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Yearick

HOUSE OF REPRESENTATIVES
152nd GENERAL ASSEMBLY

HOUSE BILL NO. 344

AN ACT TO AMEND TITLE 15 OF THE DELAWARE CODE RELATING TO ELECTIONS.

1 WHEREAS, all states have laws governing the order in which candidates for elective office appear on the ballot;
2 and

3 WHEREAS, the order in which candidates appear on the ballot can influence election outcomes; and

4 WHEREAS, various statistical studies have concluded that appearing first on the ballot can considerably increase
5 the share of the vote a candidate receives; and;

6 WHEREAS, in one ruling on the topic, the California Supreme Court held that “a significant advantage accrues to
7 a candidate by virtue of a top ballot position”; and

8 WHEREAS, the California Supreme Court further concluded that, without incumbents running, approximately 5%
9 of a candidate’s vote share could be attributed to their position on the ballot; and

10 WHEREAS, 15 states have taken action to eliminate ballot position bias by randomizing the listing of candidates;
11 and

12 WHEREAS, California is among these states and instituted a reform in 1975 by listing candidates in a
13 “randomized alphabetical order” on its ballots; and

14 WHEREAS, the California protocol utilizes a randomized drawing of letters of the alphabet, with the resulting
15 order of letters constituting a "randomized alphabet" that is used for determining the order of candidates' names on the
16 ballot; and

17 WHEREAS, Delaware’s present law mandates that one political party shall always appear in the first column on
18 the machine ballots or the first line on absentee ballots; and

19 WHEREAS, Delaware’s existing methods of listing candidates on a ballot introduce bias into the system that is
20 influencing the outcome of elections in The First State; and

21 WHEREAS, the government of the State of Delaware has an obligation to its citizens to remove any aspect of the
22 electoral process that could compromise the integrity of the system; and

23 WHEREAS, a U.S. District Court in 2019 found that the State of Florida's failure to rotate or otherwise randomize
24 the order in which candidates' names appeared on election ballots was unconstitutional.

25 NOW, THEREFORE:

26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

27 Section 1. Amend § 4502, Title 15 of the Delaware Code by making deletions as shown by strike through and
28 insertions as shown by underline as follows:

29 § 4502. Form and designation of ballots [~~For application of this section, see 83 Del. Laws, c. 353, § 6.~~]

30 (a) (1) For each election, the party ~~emblem adopted by each political party and its name~~ shall appear on the ballot
31 with the names of each of its candidates, shall be arranged in line with the titles of the offices for which they are contesting,
32 along with space for the voter to write in the name of any candidate of that voter's choice, as prescribed under § 5005A(b)
33 of this title.

34 (2) In those years in which a President and Vice President of the United States are to be elected, the ballot
35 must be designated "Presidential, Vice Presidential, State, County, and District Ballot"; in other years, the ballot must
36 be designated "State, County, and District Ballot".

37 ~~(3) The names of all candidates of any party must be placed under the title and device of such party as~~
38 ~~designated in the certificate filed with the Department by the party's authorized agent or, if none is designated, under~~
39 ~~some suitable title or device to be selected by the Department.~~

40 (3) The names of all candidates of a major party shall randomly appear in the first or initial columns on the
41 left-hand side of the ballot.

42 (4) The names of candidates of any nonmajor party or unaffiliated candidates shall be randomly designated to
43 a column of the ballot appearing after the columns designated for candidates of any major party under paragraph 3 of
44 this subsection.

45 ~~(4)~~(5) When a President and Vice President are to be elected, the names of the candidates for those offices
46 must be placed at the top of the list of candidates for all offices to be voted upon and shall be randomly designated to a
47 column of the ballot the same as candidates for other offices under this section, provided, however, the President and
48 Vice President candidates of a party must appear together on the ballot as 1 vote.

49 ~~(5) The device named and chosen and the lists of candidates of the Democratic Party must be placed in the~~
50 ~~first column on the left hand side of the ballot, of the Republican Party in the second column, and of any other party,~~
51 ~~and the space for the voter to write in the name of any candidate of that voter's choice for any office, in such order as~~
52 ~~the Department decides.~~

53 ~~(6) The names of unaffiliated candidates must appear in alphabetical order, under the heading “Unaffiliated~~
54 ~~Candidates”, after the listing of various political parties.~~

55 (6) In a presidential election year, the first column on the left-hand side of the ballot will alternate between
56 major parties to ensure no major party’s Presidential and Vice presidential candidate appears in the first column in 2
57 consecutive Presidential elections.

58 (7) No column of the ballot shall designate a political party.

59 (8) No column shall be designated as “unaffiliated”.

60 (b) All ballots for the same election shall be of uniform size, of the same quality and color of paper and
61 sufficiently thick that the printing cannot be distinguished from the back. ~~The arrangement of the ballots shall in general~~
62 ~~conform, as nearly as possible, to the sample ballot set forth in this section.~~

63 ~~(c) The ballots prepared in accordance with this chapter shall conform as far as possible to the following design~~
64 ~~except that the~~ The write-in column may be placed on either side of the ballot.

65 (d) Absentee ~~or mail~~ ballots may be laid out with candidate names under an office title. If this form is used, ~~party~~
66 ~~logos are not to be used~~ and the political party of each candidate shall be listed beside or below the name of each candidate.
67 The candidates shall be listed in the order specified in subsection (a) of this section. Except, that in a primary election the
68 candidates shall be listed in randomized alphabetic order and the political party shall be listed for each office.

69 (e) If the number of candidates, or offices ~~and/or parties~~ to be listed on the ballot preclude the layout of a ballot as
70 specified in this section, the Department of Elections shall obtain approval of the State Election Commissioner to lay out
71 the ballot in a manner best suited to the number of candidates, or offices ~~and/or parties~~ eligible to be placed on the ballot.

72 Section 2. Amend § 3124, Title 15 of the Delaware Code by making deletions as shown by strike through and
73 insertions as shown by underline as follows:

74 § 3124. Ballots for voting devices.

75 (b) Two business days after the candidate filing deadline. ~~The~~ the names of all candidates for nomination for the
76 same office must be placed under the title of the office, the surname of candidates to be placed in randomized alphabetical
77 order, and may not be separated one from another by any other matter. Randomized alphabetical order means each letter of
78 the alphabet shall be assigned a random number beginning with 1 and the candidate whose surname begins with the letter
79 representing the lowest number shall appear first on the ballot. Thereafter, the candidate whose surname has the next
80 lowest number shall be listed until all candidates are listed on the ballot. If a candidate’s surname begins with a number or
81 some other designation, then that number or designation shall also be assigned a random number.

82 Section 3. Amend § 3001, Title 15 of the Delaware Code by making deletions as shown by strike through and
83 insertions as shown by underline as follows:

84 § 3001. Political parties.

85 No political party's candidates shall be listed on any general election ballot unless, 21 days prior to the date of the
86 primary election, there shall be registered in the name of that party a number of voters equal to at least 10/100 of 1 percent
87 of the total number of voters registered in the State as of December 31 of the year immediately preceding the general
88 election year.

89 Section 4. Amend § 3003, Title 15 of the Delaware Code by making deletions as shown by strike through and
90 insertions as shown by underline as follows:

91 § 3003. County ballots.

92 The Department shall not list a political party's candidate on any ballot within the county unless at least 1
93 candidate for that political party qualifies to appear on at least 1 ballot in the county.

94 Section 5. Amend § 3302, Title 15 of the Delaware Code by making deletions as shown by strike through and
95 insertions as shown by underline as follows:

96 § 3302. Party title, figure or device.

97 (a) The certificates of nomination shall designate a title for the party which the convention or committee
98 represents, ~~together with any simple figure or device~~ by which its lists of candidates may be designated on the ballot. The
99 state convention or committee of any party may designate a simple figure or device by which its list of candidates may be
100 designated and may be used by figure or title or device selected and designated by the state conventions or committee of
101 ~~any party shall be used by~~ that party throughout this State. Only 1 figure or device shall be used by a party at any election.
102 The same title, figure or device shall not be used by more than 1 party, and the party first certifying a name, title, figure or
103 device to the Department shall have prior right to use the same, and provided further that the Democratic Party and the
104 Republican Party shall have exclusive use of such title and no other party shall use the word "Democratic" or "Republican"
105 or any variation thereof in its title. Such figure or device may be the figure of a star, an eagle, a plow, or some such
106 appropriate symbol, but the coat of arms or seal of this State or of the United States or the flag of the United States or of
107 this State shall not be used as such figure or device.

108 (b) In case of a division in any party and claim by 2 or more factions to the same party name or title, figure or
109 device, if the division occurs at a state convention or extends throughout this State, the State Board of Elections shall,
110 within 10 days after any one of them has received the certificates of the contending factions, assemble in Dover, and
111 determine to which faction the name, title or figure properly belongs, giving the preference to the convention held at the

112 time and place designated in the call of the regularly constituted party authorities; if, within 5 days after, the other faction
113 presents no other party name or title, figure or device and certifies the same to the Board, the latter shall again immediately
114 assemble and select some suitable title, figure or device for such faction and the name shall be placed ~~above the list of its~~
115 with its list of candidates on the ballots. If the certificate of the contending factions are not received by the Board in time
116 for them to assemble at Dover before publishing the device and list of candidates in the newspapers, then and in that case
117 the Board shall determine for itself which faction shall be entitled to the name, title, figure or device and shall select a
118 name, title, figure or device for the other faction.

119 Section 6. This Act shall become effective for all elections occurring after December 31, 2023.

SYNOPSIS

This bill seeks to correct a current bias in Delaware's election law impacting the outcome of countless races throughout the state.

Numerous academic analyses have concluded that there is a considerable benefit to a candidate's name appearing first on the ballot.

In one noteworthy legal proceeding on ballot position bias, the California Supreme Court held that "a significant advantage accrues to a candidate by virtue of a top ballot position." The High Court further concluded that without incumbents running, approximately 5% of a candidate's vote share could be attributed to their position on the ballot.

California took action in 1975 to eliminate this flaw by randomizing the listing of candidates on its ballots. The Golden State uses a system where a randomized drawing of letters of the alphabet is conducted, with the resulting order of letters constituting a "randomized alphabet" that is used for determining the order of candidates' names on the ballot.

According to the National Conference of State Legislatures, 15 states have enacted reforms to deal with ballot position bias.

Delaware law currently mandates that one political party always appear in the first column on the machine ballots or on the first line of absentee ballots. This bill proposes eradicating ballot position inequity by adopting a randomized system modeled after the one successfully employed in California for nearly five decades.