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Bill Analysis

Version: As Introduced

Primary Sponsors: Reps. K. Smith and Galonski

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SUMMARY

- Requires any candidate for president or vice-president to include the candidate's federal income tax return for each of the five most recent taxable years with the candidate's candidacy filings submitted to the Secretary of State.
- Requires any candidate for president or vice-president selected to fill a vacancy to include the candidate's federal income tax return for each of the five most recent taxable years with the candidate's certification.
- Exempts a federal income tax return, for purposes of filing as a candidate for president or vice-president, from the prohibition of filing a document with the Secretary that contains an individual's Social Security number or federal tax identification number.
- Requires the Secretary to redact any identifying numbers and publish a candidate's federal income tax return submitted to the Secretary within seven days of receiving the return.

DETAILED ANALYSIS

Candidates' federal income tax return

The bill requires a candidate for president or vice-president, including a write-in candidate, independent candidate, or a candidate selected to fill a ballot vacancy, to include copies of the candidate's federal income tax returns for each of the five most recent taxable years with the appropriate candidacy filings. A candidate also must include, with the federal income tax returns and candidacy filings, a signed statement consenting to the candidate's federal income tax returns being published. The Secretary must provide the consent form to be signed by the candidate. If a candidate has not filed federal income tax returns for the past five or more taxable years, the candidate must include a signed statement indicating such with the candidate's filings and provide copies of any federal income tax returns the candidate has filed. The Secretary must provide the statement indicating the candidate does not have five years of

federal income tax returns to be signed by the candidate. A presidential or vice-presidential candidate is not permitted to appear on the ballot for an election if the candidate has not submitted the candidate's federal income tax returns and signed the forms provided by the Secretary.

Under the bill, a federal income tax return, for purposes of filing as a candidate for president or vice-president, is exempt from the prohibition under current law of filing a document with the Secretary that contains an individual's Social Security number or federal tax identification number. The bill also states that a federal income tax return submitted with a candidate's filing may exclude any Social Security number, individual taxpayer identification number, adoption taxpayer identification number, a bank account, debit card, credit card, or other financial account number, or other information that is excluded under Ohio's Public Records Law. The bill requires the Secretary to redact any information permitted to be excluded and publish the redacted return on the Secretary's official website within seven days of receiving the filing.¹

COMMENT

The bill might be challenged on the ground that it creates a substantive qualification for presidential candidates, beyond the qualifications listed in the U.S. Constitution. In *U.S. Term Limits v. Thornton*, the U.S. Supreme Court ruled that a state may not specify different or additional qualifications for federal office, as the qualifications set forth in the U.S. Constitution are "fixed" and may not be supplemented. In that case, several states, including Ohio, had adopted constitutional amendments imposing term limits on members of Congress. The amendment in question prevented a term-limited candidate from appearing on the ballot. The court held that, "a state amendment is unconstitutional when it has the likely effect of handicapping a class of candidates and has the sole purpose of creating additional qualifications indirectly."²

In later cases, the courts have applied the reasoning in *Thornton* to state ballot access provisions that create additional qualifications for presidential candidates. The courts have ruled that the states may impose legitimate ballot access procedures that are designed to regulate the election process and preserve the integrity of the system. For example, the courts have upheld state laws that impose reasonable petition signature requirements,³ prevent unsuccessful primary candidates from running as independents in the general election,⁴ and require a filing fee.⁵ But, a state cannot impose a substantive qualification that acts as an

¹ R.C. 111.241, 3505.10, 3505.101, 3513.041, 3513.257, and 3513.31.

² *U.S. Term Limits v. Thornton*, 514 U.S. 779, 800 and 836 (1995).

³ *Cartwright v. Barnes*, 304 F.3d 1138, 1142 (11th Cir. 2002).

⁴ *National Committee of the United States Taxpayers Party v. Garza*, 924 F.Supp. 71, 75 (S.D. Tex. 1996); *Libertarian Party of Michigan v. Johnson*, 905 F.Supp.2d 751, 765 (E.D. Mich. 2012).

⁵ *Biener v. Calio*, 361 F.3d 206, 212 (3d Cir. 2004).

“absolute bar” to candidates who would otherwise qualify under the Qualifications Clause, or that has the likely effect of handicapping an otherwise qualified class of candidates, even if the state claims the requirement is procedural.⁶

HISTORY

Action	Date
Introduced	01-21-20

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⁶ *Schaefer v. Townsend*, 215 F.3d 1031, 1034 and 1035 (9th Cir. 2000), holding that a California statute requiring candidates for the House of Representatives be residents at the time of filing is an impermissible qualification; *Campbell v. Davidson*, 233 F.3d 1229, 1234 (10th Cir. 2000), holding unconstitutional a Colorado statute requiring candidates to be registered voters.