



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

ON THE FOLLOWING MEASURE:

S.B. NO. 150, RELATING TO ELECTIONS.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Tuesday, January 31, 2017 **TIME:** 9:00 a.m.

LOCATION: State Capitol, Room 016

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

Chair Keith-Agaran 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 most recent tax returns to the chief election officer in order to be qualified to appear on the general election ballot. This is accomplished by adding this requirement into section 11-113, Hawaii Revised Statutes (HRS), which governs the contents of presidential ballots.

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 14-23, HRS, presently provides that electors and alternates must be registered voters. Other conditions could potentially be added to this provision or elsewhere in chapter 14, HRS.

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.



HAWAII

AMERICANS FOR DEMOCRATIC ACTION

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John Bickel, President 23404	Guy Archer	Jan Lubin	Cameron Sato	PO. Box
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Karin Gill, Secretary	Chuck Huxel			

January 29 , 2017

TO: Honorable Chair Keith-Agaran and Members of Judiciary Committee

RE: SB 150 Relating to Elections
Support for hearing on Jan. 31

Americans for Democratic Action is an organization founded in the 1950s by leading supporters of the New Deal and led by Patsy Mink in the 1970s. We are devoted to the promotion of progressive public policies.

We support SB150 as it would require candidates for president and vice president to provide a copy of each candidate's most recent income tax return in order to be included on the state ballot. Until recently this law seemed unnecessary, but with the current occupant of the White House it seems we do need a law to give information on the financial dealings of people who want to lead our country. We also have a concern that this bill might be unconstitutional. Other states are considering this; so among us we hope constitutional language can be found.

Thank you for your consideration.

Sincerely,

John Bickel
President



Senate Judiciary and Labor Committee
Chair Gilbert Keith S.C. Keith-Agaran, Vice Chair Karl Rhoads

Tuesday 01/31/17 at 9:00 AM in Room 016
SB150 – Relating to Elections

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

Dear Chair Keith-Agaran, Vice Chair Rhoads, and members of the Senate Judiciary and Labor Committee:

Common Cause Hawaii supports SB150 which requires candidates for president and vice president to release their most recent tax return.

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, but also the public's trust in our nation's leaders.

Thank you for the opportunity to submit testimony supporting SB150.



49 South Hotel Street, Room 314 | Honolulu, HI 96813
www.lwv-hawaii.com | 808.531.7448 | voters@lwv-hawaii.com

COMMITTEE ON JUDICIARY AND LABOR

TUESDAY, January 31, 2017, Conference Room 016, 9:00 a.m.
SB 150, RELATING TO ELECTIONS

TESTIMONY

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

Chair Keith-Agaran, Vice-Chair Rhoads and Committee Members:

The League of Women Voters of Hawaii SUPPORTS THE INTENT of SB150 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 if they wish to be included on Hawaii ballots.

Personal wealth and personal income should not be an important consideration in judging the qualifications of a political candidate. But disclosure of financial interests by political candidates is a well-established way of making known possible conflict of interests; this helps combat corruption and undue influence. The public has a right to know about such potential conflicts.

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. This approach is consistent with our well-established position on campaign finance disclosure.

Thank you for the opportunity to submit testimony.

TESTIMONY
THE LIBERTARIAN PARTY OF HAWAII
c/o 1658 Liholiho St #205
Honolulu, HI 96822

January 28, 2017

RE: SB 150 to be heard Tuesday January 31, at 9AM in Room 016

To the members of the Senate Committee on Judiciary and Labor

We oppose SB150 that aims to add a requirement that candidates for president submit a copy of their most recent tax return before being allowed on the Hawaii ballot. This is a political rather than a legal issue. Voters are the ones who should decide the question as to the fitness of a candidate who does not comply with media requests to make public such information. A law like this becomes an opening for all sorts of new "requirements" that allow bureaucrats and politicians to replace the decision making of voters with their own.

Signed:



Tracy Ryan, Chair

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: SB 150

INTRODUCED BY: K. RHOADS, S. CHANG

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. The bill is not clear on whether the return when submitted may be disclosed to the public, and should be clarified. And if that is the intent, why don't we impose the same requirement for our own public elected officials?

BRIEF SUMMARY: Amends HRS section 11-113 to require a U.S. presidential or vice presidential candidate to submit a copy of the candidate's individual federal income tax return.

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.

The bill is not clear as to whether the tax returns submitted are to be made public. If the intent is to make them public, appropriate language would make it clear.

And, if the intent is to make them public, 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 1/26/2017

From: mailinglist@capitol.hawaii.gov
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Cc:
Subject: Submitted testimony for SB150 on Jan 31, 2017 09:00AM
Date: Friday, January 27, 2017 3:19:37 PM

SB150

Submitted on: 1/27/2017

Testimony for JDL on Jan 31, 2017 09:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Barbara Polk	Individual	Support	No

Comments: I support the general concept of this bill, but would prefer to see the requirement for providing tax returns to be expanded to 5 years, as has been the minimum recent practice of Presidential candidates. It's too bad a bill like this has to be considered, but once one person violates the common practice, I believe it is necessary to establish a requirement.

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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Date: Thursday, January 26, 2017 6:48:53 PM

SB150

Submitted on: 1/26/2017

Testimony for JDL on Jan 31, 2017 09:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Marilyn Khan	Individual	Support	No

Comments:

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Date: Thursday, January 26, 2017 9:11:08 PM

SB150

Submitted on: 1/26/2017

Testimony for JDL on Jan 31, 2017 09:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
RuthMarie Quirk	Individual	Support	No

Comments:

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