

**Top Two Primary    Advisory 01: Clarifications from Training    May 27, 2008**

New considerations have emerged throughout the process of conducting trainings for the Top Two Primary. Here are three important clarifications resulting from county input during our trainings:

**Clarification #1: Inserts for the Top Two Primary.** WAC 434-250-040(k) requires a specific statement be printed on a separate insert to be included with the ballot packet for the Top Two Primary.

The statement must be printed on one side of the insert, and **there should not be any additional information included with the statement on that side of the paper.** If a folded insert is utilized, the statement must still have the appearance of being presented separately. No additional text should compete with the statement on the same side of a folded insert.

With consistency as our aim, our program is willing to review your county's insert if you have questions about the compliance of its design. Please contact us if your insert could possibly be a departure from these rules.

**Clarification #2: Inserts for General Elections.** WAC 434-250-040(1) and (m) require similar statements to be included with ballot packets for the general elections. These statements are **not** required to be on a separate insert; each county can decide where to include this statement in the ballot packet.

**Clarification #3: Political Party Preference.** WAC 434-215-120(1), (3), and (4) states that on a Declaration of Candidacy, a candidate may use up to sixteen characters to express a political party preference. The candidate's preference will be reviewed by the filing officer for obscenity and any reference implying endorsement or nomination of a party.

The Top Two Primary gives candidates the freedom to express a party preference, but if that preference seems confusing, misspelled, or adversely affected by punctuation, the Secretary of State's Office will use its discretion to contact candidates for clarification. County Auditors may choose to extend this same courtesy. For declarations filed in person, filing officers may ask candidates for clarification if preference information seems unclear.

**For further clarification** about these topics addressed at training, please contact Libby Nieland in the Certification and Training Program at (360)725-5770 or at [lnieland@secstate.wa.gov](mailto:lnieland@secstate.wa.gov) .



*Washington*  
**Secretary of State**  
SAM REED

**Top Two Primary      Advisory 02: Ballot Packet Requirements      May 29, 2008**

Implementing the Top Two Primary brings about many changes to our ballot format. Attached are a full checklist of ballot packet requirements, an insert example, and a ballot example.

**Highlights of Top Two Ballot Packet Requirements**

- ◆ The Party Preference Notice required by WAC 434-230-015(4) must be printed on the ballot in the specified location.
- ◆ The Top Two Primary explanation required by WAC 434-250-040 must be printed on a separate insert.
- ◆ Offices must be labeled as partisan or nonpartisan.
- ◆ For partisan offices, any party preference stated on the Declaration of Candidacy must be printed on the ballot under the candidate's name; if no preference is stated, that information must be printed under the candidate's name as in the following examples:

John Smith  
(Prefers Example Party)

Jane Doe  
(States No Party Preference)

- ◆ For nonpartisan offices, only the candidate's name shall be printed on the ballot.
- ◆ PCO races will appear at the end of the ballot, or on a separate ballot.
- ◆ PCO races must have the explanation required by WAC 434-230-100 printed on the ballot before the list of candidates.
- ◆ PCO candidates must have party information printed on the ballot for the candidates as specified in WAC 434-230-100.
- ◆ The new instructions for canceling a vote must be printed on the ballot or included elsewhere in the ballot packet.

For further details, please contact Samantha Duncan at (360) 725-5771 or [sduncan@secstate.wa.gov](mailto:sduncan@secstate.wa.gov) .

**Top Two Primary**                      **Advisory 03: Candidate Filing**                      **May 30, 2008**

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As we head into Candidate Filing Week, here are some important points to keep in mind:

- For over-the-counter declarations, be sure to use the new Declaration of Candidacy form (which includes party preference information for partisan offices.) If you receive a filing on an old form through the mail, accept the filing; when you publish your list of candidates who have filed, and create your ballots, use the political party information from the form as the candidate's party preference information. If you have questions about how the party preference should be displayed, please contact our office.
- Certain items are prohibited on the Declaration of Candidacy form in regards to nicknames and party preference.
  - The candidate may use a nickname per RCW 29A.24.060, however the candidate cannot:
    - Use a nickname that denotes present or past occupation, including military rank;
    - Use a nickname that denotes the candidate's position on issues or political affiliation;
    - Use a nickname designed intentionally to mislead voters.
  - As stated in WAC 434-215-120(4), party preference may not:
    - Include any obscene language
    - Imply that the candidate is nominated or endorsed by a political party or that a political party approves of or associates with that candidate. **For example**, if a candidate writes "GOP Incumbent," it implies that the candidate is a perennial candidate of the Republican Party, which would not be allowed under this WAC.

If such filings are received, you may petition the Superior Court for determination that the party preference should be edited, rejected, or replaced with "States No Party Preference." Please also contact our office in this case.
- Over-the-counter filing is an opportunity to educate the candidate about how party preference information will appear on the ballot. You may give a candidate the opportunity to correct his or her preference before filing. For candidates who file online, The Secretary of State's Office will be contacting candidates whose preference is questionable and allowing corrections through June 12.
- For all voids in candidacy and any vacancies occurring from June 3<sup>rd</sup> through August 18<sup>th</sup>, offices will appear on the General Election Ballot only. In such cases, the County Auditor may hold the special filing period at any time.

- For offices whose filings may be accepted by either the Secretary of State or the county, please notify us of:
  - Filings received for these offices during the regular filing period via the detailed instructions in the attachment.
  - Withdrawals in these offices by the close of business Thursday, June 12<sup>th</sup>.
  - Special three day filing periods for voids or vacancies in any of these offices so we can have online filing available concurrently.
  - Your final lot draw order for any Legislative, Court of Appeals, and Superior Court positions entirely within your county immediately after conducting your lot draw.
  - Filings accepted during your special filing period.

In turn, our office will communicate all of the above to the applicable counties.

Please find attached, “County Recording Procedures” for specifics about communicating with our office. If you have any questions, feel free to contact us at (360) 902-4180.



**Top 2 Primary      Advisory 04: Reporting Election Results      June 24, 2008**

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When reporting election results for the Top 2 Primary, your voting system reports will not include the party preference field with each candidate's name.

Some counties may be able to set up a report outside of their voting systems that can report this information. If you choose to do this, you must report the whole statement for each partisan candidate ((Prefers xxxx Party) or (States No Party Preference)) or no party information at all.

Political party names may **not** be abbreviated, with the exception of reporting Precinct Committee Officer (PCO) and Presidential/Vice Presidential results.

Candidates for PCO and President/Vice President are representing a political party, and as such may be treated differently when reporting results. The reports may either contain the complete statement (e.g. Democratic Party Candidate or Republican Party Candidate) or use an abbreviation for the political party. Valid party abbreviations for PCOs on reports are "D" and "R", or "DEM" and "REP." Valid party abbreviations for the Presidential race will be provided at a later date.

**Note:** The state website and WEI websites will report the (Prefers xxxx Party) information with each candidate name. However, political party information will **not** be required to be on the final canvass reports that you will send to the Secretary of State's Office.

For further details or questions, you may contact Patty Murphy at [pmurphy@secstate.wa.gov](mailto:pmurphy@secstate.wa.gov) , or call (360) 902-4188.

**Top 2 Primary                      Advisory 05: Notice of Primary                      July 11, 2008**

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Implementation of the Top 2 Primary has not changed the requirements for the Notice of Primary as outlined in RCW 29A.52.311.

For those publishing a primary local voters' pamphlet, either on your own or combined with the state, publication of a Notice of Primary for the August primary is still required. RCW 29A.32.260 provides a notice of election exemption for counties publishing a voters' pamphlet; the exemption refers to notices listed in RCW 29A.52.351, which only applies to general and special elections. Therefore, counties publishing a local voters' pamphlet for the general election are not required to publish a notice of election.

Based on questions we have received from counties about the Top 2 Primary, there appears to be some confusion about whether it is to be treated like a nonpartisan primary. Even though party preference does not affect the way a candidate moves to the general election ballot as it did before, the Top 2 Primary is **not** administered as a nonpartisan primary. Offices previously considered partisan are still partisan offices.

**Requirements for the Notice of Primary** (RCW 29A.52.311; WAC 434-250-310(3))

**When:**

Between 3 and 10 days before the date of the Primary

**Where:**

One or more newspapers of general circulation in your county

**Must include:**

Names and addresses of all candidates for each race (see note below)  
Party preferences, if stated, or "States No Party Preference" for each partisan candidate  
Nonpartisan candidates listed separately, with a notation that the office is nonpartisan  
Instructions for voting

*(Note: List the campaign address if provided on the Declaration of Candidacy; if no campaign address was provided, use the candidate's residence address. For an easy copy and paste list of these, the 'Candidates Who Have Filed' report displays the campaign addresses for each candidate. WEI counties have state and local candidates on their report and non-WEI counties can find all state candidates here:*

*<http://wei.secstate.wa.gov/osos/en/candidatefiling/Pages/CandidateFilingIndex.aspx> )*

**Must also include, for vote by mail:**

Statement if the election is conducted all by mail (if entire county is vote by mail)

List of precincts that are voting by mail (unless the entire county is vote by mail)

Statement that no polling places are open (unless all elections are vote by mail)

The location where voters may obtain replacement ballots

Whether return postage is required

Dates, times and locations of deposit sites and voting centers

**Must include, for poll counties:**

Hours polls will be open

Addresses of polls for each precinct

**Not required, but preferable:**

Publish the information included in the Notice of Primary on your website

Specifically state how much the postage will be to return the ballot

Provide specific information on accessible voting

Include final date to mail and final date time for drop off of ballots

Please contact the Certification and Training Program at (360) 902-4180 if you have any questions.

**Top 2 Primary      Advisory 06: Superior Court Judges      July 11, 2008**

All superior court judge positions are up for election in 2008. The administration of judicial elections, especially superior court judges, is a complex undertaking. Specific requirements for superior court judges are based on the number of candidates filing and the size of the county.

**If only one candidate files:**

- For counties with a population of over 100,000, no election—primary or general—is held for these candidates. A certificate of election is issued after candidate filing is concluded. (Article IV, Sec. 29 of the Constitution)
- For counties with a population under 100,000, the candidate appears in both the primary and general election ballots. (The state constitution provides exemptions for single candidates in counties over 100,000 and multi-candidate races where a single candidate receives a majority. There are no exemptions for single candidate races in a smaller county. As a result, the race appears in both the primary and general elections.)

**If two or more candidates file:**

For all counties, the position appears on the primary ballot.

For the general election ballot the following applies:

- If a single candidate receives a majority in the primary, the candidate is considered elected and does not appear on the general election ballot. (RCW 29A.36.171 (2) and Art IV, Sec 29 read together)  
**Note:** The position will continue to the general election if a write-in candidate files in accordance with Article IV, Sec. 29 of the Constitution.
- If a single candidate does not receive a majority, the two candidates with the most votes go on to the general election. (RCW 29A.36.171 (1))
- Every candidate advancing to the general election ballot must also have received at least 1% of the total votes cast for that race in the primary. (RCW 29A.36.171 (1))

To determine if a candidate receives 1% of the “total number of votes cast for all candidates for that office...” add all votes cast for candidates and the number of write-in votes together. Undervotes and overvotes are not considered votes for a candidate. Take 1% of the total. (RCW 29A.36.191)

To determine if write-ins need to be tabulated, add the number of undervotes, overvotes, and write-ins. If this total equals or exceeds the number of votes required to go onto the general, the individual write-in votes must be tabulated. When tabulating write-in votes, overvotes and undervotes must be examined to verify a valid write-in vote has not been overlooked. This will be especially important for single candidate races.

Recently, questions have been asked about the definition of “majority.” A majority is more than 50% of the total votes cast or a minimum of 50% plus one vote. Simply receiving the most votes in a multi-candidate race is a plurality, not a majority. (Again, total votes cast include the number of write-in votes.)

As always, we encourage you to use the attached judge reference sheet. You may also find this document at:

[http://www.secstate.wa.gov/elections/pdf/2006/Judicial\\_Offices\\_Appearing\\_on\\_the\\_Ballot.pdf](http://www.secstate.wa.gov/elections/pdf/2006/Judicial_Offices_Appearing_on_the_Ballot.pdf)

Please contact the Certification and Training Program at (360) 902-4165 if you have any questions.

**Top 2 Primary                      Advisory 07: Write-in Votes                      July 17, 2008**

Processing write-in votes in the upcoming Primary could prove challenging. Reinstatement of the one percent rule, which moves the top two vote getters on to the General Election, and the elimination of the 10% rule for Precinct Committee Officers (PCO) will increase the number of offices requiring the tally of write-in votes.

Any time there is only one candidate in a race, there is the possibility that a write-in candidate will be the second of the two candidates to move on to the General Election.

Candidates for PCO no longer have to meet the 10% rule (RCW 29A.80.051). The candidate with the most votes is elected. In many cases, you will have to process write-in votes to determine which candidate is elected.

**Note: For legislative and judicial offices with single candidates, you must tally the write-in votes and report the write-in vote totals with the certification to the OSOS.**

**Determining When to Tally Write-In Votes**

1. Two or more candidates in a race:

Combine the number of write-in votes + overvotes + undervotes. If this number exceeds the number of votes of one of the top two candidates, then write-in votes must be tallied. The top two candidates must also receive at least one percent of total votes cast for candidates in question.

2. One candidate in a race:

Add the number of write-in votes + overvotes + undervotes. If this number exceeds one percent of votes cast for candidates, then write-in votes must be tallied.

To calculate whether a candidate meets the one percent requirement, add the number of votes for all candidates -- include write-in votes but not overvotes or undervotes. One percent of this number is the minimum number of votes a candidate must receive to go on to the General Election. Of course, candidates must also be one of the two candidates receiving the most votes in the Primary.

## **To Tally Write-In Votes**

### 1. Declared Write-In Candidates:

Tally any names that can reasonably be considered to be the candidate.

### 2. Undeclared Write-In Candidates:

Tally separately for each name variation. Political party preference is not required to be a valid write-in vote.

Rules for invalid write-in votes can be found in RCW 29A.24.311.

## **Election Results**

Declared write-in candidates will not appear in any Voters' Pamphlet, Online Voters' Guide, or the Candidates Who Have Filed report or on a ballot. However, they may appear on results reports. If so, they will be listed as the last candidates in each race.

Declared write-in candidates for state races will be 'filed' in WEI as write-in candidates. When counties upload or enter results, they will be prompted for cumulative totals for any declared write-in candidates. (Hart counties may setup their upload for these results.)

WEI Counties may follow the WEI procedure for declared write-in candidates for local races (attached).

Write-in candidates will be listed on the website with a write-in label preceding the name.

## **Write-In Candidates from the Primary Advancing to the General Election Ballot**

The write-in candidate must be one of the top two candidates receiving the most votes in the Primary, and must receive at least one percent of votes cast for all candidates in that race. This does not apply to PCOs, as they are elected in the Primary.

If the write-in candidate meets the two requirements:

- The candidate's name will appear on the General Election ballot.
- For a declared write-in candidate, use the party preference listed on the Declaration of Candidacy form.
- For an undeclared write-in candidate, "(States No Party Preference)" will be on the ballot.
- The candidate's name will appear on all General Election publications as a regular candidate for the office.

## **Write-In Candidates for PCO**

Candidates, regular or written-in, with the most votes within a party are elected. A minimum number of votes is not required.

A valid write-in vote must indicate the party of the candidate.

If no candidates have filed, you must tally the write-in votes to determine who is elected.

Mandatory recount rules do apply to PCOs. Recounts and ties are treated as they would be for any other race.

## **Election Results**

Declared write-in candidates for PCO will not appear in any Voters' Pamphlet, Online Voters' Guide, the Candidates Who Have Filed report, the sample ballot, or on a ballot. However, they may appear on results reports. If so, they will be listed as the last candidates in each race.

WEI Counties may follow the WEI procedure for PCOs and PCO declared write-in candidates (attached).

For questions regarding write-in votes, please contact the Certification and Training Program at (360) 902-4180.



## **Top 2 Primary      Advisory 08: Political Party Observers      July 24, 2008**

Official political party observers are essential for the integrity of all state and local elections and primaries. Observers should be present as witnesses for all election processes, including ballot processing, tabulation, and recounts.

Observers do not actively participate in any election activity but must be permitted to witness activities associated with the election or primary.

### **Requesting and Appointing Observers**

The County Auditor is required by RCW 29A.40.100, WAC 434-250-110, and WAC 434-261-020 to request official political party observers be appointed by each major political party. This request must:

- Be in writing;
- Be completed prior to initial processing of ballots;
- State the time and date that ballot processing will begin;
- Specify the number of observers requested; and
- Request designation of a supervisor if more than one observer is appointed.

It is the responsibility of major political parties to appoint their official party observers. If a party fails to appoint or observers fail to attend, the election processes and activities will continue as scheduled.

The County Auditor may refuse any appointment of an official observer, provided that the political party is promptly requested to appoint a substitute (WAC 434-261-020). Additionally, the County Auditor may request a disruptive observer to leave (WAC 434-264-030). It is beneficial to have these rights outlined in your Canvassing Board Manual or procedures.

### **Preparing for Observers**

As mandated by RCW 29A.12.120, the County Auditor must provide training to official party observers prior to every primary or general election. Record of attendance at training must be kept to qualify observers for subsequent elections. Observers are to be instructed in:

- Proper conduct of duties;
- Rules regarding what observers may or may not do;

- Election procedures used by the election department for processing, vote tallying, and verification of accuracy;
- Verifying the accuracy of vote tabulation.
- The proper method to submit questions and objections.

All observers must be identified by roster and identification tags. If more than one observer is present at a single location, observer stations may be assigned by the County Auditor (WAC 434-261-020).

### **Partnering with your Observers**

We encourage you to have observer guidelines detailed in your procedures prior to the observers beginning their duties. This will allow the observers and the election staff to have a clear understanding of the role and conduct of political party observers. Written guidelines will also help avoid misunderstandings and conflict.

Political party observers are part of the citizenry we serve. We need to recognize any comments or questions they have, and treat them with respect in an efficient and responsive manner. They in turn must observe, and not participate in or impede any aspects of the administration of the election.

It may be helpful to refer to WAC 434-264 for assistance in creating observer guidelines for your procedures. Official political party observers may, by mutual agreement, request a manual count of precincts or ballot batches as described in RCW 29A.60.170. Procedures for this must also be addressed in your County Canvassing Board manual.

If you have any questions, feel free to contact us at (360) 902-4180.



## **Top 2 Primary Advisory 09: County Questions (Write-in Votes) August 25, 2008**

In addition to the email sent 8/22 (see attached), several other important questions from county elections staffs about the processing of write-in votes deserve further clarification from our office:

1. If individual write-in votes must be tallied, are votes for all write-ins reported?
2. Must write-in votes for multi-county offices be tallied and reported?
3. When is it necessary to recount a PCO race, and if the race is tied, how do we determine a winner?
4. Is the County Auditor required to issue Certificates of Election?

**Question #1:** If individual votes must be tallied, are votes for all write-ins reported?

Only valid write-in names must be reported. When tallying individual votes, tally the votes for each candidate. If the vote is for someone who is not a registered voter in the district, the vote may be accounted for in a general category, such as “other” or “uncertified”.

After applying the rules in the Voter Intent Manual, individually tallied votes plus the general category should equal the total number of write-in votes cast for an office.

Checking the VRDB to verify a write-in name is registered in a district is optional. If no one by that name is registered, the vote may be added to the general category described above. Please be aware that it is possible for voters to have names that are the same as fictional characters such as “Mickey Mouse”, “Santa Claus”, and “Anyone Else”. Please check the VRDB before determining a write-in candidate is not a registered voter in the district. For your convenience, we’ve attached a list of names already checked on the VRDB.

**Question #3:** Must write-in votes for multi-county offices be tallied and reported?

If only one candidate filed in an office, then yes, tally and report write-in votes for individual candidates with your certification. The 1% rule will automatically require a tally of write-ins.

If more than one candidate filed in an office and pre-inspection procedures outlined in the attached email are followed, then tallying and reporting may not be necessary. If the number of

write-in votes exceeds the number of votes received by the 2<sup>nd</sup> place candidate within your county, please notify the OSOS Certification and Training Program. All counties will be required to tally votes for that office when this occurs.

**Question #4:** When is it necessary to recount a PCO race, and if the race is tied, how do we determine a winner?

The same recount rules and statutes will apply to PCO races as apply to other offices. If you have the write-in ballots segregated, only the ballots with write-in votes need to be recounted.

In the event of a tie after conducting the recount, the winner would be determined by lot. If you have more than two candidates with tied votes, you may need to use a different method, such as drawing a name or number. (RCW Chapter 29A.64 and WAC Chapter 434-264)

**Question #5:** Is the county required to issue Certificates of Election?

It is up to the County Auditor whether to issue Certificates of Election or not. We suggest following standard procedures used in previous PCO elections.

Additional information contained in “Advisory 07: Write-in Votes” still applies, and can be accessed on our website: <http://www.secstate.wa.gov/elections/Top2PrimaryAdvisories.aspx> .

If you have questions, please contact the Certification and Training Program, (360) 902-4180.

**Top 2 Primary Advisory 10: General Election Ballot Packet (Revised) Sept. 8, 2008**

Rules for the Top 2 Primary will impact the upcoming general election ballot packet.

Litigation regarding Initiative 1029 will also affect the ballot.

This advisory lists important points for formatting the ballot, providing instructions to voters, and directions for printing I-1029 on the ballot.

Ballot Format, WAC 434-230-015(4):

The party preference explanation on the general election ballot will differ from the primary. It must be printed immediately **after** President and Vice-President of the United States, but immediately above the first partisan congressional, state or county office. The notice must be printed in bold:

**“READ: Each candidate for President and Vice-President is the official nominee of a political party. For other partisan offices, each candidate may state a political party that he or she prefers. A candidate’s preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate.”**

The notice may also be included in the ballot instructions. (Optional)

Candidate Format, WAC 434-230-045:

The candidate who received the highest number of votes in the primary must be listed on the ballot first and the candidate receiving the second highest number of votes must be listed second. A candidate’s party preference information must remain the same as listed in the primary. Political party preferences will not affect the order in which candidates are listed (except President and Vice-President).

President and Vice-President, WAC 434-230-110(1) - (4):

- Candidates for President and Vice-President must be paired together (on either one line or two)
- Political party names may not be abbreviated; the first letter of each word must be capitalized
- Each pair must be designated as nominees, **without** parentheses: Republican Party Nominees (e.g.)
- Candidates who are not nominated by a political party, but running as “independents” must be designated as such: Independent Candidates (e.g.)
- OSOS will certify a list of candidates in ballot order when we receive official notification from the major parties

Examples of Formatting (using 2004 Presidential Candidates):

George Bush/Dick Cheney  
Republican Party Nominees

Ralph Nader/  
Peter Camejo  
Independent Candidates

Instructions to Voters, WAC 434-250-040:

The following instructions are required, but can be included anywhere in the packet (on the ballot, envelope, or an insert). The County Auditor's Office is not required to provide a separate insert, although this is strongly encouraged:

“Washington has a new election system. In each race for partisan office, the two candidates who receive the most votes in the August Primary advance to the November General Election. Each candidate for partisan office may state a political party that he or she prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate. The election for President and Vice-President is different. Candidates for President and Vice-President are the official nominees of their political party.”

Our office does not have a problem with substituting “receive” with “received” (past tense).

The same notice (above) must be displayed at polling places while they are open (WAC 434-253-025(8)).

Statewide Initiatives:

The Secretary of State's Office has certified three statewide initiatives: I-985, I-1000, and I-1029. Our office has been named in a lawsuit over I-1029.

The paragraph below is found on the certification document directly following I-1029. The statement is not intended for the ballot and is provided for your information only. Do **not** print this statement on the ballot:

“**Note:** The certification of Initiative Measure No. 1029 is subject to possible modification if a court of competent jurisdiction issues an order removing I-1029 from the ballot.”

The State Supreme Court heard arguments on Thursday, September 4<sup>th</sup>, **and has dismissed the court challenge to place I-1029 on the ballot. This means Initiative 1029 will appear on the ballot and you may proceed accordingly. Again, the “note” about possible modification should not be printed on the ballot.** The official language for I-1029 is located on our site at:

<http://www.secstate.wa.gov/assets/elections/CertifiedBallotMeasureTitlesforthe2008GeneralElectionpdf.pdf>

If you have questions, please contact the Certification and Training Program, (360) 902-4180.