

ASSEMBLY BILL

No. 2338

Introduced by Assembly Member Wagner

February 21, 2014

An act to amend Section 1060 of the Code of Civil Procedure, and to amend Sections 9190, 9295, 9380, and 9509 of the Elections Code, relating to elections.

LEGISLATIVE COUNSEL'S DIGEST

AB 2338, as introduced, Wagner. Initiatives: writ of mandate.

(1) In cases of actual controversy relating to the legal rights and duties of respective parties, existing law authorizes a party to bring an action in superior court for a declaration of the party's rights and duties and to request a determination of any question of construction or validity arising under an instrument or contract.

This bill would, if a local initiative measure has been certified by an elections official as having qualified for the ballot, prohibit a public agency from bringing suit seeking a declaration of rights related to the construction or validity of the initiative measure until after the election for which the initiative measure qualified has been held.

(2) Under existing law, the elections official administering a county, municipal, district, or school district election is required to make a copy of certain election materials available for public examination in his or her office for a period of 10 calendar days immediately following the filing deadline for submission of those documents. Existing law permits any voter of the jurisdiction in which the election is being held, or the elections official, himself or herself, to seek a writ of mandate or an injunction requiring the amendment or deletion of any or all of the materials, as specified, during that 10-calendar-day public examination

period. Existing law also requires that a peremptory writ of mandate or injunction be issued only upon clear and convincing proof, as specified.

This bill would require that, if the governing body of the jurisdiction in which the initiative measure will be voted upon seeks to challenge the qualification or validity of the initiative measure, it shall do so by seeking the above-described writ of mandate or injunction during the 10-calendar-day public examination period in order to prohibit the initiative measure from being placed on the ballot. The bill also would require that a peremptory writ of mandate or an injunction be issued only upon clear and convincing proof that the initiative measure does not qualify or is not valid for placement on the ballot, and that issuance of the writ of mandate or injunction will not substantially interfere with the printing or distribution of official election materials as provided by law.

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

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

1 SECTION 1. Section 1060 of the Code of Civil Procedure is
 2 amended to read:
 3 1060. (a) Any person interested under a written instrument,
 4 excluding a will or a trust, or under a contract, or who desires a
 5 declaration of his or her rights or duties with respect to another,
 6 or in respect to, in, over or upon property, or with respect to the
 7 location of the natural channel of a watercourse, may, in cases of
 8 actual controversy relating to the legal rights and duties of the
 9 respective parties, bring an original action or cross-complaint in
 10 the superior court for a declaration of his or her rights and duties
 11 in the premises, including a determination of any question of
 12 construction or validity arising under the instrument or contract.
 13 He or she may ask for a declaration of rights or duties, either alone
 14 or with other relief; and the court may make a binding declaration
 15 of these rights or duties, whether or not further relief is or could
 16 be claimed at the time. The declaration may be either affirmative
 17 or negative in form and effect, and the declaration shall have the
 18 force of a final judgment. ~~The declaration may be had before there~~
 19 ~~has been any breach of the obligation in respect to which said~~
 20 ~~declaration is sought. A party may obtain a declaration before any~~
 21 *breach of the obligation giving rise to the declaration has occurred.*

1 (b) Notwithstanding subdivision (a), if an initiative measure
2 has been certified by an elections official as having qualified for
3 the ballot pursuant to Section 9116, 9118, 9214, 9215, 9310, or
4 9311 of the Elections Code, a public agency shall not bring an
5 original action or a cross-complaint seeking a declaration under
6 this section until after the election for which the initiative measure
7 qualified has been held.

8 SEC. 2. Section 9190 of the Elections Code is amended to read:

9 9190. (a) The county elections official shall make a copy of
10 the materials referred to in Sections 9119, 9120, 9160, 9162, and
11 9167 available for public examination in the county elections
12 official's office for a period of 10 calendar days immediately
13 following the deadline for submission of those materials. Any
14 person may obtain a copy of the materials from the county elections
15 official for use outside of the county elections official's office.
16 The county elections official may charge a fee to any person
17 obtaining a copy of the material. The fee may not exceed the actual
18 cost incurred by the county elections official in providing the copy.

19 (b) (1) During the 10-calendar-day public examination period
20 provided by this section, any voter of the jurisdiction in which the
21 election is being held, or the county elections official, himself or
22 herself, may seek a writ of mandate or an injunction requiring any
23 or all of the materials to be amended or deleted. The writ of
24 mandate or injunction request shall be filed no later than the end
25 of the 10-calendar-day public examination period.

26 (2) A peremptory writ of mandate or an injunction shall be
27 issued pursuant to this subdivision only upon clear and convincing
28 proof that the material in question is false, misleading, or
29 inconsistent with this chapter, and that issuance of the writ or
30 injunction will not substantially interfere with the printing or
31 distribution of official election materials as provided by law.

32 (3) The county elections official shall be named as respondent
33 and the person or official who authored the material in question
34 shall be named as real parties in interest. In the case of the county
35 elections official bringing the mandamus or injunctive action, the
36 board of supervisors of the county shall be named as the respondent
37 and the person or official who authored the material in question
38 shall be named as the real party in interest.

39 (c) (1) If the board of supervisors of the county challenges the
40 qualification or validity of an initiative measure, it shall seek a

1 writ of mandate or an injunction under this section to prohibit the
 2 initiative measure from being placed on the ballot. The writ of
 3 mandate or injunction request shall be filed no later than the end
 4 of the 10-calendar-day public examination period.

5 (2) A peremptory writ of mandate or an injunction shall be
 6 issued pursuant to this subdivision only upon clear and convincing
 7 proof that the initiative measure does not qualify or is not valid
 8 for placement on the ballot, and that issuance of the writ of
 9 mandate or injunction will not substantially interfere with the
 10 printing or distribution of official election materials as provided
 11 by law.

12 SEC. 3. Section 9295 of the Elections Code is amended to read:

13 9295. (a) The elections official shall make a copy of the
 14 material referred to in Sections 9223, 9280, 9281, 9282, and 9285
 15 available for public examination in the elections official’s office
 16 for a period of 10 calendar days immediately following the filing
 17 deadline for submission of those materials. Any person may obtain
 18 a copy of the materials from the elections official for use outside
 19 of the elections official’s office. The elections official may charge
 20 a fee to any person obtaining a copy of the material. The fee may
 21 not exceed the actual cost incurred by the elections official in
 22 providing the copy.

23 (b) (1) During the 10-calendar-day public examination period
 24 provided by this section, any voter of the jurisdiction in which the
 25 election is being held, or the elections official, himself or herself,
 26 may seek a writ of mandate or an injunction requiring any or all
 27 of the materials to be amended or deleted. The writ of mandate or
 28 injunction request shall be filed no later than the end of the
 29 10-calendar-day public examination period.

30 (2) A peremptory writ of mandate or an injunction shall be
 31 issued pursuant to this subdivision only upon clear and convincing
 32 proof that the material in question is false, misleading, or
 33 inconsistent with the requirements of this chapter, and that issuance
 34 of the writ or injunction will not substantially interfere with the
 35 printing or distribution of official election materials as provided
 36 by law.

37 (3) The elections official shall be named as respondent, and the
 38 person or official who authored the material in question shall be
 39 named as real parties in interest. In the case of the elections official
 40 bringing the mandamus or injunctive action, the board of

1 supervisors of the county shall be named as the respondent and
2 the person or official who authored the material in question shall
3 be named as the real party in interest.

4 *(c) (1) If the legislative body of the city challenges the*
5 *qualification or validity of an initiative measure, it shall seek a*
6 *writ of mandate or an injunction under this section to prohibit the*
7 *initiative measure from being placed on the ballot. The writ of*
8 *mandate or injunction request shall be filed no later than the end*
9 *of the 10-calendar-day public examination period.*

10 *(2) A peremptory writ of mandate or an injunction shall be*
11 *issued pursuant to this subdivision only upon clear and convincing*
12 *proof that the initiative measure does not qualify or is not valid*
13 *for placement on the ballot, and that issuance of the writ of*
14 *mandate or injunction will not substantially interfere with the*
15 *printing or distribution of official election materials as provided*
16 *by law.*

17 SEC. 4. Section 9380 of the Elections Code is amended to read:

18 9380. (a) The elections official shall make a copy of the
19 materials referred to in Sections 9312, 9315, and 9317 available
20 for public examination in his or her office for a period of 10
21 calendar days immediately following the filing deadline for
22 submission of those documents. Any person may obtain a copy of
23 the materials from the elections official for use outside of the
24 elections official's office. The elections official may charge a fee
25 to any person obtaining a copy of the material. The fee may not
26 exceed the actual cost incurred by the elections official in providing
27 the copy.

28 (b) (1) During the 10-calendar-day public examination period
29 provided by this section, any voter of the jurisdiction in which the
30 election is being held, or the elections official, himself or herself,
31 may seek a writ of mandate or an injunction requiring any material
32 to be amended or deleted. The writ of mandate or injunction request
33 shall be filed no later than the end of the 10-calendar-day public
34 examination period.

35 (2) A peremptory writ of mandate or an injunction shall be
36 issued *pursuant to this subdivision* only upon clear and convincing
37 proof that the material in question is false, misleading, or
38 inconsistent with this chapter, and that issuance of the writ or
39 injunction will not substantially interfere with the printing or
40 distribution of official election materials as provided by law.

1 (3) The elections official shall be named as respondent and the
2 person or official who authored the material in question shall be
3 named as real parties in interest. In the case of the elections official
4 bringing the mandamus or injunctive action, the board of
5 supervisors of the county shall be named as the respondent and
6 the person or official who authored the material in question shall
7 be named as the real party in interest.

8 (c) (1) *If the governing board of the district challenges the*
9 *qualification or validity of an initiative measure, it shall seek a*
10 *writ of mandate or an injunction under this section to prohibit the*
11 *initiative measure from being placed on the ballot. The writ of*
12 *mandate or injunction request shall be filed no later than the end*
13 *of the 10-calendar-day public examination period.*

14 (2) *A peremptory writ of mandate or an injunction shall be*
15 *issued pursuant to this subdivision only upon clear and convincing*
16 *proof that the initiative measure does not qualify or is not valid*
17 *for placement on the ballot, and that issuance of the writ of*
18 *mandate or injunction will not substantially interfere with the*
19 *printing or distribution of official election materials as provided*
20 *by law.*

21 SEC. 5. Section 9509 of the Elections Code is amended to read:

22 9509. (a) The elections official shall make a copy of the
23 materials referred to in Sections 9500, 9501, and 9504 available
24 for public examination in his or her office for a period of 10
25 calendar days immediately following the filing deadline for
26 submission of those documents. Any person may obtain a copy of
27 the materials from the elections official for use outside of the
28 elections official's office. The elections official may charge a fee
29 to any person obtaining a copy of the material. The fee may not
30 exceed the actual cost incurred by the elections official in providing
31 the copy.

32 (b) (1) During the 10-calendar-day public examination period
33 provided by this section, any voter of the jurisdiction in which the
34 election is being held, or the elections official, himself or herself,
35 may seek a writ of mandate or an injunction requiring any or all
36 of the materials to be amended or deleted. The writ of mandate or
37 injunction request shall be filed no later than the end of the
38 10-calendar-day public examination period.

39 (2) A peremptory writ of mandate or an injunction shall be
40 issued *pursuant to this subdivision* only upon clear and convincing

1 proof that the material in question is false, misleading, or
2 inconsistent with this chapter, and that issuance of the writ or
3 injunction will not substantially interfere with the printing or
4 distribution of official election materials as provided by law.

5 (3) The elections official shall be named as respondent and the
6 person or official who authored the material in question shall be
7 named as real parties in interest. In the case of the elections official
8 bringing the mandamus or injunctive action, the board of
9 supervisors of the county shall be named as the respondent and
10 the person or official who authored the material in question shall
11 be named as the real party in interest.

12 (c) (1) *If the governing board of the district challenges the*
13 *qualification or validity of an initiative measure, it shall seek a*
14 *writ of mandate or an injunction under this section to prohibit the*
15 *initiative measure from being placed on the ballot. The writ of*
16 *mandate or injunction request shall be filed no later than the end*
17 *of the 10-calendar-day public examination period.*

18 (2) *A peremptory writ of mandate or an injunction shall be*
19 *issued pursuant to this subdivision only upon clear and convincing*
20 *proof that the initiative measure does not qualify or is not valid*
21 *for placement on the ballot, and that issuance of the writ of*
22 *mandate or injunction will not substantially interfere with the*
23 *printing or distribution of official election materials as provided*
24 *by law.*