

Date of Hearing: May 6, 2014

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Paul Fong, Chair

AB 2766 (Elections & Redistricting Committee) – As Introduced: April 2, 2014

SUBJECT: Elections: central committees: oaths.

SUMMARY: Repeals provisions of law that require county central committee members of Democratic, Republican, and American Independent parties, whether elected to the committee or appointed to fill a vacancy, before he or she enters upon the duties of his office, to take and subscribe the oath or affirmation to uphold the California and United States Constitutions.

EXISTING LAW:

- 1) Requires public officials to take an oath or affirmation of office to support and defend the California and United States Constitutions.
- 2) Requires and defines a public officer and employee to include "every officer and employee of the State, including the University of California, every county, city, city and county, district, and authority, including any department, division, bureau, board, commission, agency, or instrumentality of any of the foregoing."
- 3) Requires county central committee members of the Democratic, Republican, and American Independent Parties, whether elected to the committee or appointed to fill a vacancy, before he or she enters upon the duties of his office, to take and subscribe the oath or affirmation to uphold the California and United States Constitutions.
- 4) Provides that it is the right of the people to freely exercise religion, freedom of speech and press, and to peaceably assemble and to petition the government for redress of grievances.

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

COMMENTS:

- 1) Purpose of the Bill: This is one of the Assembly Elections & Redistricting Committee's bills, containing changes to provisions of the Elections Code to conform state law to a recent Superior Court ruling in Barta v. Bowen, in which the court found that the Elections Code requirement for central committee members to take the oath of office was unconstitutional. The provisions of this bill are changes requested by the Secretary of State (SOS).
- 2) Loyalty Oaths: Article XX, Section 3 of the California Constitution requires public officials to take an oath or affirmation of office to support and defend the California and United States Constitutions. Additionally, existing state statute requires each county central committee member of the Democratic, Republican, and American Independent Party, whether elected to the committee or appointed to fill a vacancy, to take and subscribe to the oath or affirmation set forth in Article XX, Section 3 of the California Constitution, before he or she enters upon the duties of his or her office. Current law does not include a similar loyalty oath requirement for members of the central committee of the Peace and Freedom Party.

Last year, a lawsuit was filed against the SOS challenging the loyalty oath requirement for political party central committee members. In the lawsuit, the petitioner alleged that requiring central committee members to take the oath of office found in the Article XX, Section 3 of the California Constitution is a violation of the United States and California Constitutions. The petitioner requested the court to declare Elections Code Sections 7210, 7408, and 7655 invalid because county central committee members are not public officeholders or employees and consequently, they should not be required to take the oath. Additionally, the petitioner alleged that the oath requirement violates the associational rights of the political parties by regulating the internal affairs of these political parties without a compelling state interest.

The Superior Court ruled in favor of the petitioner's request for a declaratory judgment that Elections Code Sections 7210, 7408, and 7655 are unconstitutional.

In light of the Superior Court's decision and because the SOS concedes that Elections Code Sections 7210, 7408, and 7655 could be considered unconstitutional, this bill repeals the loyalty oath requirements in the Elections Code for the county central committee members of the Democratic, Republican, and American Independent Parties. Political parties would be free to impose their own requirements for members of their central committees, but the state would no longer require central committee members to take the oath contained in Article XX, Section 3 of the California Constitution before taking office.

3) Arguments in Support: Secretary of State Debra Bowen writes in support:

A Superior Court decision in *Barta v. Bowen* (2013) ruled the loyalty oath required of the county central committee members is unconstitutional based on the U.S. Constitution First Amendment right to association. The Court has said party offices are not public offices and the state can only require an oath for people serving public offices.

The freedom to association is an essential cornerstone of a democracy. It is not in the interest of California to legislate the inner workings of political parties, and AB 2766 allows the decision of whether to require an oath from county central committee members to be made by the political party itself. Parties that wish to require loyalty oaths of their central committee members may do so under their own party rules. AB 2766 will avoid unnecessary state costs that would be incurred defending an unconstitutional requirement currently placed upon political parties.

REGISTERED SUPPORT / OPPOSITION:

Support

Secretary of State Debra Bowen

Opposition

None on file.

Analysis Prepared by: Nichole Becker / E. & R. / (916) 319-2094