



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2017**

ON THE FOLLOWING MEASURE:

H.B. NO. 1581, RELATING TO ELECTIONS.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Friday, February 24, 2017

TIME: 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Deirdre Marie-Iha, Deputy Attorney General

Chair Nishimoto and Members of the Committee:

The Department of the Attorney General provides the following comments.

This bill would require candidates for President and Vice President of the United States to provide copies of their five most recent federal income tax returns to the chief election officer in order to be qualified to appear on the general election ballot. The returns would then be made available to the public. This is accomplished by adding a new section in chapter 11, Hawaii Revised Statutes (HRS), which governs elections.

This bill might raise potential constitutional problems. It is an open question whether such a requirement is constitutional as applied to a presidential ballot. There is case law holding that state procedures governing ballot access may not add qualifications for congressional office. U.S. Term Limits, Inc. v. Thornton, 514 U.S. 779 (1995). Thornton turns in large part on the principle that the qualifications for federal office are set by the United States Constitution itself. It also rejects the contention that styling the requirement as a condition of access to the ballot itself makes the requirement permissible. See also Cook v. Gralike, 531 U.S. 510 (2001) (State may not add notation to the ballot about whether congressional candidate supported or opposed proposed term limits). Thornton and Cook both turn on the states' authority under the elections clause of Article I, section 4 of the United States Constitution. This provision governs congressional elections.

However, there is also case law indicating that the states' authority over a *presidential* ballot may be greater under Article II, section 1 of the United States Constitution. This provision governs the electoral college. See *McPherson v. Blacker*, 146 U.S. 1, 25-26 (1892) (describing states' authority over selection of electors as "plenary authority[;]" and that "the whole subject is committed" to the state legislatures). Article II provides, in relevant part: "Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector." U.S. Const. Art. II, § 1, cl. 2.

To lessen the potential constitutional problems, we suggest that the bill be amended to add a provision to explicitly make the requirement regarding the release of tax returns operate on the electors chosen by the State. Section 14-28, HRS, presently governs the votes cast by electors. A sentence could be added to the end section 14-28 stating, for example: "Notwithstanding any other provision of law to the contrary, the electors, when convened, shall not vote for any person for president or vice president unless each of the candidates had, at least fifty days prior to the general election, publicly released the candidate's tax income tax returns for at least the five tax years preceding the general election, by providing the returns to the office of elections or posting the returns for free and public viewing on the internet." To maximize the potential of successfully invoking the State's authority under Article II, section 1, we recommend that this provision be independent. That is, it should not be dependent on a cross-reference to, or on the full operation of, the new provision of chapter 11 presently added by section 2 of the bill.

We also suggest that the bill include an explicit severability provision.

Given the uncertainty in this area of law, any attempt to place requirements on the presidential ballot raises the possibility of a court challenge. The suggestions made above may lessen but would not eliminate the constitutional concerns identified here.



House Judiciary Committee
Chair Scott Nishimoto, Vice Chair Joy San Buenaventura

02/24/17 at 2:00 PM in Room 325
HB1581 – Relating to Elections

TESTIMONY — SUPPORT
Corie Tanida, Executive Director, Common Cause Hawaii

Dear Chair Nishimoto, Vice Chair San Buenaventura, and members of the committee:

Common Cause Hawaii supports HB1581 which requires candidates for president and vice president to release their five most recent tax returns, in order to be included on a Hawaii ballot.

The majority of presidential candidates and many vice presidential candidates have released their tax returns to the public for the last 40 years. We believe that this practice not only helps to increase transparency and reduce conflicts of interest, it also increases the public's trust and confidence in our nation's leaders.

Thank you for the opportunity to submit testimony **supporting HB1581**.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: MISCELLANEOUS, Mandatory Disclosure of Income Tax Returns for Candidates for U.S. President and Vice President

BILL NUMBER: HB 1581

INTRODUCED BY: C. LEE, BROWER, CREAGAN, JOHANSON, LOWEN, MCKELVEY, NISHIMOTO, QUINLAN, TODD, Keohokalole

EXECUTIVE SUMMARY: Requires a candidate for President or Vice President of the United States to submit a copy of the candidate's individual federal income tax return as a condition of appearing on the ballot in Hawaii. Why don't we impose the same requirement for our own public elected officials?

SYNOPSIS: Adds a new section to HRS chapter 11 to require a U.S. presidential or vice presidential candidate to submit a copy of the candidate's individual federal income tax return, and to provide written consent to the office of elections for public disclosure of the federal income tax returns. Requires public disclosure on the website of the office of elections no later than seven days after submission. Allows for redaction of information that the director of taxation deems appropriate.

EFFECTIVE DATE: Upon approval.

STAFF COMMENTS: The measure apparently is in response to President Donald Trump's refusal to release his tax returns.

"It's a reasonable step since every modern president has released their tax returns and put their assets into a blind trust to make sure the only interest they have is the interest of our country and its people," the Star-Advertiser recently quoted one lawmaker as saying.

Similar proposals are circulating in California, Massachusetts, and New Mexico.

In most states, including ours, tax returns and tax return information are confidential. The reason for the confidentiality is that it is generally believed that people will be more honest with the government about their finances if the people won't have to worry about collateral consequences from other folks peeking. What might happen if a nosy neighbor wants to peek? Or a business competitor? Or an opposition candidate if you are trying to run for public office? The interest in confidentiality is strong enough so that in civil litigation where parties are suing each other, parties are usually able to demand that the other side disclose any information "designed to lead to the discovery of admissible evidence," but aren't allowed to demand tax returns unless the judge thinks that there is a special need for them.

Even in Hawaii, people don't like to cough up tax returns or other sensitive financial records. Back in 2014, when a law (Act 240, Session Laws of Hawaii 2014) required that sensitive financial disclosures of many state volunteer boards and commissions be made public, Hawaii

News Now reported that at least sixteen board or commission members resigned rather than allow their financial disclosures to be released to the public. The state Land Use Commission lost five of its nine members (56%), the board of the Agribusiness Development Corporation lost four of 11 (45%), the University of Hawaii Board of Regents lost four of its 15 (27%), and the board of the Hawaii Housing Finance and Development Corporation lost two of eight (25%).

We need to ask ourselves what price is necessary to have a participatory role in government. If we want to have those with relevant experience and backgrounds to serve the public interest, do we need to have them bare all their financial information? In this digital age, potential office holders may well ask what consequences they or their family will suffer at the hands of those who may have a different political agenda once this information is irrevocably exposed. Some won't want to take the heat and will get out of the proverbial water, leaving our country to be run by whoever is left.

Is there any logical reason to mandate disclosure just for those two offices? Shouldn't we be taking care of our own back yard and imposing this requirement for State elective offices as well?

Digested 2/22/2017



LATE

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COMMITTEE ON JUDICIARY

FRIDAY, February 24, 2017, Conference Room 325
HB 1581, RELATING TO ELECTIONS

TESTIMONY

Janet Mason, Legislative Committee, League of Women Voters of Hawaii

Chair Nishimoto, Vice-Chair San Buenaventura, and Committee Members:

The League of Women Voters of Hawaii SUPPORTS the intent of HB1581 that requires candidates for U.S. President and U.S. Vice President to disclose a copy of their most recent individual Federal income tax return to be included on Hawaii ballots.

Personal wealth should not be an important consideration in judging the qualifications of a political candidate, but any political campaign should ensure the public's right to know. Disclosure of financial interests of political candidates is a way of making known any possible conflict of interests; this helps combat corruption and undue influence.

However, disclosure reports should be received, compiled, and published by an independent commission such as the Federal Elections Commission and not by a political party.

Thank you for the opportunity to submit testimony.

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 23, 2017 9:30 AM
To: JUDtestimony
Cc: danielle.jayewardene@gmail.com
Subject: Submitted testimony for HB1581 on Feb 24, 2017 14:00PM

HB1581

Submitted on: 2/23/2017

Testimony for JUD on Feb 24, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Danielle Jayewardene	Individual	Support	No

Comments: Dear Chair Nishimoto and Vice Chair San Buenaventura, Re: HB 1581 to be heard on February 24, 2017 at 2pm. I am in strong support of HB1581. I believe it is imperative that any President and Vice President of the Unites States of America provide full disclosure of their domestic and international financial obligations and ties in order to ensure there is no conflict of interest between their financial interests and their great responsibility to maintain the wellbeing, safety and security of the citizens and residents of the nation who they serve. Thank you much for your consideration, Danielle Chianese Jayewardene

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 22, 2017 2:05 PM
To: JUDtestimony
Cc: ndavlantes@aol.com
Subject: *Submitted testimony for HB1581 on Feb 24, 2017 14:00PM*

HB1581

Submitted on: 2/22/2017

Testimony for JUD on Feb 24, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Nancy Davlantes	Individual	Support	No

Comments:

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To: JUDtestimony
Cc: feelfreetolisten@yahoo.com
Subject: *Submitted testimony for HB1581 on Feb 24, 2017 14:00PM*

HB1581

Submitted on: 2/23/2017

Testimony for JUD on Feb 24, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Krista Anderson	Individual	Support	No

Comments:

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To: JUDtestimony
Cc: jamisona@hawaii.edu
Subject: *Submitted testimony for HB1581 on Feb 24, 2017 14:00PM*

HB1581

Submitted on: 2/23/2017

Testimony for JUD on Feb 24, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Alexis E. Jamison	Individual	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Friday, February 24, 2017 1:41 PM
To: JUDtestimony
Cc: beckypgardner@gmail.com
Subject: Submitted testimony for HB1581 on Feb 24, 2017 14:00PM

HB1581

Submitted on: 2/24/2017

Testimony for JUD on Feb 24, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Becky Gardner	Individual	Support	No

Comments: Testifying as individual, not as employee of state.

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