TESTIMONY OF THE

CHIEF ELECTION OFFICER, OFFICE OF ELECTIONS

TO THE SENATE COMMITTEE ON JUDICIARY

ON SENATE BILL NO. 47

RELATING TO ARRANGEMENT OF CANDIDATE NAMES ON BALLOTS

February 9, 2023

Chair Rhoads and members of the Senate Committee on Judiciary, thank you for the opportunity to provide comments on Senate Bill No. 47. This bill requires candidate names to be randomized on individual ballots and randomly rotated across precincts; requires the Office of Elections to inform voters and candidates, by a method suited for the voting system, that the names of candidates may not be in alphabetical order; and requires that any new contract entered into by the Office of Elections for equipment or services relating to preparing ballots or counting votes include the capability to randomize the names of candidates appearing on the ballot if technologically possible.

We would accomplish the purpose of this measure by randomly selecting a letter of the alphabet to be the first letter to organize the candidate names. For example, if "H" was randomly selected by lot, candidates whose last name starts with an "H" would be listed first and subsequent names will follow alphabetically (e.g., "I," "J," "K").

The current voting system is programmed for precinct rotation such that if "H" was the randomly selected letter for the first district/precinct (i.e., 01-01), "I" would be the start of the alphabet for the second district/precinct (i.e., 01-02), and "J" for the third district/precinct (i.e., 01-03), and so on. The system is not capable of randomizing the names within a precinct as the vote counting system is programmed to read x and y coordinates when tallying votes.

Additionally, the alphabetical organization is used for proofing the ballots to ensure all candidates are properly listed and the vote counting system is recording votes for the proper candidate.

Thank you for the opportunity to provide comments on Senate Bill No. 47.

LWV LEAGUE OF WOMEN VOTERS® OF HAWAII

Committee on JUDICIARY
Sen. Karl Rhoads, Chair
Sen. Mike Gabbard, Vice Chair

Thursday, February 9, 2023, 9:30 a.m., Room 016 & Via Videoconference

SB 47— RELATING TO ARRANGEMENT OF CANDIDATE NAMES ON BALLOT

TESTIMONY
Janet Mason, Legislative Committee, League of Women Voters of Hawaii

Chair Rhoads, Vice Chair Gabbard, and Committee Members:

The League of Women Voters of Hawaii offers comments only on SB47, that would require candidate names to be randomized on individual ballots and randomly rotated across precincts.

The main purpose of the bill is to address the well-known problem that coming first on the ballot increases a candidate's total vote count. This phenomenon is well documented in political science and psychology research, and the advantage has been found to be about 2- 3% in close races. [1]

To our knowledge no study has been done of ballot order effects in vote by mail states, where voters have more time to study the ballots at home; it is possible that this might offset any positional ballot advantage. The League has long supported more voter education in Hawaii, including candidate statements.

We interpret the bill to apply to all primary and general elections. Is this the intent? Though ballot order matters in all elections, the effect has been seen to be substantial for minor party candidates in general elections.[2] In primary and nonpartisan elections, there is some research indicating the effect is greater for all types of candidates.[3]

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[1] Ho, Daniel E. and Kosuke, Imai, "Estimating the Causal Effects of Ballot Order from a Randomized Natural Experiment: the California Alphabet Lottery, 1978-2002, *The Public Opinion Quarterly*, *(2008) 72 (2): 216-240*

[2] Jonathan G.S. Koppell & Jennifer A. Steen, *The Effects of Ballot Position on Election Outcomes*, 66 J. POL. 272 (2004).

[3] Joanne M. Miller & Jon A. Krosnick, *The Impact of Candidate Name Order on Election Outcomes*, 62 PUB. OPINION Q. 291, 308-309 (1998).

To be fair, in the first randomization step the ballot should be arranged so that **all** candidate names are randomized, not just the first candidate's name. Additional rules must be set to address situations such as candidates having the same name and whether the randomization would be done in a public drawing. However, to make it feasible to conduct post-election audits, we do think it is important that everyone within the same voting district have the same ballot.

Randomizing name order on a ballot without rotation across precincts is only slightly fairer than the alphabetical name order because there would still be only one chance to be the lucky person whose name appears at the top of the contest. The intent of this measure is to introduce an additional step to add more randomization, by taking the first randomly ordered precinct-specific ballot, and "randomly rotating" ballot order names across precincts. Randomization across precincts would give candidates more than one chance to appear at the top of the contest.

Is randomizing across districts in this way suitable for every race? We're not sure in part because in Hawaii's statewide primary races, there could be many candidates across 51 representative districts and 21 senatorial districts. California rotates candidates for statewide offices only, and this approach merits consideration as a first step. [4]

We do hope the Office of Elections testifies on this bill, to confirm that randomized candidate names on a single ballot and rotation of these randomized names across precincts is possible with the voting system they have. We also need their firsthand opinion about whether this would increase the cost of administering an election. If a County holds a stand-alone election they would print the ballot instead of the Office of Elections, and I am not sure the Counties have such randomization capabilities, so an amendment to this effect seems required.

Since alphabetical candidate order has been the norm, we expect voters will be confused by a ballot where the names are listed in a different order. The measure requires the Office of Elections to inform voters and candidates of the new randomization and rotation "by a method suited for the voting system." At a minimum instructions or statements on the ballot produced by the voting system should be required.

Voter education concerns us. We do not believe ballot instructions alone are sufficient, and hope the Office of Elections would also plan and conduct a public awareness effort about such a change. If the bill is enacted, presumably voters would also have to forgo having a "sample" ballot to examine before voting. This tool has been popular for a long time, but if there are many different ballot designs for an election there's no single sample. Perhaps the Office of Elections could make different sample ballots available to voters, based on the randomization in their precinct. Our State very much needs a more robust voter education program, and we support expanding this as described in SB1076/HB 832.

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[4] https://www.sos.ca.gov/elections/randomized-alphabet

The right to vote is a fundamental right of every eligible citizen, and it is now well established that ballot order can impact voting, when it dilutes the votes for candidates who do not have an advantageous position on the ballot. The League also supports the equal right of every citizen to be elected to office. With this in mind, we plan to continue watching measures like this which have implications for equal protection under our U.S. Constitution.

Thank you for the opportunity to submit testimony.

SB-47
Submitted on: 2/3/2023 7:50:42 PM
Testimony for JDC on 2/9/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Andrew Crossland	Individual	Oppose	Written Testimony Only

Comments:

I oppose this Bill.

SB-47
Submitted on: 2/7/2023 9:31:10 PM
Testimony for JDC on 2/9/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Vivek Pathela	Individual	Oppose	Written Testimony Only

Comments:

OPPOSE