

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 435

Introduced by Assembly Member Wagner

February 14, 2011

An act to amend ~~Section 18521~~ *Sections 13307 and 13308* of the Elections Code, relating to elections.

LEGISLATIVE COUNSEL'S DIGEST

AB 435, as amended, Wagner. Elections: ~~voting inducements.~~
candidate's statement: nonpartisan office.

Existing law permits each candidate for a nonpartisan elective office in a local government agency to prepare a candidate's statement for publication in the voter's pamphlet sent to voters prior to the election. Existing law requires that the candidate's statement be limited to a recitation of the candidate's own personal background and qualifications and not make reference to other candidates for that office or to another candidate's qualifications, character, or activities.

This bill would further prohibit the statement of a candidate for a nonpartisan local office from containing a pledge, promise, or commitment with respect to a matter that could come before the candidate in the office to which he or she is seeking election. In addition, the bill would require that the statement of the candidate's personal background and qualifications be limited to objective, verifiable facts concerning the candidate's experiences, accomplishments, and credentials and not include references to the candidate's beliefs, ideas, ideology, viewpoints, or campaign platform. The bill would also require that each voter's pamphlet contain a notice informing the voter that each candidate's statement has been prepared solely by, and contains

the representations solely of, that candidate and has not been independently verified by the elections official or any other government official or agency.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

~~Existing law makes it a crime for a person to attempt to influence a voter, through the use of money, gifts, loans, or other valuable consideration, to vote or refrain from voting for a particular person or measure.~~

~~This bill would make nonsubstantive changes to those provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. *The Legislature finds and declares all of the*
- 2 *following:*
- 3 (a) *A candidate’s statement permitted under Section 13307 of*
- 4 *the Elections Code is a limited public forum subject to reasonable*
- 5 *time, place, and manner restrictions.*
- 6 (b) *The public relies upon a candidate’s statement to obtain*
- 7 *accurate, verifiable, and factual information about that candidate.*
- 8 (c) *A candidate for public office has considerable opportunities*
- 9 *outside of the limited public forum of a candidate’s statement in*
- 10 *the ballot pamphlet to express his or her beliefs, ideas, ideology,*
- 11 *viewpoints, and campaign platform.*
- 12 (d) *A candidate’s beliefs, ideas, ideology, viewpoints, and*
- 13 *campaign platform frequently change during the course of a*
- 14 *campaign or during a term of office, if the candidate is elected.*
- 15 (e) *The beliefs, ideas, ideology, viewpoints, and campaign*
- 16 *platform set forth in a candidate’s statement for the voter’s*
- 17 *pamphlet can limit the ability of the candidate, once elected to*
- 18 *office, to respond to those issues with which he or she is confronted.*

1 (f) *The California Court of Appeal, in the case of Hammond v.*
2 *Agran (1999) 76 Cal.App.4th 1181, incorrectly construed Section*
3 *13307 of the Elections Code when it ruled that a candidate’s*
4 *statement of his or her “qualifications” could include that*
5 *candidate’s beliefs, ideas, ideology, viewpoints, and campaign*
6 *platform.*

7 (g) *The term “qualifications,” as used in Sections 13307 and*
8 *13308 of the Elections Code, should not be interpreted to include*
9 *a candidate’s beliefs, ideas, ideology, viewpoints, or campaign*
10 *platform, but should be interpreted to mean only factual*
11 *information capable of objective verification.*

12 SEC. 2. *Section 13307 of the Elections Code is amended to*
13 *read:*

14 13307. (a) (1) Each candidate for nonpartisan elective office
15 in any local agency, including any city, county, city and county,
16 or district, may prepare a candidate’s statement on an appropriate
17 form provided by the elections official. The statement may include
18 the name, age, and occupation of the candidate and a brief
19 description, of no more than 200 words, of the candidate’s
20 education and qualifications expressed by the candidate himself
21 or herself. However, the governing body of the local agency may
22 authorize an increase in the limitations on words for the statement
23 from 200 to 400 words. The statement shall not include the party
24 affiliation of the candidate, nor membership or activity in partisan
25 political organizations.

26 (2) The statement authorized by this subdivision shall be filed
27 in the office of the elections official when the candidate’s
28 nomination papers are returned for filing, if it is for a primary
29 election, or for an election for offices for which there is no primary.
30 The statement shall be filed in the office of the elections official
31 no later than the 88th day before the election, if it is for an election
32 for which nomination papers are not required to be filed. If a runoff
33 election or general election occurs within 88 days of the primary
34 or first election, the statement shall be filed with the elections
35 official by the third day following the governing body’s declaration
36 of the results from the primary or first election.

37 (3) Except as provided in Section 13309, the statement may be
38 withdrawn, but not changed, during the period for filing nomination
39 papers and until 5 p.m. of the next working day after the close of
40 the nomination period.

1 (b) (1) The elections official shall send to each voter, together
2 with the sample ballot, a voter's pamphlet which contains the
3 written statements of each candidate that is prepared pursuant to
4 this section. The statement of each candidate shall be printed in
5 type of uniform size and darkness, and with uniform spacing. The
6 elections official shall provide a Spanish translation to those
7 candidates who wish to have one, and shall select a person to
8 provide that translation from the list of approved Spanish language
9 translators and interpreters of the superior court of the county or
10 from an institution accredited by the Western Association of
11 Schools and Colleges.

12 (2) *Each voter's pamphlet shall contain a notice informing the*
13 *voter of all of the following:*

14 (A) *Each candidate's statement has been prepared solely by*
15 *that candidate.*

16 (B) *The representations made in each candidate's statement*
17 *are the representations solely of that candidate.*

18 (C) *The accuracy and validity of the representations made in*
19 *each candidate's statement have not been independently verified*
20 *by the elections official or any other government official or agency.*

21 (c) The local agency may estimate the total cost of printing,
22 handling, translating, and mailing the candidate's statements filed
23 pursuant to this section, including costs incurred as a result of
24 complying with the federal Voting Rights Act of 1965, as amended.
25 The local agency may require each candidate filing a statement to
26 pay in advance to the local agency his or her estimated pro rata
27 share as a condition of having his or her statement included in the
28 voter's pamphlet. In the event the estimated payment is required,
29 the receipt for the payment shall include a written notice that the
30 estimate is just an approximation of the actual cost that varies from
31 one election to another election and may be significantly more or
32 less than the estimate, depending on the actual number of
33 candidates filing statements. Accordingly, the local agency is not
34 bound by the estimate and may, on a pro rata basis, bill the
35 candidate for additional actual expense or refund any excess paid
36 depending on the final actual cost. In the event of underpayment,
37 the local agency may require the candidate to pay the balance of
38 the cost incurred. In the event of overpayment, the local agency
39 which, or the elections official who, collected the estimated cost

1 shall prorate the excess amount among the candidates and refund
2 the excess amount paid within 30 days of the election.

3 (d) Nothing in this section shall be deemed to make any
4 statement, or the authors thereof, free or exempt from any civil or
5 criminal action or penalty because of any false, slanderous, or
6 libelous statements offered for printing or contained in the voter's
7 pamphlet.

8 (e) Before the nominating period opens, the local agency for
9 that election shall determine whether a charge shall be levied
10 against that candidate for the candidate's statement sent to each
11 voter. This decision shall not be revoked or modified after the
12 seventh day prior to the opening of the nominating period. A
13 written statement of the regulations with respect to charges for
14 handling, packaging, and mailing shall be provided to each
15 candidate or his or her representative at the time he or she picks
16 up the nomination papers.

17 (f) For purposes of this section and Section 13310, the board of
18 supervisors shall be deemed the governing body of judicial
19 elections.

20 *SEC. 2. Section 13308 of the Elections Code is amended to*
21 *read:*

22 13308. (a) In addition to the restrictions set forth in Section
23 13307, ~~any~~ a candidate's statement submitted pursuant to Section
24 13307 shall be limited ~~to~~ as follows:

25 (1) A candidate's statement shall be limited to a recitation of
26 the candidate's own personal background and qualifications, and
27 shall not ~~in any way~~ make reference to other candidates for that
28 office or to another candidate's qualifications, character, or
29 activities. ~~The~~

30 (2) A candidate's statement shall not contain a pledge, promise,
31 or commitment with respect to a matter that could come before
32 the candidate in the office to which he or she is seeking election.

33 (b) For purposes of this section and Section 13307, "personal
34 background" and "qualifications" shall be limited to objective,
35 verifiable facts concerning the candidate's experiences,
36 accomplishments, and credentials and shall not include references
37 to the candidate's beliefs, ideas, ideology, viewpoints, or campaign
38 platform.

39 (c) An elections official shall not cause to be printed or circulated
40 ~~any~~ a candidate's statement submitted pursuant to Section 13307

1 ~~that the elections official determines is not so limited or that~~
2 ~~includes any reference prohibited by this section.~~

3 *SEC. 3. If the Commission on State Mandates determines that*
4 *this act contains costs mandated by the state, reimbursement to*
5 *local agencies and school districts for those costs shall be made*
6 *pursuant to Part 7 (commencing with Section 17500) of Division*
7 *4 of Title 2 of the Government Code.*

8 ~~SECTION 1. Section 18521 of the Elections Code is amended~~
9 ~~to read:~~

10 ~~18521. A person shall not directly or through another person~~
11 ~~receive, agree, or contract for, before, during or after an election,~~
12 ~~any money, gift, loan, or other valuable consideration, office, place,~~
13 ~~or employment for himself or herself or another person because~~
14 ~~he or she or another person did any of the following:~~

15 ~~(a) Voted, agreed to vote, refrained from voting, or agreed to~~
16 ~~refrain from voting for any particular person or measure.~~

17 ~~(b) Remained away from the polls.~~

18 ~~(c) Refrained or agreed to refrain from voting.~~

19 ~~(d) Induced any other person to do any of the following:~~

20 ~~(1) Remain away from the polls.~~

21 ~~(2) Refrain from voting.~~

22 ~~(3) Vote or refrain from voting for a particular person or~~
23 ~~measure.~~

24 ~~Any person violating this section is punishable by imprisonment~~
25 ~~in the state prison for 16 months or two or three years.~~