



CITIZENS FOR
RESPONSIBILITY &
ETHICS IN WASHINGTON

January 8, 2026

The Honorable Thomas Umberg
Chair, California Senate Judiciary Committee
1021 O Street, Suite 6610
Sacramento, CA 95814

The Honorable Roger Niello
Vice-Chair, California Senate Judiciary Committee
1021 O Street, Suite 7110
Sacramento, CA 95814

The Honorable Sabrina Cervantes
Chair, California Senate Elections Committee
1021 O Street, Suite 7330
Sacramento, CA 95814

The Honorable Steven Choi
Vice-Chair, California Senate Elections Committee
1021 O Street, Suite 7130
Sacramento, CA 95814

Re: Amendment to Elections Code in Senate Bill 46

Dear Chair Umberg, Chair Cervantes, Vice-Chair Niello and Vice-Chair Choi,

On behalf of Citizens for Responsibility and Ethics in Washington (CREW), a nonpartisan nonprofit organization dedicated to promoting ethics, transparency and accountability in government, I write to you today in support of a proposed amendment to Senate Bill 46 which would amend 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. 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.

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.¹ Secretaries of State play a crucial role in our electoral system, often administering both state and federal elections. This can include certifying election results,² testing elections equipment³ and overseeing campaign finance reporting requirements.⁴ In addition, Secretaries of State play a crucial role 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

¹ U.S. Const. art. I, § 4, cl. 1; U.S. Const. art. II, § 1, cl. 2;

² See *Election Certification Deadlines*, Nat'l Conference State Legislatures (Jan. 20, 2025), (<https://www.ncsl.org/elections-and-campaigns/election-certification-deadlines>).

³ See *Voting System Standards, Testing and Certification*, Nat'l Conference State Legislatures (Aug. 21, 2025), (<https://www.ncsl.org/elections-and-campaigns/voting-system-standards-testing-and-certification>).

⁴ See *Campaign Finance Enforcement*, Nat'l Conference State Legislatures (Oct. 15, 2020), (<https://www.ncsl.org/elections-and-campaigns/campaign-finance-enforcement>).

the ballot.⁵ 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.⁶

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.⁷ As then-Judge Neil Gorsuch wrote for the Tenth Circuit in *Hassan v. Colorado*, in a case where the Colorado Secretary of State refused to list a candidate for president because they were not a natural born citizen as required by Article II, Section 1 of the U.S. Constitution, “a state’s legitimate interest in protecting the integrity and practical functioning of the political process permits it to exclude from the ballot candidates who are constitutionally prohibited from assuming office.”⁸

However, in California this authority is in question because of a 2010 decision by the California Court of Appeal in *Keyes v. Bowen*. In *Keyes*, plaintiffs sued the California Secretary of State to keep then-President Barack Obama off the ballot based on the erroneous claim that he was not a natural born citizen as required by the Constitution.⁹ Rather than engage in the exceedingly limited fact finding that would have been required to dismiss plaintiff’s claims as unfounded, the court held that the Secretary of State “does not have a duty to investigate and determine whether a presidential candidate meets eligibility requirements of the United State[s] Constitution.”¹⁰ This decision is inconsistent with the Secretary of State’s oath of office to “support and defend the Constitution of the United States” and is inconsistent with at least one other known instance where the California Secretary of State did preclude a constitutionally ineligible candidate from appearing on the ballot.¹¹

The decision in *Keyes*, if allowed to stand, could lead to the effective disenfranchisement of California voters. This possibility isn’t merely theoretical. Take for example the possibility that a major party nominated a popular Californian like Zendaya—who is 29 years old—or former California Governor Arnold Schwarzenegger—who is not a natural born citizen—as their candidate for president. Voters who have an affinity to that party would then be left with an impossible choice—effectively throwing their vote away by casting it for a candidate who is ineligible to hold office or abandoning their political leanings. That is effective disenfranchisement. Californians deserve better.

⁵ See POGO & CREW, *Routine Disqualification: Every State Has Kept Ineligible Candidates Off the Ballot, and Trump Could Be Next* (Sept. 5, 2023), (https://www.citizensforethics.org/wp-content/uploads/2023/09/POGO-CREW_Routine-Disqualification-Report_2023-09-05_v2.pdf).

⁶ U.S. Const. art. II, § 1, cl. 5; U.S. Const. amend. XII; U.S. Const. amend. XXII.

⁷ See POGO & CREW, *Routine Disqualification: Every State Has Kept Ineligible Candidates Off the Ballot, and Trump Could Be Next* at 8, 21-26 (Sept. 5, 2023), (https://www.citizensforethics.org/wp-content/uploads/2023/09/POGO-CREW_Routine-Disqualification-Report_2023-09-05_v2.pdf).

⁸ *Hassan v. Colorado*, 495 F. App’x 947, 948 (10th Cir. 2012)

(<https://law.justia.com/cases/federal/appellate-courts/ca10/12-1190/12-1190-2012-09-04.html>).

⁹ See *Keyes v. Bowen*, 189 Cal. App. 4th 647 (Cal. Ct. App. 2010)

(<https://www.courtlistener.com/opinion/2250675/keyes-v-bowen/>).

¹⁰ *Id.* at 651-52.

¹¹ CaliforniaSOS, *Dr. Shirley N. Weber takes the Oath of Office as California’s Secretary of State*, at 0:58 (YouTube, Feb. 10, 2021), (<https://www.youtube.com/watch?v=HuhezdjNF1g&t=91s>); Cal. Const. art. XX, § 3

(<https://leginfo.legislature.ca.gov/faces/displaySection.xhtml?lawCode=CONS§ionNum=SEC.%203.&article=X&X>); *Lindsay v. Bowen*, 750 F.3d 1061 (9th Cir. 2014).

(<https://law.justia.com/cases/federal/appellate-courts/ca9/13-15085/13-15085-2014-05-06.html>).

This does not have to be the case for California. Because *Keyes v. Bowen* was a statutory decision, it can be overturned by a simple statute amending the California Elections Code. That is what Senator Umberg has proposed here.

The amendment to the California Elections Code proposed by Senator Umberg—which is modeled on the statute in force in Colorado—would add a new section to the code, Section 6901.7, which sets forth both the duties of the Secretary of State and the protections that candidates have to prevent erroneous removal from the ballot.¹² The proposed statute 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 including Colorado,¹³ Ohio,¹⁴ Rhode Island¹⁵ and Wisconsin,¹⁶ among others.

CREW urges the California legislature to adopt this good government reform. By adopting this technical change to the California Elections Code, the legislature will ensure that the Secretary of State has the ability to police the ballot like their colleagues do in other states and will also ensure that Californians are not effectively disenfranchised if an ineligible candidate appears on their ballot.

Sincerely,

A handwritten signature in blue ink, appearing to read "Donald Sherman".

Donald Sherman
Executive Director and Chief Counsel

¹² S.B. 46, 2025-26 Cal. Leg., Reg. Sess. (as amended Jan. 5, 2026), (https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202520260SB46).

¹³ Colo. Rev. Stat. § 1-5-412, (<https://law.justia.com/codes/colorado/title-1/general-primary-recall-and-congressional-vacancy-elections/article-5/part-4/section-1-5-412/>).

¹⁴ Ohio Rev. Code § 3501.39, (<https://codes.ohio.gov/ohio-revised-code/section-3501.39>).

¹⁵ R.I. Gen. Laws § 17-14-13, (<https://webserver.rilegislature.gov/Statutes/TITLE17/17-14/17-14-13.htm>).

¹⁶ Wis. Stat. § 8.30, (<https://docs.legis.wisconsin.gov/statutes/statutes/8/30>).