OPPOSITION OF SB 888

Senate Majority Leader Ginny Burdick

Senate Republican Leader Ted Ferrioli

And Committee Members

I am opposing this bill because there is no Federal Law stating that a President has to release Income Taxes.

As a voting citizen of Oregon I do not, in any way, shape or form, want you to decide who will be on my voting ballot. If and when it becomes a Federal Law you cannot legally pass a bill like this. Until such a Federal Bill passes on this issue ALL Oregonians must have the proper and lawful voting rights. I know there is a bill in the Senate at the White House right now to make candidates release their tax returns, but as yet is not passed and therefore not a Law.

I would like to remind you that you work for ALL Oregonians and not just special interest groups. You should not be submitting or passing bills for your own adgenda, or without a vote from every Oregonian.

I thank you for taking my voting rights seriously by not passing SB 888

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No, States Don't Get To Make Presidential Candidates Release Tax Returns

Democratic state legislators want to require presidential candidates to publicly disclose their tax returns. There's a constitutional problem with that.

By Kyle Sammin

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Democratic state legislators across the country are proposing bills that would require candidates for President to publicly disclose their tax returns in order to qualify for the ballot. Failure to do so would mean that candidates, even if they meet the constitutional qualifications for office, would be barred from receiving votes in the state in question.

All but ignored by the national media, state legislators emerge from obscurity only rarely. Usually an article surfaces with the headline "GOP Lawmaker Proposes [something insane and unconstitutional]." The news cycle then moves on and the offending legislator is released back into the obscurity of Carson City or Little Rock.

Democratic state legislators usually get a different treatment, no matter how stupid their ideas. They are most often ignored—but occasionally, as in this article in *The Hill*, their bad and unconstitutional ideas are given serious treatment, even elevated to the level of legitimate policy proposals.

Why Is This Happening Now?

As the article notes, 32 versions of these bills have been proposed in 19 states. There are two reasons for the upwelling of legislative proposals on this topic. The first is understandable: people remain incensed at President Trump's refusal to release his tax returns during the 2016 campaign. His proffered excuse—that he was unable to do so because of an ongoing audit—was absurd, and was debunked almost as soon as the words left his mouth. Nevertheless, he persisted. And amazingly, it worked.

Beginning with Richard Nixon in 1952, most presidential and vice-presidential candidates have released at least some of their tax returns. Since the 1970s, the practice has become standard. Hillary Clinton released the last eight years of her tax records promptly, and other candidates did as well (Jeb Bush released an unheard-of 33 years of returns). Trump upset that emerging tradition when he refused to release his. There was considerable uproar over it, but the public ultimately shrugged at the lack of transparency, or at least found it preferable to the problems presented by his opponent. In wanting to know more, these state legislators are not completely out of line, but merely out of step with a public that has moved on.

The second reason for this sudden interest in transparency is in response to the demands of the far-left so-called "Resistance." The enraged and energized Left demand some anti-Trump action from the politicians they support. For state legislators, this presents a problem, since they do not interact directly with the President. An attempt to stymie his potential bid for re-election—three years in advance!—gives Democrats in state offices something to do, something to brag about to their hardcore supporters, and most importantly, something to put in their fundraising letters and e-mails. Does it make sense? Is it constitutional? They don't seem to care.

Legislators Ignore the Constitution, But Courts Won't

Politicians may ignore the Constitution they swore to uphold, but courts do not have that luxury. If any of these bills become laws, they will face immediate court challenges, and rightfully so. What these legislators are proposing is fairly revolutionary: they think they have the right to change the qualifications for the office of the presidency. *The Hill* quotes Professor Richard L. Hasen, who says on his election law blog that whether such laws pass constitutional muster is still "an open question." In fact, any reasonable look at the law and precedents shows that these efforts are doomed to fail.

While changing the qualifications for the presidency is a new idea for state legislatures, they have meddled in federal electoral law before, specifically by attempting to impose term limits on members of Congress. Back in the early 1990s, when Newt Gingrich and his Contract with America channeled voters' discontent with Washington into a Republican majority in Congress, term limits became popular again. The issue was not a new one. The Articles of Confederation contained term limits, and they were considered but rejected at the Constitutional Convention in 1787. Their popularity waxes and wanes with the political climate, and in the 1990s they were again in vogue. After a federal constitutional amendment to limit congressional terms fell short of passage in 1995, some states enacted limits on federal officeholders on their own.

Arkansas was one of those states, and the law they passed quickly found its way into court. The case, *U.S. Term Limits, Inc. v. Thornton*, was appealed to the Supreme Court, which held that the term limits were unconstitutional. The opinion by Justice John Paul Stevens cut right to the logical inconsistency of states altering the qualifications for federal offices.

[A]s the Framers recognized, electing representatives to the National Legislature was a new right, arising from the Constitution itself. The Tenth Amendment thus provides no basis for concluding that the States possess reserved power to add qualifications to those that are fixed in the Constitution. Instead, any state power to set the qualifications for membership in Congress

must derive not from the reserved powers of state sovereignty, but rather from the delegated powers of national sovereignty. *In the absence of any constitutional delegation to the States of power to add qualifications to those enumerated in the Constitution, such a power does not exist.*

As Stevens found in a later case on the same topic, states may be charged with administering federal elections, but they may not use that power to impose policy choices that the Constitution does not contain. Even beyond the historical precedent, the reason for this is obvious. If each state determines on its own who may be elected to federal office, the Congress would no longer be a truly federal legislature. It would revert instead to the confederal legislature created by the Articles of Confederation.

Federal Office Means Federal Qualifications

Under the Articles, states sent delegates to the Confederation Congress with delegates being "annually appointed in such manner as the legislatures of each State shall direct". The term limits mentioned above were the only qualification the Articles imposed; beyond that, states could limit their choices however they wished, or not at all. The reason for this was that the delegates represented the states in the loose confederation in which they had agreed to be bound. That fact, more than any other, distinguishes the Articles from the Constitution that followed: no one at the federal level represented the people directly.

In writing the Constitution, the Founding Fathers changed all that. The House of Representatives was, and is, the direct representative of the people. After the Seventeenth Amendment passed in 1913, the Senate, too, became directly elected by the people. The President, then and now, is indirectly elected. But the Fourteenth Amendment effectively enshrined the right to vote for the Electoral College in law. The federal government is chosen by the people, independent of the states.

Even without the Fourteenth Amendment, the right of electors to vote for any candidate meeting the constitutional qualifications is absolute, as the faithless electors of 2016 proved. The states did not create the office of President, or any other federal office. They cannot limit them in ways the Constitution does not, and the Constitution's limits are few: the President need only be a natural-born citizen, 35 years old, and have lived in the United States for 14 years.

We Can't Allow States To Change the Qualifications

The logic of *U.S. Term Limits, Inc. v. Thornton* is undeniable. If one state can impose new qualifications for reasons of term limits, then another can impose them for any other purpose. The term limits issue at least had the virtue of being a law of general application; the laws about the release of tax returns are openly based on an animus against one man: Donald Trump. But limiting the voters' choice is constitutional for this reason, other states will not be slow to add their own politically motivated qualifications.

If the states can add the disclosure of income tax returns as a requirement, why could they not add other requirements? Could they keep candidates off the ballot if they do not own property?

Or if they own too much? The Constitution imposes a minimum age of 35, but maybe some state thinks fifty is a better requirement, to ensure that a candidate has the requisite life experience. Maybe certain professional background is necessary. Could a state require a presidential candidate to have served in the military? To have held elective office? To have worked in the private sector? All of these ideas would find favor with some constituency or other.

During the last election, questions of whether a candidate was "qualified" to be president were obviously matters of political opinion, not legal rights. Laws like the ones being proposed now would change all that, making the legislators' momentary judgment of specific candidates superior to the voters' ideas of who should sit at the head of the executive branch. The wisest course, and the constitutional one, is to leave that judgment where the Founding Fathers placed it: with the voters.

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