

## BILL ANALYSIS

6

SENATE COMMITTEE ON  
ELECTIONS AND CONSTITUTIONAL AMENDMENTS  
Senator Ben Allen, Chair  
2015 - 2016 Regular

Bill No: SB 589 Hearing Date: 4/21/15

Author:	Block		
Version:	4/6/15		
Urgency:	No	Fiscal:	Yes
Consultant:	Darren Chesin		

Subject: Voting: voter registration: individuals with disabilities and conservatees

DIGEST

This bill authorizes an individual with a disability who is otherwise qualified to vote to complete an affidavit of registration with reasonable accommodations as needed and requires that a person be presumed mentally competent to vote, regardless of his or her conservatorship status, if the court finds that the person can communicate, with or without reasonable accommodations, a desire to participate in the voting process.

ANALYSIS

Existing law:

1. Permits prospective voters to receive assistance from another person when completing an affidavit of registration. If any person assists the affiant in completing the affidavit, that person must sign and date the affidavit below the signature of the affiant.
2. Requires an affiant to certify the content of the affidavit of voter registration as to its truth and correctness, under penalty of perjury, with a signature and the date of signing. If the affiant is unable to write he or she may instead sign with a mark or cross or use a signature stamp, as specified.

SB 589 (Block)  
of ?

Page 2

3. Provides, pursuant to the federal Voting Rights Act (42 U.S.C. 1973aa) that no citizen shall be denied, because of his failure to comply with any test or device, the right to vote in any Federal, State, or local election conducted in any State or political subdivision of a State. The term "test or device" includes, among other things, any requirement that a person demonstrate the ability to read, write, understand, or interpret any matter.

4. Provides, pursuant to the California Constitution, that the Legislature shall prohibit improper practices that affect elections and shall provide for the disqualification of electors while mentally incompetent or imprisoned or on parole for the conviction of a felony.

- 5.Regulates the terms and conditions of conservatorships and creates various requirements for a court and a court investigator with regard to informing a proposed conservatee that he or she may be disqualified from voting if he or she is not capable of completing an affidavit of voter registration. If a court finds that a person is not capable of completing an affidavit of voter registration, as specified, existing law provides that the person shall be deemed mentally incompetent and disqualified from voting.
- 6.Prohibits 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.
- 7.Provides that in certain conservatorship proceedings heard by a jury, requires the jury to unanimously find that the person is incapable of completing an affidavit of registration before the person is disqualified from voting.
- 8.If an order establishing a conservatorship is made and in connection with the order it is found that the person is incapable of completing an affidavit of voter registration, existing law requires the court to forward the order and determination to the county elections official of the person's county of residence.

SB 589 (Block)  
of ?

Page 3

- 9.Provides that during the yearly or biennial review of certain conservatorships, the court investigator must review the person's capability of completing an affidavit of voter registration and, if the conservatee's capability of completing the affidavit of voter registration changes, requires the court investigator to inform the court and the court to hold a hearing regarding that capability.

This bill:

- 1.Authorizes an individual with a disability who is otherwise qualified to vote to complete an affidavit of registration with reasonable accommodations as needed.
- 2.Authorizes an individual with a disability who is under a conservatorship to be registered to vote if he or she has not been disqualified from voting.
- 3.Finds and declares that by explicitly adding the concept of reasonable accommodation to state laws on voter qualification, the bill brings the state into compliance with federal standards.
- 4.Requires that a person be presumed competent to vote, regardless of his or her conservatorship status but requires that a person be deemed mentally incompetent, and therefore disqualified from voting if, during certain proceedings including conservatorship proceedings, the court finds by clear and convincing evidence that the person cannot communicate, with or without reasonable accommodations, a desire to participate in the voting process.
- 5.Provides that in certain conservatorship proceedings heard by a jury, the jury must unanimously find by clear and convincing evidence that the person cannot communicate, with or without reasonable accommodations, a desire to participate in the voting process before the person is disqualified from voting.
- 6.Requires the court investigator, during the yearly or biennial

review of certain conservatorships, to review the person's capability of communicating, with or without reasonable accommodations, a desire to participate in the voting process, and if the conservatee's capability of communicating that

SB 589 (Block)  
of ?

Page 4

desire has changed, would require the court investigator to inform the court and the court to hold a hearing regarding that capability.

7.Requires the court clerk's citation to the proposed conservatee to include a statement describing the aforementioned provisions.

#### BACKGROUND

Voting Rights of Conservatees . In California, if an adult is unable to manage his or her medical and personal decisions, a conservator of the person may be appointed. While a conservator of the person has charge of the care, custody and control of the conservatee, that power is not absolute. According to a form adopted by the Judicial Council entitled Notice of Conservatee's Rights, when a person becomes a conservatee, he or she does not necessarily lose the right to take part in important decisions affecting his or her property and way of life. After appointment of a conservator, the conservatee keeps specified rights including the right to vote unless the court has limited or taken that right away.

Last year the Disability and Abuse Project of Spectrum Institute filed a formal complaint with the United States Department of Justice's Civil Rights Division against the Los Angeles Superior Court regarding their application of existing state law deeming conservatees ineligible to register to vote if they are not capable of completing an affidavit of voter registration. The complaint asserted that this practice constitutes a violation of the federal Voting Rights Act's prohibition on use of a test or device as a prerequisite for voter registration.

That complaint was the impetus for AB 1311 (Bradford), Ch. 591 Statutes of 2014, which prohibited a person, including a conservatee, from being disqualified from voting on the basis that he or she signs the affidavit of voter registration with mark or a cross, signs the affidavit of voter registration with a signature stamp, or completes the affidavit of registration with the assistance of another person.

#### COMMENTS

1.According to the author : Under current law, adults with

SB 589 (Block)  
of ?

Page 5

developmental disabilities under conservatorships are routinely being disenfranchised at extremely high levels. A review of 61 conservatorship cases involving adults with developmental disabilities in Los Angeles County found that close to 90% of conservatees in those cases had been disqualified from voting due to their actual or perceived inability to complete the voter registration affidavit. Furthermore, this review found that probate attorneys are being trained to disqualify adults under conservatorships from

voting when he/she are not able to sign a registration affidavit.

SB 589 will allow disabled individuals under conservatorship to retain their right to vote unless it is shown by clear and convincing evidence that the individual cannot communicate, with or without reasonable accommodations, a desire to participate in the voting process. This is the standard recommended by the American Bar Association and adopted in Nevada and Maryland. This crucial shift will improve the protections of these adults to maintain their voting rights in California.

Under federal disability nondiscrimination laws people with disabilities are entitled to reasonable accommodations as needed to participate in public activities such as voting. While a recent law listed some types of accommodations available to adults under conservatorships to complete a voter registration form, SB 589 would conform California law to federal law by stating that people with disabilities are entitled to reasonable accommodations. This change will help protect the voting rights of adults with developmental disabilities who often fall through the cracks in our democracy.

Protecting the rights of adults with developmental disabilities is critical in maintaining and encouraging an inclusive and diverse electorate. If an adult under conservatorship can convey their desire to engage in the elections system, we should do everything in our power to ensure that they keep their voting rights. SB 589 will be a significant step forward in ensuring that adults under conservatorships don't slip through the cracks in our democracy.

2. Possible Double Referral . If this bill is approved by this

SB 589 (Block)  
of ?

Page 6

committee it needs to be returned to the Senate Rules Committee for consideration of a re-referral request from the Senate Judiciary Committee.

RELATED/PRIOR LEGISLATION

---

AB 1311 (Bradford), Ch. 591 Statutes of 2014 (see discussion in the BACKGROUND section, above).

POSITIONS

---

Sponsor: American Civil Liberties Union

Support: AIDS Legal Referral Panel  
 Association of Regional Center Agencies  
 California Association of Clerks and Elections Officials  
 Cal-TASH  
 Disability Rights California  
 Spectrum Institute  
 The Arc and United Cerebral Palsy California  
 Collaboration

Oppose: None received

-- END --