



Washington State Senate

The Honorable Robert Ferguson
Office of the Attorney General
1125 Washington Street SE
P.O. Box 40100
Olympia, WA 98504-0100

April 17, 2017

RE: Request for Opinion – Conditioning Presidential Ballot Access in Washington on Disclosure of Federal Tax Return

Dear Attorney General Ferguson:

In accordance with RCW 43.10.030(5), we write to request a formal opinion regarding the state's authority to condition ballot access for presidential candidates upon public release of their federal tax returns. In addition, we seek clarification on whether the state can enact legislation requiring the Secretary of State to decline a presidential candidate's slate of electors if the candidate, or their vice presidential running mate, has failed to release his or her federal tax returns.

On Jan. 22 of this year, a senior advisor to U.S. President Donald Trump stated, "[h]e's not going to release his tax returns. We litigated this all through the election. People didn't care." President Trump has subsequently released only a part of his 2005 tax return and there is still no indication that he will release his entire tax return for any year during his term in office. As a result, the public will not have a clear understanding of how decisions made by the Trump Administration may personally benefit the president's business portfolio or foreign governments and corporations with financial interests in his businesses.

Major party candidates for President of the United States in the past 40 years have released their tax returns with the exception of the current president. These disclosures provide much-needed transparency by divulging how much taxable income the candidate has earned, how much they paid in taxes, the size of their charitable contributions, and whether they paid tax to any foreign government. Tax returns can also expose conflicts of interests and how a particular policy change might affect personal financial holdings. This practice dates back to President Richard Nixon who, when he released his returns in 1973, said, "People have got to know whether or not their president is a crook. Well, I am not a crook."



Washington State Senate

The requirements to hold the office of the president are set forth in the presidential qualification clause of the U.S. Constitution (Article II, Sec. 1, paragraph 5), which states:

“No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the office of president; neither shall any person be eligible to that office who shall not have attained to the age of 35 years, and been 14 years a resident within the United States.”

In subsequent decades, Congress and the courts have provided little clarity regarding the states’ authority to provide additional restrictions or qualifications for the office of president. However, there are at least two provisions in state law that touch on this and other questions of presidential ballot access.

RCW 29A.56.030 sets forth the criteria for placing a candidate’s name on the presidential preference primary ballot in Washington state. This law sets forth criteria for placing candidates on the ballot that go beyond the requirements set forth in the U.S. Constitution, including whether the candidate is deemed viable by the national media or if the members of his or her party have submitted a sufficient number of signatures petitioning for ballot access.

Separately, RCW 29A.56.320 and RCW 29A.56.360 address how a slate of presidential electors may be certified and accepted by the Secretary of State. The U.S. Constitution grants broad authority to the states to set procedures around the electoral college, as evidenced by the National Popular Vote Interstate Compact, which Washington joined in 2009.

Since last November, legislation has been introduced in 26 states to require any candidate for president to disclose their tax returns prior to the presidential election. In light of the background described above and the national interest in introducing legislation, we request your guidance on the question of whether states can condition ballot access or refuse to accept a presidential candidate’s elector slate based on failure to disclose information relevant to the office (in this instance, federal tax returns). Specifically:

- 1) Is Washington State pre-empted by the presidential qualifications clause in Article II, Sec. 1 of the U.S. Constitution, another federal constitutional provision, or federal statutes from amending RCW 29A.56 to require that in order to appear on the November ballot in a presidential year in Washington state, candidates for President and Vice President of the United States must disclose information the state believes relevant to holding the office (for example, federal tax returns)?



Washington State Senate

- 2) Is Washington State pre-empted by the presidential qualifications clause in Article II, Sec. 1 of the U.S. Constitution, another federal constitutional provision, or federal statutes from amending RCW 29A.56.030 to require that in order to appear on the presidential primary ballot in Washington state, a candidate for President of the United States must disclose information the state believes relevant to holding the office (for example, federal tax returns)?
- 3) May the legislature amend 29A.56 to prohibit the secretary of state from accepting a certificate with the names and address of presidential electors chosen by a political party or convention if the presidential or vice presidential candidate nominated by that party did not release their federal tax returns in the 12 months prior to receiving the nomination?

Sincerely,

Handwritten signature of Marko Liias in black ink.

Sen. Marko Liias
Democratic Floor Leader
21st Legislative District

Handwritten signature of John McCoy in black ink.

Sen. John McCoy
Democratic Caucus Chair
38th Legislative District

Handwritten signature of Patty Kuderer in black ink.

Sen. Patty Kuderer
State Government Committee
48th Legislative District

Handwritten signature of Sharon Nelson in black ink.

Sen. Sharon Nelson
Democratic Leader
34th Legislative District

Handwritten signature of Sam Hunt in black ink.

Sen. Sam Hunt
Ranking Member
State Government Committee
22nd Legislative District

Handwritten signature of Christine Rolfes in black ink.

Sen. Christine Rolfes
23rd Legislative District



Washington State Senate

Handwritten signature of Jamie Pedersen in black ink.

Sen. Jamie Pedersen
43rd Legislative District

Handwritten signature of Rebecca Saldaña in black ink.

Sen. Rebecca Saldaña
37th Legislative District

Handwritten signature of Guy Palumbo in black ink.

Sen. Guy Palumbo
1st Legislative District

Handwritten signature of Mark Mullet in black ink.

Sen. Mark Mullet
5th Legislative District

Handwritten signature of Lisa Wellman in black ink.

Sen. Lisa Wellman
41st Legislative District

Handwritten signature of Kevin Ranker in blue ink.

Sen. Kevin Ranker
40th Legislative District

Handwritten signature of Annette Cleveland in black ink.

Sen. Annette Cleveland
49th Legislative District

Handwritten signature of Karen Keiser in black ink.

Sen. Karen Keiser
33rd Legislative District

Handwritten signature of Maralyn Chase in black ink.

Sen. Maralyn Chase
32nd Legislative District

Handwritten signature of Jeannie Darneille in black ink.

Sen. Jeannie Darneille
27th Legislative District



Washington State Senate

A handwritten signature in black ink that reads "Reuven Carlyle".

Sen. Reuven Carlyle
36th Legislative District

CC: Jeff Even, Deputy Solicitor General