

Honorable John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WASHINGTON STATE REPUBLICAN
PARTY, et al.,

Plaintiffs,

WASHINGTON DEMOCRATIC
CENTRAL COMMITTEE, et al.,

Plaintiff Intervenor,

LIBERTARIAN PARTY OF
WASHINGTON STATE, et al.,

Plaintiff Intervenor,

v.

STATE OF WASHINGTON, et al.,

Defendant Intervenor,

WASHINGTON STATE GRANGE,

Defendant Intervenor.

NO. CV05-0927-JCC

DECLARATION OF LUKE ESSER IN
OPPOSITION TO STATE AND GRANGE
MOTIONS FOR SUMMARY JUDGMENT
AND IN SUPPORT OF SUMMARY
JUDGMENT FOR PLAINTIFFS

ESSER DECLARATION IN OPPOSITION
TO STATE AND GRANGE MOTIONS
FOR SUMMARY JUDGMENT AND IN
SUPPORT OF SUMMARY JUDGMENT
FOR PLAINTIFFS - I
CV05-0927 JCC

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1 Luke Esser, being over the age of eighteen years, declares under the penalty of perjury
2 under the laws of the State of Washington as follows:

3 1. I am the Chairman of the Washington State Republican Party ("WSRP") and have
4 served in that capacity since January 2007. As Chairman of the Washington State Republican
5 Party, I oversee all Party operations and Party staff. I am responsible for implementing the
6 decisions and policies as adopted by the Republican State Committee of Washington, including
7 nomination rules. I am a public spokesman for the Party and chief contact with the press.

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9 2. When I became Party Chairman, the WSRP had in place a set of rules governing
10 nomination of Republican Party candidates. During the time I have been Chairman, the Party
11 has reviewed the rules regularly. In 2008, the WSRP adopted the nomination rules attached as
12 **Exhibit 1**. In accordance with those rules, we nominated a candidate in each of Washington's
13 nine Congressional Districts and a candidate for each of the partisan, state-wide elected offices.
14 In 2010, the WSRP adopted rules for nominating candidates. A copy is attached as **Exhibit 2**,
15 For 2010, we have nominated a single candidate for the United States Senate race and a single
16 candidate in each of the nine Congressional races. The authority to make nominations for county
17 and legislative office has been delegated to the Party organizations of those respective levels.
18 Some counties and legislative districts have completed their nomination process. Others have
19 not yet completed nominations for partisan office for 2010.

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21 3. In 2008, the Republican Party nominated Christine Webb in advance of the
22 August primary in the Third Congressional District. She was opposed by Michael Delavar. The
23 Party did not recognize Mr. Delavar as its nominee, or even a legitimate Republican candidate.
24 The state published his name on the primary ballot with the identical party designation as it did
25

1 Ms. Webb. Press reports across the District generally described him as the "Republican
2 candidate" or as the "Republican" running for Congress, notwithstanding the fact that he was not
3 our nominee and had not been recognized by the Party. Mr. Delavar advanced to the general
4 election, carrying the Republican Party name. The Republican Party did not provide Party
5 resources to him or support his candidacy in the general election.

6 4. The State publication of candidates' party preference on the ballot creates
7 confusion among voters as to which candidates are affiliated with the Republican Party and those
8 candidates that are not. In my role as Party Chairman, I speak to many individuals and reporters
9 throughout the election season. In conversations with members of the public and reporters, they
10 never refer to candidates as "the candidates who prefer the Republican Party," but instead refer
11 to them as "the Republican candidates." Reporters will also refer to candidates as "your
12 candidate" when speaking to me, even if these candidates are people I have never heard of and to
13 whom we are not offering any Party resources.

15 5. When reporters refer to these unaffiliated candidates as "the Republican
16 candidate" or as "your candidate," I correct them. I also ask reporters to contact me to find out
17 which candidates have been authorized as Party candidates. However, when I read the stories
18 written by the reporters the day after our conversation, it is never "the prefers Republican Party
19 candidate" that is referenced. It is always "the Republican candidate."

21 6. In my conversations with members of the press, I cannot ever remember a
22 reporter saying to me, "Hey, how about this candidate who prefers Republican Party?" That has
23 never happened even once. The reporters always refer to candidates who have stated a
24 "preference" as "the Republican candidate," "your candidate," or "the Party's candidate."

1 7. In conversations with individuals, whether at my Rotary Club, my church or
2 wherever I meet people, they frequently express to me that they are confused about the
3 terminology on the ballot. The confusion is whether “prefers Republican Party” on the ballot
4 means that these candidates are the Republican Party’s candidates or approved by the Party.

5 8. The State’s publication on ballots and its other official election-related
6 publications that a candidate “prefers Republican Party” make it more difficult and harder to
7 coalesce support for our candidates among Republican voters. This is true because of confusion
8 engendered by candidates who are not associated with the Republican Party carrying the same
9 “prefers Republican Party” designation as our candidates, but also because such candidates may
10 deliver different messages to the voters, both in the primary and general elections. These
11 positions may attract rival party voters to support those candidates. For example, in the Third
12 Congressional District race in 2008, Mr. Delavar took a strong position opposing U.S. military
13 persons in Iraq. This was a decidedly minority position among Republicans. It did appeal to
14 Libertarians and a swath of liberal voters who do not otherwise share interests or positions with
15 the Republican Party. With the consolidated ballot, these voters were able to vote for Mr.
16 Delavar in that single race. I believe the presence of Libertarian and other non-Republican
17 voters affected the result. In a primary which limited selection of the Republican candidate for
18 the general election to Republican voters, Mr. Delavar would have lost. Likewise, had Mr.
19 Delavar not carried the identical party designation on the primary ballot, he would not have
20 siphoned as many Republican votes from our nominee as he did, and he would not have
21 advanced to the general election, instead of our nominee. Even where the presence of
22 unauthorized candidates carrying the Republican name does not change who advances, it still
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1 changes the result. In the 2010 Senatorial primary, there were six candidates who appeared on
2 the ballot in conjunction with the Republican Party name. Only three were authorized to do so.
3 The three unauthorized candidates drew over 17,000 votes. This was over 1% of the total.
4 When national political committees and other donors make decisions regarding allocating
5 resources after the primaries, even a percentage or two shift in performance can have a major
6 effect on party fundraising to support its nominee in the general election.

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8 9. In 2008, the governor's race was the only statewide race that year where one of
9 our officially nominated Republican candidates appeared on the primary ballot with other
10 candidates claiming to be Republicans. Dino Rossi had been officially nominated as our WSRP
11 candidate for governor at the May, 2008 meeting of our State Committee. But two individuals
12 named John W. Aiken, Jr. and Javier O. Lopez had also filed to appear on the primary ballot in
13 August 2008, ostensibly as Republicans.

14 10. A survey conducted by Elway Research in July 2008 further indicated that there
15 was a surprising degree of confusion among voters concerning the abbreviation "GOP," a long-
16 standing alternate designation for the Republican Party, standing for "Grand Old Party." A
17 small, but potentially significant percentage of voters, about seven percent, thought that GOP
18 indicated a Democratic Party candidate. Dino Rossi had used GOP in his party designation when
19 filing his candidacy, but the impostor candidates had appropriated the "Republican" party name
20 in their filings, and would appear on the ballot under that designation.

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22 11. We at the WSRP were concerned about the additional risk of confusion that could
23 result if the members of our Party were not notified that Dino Rossi was the officially nominated
24 candidate of our Party, and mistakenly voted for either of these other two candidates who were
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1 posing as Republican candidates. Even a drop-off of a few percentage points in the primary
2 election results could make it much more difficult for our officially nominated Republican
3 candidate to win in the November general election.

4 12. Our Party also considered Gov. Christine Gregoire's performance (or lack
5 thereof) as the pivotal political issue in our state in 2008. To maximize our Party's success in
6 every political race that year, it was therefore critical for us to remind Party members that
7 significant philosophical differences existed between the policies undertaken by the incumbent
8 Democratic administration and the policies preferred by Republicans.

9 13. Especially in a Top Two primary election, where the state has claimed that party
10 labels on the ballot don't indicate an association with the actual party holding that label, it was
11 important for the WSRP to make sure that confusion did not exist on a philosophical level as to
12 the differences between Republicans and Democrats. Any confusion at all could prove decisive
13 in a close election year, and we had many close elections in 2008.

14 14. The three pieces of mailed literature that we sent out to Party members
15 highlighted what we considered to be significant policy mistakes of the Gregoire Administration
16 (on taxes, crime and spending, respectively), and how they differed from what the WSRP
17 believed to be desirable public policies. Making clear how our Party differs from the Democrats
18 on important public policy issues is a real challenge when anyone can appear on the ballot with
19 the words "prefers Republican Party," whether the WSRP approves of their carrying our Party
20 name or not. We were therefore determined to do our best to reduce the resulting confusion and
21 to let our Party members know of our commitment on that matter.
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1 15. Each of these three literature pieces in question were sent out to 174,528
2 identified Party members. For each of those three mailers, about eighty percent of the pieces
3 were sent to those who had indicated their Party membership by voting a Republican ballot in the
4 February 2008 presidential primary in Washington state and checking a box on their ballot next
5 to which appeared the statement, "I declare that I am a member of the Republican Party and I
6 have not participated and will not participate in the 2008 precinct caucus or convention system of
7 any other party." We purchased this list of voters from the Secretary of State's Office. The
8 remainder of approximately twenty percent of the pieces went to those defined as Republican
9 Party members based on those individuals' statements that they only voted for Republican
10 candidates when questioned by Party volunteers. This category of member has been in place
11 since 1998, when the WSRP first formalized its definition of Party member.
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13 16. Attached, as **Exhibit 3** is a true and correct copy of the cover page from the 2008
14 Voter's Pamphlet produced by the Secretary of State and the page containing a reproduction of
15 the oath voters swore when they participated in the 2008 Washington presidential preference
16 primary. The Voters Pamphlet correctly stated that the Republican Party allocated 51% of its
17 delegates to the national convention based on the results of the Presidential Preference primary.
18 The Presidential Primary oath for the Republican Party has remained unchanged since at least
19 1999.
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21 17. Delegates to our national convention make important decisions on matters of
22 internal Party governance, including adoption of the national platform and nomination of the
23 Party's candidates for president and vice president.
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1 18. The 2004 governor's race had a historically close margin, with Christine
2 Gregoire, the Democratic candidate, ultimately prevailing by 133 votes out of approximately 2.8
3 million votes cast. We had every reason to believe that the 2008 rematch between Rossi and
4 Gregoire could be just as close. Thus we were greatly concerned about both motivating
5 Republicans to vote and also in making certain that the members of our Party knew that they
6 should be voting for Dino Rossi, the officially nominated candidate of the WSRP, in the August
7 19 primary election, and not voting for either of the two individuals posing as Republican
8 candidates. The seven percent of voters who indicated some confusion about party labels was a
9 number many times the margin of victory in the 2004 gubernatorial election. We did not want
10 any Republicans to be confused about whether Dino Rossi was our nominee.

12 19. The three literature pieces were designed to appeal to members of the Republican
13 Party. Two said, "Vote for Dino Rossi and our entire State Republican Team in the August 19
14 Primary," and the third said, "Vote for Dino Rossi and the entire Republican Slate in the August
15 19 Primary." We also knew that encouraging non-Republicans (whether Democrats, third party
16 members or independents) to support a Republican ticket would be counter-productive, since
17 they wouldn't have any reason to be loyal to the Republican Party, which is part of why we
18 limited the mailings to Party members.

19 20. We were very pleased that our member communications efforts, in part, helped
20 our Party's nominee to finish within two percentage points of Christine Gregoire in the 2008
21 primary election and limited the percentage of votes lost to the two candidates posing as
22 Republicans to a combined 1.84 percent of the vote. Though Dino Rossi did not win the 2008
23 general election, we helped maintain his viability in that general election through our
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1 communications to members of our Party, and continued to highlight for our members the
2 principles for which the GOP stands.

3 21. I have run for partisan office in Washington several times. I have served as a
4 state senator, and ran for the United States Congress. In the course of those campaigns, I had
5 countless conversations with voters. For many voters, my status as a Republican candidate was
6 all the information they needed (to vote for or against me). Presenting them with that
7 information on the ballot was their cue how to vote. I-872, by printing identical party
8 designations on the ballot, for real Republican candidates and opportunists, confuses voters. The
9 State's implementation for I-872, through the campaign finance laws, forces us to repeat
10 opportunist and false-flag candidates seeking to trade on the Republican Party name using the
11 very designation, "Republican," on any political advertising that would seek to distance the Party
12 from these kinds of candidates. The repeated use of the Party name to distance ourselves from
13 unauthorized candidates would merely serve to reinforce a connection. This is a strong
14 disincentive to the Party to make affirmative efforts in political advertising to distance ourselves
15 from unauthorized candidates seeking to trade on our name. The State's implementation of I-
16 872, through its campaign finance laws, alters our political speech.
17

18 Dated at Bellevue, Washington this ____ day of September, 2010.

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21 See attached signature page
22 Luke Esser, Chairman
23 Washington State Republican Party
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1 candidates seeking to trade on our name. The State's implementation of I-872, through its
2 campaign finance laws, alters our political speech.

3 22. Dino Rossi was unanimously nominated as the WSRP candidate for U.S. Senate
4 in 2010 at the August, 2010 meeting of our State Committee.

5 Dated at Bellevue, Washington this 13th day of September, 2010.

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8 Luke Esser, Chairman
9 Washington State Republican Party
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EXHIBIT 1

County and Legislative Office

The Republican State Committee recommends that each County Central Committee adopt a policy for nominating candidates for partisan offices within the Local, County and legislative office. A copy of the adopted King County rules is attached as an example and for reference, except where inconsistent with the following.

- Offices solely within a single county are subject to nomination by such rules as that county may adopt.
- In the absence of adoption of rules by counties making up a legislative district who choose to nominate shall use the following guidelines:
 1. There shall be a separate vote on each prospective nominee
 2. Eligible incumbents as of the date of this resolution shall qualify as an automatic nominee until 2010.
 3. The mechanics of conducting the voting (i.e. meeting, vote-by-mail, teleconference) may be selected by each county.
 4. Voting must be by elected PCOs or those appointed not less than 45 days before the first vote on nomination within the relevant jurisdiction.
 5. A majority vote of those voting is required for any candidate seeking nomination.

Any nomination by a county that has occurred before the adoption of this resolution is grandfathered.

Statewide Republican Offices

Eligible incumbents for statewide office are hereby nominated by the Republican State Committee. In the absence of a Republican incumbent, nominations may be made by a majority vote of the Republican State Committee where each state committeeman, state committeewoman, and chairman or their proxies shall be entitled to cast as many votes as the county he or she represents was allocated at the 2008 Republican State Convention.

Congressional Offices

Eligible incumbents for congressional office are hereby nominated by the Republican State Committee. In the absence of a Republican congressional incumbent, nominations may be made by a majority vote of the congressional district. Each state committeeman, state committeewoman, and chairman or their proxies shall be entitled to cast as many votes as the county he or she represents was allocated in that congressional district at the 2008 Republican State Convention.

A RESOLUTION ESTABLISHING PROCEDURES TO NOMINATE REPUBLICAN CANDIDATES FOR PARTISAN OFFICES

Whereas the recent decision of the U.S. Supreme Court has cast doubt on the method by which Republican candidates for partisan office will be nominated;

Whereas the King County Republican convention considers nomination of the candidates who will carry the party's message to voters to be of the utmost importance.

Therefore, be it resolved that this convention adopts the following rules governing nomination of Republican candidates, which nominations shall be effective unless the primary is conducted under substantially the same laws that governed partisan primaries in 2006.

Rule 1. Convention Participants. The 2008 Republican nominating conventions held under these rules shall consist of the Precinct Committee Officers, residing within the candidate's district, elected or appointed at least sixty days before the holding of the convention. No proxies shall be allowed.

Rule 2. Provision for Conventions; Multi-County Districts. Conventions shall be called for each legislative district entirely or partly located within King County. For districts not solely located within King County (Legislative Districts 1, 31, 32 and 39) the county chairman shall confer with county chairmen of the other affected counties and shall seek to schedule a joint nominating convention. Absent participation by other affected counties, the nominee so chosen will be the nominee solely of the King County Republican Party.

Rule 3 Timing of Conventions. Conventions pursuant to these rules shall be held on the call of the county chairman not later than June 30, 2008. The call of the convention shall be mailed not less than ten days before the date upon which the convention is scheduled.

Rule 4. Provision Where a Single Candidate Has Filed. For any partisan office for which no more than one candidate has filed for office by the close of filing period, in the discretion of the county chairman, no convention need be called and the authority to nominate or decline to nominate shall be exercised by the Executive Committee of the King County Central Committee.

Rule 5. Rules for Conduct of Balloting. Each candidate or the candidate's representative shall be entitled to address the convention for not less than two minutes, or longer if provided for under rules adopted to govern the convention. Each delegate shall vote by ballot for one candidate for each office for which nominations are sought. The ballot shall include a line "nominate no one for this office" The results shall be tallied and reported to the chairman of the convention and, within three days after the adjournment of the convention, to the Chairman of the King County Republican Central Committee.

Rule 6. Majority Vote Required. The nominee of the Republican Party shall be the candidate who receives a majority vote. If no candidate receives a majority on the first ballot, the candidate receiving the least number of votes shall be dropped from each successive ballot until a candidate receives a majority. In the event of a tie in determining which candidate shall be dropped, the candidate shall be chosen by lot.

Rule 7. Provision for Convention Recess. If a convention determines that it is not prepared to nominate a candidate or candidates for one or more offices, the convention may recess to a date certain, not later than the June 30, 2008, or may recess to a call of the chair. In the event the convention recesses to the call of the chair, any reconvened convention must be held not later than June 30, 2008 and the call of the reconvened notice must be mailed not later than ten days before the date upon which the convention reconvenes.

Rule 8. Convention Contests. In the event that the nomination results of any convention held under these rules shall be challenged, the Executive Committee of the King County Republican Central Committee shall be the sole judge of such contest and its determination as to whom the nominee of the Republican Party is shall be final. Any challenge shall be filed by a delegate to the convention whose results are being challenged or by a candidate denied nomination by filing written notice of challenge to be postmarked or delivered to the County Headquarters a Notice of Challenge no later than the lesser of (10) days following the election in question or one half the time between the adjournment of the convention and June 30, 2008. The Notice of Challenge shall set forth the facts upon which the challenge is made accompanied by a statement of position giving fair notice to all of the nature and grounds of the challenge. The challenge shall be heard by and acted upon by the Executive Committee.

Rule 9. Authority to Use Name Republican. Only candidates who shall have been nominated pursuant to these rules shall be authorized by the Republican Party to designate themselves as Republican candidates or have

party approval to appear on the election ballot or in other election documents using the designation "Republican" or other words identifying themselves as Republicans.

Rule 10. Authority to Amend Rules. In the event of the rendering of any court decision that affects the conduct of nominations, the Executive Committee of the King County Central Committee may amend these rules to conform to, or take advantage of, such court decision. The Executive Committee is directed to amend these rules to the extent necessary to bring them into compliance with any rules that may be adopted by the Republican State Committee of Washington. The Executive Committee is authorized to work with Central Committees in any county that shares a legislative district with King County to effect the nomination of Republicans.

EXHIBIT 2

County and Legislative Office

The Republican State Committee recommends that each County Central Committee adopt a policy for nominating candidates for partisan offices within the Local, County, and legislative office.

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- In the absence of adoption of rules by counties making up a legislative district who choose to nominate shall use the following guidelines:
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 3. The mechanics of conducting the voting (i.e. meeting, vote-by-mail, teleconference) may be selected by each county.
 4. Voting must be by elected PCOs or those appointed not less than 45 days before the first vote on nomination within the relevant jurisdiction.
 5. A majority vote of those voting is required for any candidate seeking nomination.

Any nomination by a county that has occurred before the adoption of this resolution is grandfathered.

Statewide Republican Offices

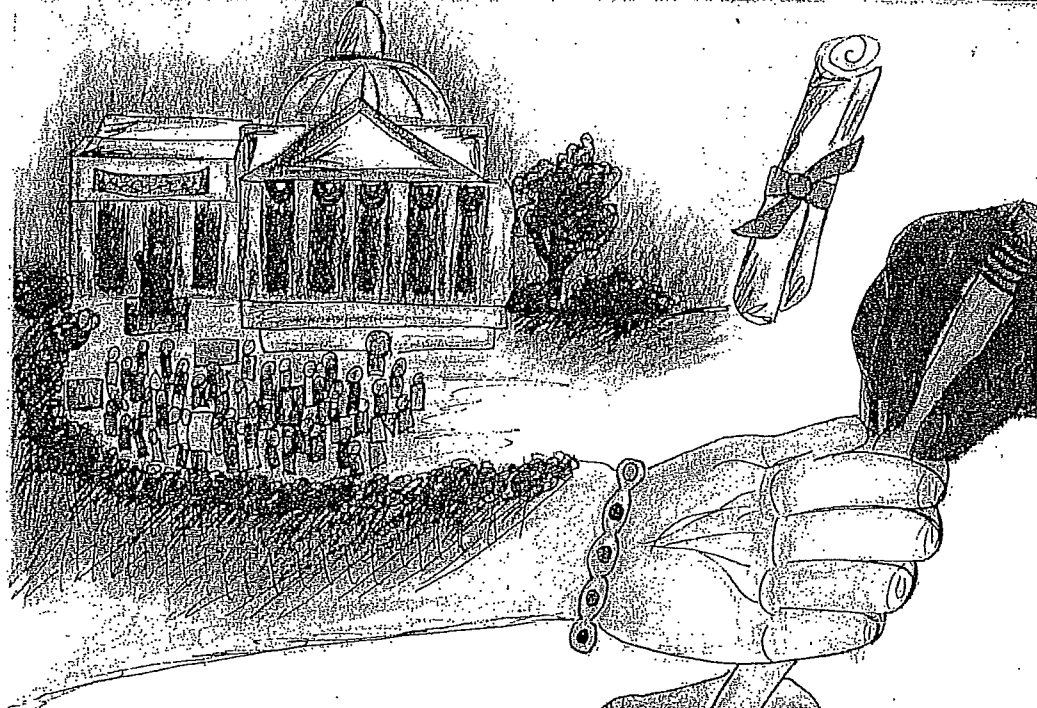
Eligible incumbents for statewide office are hereby nominated by the Republican State Committee. In the absence of a Republican incumbent, nominations may be made by a majority vote of the Republican State Committee where each state committeeman, state committeewoman, and chairman or their proxies shall be entitled to cast as many votes as the county he or she represents was allocated at the 2010 Republican State Convention.

Congressional Offices

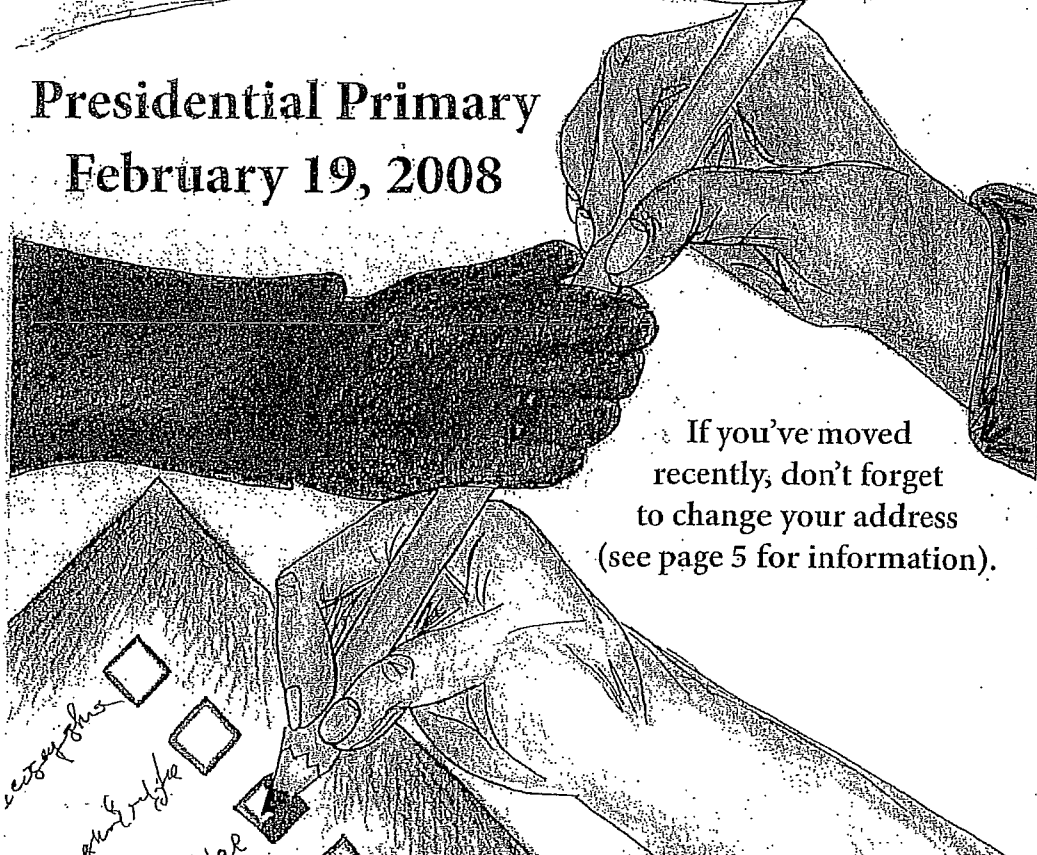
Eligible incumbents for congressional office are hereby nominated by the Republican State Committee. In the absence of a Republican Congressional incumbent, nominations may be made by a majority vote of the congressional district. Each state committeeman, state committeewoman, and chairman or their proxies shall be entitled to cast as many votes as the county he or she represents was allocated in that congressional district at the 2010 Republican State Convention.

EXHIBIT 3

STATE OF WASHINGTON VOTERS' PAMPHLET



**Presidential Primary
February 19, 2008**



If you've moved recently, don't forget to change your address (see page 5 for information).



PUBLISHED BY THE OFFICE OF THE SECRETARY OF STATE

EDITION 1

Washington State's 2008 Presidential Primary

For the first time since 1952, the race for the White House is wide open, without an incumbent President or Vice President on the campaign trail. On February 19, 2008, Washingtonians will play a role in nominating a candidate for this country's highest office.

Why Washington State has a Presidential Primary

In 1988, more than 200,000 Washington voters signed an initiative to the Legislature proposing a Presidential Primary. The Legislature adopted the initiative in 1989.

Who is eligible to vote in the Presidential Primary

Any voter registered in Washington may vote in the Presidential Primary.

The candidates listed on the ballot

Only major political party candidates appear on the Presidential Primary ballot. The major political parties currently recognized in Washington State are the Democratic Party and the Republican Party.

In order to be listed on the Presidential Primary ballot, candidates must either be generally advocated or recognized in national news media, or submit petitions that include the signatures of at least 1,000 eligible voters in the state.

Minor party and independent candidates petition to appear on the general election ballot following conventions (RCW 29A.20.121).

How to vote in the Presidential Primary

Each voter must decide whether to vote in the Democratic Presidential Primary, or the Republican Presidential Primary. A voter may not vote for candidates of both parties. Once the voter has selected a party, the voter must sign a party declaration provided by the party.

The Democratic Party declaration states:

I declare that I consider myself to be a DEMOCRAT and I will not participate in the nomination process of any other political party for the 2008 Presidential election.

The Republican Party declaration states:

I declare that I am a member of the Republican Party and I have not participated and will not participate in the 2008 precinct caucus or convention system of any other party.

The voter must vote for only one candidate, and may not vote for any candidates of the other party. Each party will receive a list of voters who chose to vote in that party's Presidential Primary.

How the political parties will use the results

Due to national party rules, the state political parties retain the authority to decide how they will use the Presidential Primary to allocate delegates to the national nominating conventions. The political parties may also use caucus results, or a combination of primary results and caucus results, to allocate delegates to the national conventions.

The state Republican Party will use the Presidential Primary to allocate 51 percent of its delegates to the 2008 Republican National Convention. The remaining 49 percent of the delegates will be allocated based on caucus results. The state Democratic Party has decided to use caucus results to allocate its delegates to the 2008 Democratic National Convention.

Because the Presidential Primary is open to *all* registered voters, the results will demonstrate which candidates are most appealing to the general voting public.

Caucuses

A voter can participate in both the party caucus and the Presidential Primary as long as both are for the same political party. Both parties plan to hold caucuses on Saturday, February 9, 2008. The parties will invite voters to participate in the caucuses and will require participants to sign a party declaration. Voters should contact the parties to learn more about where the caucuses will be held. (See page 16 for contact information.)

Need More Information?

For more information on Washington State's Presidential Primary, call the Office of the Secretary of State Voter Information Hotline at (800) 448-4881, TDD/TTY at (800) 422-8683, or visit www.vote.wa.gov.