

Date of Hearing: June 7, 2023

ASSEMBLY COMMITTEE ON ELECTIONS
Isaac G. Bryan, Chair
SB 437 (Dodd) – As Introduced February 13, 2023

SENATE VOTE: 36-0

SUBJECT: Presidential elections: candidates.

SUMMARY: Requires each political party to notify the Secretary of State (SOS) of the names of its candidates for President and Vice President of the United States (US) by the 75th day before the presidential general election. Specifically, **this bill:**

- 1) Requires each political party that is qualified to participate in a presidential general election to notify the SOS of the names of the party's nominees for President and Vice President by the 75th day before the election. Requires a political party to notify the SOS of the party's *apparent* nominees for President and Vice President if the party has not held its national convention by the 75th day before the election.
- 2) Specifies that candidates for President and Vice President are not subject to a provision of existing law that limits when a candidate can be identified on the ballot by a recently adopted name.

EXISTING LAW:

- 1) Defines "partisan office," for the purposes of the Elections Code, to include President and Vice President of the US. (Elections Code §337)
- 2) Requires the SOS, not less than 73 days before the general election, to notify each candidate for partisan office of all other persons whose names are to appear on the ballot for the same office at the general election. (Elections Code §8147.5)
- 3) Requires the SOS, not less than 68 days before the general election, to deliver a certificate to each county elections official that includes the name of every person entitled to receive votes within that county at the general election, as specified, and for each nominee for partisan office, the name of the party that nominated the person. (Elections Code §8148)
- 4) Requires at a presidential general election that the names of the respective political parties' candidates for President and Vice President shall appear on the ballot instead of the names of the candidates for presidential electors. (Elections Code §13103(b)(2))
- 5) Prohibits a candidate's new name from appearing on the ballot if the candidate changed their name within one year of the election, unless the name change was made by marriage or by decree of any court of competent jurisdiction. (Elections Code §13104)

FISCAL EFFECT: According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

COMMENTS:

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

SB 437 ensures that political parties provide timely notice of nominee names by requiring political parties to provide the SOS with the name of their nominees or apparent nominees for President and Vice President by [the 75th day before the presidential general election]. This measure also eliminates confusion about the candidate name change process by specifically removing Presidential and Vice Presidential nominees from provisions that apply to candidates for other offices.

2) **Presidential and Vice Presidential Candidate Deadline:** As detailed above, by the 73rd day prior to each general election, the SOS is required to notify each candidate for partisan office—which includes President and Vice President—of all other persons whose names are to appear on the ballot for the same office at the general election. By the 68th day prior to each general election, the SOS must submit a certificate of nomination to each county elections official that specifies all of the candidates nominated at the primary election. This certificate of nomination also includes each party’s candidates for President and Vice President. County elections officials use these certified lists of candidates to prepare official ballots and other election materials for printing. To comply with various pre-election deadlines, including a requirement that ballots be sent to military and overseas voters between the 60th and 45th day prior to the election, elections officials typically begin finalizing ballot layouts as soon as they receive the certified list from the SOS.

The SOS generally certifies the results of the primary election well in advance of the deadline for the SOS to release the list of candidates for the ensuing general election. Political parties’ candidates for President and Vice President, however, are not directly determined based on the results of California’s primary election; instead, each political party has its own process for determining its nominees for President and Vice President. State law does not specify a deadline for the political parties to transmit the names of their nominees for President and Vice President to the SOS.

In order to ensure that the office of the SOS has the information it needs to comply with its statutory obligations related to presidential general elections, as detailed above, this bill requires each political party to notify the SOS of its nominees for President and Vice President by the 75th day before the election.

It is not always the case, however, that a political party has formalized its nominees for President and Vice President by the 75th day before a presidential general election. The Democratic and Republican parties, for instance, each generally choose their nominees at national conventions held for that purpose. Those national conventions do not always conclude before the 75th day before the presidential general election.

In three cases—the 2004 & 2008 Republican conventions and the 2012 Democratic convention—one of these party’s conventions did not conclude until the 61st day before the presidential general election. In those three instances, to ensure that the SOS could release the certified list of candidates by the deadline in state law, the Legislature enacted temporary

legislation (AB 1680 (Strickland), Chapter 868, Statutes of 2003; SB 293 (Ackerman), Chapter 76, Statutes of 2007; and AB 1689 (Torres), Chapter 190, Statutes of 2010) that provided for a political party to submit the names of the party's *apparent* nominees for President and Vice President to the SOS. In each case, the legislation directed the SOS to use the names of those apparent nominees when preparing the certified list of candidates for the general election.

This bill similarly provides for a political party to notify the SOS of its apparent nominees for President and Vice President if the party has not held its national convention by the 75th day before the election. While it is often the case that a party's likely nominees for President and Vice President are known before the conclusion of the party's national convention, it is unclear what recourse would be available to a party if its nominees are not known by the 75th day before the election. Similarly, it is unclear what recourse would be available if the apparent nominees for President and Vice President that a political party provides to the SOS are not the actual nominees of that party once it concludes its formal process for choosing its nominees.

In 2024, the Republican convention is scheduled to conclude on the 110th day before the election, and the Democratic convention is scheduled to conclude on the 75th day before the election. As a result, the nominees for President and Vice President of the Democratic and Republican parties should be known by the deadline in this bill for the parties to transmit those names to the SOS, and neither party should have to avail itself of the need to transmit the names of *apparent* nominees. To the extent that party conventions in future presidential election years are scheduled to conclude after the 75th day before the election, future legislation could address that scenario if necessary.

Permitting a political party to identify its nominees for President and Vice President much later than the 75th day before the election, however, could delay preparation of election materials, and could hamper the ability of state and county elections officials to conduct a successful election. For instance, in recognition of the fact that mail being sent overseas can have lengthy transit times, state law permits county elections officials to begin mailing ballots to overseas and military voters on the 60th day before the election and generally requires officials to finish sending ballots to those voters by the 45th day before the election. Pushing back the date by which a party must identify its candidates for President and Vice President could delay the production and mailing of ballots to those voters, potentially making it difficult for some overseas and military voters to vote and return their ballots in a timely manner.

- 3) **Deadlines in Other States:** According to information from the National Association of Secretaries of State (NASS), for the purposes of the 2020 presidential general election, at least 25 states appeared to have a statutory deadline by which a political party was required to provide the names of its nominees for President and Vice President to elections officials in the state. In at least four of those states (Alabama, Iowa, Ohio, and Washington), the deadline specified in state law falls on or before the deadline that would be established by this bill.
- 4) **Candidate Name Changes:** As detailed above, Section 13104 of the Elections Code prohibits a candidate's new name from appearing on the ballot if the candidate changed their

name within one year of the election, unless the name change was made by marriage or by decree of any court of competent jurisdiction. Unlike candidates for most offices, however, candidates for President and Vice President generally do not file candidacy paperwork with elections officials in California. Instead, political parties that are qualified to participate in presidential general elections provide the names of their nominees for President and Vice President to the SOS, and state law requires those names to be printed on the ballot. Accordingly, the limit on a candidate's ability to have a recently-changed name appear on the ballot is not directly applicable to candidates for President or Vice President.

Nonetheless, the provisions of Section 13104 created confusion in connection with the 2020 Presidential election when a candidate for President was listed by a different name on the general election ballot than on the primary election ballot. Specifically, at the 2020 presidential primary election, a candidate was listed as Roque "Rocky" De La Fuente based on the information he provided to the SOS and county elections officials. In the general election, the same person was the Presidential nominee for the American Independent Party (AIP). When the AIP submitted the names of its candidates for President and Vice President to the SOS, however, it added "Guerra" to the end of the candidate's name (Roque "Rocky" De La Fuente Guerra). According to the SOS, it received many inquiries from county elections officials about whether the listing of the candidate's name for the general election ballot was a mistake, since it wasn't identical to the name used by the same candidate in the primary election.

This bill clarifies that the provisions of Section 13104 of the Elections Code related to the name by which a candidate can be identified on the ballot is not applicable to candidates for President and Vice President.

- 5) **Arguments in Support:** The sponsor of this bill, Secretary of State Shirley N. Weber, Ph.D., writes, "Senate Bill 437 is necessary to avoid the potential for the SOS to receive multiple last-minute submissions of political party Presidential nominee names. In addition, SB 437 cuts down on potential submission delays by clarifying that parties may not use candidate name change procedures that are reserved by law for candidates who are not running for President or Vice President."

REGISTERED SUPPORT / OPPOSITION:

Support

Secretary of State Shirley N. Weber, Ph.D. (Sponsor)

Opposition

None on file.

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