

RESOLUTION 13-01-2017 (REVISED)

DIGEST

Elections Code: Presidential Tax Return Required for Placement on Ballot

Amends Elections Code sections 6901, 8304, and 8651 to require that candidates for President of the United States provide five years of income tax returns or be barred from the California ballot.

RESOLUTIONS COMMITTEE COMMENT

History:

No similar resolutions found.

Reasons:

This resolution amends Elections Code sections 6901, 8304, and 8651 to require that candidates for President of the United States provide five years of income tax returns or be barred from the California ballot.

The Resolutions Committee initially recommended disapproval of this resolution. The full Conference voted to approve.

After the CCBA voted to approve, Governor Brown vetoed SB 149, which would have done the same thing as this resolution. In his veto message, the Governor said:

While I recognize the political attractiveness-even the merits-of getting President Trump's tax returns, I worry about the political perils of individual states seeking to regulate presidential elections in this manner. First, it may not be constitutional. Second, it sets a "slippery slope" precedent. Today we require tax returns, but what would be next? Five years of health records? A certified birth certificate? High school report cards? And will these requirements vary depending on which political party is in power?

A qualified candidate's ability to appear on the ballot is fundamental to our democratic system. For that reason, I hesitate to start down a road that well might lead to an ever escalating set of differing state requirements for presidential candidates.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Elections Code sections 6901, 8304 and 8651 to read as follows:

- 1 § 6901
- 2 a) Whenever a political party, in accordance with Section 6864, 7100, 7300, 7578, or
- 3 7843, submits to the Secretary of State its certified list of nominees for electors of President and
- 4 Vice President of the United States, the Secretary of State shall notify each candidate for elector
- 5 of his or her nomination by the party. ~~The~~
- 6 (b) The Secretary of State shall cause the names of the candidates for President and Vice
- 7 President of the several political parties to be placed upon the ballot for the ensuing general

8 election.

9 (c) Notwithstanding subdivision (b), the Secretary of State shall not cause the name of a
10 political party's candidate for President to be placed upon the ballot for the ensuing general
11 election unless the candidate, no later than 70 days before that general election, files with the
12 Secretary of State a copy of his or her Federal income tax returns for the five most recent taxable
13 years. The candidate shall also file copies of state tax returns for any state in which the candidate
14 earned income for the five most recent taxable years.

15 (d) The Secretary of State shall redact a Presidential candidate's tax returns as necessary
16 to protect privacy. After redacting the tax returns, the Secretary of State shall make them
17 available to the public on the Secretary of State's Internet Web site.

18 (e) The Secretary of State shall adopt regulations to implement subdivisions (c) and (d).

19
20 § 8304

21 (a) When a group of candidates for presidential electors designates the presidential and
22 vice presidential candidates for whom all of the group pledge themselves to vote, the names of
23 the presidential candidate and vice presidential candidate designated by that group shall be
24 printed on the ballot pursuant to Chapter 2 (commencing with Section 13100) of Division 13.

25 (b) (1) Notwithstanding subdivision (a), the name of a candidate for President shall not be
26 printed on a general election ballot as described in subdivision (a) unless the candidate, no later
27 than 70 days before the general election, files with the Secretary of State a copy of his or her
28 Federal income tax returns for the five most recent taxable years. The candidate shall also file
29 copies of state tax returns for any state in which the candidate earned income for the five most
30 recent taxable years.

31 (2) The Secretary of State shall redact the Presidential candidate's income tax returns as
32 necessary to protect privacy. After redacting the income tax returns, the Secretary of State shall
33 make them available to the public on the Secretary of State's Internet Web site.

34 (c) The Secretary of State shall adopt regulations to implement subdivision (b).

35
36 § 8651

37 The declaration of write-in candidacy for presidential elector shall contain the following
38 information:

39 (a) Candidate's name.

40 (b) Residence address.

41 (c) A declaration stating that he or she is a write-in candidate for the office of presidential
42 elector.

43 (d) Oath or affirmation as set forth in Section 3 of Article XX of the California
44 Constitution.

45 (e) The date of the general election.

46 (f) The names of the candidates for President and Vice President of the United States for
47 which the group of presidential electors are pledged.

48 (g) (1) A copy of the Presidential candidate's Federal income tax returns for the five most
49 recent taxable years. The candidate shall also file copies of state tax returns for any state in
50 which the candidate earned income for the five most recent taxable years.

51 (2) The Secretary of State shall redact the Presidential candidate's income tax returns as
52 necessary to protect privacy. After redacting the income tax returns, the Secretary of State shall
53 make them available to the public on the Secretary of State's Internet Web site.

(h) The Secretary of State shall adopt regulations to implement subdivision (g).

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: National Lawyers Guild – San Francisco Bay Area Chapter

STATEMENT OF REASONS

The Problem: Since the administration of Richard Nixon, presidential candidates have traditionally released their tax returns to provide transparency and allow voters to make an informed decision about the financial affairs of the candidates. This tradition arose from a questionable tax deduction related to a donation of presidential papers to the National Archives taken by President Nixon in 1969. During the Watergate scandal, this deduction was revealed which caused Nixon to release five years of his tax returns. However, there is no statutory requirement on the state or Federal level requiring a candidate to release tax information.

During the 2016 Presidential campaign, all candidates except Donald Trump released their tax returns. Mr. Trump won the election without releasing those returns. President Trump may be one of the wealthiest men to serve as President. He has financial investments throughout the United States and around the world. Without seeing his tax returns, citizens have no ability to determine what, if any, conflicts of interest he may have.

The Solution: This resolution would require all Presidential candidates to provide five years of state and Federal tax returns to appear on the ballot in California. As the most populous state and with the most electoral votes, this requirement would be a strong inducement for any candidate to release tax returns.

Combined with similar efforts in other states, these proposed amendments to California's Electoral Code would make an even stronger case for all candidates to provide voters with sufficient financial information to make an informed decision about their vote.

IMPACT STATEMENT

The resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION

None known

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COUNTERARGUMENTS AND STATE BAR SECTION COMMENTS

SANTA CLARA COUNTY BAR ASSOCIATION

This resolution seeks to require presidential candidates to produce his or her last 5 years of federal and state tax returns in order to have the candidate's name listed on the November general election ballot. The resolution is both overbroad and lacking in detail, and also improperly infringes on a voter's right to vote for the candidate of their choosing.

While it is tradition for presidential candidates to release tax returns as part of running for office, it is just that: tradition. Moreover, when candidates have released returns, it is typically federal only, not state, with no standing requirement for how years of returns must be made available. Here, the proponent provides no reasons why a candidate should release 5 years of returns, much less why state returns are also required, or how detailed the returns should be (i.e., is just the basic 1040 pages sufficient or must all schedules and worksheets be released as well?).

A further problem is the proponent's "solution" that candidates who fail to comply will not be placed on the November ballot. While the proponent, or this Conference, may not be pleased with Trump's decision not to release returns, the fact remains that over 60 million people nationally – and almost 4.5 million in California – voted for him anyway. Indeed, one has to wonder if this resolution reflects an actual concern (i.e., would it have been submitted if Hilary Clinton – who released returns – had won), or if it is simply a reaction to Trump winning the presidency. Denying the public their right to vote for their preferred candidate for president just because someone is offended that a victorious candidate did not comply with tradition should not be condoned.

Although Santa Clara County agrees that, in principle, presidential candidates should release tax returns, this resolution is not the solution. Therefore, Santa Clara County recommends disapproval.