

VETO MESSAGE ON SB 6453

April 1, 2004

To the Honorable President and Members,
The Senate of the State of Washington

Ladies and Gentlemen:

I am returning herewith, without my approval as to sections 1 through 57, section 101 and section 201, Engrossed Senate Bill No. 6453 entitled:

"AN ACT Relating to a qualifying primary;"

This bill would create a so-called "modified blanket primary" in which each candidate would self-designate a political party of that candidate's choosing to appear with his or her name on the ballot, each voter could vote for any candidate listed on the resulting ballot, and the top two candidates receiving the most votes would advance to the general election with their political party self-designation. The bill would also provide as an alternative the "open primary/private choice" system, where voters choose among candidates of one political party in the primary, and where those choices are private.

At the outset, I must reiterate my extreme frustration and disappointment with the State Republican and Democratic parties for challenging the constitutionality of our blanket primary. The blanket primary has served our state well for almost seventy years. Nonetheless, as a result of the parties' action, the United States Court of Appeals for the Ninth Circuit has ruled that the blanket primary violates the First Amendment rights of the political parties, and the Supreme Court of the United States has chosen to let that decision stand as law. As Governor, I must respect both the letter and the spirit of the federal courts' rulings while ensuring that the state of Washington has an effective and constitutional replacement to the invalidated blanket primary in time for the September 14, 2004 primary election. As demonstrated by their actions and reflected in their deliberations, I know the Legislature and Secretary of State share my goal of ensuring we have a viable replacement for the blanket primary in time for the 2004 primary election.

The Legislature, in passing ESB 6453, knowingly forwarded to me two alternatives to the blanket primary system. Both alternatives are less than ideal, but for the reasons set forth below I am choosing the open primary/private choice system, which I believe better preserves voter choice in the general election, provides more certainty with regard to the state's authority to conduct the primary election, and presents less likelihood that our state's new primary system will be challenged in, or delayed or rewritten by, the federal courts.

During the legislative session, I consistently raised concerns about the "modified blanket primary," which would advance to the general election only the two candidates, regardless of party, who receive the most votes in the primary. I believe this option would

frustrate many voters' expectations by removing from the general election the ability to choose from a list of candidates representing a broad political spectrum. The level of participation is almost twice as high in the general election than in the primary. In 1996, 1,043,000 more citizens participated in the general election than in the primary. In 2000, 1,197,000 more citizens participated in the general election than in the primary. In 2002, a year with no statewide races on the ballot other than judicial elections, 700,000 more citizens participated in the general election than in the primary. The scope of these voters' disenfranchisement in the general election would be enormous if they were forced to select from a ballot with no candidate representing either their preferred party or their general political views.

The modified blanket primary would also hurt the ability of minority and independent candidates to engage the electorate by effectively denying them access to the general election ballot. In 2000, for example, no fewer than eight political parties were represented on the general election ballot for statewide and legislative races, not including independent candidates. Minority parties bring diverse perspectives to political debate and additional choice to voters. They should not be foreclosed from meaningful participation in the democratic process.

Moreover, I believe that adoption of the modified blanket primary would almost certainly result in major parties nominating their candidates through caucuses and embroiling the state in lengthy litigation over the use of party labels by candidates who have not been nominated according to party rules. The legislation as passed acknowledges doubts about the constitutionality of the modified blanket primary system by providing that if a court finds that candidates cannot use party labels unless nominated by the parties, then the state shall move to an open primary/private choice system, similar to that used in Montana. However, for a variety of reasons, including a requirement that all appeals be exhausted before this alternative may go into effect, the provision for triggering that contingency is fundamentally flawed.

Finally, there is a distinct likelihood that the political parties would promptly block the modified blanket primary in federal court. This year, next year, and until final judicial resolution, we would have a primary system written and imposed by the federal courts, and which does not respect our voters' desire for privacy. Our state deserves to have in place immediately a system that is one of the two alternative primary systems written and enacted by the Washington Legislature " not one written and imposed by the federal courts at the urging of the major political parties.

Because of these concerns, I am persuaded that the open primary/private choice alternative in the bill presented to me by the Legislature is the better " and more legally viable " alternative, and the one that we should implement without delay. Under this option, candidates qualify for the general election through a process in which voters are not required to register with

a party, but choose among candidates of a single party, with their choice of ballot neither public information nor a public record. I believe this alternative protects voter privacy, offers voter choice consistent with the federal court ruling, and provides county auditors with a system that can be administered without undue complexity.

Section 205 expresses the intent of the Legislature that the adoption of a new primary system is necessary for the immediate preservation of the public peace, health, or safety, and the support of the state government and its existing public institutions; that enactment should take effect immediately, and that the new system should not be subject to being put on hold by referendum. I wholeheartedly concur. The integrity and smooth operation of our electoral processes are at the core of our democratic form of government. Indeed, men and women in uniform risk their lives daily to protect our democracy, and the public institutions that support that democracy.

Many public officials and concerned citizens have suggested that if no new primary system were put in place this legislative session, confusion as to election processes would occur in the fall. The Secretary of State has suggested that he would cancel the primary if a replacement law was not enacted or if the law was suspended because of referral to the general election ballot. In the September 2000 primary, more than 1.3 million voters expressed their preference as to which candidate should represent each party in the general election. With open seats for Governor, Attorney General and Congress, the primary election to determine which candidates appear on the general election ballot will likely draw even more voters. No elected official has any intention of creating a risk that more than a million voters will be denied the opportunity to have a public primary to determine the general election candidates. To the contrary, everyone involved in the legislative process for this bill has recognized the urgency of having a constitutional primary system in place for the September 14, 2004 primary, and the emergency nature of this legislation. Moreover, I am aware that county auditors need to know by early summer the laws they must implement so that they can prepare for the primary election this September. For these reasons, I agree with the Legislature that this bill should go into effect immediately and not be subject to being put on hold by referendum.

The emergency declaration in section 205 applies in these circumstances to the entire bill as I have signed it into law. Any other reading would thwart the manifest purpose of the Legislature and lead to an absurd result. Obviously, the reference to sections 102 through 193 was intended only to apply if the bill signed into law had multiple inconsistent primary systems. With my veto actions, however, this is not the case.

Some have urged me to veto section 205 to remove what they see as an ambiguous reference to sections 102 through 193, but doing so might create an unintended but more significant ambiguity with respect to whether an emergency need for a primary system exists.

I have not done that because, as all of us involved in the legislative process for this bill recognize, assuring that the primary system established by this bill takes effect for the upcoming September 14, 2004 primary is of utmost urgency to the public and democratic self-governance in our state.

Accordingly, I have left section 205 in the bill because the existing text and the circumstances in which this bill was enacted make it clear beyond reasonable dispute that the intent of all concerned was to have this bill's new primary system in place for the voters this September without risk of cancellation of this bill's primary due to any hold or delays caused by referendum.

For these reasons, I have vetoed sections 1 through 57, section 101 and section 201 of Engrossed Senate Bill No. 6453.

With the exception of sections 1 through 57, section 101, and section 201, Engrossed Senate Bill No. 6453 is approved.

Respectfully submitted,
Gary Locke
Governor