

Date of Hearing: June 19, 2019

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

SB 505 (Umberg) – As Amended May 30, 2019

SENATE VOTE: 33-0

SUBJECT: Presidential primary elections.

SUMMARY: Requires a candidate for President of the United States (President) to submit specified documentation to the Secretary of State (SOS) in order to be considered a “generally advocated for or recognized candidate” or a “recognized candidate” for President who is placed on the ballot at a presidential primary election without the need to collect signatures on nomination papers. Specifically, **this bill:**

- 1) Defines “generally advocated for or recognized candidate” or “recognized candidate” as an individual who has an authorized campaign committee registered with the Federal Election Commission (FEC) for the office of President and submits proof, as specified, of at least one of the following criteria:
 - a) The candidate is qualified for funding under the Federal Election Campaign Act (FECA);
 - b) The candidate has appeared as a candidate in a national presidential debate hosted by a political party qualified to participate in a primary election, with at least two participating candidates, which is publicly available for viewing by voters in more than one state during the current presidential election cycle. Provides for the purposes of this provision that a “political party qualified to participate in a primary election” means any political party qualified in California, a major or minor ballot-qualified political party in another state, or a national committee of a political party recognized by the FEC.
 - c) The candidate has been placed or has qualified for placement on a presidential primary ballot or a caucus ballot of a major or minor ballot-qualified political party in at least one other state in the current presidential election cycle.
 - d) The candidate has been or has qualified to be a candidate in a caucus of a major or minor ballot-qualified political party in at least one other state in the current presidential election cycle.
 - e) The candidate has both of the following:
 - i) A current presidential campaign internet website or webpage hosted by the candidate or a qualified political party.
 - ii) A written request submitted on the candidate’s behalf to the SOS by a political party that is qualified to participate in the primary election requesting that the candidate be placed on the presidential primary ballot.

- 2) Requires a candidate for President to provide the SOS with supporting documentation that the candidate meets at least one of the criteria detailed above and to specify the political party ballot on which the candidate seeks to appear no later than the 98th day before the presidential primary election.
- 3) Standardizes, for all political parties, the date by which the SOS must publicly announce and distribute a list of the selected candidates for President that the SOS intends to place on the ballot at the following presidential primary election, by requiring the SOS to make such an announcement no later than the 88th day before the presidential primary election.
- 4) Standardizes, for all political parties, the dates during which nomination papers may be circulated by a candidate who wishes to be listed as a candidate for President on a political party's primary ballot, but who is not selected as a candidate by the SOS, as detailed above. Allows signatures to be collected on the nomination papers beginning the 120th day prior to the presidential primary election, and requires nomination papers to be submitted no later than the 81st day preceding the presidential primary election.
- 5) Changes, from the 150th to the 120th day before the presidential primary election, the date by which the SOS must send a letter to specified officials in the Peace and Freedom Party and the Green Party soliciting additional information regarding the placement of candidates from those parties on the presidential primary ballot.
- 6) Makes technical and corresponding changes.
- 7) Contains an urgency clause, allowing this bill to take effect immediately upon enactment.

EXISTING LAW:

- 1) Constitutionally requires the Legislature to provide for partisan elections for presidential candidates, including an open 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, and those whose names are placed on the ballot by petition, but excluding any candidate who has withdrawn by filing an affidavit of noncandidacy.
- 2) Provides specific procedures for the Democratic Party, Republican Party, American Independent Party, Peace and Freedom Party, and Green Party to participate in a presidential primary election.
- 3) 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 SOS determines that the candidate is generally advocated for or recognized throughout the United States as actively seeking the nomination of the party.
- 4) Requires the SOS to announce and distribute to the news media a list of candidates the SOS intends to place on the ballot a specified number of days before the presidential primary election, pursuant to the following timelines:

- a) Between the 150th and the 68th day preceding a presidential primary for Democratic Party candidates.
 - b) On or before the 120th day preceding a presidential primary for Republican Party, American Independent Party, Peace and Freedom Party, and Green Party candidates.
- 5) Requires the SOS to send a letter on or before the 150th day before a presidential primary election to specified officials in the Peace and Freedom Party and the Green Party soliciting additional information regarding the placement of candidates from those parties on the presidential primary ballot.
- 6) Permits an unselected candidate seeking the nomination of a party who desires to be placed on the presidential primary ballot to qualify for the ballot by collecting a specified number of signatures on nomination papers. Authorizes circulators to obtain signatures on those nomination papers during the following time periods:
- a) For Democratic Party candidates, between 130 and 73 days prior to the presidential primary election.
 - b) For Republican Party, American Independent Party, and Peace and Freedom Party candidates, between 104 and 74 days prior to the presidential primary election.
 - c) For Green Party candidates, no later than 74 days prior to the presidential election.
- 7) Provides that a political party that does not have detailed statutory provisions applicable to its presidential primary may conduct its presidential primary election in accordance with procedures applicable to any other political party that has detailed statutory provisions applicable to its presidential primary, as specified.

FISCAL EFFECT: Unknown

COMMENTS:

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

Presidential candidates are not required to file formal paperwork or submit documentation with the Secretary of State's office to appear on the ballot. Current law does not provide statutory guidance for candidates to obtain ballot access and, consequently, has led to confusion and lawsuits. Since the Secretary of State decides who are "recognized candidates throughout the nation or throughout California," any excluded candidate regardless of eligibility or desire for their respective party's nomination could challenge their exclusion and could result in unnecessary administrative costs to the state. By requiring the submission of a form, candidates would need to show a basic level of support and seriousness when seeking the highest office in the county.

- 2) **Generally Recognized Candidates:** In the 1968 presidential primary election, California voters were unable to select the eventual Republican and Democratic Party nominees for President because the nominees chose not to contend or participate in the state's primary.

According to an analysis from the June 1972 voter information guide, at the time, statutory law provided for the election of slates of delegates to the conventions of political parties. Each slate of candidates (delegates) to be voted for was designated either as a slate expressing a preference for a particular candidate for nomination or as a slate expressing no preference. Each slate of candidates (delegates) qualified for placement on the ballot of a political party by filing nomination petitions signed by a specified number of eligible signers.

As a result, in California, presidential primary ballots for qualified political parties only listed those candidates who petitioned to appear on the ballot. To remedy this issue, Proposition 4 was placed on the June 1972 ballot. Proposition 4, among other provisions, required the Legislature to provide for a presidential primary in which candidates on the ballot are those found by the SOS to be recognized candidates throughout the nation or California for the office of President of the United States. In an argument in favor for Proposition 4 from June 1972 voter information guide, Senators Alfred E. Alquist and Howard Way stated, “The present system of selecting presidential candidates often leaves the voter without a direct voice in the decision. The ‘favorite son’ device has been used by Governors from both parties to prevent a contested primary, depriving the voters of a chance to vote for the candidate of his choice.” California voters approved Proposition 4 and gave the SOS unilateral authority to add the names of “generally recognized” candidates for President to the presidential primary election ballot. Candidates who are not selected as “generally recognized” by the SOS may petition to appear on the primary election ballot. However, while there are specific procedures for qualifying to appear on the ballot by a petition, there is a lack of statutory guidance for how the SOS is to determine which candidates are “generally recognized” as running for President, which in turn limits the transparency of that process for potential candidates.

For the June 2016 presidential primary election, Secretary of State Alex Padilla identified 43 candidates for inclusion on primary election ballots: seven in the Democratic Party primary; nine in the Republican Party primary; seven in the American Independent Party primary; five in the Green Party primary; 12 in the Libertarian Party primary; and three in the Peace and Freedom Party primary. Four of those 43 candidates (all Republicans) withdrew and did not have their names printed on the ballot in California. No additional candidates qualified to be included on California’s 2016 presidential primary ballot using the petition process.

- 3) **Presidential Candidate Qualification:** As detailed above, existing law provides two paths for a candidate to qualify to appear on the presidential primary election ballot in California: the SOS can include a candidate on the ballot if the SOS deems that candidate to be “generally recognized” as a candidate for president, or the candidate can collect signatures on a petition. For at least the last 20 years, the primary method by which candidates qualified to appear on the ballot in California was through the determination of the SOS that the candidates were “generally recognized” as candidates for president; the petition process has been used sparingly, if at all, during that time.

This bill maintains both pathways for qualifying for the ballot, but imposes new procedural requirements that a candidate must meet in order for the SOS to deem the person “generally recognized” as a candidate for president. Specifically, a candidate must meet at least one of five different criteria to be considered a “generally recognized” candidate. In situations where a candidate and a political party both want the candidate to appear on the party’s primary ballot, it is relatively easy for the candidate to meet the criteria in this bill. A

candidate is deemed to be “generally recognized” as seeking a political party’s presidential nomination if the candidate has a webpage and the political party requests that the candidate be placed on the party’s presidential primary ballot. Similarly, if a candidate appears in a debate hosted by a political party that is available for viewing by voters in at least two states, the candidate is considered to be “generally recognized” as seeking that party’s presidential nomination.

If, on the other hand, a party does not acknowledge or recognize a candidate as seeking its nomination, the criteria may be somewhat more difficult to meet. A candidate is considered “generally recognized” as a candidate for President if the candidate qualifies for federal campaign funding under FECA, but qualifying for such funding requires receiving at least \$100,000 in campaign contributions, including contributions from at least 20 different contributors in at least 20 states. (Candidates who accept federal campaign funding must also agree to campaign spending limits.) While a candidate alternately may qualify as a “generally recognized” candidate by qualifying for a primary or caucus in another state, California’s March primary election means that very few states will make such determinations by the time that the SOS must decide which candidates to include on California’s ballot.

Candidates who do not meet any of the criteria to be considered “generally recognized” as candidates still could qualify for the ballot by collecting signatures on nomination papers. Under this bill, candidates would have 39 days to collect the signatures needed to qualify for the ballot. The number of signatures needed would vary depending on the political party, but would range from just under 800 signatures for candidates seeking to appear on the ballot for the Peace and Freedom Party, to approximately 26,500 signatures for candidates seeking to appear on the ballot for the Democratic Party, and more than 86,000 signatures for candidates seeking to appear on the ballot for the Republican Party. The exact number of signatures required for the 2020 primary election will depend on voter registration totals in October of this year.

- 4) **Arguments in Support:** In support of this bill, the sponsor, Secretary of State Alex Padilla, writes:

I am pleased to support Senate Bill 505, which would provide a filing process for candidates for President that is clear, transparent, and ensures candidates demonstrate they are serious about earning the support of California voters.

California voters deserve to have candidates for President—of all parties—take California issues seriously. With our primary election now scheduled for March, the most populous state in the nation will play a major role in the presidential nominating process. The absence of clarity has led to litigation from a candidate who did not meet the federal age requirement for the Presidency and a candidate who ran merely to increase their career as a stand-up comedian.

Under current law, the Secretary of State places on the ballot the names of candidates for President if they are “generally recognized” as running. Currently, candidates are not even required to submit documentation or file formal paperwork with the Secretary of State’s office to appear on the California primary ballot.

SB 505 would define criteria that candidates must meet in order to qualify as being "generally recognized" for a presidential nomination.

5) **Arguments in Opposition:** In opposition to this bill, the Peace and Freedom Party of California writes:

We...do not see a reason for the bill. Further, we feel that the Secretary of State is overreaching his authority. A couple of the problems we still have with SB 505 are:

- the principle that to be a generally recognized candidate shouldn't require filing a form with the California Secretary of State, and the concerns that the details may make it difficult or impossible for a candidate to appear on more than one party's primary ballot, and
- that the criteria seem to make it difficult or impossible for a favorite daughter/favorite son candidate to appear on the ballot (to head an uncommitted delegation going to what is expected to be a brokered national convention).

We were told that the criteria laid out in SB 505 would let us know what a generally recognized candidate would be, but if for example, the Peace and Freedom Party and the Green Party both want the same candidate on both of their ballots, it is still arbitrary where one Secretary of State could rule one way and another Secretary of State could rule another way as has happened in the past. (In 2008, Cynthia McKinney was on both the Peace and Freedom Party and the Green Party Presidential primary ballots, and in 2016, Jill Stein was [kept] off the Peace and Freedom Party Presidential primary ballot despite our state chair and Jill Stein writing letters asking the Secretary of State to place her on both the Peace and Freedom Party and Green Party ballots). Peace and Freedom Party registrants who wanted to vote for Jill Stein in the primary had to register out of the Peace and Freedom Party in order to do so.

6) **Related Legislation:** SB 27 (McGuire), which is also being heard in this committee today, requires a candidate for President to file copies of their income tax returns with the SOS as a precondition for appearing on a California primary election ballot.

REGISTERED SUPPORT / OPPOSITION:

Support

Secretary of State Alex Padilla (sponsor)

Green Party of Los Angeles County

Green Party of Sacramento County

Opposition

Peace and Freedom Party of California

Weld 2020 Presidential Exploratory Committee Inc. (unless amended, prior version)

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