# ND18 – States CP

### Note

Vs tax affs

Most of the f/ls are responsive to how hw responds

Super vague who the Congress aff mandates candidates disclose to/what the repercussions are?? Cx is important I guess

### \*\*1NC\*\*

#### CP text: The 50 states of the United States and subnational territories should require presidential candidates to release personal tax returns as part of a ballot requirement.

#### States can do it – no constitutional barriers.

**Lang 17** Danielle Lang, 4-6-2017, "States Can Require Financial Disclosure by Presidential Candidates to Safeguard Electoral Transparency," Campaign Legal Center, <https://campaignlegal.org/update/states-can-require-financial-disclosure-presidential-candidates-safeguard-electoral> OHS-AT

Now recognizing how important it is for the public to have this information detailing potential conflicts of those in public office, at least 23 states have introduced bills that would require federal presidential candidates to release their tax returns, or comparable information, in order to be listed on the ballot as a candidate for President in future elections. Such requirements – which would codify a tradition of presidential candidates going back almost 50 years – serve the public by providing full transparency and disclosure in elections for our nation’s highest office.

The Supreme Court has repeatedly affirmed that transparency is fundamental to our political process. But as Richard Painter and Norman Eisen, our two prior Presidents’ ethics advisors, have explained, the current anemic federal disclosure form is inadequate to provide the public with critical information about Trump’s conflicts and foreign ties. State ballot access requirements could fill this critical gap in the next election.

If states do pass these requirements, they will undoubtedly be challenged. But states will have a strong argument that properly tailored disclosure requirements are constitutional.

The primary argument a challenger would make to these laws would likely be that they unconstitutionally add a “qualification” for the presidency to those specified in Article II of the Constitution. In a 1995 ruling in U.S. Term Limits v. Thornton, the Supreme Court held that states cannot add “qualifications” for congressional candidates to those in Article I of the Constitution. Therefore, the Court struck down an Arkansas law that would have denied ballot access to congressional candidates who had served more than a specified number of terms.

Rick Hasen has argued that U.S. Term Limits may not apply to presidential elections because states have carte blanche to choose their electors for the Electoral College and therefore can impose additional qualifications. However, as he recognizes, going this route opens an undemocratic can of worms suggesting unlimited state power to defy the voters in directing presidential electors’ votes.

But this extreme argument isn’t necessary. Even as the Supreme Court struck down the term limits restriction, it made a distinction between unlawful “substantive qualifications” and proper state-level “procedural” mechanisms for ballot access. This is the distinction that should matter.

So, the question is whether a financial disclosure requirement—such as a tax return or other form requiring disclosure of similar information—is procedural or substantive. While financial disclosure has not traditionally been a common ballot access measure like filing deadlines or signature requirements, it should fall on the procedural line of this constitutional test.

Although the Supreme Court has issued few decisions in this area, it appears that the critical line is between laws that exclude individuals based on personal characteristics (i.e., things that cannot be changed, at least not at the point of election, such as age, residency, education, land-ownership, and, in U.S. Term Limits, past congressional service) and laws that merely ask candidates to do something—something any candidate could do—in order to gain ballot access (such as paying filing fees, gathering signatures, resigning another public office, etc.).

This line-drawing makes intuitive sense because it hones in on state laws that would limit, ahead of time, the pool of eligible candidates for a federal position. In other words, the Court’s concern in U.S. Term Limits was about a state’s exclusion of an entire “class of candidates,” not with procedural requirements imposed equally on all candidates for an office. A tax return or other personal financial disclosure requirement does not, ahead of time, exclude any individual or class of individuals from running for president or vice-president.

To further strengthen a law against constitutional attack, a state law could include civil penalties in addition to the ballot access restriction. In that case, if a Court were to find that the ballot access restriction is akin to a “qualification” or is otherwise unconstitutional, a fallback enforcement mechanism would remain in place. There is a longstanding federal financial disclosure requirement that no court has ever held to be an unconstitutional “qualification.”

### \*\*frontlines\*\*

### o/v

#### 50 states solve the case – [contextualize]. The framing issue is that they only read ev saying states fail but no fed key warrants – you should be highly skeptical of any 2AR articulation of solvency deficits since nothing indicates that Congress is key and has no barriers.

### at: unconstitutional

#### 1] It’s not an unconstitutional ballot req – that’s Lang – Thorntorn established a distinction between unconstitutional qualifications based on personal characteristics like age versus laws that any person could comply to like releasing tax returns – disclosure doesn’t exclude anyone from candidacy

#### 2] Fiat solves the link – otherwise the aff would be rolled back too since the Constitution objection applies to all bills about candidate qualls, not just those originating from the states

#### 3] Prefer a broader analysis of Article II.

**Tribe et al 17** Laurence H. Tribe [Carl M. Loeb University Professor and professor of constitutional law at Harvard Law School], Richard W. Painter [S. Walter Richey Professor of Corporate Law at the University of Minnesota Law School and vice chair of Citizens for Responsibility and Ethics in Washington] and Norman L. Eisen, 4-14-2017, "State laws requiring candidates to disclose tax returns would be constitutional ," CNN, <https://www.cnn.com/2017/04/14/opinions/state-laws-requiring-tax-return-disclosure-legal-tribe-painter-eisen/index.html> OHS-AT

We have studied the recent round of state proposals requiring presidential candidates to release tax return information carefully and have concluded that they would be constitutional.

Our federal Constitution allows states to create ballot access requirements that ensure that the ballots for every office, including the office of presidential elector, are comprehensible and informative.

A line must of course be drawn between permissible ballot access laws and impermissible attempts to add qualifications to those specified in the federal Constitution. But our research and analysis lead us to conclude that tax return disclosure laws such as the one proposed in California resemble ballot access laws in structure, impact, and purpose much more closely than they resemble laws imposing additional qualifications for presidential office.

As a result, we believe these laws comport fully with the U.S. Constitution.

Unlike prohibited qualifications, these laws do not impose substantive requirements on candidates beyond those imposed by the Constitution itself; that is, these laws do not limit which candidates may run for office based on any particular information in their tax return. Thus, they do not create an insurmountable barrier in advance to any set of individuals otherwise qualified under Article II of our Constitution. Instead, these laws require federally qualified candidates to comply with a relatively minor process of tax disclosure. That is something competing candidates can and should readily do in order to allow voters to make more informed judgments about those contenders' characters or backgrounds.

#### OR (don’t read both – they contradict – above one is better)

#### 3] Congress links too – unconstitutional meddling in state elections – means we both get durable fiat overwise you get rolled back

**Ellis 9/14** Jenna Ellis, 9-14-2018, "3 reasons it's unconstitutional to require presidential candidates to release their tax returns," Washington Examiner, <https://www.washingtonexaminer.com/opinion/3-reasons-its-unconstitutional-to-require-presidential-candidates-to-release-their-tax-returns> OHS-AT

1. Article II of the Constitution provides the criteria for presidential candidates. It would take a constitutional amendment to modify that criteria on a federal level.

Currently, the criteria for a presidential candidate, per the Constitution, is that the candidate must be a natural-born citizen of the United States, a resident for 14 years, and 35 years of age or older. That’s it. Congress can’t add to the constitutional criteria through federal legislation.

If Congress wanted to change the threshold criteria for presidential candidates, it would likely take a constitutional amendment to Article II, which would in turn require ratification by at least three-fourths (currently 38) states. Congress does not have unilateral authority to add to Article II and impose this kind of mandated criteria on presidential candidates.

The United States Code governing presidential elections is procedural, not substantive, in furtherance of the states’ rights for the electoral process. It is similar to Congress’ role in an Article V convention of the states—there are absolutely no powers for Congress to control or regulate the substance of the convention, but merely procedurally Congress must call the time and place of the convention.

### at Sammin 16

#### This card is literally from the Federalist which should tank its creds since it’s obviously pro-Trump and the entire article is just trashing Democrats

### at: state disclosure too limited (Yin 8/3)

#### Not responsive – in order for candidates to run they have to willingly release their forms – your card is in the context of state jurisdiction to forcefully release Trump’s taxes for the purpose of the Russian investigation.

### at: circumvention (Hasen 17)

#### No circumvention – fiat ensures CP won’t get rolled back by courts

### at: republican crackdown (Hasen 17)

#### No Republican crackdown – it’s just one sentence in the card and super speculative

### at: trades off with reform (Amar 16)

#### 1] Tradeoff warrant is super bad – card doesn’t even cite what resources get sapped away

#### 2] If the aff is sufficient to solve corruption then other reforms aren’t needed

#### 3] Aff links - it also discourages candidates people might want

#### 4] T – it’s better to prevent corrupt politicians from winning the popular vote – getting them in office defeats the purpose

### at: perm

[contextual]

### at: links to ptx

### \*\*theory\*\*

### states bad – top

#### States are good –

#### 1] FUNCTIONAL LIMIT

#### 2] MISREADING THE TOPIC

#### 3]

#### Our defense –

#### 1]

#### 2] REJECT THE ARG not the team

### uniformity bad – top