

Date of Hearing: July 16, 2025

ASSEMBLY COMMITTEE ON ELECTIONS
Gail Pellerin, Chair
ACA 8 (Pellerin) – As Introduced February 20, 2025

SUBJECT: Elections: incumbent judges of the Supreme Court and courts of appeal.

SUMMARY: Permits Supreme Court and Appellate Court justices to be reelected without appearing on the ballot unless voters sign a petition requesting that a judge's name appear on the ballot. Specifically, **this measure** permits the Legislature to provide by statute that the name of a judge of the Supreme Court or a court of appeal who files a declaration of candidacy shall not appear on the ballot, and instead the judge shall be deemed elected, unless a petition requesting that the judge's name appear on the ballot is filed by a requisite number of registered voters qualified to vote for the office.

EXISTING LAW:

- 1) Provides that Supreme Court judges shall be elected at large, and judges of courts of appeal shall be elected in their districts at general elections at the same time and places as the Governor. Provides that those judges serve 12 year terms, except that a judge elected to an unexpired term serves the remainder of the term. (California Constitution Article VI, §16(a))
- 2) Permits a judge of the Supreme Court or a court of appeal to file a declaration of candidacy to succeed to the office presently held by the judge within 30 days before August 16 preceding the expiration of the judge's term. Provides that if a declaration is not filed, the Governor shall nominate a candidate before September 16. Provides that only the candidate so declared or nominated appears on the ballot, with the question of whether the candidate should be elected. Provides that the candidate is elected if the majority of the votes on the question are "yes." (California Constitution Article VI, §16(d))
- 3) Provides that if the incumbent is the only person who files nomination papers for a superior court judge seat, that person's name shall not appear on the ballot unless a petition is filed with the elections official indicating that a write-in campaign will be conducted for the office, signed by at least 0.1 percent of the registered voters qualified to vote with respect to the office, provided that the petition shall contain at least 100 signatures but need not contain more than 600 signatures, as specified. (Elections Code §8203)

FISCAL EFFECT: Unknown. Although this measure is keyed non-fiscal, it has been double-referred to the Assembly Appropriations Committee.

COMMENTS:

- 1) **Purpose of the Measure:** According to the author:

California's general election ballots are lengthy—particularly in gubernatorial elections, when judicial retention elections appear on the ballot at the same time as races for statewide offices. In some counties, judicial retention elections

regularly add more than a dozen additional contests to the ballot. Lengthy ballots contribute to voter fatigue and make the electoral process more daunting, especially for new and infrequent voters, while adding to election costs.

Voters skip participating in judicial elections at high levels compared to other contests. The percentage of ballots that are left blank in California judicial retention elections regularly exceeds 25%. Furthermore, judicial retention elections are rarely seriously opposed in California. Justices were retained in 794 of the 797 retention elections held in the state's history (99.6%).

ACA 8 asks California voters whether they want to amend the California Constitution to provide that Court of Appeals and Supreme Court justices will appear on the ballot for a retention election only if a petition is filed by registered voters. If no petition is filed, the justice would be retained without appearing on the ballot. This process is modeled after the process that currently exists for Superior Court elections.

ACA 8 is a targeted approach to address challenges posed by California's lengthy ballots and save money for county elections officials while protecting judicial accountability by maintaining voters' ability to remove Appellate and Supreme Court justices when desired.

- 2) **Judicial Elections Overview:** Judges in California are elected officials, but judicial elections differ from those for other offices. Superior court judges are elected to six-year terms by county voters. The Governor fills vacancies that occur by appointment. While individuals are sometimes elected without having served as a judge, the vast majority of superior court judges initially reach the bench via appointment.

When an incumbent superior court judge is unopposed for reelection, that contest does not appear on the ballot; instead, the judge is deemed reelected. However, voters can force the incumbent on the ballot to conduct a write-in campaign by filing a petition containing signatures of 100-600 voters, depending on the number of registered voters in the county. Most superior court judges are reelected without appearing on the ballot. In Los Angeles County, 157 of 159 judges running for reelection in 2024 were reelected without appearing on the ballot.

Elections for Court of Appeals and Supreme Court justices are different. The Governor nominates candidates, subject to confirmation by the Commission on Judicial Appointments. Confirmed justices are subject to voter approval at the next gubernatorial election, and at the end of each 12-year term. These are called retention elections.

In retention elections, justices do not run against opposing candidates. Instead, ballots ask voters whether the justice shall be retained. If a justice receives more "yes" votes, the justice remains in their position. If a justice receives more "no" votes, a new justice is appointed by the Governor.

This constitutional amendment, if approved by the voters, would permit the Legislature to

adopt a policy for retention elections that is similar to the policy that currently exists for forcing an uncontested superior court judge onto the ballot so that a write-in campaign can be conducted.

- 3) **Historical Judicial Retention Results:** Judicial retention elections for Court of Appeals and Supreme Court justices occur at the same time as gubernatorial general elections. The exact number of retention contests that appear on a voter's ballot depends on the number of justices up for retention at a given election and the Appellate district in which the voter resides. In the last 20 years, California voters have faced between four and 20 retention contests on the ballot at gubernatorial general elections. In the state's most populous Court of Appeals district, made up of Los Angeles, San Luis Obispo, Santa Barbara, and Ventura Counties, at least 14 retention contests have appeared on the ballot in each of the last five gubernatorial general elections.

Since the state's retention election process was created in 1934, no Court of Appeals justice has ever been defeated in a retention election, while three Supreme Court justices were defeated (all in 1986). In all, justices were retained in 794 of the 797 retention elections held in the state's history (99.6%). In the last 20 years, 242 retention contests have appeared on the ballot throughout the state. In all but two of those contests, more than 60% of votes cast were in favor of retaining the justice.

Voters skip voting on retention elections at high levels. The percentage of ballots that are left blank (commonly referred to as "drop-off") in retention elections regularly exceeds 25%, and has been more than 40% in some recent retention elections. By contrast, drop-off in elections for statewide office during the same time period typically has ranged from 2%-6%, though drop-off has been higher (17%-20%) in contests for Superintendent of Public Instruction (a non-partisan office) and in statewide contests where the general election ballot for an office did not feature a candidate from each of the two largest political parties (8%-18%).

- 4) **Implementing Legislation Required:** If this measure is approved by the voters, legislation would need to be enacted by the Legislature in order for the policy envisioned by this measure to be implemented. In the absence of such implementing legislation, the procedure for retention of Supreme Court and appellate court justices would remain unchanged. Such implementing legislation would need to specify the number of signatures needed on a petition requesting that the judge's name appear on the ballot and the timeline and procedure for filing such a petition.
- 5) **Arguments in Support:** In support of this measure, Secretary of State Shirley N. Weber, Ph.D., writes:

ACA 8 streamlines the process for retaining appellate and Supreme Court justices by aligning state law with existing practice in the lower courts, ensuring a more cost-effective judicial election system. ACA 8 would allow the Legislature to specify that the names of incumbent Supreme Court justices and appellate judges who are running uncontested to not appear on the ballot unless a petition is filed requesting inclusion. This reduces unnecessary election clutter and helps focus voter attention on contested races.

ACA 8 improves the integrity and efficiency of California's electoral system while minimizing voter confusion and preserving transparency.

- 6) **Arguments in Opposition:** In opposition to this measure, Election Integrity Project California writes, "The people should ALWAYS be heard. By providing a path for judges to remain in office without the approbation of the people through the electoral process, ACA 8 strikes at the very heart of 'our democracy' and paves the way to tyranny."
- 7) **Double Referral:** Although this measure is keyed non-fiscal by the Legislative Counsel, it has been double referred to the Assembly Appropriations Committee. Historically, non-fiscal measures that propose placing a measure on the ballot for voter approval have been referred to the Assembly Appropriations Committee because the state can incur costs to add additional pages to the state ballot pamphlet whenever it places a measure on the ballot.
- 8) **Approval by Voters:** As a constitutional amendment, this measure requires the approval of the voters to take effect

REGISTERED SUPPORT / OPPOSITION:

Support

California Common Cause
California Judges Association
Secretary of State Shirley N. Weber, Ph.D.

Opposition

Election Integrity Project California
1 individual

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