

STATES OF JERSEY



COMPOSITION AND ELECTION OF THE STATES: PROPOSED CHANGES (P.139/2020) – THIRD AMENDMENT

Lodged au Greffe on 12th November 2020
by the Connétable of St. Martin

STATES GREFFE

COMPOSITION AND ELECTION OF THE STATES: PROPOSED CHANGES
(P.139/2020) – THIRD AMENDMENT

1 PAGE 3, PARAGRAPH (c) –

After paragraph (c) insert the following paragraph –

“(d) to request the Privileges and Procedures Committee to bring forward the following plans for implementation in time for the 2022 elections:

- (i) the choice of ‘None of the Above’ to be automatically included as a ballot option in any States Assembly election where the number of candidates in a District or Parish does not exceed the number of seats available, with an appropriate formal consequence being provided should this ballot option achieve a plurality of the votes cast.”

CONNETABLE OF ST. MARTIN

Note: After this amendment, the proposition would read as follows –

THE STATES are asked to decide whether they are of opinion –

- (a) to agree that it should establish an Assembly of 49 Members, 37 elected from 9 districts, each choosing a number of representatives based on population, plus the 12 Parish Connétables, and to replace the current Schedule 1 to the States of Jersey Law 2005 as follows –

<i>Constituencies</i>	<i>Number of Representatives to be returned</i>
District 1: St. Helier South Vingtaines de Bas et de Haut de la Ville, St. Helier	4
District 2: St. Helier Central Vingtaine de Rouge Bouillon, St. Helier Vingtaine de Bas du Mont au Prêtre, St. Helier	5
District 3: St. Helier North Vingtaine du Mont Cochon, St. Helier Vingtaine du Mont à l'Abbé, St. Helier Vingtaine du Haut du Mont au Prêtre, St. Helier	4
District 4: St. Saviour Parish of St. Saviour	5
District 5: St. Clement Parish of St. Clement	4

District 6: St. Brelade Parish of St. Brelade	4
District 7: St. Mary, St. Ouen and St. Peter Parish of St. Mary Parish of St. Ouen Parish of St. Peter	4
District 8: St. John, St. Lawrence and Trinity Parish of St. John Parish of St. Lawrence Parish of Trinity	4
District 9: Grouville and St. Martin Parish of Grouville Parish of St. Martin	3

- (b) that an independent Boundaries Commission should be established to begin work after the 2022 elections to make recommendations to ensure that the 9 districts remain compliant with the principles cited in paragraph (a), comprised of a Chair and 3 other members from outside the Island and of 3 Jersey residents, all with relevant skills and experience, and to request the Privileges and Procedures Committee to take the necessary steps to identify, through a process overseen by the Appointments Commission, the proposed membership of the Commission for subsequent approval by the Assembly; and
- (c) to request the Privileges and Procedures Committee to bring forward for debate the necessary legislative changes to alter the composition of the Assembly and create an independent Boundaries Commission in time for the 2022 elections.
- (d) to request the Privileges and Procedures Committee to bring forward the following plans for implementation in time for the 2022 elections:
 - (i) the choice of ‘None of the Above’ to be automatically included as a ballot option in any States Assembly election where the number of candidates in a District or Parish does not exceed the number of seats available, with an appropriate formal consequence being provided should this ballot option achieve a plurality of the votes cast.

REPORT

Introduction

The aim of the Privileges and Procedures Committee's (PPC) proposition is to improve the equity and equality of votes cast in Jersey elections. It is therefore imperative that the Assembly asks the following, vital question: what if voters do not consent to candidates winning despite running unopposed, and if they do not, how should they be represented?

I believe that the inclusion of a None of the Above option on certain ballots would improve our electoral process in the following two ways:

1. It would require every candidate to face the ballot box to determine whether voters' consent to them becoming a Member of the States Assembly; and
2. It would allow voters unhappy with the candidate on offer to submit an official vote in protest, with appropriate weight given to this concern and formal consequences should a plurality be reached.

Background

During the 2018 General Election, 14 of the 49 Members of this States Assembly were elected unopposed, including myself. When I ran for the States Assembly, I did so under the expectation that I would face a challenge. None arrived, and I was therefore elected without the need for a ballot.

In a way, I found this to be disheartening, because I would have gladly campaigned for my seat and fought a proper campaign to win it. Whilst this is not to say that I believe that uncontested elections are illegitimate, I am of the belief that a mechanism should be included in our voting system to ensure that Islanders have the final say in any election, regardless of how many candidates there are, and not allow the final outcome elections to be decided when nominations close.

It is for this reason that I believe that we as an Assembly should consider providing a viable 'None of the Above' option with formalised consequences on all ballots that contain only the minimum number of candidates contesting a seat.

What is None of the Above (NOTA)?

'None of the Above' (NOTA) is a ballot option that is provided in some jurisdictions and organisations around the world to allow voters to indicate their disapproval of candidates in an election. It allows voters to withhold their consent in the same way that they can do so by voting "No" in a referendum.

In a representative, electoral democracy, the powers of a government and the members of the parliament who form it is derived from the consent of its voters. When voters select a candidate in an election, they express their consent for them to become their representative, regardless of whether that candidate wins or not. However, there is no formal process in Jersey for Islanders to demonstrate their refusal to consent to a candidate(s) election for a position in the States Assembly should it be uncontested,

regardless of their feelings towards them. NOTA provides a solution to this by allowing voters to express their disapproval of the candidates on the ballot.

In practice, the inclusion of NOTA would therefore mean that voters would be faced with the following choice on election day:

- The Candidate; or
- None of the Above

It would therefore function in essentially the same way as a referendum question, with the choice being, in effect; “Yes, I consent to the Election of this Candidate” or “No, I do not consent”. Unlike current election processes, the inclusion of NOTA means that it is the voters who have a final say on who their representative is, not those at the nomination evening.

This option was first suggested to the States Assembly within Appendix 5 of the Comité des Connétables’ Comments Paper on the Privileges and Procedures Committee’s proposition Electoral Reform 2020 (P.126/2020). Here, the Comité made note of a number of jurisdictions that use a ‘None of the Above’ or ‘Re-Open Nominations’ process, and suggested that it could be used to prevent candidates from being elected before facing a ballot, as long as “sufficient regulations are in place to prevent the option from being abused”¹.

NOTA is Not an Abstention

One key criticism that may be raised against NOTA is that you can already protest using your ballot though the act spoiling it. The key difference here is that a ballot that is deliberately spoiled is counted equally to an erroneously spoiled ballot, and therefore does not provide us with a clear understanding of the views of the electorate. NOTA provides clarity to this uncertainty by giving those who wish to disapprove of a candidate or simply protest the formal option to do so. NOTA Ballots can then be reliably separated from spoiled ballots and counted accordingly. By providing this clarity, we as a States Assembly can more clearly understand the levels of frustration that voters may have. Furthermore, there is currently no opportunity for voters to state whether they approve or disapprove of a candidate running unopposed, and it is therefore favourable to provide voters with the option to protest the sole candidate should they see fit.

Indonesia

NOTA and variants of it can be found in a number of jurisdictions around the world, including India, Ukraine, Bulgaria and the US State of Nevada. However, it is Indonesia's regional elections that are perhaps the most useful model for the States Assembly to consider, thanks to their focus on single-candidacy elections and formal consequences.

In these elections, single-candidacy elections are not uncommon. In order to ensure that voters are able to express whether or not they consent to this candidate’s election, Indonesia’s electoral laws provide voters with the choice to either vote for the candidate or to tick an empty box next to them, commonly referred to as the “Empty Box” or “Kotak Kosong”.²

¹ [P.169/2019 Com.](#)

² [Nur Hedayat Sardini, The Phenomena of “An Empty Box” and the Resistance of Pati People to the Oligarchy Domination in the Local Election Pati, ICENIS 2018](#)

Candidates must receive over 50% of the votes cast, otherwise the election will be repeated. As an example, the lone candidate in the 2018 Makassar Mayoral Election, Munafri Arifuddin, was not elected after 53% voted in favour of the Empty Box³; around 35,000 votes of the 565,040 cast⁴. The Empty Box thus carries a formal consequence if it wins.

This is unlike in India and Nevada, where a plurality of votes for the NOTA option will result in the second-placed (first-placed actual) candidate winning the election. India's NOTA option has itself been criticised as being a "symbolic instrument to express resentment"⁵, in that those elected often have no reason to respond to NOTA voters given the lack of formal consequences should it reach a plurality in an election. Because of this, I do not believe that the Indian model is a desirable option.

It goes without saying that the differences between the electorate of Jersey and the electorate of Indonesia are stark. However, we can clearly see that voters are able to find substantial utility from a NOTA-like option and make effective use of it in a way that we may be wise to follow. Furthermore, the inclusion of formal consequences for those losing to this Empty Box provides us with a useful case study when considering what would happen should NOTA win a plurality in a Jersey election.

What if NOTA Wins?

I wish to leave this outcome deliberately ambiguous in order to allow the Privileges and Procedures Committee the chance to consult Islanders and determine the most appropriate formal consequences should NOTA reach a plurality in any election. However, I can conceive of several potential scenarios should this occur, including the following:

1. The losing candidate is permitted to sit in the States Assembly as a temporarily elected member, but will be subject to a confirmatory by-election several months later, thereby preventing the seat from becoming vacant;
2. The outgoing States Member is invited to fill the vacant seat until a by-election is organised to permanently fill the vacancy;
3. A member of a Parish municipality, such as a Procureur, is invited to temporarily fill the vacancy, but is prevented from running in the subsequent by-election;
4. The seat is left vacant until a new election is held at an appropriate time.

Whilst each option presents a number of possible benefits and weaknesses, I ultimately do not believe that it would be appropriate to endorse any option until Islanders make their views on which formal consequence they believe would be most appropriate.

Conclusion

³ Rusdianto, Eko; The Only Candidate in the Makassar Mayoral Race Just Lost to an Empty Box, Vice News, 11 July 2018

⁴ Zainuddin, Hasbi; Results of Recap 15 Makassar Subdistricts: Empty Columns Win, terkini.id, 4 July 2018 (in Indonesian; translated using Google Translate)

⁵ Vachana, V.R., Roy, Maya; NOTA and the Indian Voter, thehindu.com, 28 February 2018

Overall, NOTA is about ensuring that Islanders are kept at the sovereign heart of the Island's democratic process, and not in the periphery. By adopting this ballot option, we can ensure that no candidate will avoid facing the ballot box in future elections, and that Islanders are given the tools they need to express whether or not they truly consent to who represents them in this Assembly.

Bibliography

[Comité des Connétables, Electoral Reform 2020 \(P.169/2020\): Comments, 31 January 2020](#)

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[Zainuddin, Hasbi; Results of Recap 15 Makassar Subdistricts: Empty Columns Win, terkini.id, 4 July 2018 \(in Indonesian; translated using Google Translate\)](#)

Financial and manpower implications

There are no financial and manpower implications arising from this amendment.