

Date of Hearing: July 1, 2026

ASSEMBLY COMMITTEE ON ELECTIONS
Gail Pellerin, Chair
SB 46 (Umberg) – As Amended June 24, 2026

SENATE VOTE: 30-10

SUBJECT: Presidential elections: qualifications for office.

SUMMARY: Prohibits a candidate for President or Vice President from having their name printed on the ballot unless they affirm, under oath, that they meet eligibility requirements for the office. Permits the Secretary of State (SOS) to exclude a candidate for President or Vice President from the ballot if the SOS determines that the candidate is not eligible for the office. Specifically, **this bill:**

- 1) Provides that a person is eligible to be a candidate for President or Vice President in an election in California only if that person has the qualifications to be elected to or hold that office as set forth in the United States (US) Constitution on the date the term of that office begins.
- 2) Prohibits the SOS from placing the name of a candidate for President or Vice President on the ballot unless the candidate has affirmed under oath that the candidate will fully meet the qualifications to be elected to and hold the office of President or Vice President.
- 3) Permits the SOS to exclude a candidate for President or Vice President from the ballot if the SOS determines that the election of that candidate would violate the US Constitution. Requires the SOS to issue a public notice memorializing such a determination.
- 4) Permits the SOS to refer the question of the eligibility of a candidate for President or Vice President to the Attorney General (AG) if the SOS concludes that further investigation is needed. Permits the AG to appoint a special counsel if needed to investigate the candidate's qualifications. Requires the SOS to exclude the candidate from the ballot if the AG or special counsel determines that the candidate does not meet the qualifications for office.
- 5) Prohibits a determination by the SOS, AG, or special counsel that a candidate does not meet the qualifications from being made after the 88th day before the election in the case of a primary election, or after the 73rd day before the election in the case of a general election.
- 6) Permits an elector to challenge the qualifications of a candidate for President or Vice President. Permits a candidate for President or Vice President to challenge a determination by the SOS, AG, or special counsel that the candidate does not meet the qualifications of office. Requires any challenge brought under either of these provisions to be made through a lawsuit brought in the Sacramento County Superior Court, and specifies the timelines for that lawsuit to be brought and for proceedings to be held.
- 7) Provides that in an action brought by an elector to challenge a candidate's qualifications for office, the elector has the burden to sustain the challenge by a preponderance of the evidence.

Provides that in an action brought by a candidate to challenge the candidate's exclusion from the ballot by the SOS, the SOS has the burden of sustaining the candidate's exclusion from the ballot by a preponderance of the evidence.

- 8) Makes technical and conforming changes.

EXISTING LAW:

- 1) Provides that a person is not eligible to serve as President unless the person is at least 35 years old, has been a US resident for at least 14 years, and is a natural born citizen or was a US citizen at the time of the adoption of the US Constitution. (US Constitution, Article II, Section 1)
- 2) Prohibits a person from holding any US office if the person engaged in insurrection or rebellion against the US after having previously taken an oath to support the US Constitution, as specified. Permits Congress to remove such a disability by a vote of two-thirds of each House. (US Constitution, 14th Amendment, Section 3)
- 3) Provides that no person shall be elected to the office of the President more than twice, and that 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, as specified. (US Constitution, 22nd Amendment)
- 4) Provides that no person who is constitutionally ineligible to the office of President shall be eligible to that of Vice President. (US Constitution, 12th Amendment)
- 5) Requires the SOS 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 SOS determines that the candidate is generally advocated for or recognized throughout the US as actively seeking the nomination of the party. (Elections Code §§6041, 6340, 6520, 6720, 6851)
- 6) Requires each political party qualified to participate in the presidential general election to notify the SOS of the names of that party's nominees for the offices of President and Vice President by the 75th day before the election. Permits a party to notify the SOS of the party's apparent nominees for President and Vice President instead if the party has not held its national convention by the 75th day before the election. (Elections Code §6901.5)
- 7) Requires each political party to submit to the SOS a certified list of its nominated candidates to serve as presidential electors, as specified. Requires the names of the candidates for President and Vice President nominated by each party to be printed on the ballot instead of the names of the political party's elector nominees. (Elections Code §§6864, 6901, 7100, 7300, 7578, 7843)
- 8) 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. Prohibits a writ of

mandate from being issued in such a case if doing so would substantially interfere with the conduct of the election. (Elections Code §13314)

FISCAL EFFECT: According to the Senate Appropriations Committee, SOS administrative costs have yet to be identified, but could exceed \$50,000 annually (General Fund).

COMMENTS:

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

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.

2) **Presidential Elections in California:** Elections in California for President and Vice President differ from the process for electing individuals to other federal offices and to state office. Aside from the fact that the results of these elections depend on votes cast in other states, the process for choosing the candidates who appear on the ballot at the general election also differs from California elections for other offices.

Presidential primary election results do not directly determine the candidates who will appear on the ballot at the general election. Instead, primary election results are used by some political parties to determine the delegates that represent the state at the parties' national conventions. The delegates to those conventions generally choose each party's nominee for President, and the nominee for President typically chooses the party's Vice Presidential nominee.

While the names of a party's candidates for President and Vice President are printed on the ballot at Presidential general elections, Californians 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). This is because the voters do not directly elect the President and Vice President; instead, the US 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 that the state is entitled to in Congress. As a body, the electors chosen by each state are referred to as the "Electoral College."

3) **Presidential Term Limits and President Trump:** Until Franklin Delano Roosevelt was elected to a third term as US President in 1940, no President had served more than two terms

in office. President Roosevelt subsequently was elected to a fourth term in 1944, though he died in office less than three months into that term. After President Roosevelt died, Congress proposed an amendment to the US Constitution enacting a two-term limit for the Presidency. That amendment subsequently was ratified and became the 22nd Amendment to the US Constitution in 1951.

The 22nd Amendment 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.”

Donald Trump was elected to his first term as President in 2016 and again was elected President in 2024. Notwithstanding the fact that the plain language of the 22nd Amendment bars him from being elected to the office of President again, President Trump and his allies nonetheless have floated the idea that he could run again for a third term in 2028. In March 2025, for example, the *Associated Press* quoted President Trump as saying that he wasn’t joking about trying to serve a third term, and that “there are methods which you could do it.” In October, President Trump told reporters that he hadn’t really thought about running for a third term, but also refused to rule out running again in 2028. Furthermore, media outlets have reported that the official Trump store is selling Trump 2028 hats, and President Trump has displayed those hats in the Oval Office. At other times, the press has reported that President Trump has publicly downplayed the prospect of running for a third term.

It is unclear whether President Trump is serious about seeking to serve another term as President. Absent a repeal of or an amendment to the 22nd Amendment, however, there is no obvious legal path for him to run for a third term.

- 4) **Other Presidential Eligibility Criteria:** The author’s arguments in support of this bill focus specifically on the possibility of a presidential candidate seeking a third term in office. This bill, however, applies more broadly to all the qualifications set forth in the US Constitution for being elected to or serving as President or Vice President. While the determination of whether a candidate for President or Vice President has already served two terms of office is relatively straightforward one, determining whether a candidate meets other qualifications found in the US Constitution may be less easily resolved, and could require greater investigation and fact finding. Questions about whether the SOS may exclude presidential candidates from the ballot based on eligibility concerns have been litigated frequently in California and across the country in recent years.

For example, in 2008, former presidential candidate Alan Keyes and others sued Secretary of State Debra Bowen, alleging that Barack Obama was not a natural-born citizen and therefore was ineligible to serve as President. The plaintiffs argued that the SOS had a duty to investigate whether presidential candidates meet constitutional qualifications before placing them on the ballot. The California Court of Appeal rejected this claim, holding that the plaintiffs failed to establish any such duty. (*Keyes v. Bowen* (2010), 189 Cal.App.4th 647.)

In 2012, Peta Lindsay, then 27 years old, sued Secretary Bowen after being excluded from California’s presidential primary election ballot for the Peace and Freedom Party. Lindsay

did not meet the Constitution’s minimum age requirement of 35. The US Court of Appeals for the Ninth Circuit upheld the Secretary’s decision, finding that California may refuse to list candidates who are “indisputably ineligible” to serve. The court further held that such exclusions do not violate the First Amendment or the Equal Protection Clause because the burden on political rights is minimal and justified by the state’s interest in maintaining ballot integrity and avoiding voter confusion. (*Lindsay v. Bowen* (2014), 750 F.3d 1061.)

During the 2024 Presidential campaign, multiple legal disputes arose over whether Donald Trump was constitutionally ineligible to run under Section 3 of the Fourteenth Amendment, often referred to as the “insurrection clause.” The most notable dispute arose in Colorado, where the state’s Supreme Court ruled in December 2023 that Trump’s actions related to the January 6, 2021, Capitol attack amounted to engaging in an insurrection, and that he therefore was ineligible to run for President. On appeal, however, the US Supreme Court unanimously reversed that decision, holding that individual states lack authority to enforce Section 3 of the Fourteenth Amendment for federal offices—such as the presidency. (*Trump v. Anderson* (2024), 601 US 100.)

Each of these cases involved distinct factual circumstances regarding candidate eligibility and raised questions about whether the SOS has the authority—or obligation—to exclude candidates from the ballot on that basis. This bill would expressly grant that authority to the SOS. However, notwithstanding that grant of authority, the Supreme Court’s holding in *Trump v. Anderson* would appear to prohibit the SOS from excluding a candidate for President or Vice President from the ballot on the grounds that the candidate engaged in insurrection.

- 5) **Arguments in Support:** In support of this bill, Citizens for Responsibility and Ethics in Washington wrote:

[SB 46] would add a new section to the code, Section 6901.7, which sets forth the duties of the Secretary of State, the California Attorney General, and the protections that candidates have to prevent erroneous removal from the ballot. The proposed statute carefully balances the Secretary of State’s oath to the Constitution to give them the ability to refuse to certify the name of a constitutionally ineligible candidate from the ballot and the candidate’s due process rights by setting out expedited procedures to adjudicate any disputes. Moreover, should the Secretary of State conclude that further investigation is needed to determine if a candidate is constitutionally ineligible, the statute allows the Secretary of State to refer the matter to the Attorney General and assigns any investigatory responsibilities to the Attorney General’s office. The assignment of any investigation to the Attorney General’s office is in line with that office’s role as the state’s chief legal officer. This type of statutory scheme—where the Secretary of State with the assistance of the Attorney General’s office has the statutory authority to police its ballot either unilaterally or through a challenge process—exists and has worked effectively in other states including Colorado, Ohio, Rhode Island and Wisconsin, among others.

- 6) **Arguments in Opposition:** In opposition to a prior version of this bill, the Peace and Freedom Party of California wrote:

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.

- 7) **Related Legislation:** AB 1539 (Addis), which is pending in the Senate Public Safety Committee, requires a representative from each political party, a representative of each independent presidential ticket, and a representative of each write-in presidential ticket, to certify under penalty of perjury that their nominees for President and Vice President are not barred by federal term limits from being elected to the office of President. AB 1539 was approved by this committee by a 7-0 vote and was approved on the Assembly Floor by a 75-0 vote.
- 8) **Double Referral:** This bill was heard in the Assembly Judiciary Committee on June 23, 2026, where it was approved by a 9-3 vote.

This analysis focuses on policy issues within the jurisdiction of the Assembly Elections Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

CFT – A Union of Educators & Classified Professionals, AFT, AFL-CIO (prior version)
Citizens for Responsibility and Ethics in Washington (CREW)
Democrats of Rossmoor (prior version)

Opposition

Peace and Freedom Party of California (prior version)

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