

Date of Hearing: April 29, 2021

ASSEMBLY COMMITTEE ON ELECTIONS

Marc Berman, Chair

AB 446 (Mayes) – As Amended April 19, 2021

SUBJECT: Elections: political party qualifications.

SUMMARY: Reduces the number of signatures needed on a petition to form a new political party by 70%. Permits a body that is attempting to form a new political party to appeal if the Secretary of State (SOS) rejects the proposed party's name. Allows the name of proposed political party that fails to qualify as a party within two years to be eligible for use by a different political body in the future. Specifically, **this bill:**

- 1) Reduces the number of signatures needed on a petition to form a new political party from 10% of the entire vote of the state at the last preceding gubernatorial election to 3% of the entire vote of the state at the last preceding gubernatorial election.
- 2) Permits a temporary officer of a political body that is seeking to qualify a new political party to appeal to an administrative law judge if the SOS rejects the proposed party's designated name on the grounds that it is too similar to the name of an existing party so as to mislead the voters, or on the grounds that it conflicts with the name of an existing party or political body, as specified.
- 3) Provides that the party name of a political body that has not yet qualified as a political party, and that is considered to have abandoned its attempt to qualify as a political party pursuant to existing law, is eligible for use by a future political body with newly elected temporary officers two years after the date that the first political body filed a formal notice with the SOS that it intended to qualify a political party with that name.
- 4) Limits the situation in which previously filed voter registration affidavits can be counted for the purpose of the qualification of a political party by providing that a voter's registration will count toward a political body's qualification as a political party only if the registration declared affiliation with the political body in the two years prior to the date that the political body filed its notice with the SOS that it intended to qualify as a party.
- 5) Makes technical changes.

EXISTING LAW:

- 1) Requires a group of electors that desires to qualify a new political party to form a political body by doing the following:
 - a) Holding a caucus or convention at which temporary officers are elected and a party name designated. Prohibits the designated party name from being so similar to the name of an existing party so as to mislead the voters, and prohibits the name from conflicting with the name of any existing party or political body that has previously filed notice of an intent to qualify a political party with the SOS.

- b) Filing formal notice with the SOS that the political body has organized, elected temporary officers, and declared an intent to qualify a political party, as specified. Requires the notice to include the names and addresses of the temporary officers of the political body.
- 2) Permits a political body, within the first 70 days after filing a formal notice with the SOS of its intent to qualify a political party, to request that the SOS count towards its qualification as a political party any voter registration affidavits in which voters declared affiliation with the political body prior to the date the political body filed its formal notice with the SOS.
- 3) Provides that a political party is qualified to participate in a primary election under any of the following conditions:
- a) At the last preceding gubernatorial primary election, the sum of the votes cast for all of the candidates for an office voted on throughout the state who disclosed a preference for that party on the ballot was at least 2% of the entire vote of the state for that office. Permits a party to inform the SOS that it declines to have the votes cast for a candidate who has disclosed that party as the candidate's party preference on the ballot counted toward the 2% qualification threshold, as specified.
 - b) On or before the 135th day before a primary election, it appears to the SOS that voters equal in number to at least 0.33% of the total number of voters registered on the 154th day before the primary election have declared their preference for that party. Provides, for these purposes, that a person whose party preference is designated as "Unknown," as specified, shall not be counted for purposes of determining the total number of voters registered on the 154th day before the primary election.
 - c) On or before the 135th day before a primary election, there is filed with the SOS a petition signed by voters, equal in number to at least 10% of the entire vote of the state at the last preceding gubernatorial election, declaring that they represent a proposed party, the name of which shall be stated in the petition, which proposed party those voters desire to have participate in that primary election, as specified.
- 4) Provides that a political party is qualified to participate in a presidential general election under any of the following conditions:
- a) The party was qualified to participate and participated in the presidential primary election preceding the presidential general election pursuant to existing law.
 - b) At the last preceding gubernatorial primary election, the sum of the votes cast for all of the candidates for an office voted on throughout the state who disclosed a preference for that party on the ballot was at least 2% of the entire vote of the state for that office. Permits a party to inform the SOS that it declines to have the votes cast for a candidate who has disclosed that party as the candidate's party preference on the ballot counted toward the 2% qualification threshold, as specified.
 - c) On or before the 102nd day before the presidential general election, it appears to the SOS that voters equal in number to at least 0.33% of the total number of voters registered on the 123rd day before the presidential general election have declared their preference for

that party. Provides, for these purposes, that a person whose party preference is designated as “Unknown,” as specified, shall not be counted for purposes of determining the total number of voters registered on the 123rd day before the presidential general election.

- d) On or before the 135th day before the presidential general election, there is filed with the SOS a petition signed by voters equal in number to 10% of the entire vote of the state at the last preceding gubernatorial election, declaring that they represent a proposed party, the name of which shall be stated in the petition, which proposed party those voters desire to have participate in that presidential general election, as specified.
- 5) Provides that a political body that attempted to qualify to participate in a primary election or a presidential general election, and that failed to qualify by the deadline to qualify as a party for that election, shall be considered to have abandoned its attempt to qualify as a political party and shall be ineligible to participate in that election.
- 6) Provides that whenever the registration of any party that qualified in the previous primary or general election falls below 1/15 of 1% of the total state registration, that party shall not be qualified to participate in the primary or presidential general election but shall be deemed to have been abandoned by the voters.
- 7) Requires each political party to have its qualifications reviewed by the SOS upon the occurrence of the gubernatorial election. Provides that a party that does not meet the standards for qualification, as described above, is prohibited from participating in any primary or presidential general election. Requires a party that loses qualification, but seeks to regain that qualification, to file a notice with the SOS indicating that it intends to regain qualification.

FISCAL EFFECT: Unknown. State-mandated local program; contains reimbursement direction.

COMMENTS:

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

The act of voting is our most powerful form of free speech. Our founders envisioned a system of representative democracy where individuals could speak collectively to elect those who best represented their political and philosophical preferences. While a flurry of political parties marked our nation's infancy, since the 1850s elections have been dominated by just two parties. This does not reflect Californians current political makeup. Calls for new options reverberate through the base of both parties, and a growing number of Californians do not identify with either political class. The lack of options is a manufactured choice. California law gives immense advantages to existing organized political parties, while creating multiple barriers that impede new movements. For example, the current petition process to qualify a new party requires roughly 85 times more signatures than it takes to remain as an active party. California holds itself out as a bastion of new and transformative ideas and must take steps to expand political

participation and enfranchise the voices of new political movements that represent a more diverse voter base.

- 2) **Political Party Qualification:** As detailed above, existing law permits a political body to use one of two methods to qualify as a political party. The first method is the voter registration method. In order to qualify a new political party by the voter registration method, existing law requires that voters equal in number to at least 0.33% of the total number of registered voters (excluding voters whose party preference is recorded as “unknown”) complete a voter registration affidavit declaring their preference for the political body intending to qualify as a political party by a specified deadline. A political body that sought to qualify via the voter registration method for the November 2020 presidential general election must have had 68,672 voters registered as disclosing a preference for that political body. While six political bodies filed paperwork in an attempt to qualify as political parties for the purposes of the November 2020 presidential general election, none of them qualified, and only one political body had more than 250 registrants (the Common Sense Party, with 10,725 registrants). While it is impossible to know until the 154th day before the 2022 statewide primary election the exact number of voters who must be registered as disclosing a preference for a political body in order for that political body to qualify as a political party for that primary election, based on the most recent statewide report of voter registration from the SOS, it appears likely that a political body that is seeking to qualify as a political party using the voter registration method likely would need between 70,000 and 75,000 voters to register as preferring that political body in order for the body to qualify as a political party for the 2022 statewide primary election.

The test for a political party to qualify by the registration method has been updated twice in the last decade in response to other elections policy changes. First, AB 2351 (Gordon), Chapter 903, Statutes of 2014, changed the number of registered voters needed for a political party to qualify from 1% of the entire vote of the state at the last preceding gubernatorial election to 0.33% of the total number of registered voters. This legislation, which was enacted in response to California’s implementation of the “top two” primary election system, was intended in part to help alleviate the challenges smaller parties face when trying to maintain their political party qualification status (the voter registration test described above applies not only to political bodies that are trying to form *new* political parties, but also is used as a test to allow existing political parties to maintain their status as qualified parties). The second notable change in the voter registration test came as part of SB 837 (Budget & Fiscal Review Committee), Chapter 32, Statutes of 2016, which was a budget trailer bill. Among other provisions, SB 837 provided that when a voter’s registration does not include a political party preference, that the voter’s political party preference will be designated as “Unknown,” and that voters with an “Unknown” party preference are removed from the total number of registered voters when determining whether a political party meets the voter registration method threshold of 0.33% of the total number of registered voters in the state. This provision was enacted in response to concerns that voters who were registered to vote at the Department of Motor Vehicles through the automated voter registration procedures established by the California New Motor Voter Program (AB 1461 (Gonzalez), Chapter 729, Statutes of 2015) would be less likely to choose a political party, thereby reducing the proportion of voters who were registered with a political party and making it harder for smaller parties to maintain their qualified party status. As noted above, a political body must have had 68,672 voters registered with the political body in order to qualify as a political party for the November 2020 election. In the absence of the two bills outlined above, a

political body would have needed 127,126 registered voters to qualify. This bill does not seek to change the threshold for a political body to qualify as a political party through the voter registration method.

The second method used to qualify as a new political party is by petition. In order to qualify as a new political party by petition, current law requires the SOS, no later than 135 days prior to the primary election or the presidential general election, to determine if a political body intending to qualify collected petition signatures of registered voters equal to 10% of the votes cast at the last gubernatorial election. A political body that sought to qualify via the petition method for the November 2020 presidential general election must have collected 1,271,255 valid petition signatures of registered voters. (The same number of valid petition signatures would apply to a political body seeking to qualify as a political party via the petition method for the 2022 statewide primary election.) This bill proposes to reduce the number of signatures that a political body needs to qualify by the petition method to a number of registered voters equal to 3% of the votes cast at the last gubernatorial election. For a political body seeking to qualify as a political party via the petition method for the 2022 statewide primary election, that would mean that the body would need 381,377 valid petition signatures, rather than the 1,271,255 valid signatures that are required under existing law. The threshold for a political body to qualify as a political party through the petition method has not changed in at least several decades.

According to information from the SOS, since 1968, seven new political parties have qualified to participate in California elections. Six of those parties (the American Independent Party and the Peace & Freedom Party in 1968; the Libertarian Party in 1980; the Green Party in 1992; and the Natural Law Party and the Reform Party in 1995) qualified using the voter registration method. (The Peace & Freedom Party lost its status as a political party in 1998, but regained its status in 2003 using the voter registration method.) The most recent political party to qualify under California law—the Americans Elect Party—qualified in 2011 using the petition method. According to information provided by the Americans Elect Party to the SOS, the purpose of the Americans Elect Party was “to create a process for the American people by Internet-based convention to directly nominate qualified persons for President and Vice President of the United States of America for election by the American people in November 2012.” The Americans Elect Party did not end up nominating candidates for President and Vice President in 2012, and it lost its status as a qualified political party in 2015.

- 3) **Significance of Qualification as a Political Party:** In February 2009, the Legislature approved SCA 4 (Maldonado), Res. Chapter 2, Statutes of 2009, which was enacted by the voters as Proposition 14 on the June 2010 statewide primary election ballot. Proposition 14 implemented a top two primary election system in California for most elective state and federal offices. At primary elections, voters are able to vote for any candidate, regardless of party, and the two candidates who receive the most votes, regardless of party, advance to the general election.

Prior to the passage of California’s top two primary election system, primary elections for elective federal and state offices in California generally served the purpose of allowing each political party to choose its nominee for each office that would appear on the ballot in the general election. Accordingly, each political party that participated in the primary election was entitled to have its nominee for most elective federal and state offices appear on the

ballot in the general election.

With the adoption of the top two system, however, it is no longer the case that each political party is entitled to have its nominees for most elective federal and state offices appear on the general election ballot. As a result, the primary election no longer serves primarily as a means for choosing political parties' nominees; instead, it is used to narrow the field of candidates for elective federal and state offices to the two candidates for each office who receive the most votes in the primary election.

As a result of the top two primary system, qualified political parties have fewer rights and privileges than they did under the prior primary election system. Nonetheless, becoming a qualified political party still confers several benefits under state law, including (1) the ability to have a state-conducted presidential primary election; (2) the ability to have state-conducted central committee elections; (3) the ability for candidates to use the name of that political party as their party preference that appears on the ballot in races for federal and most state elective offices; (4) the ability for the party to have a list of candidates that it endorsed for federal and most state elective offices appear in the voter information guide; (5) the ability for the party to make unlimited contributions to candidates for elective state office; and, (6) the political party's name is listed as an option for voters to select on the voter registration form.

- 4) **Appeal Process and Possible Amendments:** One provision of this bill would allow a political body, if the SOS rejects the proposed name of the political party that the body is seeking to form, to appeal that rejection to an administrative law judge. According to the author, this provision is intended to ensure that a political body has a formal process to seek reconsideration of the SOS's rejection if the body feels that the SOS's determination was incorrect.

While state law permits various determinations made by administrative agencies to be appealed at a hearing before an administrative law judge, that process may be more formal and cumbersome than is necessary to accomplish the author's policy goals. Instead, the author and the committee may wish to consider amendments to create a process within the office of the SOS by which a political body could seek reconsideration when the SOS rejects the body's proposed political party name. Under such a procedure, if the SOS formally rejects a proposed political party name, the SOS would be required to provide the reason for the rejection in writing. The political body would have 30 days to request that the SOS reconsider the rejection, and would be able to provide information about why the body believes that the rejection was incorrect. The SOS would then have 30 days to act on the request for reconsideration.

- 5) **Reuse of Proposed Party Names and Possible Amendments:** As detailed above, existing law prohibits a political body that is seeking to form a new political party from choosing a party name that conflicts with the name of an existing party, or with the name of any political body that has previously filed notice of an intent to qualify a political party with the SOS. In practice, this means that once a name has been designated for a new political party that is seeking to qualify, that name cannot be used for any future unrelated effort, even if the original effort to form a party using that name failed and even if it has been decades since that failed effort to qualify a party. (A political body that seeks to form a new political party and fails, however, can reuse the same party name for *its* future efforts to form the new

party.)

According to the author, the policy of prohibiting the reuse of proposed party names—even where those proposed names were used for abandoned efforts to form political parties years or even decades ago—creates barriers to forming new political parties, both because it is difficult to determine which party names are and aren’t available, and also because it limits the choice of names that can be used.

As currently drafted, this bill allows the party name of a political body that has not qualified as a political party to be eligible for use by a future political body with newly elected temporary officers two years after the date that the first political body filed a formal notice with the SOS that it intended to qualify a political party with that name. Notwithstanding the author’s policy goals, it is not clear that this two-year period is workable in the framework of California’s process for political parties to qualify. For example, a political body can seek to qualify a political party for a future election that is more than two years away; in fact, one political body has filed paperwork to attempt to qualify as a party for the 2024 primary election, and two additional political bodies have filed paperwork to attempt to qualify as parties for the 2024 presidential general election. As currently drafted, this bill would make the names of those proposed political parties available for use by other entities even before the deadline for those proposed political parties to qualify. Furthermore, allowing the reuse of proposed party names on such a short timeline could create confusion; voters familiar with a previously-unsuccessful effort to form a new political party with a specific name who registered to vote with that party could unknowingly end up supporting the effort of an entirely different group that is seeking to form a party using the same name.

To avoid these issues while accommodating the author’s policy goals, the author and the committee may wish to consider amendments that would make a proposed political party name available for reuse two years after the date that a political body is considered to have abandoned its attempt to qualify as a political party pursuant to existing law. If the same political body is still actively attempting to qualify as a political party, it would have a two-year period from the date that it fails to qualify as a party to resubmit a new effort using the same proposed party name. If the political body does not resubmit a new effort during that two-year period, the party name would become available for use for other future efforts to create new political parties.

- 6) **“Look Back” Period and Possible Amendments:** When a political body files a notice with the SOS seeking to form a new political party, existing law allows that body to request that the SOS count towards its qualification as a political party any voter registration affidavits in which voters declared affiliation with the political body prior to the date the political body filed its formal notice. This “look back” period is indefinite; even if a person declared their affiliation with a specific political party 10 years before a political body sought to qualify a party using that name, the voter’s registration would be counted toward that qualification effort.

Given that existing law prohibits the reuse of proposed political party names, the indefinite duration of this look back period does not create significant policy issues. If proposed political party names can be reused, however, then maintaining an indefinite look back period would create policy concerns. Essentially, such a policy would allow a voter who registered to vote in support of one body’s efforts to qualify a political party to be counted

towards the qualification of an entirely separate effort to create a political party with that same name in the future (assuming that the voter did not update the voter's political party preference on the voter's registration during that period of time). To address this issue, this bill limits the duration of the look back period to those voters who registered with a party preference in the two years before the political body files its paperwork with the SOS seeking to form the new political party.

While the two-year lookback period proposed by this bill helps address the potential that a voter's registration could be counted towards the qualification of a political party that the voter did not support, it may still allow for such situations to occur. In light of this fact, the author and the committee may wish to consider amendments to this bill that would decrease the look back period to one year. With those amendments—coupled with the suggested amendments related to the reuse of political party names that are detailed above—this bill would ensure that voters who registered to vote using the name of a proposed political party in the year following a failed effort to qualify a party using that name would not be counted towards the qualification of a *future* political party with the same name.

- 7) **Maintaining Qualified Political Party Status:** Once a political party has qualified, current law permits the party to maintain its qualified status by retaining registrants representing at least 1/15 of 1% of the total state registrations and either having its candidates for an elective statewide office receive at least 2% of the entire vote of the state for that office at the preceding gubernatorial primary election, or retaining statewide registrations equaling at least 0.33% of the total number of registered voters in the state (excluding voters whose party preference is recorded as “unknown”).

Six political parties were qualified to participate in the November 2020 presidential general election: the Democratic Party (9,691,855 registrants); the Republican Party (5,018,332 registrants); the American Independent Party (598,274 registrants); the Libertarian Party (177,183 registrants); the Peace and Freedom Party (96,803 registrants); and the Green Party (79,577 registrants). Based on the results of the 2018 gubernatorial primary election, five of those six parties have qualified to participate in the 2022 primary election as long as they retain registrations representing at least 1/15 of 1% of the total state registrations (although the exact number cannot be known until next year, a party that had at least 16,000 registrants almost certainly would meet that threshold). The one party that did not qualify for the 2022 primary election based on the result of the 2018 gubernatorial primary election is the American Independent Party, which did not have any candidates for elective statewide office in the 2018 gubernatorial primary election. Nonetheless, the American Independent Party almost certainly will remain a qualified political party for the 2022 primary election given the number of voters who are registered with the party.

- 8) **Amendments Sought:** Two political party organizations—the Green Party of Los Angeles County (GPLAC) and the Green Party of Sacramento County (GPSC)—have taken a “support if amended” position on this bill. In its letter (which is joined by GPSC), GPLAC writes that it supports this bill's provisions to lower the threshold for political parties to qualify by petition, to authorize a political body to appeal the SOS's rejection of a proposed political party name, and to allow for the reuse of proposed political party names. Its letter further notes, however, that GPLAC has the following concerns:

While AB 446 will make it easier for... new parties to gain ballot status, that improvement is mostly cosmetic, because existing law makes it extremely difficult for all but the most well-funded candidates to actually qualify for the ballot. Only a total of 39 minor party state and federal candidates have qualified for the primary election ballot since top two elections were implemented, meaning in practical terms California has more than two political parties in name only. AB 446 does nothing to address this. So the result is that under AB 446, California may have more qualified parties, but not actually more voter choice.

Even if a few candidates from new parties are able to qualify for the primary election ballot, because candidate statement fees are so high, few of them are likely to be able to afford a candidate statement of sufficient length to present their views and inform the voters. This same problem already exists for candidates from California's four legacy 'minor' parties.

To address these concerns, GPLAC seeks amendments to this bill that would (1) lower the filing fee and the signatures-in-lieu threshold to qualify for the ballot for state and federal office, and (2) lower the per-word cost of candidate statements that appear in state and county voter information guides for candidates for state and federal office.

A third political party organization—the Peace and Freedom Party of California—has taken an “oppose unless amended” position on this bill. In its letter of opposition, the Peace and Freedom Party of California expresses its disappointment that this bill was amended to remove provisions that previously appeared in the bill that would have lowered the number of votes that a party's candidates for an elective statewide office need to receive at a gubernatorial primary election in order for the party to remain qualified (the Green Party organizations noted above similarly express disappointment that this provision was removed from the bill). The Peace and Freedom Party of California's letter further states:

AB 446 also reduces the number of signatures that would be required to qualify a party for an election to 3% of the entire statewide vote at the last preceding gubernatorial election. This section which reduces the qualification for party ballot status, in our opinion, is fine if coupled with the removed section, or even another percent involving a lesser reduction of the current 2%, in order to make it easier for smaller parties to remain on the ballot once qualified. While more parties are healthy, and in fact desirable, it is also more difficult at the 2% level to maintain ballot status as the number of parties increases. This may have the effect of parties being qualified and parties being removed routinely. Our concerns would be not only the confusion among voters to a constant churn of parties coming onto the ballot and then going back off the ballot, but also the extra work put upon county election officials trying to maintain an ever-changing number of parties.

Peace and Freedom Party suggests that the 0.5% vote test be restored along with our support for AB 446. Even a reduction to another percent that is lower than the current 2% may lead to our support.

REGISTERED SUPPORT / OPPOSITION:

Support

Green Party of Los Angeles County (if amended)
Green Party of Sacramento County (if amended)

Opposition

Peace and Freedom Party of California (unless amended)

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