

SB 5078 would restrict access to voting in national elections in Washington state

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Key findings:

1. **SB 5078 would require national candidates for president and vice-president to give copies of their tax returns to state Secretary of State or be banned from the ballot.**
2. **The bill is intended to set a “norm” of financial disclosure, though the bill would not apply to the bill’s sponsor or any other state elected official.**
3. **Based on 2016 turnout, if a Democratic candidate is banned, 802,700 voters would be denied ballot access; if a Republican is banned, 602,900 voters would be denied access.**
4. **If candidates of both parties are banned, the ballot access-restriction would limit the participation of up to 3.2 million Washington voters.**
5. **Though drafted with neutral language, the bill targets the supporters of just one particular candidate; President Donald Trump.**
6. **The Attorney General has endorsed the bill, but it is clearly unconstitutional, since it would deny people equal protection of the laws, and is aimed at the supporters of one party.**

Introduction

In an effort to establish a select “norm” in national elections conducted in Washington state, starting in 2020 SB 5078 would ban the name of any candidate for the highest federal offices who did not release personal tax returns from appearing on the state’s election ballots.

The bill was introduced by Sen. Patty Kuderer (D - Bellevue) and would require that:

“...presidential and vice-presidential candidates release copies of their federal income tax returns for the last five years to appear on the [Washington state] ballot.”¹

The bill’s restriction would apply only to federal candidates running for the two highest offices; candidates running for Congress and state and local-level offices, including the state legislature, would be exempt. When asked, the sponsor of the bill said she does not intend to release her own tax returns.

The bill passed the state Senate by 28 to 21 on March 12, 2019 and has been referred to the House for further consideration.

Text of SB 5078

SB 5078 would add voter-access restrictions to the Washington state law that authorizes the state’s primary election in presidential election years.² The restriction would require all candidates for president and vice-president of the United States to release five years’ worth of personal income tax returns at least 63 days before the election.

1 SB 5078, relating to requiring disclosure of federal income tax returns of presidential and vice presidential candidates prior to appearing on the ballot,” Washington State Legislature, introduced February 1, 2019. Other bill sponsors are Senators Hunt, Darneille, Saldana, Conway, Frockt, Palumbo, Wellman, Pedersen, Mullet and Van De Wege.

2 Revised Code of Washington 29A-56-020.

The federal tax returns would be turned over to the Washington Secretary of State, who would then be instructed to release them to the public within seven days.

The names of candidates who are deemed not in compliance with the restriction would be banned from appearing on ballots sent to Washington state voters for all elections starting in 2020. State law would prohibit voters from considering any candidate who state officials ruled did not meet the restriction.

The sponsor says the bill is needed to make a voluntary practice followed by some presidential and vice-presidential candidates mandatory for all such candidates.

“Although releasing tax returns has been the norm for about the last 40 years in presidential elections, unfortunately we’ve seen that norm broken.”³

Critics see the bill as a violation of basic civil rights, especially the right to vote for the candidate of one’s choice. However, the state Attorney General and the state solicitor wrote to lawmakers giving their opinion that the proposed restriction “is likely Constitutional,” but would “definitely be challenged in court.”⁴

Policy analysis

If enacted, SB 5078 would impose a serious restriction on voter access by denying them the right to participate in the election in support of their chosen candidates for the highest federal offices. The access-restriction would limit participation by up to 3.2 million voters.

In the 2020 state primary election, based on voter participation in 2016:

If a Democratic candidate’s name is banned, about 802,700 voters would be denied access to a candidate they would like to support;

If a Republican candidate’s name is banned, about 602,900 voters would be denied access to a candidate they would like to support.

In the 2020 General Election, based on voter participation in 2016:

If a Democratic candidate’s name is banned, about 1,743,700 voters would be denied access to a candidate they would like to support;

If a Republican candidate’s name is banned, about 1,221,700 voters would be denied access to a candidate they would like to support.

Critics of the bill say it is drafted based on partisan bias. They say the bill is specifically designed to prevent Washington voters from casting votes in support of just one particular candidate in 2020, President Donald Trump.

One indicator supporting this view is the fact that the bill passed the state Senate along strict partisan lines; only Democrats voted in favor, and all Republicans and just one Democrat voted against it.⁵

The bill also includes bias against private-sector candidates for public office. Business leaders, entrepreneurs, and others who have been successful in the private sector often have more complex and varied financial histories than candidates who have spent a career working in government.

The bill would tend to favor powerful long-time officials who are already in office, and harm challengers who have gained experience in the private sector, particularly in the business community.

The bill would also suppress voter choice, by discouraging minor candidates of all parties from filing for high federal office. Minor candidates know their chances of winning a nationwide election are slim and may therefore be fearful of exposing five years of personal and sensitive tax information

3 Senator Patty Kuderer (D), quoted in “Washington Senate passes bill that would keep Trump off 2020 ballot unless he releases tax returns,” by John Bowden, *The Hill*, March 16, 2019, at <https://thehill.com/homenews/state-watch/434412-washington-senate-passes-bill-that-would-keep-trump-off-2020-ballot>.

4 Ibid.

5 Roll call on SB 5078, third reading and final passage, Washington State Senate, March 12, 2019, at <https://www.washingtonvotes.org/RollCall.aspx?ID=787251>.

simply to participate in the election. The result would be fewer options for voters, a narrower public debate, and further structural disadvantages imposed against small political parties.

Conclusion

Supporters of SB 5078 say their purpose is to establish a “norm” that candidates release their personal tax returns before running for the highest federal offices. Yet this same rule would not apply to lawmakers themselves, so it could never be “normal” in the sense that it would be apply equally to all candidates.

Further, current circumstances indicate that only the voters of one party, Republicans, would be targeted by the restriction, and denied access to supporting their likely candidate in the 2020 election, while voters who support other parties would be granted full ballot access to their candidates.

Despite the Attorney General’s endorsement, the bill is clearly unconstitutional. It singles out candidates for two particular offices, it could disproportionately impact the voters of one party, it would violate the federal law on IRS disclosures, and it would impose state restrictions on elections for federal office.

SB 5078 would harm the civil rights of the people of Washington by placing voters at a disadvantage compared to voters in other states and deny the people equal protection of the laws by being barred from fair and equal participation in a national election.

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