

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2025-2026 Regular Session

SB 46 (Umberg)
Version: January 5, 2026
Hearing Date: January 13, 2026
Fiscal: Yes
Urgency: No
AM

SUBJECT

Presidential elections: qualifications for office

DIGEST

This bill 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 U. S. Constitution on the date the term of that office begins. The bill prohibits the Secretary of State (SOS) from certifying the name of such a candidate or placing their name on the ballot unless the candidate affirms under oath that they will fully meet the qualifications to be elected. Under the bill, if the SOS has reasonable suspicion based on articulable fact that a candidate does not meet the qualifications to be elected to or hold such office, the SOS is required to investigate the candidate's qualifications.

EXECUTIVE SUMMARY

Until the third and fourth term of President Franklin Delano Roosevelt, it had been a longstanding tradition that presidents would serve no more than two terms.¹ After his death, Congress passed the 22nd Amendment in 1947, which became part of the U.S. Constitution in 1951 after three-fourths of the states ratified the amendment.² The 22nd Amendment made the long-standing tradition a requirement by enacting a 2-year term limit for the presidency. Over the past year comments from the current administration and President Trump have raised the specter that he may attempt to run for a third term, in violation of the 22nd Amendment.³ This bill seeks to ensure that a candidate for

¹ Satta, *Why does the U.S. have presidential term limits? The history of the 22nd Amendment*, PBS News, Apr. 5, 20205, available at <https://www.pbs.org/newshour/politics/why-does-the-u-s-have-presidential-term-limits-the-history-of-the-22nd-amendment>.

² *Ibid.*

³ See Welker & Lebowitz, *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->

President or Vice President of the United States in a presidential primary or general election is constitutionally eligible to be elected to or hold office.

The bill is author sponsored. The bill is supported by Citizens for Responsibility and Ethics in Washington. There is no known opposition. At the time this analysis was written the bill was pending in the Senate Elections and Constitutional Amendments Committee, therefore, the vote from that Committee is unavailable at the time this analysis is published.

PROPOSED CHANGES TO THE LAW

Existing federal law:

- 1) Provides that no one except a natural born citizen, or a citizen of the United States, at the time of 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. (U.S. Const. art. 2, § 1.)
- 2) 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.)
- 3) 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.)

Existing state law:

- 1) 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 United States as actively seeking the nomination of the party. (Elec. Code §§ 6041, 6340, 6520, 6520, 6720, & 6851.)
- 2) Requires the SOS, 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 SOS intends to place on the ballot at the following presidential primary election. (Elec. Code §§ 6722 & 6852.)

- a) Authorizes the SOS to add to the list but prohibits the SOS from deleting any candidate whose name appears on the announced list. (*Ibid.*)
- 3) 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.
 - a) Provides that a peremptory writ of mandate can only be issued upon proof of both of the following:
 - i. that the error, omission, or neglect is in violation of the Elections Code or the Constitution; and
 - ii. the issuance of the writ will not substantially interfere with the conduct of the election.
 - b) An action or appeal under these provisions have priority over all other civil matters. (Elec. Code § 13314.)

This bill:

- 1) 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 U. S. Constitution on the date the term of that office begins.
- 2) Prohibits the SOS from certifying the name of any candidate for the office of President or Vice President of the United States, and 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) Requires the SOS to investigate the candidate's qualifications and permits 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 SOS has reasonable suspicion based on articulable fact that a candidate does not meet the qualifications to be elected to or hold office as set forth in the U.S. Constitution.
- 4) Authorizes an elector to challenge the qualifications of a candidate for President or Vice President of the United States by filing a verified petition setting forth the facts alleged concerning the qualifications of the candidate in the Superior Court of the County of Sacramento and provides that the elector has the burden to sustain the challenge by a preponderance of the evidence.

- 5) 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.
- 6) Provides that, for purposes of issuing a peremptory writ of mandate, the SOS not placing the name of a candidate on the ballot for failure to meet the constitutional eligibility requirements to be elected to or hold office will not substantially interfere with the conduct of the election.

COMMENTS

1. Stated need for the bill

The author writes:

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.

2. Presidential term limits

The 22nd Amendment to the U.S. Constitution 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.) This bill provides in state law 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 U. S. Constitution on the date the term of that office begins. The bill prohibits the SOS from certifying the name of any candidate for the office of President or Vice President of the United States, and 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. The SOS would be required to investigate such a 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 if the

SOS has reasonable suspicion based on articulable fact that a candidate does not meet the qualifications to be elected to or hold office as set forth in the U.S. Constitution.

The bill establishes a mechanism for an elector or candidate to challenge a decision by the SOS to certify or not certify a candidate as described above by writ of mandate. An elector has the burden to sustain the challenge by a preponderance of the evidence. The SOS has the burden of sustaining a challenge brought by a candidate excluded from the ballot by the SOS for failure to meet the qualifications to be elected to or hold that office as set forth in the U. S. Constitution. For purposes of issuing a preemptory writ of mandate, the SOS not placing the name of a candidate on the ballot for failure to meet the constitutional eligibility requirements to be elected to or hold office will not be considered to substantially interfere with the conduct of the election.

3. Other constitutional eligibility requirements

Though the impetus of this bill is concerned with a candidate running for a third term, it should be noted the bill has broader implications as there are other constitutional requirements to be eligible to be President or Vice President. Specifically, Section 1 of Article II of the U.S. Constitution provides that:

[...] no one except a natural born citizen, or a citizen of the United States, at the time of 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. (U.S. Const. art. 2, § 1.)

The 12th Amendment to the U.S. Constitution specially states that “no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.” Many scholars believe that a President who has served two terms is ineligible to be Vice President; however, others have argued that this is not the case.⁴ This issue, should it arise, would likely lead to litigation that would ultimately be decided by the U.S. Supreme Court.

3. Statements in support

Citizens for Responsibility and Ethics in Washington writes in support stating:

[...] This technical change to California’s Elections Code is a crucial good government reform measure designed to ensure that government processes comply with the Constitution and to make sure that California voters have meaningful choices at the ballot box. [...]

⁴ See e.g. Dan T. Coenen, *Two-Time Presidents and the Vice-Presidency*, 56 B.C. L. Rev. 1287 (2015), available at: https://digitalcommons.law.uga.edu/fac_artchop/1012.

SUPPORT

Citizens for Responsibility and Ethics in Washington

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation: SB 505 (Umberg, Ch. 149, Stats. 2019) made various changes to the filing requirements for presidential candidates seeking to compete in California's presidential primary election.

PRIOR VOTES

The vote from the previous Committee was not available at the time this analysis was published.
