
SUBSTITUTE SENATE BILL 5843

State of Washington

67th Legislature

2022 Regular Session

By Senate State Government & Elections (originally sponsored by Senators Frockt, Kuderer, Hunt, Keiser, Lovelett, Nguyen, Nobles, Salomon, and C. Wilson; by request of Office of the Governor)

READ FIRST TIME 02/02/22.

1 AN ACT Relating to public officials and candidates who knowingly
2 make false statements and claims regarding the election process and
3 results; amending RCW 42.12.010 and 29A.24.031; adding a new section
4 to chapter 29A.84 RCW; creating a new section; and prescribing
5 penalties.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** (1) The legislature finds that:

8 (a) The state of Washington is a leader in the country regarding
9 election security and voter accessibility. The state is routinely
10 held up as a model for other states to implement practices that were
11 early adopted by Washington such as vote by mail, same day
12 registration, and prepaid ballot postage, all of which are secure and
13 increase voter access. Unfortunately, during the 2020 election, false
14 statements and claims regarding the validity of the 2020 election
15 results were made by individuals who were attempting to undermine the
16 election results because their preferred candidate or candidates were
17 not successful in the 2020 general election. Thousands of Americans
18 believed the false statements made by elected officials and
19 candidates for office regarding the election results and sieged the
20 United States capitol on January 6, 2021, with the intent to overturn
21 the 2020 presidential election results.

1 (b) False statements or claims about our election system and its
2 results are damaging, and such claims are even more damaging when
3 elected officials and candidates for public office make them. In the
4 aftermath of the events of January 6, 2021, false statements about
5 the 2020 general election resulted in imminent lawlessness that
6 included five deaths, hundreds of injuries including injuries to at
7 least 137 law enforcement officers, and over \$30 million in damage to
8 the United States capitol. Washington state witnessed similar
9 disorder, though on a lesser scale, including violence at the capitol
10 and invasion of the governor's executive residence.

11 (c) The United States supreme court has ruled that while content-
12 based restrictions on expression are presumptively unconstitutional,
13 some categories of speech—including incitement and defamation—fall
14 outside the protection of the speech clause. For example, with
15 respect to incitement, the United States supreme court has ruled that
16 states have the power to restrict speech that is directed to inciting
17 or that produces imminent lawless action (*Brandenburg v. Ohio*). With
18 respect to defamation of public figures, the supreme court has
19 protected political debate by grafting constitutional protections
20 onto the common law, including a requirement that the statements were
21 made knowingly or with reckless disregard of their falsity.

22 (d) For other regulations based on content, the government
23 generally bears the high burden of showing that the restrictions on
24 speech are constitutional, but may meet this burden by demonstrating
25 that the restriction is necessary to achieve a compelling interest,
26 that there is a direct causal link between the restriction imposed
27 and the injury to be prevented, and that the restriction is narrowly
28 crafted (*Brown v. Entertainment Merchants*).

29 (e) The United States supreme court held in *United States v.*
30 *Alvarez* that even verifiably false statements are not wholly outside
31 the protections of the First Amendment. However, numerous laws
32 prohibit false statements without offending the First Amendment,
33 including laws prohibiting defamation, fraud, and perjury. *Alvarez*
34 held that the law may not punish falsehoods solely on the basis that
35 the statements are verifiably false, but indicates that laws which
36 penalize falsehoods may survive constitutional scrutiny if the
37 falsehoods harm others or unjustifiably benefit the speaker.

38 (f) Some restrictions on knowing falsehoods, like criminal
39 sanctions imposed for committing perjury in a court of law, are
40 necessary to protect the integrity of the judicial system. Integrity

1 of the judicial system is also at stake when public officials and
2 those who have failed to prevail in an election continue to contest
3 election results even after courts have issued final judgments
4 affirming those results and all appeals have been exhausted.

5 (g) Beyond the issue of judicial integrity, the integrity of
6 democracy itself is at stake today. The damage inflicted by those who
7 knowingly make false statements directed at undermining the integrity
8 of our elections, the very foundation of our democracy, is
9 incalculable.

10 (2) It is the intent of the legislature to hold elected officials
11 and those that seek to hold an elected position who have taken an
12 oath to uphold the Constitutions and laws of the United States and
13 the state of Washington accountable for knowingly bringing forward
14 false statements or claims with the purpose of casting doubt on one
15 of our most sacred institutions.

16 NEW SECTION. **Sec. 2.** A new section is added to chapter 29A.84
17 RCW to read as follows:

18 (1) Any elected official or candidate who has filed for public
19 office under chapter 29A.24 RCW and who thereafter knowingly,
20 recklessly, or maliciously makes false statements or claims related
21 to any pending or completed and certified election conducted in the
22 state, regarding the legitimacy or integrity of the election process
23 or election results, is guilty of a gross misdemeanor punishable
24 under RCW 9A.20.021 if those false statements or claims:

25 (a) Are intended to incite or produce imminent lawless action and
26 do incite or produce such action resulting in harm to a person or to
27 property;

28 (b) Are made for the purpose of undermining the election process
29 or the election results; or

30 (c) Falsely claim entitlement to an office that an elected
31 official or candidate did not win after any lawful challenge made
32 pursuant to this title is completed and the election results are
33 certified.

34 (2) For the purpose of this section:

35 (a) "False statements or claims" are not dependent upon, or
36 limited to, the use of any specific words or phrases. Instead, the
37 totality of the statements or claims must be examined to determine if
38 a reasonable person would believe that the candidate or elected
39 official intended listeners to believe the falsehood.

1 (b) "Knowingly makes false statements or claims" means false
2 statements or claims that are publicly made by an elected official or
3 candidate who is aware of facts or circumstances that would lead a
4 reasonable person in the same situation to believe that the
5 statements or claims are not true.

6 (c) "Maliciously makes false statements or claims" means false
7 statements or claims that are publicly made by an elected official or
8 candidate with malice, as defined in RCW 9A.04.110.

9 (d) "Recklessly makes false statements or claims" means false
10 statements or claims that are publicly made by an elected official or
11 candidate when he or she knows of and disregards a substantial risk
12 that a wrongful act may occur and his or her disregard of such
13 substantial risk is a gross deviation from conduct that a reasonable
14 person would exercise in the same situation, as defined in RCW
15 9A.08.010.

16 (e) "Undermining the election process or election results" means
17 the elected official or candidate intended to deceive the public by
18 knowingly making false statements or claims regarding: (i) The
19 accuracy of voting systems, voting and canvassing equipment, or
20 election practices and procedures; (ii) the official conduct or
21 actions of election officials and their staff; (iii) the legitimacy
22 of votes cast in an election; or (iv) any other similar false
23 statements or claims regarding the integrity, accuracy, or lawfulness
24 of any election process or the certified results of any election
25 conducted in the state. "Undermining the election process or election
26 results" does not include any lawful challenge made pursuant to this
27 title.

28 (3) Nothing in this section shall be deemed to prohibit any
29 person from asserting claims regarding election results in actions
30 before any court of this state or the United States.

31 **Sec. 3.** RCW 42.12.010 and 1994 c 223 s 2 are each amended to
32 read as follows:

33 Every elective office shall become vacant on the happening of any
34 of the following events:

35 (1) The death of the incumbent;

36 (2) His or her resignation. A vacancy caused by resignation shall
37 be deemed to occur upon the effective date of the resignation;

38 (3) His or her removal;

1 (4) Except as provided in RCW 3.46.067 and 3.50.057, his or her
2 ceasing to be a legally registered voter of the district, county,
3 city, town, or other municipal or quasi municipal corporation from
4 which he or she shall have been elected or appointed, including where
5 applicable the council district, commissioner district, or ward from
6 which he or she shall have been elected or appointed;

7 (5) His or her conviction of a felony, a gross misdemeanor for
8 knowingly making false statements or claims regarding the legitimacy
9 of the election process or of the election results as described in
10 section 2 of this act, or of any offense involving a violation of his
11 or her official oath, except where removal from office is beyond the
12 power of the state;

13 (6) His or her refusal or neglect to take his or her oath of
14 office, or to give or renew his or her official bond, or to deposit
15 such oath or bond within the time prescribed by law;

16 (7) The decision of a competent tribunal declaring void his or
17 her election or appointment; or

18 (8) Whenever a judgment shall be obtained against that incumbent
19 for breach of the condition of his or her official bond.

20 **Sec. 4.** RCW 29A.24.031 and 2013 c 11 s 31 are each amended to
21 read as follows:

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

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

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

36 (3) A place for the candidate to state a party preference, if the
37 office is a partisan office;

38 (4) A place for the candidate to indicate the amount of the
39 filing fee accompanying the declaration of candidacy or for the

1 candidate to indicate that he or she is filing a filing fee petition
2 in lieu of the filing fee under RCW 29A.24.091;

3 (5) A place for the candidate to sign the declaration of
4 candidacy, stating that the information provided on the form is true
5 and swearing or affirming that he or she will comply with the
6 requirements of section 2 of this act and will support the
7 Constitution and laws of the United States and the Constitution and
8 laws of the state of Washington.

9 In the case of a declaration of candidacy filed electronically,
10 submission of the form constitutes agreement that the information
11 provided with the filing is true, that he or she will comply with the
12 requirements of section 2 of this act and will support the
13 Constitutions and laws of the United States and the state of
14 Washington, and that he or she agrees to electronic payment of the
15 filing fee established in RCW 29A.24.091.

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

18 NEW SECTION. **Sec. 5.** If any provision of this act or its
19 application to any person or circumstance is held invalid, the
20 remainder of the act or the application of the provision to other
21 persons or circumstances is not affected.

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