

## History of Washington State Primary Systems

### **1890 – 1907**

Nominees for partisan offices are chosen either by convention or by petition.

### **1907 – 1934**

In 1907, the Washington State Legislature establishes the first direct primary system for partisan candidates, requiring political parties to choose their nominees through a public primary. In this system, separate ballots are printed for each political party and voters may only cast ballots in one party's primary.

### **1935 – 2003**

Washington State's "blanket primary" system is established in 1935. Except for presidential primaries, all properly registered voters can vote for their choice at any primary for "any candidate for each office, regardless of political affiliation and without a declaration of political faith or adherence on the part of the voter." Under the blanket primary system, citizens may vote for a candidate of one party for one office, and then vote for a candidate of another party for the next office, and engage in cross-over voting or "ticket splitting."

### **June 26, 2000**

The U.S. Supreme Court rules California's blanket primary unconstitutional as violating the political parties' freedom of association. California Democratic Party v. Jones, 530 U.S. 567 (2000). Following this U.S. Supreme Court case, the constitutionality of Washington's blanket primary is challenged by the state Democratic, Republican and Libertarian parties in United States District Court for the Western District of Washington, Tacoma.

### **July 20, 2000**

Following a week of negotiations, attorneys for the State and the political parties agree to leave the September 2000 primary unchanged.

### **September 2000**

Secretary of State Ralph Munro begins a series of hearings around the state to gather public input on potential changes to the blanket primary system.

### **January 12, 2001**

The new Secretary of State, Sam Reed, releases a report on the blanket primary hearings. The report shows Washington voters strongly favor retaining the blanket primary system - or at least as many features of the blanket primary as possible. The report, which summarizes public input from 11 hearings around the state, notes that "most of the voters (in Washington) are independent and want to continue to participate in the primary without having to affiliate with a political party and without being restricted to the candidates of only one party in the primary." According to the report, voters particularly object to any requirement that they publicly declare party affiliation, either by party registration or by making a choice at the polls.

### **March 8, 2002**

The Federal District Court in Tacoma upholds Washington's blanket primary as constitutional. Democratic Party of Washington State v. Reed (W.D. Wash. 2002). The political parties appeal the decision.

### **September 15, 2003**

The Ninth Circuit Court of Appeals holds Washington's blanket primary system unconstitutional because it violates the political parties' right of free association. Democratic Party of Washington State v. Reed, 343 F.3d 1198 (9th Cir. 2003), cert. denied, 540 U.S. 1213 (2004).

### **November 25, 2003**

The State of Washington and the Grange petition the United States Supreme Court to review the Ninth Circuit Court of Appeals decision declaring the blanket primary unconstitutional.

#### **January 8, 2004**

The Grange files Initiative 872 with the Office of the Secretary of State. Initiative 872 proposes a “top two” primary system in which a voter has “the right to cast a vote for any candidate for each office without any limitation based on party preference or affiliation of either the voter or the candidate.” The primary is not intended to act as a nominating system. Instead, the two candidates with the most votes advance to the general election, regardless of political party preference.

#### **February 23, 2004**

The United States Supreme Court denies the State’s request to review the Ninth Circuit decision. Consequently, the Ninth Circuit opinion declaring Washington’s blanket primary unconstitutional stands. Democratic Party of Washington State v. Reed, 540 U.S. 1213 (2004).

#### **March 10, 2004**

The Washington State Legislature enacts a bill which provides for two alternative primary systems. The bill establishes a Top Two style primary system. Under the Top Two approach, the voter does not declare a party affiliation and may vote for any candidate in each race, regardless of the candidate’s party preference. The top two candidates in each race advance to the general election, regardless of party preference.

If the Top Two system is declared unconstitutional, a pick-a-party nominating primary is implemented. Under the pick-a-party primary, also referred to as a Montana-style primary, the voter affiliates with one of the major parties and votes only for candidates of that party. This is a traditional nominating primary in which one candidate from each party advances to the general election. There is no party registration, but the voter is required to momentarily affiliate with a party and only vote for candidates of that party. The voter’s party affiliation is confidential. Minor party and independent candidates do not appear in the primary but instead hold nominating conventions in the spring and advance directly to the general election.

#### **April 1, 2004**

Governor Gary Locke vetoes the portions of the bill that establish the Top Two primary. As a result, the pick-a-party primary takes effect.

#### **September 2004**

The pick-a-party primary is in effect for the September 2004 primary election. By early September, the Office of the Secretary of State receives more than 14,000 calls and letters from voters opposed to the pick-a-party primary. Following the primary election, surveys reveal that only 21% of voters supported the pick-a-party primary.

#### **November 2, 2004**

Initiative 872 appears on the general election ballot and is approved by the voters by nearly 60 percent.

#### **May 19, 2005**

The Washington State Republican Party files a lawsuit in the United States District Court for the Western District of Washington, Seattle, against Dean Logan, King County Records and Elections Division Manager, and the County Auditors of eight other counties holding partisan elections in 2005. The Washington State Democratic Central Committee and the Washington State Libertarian Party intervene as Plaintiffs. The State of Washington and the Washington State Grange intervene as Defendants. The lawsuit challenges Initiative 872 on the basis that it violates the political parties’ right to free association, in violation of the First and Fourteenth Amendments to the United States Constitution.

#### **July 15, 2005**

The U.S. District Court concludes that the Top Two Primary violates the political parties’ First Amendment right of free association by allowing any voter, regardless of his or her affiliation to the party,

to choose the party's nominee, and allowing any candidate, regardless of party affiliation or relationship to the party, to self-identify as a member of that party and appear on the primary and general election ballot as a candidate for that party. The Court strikes down Initiative 872 in its entirety and specifically states that Washington returns to a pick-a-party primary. Washington State Republican Party v. Logan, 377 F. Supp. 2d 907 (W.D. Wash. 2005).

#### **August 22, 2006**

The United States Ninth Circuit Court of Appeals affirms that Initiative 872 is unconstitutional. Washington State Republican Party v. Washington, 460 F.3d 1108 (9th Cir. 2006).

#### **October 1, 2007**

The United States Supreme Court hears oral arguments on the constitutionality of a Top Two Primary in an appeal filed by the State and the Washington State Grange. Washington State Grange v. Washington State Republican Party, et al. and State of Washington v. Washington State Republican Party, et al., Nos. 06-713 and 06-730 respectively.

#### **March 18, 2008**

The United States Supreme Court overturns the Ninth Circuit Court of Appeals decision, and upholds the constitutionality of Initiative 872. The Court rules that, on its face, I-872 does not impose a severe burden on the political parties' associational rights and that the parties' arguments that voters will be confused can only be evaluated once the primary is implemented. Washington State Grange v. Washington State Republican Party, et al., 552 U.S. 442, 128 S. Ct. 1184, 170 L. Ed. 2d 151 (2008).

#### **August 19, 2008**

Washington State conducts the first Top Two Primary in the country. The Primary system is extremely popular with the public. Following the primary election, surveys reveal that 76% of voters like the Top Two Primary.

#### **August 18, 2009**

Several counties in Washington conduct a Top Two Primary for particular legislative and partisan county offices. The public continues to respond positively to this form of Primary.

#### **August 17, 2010**

Washington State conducts another Top Two Primary for partisan county, legislative, and Congressional elections. Voters and candidates appreciate the focus on the *candidates*, rather than political parties.

#### **January 11, 2011**

In the political parties' challenge to implementation of the Top Two Primary, the United States District Court for the Western District of Washington (Case No. C05-0927-JCC) grants summary judgment in favor of the State. "Washington has implemented I-872 uniformly consistent with several of the 'ways' the Supreme Court envisioned would be consistent with the Constitution, and this Court therefore concludes that I-872 complies with the Constitution."

#### **January 19, 2012**

The United States Ninth Circuit Court of Appeals upholds the Top Two Primary. Washington State Republican Party v. Washington Grange, (No. 11-35122, W.D. Wash. 2011). "Given the design of the ballot, and in the absence of evidence of actual voter confusion, we hold that Washington's top two primary system, as implemented by the state, does not violate the First Amendment associational rights of the state's political parties ..."