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TESTIMONY IN OPPOSITION TO LEGISLATION (S-342/H-5727)
REQUIRING THE RELEASE OF PRESIDENTIAL CANDIDATE TAX RETURNS
March 2019

This legislation would require Presidential and Vice-Presidential candidates to publicly disclose their federal tax returns in order to appear on the election ballot in Rhode Island. The ACLU of RI opposes this legislation for a number of reasons.

Although we believe that there are serious constitutional concerns raised by such a requirement,[1] we wish to instead focus our testimony on the fundamental *policy* reasons why this legislation should be rejected.

It is all well and good to believe firmly in the importance of the fundamental right to vote, but that right means little if a person is not given the opportunity to vote for the candidate he or she wants to support. Democracy's dependence on our fundamental right to vote also depends, by extension, on the right to run for elected office. If the candidate a voter supports is barred from appearing on the ballot, that voter is disenfranchised. For this reason, any attempt to disqualify people from appearing on the ballot should be given the same exacting scrutiny as practices that make it harder to vote.

That is why the ACLU of RI has long objected to legislative efforts that would impose added qualifications on candidates to qualify for the ballot.[2] The debate over a candidate's refusal to release personal tax information should be fought on the campaign trail, not serve as a disqualifier for running for office.

This legislation would set a troubling precedent. For example, should Presidential candidates be required to disclose records regarding their physical and mental health – information that is potentially even more important regarding their ability to serve? Would supporters of this legislation also have considered it appropriate in 2008 to adopt a law requiring as a condition of appearing on the ballot that Presidential candidates submit a notarized copy of their birth certificate? After all, citizenship – unlike the disclosure of tax return information – is a Constitutional requirement for the office.

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[1] See *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995) (striking down a state's term limit requirement for congressional office-holders, ruling that the Constitution prohibits States from imposing congressional qualifications exceeding those specifically enumerated in the Constitution).

[2] Supporters of this legislation note that current law requires candidates to obtain a certain number of signatures to get on the ballot. But a requirement to prevent a cluttered ballot filled with candidates who claim no support – and who can still use a mechanism, the write-in vote, to participate – is very different from a substantive mandate like this, or the other examples we cite, to keep people off the ballot.

It is especially problematic for states to add ballot qualifications in the context of federal elections. In 2013, the General Assembly added Rhode Island to the list of states that have joined the National Popular Vote compact. The compact provides that state election officials in participating states would award their Electoral College votes to the presidential candidate who receives the largest number of popular votes in all 50 states and the District of Columbia. The ACLU supported the legislation as furthering core principles of democracy and the concept of "one person-one vote." Yet a bill like S-342/H-5727 undermines those goals if some candidates are barred in certain states from receiving any votes in the first place because of their decision not to release their returns.

Keeping candidates off the ballot for this reason can thus have an unfortunate delegitimizing effect on the election results. There will always be questions about the true outcome of an election if a candidate was excluded from the ballot because they refused to release their tax returns.

While we fully understand that disclosure of this information would be useful, that should not be a standard for determining who gets to run for any elected office. If people don't care what is in a candidate's tax return when deciding whom to vote for, so be it. Those who *do* care can make their opposing views known on Election Day as well.

Ultimately, the debate over a candidate's refusal to release personal tax information should be fought on the campaign trail. Democracy demands that the people use their voting power to decide who governs. Enacting laws that make it harder to run for office undermines this process.

For all these reasons, the ACLU of RI opposes S-342 and H-5727.