

The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WASHINGTON STATE REPUBLICAN
PARTY, et al.,

Plaintiffs,

WASHINGTON STATE DEMOCRATIC
CENTRAL COMMITTEE, et al.,

Plaintiff Intervenors,

and

LIBERTARIAN PARTY OF WASHINGTON
STATE, et al.,

Plaintiff Intervenors,

v.

STATE OF WASHINGTON, et al.,

Defendant Intervenors,

and

WASHINGTON STATE GRANGE,

Defendant Intervenor.

No. CV05-0927 JCC

DECLARATION OF ALEX WAGNER
IN SUPPORT OF MOTION TO
AMEND AND SUPPLEMENT
COMPLAINT

I, Alex Wagner, hereby declare as follows:

1. I am attorney of record for the Washington State Democratic Central
Committee ("the Party") in this matter. I am over the age of eighteen, have personal

DECLARATION IN SUPPORT OF MOTION TO
AMEND AND SUPPLEMENT COMPLAINT - 1
CV05-0927 JCC

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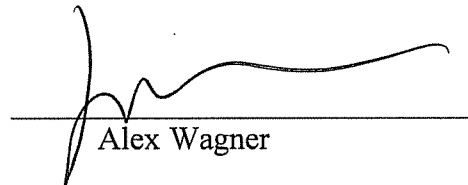
1 knowledge of the matters set forth herein, and am competent to testify thereto. I submit this
2 declaration in support of the Party's Motion to Amend and Supplement its Complaint in
3 Intervention for Declaratory Judgment and Injunctive Relief Regarding Initiative 872 and
4 Primary Elections ("Motion to Amend").

5 2. Attached hereto as **Exhibit A** is a true and correct copy of an e-mail dated
6 March 18, 2008 from Secretary of State Sam Reed entitled "Supreme Court upholds the Top
7 Two Primary."

8 3. Attached hereto as **Exhibit B** is a true and correct copy of the emergency
9 regulations filed on May 2, 2008 by the Secretary of State's office, as reproduced in the
10 Washington State Register.

11 I declare under penalty of perjury that the foregoing is true and correct:
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13 EXECUTED this 2nd day of December, 2008 at Seattle, Washington.
14

15 
16 Alex Wagner
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26

CERTIFICATE OF SERVICE

I hereby certify that on December 2, 2008, I caused to be electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

James Kendrick Pharris

Thomas Ahearne

Richard Dale Shepard

John James White, Jr.

s/Alex Wagner

David T. McDonald, WSBA #5260

Alex Wagner, WSBA # 36856

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Dwight Pelz, Chair

DECLARATION IN SUPPORT OF MOTION TO
AMEND AND SUPPLEMENT COMPLAINT - 3
CV05-0927 JCC

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EXHIBIT A

McDonald, David

From: Reed, Sam (Office) [Sam@secstate.wa.gov]
Sent: Tuesday, March 18, 2008 9:07 AM
To: Anne LaCour ; Bill Varney ; bobbie_gagner@co.benton.wa.us; Brenda Chilton ; Brenda Sorenson; Carolyn Diepenbrock ; Chris Bridston ; Corky Mattingly; dwilke@wacounties.org; tischerd@co.wahkiakum.wa.us; Dianna Galvan; ddeal@co.garfield.wa.us; Deldridge@co.jefferson.wa.us; ejohnston@co.asotin.wa.us; Eunice Coker; evelyn.arnold@co.chelan.wa.us; F. Milene Henley; Gary Zandell; Greg Kimsey; Jeanne Youngquist; Jerry Pettit ; kflyn@co.kitsap.wa.us; Karen Herr ; kmmartin@co.walla-walla.wa.us; Ken Raske ; Kim Wyman ; Kris Swanson; Laurie Thomas; Marianne Nichols ; Mike Garvison; Moss, Sheryl; nancym@co.adams.wa.us; Pat Gardner; Pat Hamilton ; Pat McCarthy; Patty Rosand; Sharon Richter; Shellah Crider ; sjohnston@co.lincoln.wa.us; Sherril Huff ; sforslof@co.whatcom.wa.us; tduvall@co.douglas.wa.us; tgray@co.stevens.wa.us; vspatz@co.grays-harbor.wa.us; vdalton@spokanecounty.org; zlenhart@co.franklin.wa.us
Cc: Elections - All
Subject: Supreme Court upholds the Top Two Primary
Importance: High
Attachments: Supreme Court Opinion 3-18-08.pdf

Dear Election Partners,

I am thrilled to announce that the U.S. Supreme Court upheld the Top Two Primary, I-872! We plan to implement the Top Two in 2008.

The Justices ruled in our favor 7-2 and we are still digesting the opinion. I have attached a copy of the opinion in case you are interested in reading it.

I greatly appreciate the ongoing support of the elections community, the Grange, the Attorney General, and many legislators in this long effort to preserve greater choice for the voters.

We expect to implement the Top Two in WAC. You can expect to hear more about the WACs from the Elections Division.

Thank you, all, for your support and hard work!

Sam

5/1/2008

EXHIBIT B

WSR 08-10-055**EMERGENCY RULES****SECRETARY OF STATE**

(Elections Division)

[Filed May 2, 2008, 12:20 p.m. , effective May 2, 2008, 12:20 p.m.]

Effective Date of Rule: Immediately.

Purpose: The purpose of this rule is to implement Initiative 872 for the 2008 primary and general elections.

Citation of Existing Rules Affected by this Order: Repealing WAC 434-220-010, 434-220-020, 434-220-030, 434-220-040, 434-220-050, 434-220-060, 434-220-070, 434-220-080, 434-220-090, 434-230-020, 434-230-040, 434-230-050, 434-230-080, 434-230-150, 434-230-160, 434-230-170, 434-230-190, 434-230-200, 434-230-210 and 434-230-220; and amending WAC 434-208-060, 434-215-025, 434-230-010, 434-230-060, 434-250-040, 434-250-050, 434-250-310, 434-253-020, 434-253-025, 434-262-031, 434-262-160, 434-335-040, 434-335-445, and 434-381-120.

Statutory Authority for Adoption: RCW 29A.04.611.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: On March 18, 2008, the United States Supreme Court issued *Washington State Grange v. Washington State Republican Party, et al.* 552 U.S. ___, 128 S. Ct. 1184, 170 L. Ed. 2d 151 (2008). In this opinion, the court reversed a Ninth Circuit opinion that had declared Washington's top two primary system unconstitutional. The impact of this ruling is that the primary system enacted by Initiative 872 (chapter 2, Laws of 2005) is now in effect. This change in primary election systems necessitates changes in the administrative rules relating to filing for office, the format of ballots and ballot materials, information submitted for appearance in the state voters' pamphlet, and the administration of primary and general elections. Pursuant to RCW 29A.24.081, the secretary of state's office and county auditors may begin to accept declarations of candidacy beginning May 16, 2008. The regular candidate filing period ends June 6, 2008. Ballots will be formatted and sent to print in June. There is insufficient time to adopt these rules through the standard rule-making process. The secretary of state's office did send a draft of the proposed rules to stakeholders and interested parties on April 16, 2008, posted the draft rules on the agency's web site, and accepted public comment through April 22, 2008.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 19, Amended 14, Repealed 20.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0,

Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 2, 2008.

Steve Excell

Assistant Secretary of State

OTS-1450.2

AMENDATORY SECTION(Amending WSR 06-23-094, filed 11/15/06, effective 12/16/06)

WAC 434-208-060 Electronic filings. In addition to those documents specified by RCW 29A.04.255, the secretary of state or the county auditor shall accept and file in his or her office electronic transmissions of the following documents:

(1) The text of any proposed initiative, referendum, or recall measure and any accompanying documents required by law;

(2) Any minor party or independent candidate filing material for president and vice-president, except nominating petitions;

(3) Lists of presidential electors selected by political parties or independent candidates;

(4) Voted ballots, provided the voter agrees to waive the secrecy of his or her ballot;

(5) Resolutions from cities, towns, and other districts calling for a special election;

(6) ~~((Filing of vacancies on the ticket by a major political party;~~

~~—(7)))~~ Voter registration form.

[Statutory Authority: RCW 29A.04.611. 06-23-094, § 434-208-060, filed 11/15/06, effective 12/16/06. Statutory Authority: RCW 29A.04.610. 04-15-089, § 434-208-060, filed 7/16/04, effective 8/16/04. Statutory Authority: 2002 c 140 § 3. 02-15-156, § 434-208-060, filed 7/23/02, effective 8/23/02. 98-08-010, recodified as § 434-208-060, filed 3/18/98, effective 3/18/98. Statutory Authority: RCW 29.04.230. 92-18-087, § 434-08-060, filed 9/2/92, effective 10/3/92.]

NEW SECTION

WAC 434-208-110 Applicable dates and deadlines. If dates, deadlines, and time periods referenced in chapter 2, Laws of 2005, conflict with subsequently enacted law, such as chapter 344, Laws of 2006, the subsequently enacted law is effective.

□

OTS-1519.3

AMENDATORY SECTION(Amending WSR 07-09-036, filed 4/11/07, effective 5/12/07)

WAC 434-215-025 ~~((Declaration of candidacy--))~~**Filing fee petitions.** (1) When a candidate submits a filing fee petition in lieu of his or her filing fee, as authorized by RCW 29A.24.091, voters eligible to vote on the office in the general election are eligible to sign the candidate's filing fee petition.

(2) The filing fee petition described in RCW 29A.24.101(3) does not apply. The filing fee petition must be in substantially the following form:

The warning prescribed by RCW 29A.72.140; followed by:

"We, the undersigned registered voters of [the jurisdiction of the office], hereby petition that [candidate's] name be printed on the ballot for the office of [office for which candidate is filing a declaration of candidacy]."

[Statutory Authority: RCW 29A.04.611. 07-09-036, § 434-215-025, filed 4/11/07, effective 5/12/07.]

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 434-215-120 Political party preference by candidate for partisan office. (1) On a declaration of candidacy, a candidate for partisan congressional, state, or county office may state his or her preference for a political party, or not state a preference. The candidate may use up to sixteen characters for the name of the political party. A candidate's party preference, or the fact that the candidate states no preference, must be printed with the candidate's name on the ballot and in any voters' pamphlets printed by the office of the secretary of state or a county auditor's office.

(2) If a candidate does not indicate a party that he or she prefers, then the candidate has stated no party preference and is listed as such on the ballot and in any voters' pamphlets.

(3) The filing officer may not print on the ballots, in a voters' pamphlet, or other election materials a political party name that is obscene. If the name of the political party provided by the candidate would be considered obscene, the filing officer may petition the superior court pursuant to RCW 29A.68.011 for a judicial determination that the party name be edited to remove the obscenity, or rejected and replaced with "states no party preference."

(4) A candidate's preference may not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate. If the name of the political party provided by the candidate implies that the candidate is nominated or endorsed by a political party, or that a political party approves of or associates with that candidate, the filing officer may petition the superior court pursuant to RCW 29A.68.011 for a judicial determination that the party name be edited, or rejected and replaced with "states no party preference."

□

NEW SECTION

WAC 434-215-130 Minor political party candidates and independent candidates. (1) In the election system enacted as chapter 2, Laws of 2005, there is no distinction between major party candidates, minor party candidates, or independent candidates filing for partisan congressional, state, or county office. All candidates filing for these partisan offices have the same filing and qualifying requirements. All candidates for partisan office have the option of stating on the ballot their preference for a political party, or stating no party preference. The party preference information plays no role in determining how candidates are elected to public office.

(2) The requirements in RCW 29A.20.111 through 29A.20.201 for minor political party candidates and independent candidates for partisan office to conduct nominating conventions and collect a sufficient number of signatures of registered voters do not apply to candidates filing for partisan congressional, state, or county office. The requirements in RCW 29A.20.111 through 29A.20.201 for minor political party candidates and independent candidates only apply to candidates for president and vice-president of the United States.

□

NEW SECTION

WAC 434-215-140 Voids in candidacy and vacancies in office. (1) The procedures established in RCW 29A.24.141 through 29A.24.191 for reopening candidate filing due to a void in candidacy or a vacancy in office apply to partisan congressional, state, or county office.

(2) As established in RCW 29A.24.141, a void in candidacy only occurs when no valid declaration of candidacy has been filed, or all persons who filed have either died or been disqualified. There is no void in candidacy as long as there is at least one candidate.

(3) If dates, deadlines, and time periods referenced in chapter 2, Laws of 2005, conflict with subsequently enacted law, such as chapter 344, Laws of 2006, the subsequently enacted law is effective.

□

NEW SECTION

WAC 434-215-150 No major party ticket. The procedures in RCW 29A.28.011 allowing a major party to fill a vacancy on a major party ticket do not apply. The predecessor statute, RCW 29A.28.010, was repealed by chapter 2, Laws of 2005 (Initiative 872). Pursuant to chapter 2, Laws of 2005, there is no "major party ticket."

□

NEW SECTION

WAC 434-215-160 Ranked choice voting. If a charter county elects candidates for county office by ranked choice voting, and if the charter specifically grants political parties the authority to determine which candidates for partisan office may run as candidates of the party, the county auditor may modify the requirements of this chapter in order to accommodate the requirements of a ranked choice voting election.

□

OTS-1445.1

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 434-220-010 Partisan primaries.

WAC 434-220-020 Definitions.

WAC 434-220-030 Ballot layout and color -- Consolidated ballots.

WAC 434-220-040 Ballot layout and color -- Physically separate ballots.

WAC 434-220-050 Order of political parties.

WAC 434-220-060 Ballot programming -- Consolidated ballots.

WAC 434-220-070 Polling place procedures -- Physically separate ballots.

WAC 434-220-080 No record of political party affiliation.

WAC 434-220-090 Partisan primary recounts.

OTS-1455.4

AMENDATORY SECTION(Amending WSR 06-14-049, filed 6/28/06, effective 7/29/06)

WAC 434-230-010 Sample ballots. Sample paper ballots shall be printed in substantially the same form as official ballots, but shall be a different color than the official ballot. Sample ballots ~~((for counties using electronic or mechanical voting systems))~~ shall be printed in a manner that makes them easily distinguishable from the official ballot. Sample ballots shall be available ~~((starting))~~ at least fifteen days prior to an election. Such sample ballots shall be made available through the office of the county auditor and at least one shall be available at all polling places on election day.

~~((Names of the candidates in each office to appear on the primary ballot shall be arranged on the sample ballot in the order provided by RCW 29A.36.121. The names of the candidates in each office to appear on the general election ballot shall be listed on the sample ballot in the order in which their names appear on the official ballot. State measures and local measures shall be in the same order as they appear on the official ballot.))~~

At any primary or election when a local voters' pamphlet is published which contains a full sample ballot, a separate sample ballot need not be printed.

Counties with populations of over five hundred thousand may produce more than one sample ballot for a primary or election, each of which lists a portion of the offices and issues to be voted on at that election. Sample ballots may be printed by region or area (e.g., legislative district, municipal, or other district boundary) of the county, provided that all offices and issues to be voted upon at the election appear~~((s))~~ on at least one of the various sample ballots printed for such county. Each regional sample ballot shall contain all offices and issues to be voted upon within that region. A given office or issue may appear on more than one sample ballot, provided it is to be voted upon within that region. Sample ballots shall be made available and distributed to each polling place and to other locations within the appropriate region or area.

[Statutory Authority: RCW 29A.04.611. 06-14-049, § 434-230-010, filed 6/28/06, effective 7/29/06. Statutory Authority: RCW 29A.04.610. 04-15-089, § 434-230-010, filed 7/16/04, effective 8/16/04. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-230-010, filed 10/13/97, effective 11/13/97. Statutory Authority: RCW 29.04.080 and 29.04.210. 92-10-038, § 434-30-010, filed 5/4/92, effective 6/4/92.]

NEW SECTION

WAC 434-230-015 Ballot format. (1) Each ballot shall specify the county, the date, and whether the election is a primary, special or general.

(2) Each ballot must include instructions directing the voter how to mark the ballot, including write-in votes.

(3) Each ballot must explain, either in the general instructions or in the heading of each race, the number of candidates for whom the voter may vote (e.g., "vote for one").

(4)(a) If the ballot includes a partisan office, the ballot must include the following notice in bold print immediately above the first partisan congressional, state or county office: "READ: 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."

(b) When the race for president and vice-president appears on a general election ballot, the ballot must include the following notice in bold print after president and vice-president but immediately above the first partisan congressional, state or county office: "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."

(c) The same notice may also be listed in the ballot instructions.

(5) Counties may use varying sizes and colors of ballot cards if such size and color is used consistently throughout a region, area or jurisdiction (e.g., legislative district, commissioner district, school district, etc.). Varying color and size may also be used to designate absentee ballots, poll ballots, or provisional ballots.

(6) Ballots shall be formatted as provided in RCW 29A.36.170. Ballots shall not be formatted as stated in RCW 29A.04.008 (6) and (7), 29A.36.104, 29A.36.106, 29A.36.121, 29A.36.161(4), and 29A.36.191.

□

NEW SECTION

WAC 434-230-025 Order of offices. Measures and offices must be listed in the following order, to the extent that they appear on a primary or election ballot:

- (1) Initiatives to the people;
- (2) Referendum measures;
- (3) Referendum bills;
- (4) Initiatives to the legislature and any alternate proposals;
- (5) Proposed constitutional amendments (senate joint resolutions, then house joint resolutions);
- (6) Countywide ballot measures;
- (7) President and vice-president of the United States;
- (8) United States senator;
- (9) United States representative;
- (10) Governor;
- (11) Lieutenant governor;
- (12) Secretary of state;
- (13) State treasurer;
- (14) State auditor;
- (15) Attorney general;

- (16) Commissioner of public lands;
- (17) Superintendent of public instruction;
- (18) Insurance commissioner;
- (19) State senator;
- (20) State representative;
- (21) County officers;
- (22) Justices of the supreme court;
- (23) Judges of the court of appeals;
- (24) Judges of the superior court; and
- (25) Judges of the district court.

For all other jurisdictions, the offices in each jurisdiction shall be grouped together and listed by position number according to county auditor procedures.

□

NEW SECTION

WAC 434-230-035 Office format. (1) The name of each office must be printed on the ballot.

(2) The description "nonpartisan office" must be printed either for each office or as a heading above a group of nonpartisan offices.

(3) If the term of office is not a full term, a description of the term (e.g., short/full term, two-year unexpired term) must be printed with the office name.

(4) Following each list of candidates shall be a response position and a space for writing in the name of a candidate.

(5) Each office or position must be separated by a bold line.

(6) On a general election ballot in a year that president and vice-president are elected, each political party's candidates for president and vice-president shall be provided one vote response position for that party.

□

NEW SECTION

WAC 434-230-045 Candidate format. (1) For each office or position, the names of all candidates shall be listed together. If the office is on the primary election ballot, no candidates skip the primary and advance directly to the general election.

(2)(a) On the primary election ballot, candidates shall be listed in the order determined by lot.

(b) On the general election ballot, the candidate who received the highest number of votes in the primary shall be listed first, and the candidate who received the second highest number of votes in the primary shall be listed second.

(c) The political party that each candidate prefers is irrelevant to the order in which the candidates appear on the ballot.

(3) Candidate names shall be printed in a type style and point size that can be read easily. If a candidate's name exceeds the space provided, the election official shall take whatever steps necessary to place the name on the ballot in a manner which is readable. These steps may include, but are not limited to, printing a smaller point size or different type style.

(4) For partisan office:

(a) If the candidate stated his or her preference for a political party on the declaration of candidacy, that preference shall be printed below the candidate's name, with parentheses and the first letter of each word capitalized, as shown in the following example:

John Smith

(Prefers Example Party)

(b) If the candidate did not state his or her preference for a political party, that information shall be printed below the candidate's name, with parentheses and the first letter of each word capitalized, as shown in the following example:

John Smith

(States No Party Preference)

(c) The party preference line for each candidate may be in smaller point size or indented.

(d) The same party preference information shall be printed on both primary and general election ballots.

(5) If the office is nonpartisan, only the candidate's name shall appear. Neither "nonpartisan" nor "NP" shall be printed with each candidate's name.

(6) The law does not allow nominations or endorsements by interest groups, political action committees, political parties, labor unions, editorial boards, or other private organizations to be printed on the ballot.

[]

NEW SECTION

WAC 434-230-055 Partisan primary. In a primary for partisan congressional, state or county office conducted pursuant to chapter 2, Laws of 2005 (Initiative 872):

(1) Voters are not required to affiliate with a political party in order to vote in the primary election. For each office, voters may vote for any candidate in the race.

(2) Candidates are not required to obtain the approval of a political party in order to file a declaration of candidacy and appear on the primary or general election ballot as a candidate for partisan office. 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. A candidate's political party preference is not used to determine which candidates advance to the general election.

(3) Based on the results of the primary, the two candidates for each office who receive the most votes and who receive at least one percent of the total votes cast for that office advance to the general election. The primary election does not serve to nominate any political party's candidates, but serves to winnow the number of candidates down to a final list of two for the general election. Voters in the primary are casting votes for candidates, not choosing a political party's nominees. RCW 29A.36.191 does not apply since the predecessor statute, RCW 29A.36.190, was repealed in chapter 2, Laws of 2005.

(4) Chapter 2, Laws of 2005 repealed the prior law governing party nominations. Political parties may nominate candidates by whatever mechanism they choose. The primary election plays no role in political party nominations, and political party nominations are not displayed on the ballot.

(5) If dates, deadlines, and time periods referenced in chapter 2, Laws of 2005, conflict with subsequently enacted law, such as chapter 344, Laws of 2006, the subsequently enacted law is effective.

□

AMENDATORY SECTION(Amending WSR 07-24-044, filed 11/30/07, effective 12/31/07)

WAC 434-230-060 Primary votes required for appearance on general election ballot. Following any ~~((nonpartisan))~~ primary, ~~((no))~~ a candidate's name shall be entitled to appear on the general election ballot ~~((unless))~~ if he or she receives the greatest or the next greatest number of votes for the office and additionally receives at least one percent of the total votes cast for the office.

~~((Following any partisan primary, no major political party candidate's name shall be entitled to appear on the general election ballot unless he or she receives a plurality of votes cast for the candidates of his or her party for that office. The requirement in RCW 29A.36.191 that a candidate for partisan office receive at least one percent of the votes cast for that office in order to appear on the general election ballot is unenforceable based on *Libertarian Party v. Sam Reed*, Thurston County Superior Court No. 04-2-01974-2 (2004).))~~

[Statutory Authority: RCW 29A.04.611. 07-24-044, § 434-230-060, filed 11/30/07, effective 12/31/07; 06-14-049, § 434-230-060, filed 6/28/06, effective 7/29/06. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-230-060, filed 10/13/97, effective 11/13/97. Statutory Authority: RCW 29.04.080 and 29.04.210. 92-10-038, § 434-30-060, filed 5/4/92, effective 6/4/92.]

NEW SECTION

WAC 434-230-085 Candidate who qualifies for more than one office. In the event a candidate, as a result of write-in votes in the primary, qualifies to appear on the general election ballot for more than one office, the candidate may notify the county auditor in writing within three days of certification of the primary of the single office for which he or she desires to appear on the general election ballot. If the candidate fails to notify the county auditor, the county auditor shall determine the single office for which the candidate shall appear on the general election ballot. Any void in candidacy for other positions thus created will be handled as provided by law.

□

NEW SECTION

WAC 434-230-095 When a candidate dies or is disqualified. The procedures in RCW 29A.28.021

allowing a political party to appoint a replacement candidate if the party's candidate dies or is disqualified do not apply. The predecessor statute, RCW 29A.28.020, was repealed by chapter 2, Laws of 2005 (Initiative 872).

□

NEW SECTION

WAC 434-230-110 President and vice-president of the United States. (1) When the race for president and vice-president appears on a general election ballot, the candidates for these offices must be paired together.

(2) The full name of the political party, rather than an abbreviation, must be provided for each pair of candidates, with a designation that these candidates are the nominees of the party. The first letter of each word in the political party name must be capitalized. For example:

Example Party Nominees

(3) The order that candidates appear on the ballot is based on their political party. The political party that received the highest number of votes from the electors of this state for the office of president at the last presidential election must appear first, with the candidates of the other political parties following according to the votes cast for their nominees for president at the last presidential election. Candidates of parties that did not have nominees in the last presidential election follow in the order of their qualification with the secretary of state.

□

NEW SECTION

WAC 434-230-120 Ranked choice voting. If a charter county elects candidates for county office by ranked choice voting, and if the charter specifically grants political parties the authority to determine which candidates for partisan office may run as candidates of the party, the county auditor may modify the requirements of this chapter in order to accommodate the requirements of a ranked choice voting election.

□

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 434-230-020 Placement of state ballot measures.

WAC 434-230-040 Candidate's political party designation -- Primary to general.

WAC 434-230-050 Candidate nominated by two or more political parties or for two or more offices.

WAC 434-230-080 Judicial ballots -- Form.

WAC 434-230-150 Ballot uniformity.

WAC 434-230-160 Poll-site voting instructions.

WAC 434-230-170 Ballot form.

WAC 434-230-190 Paper ballot uniformity.

WAC 434-230-200 Paper ballot instructions.

WAC 434-230-210 Paper ballots -- Ballot form.

WAC 434-230-220 Same party designations used for primary and general elections.

OTS-1456.5

AMENDATORY SECTION(Amending WSR 07-24-044, filed 11/30/07, effective 12/31/07)

WAC 434-250-040 Instructions to voters. (1) ~~((In addition to the instructions required by chapters 29A.36 and 29A.40 RCW, instructions for properly voting and returning))~~ Instructions that accompany an absentee ballot must ((also)) include:

- (a) How to ~~((correct a ballot by crossing out the incorrect vote and voting the correct choice))~~ cancel a vote by drawing a line through the text of the candidate's name or ballot measure response;
- (b) Notice that, unless specifically allowed by law, more than one vote for an office or ballot measure will be an overvote and no votes for that office or ballot measure will be counted;
- (c) Notice that, if a voter has signed or otherwise identified himself or herself on a ballot, the ballot will not be counted;
- (d) An explanation of how to complete and sign the affidavit on the return envelope;
- (e) An explanation of how to make a mark, witnessed by two other people, if unable to sign the affidavit;
- (f) An explanation of how to place the ballot in the security envelope and place the security envelope in the return envelope;
- (g) An explanation of how to obtain a replacement ballot if the original ballot is destroyed, spoiled, or lost;
- (h) Notice that postage is required, if applicable; ~~((and))~~
- (i) Notice that, in order for the ballot to be counted, it must be either postmarked or deposited at a designated deposit site no later than election day; ~~((and))~~
- (j) ~~((How a voter can))~~ An explanation of how to learn about the locations, hours, and services~~((:))~~ of voting centers and ballot deposit sites, including the availability of accessible voting equipment~~((:))~~;

County auditors may use existing stock of instructions appearing on absentee ballot ~~((instructions))~~ envelopes until December 1, 2008;

(k) For a primary election that includes a partisan office, a notice on a separate insert printed on colored paper explaining:

"Washington has a new primary. You do not have to pick a party. In each race, you may vote for any candidate listed. The two candidates who receive the most votes in the August primary will 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."

(l)(i) For a general election that includes a partisan office, the following explanation:

"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."

(ii) In a year that president and vice-president appear on the general election ballot, the following must be added to the statement required by (1)(i) of this subsection:

"The election for president and vice-president is different. Candidates for president and vice-president are the official nominees of their political party."

(m) Any other information the county auditor deems necessary.

(2) Instructions that accompany a special absentee ballot must also include:

(a) A listing of all offices and measures that will appear upon the ballot, together with a listing of all persons who have filed for office or who have indicated their intention to file for office; and

(b) Notice that the voter may request and subsequently vote a regular absentee ballot, and that if the regular absentee ballot is received by the county auditor prior to certification of the election, it will be tabulated and the special absentee ballot will be voided.

[Statutory Authority: RCW 29A.04.611, 07-24-044, § 434-250-040, filed 11/30/07, effective 12/31/07; 07-09-036, § 434-250-040, filed 4/11/07, effective 5/12/07; 06-23-094, § 434-250-040, filed 11/15/06, effective 12/16/06; 05-17-145, § 434-250-040, filed 8/19/05, effective 9/19/05.]

AMENDATORY SECTION(Amending WSR 07-24-044, filed 11/30/07, effective 12/31/07)

WAC 434-250-050 ~~((Ballot materials:))~~ **Envelopes.** ~~((In addition to the instructions and in addition to materials required by chapters 29A.36 and 29A.40 RCW, each))~~ Absentee ballots must be accompanied by the following:

(1) A security envelope, which may not identify the voter and must have a hole punched in a manner that will reveal whether a ballot is inside;

(2) A return envelope, which must be addressed to the county auditor and have a hole punched in a manner that will reveal whether the security envelope is inside. The return envelope must display the official election materials notice required by the United States Postal Service, the words "POSTAGE REQUIRED" or "POSTAGE PAID" in the upper right-hand corner, and the following oath with a place for the voter to sign, date, and write his or her daytime phone number:

I do solemnly swear or affirm under penalty of perjury that:

I am a citizen of the United States;

I am a legal resident of the state of Washington;

I will be at least 18 years old on or before election day;

I am not presently denied my voting rights as a result of being convicted of a felony;

I have not been judicially declared mentally incompetent;

I have not already voted in this election; and

I understand it is illegal to cast a ballot or sign a ballot envelope on behalf of another voter.

Attempting to vote when not qualified, attempting to vote more than once, or falsely signing this oath is a felony punishable by a maximum imprisonment of five years, a maximum fine of \$10,000, or both.

Signature _____ Date _____

The return envelope must include space for witnesses to sign.

The return envelope must conform to postal department regulations.

County auditors may use existing stock of absentee envelopes until December 1, 2008.

[Statutory Authority: RCW 29A.04.611, 07-24-044, § 434-250-050, filed 11/30/07, effective 12/31/07; 07-09-036, § 434-250-050, filed 4/11/07, effective 5/12/07; 05-17-145, § 434-250-050, filed 8/19/05, effective 9/19/05.]

NEW SECTION

WAC 434-250-150 Ranked choice voting. If a charter county elects candidates for county office by ranked choice voting, and if the charter specifically grants political parties the authority to determine which candidates for partisan office may run as candidates of the party, the county auditor may modify the requirements of this chapter in order to accommodate the requirements of a ranked choice voting election.

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AMENDATORY SECTION(Amending WSR 07-20-074, filed 10/1/07, effective 11/1/07)

WAC 434-250-310 Notice of elections by mail. (1) A jurisdiction requesting that a special election be conducted entirely by mail, as authorized by RCW 29A.48.020, may include the request in the resolution calling for the special election, or may make the request by a separate resolution. Not less than forty-seven days prior to the date for which a mail ballot special election has been requested, the county auditor shall inform the requesting jurisdiction, in writing, whether the request is granted and, if not granted, the reasons why.

(2) In the event that a primary is to be conducted by mail, the auditor must notify the jurisdiction involved not later than seventy-nine days before the primary date.

(3) ~~((In addition to the information required in the notice of election published pursuant to RCW 29A.52.351 and 29A.52.311))~~ A county auditor conducting an election by mail, including a county auditor that conducts every election by mail, must ~~((also))~~ state:

- (a) The election will be conducted by mail ~~((and regular polling places will not be open))~~;
- (b) The precincts that are voting by mail if it is only specific precincts rather than the entire county;
- (c) The location where voters may obtain replacement ballots;
- (d) Whether return postage is required;
- (e) The dates, times and locations of designated deposit sites and voting centers; and

(f) If the county auditor does not conduct all elections by mail, the fact that regular polling places will not be open.

[Statutory Authority: RCW 29A.04.611, 07-20-074, § 434-250-310, filed 10/1/07, effective 11/1/07; 07-12-032, § 434-250-310, filed 5/30/07, effective 6/30/07; 05-17-145, § 434-250-310, filed 8/19/05, effective 9/19/05.]

OTS-1457.4

AMENDATORY SECTION(Amending WSR 07-20-074, filed 10/1/07, effective 11/1/07)

WAC 434-253-020 Polling place -- Election supplies. Polling places shall be provided, at a minimum, with the following supplies at every election:

(1) Precinct list of registered voters or a poll book, which shall include suitable means to record the signature and address of the voter;

(2) Inspector's poll book;

(3) Required oaths/certificates for inspectors and judges;

(4) Sufficient number of ballots as determined by election officer;

(5) Ballot containers;

(6) United States flag;

(7) Voting instruction signs;

(8) Challenge and provisional ballots and envelopes;

(9) Cancellation cards due to death;

(10) Voting equipment instructions;

(11) Procedure guidelines for inspectors and judges and/or precinct election officer guidebooks;

(12) Keys and/or extra seals;

(13) Pay voucher;

(14) Ballots stub envelope;

(15) Emergency plan of action;

(16) Either sample ballots or voters' pamphlets;

(17) HAVA voter information poster;

(18) A sign listing the date of the election and the hours of voting on election day; and

(19) Voter registration forms(~~and~~

~~(20) For partisan primaries in counties using physically separate ballots, an "unvoted ballots" container with a numbered seal)).~~

[Statutory Authority: RCW 29A.04.611. 07-20-074, § 434-253-020, filed 10/1/07, effective 11/1/07; 06-14-049, § 434-253-020, filed 6/28/06, effective 7/29/06. Statutory Authority: RCW 29A.04.611, 29A.04.530. 06-02-028, § 434-253-020, filed 12/28/05, effective 1/28/06. Statutory Authority: RCW 29A.04.611. 05-17-145, § 434-253-020, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-253-020, filed 10/13/97, effective 11/13/97. Statutory Authority: 1990 c 59. 92-12-083, § 434-53-020, filed 6/2/92, effective 7/3/92.]

AMENDATORY SECTION(Amending WSR 08-05-120, filed 2/19/08, effective 3/21/08)

WAC 434-253-025 Polling place -- Items to be posted. The following items must be posted or displayed at each polling place while it is open:

- (1) United States flag;
- (2) HAVA voter information poster;
- (3) A sign listing the date of the election and the hours of voting on election day;
- (4) Voting instructions printed in at least 16 point bold type;
- (5) Either sample ballots or voters' pamphlets;
- (6) Voter registration forms;
- (7) Election materials in alternative languages, if so required by the Voting Rights Act (42 U.S.C. 1973aa et seq.); ~~((and))~~
- (8)(a) For a primary election that includes a partisan office, the same notice provided to absentee voters by WAC 434-250-040 (1)(k);
- (b) For a general election that includes a partisan office, the same notice provided to absentee voters by WAC 434-250-040 (1)(l); and
- (9) Any other items the county auditor deems necessary.

[Statutory Authority: RCW 29A.04.611. 08-05-120, § 434-253-025, filed 2/19/08, effective 3/21/08; 07-20-074, § 434-253-025, filed 10/1/07, effective 11/1/07; 05-17-145, § 434-253-025, filed 8/19/05, effective 9/19/05.]

NEW SECTION

WAC 434-253-330 Ranked choice voting. If a charter county elects candidates for county office by ranked choice voting, and if the charter specifically grants political parties the authority to determine which candidates for partisan office may run as candidates of the party, the county auditor may modify the requirements of this chapter in order to accommodate the requirements of a ranked choice voting election.

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OTS-1446.4

AMENDATORY SECTION(Amending WSR 07-20-074, filed 10/1/07, effective 11/1/07)

WAC 434-262-031 Rejection of ballots or parts of ballots. (1) The disposition of provisional ballots is governed by WAC 434-253-047. The county canvassing board must reject any ballot cast by a voter who was not qualified to vote, or for other reasons required by law or administrative rule. A log must be kept of all voted ballots rejected, and must be included in the minutes of each county canvassing board meeting.

(2) Ballots or parts of ballots shall be rejected by the canvassing board in the following instances:

(a) Where ~~((two ballots are found folded together, or where))~~ a voter has already voted ~~((more than))~~ one ballot;

(b) Where two voted ballots are contained within a returned mail ballot envelope containing only one valid signature under the affidavit, unless both ballots are voted identically, in which case one ballot will be counted. If there are two valid signatures under the affidavit, both ballots must be counted;

(c) Where a ballot or parts of a ballot are marked in such a way that it is not possible to determine the voter's intent consistent with WAC 434-261-086;

(d) Where the voter has voted for candidates or issues for whom he or she is not entitled to vote;

(e) Where the voter has voted for more candidates for an office than are permissible~~((;~~

~~—(f) In the case of a partisan primary, where the voter has voted for a write-in candidate for partisan office who has not filed a write-in declaration of candidacy, thereby affiliating with a major party.~~

~~—(3) For physically separate ballots in a partisan primary:~~

~~—(a) If more than one ballot is returned but only one ballot is voted, the voted ballot must be counted.~~

~~—(b) When a voted nonpartisan ballot and a voted party ballot are both returned, and the nonpartisan section of the party ballot was not voted, the votes from both ballots must be duplicated onto a blank party ballot and counted.~~

~~—(c) When a voted nonpartisan ballot and a voted party ballot are both returned, and nonpartisan races and ballot measures were voted on both ballots, the nonpartisan and ballot measure votes that are the same on each ballot and the partisan votes must be duplicated onto a blank party ballot and counted.~~

~~—(d) When more than one voted party ballot is returned, the partisan votes may not be counted but the nonpartisan and ballot measure votes that are the same on both ballots must be duplicated onto a blank nonpartisan ballot and counted)).~~

[Statutory Authority: RCW 29A.04.611. 07-20-074, § 434-262-031, filed 10/1/07, effective 11/1/07; 07-02-100, § 434-262-031, filed 1/3/07, effective 2/3/07; 06-14-049, § 434-262-031, filed 6/28/06, effective 7/29/06; 05-17-145, § 434-262-031, filed 8/19/05, effective 9/19/05.]

AMENDATORY SECTION(Amending WSR 97-21-045, filed 10/13/97, effective 11/13/97)

WAC 434-262-160 Write-in-voting -- Voter intent. (1) In all cases of write-in votes the canvassing board shall exercise all reasonable efforts to determine the voter's intent. ~~((Write-in votes are to be counted where abbreviations are used for office, position, or political party.))~~ Write-in votes in the general election are not to be counted for any person who filed for the same office as either a regular or write-in candidate at the preceding primary and failed to qualify for the general election. If a write-in declaration of candidacy has been filed, the

voter need only write in that candidate's name in order for the vote to be counted; the candidate's party preference does not impact whether the write-in vote shall be counted. If no declaration of write-in candidacy has been filed, the voter must write in the name of the candidate(~~(; the political party, if applicable;)~~) and, if the office (~~and~~) or position number cannot be determined by the location of the write-in on the ballot, the office and position number, in order for the write-in vote to be counted.

(2)(a) If a write-in candidate for partisan office does not file a write-in declaration of candidacy but does qualify for the general election ballot, the candidate has not stated a preference for a political party and therefore shall have "(states no party preference)" printed on the general election ballot.

(b) If a write-in candidate for partisan office files a write-in declaration of candidacy and qualifies for the general election ballot, the party preference stated on the write-in declaration of candidacy, if any, shall be printed on the general election ballot.

[Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-262-160, filed 10/13/97, effective 11/13/97. Statutory Authority: 1990 c 59. 92-12-083, § 434-62-160, filed 6/2/92, effective 7/3/92.]

NEW SECTION

WAC 434-262-210 Ranked choice voting. If a charter county elects candidates for county office by ranked choice voting, and if the charter specifically grants political parties the authority to determine which candidates for partisan office may run as candidates of the party, the county auditor may modify the requirements of this chapter in order to accommodate the requirements of a ranked choice voting election.

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OTS-1447.1

AMENDATORY SECTION(Amending WSR 06-11-042, filed 5/10/06, effective 6/10/06)

WAC 434-335-040 Voting system requirements. (1) No voting device or its component software may be certified by the secretary of state unless it:

- (a) Secures to the voter secrecy in the act of voting;
- (b) Permits the voter to vote for any person for any office and upon any measure that he or she has the right to vote for;
- (c) Correctly registers all votes cast for any and all persons and for or against any and all measures;
- (d) Provides that a vote for more than one candidate cannot be cast by one single operation of the voting device or vote tally system except when voting for President and Vice-President of the United States;
- (e) Produces a machine countable and human readable paper record for each vote that may be accepted or rejected by the voter before finalizing his or her vote. The paper record of an electronic vote may not be removed from the device by the voter. If the voting device is programmed to display the ballot in multiple languages, the paper record produced must be printed in the language used by the voter; and
- (f) Has been tested and approved by the appropriate independent testing authority approved by the United States election assistance commission(~~(; and~~
- ~~(g) For a partisan primary, prevents the counting of votes for candidates of more than one political party)).~~

(2) No vote tabulating system may be certified by the secretary of state unless it:

(a) Correctly counts votes on ballots on which the proper number of votes have been marked for any office or issue;

(b) Ignores votes marked for any office or issue where more than the allowable number of votes have been marked, but correctly counts the properly voted portions of the ballot;

(c) Accumulates a count of the specific number of ballots tallied for each precinct, total votes by candidate for each office, and total votes for and against each ballot measure on the ballot in that precinct;

(d) Produces precinct and cumulative totals in printed form; and

(e) Produces legislative and congressional district totals for statewide races and issues in electronic and printed form.

(3) A vote tabulating system must:

(a) Be capable of being secured with lock and seal when not in use;

(b) Be secured physically and electronically against unauthorized access;

(c) Not be connected to, or operated on, any electronic network including, but not limited to, internal office networks, the internet, or the world wide web. A network may be used as an internal, integral part of the vote tabulating system but that network must not be connected to any other network, the internet, or the world wide web; and

(d) Not use wireless communications in any way.

(4) Transfer of information from a remote tabulating system may be made by telephonic transmission only after the creation of a disk, paper tape, or other physical means of recording ballot results.

(5) The source code of electronic voting system software that has been placed in escrow must be identical to the source code of software that has been tested and certified by the federal independent testing authority and installed in the county. The applicant must place in escrow both the human-readable source code and the working or compiled version. In lieu of placing them in escrow, the source code and the working or compiled version may be deposited with the national software reference library. The software may be verified by matching the system's digital software signatures with the digital signatures the elections assistance commission has on file, when available.

[Statutory Authority: RCW 29A.04.611, 06-11-042, § 434-335-040, filed 5/10/06, effective 6/10/06; 05-18-022, § 434-335-040, filed 8/29/05, effective 9/29/05.]

AMENDATORY SECTION(Amending WSR 08-05-120, filed 2/19/08, effective 3/21/08)

WAC 434-335-445 The preparation of logic and accuracy test decks. (1) Each county shall produce a test deck of ballots to be used in the official logic and accuracy test to verify that the vote tabulating system is programmed to correctly count the ballots.

(2) The pattern to mark the test deck shall begin by giving the first candidate in each race one vote, the second candidate in each race two votes, the third candidate in each race three votes, etc. Once the pattern is completed for each race and issue, each remaining precinct or ballot style must be tested by using a minimum of

one ballot that has a first choice marked for each race and issue. Additional votes may be added to ensure all responses for a race or issue have unique results. Another pattern may be used if it meets the requirements outlined in this section and is approved by the secretary prior to marking the test deck.

(3) The test deck must also test that the vote tabulating system is programmed to accurately count write-in votes, overvotes and blank ballots. The test deck must also include a sampling of all ballots that will be used during the election, including ballot on demand, alternative language ballots, and ballots marked with an electronic ballot marker.

~~((4) In a partisan primary:~~

~~—(a) When a consolidated ballot is used, the test deck must test that the partisan and nonpartisan votes are counted properly for situations where just one party is selected, no party is selected, and both parties are selected; and~~

~~—(b) When separate ballots are used, a test deck for each party must be prepared in addition to a test deck for nonpartisan races;))~~

[Statutory Authority: RCW 29A.04.611, 08-05-120, § 434-335-445, filed 2/19/08, effective 3/21/08; 06-14-048, § 434-335-445, filed 6/28/06, effective 7/29/06.]

OTS-1448.3

AMENDATORY SECTION(Amending WSR 08-05-120, filed 2/19/08, effective 3/21/08)

WAC 434-381-120 Deadlines. (1) Candidate statements and photographs shall be submitted to the secretary of state((:

~~—(a) For candidates who filed during the regular filing period;)) within seven calendar days after filing their declaration of candidacy((:~~

~~—(b) For candidates who filed during a special filing period, or were selected by a political party pursuant to either RCW 29A.52.010 or 29A.24.140, within seven calendar days after the close of the special filing period or selection by the party)).~~

(2) For ballot measures, including initiatives, ~~((referendums))~~ referenda, alternatives to initiatives to the legislature, and constitutional amendments, the following documents shall be filed with the secretary of state on or before the following deadlines:

(a) Appointments of the initial two members of committees to prepare arguments for and against measures:

(i) For an initiative to the people or referendum measure: Within ten business days after the submission of signed petitions to the secretary of state;

(ii) For an initiative to the legislature, with or without an alternative, constitutional amendment or referendum bill, within ten business days after the adjournment of the regular or special session at which the legislature approved or referred the measure to the ballot:

(b) Appointment of additional members of committees to prepare arguments for and against ballot measures, not later than the date the committee submits its initial argument to the secretary of state;

(c) Arguments for or against a ballot measure, no later than twenty calendar days following appointment of

the initial committee members;

(d) Rebuttals of arguments for or against a ballot measure, by no later than fourteen calendar days following the transmittal of the final statement to the committees by the secretary. The secretary shall not transmit arguments to opposing committees for the purpose of rebuttals until both arguments are complete.

(3) If a ballot measure is the product of a special session of the legislature and the secretary of state determines that the deadlines set forth in subsection (2) of this section are impractical due to the timing of that special session, then the secretary of state may establish a schedule of deadlines unique to that measure.

(4) The deadlines stated in this rule are intended to promote the timely publication of the voters pamphlet. Nothing in this rule shall preclude the secretary of state from accepting a late filing when, in the secretary's judgment, it is reasonable to do so.

[Statutory Authority: RCW 29A.04.611, 08-05-120, § 434-381-120, filed 2/19/08, effective 3/21/08. Statutory Authority: RCW 29A.04.610, 04-15-089, § 434-381-120, filed 7/16/04, effective 8/16/04. Statutory Authority: RCW 29.81.320, 02-02-067, § 434-381-120, filed 12/28/01, effective 1/28/02.]

NEW SECTION

WAC 434-381-200 Political party preference information. If a state voters' pamphlet includes a race for partisan office, the pamphlet must include an explanation that each candidate for partisan office may state a political party that he or she prefers, and that 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 pamphlet must also explain that a candidate can choose to not state a political party preference.

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