

OFFICES THAT MAY
BE OPPOSED IN
THE PRIMARY AND
UNOPPOSED IN THE
GENERAL ELECTION



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Offices that may be Opposed in the Primary and Unopposed in the General Election

1. Executive Summary:

The Washington State Legislature requested a study of how many times judicial candidates and candidates for the Office of Superintendent of Public Instruction have appeared without opposition in a general election since 1985. We were asked to determine whether the differences in the numbers of voters between the primary and general election may have resulted in a different outcome had there been a contested general election. The cost of holding such elections was to be estimated.

Twenty-one nonpartisan races meet the criteria outlined in the study. We cannot make determinations about which candidate would have won in a contested general election. However, some formulas for speculation are offered. We conclude that there would be modest financial implications if Washington State were to move these initially-contested races to the general election.

2. Introduction:

The 2005 Legislature directed the Office of the Secretary of State to prepare a report on judicial and Office of Superintendent of Public Instruction (OSPI) elections. By law, these offices have a different format for presenting candidates on the primary and general election ballots.

Specifically, the Legislature requested analysis on judicial and OSPI races since 1985 in which a candidate appeared unopposed in the general election after having been opposed in the primary. While over 1,500 races for these offices have occurred since 1985, only 21 races were identified as having met these criteria because of the unique constitutional and statutory provisions governing these races. The Legislature also requested a financial analysis. Specifically, chapter 243, laws of 2005 § 25 directs this study as follows:

The secretary of state shall study the feasibility of requiring that the names of the top two vote-getters in primary elections of justices of the state supreme court, judges of the courts

of appeals, superior courts, and district courts, and the superintendent of public instruction shall appear on the general election ballot. The study shall include [1] a survey of how many times a judicial candidate and a candidate for superintendent of public instruction have appeared without opposition on the general election ballot from 1985 to present; [2] the number of voters voting for these races in the primary election as opposed to voting for the same races in the general election; and [3] if the differences in the numbers of voters voting at the primary and voting at the general election may have resulted in a different election result. The study shall also include [4] a financial analysis of the proposed changes. The secretary of state shall report the results of the study to the appropriate committees of the Legislature no later than January 31, 2006. [Bracketed numbers added.]

Thus, our task begins with a determination of [1] how many times a judicial candidate and a candidate for OSPI has appeared without opposition on the general election ballot since 1985. Races in which the winner was also unopposed in the primary are necessarily excluded, because by definition, any differences in the numbers of voters for these races in the two elections could not possibly have resulted in a different election result since there was only one candidate. We are then to address [2 and 3] whether the differences in the numbers of voters for these races in the primary and general elections may have resulted in a different outcome. Finally, we must consider [4] the financial consequences of requiring contested general elections for these offices whenever possible.

3. Applicable Law:

RCW 29A.36.171(2) determines whether a candidate for these nonpartisan offices may be unopposed in a general election after being opposed in the primary:

On the ballot at the general election for the office of justice of the supreme court, judge of the court of appeals, judge of the superior court, judge of the district court, or state superintendent of public instruction, if a candidate in a contested primary receives a majority of all the votes cast for that office or position, only the name of that candidate may be printed under the title of the office for that position.

¹ Write-in results have not been separately noted and are not addressed in this report.

This means that a candidate that wins a majority of the votes in a contested primary for one of these offices, including by definition the winners of virtually all two-candidate primaries, runs unopposed in the general election.¹

However, a *superior court* candidate who wins a majority in the primary generally receives a certificate of election without running in a general election because of the interaction between the statutes and the Constitution. Article IV § 29 states:

If, after any contested primary for superior court judge in any county, only one candidate is entitled to have his name printed on the general election ballot for any single position, *no election shall be held* as to such position, and a certificate of election shall be issued to such candidate. [Emphasis added.]

It is further stated that this certificate is issued provided that no one files a declaration of write in campaign. The cited RCW 29A.36 statutes have the paradoxical effect of obviating these general elections that they would otherwise regulate.

Few superior court races meet the opposed-then-unopposed parameters of our study. The general election will also be contested if no one gets a majority in a contested primary.

In *district court* races, contested primaries were once followed by two-candidate general elections, regardless of whether there was a majority in the primary or repeating a two-person race (see 1978 Attorney General Opinion No. 24). However, chapter 19, laws of 1998 eradicated the two-person primary by amending what is now RCW 29A.52.220 by adding district court to the local jurisdictions for which there is *no* primary if “there are no more than two candidates filed for the position.”²

As was the case in superior court races, applying this law means few district court races meet our opposed-then-unopposed parameters because:

- Before 1998, district court contested primaries were followed by contested general elections.
- From 1998 to 2004, there would be no unopposed district court candidate in the general election if there were three or more candidates in the primary, and no district court candidate in the primary at all if only two candidates filed.

² In 2004, “judge of the District Court” was added to the listing of nonpartisan offices as to which a majority in a contested primary earns a candidate sole listing in the general. See, e.g., chapter. 271, laws of 2004, § 170, enacting RCW 29A.36.171 (quoted at the outset). However, it appears that no District Court races have yet applied that change.

We express our appreciation to the election officers of the thirty-one counties listed in the table in Appendix A for their cooperation in providing data and other information. Their cooperative efforts were not mandated but were indispensable to this report.

³ We did not include municipal departments of district courts.

4. Methodology:

We obtained data chiefly from two types of sources:

1. *County elections offices.* All thirty-nine counties, through their County Auditors and/or election offices, were asked to provide responsive data. Thirty-one counties did so, as detailed in the table “County Responses to OSOS Inquiries re 2005 Ch. 243,” Appendix A. The Auditors provided data by mail and/or email and occasionally supplemented the data by telephone. We also reviewed data in the King County Records, Elections and Licensing Services Division in Seattle, and for 1998-2005, the Pierce County Auditor’s on-line Election Archives (http://www.piercecountywa.org/pc/abtus/ourorg/aud/Elections/Archives/Archive_index.htm).

2. *The Secretary of State’s webpage* (www.secstate.wa.gov/elections). Various links were used to locate the information.

We reviewed election results for the subject races³ from 1985 through 2005. The relevant collected data is displayed in Appendix B.

Each opposed-then-unopposed race was recorded by last name of the candidate unopposed in the general election, position number, year, total votes for that position in the primary, candidate’s total votes in the primary, and total votes for that position in the general election (candidate’s total, since unopposed). In addition to compiling this data, we performed certain calculations, which are discussed below.

5. Results / Findings:

A. Different elections, different results?

We have identified 21 races meeting our opposed-then-unopposed criteria. These break down as follows:

- OSPI: one race (races occurred in 1988, 1992, 1996, 2000, and 2004);
- Supreme Court: five races (three races occurred biennially, 1986 through 2004; terms are six years: RCW 2.04.071);
- Court of Appeals: nine races (multiple races occurred biennially, 1986 through 2004; terms are six years: RCW 2.06.070);

⁴ OSPI: 5; Supreme Court: 30 (10 biennial elections, 1986-2004, 3 positions each election); Court of Appeals: 73 (22 6-year positions; estimate 1/3 open in 1986, 1992, 1998, and 2004, 1/3 in 1988, 1994, 2000, and 1/3 in 1990, 1996, and 2002); Superior Court: 900 (assuming 180 positions in the five listed elections); District Court: 545 (assuming 109 positions in the five listed elections). The numbers of Court of Appeals, Superior Court, and District Court positions are as of a telephone call made to the Administrative Office of the Courts on January 19, 2006, but there actually were fewer judges at different points in the past.

- Superior Court: four races (races mostly occurred in 1988, 1992, 1996, 2000, and 2004; terms are four years: RCW 2.08.060, 2.08.070);
- District Court: two races (races mostly occurred in 1986, 1990, 1994, 1998, and 2002; terms are four years: RCW 3.34.050, 3.34.070).

Notably, these represent a relatively small number of the total contests for these offices during the 1985-2005 period. For comparison, we roughly calculate that there could have been over 1,500 election contests during this time period for these five types of offices,⁴ although most of the superior and district court races appear to have been uncontested. This latter fact (along with the legal unlikelihood already noted), explains the especially tiny fraction of these local judicial races appearing in the data.

It is impossible to determine whether the differences in the numbers of voters for these races in the primary and general elections may have resulted in a different outcome. There is no way to determine how voters in a general election would have voted if there had been two candidates instead of one.

Certainly, voter turnout increased for the general elections, and those increases were usually greater than the winner's margin in the primary. However, presumably a significant number of the increased or "new" voters in the general election would also have voted for the primary winner. Postulating a different result in the general election would involve determinations including:

- which primary voters would also have voted in the general election, and how (changing their votes or not),
- how "new" general election-only voters would have voted, and
- the effects of various other unknowns (such as candidates' post-primary campaign efforts and other campaign developments).

Such determinations rest on assumptions and speculations we cannot make.

Nevertheless, however speculatively, we have included a series of calculations that may help the reader analyze the data in Appendix B. It proceeds from various uncertain assumptions, including:

- most people who vote in a primary will also vote in the general election;

- most people who choose the highest vote-getter in a primary, from among all of the candidates, will continue to vote for that candidate in the general election;
- the total votes for the unopposed candidate in the general election meaningfully reflect the number that would also have been cast for that office in a contested general election; and
- thus, for the result to remain unchanged, the primary winner would only need to add (to his/her primary voters) enough of the “new” general election—only voters to gain a majority of the total votes cast for that office in a general election.

The worksheet calculations follow these uncertain assumptions to the point of estimating the percentage of the additional votes cast in the general election which the primary winner would have needed for a majority in the general election (reflected in column K).

B. Financial Analysis

Modest costs would be incurred if the Legislature were to require contested general elections for races currently contested only in the primaries. Only 21 opposed-then-unopposed races statewide have been identified over an almost 20 year period, an average of slightly more than one per year.

Still, under current law, most of the additional costs would be imposed on the counties and possibly other local jurisdictions and not on the state. The OSPI and judicial elections generally occur during even-numbered years, when the state does not reimburse the counties for any primary or general election costs. The state would share in the additional costs only if a superior court race happened to occur in an odd-numbered year.

As to what those increased costs would be, some guidance can be found in the Budgeting, Accounting, and Reporting System (BARS) formula, decreed by the State Auditor’s Office for allocation of election costs among the jurisdictions that appear on the ballot (King and three other counties use different formulas). Under that BARS formula, each issue or office added to the ballot increases a factor which in turn increases the amount charged to the jurisdiction responsible for that race (see BARS Manual Vol. 1, Part 3, Chapter 12, pp. 13-14, at: http://www.sao.wa.gov/localgovernment/bars/2005BARS/CAT1_2005.pdf)

The Auditors expressed considerable uncertainty and variety when responding to our informal survey as to their expected additional costs for adding races to the general election ballot (see Appendix A,

“County Responses to SOS Inquiries re Chapter 243, Laws of 2005”). How many such races there would be was unknown, although it was recognized that relatively few are likely because most superior and district court races are unopposed.

The following counties indicated in one way or another that they generally did not anticipate incurring significant additional costs: Chelan, Clark, Jefferson, King, Klickitat, Lincoln, Pierce, Snohomish, and Spokane.

Other counties reported expected additional costs for adding a race to the general election ballot as follows:

- Clallam: \$2,600-5,500
- Cowlitz: \$2,000
- Kitsap: \$2,158
- Yakima: \$3,500-5,000.

Finally, some counties expressed additional uncertainties and concerns, including:

- **King:** While moving judicial races to the general election ballot is unlikely to have a big operational cost impact, there could be a bigger impact in odd-numbered years if this resulted in shifting election costs from the state to local jurisdictions. If removing state judicial races from the primary left no state races on that ballot, there could be substantial increases in cost allocations charged to the other jurisdictions which remained on the primary ballot. Based on the 2005 primary, this could mean estimated 22.5 - 24 percent increases in those charges to the remaining jurisdictions.
- **Spokane:** Twelve additional races could force a two-page ballot (costing an extra \$75,000-125,000).
- **Whatcom:** Additional costs would depend on whether a two-sided ballot became required.

6. Conclusion:

Our study has found a relatively small number of the prescribed opposed-then-unopposed races. It is impossible to determine in a reasonable manner whether the greater number of voters in any general election may have resulted in a different election result from

⁵ The current study is expressly limited to races in which candidates “have appeared without opposition on the general election ballot”. However, further perspective on whether the usually greater number of voters in a general election “may have resulted in a different election result” from that in the primary might be found in *contested* district court elections before 1998 (before the duplicative primary was eliminated), where two candidates ran consecutively in the primary and general. See, e.g., King County (twelve races same winner in both; two 1986 races with different winners in general [one by one vote]); Lewis County in 1990 (two races; highest vote-getter changed in one) and Yakima County in 1986 and 1990 (no changes in three races) and 1988 (change in general).

that in the primary.⁵

Minimal costs may be anticipated if the law was changed to require contested general elections for these races because there are so few opposed-then-unopposed races. Most of these costs will likely fall on the local jurisdictions.

7. Appendices:

A: “County Responses to OSOS Inquiries re 2005 Ch. 243” (table)

B: “Candidates Opposed in the Primary and Unopposed in the General (1985–2005)” worksheet.

Abbreviations:

G—General election

Opp/Unopp—Races Opposed in Primary but then Unopposed in General Election

P—Primary election

sup. ct—superior court

dist. ct—district court

**Appendix A:
County Responses to OSOS Cost Inquiries re 2005 Ch. 243**

COUNTY	SUPERIOR CT.	DISTRICT CT.	FINANCIAL	COMMENT
Asotin	No Opp/Unopp	No Opp/Unopp	Not addressed	
Benton	No Opp/Unopp	No Opp/Unopp	Not addressed	
Chelan	No Opp/Unopp	No Opp/Unopp	Extra costs if P top 2 on G: None (unlikely (to require additional ballot))	
Clallam	No Opp/Unopp	No Opp/Unopp	Extra cost for placement on G ballot: judges ~\$5,500; OSPI \$2,600 (not paid by state in even year elections)	No further breakdown of cost increase
Clark	No Opp/Unopp	2004 Pos. 5	Additional cost if P top 2 judicial candidates on G: None	
Cowlitz	1996 Pos. 2	No Opp/Unopp	Adding one candidate to race already on ballot not expensive: ~\$2,000 (incl. voter's pamphlet)	No further breakdown of cost increase
Ferry	No Opp/Unopp	No Opp/Unopp	Not addressed	
Franklin	No Opp/Unopp	No Opp/Unopp	Not addressed	
Garfield	No Opp/Unopp	No Opp/Unopp	Not addressed	
Grant	No Opp/Unopp	No Opp/Unopp	Not addressed	
Grays Harbor	No Opp/Unopp	No Opp/Unopp	Not addressed	
Island	No Opp/Unopp	No Opp/Unopp	Not addressed	
Jefferson	No Opp/Unopp	No Opp/Unopp	"Insignificant" cost	
King	No Opp/Unopp	No Opp/Unopp	See below*	
Kitsap	No Opp/Unopp	No Opp/Unopp	Extra cost for county to add a race to the G in even year is an additional ½ to 1% (\$2,158 in 2004; based on state formula)	

COUNTY	SUPERIOR CT.	DISTRICT CT.	FINANCIAL	COMMENT
Klickitat	1992 Klickitat-Skamania Pos. 1	No Opp/Unopp	No additional costs	Pos. 1 Unopposed in 1992 G only in Klickitat
Lewis	No Opp/Unopp	No Opp/Unopp	Auditor directs proportional charging of total election costs when an office is added to ballot; state doesn't pay for even years/ sup. ct or dist. ct.	
Lincoln	No Opp/Unopp	No Opp/Unopp	"Minimal" cost to include top 2 on G ballot	
Mason	No Opp/Unopp	No data	(State's shares of election costs listed)	
Okanogan	No Opp/Unopp	No Opp/Unopp	Could not answer	
Pend Oreille	No Opp/Unopp	No Opp/Unopp	Not addressed	
Pierce	No Opp/Unopp	No Opp/Unopp	No significant cost increase (bigger ballot) to add contested races in G; changing sup.ct unlikely to cause bigger ballot because not enough races opposed	
Skagit	No Opp/Unopp	No Opp/Unopp	Not addressed	
Skamania	No Opp/Unopp	No data	Not addressed	Pos. 1 not on 1992 G ballot in Skamania; no other data
Snohomish	No Opp/Unopp	1990 Pos. 1	Negligible/ no extra cost if top 2 superior/ district court candidates in P appear on G ballot; rarely more than 1 candidate files. Changing number of matters on ballot changes formula allocations of election costs	
Spokane	1988 Pos. 1 1992 Pos. 1	No Opp/Unopp	Costs minimal, except that if required adding 12 sup. ct races in G could force 2-page ballot (\$75-125K for additional page, testing and processing)	Cost analysis of additional 12 races & ballot page may assume that all 12 would be contested
Stevens	No Opp/Unopp	No Opp/Unopp	Not addressed	

COUNTY	SUPERIOR CT.	DISTRICT CT.	FINANCIAL	COMMENT
Thurston	No Opp/Unopp	No Opp/Unopp	Not addressed	
Wahkiakum	No Opp/Unopp	No Opp/Unopp	Not addressed	
Whatcom	No Opp/Unopp	No Opp/Unopp	Difficult to estimate. Considerable impact if resulted in two-sided ballot; less impact if still one-sided	
Yakima	No Opp/Unopp	No Opp/Unopp	Adding a couple of sup. ct races to G ballot unlikely to change its size, so cost increase \$3,500-5,000 per race added	No further breakdown of cost increase

*King County financial comments: Moving judicial races to G unlikely to have big operational cost impact. Real impact could be in odd-numbered years, which already are the only years when state pays a share of P/ G election costs. If removing state judicial races from P left no state races on that ballot, this could substantially increase the cost allocations charged to other jurisdictions which remained on P ballot (same size pie, fewer and larger pieces). Based on the 2005 primary, this could mean estimated 22½ to 24% increases in those charges to remaining jurisdictions.

Appendix B: Candidates Opposed in the Primary and Unopposed in the General (1985 - 2005)

Race			Primary			General	Data			
A Candidate	B Office	C Year	D Total votes for position in Primary	E Candidate's total votes in Primary	F Candidate's percentage of Primary Votes (E / D)	G Total votes for Candidate and write- ins in General	H Additional Votes cast in General (G - D)	I Threshold for majority in General	J Difference between Candidate's votes in the primary and votes needed for a majority in the General (I - E)	K Of additional votes cast in the General, the percentage the Candidate must receive to achieve a majority (J / H)
SUPERINTENDENT OF PUBLIC INSTRUCTION										
Bergeson	OSPI	2000	1,069,236	611,578	57%	1,653,830	584,594	826,916	215,338	37%
SUPREME COURT										
Guy	1	1994	678,863	357,216	53%	1,104,579	425,716	552,291	195,075	46%
Durham	1	1996	912,545	479,244	53%	1,450,710	538,165	725,356	246,112	46%
Sanders	6	1998	780,823	497,668	64%	1,191,678	410,855	595,840	98,172	24%
Bridge	7	2000	906,126	560,345	62%	1,523,168	617,042	761,585	201,240	33%
Madsen	5	2004	939,047	571,930	61%	1,892,177	953,130	946,090	374,160	39%
COURT OF APPEALS										
Forrest	Div. 1, Dist. 3, Pos. 1	1988	47,164	28,656	61%	73,002	25,838	36,502	7,846	30%
Shields	Div. 3, Dist. 1, Pos. 1	1988	79,606	58,131	73%	129,620	50,014	64,811	6,680	13%
Houghton	Div. 2, Dist. 2, Pos. 1	1996	117,093	59,539	51%	163,128	46,035	81,565	22,026	48%
Hunt	Div. 2, Dist. 2, Pos. 1	1996	128,044	65,852	51%	174,476	46,432	87,239	21,387	46%
Brown	Div. 2, Dist. 3, Pos. 1	1996	55,526	35,382	64%	79,665	24,139	39,834	4,452	18%
Quinn- Brintnall	Div. 2, Dist. 1, Pos. 3	2000	125,015	72,112	58%	182,828	57,813	91,415	19,303	33%
Coleman	Div. 1, Dist. 1, Pos. 5	2002	217,409	130,204	60%	300,258	82,849	150,130	19,926	24%
Kato	Div. 3, Dist. 1, Pos. 2	2002	82,756	42,242	51%	113,197	30,441	56,600	14,358	47%
Grosse	Div. 1, Dist. 1, Pos. 1	2004	275,528	185,899	67%	532,335	256,807	266,169	80,270	31%

Race			Primary			General	Data			
A Candidate	B Office	C Year	D Total votes for position in Primary	E Candidate's total votes in Primary	F Candidate's percentage of Primary Votes (E / D)	G Total votes for Candidate and write- ins in General	H Additional Votes cast in General (G - D)	I Threshold for majority in General	J Difference between Candidate's votes in the primary and votes needed for a majority in the General (I - E)	K Of additional votes cast in the General, the percentage the Candidate must receive to achieve a majority (J / H)
SUPERIOR COURT										
Austin	Spokane # 1	1988	57,162	33,734	59%	97,654	40,492	48,828	15,094	37%
Kolbaba	Klickitat- Skamania # 1*	1992	3,911	2,533	65%	4,989	1,078	2,496	-38	-3%
Austin	Spokane # 1	1992	82,881	46,362	56%	125,545	42,664	62,774	16,412	38%
Warning	Cowlitz # 2	1996	16,710	8,861	53%	24,247	7,537	12,125	3,264	43%
DISTRICT COURT										
Fisher	Everett # 1	1990	9,129	4,777	52%	11,650	2,521	5,826	1,049	42%
Melnick	Clark # 5	2002	40,124	23,473	59%	111,489	71,365	55,746	32,273	45%

*1992 Klickitat data only

