

Date of Hearing: June 23, 2026

ASSEMBLY COMMITTEE ON JUDICIARY
Ash Kalra, Chair
SB 46 (Umberg) – As Amended January 5, 2026

SENATE VOTE: 30-10

SUBJECT: PRESIDENTIAL ELECTIONS: QUALIFICATIONS FOR OFFICE

SYNOPSIS

After winning a second term as President in 2024 and assuming office in 2025, President Donald Trump and his allies have been openly musing about the President seeking a third (or more) term in office despite the 22nd Amendment to the United States Constitution prohibiting any person from serving more than two terms as President. Although the President's dipping poll numbers and speculation about the 80-year old's health have diminished such talk in recent months, his supporters have claimed they have a "plan" to circumvent the 22nd Amendment.

To that end, this bill would prohibit the Secretary of State from placing any person's name on a Presidential ballot if the person does not meet the legal requirements to be President, including but not limited to, having already served two terms in the office. The bill also requires the Secretary of State (SOS) to investigate a candidate's qualifications and authorizes the SOS to request the candidate provide proof of their constitutional eligibility to be elected to and hold office before placing their name on the ballot if the Secretary of State has a reasonable suspicion based on articulable fact that a candidate for President or Vice President of the United States does not meet the qualifications to be elected to or hold office.

This author-sponsored measure is supported by the Citizens for Responsibility and Ethics in Washington who note that this bill clarifies ambiguity in California law stemming from prior court decisions on candidate eligibility. This bill is opposed by the Peace and Freedom Party of California who believe it creates unnecessary bureaucratic burdens for the Secretary of State and candidate for President. If approved by this Committee will subsequently be heard in the Committee on Elections.

SUMMARY: Provides that a candidate for President or Vice President of the United States in a presidential primary or general election is eligible only if that person has the qualifications to be elected to or hold that office as set forth in the United States Constitution on the date the term of that office begins. Specifically, **this bill:**

- 1) Specifies that a person is eligible to be a candidate for President or Vice President of the United States in a presidential primary or general election only if that person has the qualifications to be elected to or hold that office as set forth in the United States Constitution on the date the term of that office begins.
- 2) Prohibits the Secretary of State from certifying the name of any candidate for the office of President or Vice President of the United States, and prohibits the Secretary of State from placing the candidate's name on the 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 of the United States.

- 3) Provides that if the Secretary of State has reasonable suspicion based on articulable fact that a candidate for President or Vice President of the United States does not meet the qualifications to be elected to or hold office as set forth in the United States Constitution, the Secretary of State is to investigate the candidate's qualifications and may request that the candidate provide proof of their constitutional eligibility to be elected to and hold office before placing their name on the ballot.

EXISTING LAW:

- 1) Provides that the President of the United States is to hold their Office during the Term of Four Years. (U.S. Const. art. I, Sec. 2.)
- 2) Provides that no Person except a natural born Citizen, or a Citizen of the United States, at the time of the 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. (*Ibid.*)
- 3) Provides that no one 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. (U.S. Const. 22nd Amend.)
- 4) Provides that no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States. (U.S. Const. 12th Amend.)
- 5) Requires the California Secretary of State to place the name of a candidate seeking the nomination of the Democratic Party, Republican Party, American Independent Party, Peace and Freedom Party, or Green Party for the office of President on the presidential primary ballot when the Secretary of State determines that the candidate is generally advocated for or recognized throughout the United States as actively seeking the nomination of the party. (Election Code Sections 6041, 6340, 6520, 6520, 6720 & 6851.)
- 6) Requires the Secretary of State, on or before the 88th day preceding a presidential primary election, to publicly announce and distribute to the news media for publication a list of the candidates the Secretary intends to place on the ballot at the following presidential primary election. (Election Code Sections 6722 & 6852.)
- 7) Authorizes 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, as specified.

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

COMMENTS: Until Franklin D. Roosevelt won reelection to a third term in the White House in 1940, no American President had served more than two terms. Although not in law, George Washington's voluntary relinquishment of the office after two terms set the tradition followed by most American Presidents. In fact, following Roosevelt's Administration, this informal tradition was codified into law with the enactment of the 22nd Amendment to the United States Constitution, limiting Presidents to two terms in office.

Despite the legal limits on serving more than two terms, President Donald Trump and some of his most ardent supporters have openly mused about the President seeking a third term. Accordingly, this bill seeks to avert any attempt to side-step the 22nd Amendment by prohibiting the Secretary of State from certifying the name of any candidate for the office of President or Vice President of the United States if that candidate does not meet the legal qualifications for the office. In support of the bill the author states:

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 continues to 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.

Donald Trump, Steven Bannon and the push for a permanent Trump Presidency. As he is wont to do, Donald Trump's grandiose musings have included suggesting he would run for a third term as President. While the musings about a third term have lessened amid the President's sinking poll numbers (Fernando Cervantes, Jr., Trump hits new approval low in latest poll over handling of economy, USA Today (June 18, 2026) available at: <https://www.usatoday.com/story/news/politics/2026/06/18/trumps-economy-approval-rating-hits-new-low-latest-poll/90610458007/>) and questions about the 80-year of President's health (Collin Binkley, *Trump wraps up 3-hour medical visit to Walter Reed. What the public finds out is up to him*, PBS News (May 26, 2026) available at: <https://www.pbs.org/newshour/politics/trump-will-see-doctors-for-a-medical-exam-what-the-public-finds-out-is-up-to-him>), some of the President's most loyal backers claim to have a plan for him to remain in office. Furthermore, the President himself refuses to rule out seeking an avenue to remain in power past 2028, telling NBC News, "A lot of people want me to do it" and responding "I'm not joking" when asked if he serious about a third term. (Kristen Welker, *Trump won't rule out seeking a third term in the White House, tells NBC News 'there are methods' for doing so*, NBC News (Mar. 30, 2025) available at: <https://www.nbcnews.com/politics/donald-trump/trump-third-term-white-house-methods-rcna198752>.)

Indeed, Steven Bannon, the manager of the President's first campaign, has stated that he has a plan to keep the President in office and suggested there are "many different alternatives" to keeping the President in power. (Khaleda Rahman, *How Donald Trump Could Serve a Third Term in 2028: Four Possible Options*, Newsweek (Oct. 29, 2025) available at: <https://www.newsweek.com/how-donald-trump-serve-third-term-2028-four-options-10950256>.) As legally dubious as many of these plans appear, pushing the boundaries of the United States' legal system has been a hallmark of the President's two terms in office.

The Secretary of State's process for developing the ballot. Unlike state and congressional races, in which California utilizes the "top two" primary system, elections for President and Vice President are driven by the political parties and their system for nominating candidates. In order to qualify for a party's primary ballot, a person seeking the Presidency need only demonstrate to the Secretary of State that they are a candidate that is generally advocated for or recognized

throughout the United States as actively seeking the nomination of the party. Once the national political parties pick a nominee they need only notify the Secretary of State of the nominee by a date specified by the Secretary in order to ensure the General Election ballots can be printed and mailed by the deadlines specified in state law. Accordingly, the Secretary of State expends far less effort to put Presidential candidates on the ballot when compared with state elections or ballot measure that typically require gathering and verifying signatures.

This bill would task the Secretary of State with enforcing the constitutional qualifications for the Presidency by blocking candidates who are not eligible from appearing on the ballot. The bill would require candidates to certify their qualifications to the Secretary of State and prohibit the Secretary of State from listing any unqualified candidates on a Presidential ballot. The bill would also require the Secretary of State to investigate a candidate's qualifications if they have reasonable suspicion based on articulable fact exists that a candidate for President or Vice President of the United States does not meet the qualifications to be elected to or hold office. Finally, the bill makes several conforming changes across the Elections Code.

This bill would overturn caselaw and impose a duty for the Secretary of State to investigate candidates for office. Although a departure from existing precedent, prohibiting the Secretary of State from placing constitutionally unqualified candidates on the ballot appears legal and reasonable. It should be noted, however, that the role of the Secretary of State in determining the qualifications for Presidential candidates has been challenged in prior elections. In 2010, on behalf of the "Birther Movement," failed-presidential candidate Allan Keyes challenged the qualifications of President Barack Obama on the false grounds that the President was not born in the United States. After reviewing the existing law related to developing the ballot, discussed above, the Third District Court of Appeal held, "the aforementioned statutes do not impose a clear, present, or ministerial duty on the Secretary of State to determine whether the presidential candidate meets the eligibility criteria of the United States Constitution." (*Keyes v. Bowen* (2010) 189 Cal.App.4th 647,659.) The court further noted that the statute was clear that the Secretary of State had an affirmative duty to place the names of the party nominee on the General Election ballot per Election Code Section 6901. (*Ibid.*)

A review of the holding in *Keyes v. Bowen* highlights that the court conducted an extensive analysis of the then-existing statutory scheme, which remains largely unchanged today. The court found the statute did not place an affirmative duty on the Secretary of State but did not say that such a duty could not be imposed by the Legislature. To the extent that this bill changes that scheme and places an affirmative duty onto the Secretary of State, the bill is unlikely to run afoul of the prior decision in *Keyes v. Bowen*.

ARGUMENTS IN SUPPORT: This bill is supported by Citizens for Responsibility and Ethics in Washington. In support of the bill they write:

States have the authority to enact election laws and administer elections, as set forth in the Election Clause and Electors Clause of the U.S. Constitution. Secretaries of State play a crucial role in our electoral system, often administering both state and federal elections. This can include certifying election results, testing elections equipment and overseeing campaign finance reporting requirements. In addition, Secretaries of State play a crucial role regulating ballot access to maintain the integrity of their electoral system by barring individuals who are constitutionally ineligible to run for or hold office from appearing on the ballot. In the context of the office of president or vice president, constitutional ineligibility can occur in

many ways, including if a candidate is under 35 years old, not a natural born citizen or, in the case of the office of the presidency, if a candidate has already served two terms in office.

In every state plus the District of Columbia the Secretary of State or relevant elections official has exercised this responsibility by removing ineligible candidates from the ballot, including presidential candidates who do not meet constitutional qualifications. As then-Judge Neil Gorsuch wrote for the Tenth Circuit in *Hassan v. Colorado*, in a case where the Colorado Secretary of State refused to list a candidate for president because they were not a natural born citizen as required by Article II, Section 1 of the U.S. Constitution, “a state’s legitimate interest in protecting the integrity and practical functioning of the political process permits it to exclude from the ballot candidates who are constitutionally prohibited from assuming office.”

However, in California this authority is in question because of a 2010 decision by the California Court of Appeal in *Keyes v. Bowen*. In *Keyes*, plaintiffs sued the California Secretary of State to keep then-President Barack Obama off the ballot based on the erroneous claim that he was not a natural born citizen as required by the Constitution. Rather than engage in the exceedingly limited fact finding that would have been required to dismiss plaintiff’s claims as unfounded, the court held 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[s] Constitution.” This decision is inconsistent with the Secretary of State’s oath of office to “support and defend the Constitution of the United States” and is inconsistent with at least one other known instance where the California Secretary of State did preclude a constitutionally ineligible candidate from appearing on the ballot.

The decision in *Keyes*, if allowed to stand, could lead to the effective disenfranchisement of California voters. This possibility isn’t merely theoretical. Take for example the possibility that a major party nominated a popular Californian like Zendaya—who is 29 years old—or former California Governor Arnold Schwarzenegger—who is not a natural born citizen—as their candidate for president. Voters who have an affinity to that party would then be left with an impossible choice—effectively throwing their vote away by casting it for a candidate who is ineligible to hold office or abandoning their political leanings. That is effective disenfranchisement. Californians deserve better.

ARGUMENTS IN OPPOSITION: The bill is opposed by the Peace and Freedom Party of California. In opposition they state:

The main reason we oppose the bill is that it creates an unnecessary bureaucratic burden that presidential candidates must overcome in order to be listed on our party's presidential preference primary ballot. We are currently a one state party, and our presidential ballot line is often sought by left presidential candidates running as independents or from national parties that are not ballot-qualified in California. We don't want to make it more difficult for such candidates, who may not visit California until after the list of candidates is certified, to run.

Further, there are situations in which it may be legally unclear whether a potential presidential or vice-presidential candidate is in fact eligible to hold office. Requiring such candidates to state under penalty of perjury that they are eligible puts them at legal risk, when the only situation in which it would be necessary to determine their eligibility would be if

they were elected. Even if they are in fact ineligible, those who support them deserve to be able to vote for them, with such votes treated as if they were for an unpledged slate of delegates or electors led by the nominal candidate.

REGISTERED SUPPORT / OPPOSITION:

Support

Citizens for Responsibility and Ethics in Washington
Democrats of Rossmoor

Opposition

Peace and Freedom Party of California

Analysis Prepared by: Nicholas Liedtke / JUD. / (916) 319-2334