
**SENATE COMMITTEE ON
ELECTIONS AND CONSTITUTIONAL AMENDMENTS**
Senator Steven Glazer, Chair
2021 - 2022 Regular

Bill No: AB 446 **Hearing Date:** 7/12/21
Author: Mayes
Version: 5/27/21
Urgency: No **Fiscal:** Yes
Consultant: Nicolas Heidorn

Subject: Elections: political party qualifications.

DIGEST

This bill reduces the number of signatures needed on a petition to form a new political party from 10% to 3% of the vote at the last gubernatorial election. The bill allows the name of a proposed political party that fails to qualify as a party to be eligible for use by a different political body in the future, as specified. It also permits a body that is attempting to form a new political party to request reconsideration if the Secretary of State (SOS) rejects the proposed party's name.

ANALYSIS

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.

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) Specifies that affidavits of registration in which voters declared affiliation with a political body before the date that political body filed formal notice with the SOS of its intent to qualify as a political party may be counted toward the political body's qualification as a party in either of the following circumstances:
 - a) For a political body that has previously filed one or more formal notices, the body provides from at least one of the previous temporary officers of the political body a signed affidavit stating that it is the same political body that voters declared affiliation with on their affidavits of registration.
 - b) For a political body for which the current formal notice is its first formal notice, the political body provides from at least one of its current temporary officers a signed affidavit stating that it is the same political body that voters declared affiliation with on their affidavits of registration.
- 3) Provides that a political body that failed to qualify as a political party by the deadline for a party to qualify for a primary election or a presidential general election, and as set forth in a list compiled by the SOS showing the number of voters in the state by party preferences, is ineligible to participate in the following election, as specified. Provides that such a political body is not considered to have abandoned its attempt to qualify as a political party if the body files a new notice of intent to qualify as a political party within 2 years of becoming ineligible to participate in the following election, as specified.

- 4) Provides that the party name of a political body that has not qualified as a political party and is considered to have abandoned its attempt to qualify as a political party is eligible for use by a future political body with newly elected temporary officers, as specified.
- 5) Requires the SOS, if the SOS rejects a designated political party name proposed by a political body on the grounds that it is identical to or so similar to the name of an existing political party or political body so as to mislead voters, to notify the temporary officers of the proposed party in writing of the rejection, and to explain the reason why the designated party name was rejected. Permits a temporary officer of the political body, within 30 days of receiving notification of the rejection, to request that the SOS reconsider the rejection, as specified. Requires the SOS, within 30 days of receiving a request for reconsideration, to approve or reject the designated party name and notify the temporary officers in writing of that determination.
- 6) Makes technical changes.

BACKGROUND

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, it appears likely that a political body that is seeking to qualify as a political party using the voter registration method 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. This calculation is based on the most recent statewide report of voter registration from the SOS indicating there are around 22.1 million registered voters in California, excluding around 125,000 registered voters whose party preference is listed as “unknown.”

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. According to an analysis by the Assembly Elections Committee, 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 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 existing threshold for a political body to qualify as a political party through the petition method has not changed in at least several decades.

Political Party Qualification Attempts. 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.

The vast majority of political bodies fail to ever qualify as political parties, including every political body attempting to qualify over the past few election cycles. For example, six political bodies failed to qualify for the November 2020 general election, five for the March 2020 primary, and eight for the June 2018 primary.

According to the SOS, there are presently ten political bodies attempting to qualify as a political party for the following elections:

- *June 2022 Primary Election:* American Moderate Party (no registrants as of the February 2021 report of registration), American Solidarity Party (117 registrants), California National Party (425 registrants), Common Sense Party (8,222 registrants), Constitution Party of California (no registrants), Peoples Party (332 registrants), and Rally West Party (15 registrants).
- *March 2024 Primary Election:* California Women’s Party (1 registrant).
- *November 2024 General Election:* The Hogwash Party (no registrants) and One Party (2 registrants).

Significance of Qualification as a Political Party. In February 2009, the Legislature approved SCA 4 (Maldonado), Resolution 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. (Elections for President and Superintendent of Public Instruction are notable exceptions.) Under the top two primary, voters are able to vote for any candidate in the primary, regardless of the voter’s or the candidate’s party affiliation, 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 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 (which is not conducted using the top two primary); (2) the ability to have state-conducted party 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.

Reuse of Proposed Party Names. 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.

This bill would permit a new political body to reuse a proposed political party name after the previous political body is considered to have abandoned its attempt to qualify as a political party. Under the bill, once a political body fails to qualify for an election, the political body has two years to file a new notice of intent to qualify as a party, in which case it is not considered to have abandoned its attempt to qualify and its proposed political party name is not eligible for reuse by a new political body. If the political body does not file a new notice of intent during that two-year period, the party name would become available for other future efforts to create new political parties.

The "Look Back" Period for Counting Prior Registrants. 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 unrelated 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 limit the potential for abuse, this bill provides that previously-filed voter registration affidavits can be counted for the purpose of the qualification of a political party only if the political body that is attempting to qualify provides a signed affidavit from at least one previous temporary officer stating that it is the same political body that voters declared affiliation with.

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 & 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.

COMMENTS

- 1) 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. California law gives immense advantages to existing organized political parties, while creating multiple barriers that impede new movements. This measure takes steps to expand political participation and enfranchise the voices of new political movements that represent a more diverse voter base.

- 2) Former Political Party Names. AB 446 changes existing law to allow the reuse of "the party name of a political body that has not qualified as a political party" and has abandoned its attempt to qualify as a political party, which would likely include a formerly qualified political party that lost its qualification and abandoned its attempt to re-qualify. The bill provides that a political body has abandoned its attempt to qualify as a party if it does not file another notice of intent to qualify within two years of becoming ineligible to participate in an upcoming election, as specified.

As detailed above, most political bodies that attempt to qualify as a political party do not succeed. Many of these political bodies will convince only a few hundred voters to register with their proposed party, compared with the over 22 million registered voters in the state as a whole. In such instances, allowing the reuse of a former political body's proposed party name after even a relatively short period of time is unlikely to cause significant voter confusion, since so few voters are aware of most political bodies' efforts to qualify as a party to begin with.

However, this may not be the case with a political body that did successfully qualify as a party, only to later fail to re-qualify and ultimately abandon its efforts at regaining party status. A formerly qualified party, at some point, likely either had tens of thousands of voters registered with that party or collected hundreds of thousands of petition signatures to qualify or maintain its qualification as a party. The party also likely fielded candidates registered with that party for state and federal office. It is therefore more likely with a formerly qualified party than with a political body that never qualified that voters may have an impression of the values and policies of the prior party, which may not align with the values and policies of a new, unrelated political body seeking to use that same name. The potential for confusion would likely be highest for prior registrants of the defunct party, who may not have re-registered after the party lost its qualified status.

To avoid voter confusion, the committee may wish to consider prohibiting the reuse of the name of a formerly qualified political party for a longer duration than the two year period after a political body becomes ineligible to participate in an election and does not renew its attempt to qualify.

- 3) Argument in Opposition. In a letter opposing AB 446, the Peace & Freedom Party of California objected to an amendment to the bill removing a provision previously appearing in the bill which would have lowered, from 2% to 0.5% of the statewide vote at a gubernatorial primary election, the number of votes that a party's candidates for an elective statewide office need to receive in order for the party to remain qualified. The Peace & Freedom Party states, in part, the following:

AB 446 ... 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.

RELATED/PRIOR LEGISLATION

SB 837 (Budget & Fiscal Review Committee), Chapter 32, Statutes of 2016, discussed above, 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.

AB 2351 (Gordon), Chapter 903, Statutes of 2014, discussed above, 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.

SCA 4 (Maldonado), Resolution Chapter 2, Statutes of 2009, discussed above, proposed a top two primary election system in California, which would replace party nomination primaries for most elective state and federal offices. SCA 4 was enacted by the voters as Proposition 14 on the June 2010 statewide primary election ballot.

PRIOR ACTION

Assembly Floor:	70 - 4
Assembly Appropriations Committee:	13 - 3
Assembly Elections Committee:	6 - 0

POSITIONS

Sponsor: Author

Support: None received

Oppose: Peace & Freedom Party of California

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