
THIRD READING

Bill No: **SB 46**
Author: Umberg (D)
Amended: 1/5/26
Vote: 21

SENATE JUDICIARY COMMITTEE: 11-2, 1/13/26

AYES: Umberg, Allen, Ashby, Caballero, Durazo, Laird, Reyes, Stern, Wahab, Weber Pierson, Wiener
NOES: Niello, Valladares

SENATE ELECTIONS & C.A. COMMITTEE: 4-1, 1/13/26

AYES: Cervantes, Allen, Durazo, Umberg
NOES: Choi

SENATE APPROPRIATIONS COMMITTEE: 5-2, 1/22/26

AYES: Caballero, Cabaldon, Grayson, Richardson, Wahab
NOES: Seyarto, Dahle

SUBJECT: Presidential elections: qualifications for office

SOURCE: Author

DIGEST: This bill prohibits the California Secretary of State (SOS) from placing the name of a candidate for U.S. President or Vice President on a ballot, unless the candidate affirms, under oath, that the candidate meets the requirements for one of the aforementioned offices and the SOS does not have a reasonable suspicion the candidate is lying.

ANALYSIS:

Existing law:

- 1) States, pursuant to the U.S. Constitution, that “[n]o person except a natural born citizen, or a citizen of the United States, at the time of adoption of this Constitution, shall be eligible to the office of President; neither shall any person

be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.”

- 2) States, pursuant to the U.S. Constitution, that “[n]o person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.”
- 3) States, pursuant to the U.S. Constitution, that “[n]o person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once.”
- 4) States, pursuant to the U.S. Constitution, that when electors of a state meet and vote “for President and Vice President, one of whom, at least, shall not be an inhabitant of the same state with themselves...”
- 5) States, pursuant to the U.S. Constitution, that “[t]he executive power shall be vested in a President of the United States of America. He shall... be elected, as follows... Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the state may be entitled in the Congress...”
- 6) Permits, pursuant to the California Constitution, the Legislature to provide for partisan elections for presidential candidates, including a “presidential primary whereby the candidates on the ballot are those found by the SOS to be recognized candidates throughout the nation or throughout California for the office of President of the U.S., and those whose names are placed on the ballot by petition, but excluding any candidate who has withdrawn by filing an affidavit of noncandidacy.”
- 7) Provides specific procedures by which the Democratic Party, the Republican Party, the American Independent Party, the Peace and Freedom Party, and the Green Party to participate in a presidential primary election.

- 8) Requires the SOS to place the name of a candidate seeking the nomination of the Democratic Party, the Republican Party, the American Independent Party, the Peace and Freedom Party, or the Green Party for the office of President on the presidential primary ballot when the SOS determines that the candidate is generally advocated for or recognized, as defined, throughout the U.S. as actively seeking the nomination of the party.
- 9) Requires a candidate to submit a form to the SOS proving a candidate meets the criteria defining a “general advocated for or recognized candidate” or “recognized candidate.”
- 10) Requires the SOS to announce and distribute to the news media a list of candidates the SOS intends to place on the ballot on or before the 88th day preceding a presidential primary. The SOS may add names to this list but not delete any.
- 11) Requires the SOS to place on the general election ballot the names of the candidates for President and Vice President that the political parties have selected.
- 12) Permits an elector to seek a writ of mandate alleging that an error or omission has occurred, or is about to occur, in the placing of a name on, or in the printing of, a ballot, county voter information guide, state voter information guide, or other official matter, or that any neglect of duty has occurred, or is about to occur. A peremptory writ of mandate shall issue only upon proof of both of the following:
 - a) That the error, omission, or neglect is in violation of the Elections Code or the California Constitution.
 - b) That issuance of the writ will not substantially interfere with the conduct of the election.

This bill:

- 1) Reiterates the qualifications contained in the U.S. Constitution for serving as President and further notes that these apply to the Vice President.
- 2) Prohibits the SOS from certifying and placing the name of any candidate for President or Vice President on a primary or general election ballot, if the candidate does not affirm, under oath, that the candidate will fully meet the qualifications to be elected to and hold the office of President or Vice President.

- 3) Directs the SOS to investigate whether a candidate meets the qualifications, if the SOS has reasonable suspicion based on articulable fact that a candidate for President or Vice President does not meet the constitutional qualifications for the office. The SOS may request the candidate provide proof of constitutional eligibility.
- 4) Allows a candidate, who the SOS does not certify and therefore does not announce to include on a ballot for President or Vice President, to petition the Sacramento Superior Court to challenge the SOS's determination. The SOS has the burden to sustain the candidate's exclusion from the ballot by a preponderance of the evidence. (A preponderance of the evidence means that the claim is more likely true than not based on the evidence presented to the court.)
- 5) Permits an elector, which is any person qualified to be a California voter, to challenge the qualifications of a candidate for President or Vice President by filing a petition in the Sacramento County Superior Court. The elector has the burden to sustain the challenge by a preponderance of the evidence.
- 6) Requires the petitions in 4) and 5) must be filed no later than five days after the SOS certifies the list of candidates. The court shall hold a hearing on the qualifications of the candidate not less than five days nor more than ten days after the SOS certifies candidates. At the hearing, the court shall hear testimony and other evidence and then within 48 hours of the close of the hearing determine whether the candidate has the required qualifications.
- 7) Provides the SOS not placing the name of a candidate on the ballot for failure to meet the constitutional eligibility requirements to be elected to or hold office will not substantially interfere with the conduct of the election when a peremptory writ of mandate is under consideration following an elector's allegation that an error or omission has occurred, or will occur, on the ballot or in specified election materials.

Background

Presidential Elections in California. The process of electing the President and Vice President in California is different than electing individuals to other federal and state offices. For the most part, the process is partisan with each political party holding a primary to provide direction for the state party's delegation at, typically, a national convention.

As previously mentioned, candidates need to be recognized by the SOS to be on a political party's presidential primary ballot. Voters, at the statewide primary election, receive a ballot based on their political party preference. Following the statewide presidential primary and after every state has their presidential primary or caucus, the delegations from each state convene at their national conventions to select their party's nominee for President and Vice President. When these conventions conclude and by a specified deadline, each political party in California notifies the SOS of their nominees and submit a slate of electors for that political party's nominee. The SOS publishes a certified list of candidates.

Interestingly, voters do not directly elect the President and Vice President. Instead, the U.S. Constitution requires each state to appoint electors who have the responsibility of choosing the President and Vice President. Each state is allocated a number of electors equal to the number of Senators and Representatives the state is entitled to in Congress. The electors from all the states are referred to as the "Electoral College." When Californians mark their ballots for President and Vice President, they actually are casting their votes for a slate of presidential elector candidates selected by the political party that nominated that presidential ticket (or, in the case of an independent presidential ticket not affiliated with a political party, for a slate of elector candidates that has pledged to vote for that ticket).

Following the statewide presidential general election, the winning slate of electors meet at the California State Capitol to officially vote for President and Vice President. The results are then submitted to Congress for certification.

Comments

Author's Statement. Having our political candidates meet basic constitutional requirements should be an obvious prerequisite for placing them on the ballot. Sadly, rhetoric advocating the dismissal of these requirements continues to permeate national news discussions as the 2028 presidential election approaches. For more than five years, President Trump has maintained that a third term or third presidential run is possible. This is a clear violation of the 22nd Amendment, which has existed for 75 years, and illustrates one of the most clear and unambiguous Article Two requirements. If President Trump cannot condone such obviously unconstitutional actions, states must be able to disqualify candidates who seek to be placed on the ballot who don't meet basic constitutional requirements, such as age, place of birth, and number of previous terms served.

Faith in Democracy. Democracy depends on voters having faith in the system used to elect their representatives. Political parties nominate candidates and each state holds an election to decide how to assign its Electoral College votes. This

decides who is selected as the next President and Vice President and Congress must affirm this selection.

In recent years, many have lost faith in this process, believing the political parties are not to be trusted and the Electoral College system is unrepresentative of the wishes of the American people. This bill reflects that loss of faith, and so provides an administrative and legal path to remove from the ballot candidates nominated by political parties, so those candidates cannot receive California's Electoral College votes.

Keyes v. Bowen. In 2008, former presidential candidate Alan Keyes sued California SOS Debra Bowen and others. Keyes challenged Barack Obama's qualifications to be President based on where he was born. The case argued the SOS must investigate whether a presidential candidate meets the qualifications to be President, before listing the candidate on the ballot. Ultimately, the California Court of Appeals decided if a qualified party certifies a presidential nominee, the SOS must list the person on the November ballot. The court wrote in its decision:

Among other things, we conclude that the Secretary of State does not have a duty to investigate and determine whether a presidential candidate meets eligibility requirements of the United State Constitution. As we will explain, the presidential nominating process is not subject to each of the 50 states' election officials independently deciding whether a presidential nominee is qualified, as this could lead to chaotic results. Were the courts of 50 states at liberty to issue injunctions restricting certification of duly-elected presidential electors, the result could be conflicting rulings and delayed transition of power in derogation of statutory and constitutional deadlines. Any investigation of eligibility is best left to each party, which presumably will conduct the appropriate background check or risk that its nominee's election will be derailed by an objection in Congress, which is authorized to entertain and resolve the validity of objections following the submission of the electoral votes.

Timing. To successfully administer an election, there are a number of steps and deadlines that need to be met in order to provide the necessary information to election officials and voters. This results in a relatively fast-paced schedule where if a deadline is not met, it could have a ripple effect later in the election administrative process. This bill provides a process for an elector to challenge the lack of a listing of a presidential candidate from the SOS' list of certified candidates in a 12-day process where the matter is litigated. For example, for the presidential general election, this process could begin as late as the 68th day before

the election. If all 12 days are used, then the matter should be resolved in Superior Court by the 56th day prior to Election Day. This bill's contents do not contemplate an appeal to a Superior Court's ruling.

This issue has the ability to delay the printing of ballots and election materials. For instance, election officials begin to process applications for military and overseas voter ballots 60 days before Election Day. Federal law stipulates that military and overseas voter ballots must be sent to voters by the 45th day before Election Day. If any delay occurs as a result of who is or is not listed on the ballot due to litigation, it may become difficult for voters to receive accurate election information, candidate information, and ballots in a timely manner.

Under Oath. This bill stipulates the SOS cannot certify the name of any candidate for President and Vice President or place that person on a ballot unless the candidate affirms, under oath, that the candidate meets the qualifications for the office upon which they seek. Moving forward, the author should consider how the oath should be administered and whether the oath needs to be taken in person. It may be difficult to have candidates, for the primary and the general election, travel to California to take this oath.

SOS Investigates. This bill requires the SOS with reasonable suspicion to investigate a candidate's eligibility for President or Vice President. It is unknown how that process would unfold and there may be different approaches based on who is SOS. For example, if someone questions whether a candidate is a U.S. citizen, the SOS could request a birth certificate. This investigative authority may create an impression the SOS is taking a partisan position on the eligibility of candidates because the SOS' role in placing candidates on the ballot for President and Vice President is largely administrative and ministerial.

Who Decides. Generally, it is not explicit on who determines the candidate's eligibility and at what point during the electoral process the determination is made. This bill creates a larger role for the SOS by having them decide whether a candidate for President and Vice President meets the qualifications in the U.S. Constitution. The SOS, the political parties, the voters, the Electoral College, Congress, and the courts may each have an argument that they are the appropriate entity to decide a candidate's qualifications.

Related/Prior Legislation

AB 1539 (Addis) of the current legislative session requires, before the SOS may place candidates on the ballot, a representative of each political party to certify, under penalty of perjury, that the party's nominees for President and Vice

President are qualified under the 22nd Amendment to the U.S. Constitution to be President.

SB 929 (Min) of 2024 would have required the SOS, before placing the name of a candidate for President or Vice President on the ballot for the general election, to determine whether the candidate satisfies the qualifications for the office described in the U.S. Constitution. The bill also would have prohibited the SOS from placing on the ballot the name of any candidate who the SOS determines is not eligible in accordance with these provisions. The bill was referred to the Senate Committee on Elections and Constitutional Amendments but was not heard.

SB 637 (Min) of 2023 stated it was the intent of the Legislature to enact legislation authorizing the SOS to disqualify a candidate from the ballot if the candidate is prohibited from holding office under Section 3 of the 14th Amendment of the U.S. Constitution. The bill died in the Senate Committee on Rules without referral.

SB 505 (Umberg, Chapter 149, Statutes of 2019) made changes to the filing requirements for presidential candidates seeking to compete in California's primary election.

SCA 3 (Alquist, Resolution Chapter 274, Statutes of 1971), among other provisions, placed on the 1972 primary ballot the question whether California should have a Presidential primary that requires the SOS to place all publicly recognized candidates for President on the primary ballot. This appeared as Proposition 4 where it was approved by California voters.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Committee on Appropriations:

SOS administrative costs have yet to be identified, but could exceed \$50,000 annually (General Fund).

SUPPORT: (Verified 1/22/26)

Citizens for Responsibility and Ethics in Washington

OPPOSITION: (Verified 1/22/26)

One individual

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