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SB 46: Constitutionally Ineligible Candidates

SUMMARY

Senate Bill 46 amends the California Elections Code to ensure that the California Secretary of State has the legal authority to remove constitutionally ineligible candidates for president and vice president from California's primary and general election ballot.

BACKGROUND

States have the authority to enact election laws and administer elections, as set forth in the Election Clause and Electors Clause of the U.S. Constitution. Secretaries of State play a crucial role in our electoral system, often administering both state and federal elections. This can include certifying election results, testing election equipment, and overseeing campaign finance reporting requirements. In addition, Secretaries of State play a crucial role in regulating ballot access to maintain the integrity of their electoral system by barring individuals who are constitutionally ineligible to run for or hold office from appearing on the ballot.

In the context of the office of president or vice president, constitutional ineligibility can occur in many ways, including if a candidate is under 35 years old, not a natural born citizen or, in the case of the office of the presidency, if a candidate has already served two terms in office.

In every state, plus the District of Columbia, the Secretary of State or relevant elections official has exercised this responsibility by removing ineligible candidates from the ballot, including presidential candidates who do not meet constitutional qualifications.

NEED FOR THE BILL

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.

SOLUTION

SB 46 carefully balances the Secretary of State's oath to the Constitution to give them the ability to remove constitutionally ineligible candidates from the ballot and the candidate's due process rights by setting out expedited procedures to adjudicate any disputes. This type of statutory scheme—where the Secretary of State or relevant elections official has the statutory authority to police its ballot either unilaterally or through a challenge process—exists and has worked effectively in other states.

SB 46 is a crucial good-government reform measure designed to ensure government processes comply with the Constitution and to ensure California voters have meaningful choices at the ballot box.

SUPPORT

Citizens for Responsibility and Ethics in Washington

FOR MORE INFORMATION

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