

INITIATIVE 872

To the People

Chapter 2, Laws of 2005

THE PEOPLE'S CHOICE INITIATIVE

EFFECTIVE DATE: 12/2/04

Approved by the
People of the State of Washington
in the General Election on
November 2, 2004

ORIGINALLY FILED

January 26, 2004

Secretary of State

1 AN ACT Relating to elections and primaries; amending RCW
2 29A.04.127, 29A.36.170, 29A.04.310, 29A.24.030, 29A.24.210, 29A.36.010,
3 29A.52.010, 29A.80.010, and 42.12.040; adding a new section to chapter
4 29A.04 RCW; adding a new section to chapter 29A.52 RCW; adding a new
5 section to chapter 29A.32 RCW; creating new sections; repealing RCW
6 29A.04.157, 29A.28.010, 29A.28.020, and 29A.36.190; and providing for
7 contingent effect.

8 BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

9 **TITLE**

10 NEW SECTION. **Sec. 1.** This act may be known and cited as the
11 People's Choice Initiative of 2004.

12 **LEGISLATIVE INTENT: PROTECTING VOTERS' RIGHTS AND CHOICE**

13 NEW SECTION. **Sec. 2.** The Washington Constitution and laws protect
14 each voter's right to vote for any candidate for any office. The
15 Washington State Supreme Court has upheld the blanket primary as
16 protecting compelling state interests "allowing each voter to keep

1 party identification, if any, secret; allowing the broadest possible
2 participation in the primary election; and giving each voter a free
3 choice among all candidates in the primary." *Heavey v. Chapman*, 93
4 Wn.2d 700, 705, 611 P.2d 1256 (1980). The Ninth Circuit Court of
5 Appeals has threatened this system through a decision, that, if not
6 overturned by the United States Supreme Court, may require change. In
7 the event of a final court judgment invalidating the blanket primary,
8 this People's Choice Initiative will become effective to implement a
9 system that best protects the rights of voters to make such choices,
10 increases voter participation, and advances compelling interests of the
11 state of Washington.

12 WASHINGTON VOTERS' RIGHTS

13 NEW SECTION. **Sec. 3.** The rights of Washington voters are
14 protected by its Constitution and laws and include the following
15 fundamental rights:

- 16 (1) The right of qualified voters to vote at all elections;
- 17 (2) The right of absolute secrecy of the vote. No voter may be
18 required to disclose political faith or adherence in order to vote;
- 19 (3) The right to cast a vote for any candidate for each office
20 without any limitation based on party preference or affiliation, of
21 either the voter or the candidate.

22 DEFINITIONS

23 NEW SECTION. **Sec. 4.** A new section is added to chapter 29A.04 RCW
24 to read as follows:

25 "Partisan office" means a public office for which a candidate may
26 indicate a political party preference on his or her declaration of
27 candidacy and have that preference appear on the primary and general
28 election ballot in conjunction with his or her name. The following are
29 partisan offices:

- 30 (1) United States senator and United States representative;
- 31 (2) All state offices, including legislative, except (a) judicial
32 offices and (b) the office of superintendent of public instruction;
- 33 (3) All county offices except (a) judicial offices and (b) those
34 offices for which a county home rule charter provides otherwise.

1 **Sec. 5.** RCW 29A.04.127 and 2003 c 111 s 122 are each amended to
2 read as follows:

3 "Primary" or "primary election" means a ~~((statutory))~~ procedure for
4 ~~((nominating))~~ winnowing candidates ~~((to))~~ for public office ~~((at the~~
5 ~~polls))~~ to a final list of two as part of a special or general
6 election. Each voter has the right to cast a vote for any candidate
7 for each office without any limitation based on party preference or
8 affiliation, of either the voter or the candidate.

9 **Sec. 6.** RCW 29A.36.170 and 2003 c 111 s 917 are each amended to
10 read as follows:

11 (1) ~~((Except as provided in RCW 29A.36.180 and in subsection (2) of~~
12 ~~this section, on the ballot at the general election for a nonpartisan))~~
13 For any office for which a primary was held, only the names of the top
14 two candidates will appear on the general election ballot; the
15 name~~((s))~~ of the candidate who received the greatest number of votes
16 will appear first and the candidate who received the next greatest
17 number of votes ~~((for that office shall appear under the title of that~~
18 ~~office, and the names shall appear in that order. If a primary was~~
19 ~~conducted,))~~ will appear second. No candidate's name may be printed on
20 the subsequent general election ballot unless he or she receives at
21 least one percent of the total votes cast for that office at the
22 preceding primary, if a primary was conducted. On the ballot at the
23 general election for ~~((any other nonpartisan))~~ an office for which no
24 primary was held, the names of the candidates shall be listed in the
25 order determined under RCW 29A.36.130.

26 (2) ~~((On the ballot at the general election))~~ For the office of
27 justice of the supreme court, judge of the court of appeals, judge of
28 the superior court, or state superintendent of public instruction, if
29 a candidate in a contested primary receives a majority of all the votes
30 cast for that office or position, only the name of that candidate may
31 be printed ~~((under the title of the office))~~ for that position on the
32 ballot at the general election.

33 NEW SECTION. **Sec. 7.** A new section is added to chapter 29A.52 RCW
34 to read as follows:

35 (1) A primary is a first stage in the public process by which
36 voters elect candidates to public office.

1 (2) Whenever candidates for a partisan office are to be elected,
2 the general election must be preceded by a primary conducted under this
3 chapter. Based upon votes cast at the primary, the top two candidates
4 will be certified as qualified to appear on the general election
5 ballot, unless only one candidate qualifies as provided in RCW
6 29A.36.170.

7 (3) For partisan office, if a candidate has expressed a party or
8 independent preference on the declaration of candidacy, then that
9 preference will be shown after the name of the candidate on the primary
10 and general election ballots by appropriate abbreviation as set forth
11 in rules of the secretary of state. A candidate may express no party
12 or independent preference. Any party or independent preferences are
13 shown for the information of voters only and may in no way limit the
14 options available to voters.

15 **CONFORMING AMENDMENTS**

16 **Sec. 8.** RCW 29A.04.310 and 2003 c 111 s 143 are each amended to
17 read as follows:

18 ((Nominating)) Primaries for general elections to be held in
19 November must be held on:

20 (1) The third Tuesday of the preceding September; or ((on))

21 (2) The seventh Tuesday immediately preceding ((such)) that general
22 election, whichever occurs first.

23 **Sec. 9.** RCW 29A.24.030 and 2003 c 111 s 603 are each amended to
24 read as follows:

25 A candidate who desires to have his or her name printed on the
26 ballot for election to an office other than president of the United
27 States, vice president of the United States, or an office for which
28 ownership of property is a prerequisite to voting shall complete and
29 file a declaration of candidacy. The secretary of state shall adopt,
30 by rule, a declaration of candidacy form for the office of precinct
31 committee officer and a separate standard form for candidates for all
32 other offices filing under this chapter. Included on the standard form
33 shall be:

34 (1) A place for the candidate to declare that he or she is a
35 registered voter within the jurisdiction of the office for which he or
36 she is filing, and the address at which he or she is registered;

1 (2) A place for the candidate to indicate the position for which he
2 or she is filing;

3 (3) For partisan offices only, a place for the candidate to
4 indicate ((~~a~~)) his or her major or minor party ((~~designation, if~~
5 ~~applicable~~)) preference, or independent status;

6 (4) A place for the candidate to indicate the amount of the filing
7 fee accompanying the declaration of candidacy or for the candidate to
8 indicate that he or she is filing a nominating petition in lieu of the
9 filing fee under RCW 29A.24.090;

10 (5) A place for the candidate to sign the declaration of candidacy,
11 stating that the information provided on the form is true and swearing
12 or affirming that he or she will support the Constitution and laws of
13 the United States and the Constitution and laws of the state of
14 Washington.

15 In the case of a declaration of candidacy filed electronically,
16 submission of the form constitutes agreement that the information
17 provided with the filing is true, that he or she will support the
18 Constitutions and laws of the United States and the state of
19 Washington, and that he or she agrees to electronic payment of the
20 filing fee established in RCW 29A.24.090.

21 The secretary of state may require any other information on the
22 form he or she deems appropriate to facilitate the filing process.

23 **Sec. 10.** RCW 29A.24.210 and 2003 c 111 s 621 are each amended to
24 read as follows:

25 Filings for a partisan elective office shall be opened for a period
26 of three normal business days whenever, on or after the first day of
27 the regular filing period and before the sixth Tuesday prior to ((a
28 primary)) an election, a vacancy occurs in that office, leaving an
29 unexpired term to be filled by an election for which filings have not
30 been held.

31 Any ((~~such~~)) special three-day filing period shall be fixed by the
32 election officer with whom declarations of candidacy for that office
33 are filed. The election officer shall give notice of the special
34 three-day filing period by notifying the press, radio, and television
35 in the county or counties involved, and by ((~~such~~)) any other means as
36 may be required by law.

1 Candidacies validly filed within the special three-day filing
2 period shall appear on the primary or general election ballot as if
3 filed during the regular filing period.

4 The procedures for filings for partisan offices where a vacancy
5 occurs under this section or a void in candidacy occurs under RCW
6 29A.24.140 must be substantially similar to the procedures for
7 nonpartisan offices under RCW 29A.24.150 through 29A.24.170.

8 NEW SECTION. Sec. 11. A new section is added to chapter 29A.32
9 RCW to read as follows:

10 The voters' pamphlet must also contain the political party
11 preference or independent status where a candidate appearing on the
12 ballot has expressed such a preference on his or her declaration of
13 candidacy.

14 **Sec. 12.** RCW 29A.36.010 and 2003 c 111 s 901 are each amended to
15 read as follows:

16 On or before the day following the last day allowed for (~~political~~
17 ~~parties to fill vacancies in the ticket as provided by RCW 29A.28.010~~)
18 candidates to withdraw under RCW 29A.24.130, the secretary of state
19 shall certify to each county auditor a list of the candidates who have
20 filed declarations of candidacy in his or her office for the primary.
21 For each office, the certificate shall include the name of each
22 candidate, his or her address, and his or her party (~~designation, if~~
23 ~~any~~) preference or independent designation as shown on filed
24 declarations.

25 **Sec. 13.** RCW 29A.52.010 and 2003 c 111 s 1301 are each amended to
26 read as follows:

27 Whenever it shall be necessary to hold a special election in an
28 odd-numbered year to fill an unexpired term of any office which is
29 scheduled to be voted upon for a full term in an even-numbered year, no
30 (~~September~~) primary election shall be held in the odd-numbered year
31 if, after the last day allowed for candidates to withdraw, (~~either of~~
32 ~~the following circumstances exist:~~

33 ~~— (1) No more than one candidate of each qualified political party~~
34 ~~has filed a declaration of candidacy for the same partisan office to be~~
35 ~~filled; or~~

1 ~~(2))~~ no more than two candidates have filed a declaration of
2 candidacy for a single (~~nonpartisan~~) office to be filled.

3 In (~~either~~) this event, the officer with whom the declarations of
4 candidacy were filed shall immediately notify all candidates concerned
5 and the names of the candidates that would have been printed upon the
6 (~~September~~) primary ballot, but for the provisions of this section,
7 shall be printed as (~~nominees~~) candidates for the positions sought
8 upon the (~~November~~) general election ballot.

9 **Sec. 14.** RCW 29A.80.010 and 2003 c 111 s 2001 are each amended to
10 read as follows:

11 (~~(1)~~) Each political party organization may(~~+~~
12 ~~(a) Make its own~~) adopt rules (~~and regulations; and~~
13 ~~(b) Perform all functions inherent in such an organization.~~
14 ~~(2) Only major political parties may designate candidates to appear~~
15 ~~on the state primary ballot as provided in RCW 29A.28.010)~~ governing
16 its own organization and the nonstatutory functions of that
17 organization.

18 **Sec. 15.** RCW 42.12.040 and 2003 c 238 s 4 are each amended to read
19 as follows:

20 (1) If a vacancy occurs in any partisan elective office in the
21 executive or legislative branches of state government or in any
22 partisan county elective office before the sixth Tuesday prior to the
23 (~~primary for the~~) next general election following the occurrence of
24 the vacancy, a successor shall be elected to that office at that
25 general election. Except during the last year of the term of office,
26 if such a vacancy occurs on or after the sixth Tuesday prior to the
27 (~~primary for that~~) general election, the election of the successor
28 shall occur at the next succeeding general election. The elected
29 successor shall hold office for the remainder of the unexpired term.
30 This section shall not apply to any vacancy occurring in a charter
31 county (~~which~~) that has charter provisions inconsistent with this
32 section.

33 (2) If a vacancy occurs in any legislative office or in any
34 partisan county office after the general election in a year that the
35 position appears on the ballot and before the start of the next term,
36 the term of the successor who is of the same party as the incumbent may
37 commence once he or she has qualified as defined in RCW (~~29.01.135~~)

1 29A.04.133 and shall continue through the term for which he or she was
2 elected.

3 **CODIFICATION AND REPEALS**

4 NEW SECTION. **Sec. 16.** The code reviser shall revise the caption
5 of any section of Title 29A RCW as needed to reflect changes made
6 through this Initiative.

7 NEW SECTION. **Sec. 17.** The following acts or parts of acts are
8 each repealed:

9 (1) RCW 29A.04.157 (September primary) and 2003 c 111 s 128;

10 (2) RCW 29A.28.010 (Major party ticket) and 2003 c 111 s 701, 1990
11 c 59 s 102, 1977 ex.s. c 329 s 12, & 1965 c 9 s 29.18.150;

12 (3) RCW 29A.28.020 (Death or disqualification--Correcting ballots--
13 Counting votes already cast) and 2003 c 111 s 702, 2001 c 46 s 4, &
14 1977 ex.s. c 329 s 13; and

15 (4) RCW 29A.36.190 (Partisan candidates qualified for general
16 election) and 2003 c 111 s 919.

17 NEW SECTION. **Sec. 18.** This act takes effect only if the Ninth
18 Circuit Court of Appeals' decision in *Democratic Party of Washington*
19 *State v. Reed* , 343 F.3d 1198 (9th Cir. 2003) holding the blanket
20 primary election system in Washington state invalid becomes final and
21 a Final Judgment is entered to that effect.

Originally filed in Office of Secretary of State January 26, 2004.
Approved by the People of the State of Washington in the General
Election on November 2, 2004.