

Green Party of Los Angeles County

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April 23, 2020

**Assembly Member Marc Berman
Chair of the State Assembly Committee on Elections
Legislative Office Building, 1020 N Street, Room 365, Sacramento**

Re: Support AB 446 Elections: political party qualifications with amendments

Dear Chair and members of the committee

The Green Party of Los Angeles County (GPLAC) supports AB 446 with amendments.

The changes recommended in AB 446 can be positive steps towards increasing voter choice in California. But they need to be combined with other reforms to meaningfully contribute to that goal. Without those reforms, the GPLAC is concerned AB 446 could leave voters with limited choice and possibly even set back voter choice in our state. The GPLAC thereby supports AB 446 in a good faith effort to attempt to influence reform in a positive direction.

Sincerely



Michael Feinstein, Secretary, Green Party of Los Angeles County

This statement of support is co-signed by the Green Party of Sacramento County.

What the GPLAC supports in AB 446

Specifically the GPLAC supports AB 446 attempts to (a) make it easier for a new party to gain ballot status by lowering the party petition signature threshold from 10% to 3% of the last gubernatorial vote, (b) authorize a political body's temporary officers to appeal a determination on party name eligibility to an administrative law judge and (c) allow the party name of a political body that has not qualified as a political party and is considered to have abandoned its attempt to qualify to be used by a future political body on or after two years from the date it filed notice with the Secretary of State.

What the GPLAC's concerns are with AB 446

- (a) While AB 446 will make it easier for a new parties to gain ballot status, that improvement is mostly cosmetic, because existing law makes it extremely difficult for all but the most well-funded candidates to actually qualify for the ballot. Only a total of 39 minor party state and federal candidates have qualified for the primary election ballot since top two elections were implemented, meaning in practical terms California has more than two political parties in name only. AB 446 does nothing to address this. So the result is that under AB 446, California may have more qualified parties, but not actually more voter choice.**

- (b) Even if a few candidates from new parties are able to qualify for the primary election ballot, because candidate statement fees are so high, few of them are likely to be able to afford a candidate statement of sufficient length to present their views and inform the voters. This same problem already exists for candidates from California's four legacy 'minor' parties.**

- (c) The GPLAC strongly supports having a full range of parties on the ballot that reflect the diversity of political viewpoints and perspectives within California. However, without also addressing how parties stay on the ballot in California under the state's current electoral system, an increase in parties may make it more difficult for parties to retain their ballot status. In this respect we note with strong regret that the reduction in the party primary election vote test to 0.5% has been dropped from the bill.**

Discussion of GPLAC concerns with AB 446

Before top two elections, ballot qualified parties in California were able to retain their status via a 2% general election vote test in a statewide election for statewide constitutional office or US Senate. In those elections, the total possible number of candidates was limited by the total number of ballot qualified candidates and the rare independent who could qualify for the ballot in such an election. Additionally, candidates from California's de facto 'minor parties' had a different and lower threshold to qualify for the ballot, so that they could qualify for most if not all statewide races via the signature-in-lieu route without paying filing fees. This meant that these parties could maximize their ability to retain their ballot status via the general election vote test by appearing in as many statewide races as possible.

Since top two elections were enacted, no minor party candidate has qualified for a statewide general election ballot, nor are any realistically expected to do so. Therefore the vote test was changed to a 2% primary election vote test.

At the same time under top two, the requirement to appear on the statewide primary ballot for candidates from these parties has been increased exponentially, making it harder for these candidates to appear on the statewide ballot, with the number of minor party candidates qualifying for statewide races dropping significantly as a result.

Also under top two, the number of candidates on the primary election ballot has increased - especially major party candidates - such that the vote is often split among more candidates in top two primary elections than was the case with 'before top two' general election. Because top two jungle primaries do not use ranked-choice voting, this vote-splitting is exacerbated by the 'lesser-of-evil' dynamic, such that primary election voters often must choose between voting for a minor party candidate with no realistic chance at appearing on the general election ballot, and a major party candidate that is less representative but still close to their views, that might make it to the general election.

The combination of these factors means that under top two, it is incrementally even harder to retain ballot status via the primary election vote test than it was before top two via a general election vote test. Rather

than addressing this, AB 446 simply adds the potential for even more primary election vote-splitting via more parties on the ballot.

Amendments the GPLAC supports to AB 446

When the author of AB 446 — Assemblymember Chad Mayes - made the decision to change his party affiliation from Republican to No Party Preference, GPLAC member Michael Feinstein wrote a column that Mayes' decision was a strong argument to change to a proportional representation system to elect the California state legislature ("Chad Mayes' exit from the GOP and the need for electoral reform" (<https://www.pe.com/2020/01/07/chad-mayes-exit-from-the-gop-and-the-need-for-electoral-reform/>)).

Combined with a larger state legislature (California currently has the lowest per-capita state legislative representation in the United States), such a proportional representation system would increase per capita representation and provide a more diverse and representative legislative than is possible under single-seat legislative elections (<https://feinstein4sos.org/issues/per-capita-representation/>).

By contrast, the GPLAC notes that frustration with limited representation from single-seat general elections featuring candidates nominated in party primaries, led to the enactment of single seat general elections nominated in jungle primaries. From a Green Party perspective, this just exchanged one set of single-seat election problems for another (<https://www.foxandhoundsdaily.com/2018/05/top-two-malfunctions-democracy-suffers/>.)

That's why the GPLAC believes the State Assembly and State Senate elections committee should conduct a public hearing input process on evaluation the top two experiment and alternatives to it, including full proportional representation for the state legislature, and ranked-choice voting for all statewide constitutional office and US Senate. Such a public process does not need to be part of AB 446, but should occur on its own track.

Understanding that AB 446 itself is more modest in scope, to address its concerns with the bill, the GPLAC supports the following amendments:

(a) Lower the filing fee and the signatures-in-lieu threshold to qualify for state and federal office

(b) Lower the per-word candidate statement fee to appear in statewide and county official voter information guides

Discussion of amendments the GPLAC supports to AB 446

(a) Rationale to lower the filing fee and the signature-in-lieu threshold

Under top two elections, the signature-in-lieu requirement to appear on the statewide ballot for members of California's legacy minor parties (Green, Libertarian, Peace and Freedom, and American Independent) was raised from 150 party members to 7,000 registered voters. Similar proportional increases have occurred for thresholds for state and federal legislative office. The result has been a major decrease in candidates from these parties

Prior to top two, minor party candidates qualified for the ballot almost exclusively by gathering signatures-in-lieu, thus avoiding paying any filing fee. Under top two only minor party candidates that can raise the filing fee can qualify for the ballot.

Under top two elections, the number of primary election ballot-qualified candidates from these parties has gone down from an average of 127 per election cycle between 1992 and 2010 (<https://www.sacbee.com/opinion/op-ed/soapbox/article81520547.html>), to a total of only 39 in five election cycles from 2012 to 2020 (see Attachments #1 and #2 below), an average of eight per election cycle. This greatly lessens voter choice.

Under the more onerous threshold, minor parties must now also concentrate scarce resources to qualify a few candidates for statewide constitutional office, to increase their chances of retaining ballot status and letting voters across the state know their parties still exist. Eighty-two percentage of all minor party candidates who have qualified for the ballot have been for statewide races that help these parties retain ballot status. This leaves fewer resources to help qualify state legislative and US House candidates. Since top two went into effect, only seven state legislative and US House candidates have qualified for the ballot in total over five election

cycles between 2012 and 2020! This all means voters are seeing fewer options from across the political spectrum than before top two.

AB 446 is intended to make it easier for parties to gain ballot status. It stands to reason that it should also make it more achievable for those parties to actually run candidates, than what is occurring at present under top two.

Therefore the GPLAC supports substantially lowering filing fees and signature-in-lieu threshold for all state and federal office.

The existing filing fee thresholds have been in place for decades, back to time when far fewer minor parties existed and it was mostly major party candidates trying to qualify for the ballot. The filing fee threshold should be revisited to better correspond to the fact that more parties are on the ballot today, and the fee should not be mostly prohibitive to their ability to ran candidates.

The GPLAC also does not believe that filing fees should be seen in a 'cost-recovery' context. Instead the GPLAC believes that filing fees should seen as part of promoting voter choice, and that it is in the public interest to ensure that the fees are not an unreasonable barrier to voter choice.

As for the signature-in-lieu threshold, under the current top two system, minor party candidates simply do not have the infrastructure to gather the needed signatures-in-lieu to avoid paying the filing fee. At the same time, because the filing fee is so high, each signature-in-lieu is not worth much money itself. In 2018 the filing fee for governor was \$3,916.12 (<https://elections.cdn.sos.ca.gov/statewide-elections/2018-primary/2018-governor-lt-governor.pdf>.) To avoid paying the filing fee required gathering 7,000 valid signatures-in-lieu, making each signature worth 56 cents.

Outside of gathering the small number of easy low-hanging signatures from active party members and friends, at this financial worth, it hardly merits campaign efforts to gather them. Under the current thresholds, the calculus becomes that time is better spent fundraising to pay the fee, instead of gathering petition signatures — meaning the existing signature-in-lieu threshold is not viable for most minor party candidates, making it an option in name only.

(b) Rationale to lower the per-word candidate statement fee to appear in statewide and county official voter information guides signatures-in-lieu

Compounding problems for minor party candidates is the high cost of candidate statements in the official Voter Information Guides. Even if a small number of such candidates are able to qualify for the ballot, they mostly can not also afford a full or even mostly full candidate statement, especially since this fee must be paid even before the filing period has ended. This means most voters will know little about what they stand for, even if they are on the ballot.

The GPLAC believes that a voters' rights approach would suggest that the public is entitled to a base level of information about all ballot-qualified candidates, and that the cost of candidate statements should not preclude that information reaching the voters via the Official Voter Information guides (<https://www.foxandhoundsdaily.com/2018/01/voters-right-know-undermined-high-candidate-statement-fees-sos-conflict-interest.>)

Proposition 34, passed in 2000 (<http://vigarchive.sos.ca.gov/2000/general/text/text-proposed-law-34.htm>) stated that:

- statewide candidates who accept the voluntary expenditure limits are designated as having done so in the state Voter Information Guide, and legislative candidates in the voter information portion of county sample ballots; and that
- participating candidates may also purchase space to place a 250-word statement in these publications.

However Proposition 34 was silent upon what basis/values that cost would be calculated. The candidate statement filing fee is determined administratively by the Secretary of State for statewide constitutional office and US Senate, and by county registrars for state and US House.

Before Proposition 34, then-Secretary of State Tony Miller had ruled that the cost be free. Since then, subsequent Secretary of States have charged \$20/word to start, then raised it to \$25/word for 2010, meaning a full candidate statement today costs \$6250. This escalation in cost under

administrative decisions by the Secretary of State has the the practical effect of making the statements too expensive for many candidates, depriving voters of basic information about the choices before them.

While some argument can be made that some level of candidate filling fees are necessary to prevent an almost limitless number of candidates from appearing on the ballot, there is no argument to be made that keeping fees high to limit information to voters about the choices before them is a good thing.

The GPLAC supports amending AB 446 to substantially reduce or make free the cost of candidate statements in the printed Official Voter Information Guides, and at a minimum to offer a full candidate statement at a *de minimis* cost in the electronic version, where there are no printing costs.

This may require amending Sections 85601 and 13307(d) of the Elections Code, Proposition 34 and/or via some other approach

The GPLAC acknowledges that there may be costs involved with extra pages in the printed voter information guides, and there are translation costs involved even where there is no hard copy print version. However these costs are infinitesimal rounding errors in the state budget, especially when considering the public's right to know. Therefore the GPLAC believes the state should bear these costs and not displace this upon the county registrars.

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Attachment #1: Total state legislative and Congressional candidate qualifying for the primary election ballot under Top Two, 2012 to 2020

Libertarian (1 legislative) - no US House, one legislative): 2012 - no US House, no legislative. 2014 - no US House, no legislative. 2016 - no US House, no legislative. 2018 - no US House, one legislative (AD 70). 2020: no US House, no legislative.

Green (3 - two US House, one legislative): 2012 - no US House, no legislative. 2014 - no US House, no legislative. 2016 - no US House, no

legislative. 2018 - two US House (CD 34, CD 40), no legislative. 2020 - no US House, one legislature (AD 58).

Peace & Freedom (1 - one legislative): 2012 - no US House, one legislative (AD 15). 2014 - no US House, no legislative. 2016 - no US House, no legislative. 2018 - no US House, no legislative. 2020 - no US House, no legislative.

American Independent (2 - no US House, 2 legislative): 2012 -- no US House, no legislative. 2014 - no US House, one legislative (AD 79). 2016 - no US House, no legislative. 2018 - no US House, no legislative. 2020 - - no US House, one legislative (SD 35).

Total (21): 2 US House, 5 legislative. This total does not include primary election write-in candidates, because they did not qualify for the ballot under the filing fee/signature-in-lieu thresholds.

Attachment #2: Total statewide constitutional and U.S. Senate candidates qualifying for the primary election ballot under Top Two, 2012 to 2020

Libertarian (8): 2012 one (US Senate). 2014 one (Attorney General). 2016 two (2 for U.S. Senate). 2018 four (U.S. Senate, 2 for Governor, Secretary of State)

Green (10): 2014 five (Governor, Lt. Governor, Controller, Treasurer, Secretary of State). 2016 one (U.S. Senate) 2018 four (2 for Governor, 2 for Secretary of State).

Peace & Freedom (13): 2012 two (2 for US Senate). 2014 three (Governor, Lt. Governor, Insurance Commissioner). 2016 one (U.S. Senate). 2018 seven (U.S. Senate, 2 for Governor, Secretary of State, Controller, Treasurer, Insurance Commissioner)

American Independent (1): 2012 one (US Senate)

Total (32): 22 statewide constitutional, 10 US Senate

Attachment #3: Memo: Effect of per word fee on the number of words in Green Party candidate statements in California Voter Guide

<https://losangeles.cagreens.org/gpca/memo-effect-of-per-word-fee>

Number of words per candidate statement for statewide Green candidates after the Secretary of State started charging per word (2006-2018)

\$25/per word in 2018

Christopher Carlson, Governor (2018) - 20 words
Josh Jones, Governor (2018) - 90 words
Michael Feinstein, Secretary of State (2018) - 247 words
Erik Rydberg, Secretary of State (2018) - 12 words

\$25/per word in 2014

Luis Rodriguez, Governor (2014) - 64 words
Jena Goodman, Lt. Governor (2014) - 0 words
Laura Wells, Controller (2014) - 62 words
Ellen Brown, Treasurer (2014) - 119 words
David Curtis, Secretary of State (2014) - 60 words

\$25/per word in 2010

Laura Wells, Governor (2010) - 87 words
Jimi Castillo, Lt. Governor (2010) - 8 words
Ann Menasche, Secretary of State (2010) - 62 words
Charles "Kit" Crittendon, Treasurer (2010) - 25 words
Peter Allen, Attorney General (2010) - 14 words
William Balderston, Insurance Commissioner (2010) - 5 words

\$20/per word in 2006

Peter Camejo, Governor (2006) - 213 words
Donna Warren, Lt. Governor (2002) - 78 words
Forrest Hill, Secretary of State (2006) - 97 words
Laura Wells, Controller (2006) - 213 words
Methual M. Thakker, Treasurer (2006) - 171 words
Michael S. Wyman, Attorney General (2006) - 155 words

Number of words per candidate statement for statewide Green candidates before the Secretary of State started charging per word (1994-2002)

Peter Camejo, Governor (2002) - 246 words

Donna Warren, Lt. Governor (2002) - 249 words

Larry Shoup, Secretary of State (2002) - 248 words

Laura Wells, Controller (2002) - 242 words

Jeanne-Marie Rosenmeier, Treasurer (2002) - 244 words

Glen Mower, Attorney General (2002) - 250 words

David Sheidlower, Insurance Commissioner (2002) - 204 words

Dan Hamburg, Governor (1998) - 198 words

Sara Amir, Lt. Governor (1998) - 193 words

Barbara Blong, US Senate (1994) - 210 words

Danny Moses, Lt. Governor (1994) - 189 words

Margaret Garcia, Secretary of State (1994) - 198 words