

Date of Hearing: April 10, 2024

ASSEMBLY COMMITTEE ON ELECTIONS
Gail Pellerin, Chair
AB 1784 (Pellerin) – As Amended April 2, 2024

AS PROPOSED TO BE AMENDED

SUBJECT: Primary elections: candidate withdrawals.

SUMMARY: Clarifies that state law prohibits a person from running for more than one office at a primary election. Allows a person who has filed to be a candidate at a primary election to withdraw that candidacy until the candidate filing deadline for that office. Specifically, **this bill:**

- 1) Recodifies a provision of existing law that prohibits a person from filing nomination papers for more than one office at the same primary election so that it is a standalone prohibition, instead of being contained within a provision of law that also relates to the independent nomination of candidates.
- 2) Specifies that for the purpose of the prohibition against filing nomination papers for more than one office at a primary election, the position of member of a political party's county central committee is not an "office."
- 3) Requires an elections official to reject as invalid any nomination papers that a person attempts to file for an office at a primary election if the person has already filed nomination papers for another office at the same primary election, and those earlier-filed nomination papers have not been withdrawn, as specified.
- 4) Allows a candidate to withdraw nomination documents that the candidate delivered for filing to the county elections official at a primary election by delivering a statement of withdrawal to the county elections official.
 - a) Provides that the statement of withdrawal may be delivered to the county elections official by a person other than the candidate.
 - b) Requires the statement to be signed by the candidate under penalty of perjury, and to include all of the following:
 - i) Identification of the office for which the candidate previously filed nomination documents.
 - ii) A statement that the candidate irrevocably withdraws those previously-filed nomination documents.
 - iii) A statement that the candidate understands that by withdrawing the nomination documents, the candidate will not appear on the ballot as a candidate for that office.
 - c) Allows a candidate to withdraw previously-filed nomination documents until 5 p.m. on the deadline for candidates to file nomination documents for that office.

- d) Permits a candidate who withdraws nomination documents pursuant to this procedure to file nomination documents for any other office at the same primary election for which the person is eligible to be a candidate, except for the office for which the person withdrew their nomination documents. Clarifies that this provision does not extend the deadline for filing nomination documents. Specifies that if a candidate withdraws their nomination documents and does not subsequently qualify as a candidate for another office at the same primary election, the candidate's name shall not appear on the ballot for any office at that election.
- 5) Requires a county elections official who receives a statement of withdrawal from a candidate for elective state or federal office to do both of the following:
 - a) Electronically send a copy of that statement to the Secretary of State (SOS) and to county elections officials in other affected counties immediately upon receipt of the statement.
 - b) Forward the original statement of withdrawal to the SOS within five days of receipt.
- 6) Specifies that if an eligible incumbent files nomination documents for an office and subsequently withdraws those documents pursuant to this bill or existing law, the candidate filing deadline for that office is extended in the same manner as if the incumbent had not filed the nomination documents.
- 7) Repeals obsolete provisions of law related to the independent nomination of candidates.
- 8) Contains findings and declarations and statements describing the intent of the Legislature in enacting this bill.
- 9) Makes corresponding changes.

EXISTING LAW:

- 1) Provides that existing law related to primary elections does not prohibit the independent nomination of candidates, as specified, subject to the following limitations:
 - a) A candidate whose name has been on the ballot as a candidate of a party at a direct primary and who has been defeated for that party nomination is ineligible for nomination as an independent candidate and is ineligible as a candidate named by a party central committee to fill a vacancy on the ballot for a general election.
 - b) No person may file nomination papers for a party nomination and an independent nomination for the same office, or for more than one office at the same election. (Elections Code §8003)
- 2) Prohibits a candidate whose declaration of candidacy has been filed for any primary election from withdrawing as a candidate at that primary election. (Elections Code §8800) Permits a candidate for city office, district office, school district governing board, community college district governing board, and county board of education to withdraw as a candidate until the filing deadline for the office that the candidate is seeking. (Elections Code §§10224, 10225, 10510, 10516, 10603, and 10604)

- 3) Requires a candidate's name to be printed on the ballot at a primary election if the candidate has declared a candidacy for that election, unless the candidate has died and that fact has been ascertained by the elections official at least 68 day before the election. (Elections Code §8809)
- 4) Provides that specified state laws related to nominations of candidates at primary elections do not apply to any of the following:
 - a) Recall elections.
 - b) The presidential primary.
 - c) The nomination of officers of cities or counties whose charters provide a system for nominating candidates for those offices.
 - d) The nomination of officers for any district not formed for municipal purposes.
 - e) The nomination of officers for general law cities.
 - f) The nomination of school district officers. (Elections Code §8000)

FISCAL EFFECT: Unknown. State-mandated local program; contains a crimes and infractions disclaimer; contains reimbursement direction.

COMMENTS:

- 1) **Author's Amendments:** After the committee's deadline for pre-committee author's amendments, the author proposed minor amendments to this bill to require a county elections official who receives a statement of withdrawal from a candidate for elective state or federal office to do both of the following:
 - a) Electronically send a copy of that statement to the SOS and to county elections officials in other affected counties immediately upon receipt.
 - b) Forward the original statement of withdrawal to the SOS within five days.

This analysis reflects those proposed author's amendments.

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

For more than 100 years, California law has prohibited a person from running for more than one office at a primary election. This longstanding prohibition serves important public policy goals, including avoiding voter confusion and preventing unnecessary special elections.

Despite this prohibition, a Sacramento Superior Court judge ordered the Secretary of State to allow a candidate to run simultaneously for seats in both the State Assembly and the United States House of Representatives. The judge concluded

that the prohibition on filing nomination papers for more than one office applies only to the process for independent nomination of candidates. This conclusion is contrary to how current and former California Secretaries of State from both major political parties and nonpartisan local county elections officials have interpreted the law for decades. In her decision, the judge even acknowledged that it “defies common sense to find the law permits a candidate to run for two offices during the same election.”

AB 1784 will clarify that California law does not permit a person to file nomination documents for more than one office at the same primary election, and that this prohibition is not limited to the independent nomination process. Elections officials would be required to reject a candidate’s nomination documents if the candidate attempts to file for more than one office at a primary election, unless the candidate has withdrawn all previously filed nomination papers as permitted by this bill.

Finally, AB 1784 will allow a candidate to withdraw nomination documents that were previously filed for an office at a primary election in order to allow the candidate to change plans and run for a different office. If an incumbent who filed for reelection subsequently withdraws, candidate filing for that office would be extended in the same manner as if the incumbent did not file for reelection. This withdrawal procedure is carefully designed to avoid unduly interfering with elections officials’ preparations for conducting the election.

- 3) **History of Prohibition on Multiple Candidacies:** Prior to 1910, California generally did not hold primary elections to determine the candidates that would appear on the ballot at the general election as nominees of qualified political parties. Instead, political parties held conventions at which they chose their nominees for public office, with those nominees appearing on the ballot at the general election. A candidate who wished to seek office as an independent candidate, rather than as the nominee of a political party, could qualify to appear on the general election ballot by collecting a specified number of signatures from voters on nomination papers.

In 1908, however, California voters approved a constitutional amendment to require the Legislature to enact laws that provide for the direct nomination of candidates for public office at primary elections. The following year, the Legislature approved legislation (Chapter 405, Statutes of 1909) that created a primary election system that would be used to determine the candidates from each political party that would appear on ballot in the general election. That legislation included language that specified that it did not prohibit the independent nomination of candidates for the general election, except that a candidate defeated at the primary election was ineligible for an independent nomination to the same office at the same election.

Four years later, the Legislature made various changes to the state’s primary election laws, including adding provisions that prohibited a person from filing nomination papers for a party nomination and an independent nomination at the same office, or for more than one office at the same election (Chapter 690, Statutes of 1913). Those provisions that were

originally added to state law in 1913 have remained in state law since that time, and currently are codified as subdivision (b) of Section 8003 of the Elections Code.

While the restriction on running for more than one office at a primary election is included in a section of law that discusses the independent nomination of candidates, courts, elections officials, and the California Attorney General (AG) have long interpreted that law as applying more broadly to *all* candidates at primary elections, not only to those who seek to be nominated for the general election ballot under the independent nomination process. In 1940 (Ops. Cal. Atty. Gen. No. NS-2739 (1940)) and again in 1962 (40 Ops. Cal. Atty. Gen. 99 (1962)), the AG issued opinions that concluded that a prior version of this provision prohibited an individual from seeking more than one office at the same primary election. Neither opinion was conditioned on the candidate seeking one or more offices under the independent nomination procedure. Similarly, in 1982, the California Supreme Court described a prior version of this provision as “[a] statutory proscription against dual candidacy” (*Moore v. Panish* (1982) 32 Cal.3d 535). That same year, the California Secretary of State (SOS) issued a legal opinion interpreting the same statutory provision to apply to all candidates, not just independent candidates (Opinion No 82 SOS 1 (1982)).

- 4) **Candidate Withdrawal:** As detailed above, existing California law generally prohibits a person from withdrawing as a candidate at a primary election after filing a declaration of candidacy for an office at that primary election. This restriction was enacted by the Legislature in 1917 (Chapter 711, Statutes of 1917). For offices that are not subject to the state’s primary election laws, however, including candidates for office in school districts, community college districts, county boards of education, special districts, and general law cities, state law expressly allows a person to withdraw as a candidate after filing for office until the deadline for filing for that office.

Based on information from the National Conference of State Legislatures and research by committee staff, it appears that California is the only state that has a complete prohibition on candidates withdrawing after filing nomination documents for a primary election.

California’s prohibition on candidate withdrawal coupled with a prohibition on running for more than one office at a primary election would prevent a candidate from being able to change plans and run for a different office once they have filed for one office at the primary election. By allowing a person to withdraw their candidacy up until the filing deadline for an office, this bill would provide a candidate with some flexibility if circumstances change such that the candidate wishes to run for a different office at the primary election.

- 5) **Sacramento Superior Court Case:** Background information provided by the author indicates that this bill was introduced in response to a December 2023 decision by the Sacramento Superior Court in which the court ordered the SOS to place a person on the ballot as a candidate for the 20th Congressional District in California even though that same person was appearing on the ballot as a candidate for the 32nd Assembly District. The candidate in question had filed nomination documents to run for the Assembly in late-November 2023. Thirteen days later, after the incumbent officeholder in the 20th Congressional District announced that he was not going to run for re-election, the candidate who previously filed nomination documents for the 32nd Assembly District also filed

nomination documents for the 20th Congressional District. On December 15, 2023, the SOS announced that she would not include the candidate on the list of certified candidates for the 20th Congressional District because the candidate had already filed for the Assembly. The SOS noted that state law both prohibits a candidate who has filed their declaration of candidacy from withdrawing as a candidate at that primary election and prohibits a candidate from filing nomination papers for more than one office at the same election.

On December 22, 2023, the candidate petitioned the Sacramento Superior Court for a writ of mandate ordering the SOS to include his name on the list of candidates for the 20th Congressional District for the March 2024 primary election. Just six days later, on December 28, 2023, the court heard oral argument in the case, and ordered the SOS to place the name of a candidate on the ballot for a seat in the 20th Congressional District even though that same person was also appearing on the ballot as a candidate for Assembly. The judge's ruling concluded that the prohibition on filing nomination papers for more than one office at a primary election applies only to the process for the independent nomination of candidates. In the decision, the judge acknowledged that the ruling "may result in voter confusion and the disenfranchisement of voters if [the candidate] is ultimately elected for both offices but does not retain one."

Because the court's ruling was issued on the same day as the statutory deadline for the SOS to issue the certified list of candidates for the March 2024 statewide primary election, the SOS included that candidate's name as a candidate for both the 32nd Assembly District and the 20th Congressional District. Although the SOS subsequently sought review of the Superior Court's ruling in the Third District Appellate Court, the March 2024 statewide primary election proceeded with that candidate's name being listed on the ballot for both offices. The Appellate Court heard oral arguments in that case on April 4, 2024. It has not issued its ruling at the time of the preparation of this committee analysis.

Even though the Sacramento Superior Court ruling was issued after the close of the regular nomination period for this year's primary election, at least one other candidate has already sought to run for multiple offices at a primary election, citing that ruling as a basis. According to a news report from KGET TV 17, the NBC television affiliate in the Bakersfield and Kern County region, a candidate who appeared on the ballot in the 20th Congressional District at the March primary election subsequently filed paperwork to run as a write-in candidate in the 32nd Assembly District at the same election. According to the news report, the SOS excluded this candidate's name from the list of qualified write-in candidates in the 32nd Assembly District because he had already filed as a candidate for another office at that primary election.

- 6) **Central Committee:** This bill includes a provision that specifies that the position of member of a political party county central committee is not an "office," for the purpose of the prohibition on a person filing declarations of candidacy for more than one office at a primary election. A lack of clarity in state law has resulted in different conclusions over the years about whether the restriction on running for more than one office at a primary election applies to positions on a political party county central committee. In 1940 (Ops. Cal. Atty. Gen. No. NS-2739 (1940)) and again in 1962 (40 Ops. Cal. Atty. Gen. 99 (1962)), the AG issued opinions concluding that membership on a political party county central committee

was an “office” under the Elections Code, and therefore found that prohibition on filing for more than one office at a primary election prohibited a person from filing to run for a political party county central committee and a public office at the same primary election. Those opinions reached that conclusion based on the belief that the Legislature intended a position on a county central committee to be considered an office, and therefore subject to the restriction.

In 1982, however, the California Supreme Court ruled that the restriction on filing nomination papers for more than one office at a primary election did not apply to county central committee (*Moore v. Panish* (1982) 32 Cal.3d 535). Earlier that same year, the SOS issued an opinion reaching the same conclusion, finding that member of a county central committee was not an “office” for the purpose of that prohibition. (Opinion No 82 SOS 1 (1982))

In recent election cycles, multiple candidates have filed to run both for a political party’s county central committee and a public office at the same primary election. Nonetheless, the lack of clarity in the Elections Code may still contribute to confusion about whether such dual candidacies are allowed. This bill would make it expressly clear in state law that membership on a county central committee is not an “office,” for the purpose of the prohibition on filing nomination papers for more than one office at a primary election, thereby eliminating this ambiguity.

- 7) **Certain Dual Candidacies Allowed:** The longstanding prohibition against candidates filing for more than one office at a primary election is not an absolute prohibition, and certain candidates have appeared on the ballot for more than one office at a primary election without running afoul of that prohibition. For instance, the ballot for this year’s statewide primary election included the name of a person who was a candidate both for United States Senate and in the American Independent Party’s primary for President. As detailed above, state law dealing with candidate nominations at primary elections does not apply to presidential primary elections, and candidates for President at primary elections do not file declarations of candidacy, which is why the dual candidacy prohibition did not apply in that situation.

Furthermore, nothing in existing law prohibits a person who is holding one office from running for another office, even where the terms of those two offices overlap. For example, under existing law, a state Senator who is in the first half of a four-year term could run for a term in Congress that begins about halfway through the Senate term, and would not be required to resign from the Senate in order to run for that Congressional seat.

Nothing in this bill would change either of those longstanding policies.

- 8) **Arguments in Support:** In support of this bill, the League of Women Voters of California writes:

While state law has long prohibited dual candidacies, AB 1784’s clarification is necessary due to a recent narrow interpretation by the Sacramento Superior Court. In her decision allowing a candidate to run for two offices during the same election, the judge acknowledged that the ruling “may result in voter confusion

and the disenfranchisement of voters if [the candidate] is ultimately elected for both offices but does not retain one.”

Voter confusion and undermining confidence in elections are certainly key problems with dual candidacies. Furthermore, they subject voters to the bait and switch of voting for a candidate who may choose to accept election to another office. Finally, if a candidate wins both contests, then one jurisdiction is left without representation. This would likely result in a special election which is both expensive and historically subject to low and unrepresentative turnout.

The League of Women Voters of California supports AB 1784 as crucial to fixing a situation that is very bad for California’s democracy. Because the tides can change quickly in politics, we also appreciate the careful design of a withdrawal process that inures to the benefit of voters, candidates, and the timely and efficient conduct of elections.

- 9) **Related Legislation:** AB 1795 (Wendy Carrillo), which is pending in this committee, specifies that a candidate is prohibited from filing nomination documents for more than one office at the same primary election, and permits a candidate who has filed a declaration of candidacy for an office at a primary election to additionally file nomination documents for one of a number of specified offices if a filing extension is granted for that second office because the incumbent has not filed nomination documents.

AB 2003 (Vince Fong), which is pending in this committee, permits a candidate whose declaration of candidacy has been filed for a primary election to withdraw their candidacy until the deadline for filing nomination documents for that office at the primary election.

AB 3284 (Elections Committee), which is pending in this committee, is an elections omnibus bill that makes various minor and technical changes to state law governing elections. Both AB 3284 and this bill propose to amend Section 8040 of the Elections Code.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Clerks & Election Officials
League of Women Voters of California
Santa Monica Democratic Club
Secretary of State Shirley N. Weber, Ph.D. (if amended)

Opposition

None on file.

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