - b) the total number of proceedings in which an individual was deemed disqualified from voting by the court pursuant to existing law, that occurred in that court since the clerk's last report.
- 6) Requires the Judicial Council, in consultation with the SOS, to adopt rules of court to implement the provisions of this bill, and the Judicial Council forms that are used by courts to provide the notices to the SOS described in (5), above. Requires the forms to contain clearly identified spaces for all of the following:
- a) all known first names;
 - b) all known last names;
 - c) all known middle names;
 - d) all known name suffixes;
 - e) last known address;
 - f) date of birth;
 - g) last four digits of the person's social security number, if available;
 - h) driver's license or state-issued identification number, if available;
 - i) the court case number;
 - j) the date of the order affecting the individual's voting rights;
 - k) the specific provision of state law pursuant to which the court's order was made;
 - l) whether the legal effect of the court's order is a disqualification or a restoration of the right to vote; and
 - m) a certification, if applicable, that the individual has been disqualified from voting due to the court's finding by clear and convincing evidence that the individual is incapable, with or without reasonable accommodations, to communicate a desire to participate in the voting process.
- 7) Requires the SOS to inform the clerk of the court when it receives a notice from the court that is missing any personal identifying information as required in (6), above.
- 8) Requires the SOS, upon receipt of all of the required personal identifying information described in (6), above, to do both of the following:
- a) identify any registration record in the statewide voter database that contains personal identifying information that matches each of the unique identifiers in (6), above; and
 - b) within three days of receiving the information from the court, for any matched records, to provide the personal identifiable information, the corresponding unique identifier or identifiers contained in the statewide voter database, and a statement regarding whether the legal effect of the court's order is to disqualify or restore the right to vote, to the appropriate county elections official.

- 9) Requires the county elections official, upon receiving information from the SOS, to do either of the following, as applicable:
 - a) begin the cancellation notification procedures for any person whose registration information matches the unique identifier or identifiers provided by the SOS and who, according to the information provided by the SOS, has been disqualified to vote by a court; and
 - b) if a person's right to vote has been restored and the person's address is within the county according to the information provided by the SOS, notify the person that their voting rights are restored and that they may register to vote if they are otherwise eligible, along with information regarding the procedures for registering to vote. Requires the elections official, if the address provided by the SOS is different from the address contained in the county's voter registration file, to provide the notice and information to the person at both addresses. Requires the SOS to prepare a form that the county elections officials use to provide the notice.
- 10) Provides that a county or county elections official is not liable for taking or failing to take action when the county or county elections official has received erroneous information from the SOS.
- 11) Provides if a person who is ineligible to vote receives a notice pursuant to this bill that the person's right to vote has been restored, and subsequently becomes registered or preregistered to vote, and votes or attempts to vote in an election held after the effective date of the person's registration or preregistration, that person shall be presumed to have acted with official authorization and shall not be guilty of fraudulently voting or attempting to vote pursuant to existing law, unless that person willfully votes or attempts to vote knowing that the person is not eligible to vote.
- 12) Requires the SOS, each month, to post on its website a report showing, for the preceding period, the number of voting rights disqualifications and the number of voting rights restorations pursuant to existing law, as applicable, that were ordered within each county and the number of court proceedings in each county in which a person was deemed mentally incompetent, and therefore disqualified from voting, pursuant to specified provisions of existing law.
- 13) Requires the SOS, in consultation with the Judicial Council, to prepare and deliver a training via a remote web-based learning platform that is accessible through the SOS's website that contains information about the responsibilities of superior courts and county elections officials, as specified in this bill, and information about the legal standards for voting rights disqualification, the duties of court investigators, and the reporting requirements for courts related to voting rights disqualification and restoration. Requires each court executive officer and each county elections official, at least annually, to complete this training. Requires the SOS to track the

court executive officers and county elections officials who have completed the training, as specified.

14) Makes conforming changes.

COMMENTS

1. Protecting voters from faulty purges

Federal law requires each state to make a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of death of the registrant, or a change in the residence of the registrant, as specified. (52 U.S.C. § 20507(a)(4).) California complies with this mandate by requiring the removal of anyone who appears on the voter registration rolls if county elections officials have reason to believe that the individual was sentenced to state or federal prison for the conviction of a felony, was found “mentally incompetent” to vote by a court, or is ineligible due to death or change of residence. (Elec. Code §§ 2201-2012.)

Existing law provides county elections officials with a number of different options for trying to ascertain which of the names on their registered voter list may fit the grounds for removal set forth above. They can try sending address confirmation postcards to voters and following up on cases where the postcards get returned to them. (Elec. Code § 2221.) They can use change of address information from the U.S. Postal Service. (Elec. Code § 2222.) They can contract with a consumer credit reporting agency to obtain change of address information. (Elec. Code § 2227.) Or they can try to confirm whether voters are still living at the same address by including information together with the voter information (Elec. Code § 2226.)

None of these methods are foolproof. As the sponsors of this bill put it:

“[u]nfortunately, errors in the existing reporting systems that inform these voter registration cancellations can result in false matches between different agencies’ records or cause elections officials to rely on over-inclusive lists which include the names of individuals who are eligible to vote.” The sponsors highlight media reports about a 2018 incident in which some 3,000 eligible voters in Los Angeles County were improperly dropped from the registration rolls.¹ Moreover, the proponents point to studies indicating that these erroneous registration cancellations have a disparate impact on voters of color, low-income voters, and younger voters.²

¹ Potter, *Groups Claim Thousands Improperly Removed from CA Voting Rolls* (Apr. 26, 2018) Public News Service <https://www.publicnewsservice.org/index.php?/content/article/62096-1> (as of Jun. 18, 2022).

² Morris, *Voter Purge Rates Remain High, Analysis Finds* (Aug. 21, 2019) Brennan Center for Justice <https://www.brennancenter.org/our-work/analysis-opinion/voter-purge-rates-remain-high-analysis-finds> (as of Jun. 18, 2022).

In an attempt to prevent this sort of inadvertent disenfranchisement from taking place, this bill builds in a backstop mechanism. Under the bill, county elections officials would have to send out a postcard to anyone whose voter registration they are proposing to cancel 15-30 days before doing so. The postcard would not only provide the voter with notice of the proposed registration cancellation, but also provide a simple checkbox mechanism through which the voter could respond, indicating why the voter in fact remains eligible to vote.

The proponents assert that this backstop mechanism aligns with best practices for ensuring that voter registration purges do not erroneously disenfranchise eligible voters:

Experts have long recommended notifying voters of an intended registration cancellation as a best practice for preventing disenfranchisement caused by inaccurate data or procedural errors, and several states already provide similar notice to their voters prior to removing them from registration rolls. AB 2841's notice and cure procedures for voter registration cancellations also mirror those already in place under existing California law to ensure that voters have an opportunity to fix any signature issues on their vote-by-mail ballot envelope before their ballot is rejected. [Footnotes omitted.]

2. Improving communication and collaboration between the courts and elections officials to ensure protection of conservatee's voting rights

The second major component of the bill is intended to fortify existing mechanisms for appropriately preserving the voting rights of people who are subject to a court-ordered conservatorship.

Seven years ago, California enacted laws intended to address reports that Californians under court conservator orders were being systematically deprived of the chance to vote. (SB 589, Block, Ch. 736, Stats. 2015.) SB 589 set a presumption that voters under conservatorship are competent to vote until a court determines otherwise. Furthermore, SB 589 clarified that people subject to a conservatorship could not be denied the opportunity to vote so long as they are able to express a desire to participate in the process. Previously, some individuals with disabilities who wanted to vote but were unable to fill out the voter registration form on their own were denied an opportunity to vote on that basis.

According to an evaluation by the American Civil Liberties Union (ACLU) however, implementation of AB 589 has fallen well short of the legislation's aims.

This research indicates that counties track and report conservatorship voting rights changes in an inconsistent and unclear manner, and the findings suggest that some counties may not be fully complying with the requirements of SB 589. The dramatic variations in county practice, along with a widespread lack of transparency, point to an urgent need for improved state-level support in implementing SB 589. [Footnotes omitted.]

Among other things, the ACLU's study found that many courts were not using standardized forms that the Secretary of State and the Judicial Council of California developed for the purpose of tracking and communicating the voting status of people subject to a court-ordered conservatorship. Thousands of notices regarding modifications to conservatees' voting rights were also missing altogether or lacked key information such as the case number or even whether the noticed modification was intended to disqualify the conservatee from voting or restore the conservatee's voting rights. In general, the ACLU states: "Problematic data management was a consistent observation across counties."

In an attempt to address many of these issues and to more fully realize the intent behind SB 589, this bill proposes a series of reforms and improvements to the procedures behind SB 589. In particular, the bill proposes to standardize and modernize communications between the courts and the Secretary of State's office regarding the status of conservatees' voting rights. For example, the bill requires courts to provide significantly more detailed information about the conservatee during communications, helping to ensure that the information gets applied to the right voter file. The bill further mandates training for court staff regarding their responsibilities under SB 589 and as well as regular, public reporting on the number of voting rights modifications that the courts have ordered, thus creating greater transparency and enabling watchdog groups such as the ACLU to continue to monitor progress and flag problems.

3. Arguments in support of the bill

According to the author:

Although California has made some improvements to protections for the rights of people with disabilities in recent years, voters with disabilities are still underrepresented in our democracy. And while there has recently been an increase in public awareness about the urgency of protecting the rights of people with disabilities who are placed under conservatorship, more must be done to ensure that eligible voters under conservatorship are not wrongly excluded from the ballot box. Errors in existing reporting systems and overly aggressive voter purges lead to the disenfranchisement of eligible voters. Studies show that these erroneous cancellations

disproportionately impact voters who are Black, Brown, Indigenous, or other people of color, low-income, and young people. AB 2841 would implement best practices for preventing the disenfranchisement of eligible voters by requiring county elections officials to notify affected voters before cancelling their registration and to give those voters an opportunity to stop erroneous cancellations before they happen.

As sponsors of the bill, the American Civil Liberties Union of California and the League of Women Voters jointly write:

Although progress has been made in recent years toward this goal, more must be done to remove unnecessary barriers to electoral participation caused by errors in the voter registration cancellation process and by misinformation about who has the right to vote in California elections. This bill is an important step to protect eligible voters – those Californians who are more likely to be people with disabilities, people of color, or low-income – from inaccurate registration purges and to empower more of these underrepresented voters to exercise their rights.

In support, Disability Rights California writes:

Voters with disabilities are also underrepresented in our democracy. California sought to protect the rights of voters with disabilities under conservatorship by enacting SB 589 (Block, 2015), which no longer based the revocation of the right to vote on whether a person can fill out a voter registration form but instead on whether a person can express a desire to participate in the voting process. However, research by the ACLU indicates that counties continue to track and report conservatorship voting rights disqualifications and restorations in an inconsistent and unclear manner. This research also reveals that SB 589 compliance appears to be lacking in many counties, indicating an urgent need for improved oversight. There has recently been an increase in national public awareness about the importance of protecting the rights of people with disabilities who are placed under conservatorship, and more must be done to ensure that eligible California voters under conservatorship are not wrongly excluded from the ballot box.

SUPPORT

American Civil Liberties Union of California (sponsor)

League of Women Voters (sponsor)
A New Way of Life Re-entry Project
Asian Americans Advancing Justice – California
California Association of Nonprofits
California School Employees Association
California Environmental Voters
Common Cause
Courage California
Disability Rights California
Dolores Huerta Foundation
Ella Baker Center for Human Rights
Inland Empire United
National Council of Jewish Women-California
Santa Clara County Democratic Party
Services, Immigrant Rights and Education Network
Voices for Progress
The W. Haywood Burns Institute

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

SB 589 (Block, Ch. 736, Stats. 2015) authorized an individual with a disability who is otherwise qualified to vote to complete an affidavit of registration with reasonable accommodations as needed and presumes that a person is mentally competent to vote, regardless of conservatorship status, if the court finds that the person can communicate a desire to participate in the voting process.

AB 1311 (Bradford, Ch. 591, Stats. 2014) prohibited a person, including a conservatee, from being disqualified from voting on the basis that the person signs the affidavit of voter registration with a mark or a cross, signs the affidavit of voter registration with a signature stamp, or completes the affidavit of voter registration with the assistance of another person.

PRIOR VOTES:

Senate Elections and Constitutional Amendments (Ayes 4, Noes 1)
Assembly Floor (Ayes 56, Noes 17)
Assembly Appropriations Committee (Ayes 12, Noes 4)
Assembly Elections Committee (Ayes 6, Noes 1)
