

IN THE SUPREME COURT OF THE STATE OF IDAHO

RAÚL R. LABRADOR, in his official capacity
as the Idaho Attorney General,

Petitioner,

v.

IDAHOANS FOR OPEN PRIMARIES, a
coalition of community groups and civic
organizations that includes: RECLAIM
IDAHO, IDAHO CHAPTER OF MORMON
WOMEN FOR ETHICAL GOVERNMENT,
and VETERANS FOR IDAHO VOTERS,

Real Parties in Interest-Respondents,

and

PHIL MCGRANE, in his official capacity as the
Idaho Secretary of State,

Respondent.

Case No. _____

**VERIFIED PETITION FOR A WRIT OF
PROHIBITION OR MANDATE**

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INTRODUCTION

1. The so-called “Open Primaries Initiative” would not institute open primaries in Idaho.

2. This Court already reviewed the initiative and held that the term “open primary . . . fail[s] to accurately describe the primary system proposed by the Initiative.” *Idahoans for Open Primaries v. Labrador*, 172 Idaho 466, 533 P.3d 1262, 1280 (2023).

3. That holding was correct. The term “open primary” refers to a system in which parties hold separate primaries but anyone can vote in them—in short, the system Idaho had before 2011. *Id.*, 172 Idaho at ____, 533 P.3d at 1279.

4. The “Open Primaries Initiative,” on the other hand, would implement a “top four primary” that would abolish party-run primaries entirely. Parties would be free to endorse any candidates they wished, but they would no longer play any role in determining which candidates run in the general election.

5. Flouting this Court’s holding, Idahoans for Open Primaries—the coalition of organizations sponsoring the initiative—and its members have purposefully and ubiquitously used the term “open primaries” to promote their initiative, including in the coalition’s name, dozens of times on their websites, and on countless clipboards, banners, t-shirts, stickers, and social media posts.

6. Just this month, they gathered supporters to chant the words “open primaries” in the state capitol, and their current logo reads “Yes! On 1 For Open Primaries.”

7. Continuing to use “open primaries” was no accident. Idahoans for Open Primaries has knowingly ignored the Court’s holding because Idaho used to have open primaries, and the coalition hoped to frame its “top four primary” proposal as a return to something familiar.

8. While training signature gatherers, Idahoans for Open Primaries told them, “we had open primaries for 80 years,” so “open primaries are actually the Idaho way.” On many other occasions they have suggested to the public that their system is the same one that existed before 2011.

9. However, this State has never used the primary system that the initiative proposes.

10. The coalition’s pervasive uses of the slogan “open primaries,” after this Court ruled it inaccurate, are knowing “false statement[s] or representation[s]” that violate Idaho Code § 34-1815. All the coalition’s signatures were obtained in violation of this statute and “are null and void.” Idaho Code § 34-1815.

11. In addition to abolishing Idaho’s tradition of party-run primaries, the initiative would also enact ranked-choice voting in the *general* election. *Idahoans for Open Primaries*, 172 Idaho at ____, 533 P.3d at 1282.

12. But unlike the “open primaries” slogan, “ranked-choice voting” is nowhere to be seen on the coalition’s clipboards, banners, t-shirts, stickers, or website home page. Indeed, it has been relegated to an afterthought in the coalition’s promotional efforts.

13. Ranked-choice voting receives so little attention in Idahoans for Open Primaries' promotional materials because it is highly unpopular and, when tried in other jurisdictions, often quickly repealed. The Idaho Legislature has preemptively banned ranked-choice voting, and recent polling shows that the majority of Idahoans oppose ranked-choice voting. By appending a ranked-choice voting proposal to a comparatively more popular top four primary proposal, Idahoans for Open Primaries hopes to secure votes from citizens who don't notice that the initiative has anything to do with ranked-choice voting, or who support a top four primary strongly enough to vote for the bundled pair even though they don't approve of ranked-choice voting.

14. The purpose of Idaho's single-subject rule is to prevent such distinct and consequential changes from lurking in the fine print of a proposed law, and to outlaw the "logrolling" tactic that Idahoans for Open Primaries has chosen to use. Independent proposals are required to stand (if at all) on their own merits.

15. Like the deceptive marketing, this single-subject violation makes it unlawful to include the initiative on the ballot. Idaho Code § 34-1801A(1).

STATEMENT OF JURISDICTION

16. This Court has "original jurisdiction to issue writs of mandamus, certiorari, prohibition, habeas corpus, and all writs necessary or proper to the complete exercise of its appellate jurisdiction." Idaho Const., art. V, § 9; Idaho Code § 1-203; *see also* I.A.R. 5(a). The Court will exercise its original jurisdiction to issue writs based on

the “importance of the question[] presented” and the “urgent necessity for immediate determination.” *Keenan v. Price*, 68 Idaho 423, 429, 195 P.2d 662, 664 (1948).

17. This Court has previously exercised jurisdiction where the Secretary of State was preparing to act contrary to law, particularly in consequential election-related circumstances proceeding on an “urgent” timeline. *See Reclaim Idaho v. Denney*, 169 Idaho 406, 423, 497 P.3d 160, 177 (2021) (exercising jurisdiction based on “the urgent need for an immediate determination”); *Van Valkenburgh v. Citizens for Term Limits*, 135 Idaho 121, 124, 15 P.3d 1129, 1132 (2000) (exercising jurisdiction based on the “urgent nature” of the request in light of impending election deadline). In fact, this Court exercised its original jurisdiction the last time this very initiative petition was before the Court. *Idahoans for Open Primaries*, 172 Idaho at ____, 533 P.3d at 1271–72.

18. Jurisdiction is proper in this case for the same reasons it was proper in the last case involving this initiative. Whether the initiative petition is legally sufficient to appear on the ballot is an “issue . . . of statewide importance” because it will determine the future of Idaho’s electoral regime. *Id.* The relevant issues “arise[] from the people’s fundamental constitutional right to initiate or repeal legislation,” *id.*, and implicate the constitutional single-subject rule. *See* Idaho Const. art III, § 16; Idaho Code § 34-1801A(1). And the matter is urgent—the Secretary of State must furnish a certified copy of the ballot title to county officials by September 7, less than two months away. Idaho Code §§ 34-1810, 34-909. Without this Court’s intervention, the initiative will be put to a vote even though its promoters have flooded the State with

false statements about the initiative to garner signatures and the initiative impermissibly contains two independent objectives.

19. The Attorney General has standing to seek a writ enjoining the Secretary of State from furnishing the ballot title to the counties. The Attorney General “plays a unique role in State affairs,” and possesses the right and the duty to “institute civil actions for and on behalf of the state for the protection of the state’s rights and interests.” *Wasden v. State Bd. of Land Comm’rs*, 153 Idaho 190, 195, 280 P.3d 693, 698 (2012) (first quote); *Howard v. Cook*, 59 Idaho 391, 83 P.2d 208, 211 (1938) (second quote) (cleaned up). This includes the State’s interest in protecting the integrity and fairness of the initiative process. *Brnovich v. Democratic Nat’l Comm.*, 594 U.S. 647, 685 (2021) (“A State indisputably has a compelling interest in preserving the integrity of its election process.”) (cleaned up); *People ex rel. Salazar v. Davidson*, 79 P.3d 1221, 1229 (Colo. 2003) (recognizing “the common law power of the Attorney General to bring an original proceeding in order to protect the integrity of the election process”).

20. This case is ripe for review. “Pre-election review of a challenged initiative [is] appropriate where the procedures for placing the initiative on the ballot were not followed.” *Davidson v. Wright*, 143 Idaho 616, 621, 151 P.3d 812, 817 (2006) (cleaned up). Whether Idahoans for Open Primaries and its member organizations used false and misleading statements to obtain the required number of signatures plainly concerns the procedures for placing the initiative on the ballot. Idaho Code § 34-1815. Moreover, the single-subject rule is set forth as a procedure for placing an initiative on

the ballot because it ensures an accurate and informed vote without the presence of a concealed second subject. Idaho Code § 34-1801A(1).

21. The Attorney General has no plain, speedy, and adequate remedy in the ordinary course of law. Idaho Code §§ 7-303, 7-402.

PARTIES

22. Petitioner Raúl Labrador is acting in his official capacity as the Attorney General of Idaho. He has the authority to institute actions to protect the State's rights and interests, such as its interest in the integrity of the initiative process.

23. Respondent Phil McGrane is named in his official capacity as Secretary of State of Idaho. Secretary McGrane is the Chief Elections Officer in the State. Idaho Code § 34-201. Under Idaho law, he has the responsibility to assess the number of signatures supporting initiatives and the initiatives' legal sufficiency, and if the initiatives meet the relevant requirements, to file, accept, and certify the ballot titles and numbers then furnish a copy to county clerks. Idaho Code §§ 34-1808, 34-1810.

24. Real party in interest Idahoans for Open Primaries is a coalition of member organizations that includes real parties in interest Veterans for Idaho Voters, the Idaho Chapter of Mormon Women for Ethical Government, and Reclaim Idaho.¹ The purpose of the coalition is to qualify the initiative at issue for the 2024 general election ballot and secure the initiative's enactment into law. *Idahoans for Open Primaries*,

¹ Idahoans for Open Primaries, <https://yesforopenprimaries.com/> (last visited July 9, 2024).

172 Idaho at ____, 533 P.3d at 1269. Idahoans for Open Primaries is an unincorporated nonprofit association under Idaho law. *Id.*, 172 Idaho at ____, 533 P.3d at 1274; Idaho Code § 30-27-102(a)(5). As such, it has the legal capacity to sue and be sued. Idaho Code § 30-27-109(a).

GENERAL ALLEGATIONS

For many years, Idaho required parties to hold open primaries; it switched to “closed primaries” when the open primary system was held unconstitutional.

25. Between 1931 and 2011, Idaho’s primary election system required parties to hold open primaries to determine which candidates would represent them on the ballot in the general election for most state and federal offices. Boyd A. Martin, *The Direct Primary in Idaho* 90 (1947); see Idaho Code § 34-904 (2008).

26. An open primary system is one where political parties hold independent party primaries to select party nominees and allow anyone, regardless of party affiliation, to vote in their primaries.

27. Open primaries operate within a party-run primary framework.

28. In an open primary system, voters may participate in only one political party’s primary contest and may cast a vote for candidates of only one party.

29. Candidates nominated in open primaries represent political parties in the general election.

30. Before 2011, Idaho also used a “first past the post” tabulation system in the general election, meaning the person with the most votes won, regardless of

whether any candidate achieved a majority. Idaho Code §§ 34-703, 34-906, 34-1215; *see also* Idaho Const. art. IV, § 2.

31. In 2011, a federal court ruled that Idaho’s open primary system was unconstitutional. *Idaho Republican Party v. Ysursa*, 765 F. Supp. 2d 1266, 1270–76 (D. Idaho 2011).

32. In response to the decision, Idaho amended its election laws to permit closed primaries. *See* 2011 Idaho Sess. Laws 929 (H.B. 351).²

33. Following the 2011 amendment, political parties may choose to permit only the party’s voters registered to participate in the party’s primary.

34. Closed primaries remain permissible under current Idaho law.

35. The 2011 amendment did not change the vote tabulation system of the general election. As before, each primary winner represents his or her party as an officially nominated candidate, each voter votes for one candidate only, and candidates can win office with a plurality of votes.

A leader from Idahoans for Open Primaries submits an initiative petition that does not propose open primaries—yet misleadingly titles it “The Idaho Open Primaries Act.”

36. On May 2, 2023, Ashley Prince—a campaign manager for Idahoans for Open Primaries—submitted an initiative petition to the Secretary of State entitled

² Idaho Secretary of State, *Primary Elections in Idaho*, https://sos.idaho.gov/elect/primary_elections_in_idaho.html (last visited July 9, 2024).

“The Idaho Open Primaries Act.” *See* Idaho Code § 34-1804(1). A true and correct copy of that petition is attached as Exhibit A.

37. The initiative petition proposes changing two major aspects of Idaho’s election system.

38. *First*, the initiative would modify the primary election system by eliminating party-run primaries in favor of a single, state-wide primary.

39. Under the primary system that the initiative proposes, all candidates would appear on the same ballot regardless of party affiliation, and all voters would participate in the same state-wide primary regardless of party affiliation. Voters could choose among the candidates from any party, and the four candidates receiving the most votes would appear on the general election ballot.

40. Under the primary system that the initiative proposes, none of the four candidates who advance to the general election is considered the nominee of any political party.

41. The primary system that the initiative proposes is commonly referred to as a “top four primary election.”

42. The primary system that the initiative proposes would not be the same as the primary system used in Idaho between 1931 and 2011.

43. *Second*, the initiative petition would institute ranked-choice voting in the general election.

44. Under the general election vote-tabulation system that the initiative proposes, “voters could rank candidates on the ballot in order of preference or choose to vote for a single candidate.” *Idahoans for Open Primaries*, 172 Idaho at ____, 533 P.3d at 1269. Voting would then be tabulated in rounds:

In the first round, each ballot’s first-choice candidates would be tabulated, and in the event no candidate received a majority of votes cast, the candidate receiving the fewest first-choice votes would be eliminated. The remaining candidates are designated “active candidates.” In a round of tabulation, a ballot counts as a vote for its highest-ranked active candidate.

In each successive round of tabulation, so long as the ballot contains rankings for other active candidates, a vote for an eliminated candidate would be transferred to the ballot’s next highest-ranking active candidate. If all of the candidates ranked on that ballot are eliminated, the ballot would become “inactive” and would no longer be counted. The rounds would proceed until only two candidates remained, at which point the candidate who received the most votes would be declared the winner.

45. Idaho has never used ranked-choice voting in the general election.

The Attorney General reviews the initiative and notes certain deficiencies; Idahoans for Open Primaries modifies the petition to remove misleading references to open primaries.

46. Upon receiving the initiative petition, the Secretary of State promptly transmitted a copy to the Attorney General for his review. Idaho Code § 34-1804(1); Idaho Code § 34-1809(1).

47. The Attorney General reviewed the measure for form, style, and matters of substantive import, and on May 31, 2023, he timely issued his certificate of review.

A true and correct copy of the certificate of review is attached to this petition as Exhibit B.

48. The certificate contained several recommendations, some of which were ultimately adopted and implemented.

49. In one recommendation, the Attorney General explained that—despite the name of the initiative petition—the “proposed initiative would not create an open primary system.” Instead, he observed that the initiative proposed a primary that “abolishes the system of party primaries” and creates a single primary for all candidates. “To avoid misleading voters,” the Attorney General recommended that “the proposed initiative should select terminology other than ‘open primary.’”

50. Additionally, the certificate of review concluded that the proposed initiative violated the “single-subject rule,” which requires that initiatives “embrace but one subject and matters properly connected therewith.” Idaho Const. art. III, § 16; Idaho Code § 34-1801A(1). The certificate noted that the proposed initiative “addresses two distinct subjects”: (1) a primary reform, and (2) a general election reform. The certificate explained that proposing both reforms to the voters would “require[] [them] to either adopt the ‘open primary’ system and the ranked choice voting method of general election voting or to reject both of them”—“the very type of ‘logrolling’ the Idaho Supreme Court has held violates the single subject requirement.”

51. In response to the certificate of review, Prince modified the initiative to respond to its recommendations. A true and correct copy of the modified initiative petition and accompanying transmittal letter is attached as Exhibit C.

52. The modified initiative deleted the provision of the initiative referring to the proposed law as “The Idaho Open Primaries Act.”

53. The modified initiative also removed all 43 uses of the term “open primary” from the text of the original initiative. The modified initiative referred to the proposed primary election system exclusively as a “top four primary.”

54. However, the modified initiative did not make any change aimed at addressing the single-subject violation identified in the certificate of review.

55. Prince filed the modified initiative with the Secretary of State for ballot title assignment on June 15, 2023.

56. On June 30, 2023, the Attorney General assigned a short title and long title to the initiative. A true and correct copy of the Attorney General’s proposed ballot titles for the initiative petition and the accompanying transmittal letter to the Secretary of State is attached as Exhibit D.

This Court unambiguously holds that the initiative does not propose open primaries.

57. On July 10, 2023, Idahoans for Open Primaries and one of its member organizations (Reclaim Idaho) sought a writ of certiorari in this Court challenging the titles assigned by the Attorney General.

58. Among other things, the organizations challenged the Attorney General's use of the phrase "nonparty blanket primary" to describe the system proposed by the initiative, arguing that "not using 'open primary' . . . prejudices the Initiative." *Idahoans for Open Primaries*, 172 Idaho at ____, 533 P.3d at 1279.

59. The organizations also argued that the Attorney General inappropriately separated the short title into two numbered sections in delineating the changes made to (1) the primary election and (2) the general election.

60. On August 16, 2023, this Court held that neither "nonparty blanket primary" nor "open primary" could be used in the title of the initiative.

61. With respect to the term "open primary," the Court held that "the initiative does not describe an 'open primary' system because it does not propose retaining the separate, party-run system currently in place." *Idahoans for Open Primaries*, 172 Idaho at ____, 533 P.3d at 1279. It further explained that "'open primary' means something significantly different than what is proposed by the initiative." *Id.* ("the term 'open primary' also fails to adequately describe what the Initiative proposes").

62. The Court ultimately concluded that "the most accurate description for the type of primary proposed in the Initiative is a 'top four primary.'" *Id.*, 172 Idaho at ____, 533 P.3d at 1280.

63. The Court also rejected the organizations' challenge to the use of numbering to separately list the initiative's impact on each of the two "major aspects

of Idaho’s election system: the primary election system and the general election vote tabulation system.” *Id.*, 172 Idaho at ____, 533 P.3d at 1282–83.

64. The Court directed the Attorney General to provide new ballot titles complying with its opinion, which he did. The new titles use “top-four primary” to describe the primary structure being proposed. *Id.*, 172 Idaho at ____, 533 P.3d at 1287–88. The Court approved the new titles and certified them to the Secretary of State. *Id.*

65. Following the Court’s decision, Idahoans for Open Primaries could begin gathering signatures in support of its initiative petition. Idaho Code § 34-1802(1).

Notwithstanding this Court’s holding, Idahoans for Open Primaries ubiquitously uses the phrase “open primaries” to promote its initiative; ranked-choice voting, by contrast, goes largely unmentioned.

66. Since this Court’s ruling, Idahoans for Open Primaries has deliberately and systematically promoted its initiative as implementing “open primaries”—in contravention of this Court’s clear holding and state law. The coalition has done this through statements made to the voting public on its website, in its signature-gathering interactions, in accessories used while collecting signatures, and in both social and traditional media sources. These media rarely mention “top four primaries”—the title that this Court concluded most accurately describes the system the initiative proposes.

67. The main reason Idahoans for Open Primaries has continued to defiantly represent to the public that its initiative would implement open primaries is to suggest to voters that the initiative would reinstitute the system that Idaho used before 2011.

68. However, the initiative will not implement the same primary system that Idaho used before 2011.

69. The coalition has also used the term “open primaries” because it is a mainstream idea. Fifteen states currently use open primaries and seven more allow unaffiliated voters to participate in any primary they choose.³

70. A top four primary, on the other hand, is used by only one state (Alaska).⁴

71. Ranked-choice voting, for its part, is an afterthought in Idahoans for Open Primaries’ promotional efforts.

72. Idahoans for Open Primaries’ reason for de-emphasizing ranked-choice voting is self-evident. Ranked-choice voting is an unpopular idea that lacks broad support—two states use ranked-choice voting for all statewide general elections (Alaska and Maine), and both laws have faced repeal efforts since being enacted.⁵ Six

³ National Conference of State Legislators, *State Primary Election Types*, <https://www.ncsl.org/elections-and-campaigns/state-primary-election-types> (last visited July 9, 2024).

⁴ National Conference of State Legislators, *State Primary Election Types*, <https://www.ncsl.org/elections-and-campaigns/state-primary-election-types> (last visited July 9, 2024).

⁵ James Brooks, *Alaska ranked choice repeal measure wins first round of legal challenge, but trial awaits*, Alaska Beacon (June 11, 2024), <https://tinyurl.com/m4m6dmb8>; Main State Legislature, *Ranked Choice Voting in Maine*, (May 3, 2024), <https://tinyurl.com/43ytdfrm>; Adam Crepeau & Liam Sigaud, *A False Majority: The Failed Experiment of Ranked-Choice Voting*, at 27–29, The Maine Heritage Policy Center (Aug. 2019), <https://tinyurl.com/yz4hcwz>.

states (including Idaho) have statutes proactively banning ranked-choice voting.⁶ And according to recent polling, the majority of Idahoans oppose ranked-choice voting.⁷

73. These misrepresentations often had the desired effect. Idaho voters have been confused by the “open primaries” moniker, and have failed to notice that the initiative would also institute ranked-choice voting in the general election. Voters have signed the petition and regretted doing so when they discovered the true effect of the initiative. *See* Hutchins Decl. at ¶ 16; Ball Decl. at ¶ 16.

Idahoans for Open Primaries and its members mislead the public through their websites.

74. If a potential signer wanted to understand the true purpose of the initiative, he would have found no such luck on the home page of the Idahoans for Open Primaries’ website. A printout of the website that was active during the signature-gathering window for the petition is attached as Exhibit E.⁸

75. The Idahoans for Open Primaries’ website makes copious mention of “open primaries.” It uses the phrase fourteen times as it describes the effect the initiative would have on the primary election system in Idaho.

⁶ Idaho Code § 34-903B; Fla. Stat. § 101.019; Ky. Rev. Stat. Ann. § 117.147; Mont. Code Ann. § 13-1-125; S.D. Codified Laws § 12-1-9.1; Tenn. Code Ann. § 2-8-117.

⁷ Matthew May et al., *Ninth Annual Idaho Public Policy Survey*, at 11, Boise State Univ. (Jan. 2024), <https://tinyurl.com/r39f623d>.

⁸ That printout was produced from <https://openprimariesid.org> on April 17, 2024.



Idaho's closed primary system blocks 270,000 independent voters from voting in the most important elections.

Too many of our leaders are handpicked by political party committees, not by the people they're supposed to serve.



76. Meanwhile, there is not a single mention of the phrase “top four primary” on the website’s home page.

77. There is also not a single mention of ranked-choice voting on the website's home page.

78. Despite the lack of material information, the home page solicited signatures through a link entitled "Sign the Petition," which routed visitors to a page entitled "Where Can I Sign?" listing signature-gathering locations and events. A printout of the "Where Can I Sign?" page that was active during the signature-gathering window for the petition is attached as Exhibit F.⁹

79. On its "Frequently Asked Questions" page, Idahoans for Open Primaries explains why it uses the term "open primary" rather than "top four primary" to describe the initiative despite the Supreme Court's holding that "open primary" is an inaccurate descriptor. Its explanation is that it disagrees with this Court's holding and doesn't believe it has to follow it. A printout of the "Frequently Asked Questions" page with the relevant question and answer visible that was active during the signature-gathering window for the petition is attached as Exhibit G.¹⁰

80. The "Frequently Asked Questions Page" claims:

"Open primary" is an accurate term to describe this initiative. It's true that the Idaho Supreme Court took the view that the term "open primary" describes the primary system Idaho used to have, and that the old Idaho system was distinct from what our initiative proposes. Our view,

⁹ That printout was produced from <https://openprimariesid.org/sign-the-petition> on April 17, 2024.

¹⁰ That printout was produced from <https://openprimariesid.org/faq> on April 17, 2024.

which is common among reformers across the country, is that there are multiple types of “open primary.” One type is the partisan open primary system, which is the system we used to have in Idaho. Another type is the nonpartisan open primary, which is the type of open primary established in Alaska and other states. Both systems are correctly called “open primaries” because they both give all voters—regardless of party affiliation—the right to participate in primary elections.

Exhibit G at 5.

81. Idahoans for Open Primaries made these arguments—and this Court rejected them—in the previous writ proceeding involving this initiative.

82. Also on the “Frequently Asked Question” page of its website, Idahoans for Open Primaries responds to the questions: “Why is the initiative called the ‘Open Primaries Initiative’ and not the ‘Ranked Choice Voting Initiative’? Isn’t this initiative all about ranked choice voting?” Its answer explains that there are, in fact, two objects in the initiative petition. A printout of the “Frequently Asked Questions” page with the relevant questions and answer visible that was active during the signature-gathering window for the petition is attached as Exhibit H.¹¹

83. The “Frequently Asked Questions” page explains:

It makes good sense to call it the “Open Primaries Initiative” because the initiative’s *chief goal* is to end closed primaries and allow all Idaho voters—regardless of party affiliation—the right to participate in primary elections. The initiative also establishes an instant runoff (also called “ranked choice voting”) in general elections. But

¹¹ That printout was produced from <https://openprimariesid.org/faq> on April 17, 2024.

the instant runoff is a *secondary feature* of the reform. It's included mainly to make sure that, once four candidates have advanced from an open primary, the final winner has support from a broad coalition of voters and not just a narrow slice of the electorate.

Exhibit H at 5 (emphases added).

84. If a potential signer were to search one of Idahoans for Open Primaries' members' websites, he would be similarly misled about the object of this initiative.

85. On the "Idaho Open Primaries Initiative" page of its website, the Mormon Women for Ethical Government states, "For nearly one hundred years, Idaho had open primaries. This changed in 2011 when the Idaho legislature closed them. This law required voters to register with a party in order to participate in the primary election. Restoring open primaries prioritizes individual Idaho voters over political party politics." Screenshots of this page are attached as Exhibit I.¹²

86. The Mormon Women for Ethical Government website further states that "[r]estoring open primaries will make room for candidates who enjoy broad support," and "[r]estoring open primaries is a way to support and defend representative government." The website never states that the initiative would institute ranked-choice voting in the general election.

¹² The pictures are screenshots taken from <https://www.mormonwomenforethicalgovernment.org/Idaho-open-primaries> on July 11, 2024.

Idahoans for Open Primaries and its members train signature gatherers to mislead signers, and that training is followed during interactions with voters.

87. Idahoans for Open Primaries and its members trained volunteer and paid signature gatherers on preferred approaches to soliciting signatures from registered voters.

88. The main lesson from these training sessions was to emphasize open primaries and evade other issues.

89. At substantially all training sessions, signature gatherers were instructed to use the phrase “open primaries” in soliciting signatures.

90. During the first training session, Rep. Todd Achilles, co-founder and president of Veterans for Idaho Voters, instructed signature gatherers to “remind” people “that we had open primaries for 80 years. It was only when a fringe group sued to close the primaries in 2011 that it changed. So open primaries are actually the Idaho way.” Spoon Decl., Ex. A at 04:15–04:37 (recording of training).

91. At the same event, Ashley Prince, the initiative’s sponsor and campaign manager for Idahoans for Open Primaries, taught signature gatherers to engage with potential signers in the following way:

A good first opening line is . . . “Hi my name is Ashley. I’m with Reclaim Idaho. We are out in the neighborhood gathering signatures for the Open Primaries Initiative. This initiative will give more voice and more power to Idaho voters. Will you sign the petition?”

Spoon Decl., Ex. A at 15:00–15:23.

92. If potential signers ask for more information, Ashley Prince recommended the signature gatherers parrot the following:

Over a quarter of a million independents are blocked from the most important elections and too many of our leaders are handpicked by party committeemen and party bosses and not by the people they are supposed to serve. This initiative would open the primary, give more voice to Idahoans, and allow us to get better leaders. Will you sign?

Spoon Decl., Ex. A at 15:36–15:59.

93. The approach modeled by Prince did not include any reference to ranked-choice voting in the general election.

94. Prince further instructed signature gatherers, in the event any additional questions were asked, to direct potential signers to the Idahoans for Open Primaries website. Spoon Decl., Ex. A at 17:08–17:21.

95. After Prince's instruction, representatives from Reclaim Idaho conducted a "role play" training session. They recommended that signature gatherers tell potential signers that the purpose of the initiative is to implement "open primaries." *See* Chafetz Decl. at ¶ 8. They did not recommend to signature gatherers that they tell potential signers that the initiative would implement ranked-choice voting in the general election.

96. In keeping with their training, signature gatherers frequently told potential signers that the initiative would implement "open primaries." *See* Tanner Decl. at ¶ 4; Ball Decl. at ¶¶ 4–7; Hutchins Decl. at ¶ 6.

97. Signature gatherers ordinarily did not use the phrase “top four primary” in describing the initiative to potential signers. *See* Tanner Decl. at ¶ 7; Ball Decl. at ¶ 12; Hutchins Decl. at ¶ 9.

98. Signature gatherers also ordinarily did not mention ranked-choice voting in their interactions with potential signers. *See* Tanner Decl. at ¶¶ 4–6; Ball Decl. at ¶ 11; Hutchins Decl. at ¶ 8.

99. In a podcast entitled “The Purple Principle,” Margaret Kinzel, a representative of the Idaho Chapter of Mormon Women for Ethical Government, recorded an attempt to solicit a signature to demonstrate how the coalition collects signatures. In the recording, she opened the conversation by saying, “We’re collecting signatures to get open primaries on the ballot in November.” Ms. Kinzel never mentioned the phrase “top four primary” or explained that the initiative would implement ranked-choice voting. The voter agreed to sign the petition.¹³

Idahoans for Open Primaries mislead voters through its signature-gathering accessories.

100. Adorned with accessories provided by Idahoans for Open Primaries and its members, staffers and signature gatherers went to every Idaho citizen they could find with one misleading request: Will you show your support for open primaries by signing our petition?

¹³ The Purple Principle, *Idaho’s Open Primaries Initiative: Sometimes It Takes a Coalition*, at 25:17, YouTube (June 12, 2024) <https://www.youtube.com/watch?v=hKv1jgI1IK0&t=1s>.

101. Substantially all signature gatherers used a clipboard during signature-gathering efforts that read, “SIGN HERE TO SUPPORT OPEN PRIMARIES IN IDAHO.” The clipboard refers to the initiative as the “Open Primaries Initiative.” A picture of the standard clipboard used by signature gatherers is attached as Exhibit J.¹⁴



102. Further, during substantially all signature drives and signature-gathering events, and at all signature-gathering locations, Idahoans for Open Primaries and its member organizations displayed large banners that say, “SIGN HERE: Open Primaries Initiative.” A picture of a signature table using the standard banner used by

¹⁴ The picture is a screenshot taken of <https://openprimariesid.org/team-signature-totals> on April 17, 2024.

signature gatherers is attached as Exhibit K.¹⁵ The picture also shows stacks of stickers that say “I SIGNED FOR OPEN PRIMARIES” on the table.



¹⁵ The picture is a screenshot taken of <https://www.facebook.com/photo?fbid=682177427285955&set=pcb.682188360618195>.

103. According to Idahoans for Open Primaries’ publicly posted pictures, its signature-gathering teams from 24 counties used the standard “open primaries” clipboards and banners described above. Screenshots of these pictures are attached combined as Exhibit L.¹⁶



¹⁶ The screenshots were taken from <https://openprimariesid.org/team-signature-totals> on July 17, 2024.

WEST ADA TEAM



Team Total: 1887

**Open Primaries
Initiative**

104. At least 76,555 signatures have been gathered using the above promotional clipboards and banners: Adams County Team, 51; Babe Vote Team, 4,385; Bannock County Team, 3,600; Blaine County Team, 2,637; Bonner County Team, 3,325; Bonneville County Team, 4,663; Boundary County Team, 443; Caldwell Team, 877; Clark County Team, 46; Clearwater County Team, 332; East Boise Team, 5,114; Elmore County Team, 331; Fremont County Team, 147; Gem County Team,

166; Gooding County Team, 149; Idaho County Team, 862; Kootenai County Team, 5,521; Latah County Team, 2,594; Lemhi County Team, 344; Madison County Team, 701; Nez Perce County Team, 2,301; North Boise Team, 13,225; Northwest Boise and Garden City Team, 7,595; Payette County Team, 162; Teton County Team, 1,974; Twin Falls County Team, 3,504; Valley County Team, 1,873; Vista Team, 3,948; Washington County Team, 304; West Ada Team, 1,887; and West Boise Team, 3,494. Exhibit L.

105. All 76,555 signatures gathered using misleading promotional clipboards and banners were obtained in violation of Idaho law because they represented to voters that the initiative would institute open primaries, even though it would not. Idaho Code § 34-1815.

Idahoans for Open Primaries and its members mislead potential signers using traditional and social media.

106. Idahoans for Open Primaries and its members have also utilized social media to spread the same false representations about the initiative—that it would institute open primaries and return Idaho to the system it had in place before 2011. Attached as Exhibit M is a compilation of the statements described below that were posted on social media.¹⁷

107. On September 16, 2023, Idahoans for Open Primaries posted on X, “Idaho deserves better. It’s time for Open Primaries.” Ex. M at 1.¹⁸

¹⁷ The social media posts have been screenshotted from their respective sites and all were last visited on July 16, 2024.

¹⁸ <https://x.com/OpenPrimariesID/status/1702787759113667003>.

108. On October 11, 2023, Idahoans for Open Primaries posted on X, “[T]he vote will not be a question of whether candidates will be chosen in open or closed primaries but whether candidates will be chosen in open primaries or by Idaho Republican Chair Dorothy Moon.” Ex. M at 2.¹⁹

109. On November 9, 2023, Veterans for Idaho Voters posted on X, “Have more choice and better elections with open primaries.” This was reposted by Idahoans for Open Primaries. Ex. M at 3.²⁰

110. On December 15, 2023, the co-leader of the Idaho Chapter of Mormon Women for Ethical Government said in a written statement widely reported in the media—including the Idaho Capital Sun—that “[t]he fact that volunteers have already reached 50,000 signatures in just four months is a testament to how passionate Idahoans are about the prospect of an open primary.” An article containing this quote is attached as Exhibit N.²¹

111. On December 21, 2023, Idahoans for Open Primaries posted on X, “The choice is stark—either keep the closed GOP primary . . . or adopt an open primary system that will allow the people to elect reasonable, problem-solving candidates to serve them.” Ex. M at 4.²²

¹⁹ <https://x.com/OpenPrimariesID/status/1712141285174440322>.

²⁰ <https://x.com/Vets4IDVoters/status/1722758457580036268>.

²¹ Clark Corbin, *Idaho open primary ballot initiative reaches 50,000 signature milestone*, Idaho Capital Sun (Dec. 15, 2023), <https://tinyurl.com/mwnz26kn>.

²² <https://x.com/OpenPrimariesID/status/1737920682946888160>.

112. Idahoans for Open Primaries and its members used the phrase “open primaries” in these statements to imply that the system the initiative would implement would be the same system that Idaho had in place before 2011.

113. In fact, the coalition and its members regularly said *explicitly* that the system would be the same as 2011.

114. On March 18, 2024, Idahoans for Open Primaries posted on X, “Idahoans across the spectrum are fed up with closed primaries that shut out independent voters. Let’s go back to the days when all Idaho voters had a voice in our elections.” Ex. M at 5.²³

115. On September 13, 2023, Veterans for Idaho Voters posted on X, “Idaho’s primaries were open for 80 years until a small group of far right extremists sued to close them in 2011. Open and accessible **is** the Idaho Way.” Ex. M at 6.²⁴

116. On October 7, 2023, the Idaho Chapter of the Mormon Women Ethical Government posted on Facebook, “The Open Primaries ballot initiative is intended to restore Idaho’s open electoral system and return political power to the people.” Ex. M at 7. This was reposted by Idahoans for Open Primaries.²⁵

²³ <https://x.com/OpenPrimariesID/status/1769829767262445605>.

²⁴ <https://x.com/Vets4IDVoters/status/1702046004642460133>.

²⁵ https://www.facebook.com/people/Idahoans-for-Open-Primaries/100092553061659/?mibextid=LQQJ4d&_rdr.

117. On April 12, 2024, Idahoans for Open Primaries posted the following quote by Karole Honas on X: “In fact, until 2011, Idaho had open primaries. That meant anyone could vote for any candidate, regardless of party affiliation. And you know what? I miss those days.” Ex. M at 8.²⁶

118. On January 28, 2024, Veterans for Idaho Voters posted on X, “For 80 years, until 2011, Idaho had open primaries[.] True Idahoans support #Open Primaries.” Ex. M at 9.²⁷ This was reposted by Idahoans for Open Primaries.

119. On October 12, 2023, through the Mormon Women for Ethical Government YouTube channel, a leader from the organization stated, “We’re not taking down a longtime tradition; we’re reversing something that the State tried and it just didn’t work.”²⁸

Idahoans for Open Primaries submits its wrongly obtained signatures for verification, and continues spreading lies about its initiative petition.

120. By April 30, 2024, Idahoans for Open Primaries had collected 94,795 signatures in support of its initiative petition.²⁹

²⁶ <https://x.com/OpenPrimariesID/status/1778843199383179347>.

²⁷ <https://x.com/Vets4IDVoters/status/1751658834933006540>.

²⁸ Mormon Women for Ethical Government, *GROW ID Chapter Open Primaries 10.12.23*, at 7:54 YouTube (Oct. 12, 2023), <https://www.youtube.com/watch?v=BLOUrXXTtVk>.

²⁹ Clark Corbin, *Having exceeded goal, Idaho open primary supporters submit final signatures for verification*, Idaho Capital Sun, May 1, 2024, <https://tinyurl.com/45uvaj8v>.

121. On May 1, 2024, Idahoans for Open Primaries submitted the final signatures to the county clerks of 20 different counties for verification.³⁰

122. The clerks' verification process resulted in just under 75,000 verified signatures.³¹

123. The initiative needs at least 62,895 signatures to appear on the ballot. Idaho Code § 34-1805; Press Release, Idaho Secretary of State, Idahoans for Open Primaries Initiative Qualifies for November Ballot (July 10, 2024), <https://tinyurl.com/yzvkhkna>.

124. On July 2, 2024, following county verification, Idahoans for Open Primaries submitted its petition along with the verified signatures to the Secretary of State for final filing and consideration.

125. As part of a political demonstration, Idahoans for Open Primaries supporters lined up through the halls of the state capitol to pass boxes of signatures to the Secretary of State's office.

126. Supporters delivering the signatures to the Secretary of State wore identical shirts that read, "Yes! On 1 For Open Primaries."

³⁰ *Id.*

³¹ Clark Corbin, *Idaho open primaries supporters submit signatures to state for final round of verification*, Idaho Capital Sun, July 2, 2024, <https://tinyurl.com/44sm4327>.



127. During this demonstration, Idahoans for Open Primaries' leaders and supporters chanted, "Vote yes on open primaries, vote yes on 1!"³²

128. When delivering the signatures to the Secretary of State, Karole Honas, a speaker for Idahoans for Open Primaries, stated, "we have done a fabulous job of hitting every single county in the State of Idaho and getting support for open primaries." She claimed that a lot of people "just didn't realize . . . how bad a mistake our Republican Party was making to close the primaries." She concluded that "maybe with open primaries, some other candidates will feel like they can get on the ballot and have a chance."³³

³² Idaho Statesman, *Idahoans Deliver Signatures Seeking Open Primaries*, YouTube (July 2, 2024), https://www.youtube.com/watch?v=ZQhV7_NnsyA.

³³ *Id.*

129. Since submitting its petition to the Secretary of State, Idahoans for Open Primaries and its members have continued to represent to the Idaho voting public that the initiative will establish open primaries.

130. On July 4, 2024, Idahoans for Open Primaries posted on Facebook, “Let’s vote YES on 1 to establish open primaries and give power back to the people of Idaho.” Ex. M at 10.³⁴

131. On July 7, 2024, Reclaim Idaho posted on its Facebook page the text of an article written by Randy Stapilus, explaining that “[w]ins under the open primary system would go to whoever has the most support among the most voters.” Ex. M at 11.³⁵

132. On June 7, 2024, Idahoans for Open Primaries reposted the following statement on X: “A voter initiative will likely be on the ballot this November. It proposes open primaries.” Ex. M at 12.³⁶

133. On the current version of the Idahoans for Open Primaries website home page—entitled “yesforopenprimaries.com”—the coalition refers to the initiative petition as the “Open Primaries Act,” even though the coalition formally abandoned

³⁴ https://www.facebook.com/people/Idahoans-for-Open-Primaries/100092553061659/?mibextid=LQQJ4d&_rdr.

³⁵ https://www.facebook.com/story.php?story_fbid=878444974325865&id=100064811110324&rdid=RwmnX6wlkRk8TFge.

³⁶ <https://x.com/SamSandmire/status/1799219897882607822>.

that name in response to the recommendation in the Attorney General's certificate of review. A printout of that website is attached as Exhibit O.

134. Idahoans for Open Primaries has also continued to defend its initiative as compliant with the single-subject rule.

135. On its "Frequently Asked Questions" page, Idahoans for Open Primaries responds to the question "Does the Open Primaries Initiative violate the single-subject rule?" Its answer is that the provisions of the initiative all have to do with the same general topic of elections. A printout of the "Frequently Asked Questions" page is attached as Exhibit P.³⁷

136. The "Frequently Asked Questions" page explains:

It is true that the Idaho Constitution requires ballot initiatives to deal with a single subject. However, "single subject" has been construed very broadly by the Idaho Supreme Court. It does not mean that an initiative can't deal with multiple policy reforms. It simply means that an initiative must have only "one general subject, object, or purpose" and that all provisions are "germane" to a general subject. See *Cole v. Fruitland Canning Ass'n*, 64 Idaho 505, 134 P.2d 603, 606 (1943).

In the case of the Open Primaries Initiative, the general subject is elections. Clearly, all provisions in the initiative are germane to the general subject of elections.

Exhibit P at 2.

³⁷ That printout was produced from <https://yesforopenprimaries.com/faq> on July 22, 2024.

137. The Secretary of State announced that he has determined that the initiative meets the statutory requirements to appear on the ballot. Press Release, Idaho Secretary of State, Idahoans for Open Primaries Initiative Qualifies for November Ballot (July 10, 2024), <https://tinyurl.com/yzvkhnka>. It appears he will furnish a certified copy of the initiative’s ballot title to the county clerks notwithstanding (1) false representations related to the use of the phrase “open primaries” used to obtain signatures, Idaho Code § 34-1815, or (2) the initiative’s non-conformity with the single-subject rule. *Id.* § 34-1801A(1).

CLAIMS FOR RELIEF

Count I – The initiative violates Idaho Code § 34-1815

138. Petitioner hereby re-alleges and incorporates by reference the allegations set forth in Paragraphs 1 through 137 of this Petition.

139. Idaho Code § 34-1815 states:

It shall be unlawful for any person to wilfully [sic] or knowingly circulate, publish or exhibit any false statement or representation, whether spoken or written, or to fail to disclose any material provision in a petition, concerning the contents, purport or effect of any petition mentioned in sections 34-1801A through 34-1822, Idaho Code, for the purpose of obtaining any signature to any such petition, or for the purpose of persuading any person to sign any such petition.

140. Idahoans for Open Primaries and its member organizations have repeatedly and knowingly circulated, published, and exhibited the false representation that (1) the initiative would implement “open primaries” and (2) the initiative would

revert Idaho's primary elections to the system that existed in the State before 2011. Those statements are false—open primaries operate within a party-run framework and result in nominees that represent the parties in the general election, but the primary that the initiative proposes would eliminate party-run primaries and advance four candidates who do not represent any party to the general election. For this reason, this Court has already held that “[t]he Initiative does not describe an ‘open primary’ system,” and that “the most accurate description for the type of primary proposed in the Initiative is a ‘top four primary.’” *Idahoans for Open Primaries*, 172 Idaho at ____, 533 P.3d at 1279–80.

141. Idahoans for Open Primaries and its member organizations have made these false representations knowingly. The coalition was a party when the Court ruled that the initiative would not implement an “open primary.” The coalition acknowledges the Court’s decision on its website. Even before the Court’s decision, the coalition’s representative consciously eliminated any use of the phrase “open primary” in the text of the initiative once the Attorney General informed her in his certificate of review that the initiative did not describe an open primary and would be misleading. The text of the initiative being proposed now exclusively uses the phrase “top-four primary,” and not “open primary.”

142. Idahoans for Open Primaries and its member organizations made these false representations to secure signatures for the initiative petition. These representations were intended to suggest to Idahoans that the initiative would

implement a primary system that is (1) mainstream and (2) familiar to Idaho—neither of which is true. Many of these representations were made orally and in writing directly at the point of signature.

143. The signatures that the coalition obtained in support of its initiative petition are invalid due to these false representations. *See* Idaho Code § 34-1815. Without these signatures, the initiative does not qualify to appear on the ballot in the general election. *Id.* § 34-1805.

144. Either a writ of prohibition or mandate is appropriate in these circumstances. A writ of prohibition is proper when a state officer “is proceeding without or in excess of [his] jurisdiction”—*i.e.*, in excess of his “power or authority conferred by law.” *Wasden ex rel. State v. Idaho State Bd. of Land Comm’rs*, 150 Idaho 547, 552, 249 P.3d 346, 351 (2010). A writ of mandate requires demonstrating that the officer “has a clear legal duty to perform . . . the desired act,” and that the act is “ministerial or executive in nature, and does not require the exercise of discretion.” *Cowles Pub. Co. v. Magistrate Ct. of the First Jud. Dist. of State, Cnty. Of Kootenai*, 118 Idaho 753, 760, 800 P.2d 640, 647 (1990).

145. Both a writ of prohibition and a writ of mandate also require showing that “there is not a plain, speedy, and adequate remedy in the ordinary course of law.” Idaho Code §§ 7-303, 7-402.

146. The Secretary of State has a clear legal duty to refuse to file and accept petitions lacking sufficient signatures, and has no power to certify petitions that fail to

meet the signature threshold or to include those initiatives on the certified ballot he sends to the county clerks. Idaho Code §§ 34-1808, 34-1810. He therefore has a duty not to file, accept, or certify this petition or include this initiative on the certified ballot he sends to the county clerks.

147. There is no other remedy at law that could vindicate this violation of election law. And even if there were, it would not be “speedy” or “adequate” under the circumstances because it could not possibly reach final disposition before the September 7 deadline by which the Secretary of State must furnish the ballot titles to the county clerks. Idaho Code §§ 34-1810, 34-909.

Count II – The initiative violates Idaho Code § 34-1801A

148. Petitioner hereby re-alleges and incorporates by reference the allegations set forth in Paragraphs 1 through 147 of this Petition.

149. Idaho Code § 34-1801A(1) states, “[a]n initiative petition shall embrace only one (1) subject and matters properly connected with it.” *See* Idaho Const. art. III, § 16. This “single-subject rule” requires “a common object, and that all parts of a statute relate to and tend to support and accomplish the indicated object.” *Am. Fed’n of Lab. v. Langley*, 66 Idaho 763, 767, 168 P.2d 831, 833 (1946).

150. The initiative petition contains two distinct objects: (1) replacing the current party-run primary system with a top four primary system; and (2) instituting ranked-choice voting in general elections. A top four primary has nothing to do with

how votes are tabulated in the general election, and its implementation is unrelated to adopting a ranked-choice voting system.

151. The presence of more than one objective in the initiative petition offends the twin aims of the single-subject rule. Ranked-choice voting in the general election has largely been concealed by the Idahoans for Open Primaries' overwhelming promotional emphasis on "open primaries," leaving many voters and petition signers uninformed about the second sweeping change the initiative would enact. Moreover, the initiative bundles ranked-choice voting with "open primaries" because ranked-choice voting is far less popular, and making them a package will force Idahoans who would otherwise support only "open primaries" to vote in favor of ranked-choice voting too (or vice versa). This is a prototypical example of logrolling.

152. The initiative petition is legally insufficient because of the presence of more than one objective in a single initiative. *See* Idaho Code §§ 34-1808; 34-1801A(1).

153. Either a writ of prohibition or mandate is appropriate in these circumstances. A writ of prohibition is proper when a state officer "is proceeding without or in excess of [his] jurisdiction"—*i.e.*, in excess of his "power or authority conferred by law." *Wasden ex rel. State v. Idaho State Bd. of Land Comm'rs*, 150 Idaho 547, 552, 249 P.3d 346, 351 (2010). A writ of mandate requires demonstrating that the officer "has a clear legal duty to perform . . . the desired act," and that the act is "ministerial or executive in nature, and does not require the exercise of discretion."

Cowles Pub. Co. v. Magistrate Ct. of the First Jud. Dist. of State, Cnty. Of Kootenai, 118 Idaho 753, 760, 800 P.2d 640, 647 (1990).

154. Both a writ of prohibition and a writ of mandate also require showing that “there is not a plain, speedy, and adequate remedy in the ordinary course of law.” Idaho Code §§ 7-303, 7-402.

155. The Secretary of State has a clear legal duty to refuse to file and accept legally insufficient petitions, without any power to certify deficient initiative petitions or to include those initiatives on the certified ballot he sends to the county clerks. Idaho Code §§ 34-1808, 34-1810. He therefore has a duty not to file, accept, or certify this petition or include this initiative on the certified ballot he sends to the county clerks.

156. There is no other remedy at law that could vindicate this violation of election law. And even if there were, it would not be “speedy” or “adequate” under the circumstances because it could not possibly reach final disposition before the September 7 deadline by which the Secretary of State must furnish the ballot titles to the county clerks. Idaho Code §§ 34-1810, 34-909.

PRAYER FOR RELIEF

Petitioners respectfully request that this Court grant the following relief as promptly as possible given the urgency of this request:

(a) In accordance with Idaho Appellate Rule 5(d), issue a peremptory or alternative writ of prohibition directing the Secretary of State not to include the ballot

title and number for the initiative on the certified ballot that he furnishes to the county clerks;

(b) In the alternative, in accordance with Idaho Appellate Rule 5(d), issue a peremptory or alternative writ of mandate ordering the Secretary of State to declare that all signatures supporting the initiative are invalid and withdraw his filing, acceptance, and certification of the initiative so it does not appear on the final certified ballot;

(c) Award to the Attorney General his reasonable costs and attorneys' fees; and

(d) Award such other and further relief as this Court shall deem just and reasonable.

DATED: July 24, 2024

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

By: /s/ Alan M. Hurst

ALAN M. HURST

Solicitor General

MICHAEL A. ZARIAN

Deputy Solicitor General

SEAN M. CORKERY

Assistant Solicitor General

VERIFICATION

Under Idaho Code § 9-1406, I, PHIL BROADBENT, Chief Deputy Attorney General of the Office of the Attorney General, declare that I have read the foregoing Verified Petition, that I know the contents of such Verified Petition, and that the facts stated on behalf of the Attorney General are true to the best of my knowledge and belief.

DATED: July 24, 2024

By: /s/ Phillip E. Broadbent
Phillip E. Broadbent, Chief Deputy
Idaho Office of the Attorney General

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CERTIFICATE OF SERVICE

I certify that on July 24, 2024, I caused a true and correct copy of the above to be served upon the following individuals via Certified U.S. Mail:

Phil McGrane
Idaho Secretary of State
P.O. Box 83720
Boise, ID 83720

Ashley Prince
Idahoans for Open Primaries
P.O. Box 8971
Boise, ID 83707

Deborah Silver
Reclaim Idaho Fund, Inc.
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Jennifer Walker Thomas
Mormon Women for Ethical
Government
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Suite 321
Riverton, UT 84065

/s/ Alan M. Hurst

Date: July 24, 2024



**EXHIBIT
A**

MAY 2 '23 AM 8:09
IDAHO SECRETARY OF STATE

May 2, 2023

To the Honorable Phil McGrane, Secretary of State of the State of Idaho:

Idahoans for Open Primaries, a coalition of community groups and civic organizations, is formally filing the attached proposed initiative to be referred to as "The Idaho Open Primaries Act" for Certificate of Review. Accompanying the proposed initiative, you will find signatures of at least 20 qualified electors. Additionally, the proposed funding source can be found on the final page of the proposed initiative.

Sincerely,

Ashley Prince

info@openprimariesid.org
208-971-3000

1424 S Loveland St
Boise, ID 83705

RETRIEVED FROM DEMOCRACYDOCKET.COM

WARNING

It is a felony for anyone to sign any initiative or referendum petition with any name other than his own, or to knowingly sign his name more than once for the measure, or to sign such petition when he is not a qualified elector.

INITIATIVE PETITION

To the Honorable Phil McGrane, Secretary of State of the State of Idaho:

“We the undersigned citizens and qualified electors of the State of Idaho, respectfully demand the following proposed law, effective January 1, 2026 to wit:

Be It Enacted by the People of the State of Idaho:

SECTION 1. This act may be referred to as “The Idaho Open Primaries Act.”

SECTION 2. FINDINGS AND INTENT. (1) The people find that it is in the public interest of Idaho citizens to adopt a primary election system that is open and nonpartisan in order to generate more qualified and competitive candidates for elected office, boost voter turnout, better reflect the will of the electorate, and reward cooperation and reduce partisanship among elected officials.

(2) It is also in the public interest of Idaho citizens to adopt a general election system that helps ensure that the values of elected officials more broadly reflect the values of the electorate. An instant runoff voting system will mitigate the likelihood that a candidate who is disapproved by a majority of voters will get elected, encourage candidates to appeal to a broader section of the electorate, allow Idahoans to vote for the candidates that most accurately reflect their values without risking the election of those candidates that least accurately reflect their values, encourage greater third party and independent participation in elections, and provide a stronger mandate for winning candidates.

(3) It is the intent of this act that, at the conclusion of an instant runoff election, whichever candidate has the highest number of votes in the final round of tabulation is declared the winner.

SECTION 3. That Section 34-103, Idaho Code, be, and the same is hereby amended to read as follows:

34-103. "SPECIAL ELECTION" DEFINED. "Special election" means any election other than a general, ~~or~~ primary, or open primary election held at any time for any purpose provided by law.

SECTION 4. That Section 34-113, Idaho Code, be, and the same is hereby amended to read as follows:

34-113. "CANDIDATE" DEFINED. "Candidate" means and includes every person for whom it is contemplated or desired that votes be cast at any political convention, primary, open primary, general or special election, and who either tacitly or expressly consents to be so considered, except candidates for president and vice-president of the United States.

SECTION 5. That Chapter 1, Title 34, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 34-118, Idaho Code, and to read as follows:

34-118. “OPEN PRIMARY ELECTION” DEFINED. “Open primary election” means an election, other than a judicial nominating election, held for the purpose of determining the candidates who will appear on the general election ballot. In open primary elections, all candidates will appear on the same ballot regardless of party affiliation, and all qualified electors may participate regardless of party affiliation. Open primary elections do not determine any party’s nominee and candidates who advance from an open primary election to a general election are not considered nominees of any political party. Open primary elections shall be held on the same day as primary elections.

SECTION 6. That Chapter 1, Title 34, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 34-119, Idaho Code, and to read as follows:

34-119. "INSTANT RUNOFF VOTING" DEFINED. "Instant runoff voting" means the method of casting and tabulating votes described in section 34-1218, Idaho Code, in which voters may rank candidates by order of preference, with each ballot counting as a single vote for its highest-ranked candidate still in the election, and ballots are tabulated in rounds, with the candidate receiving the fewest votes eliminated and votes for that candidate transferring to each ballot's next-highest ranked candidate until one (1) candidate receives a majority of remaining votes.

SECTION 7. That Chapter 1, Title 34, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 34-119, Idaho Code, and to read as follows:

34-119. "INSTANT RUNOFF VOTING" DEFINED. "Instant runoff voting" means the method of casting and tabulating votes described in section 34-1218, Idaho Code, in which voters may rank candidates by order of preference, with each ballot counting as a single vote for its highest-ranked candidate still in the election, and ballots are tabulated in rounds, with the candidate receiving the fewest votes eliminated and votes for that candidate transferring to each ballot's next-highest ranked candidate until one (1) candidate receives a majority of remaining votes.

SECTION 8. That Chapter 1, Title 34, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 34-120, Idaho Code, and to read as follows:

34-120. "COUNTY ELECTIVE OFFICE" DEFINED. "County elective office" means county commissioner, sheriff, prosecuting attorney, coroner, clerk, assessor, and treasurer.

SECTION 9. That Section 34-404, Idaho Code, be, and the same is hereby amended to read as follows:

34-404. REGISTRATION OF ELECTORS. (1) All electors must register before being able to vote at any primary, open primary, general, special, school or any other election governed by the provisions of title 34, Idaho Code. Registration of a qualified person occurs when a legible, accurate and complete registration application is received in the office of the county clerk or is received at the polls pursuant to section 34-408A, Idaho Code.

(2) Each elector may select on the registration application an affiliation with a political party qualified to participate in elections pursuant to section 34-501, Idaho Code, or may select to be designated as "unaffiliated"; The county clerk shall record the party affiliation or "unaffiliated" designation so selected as part of the elector's registration record. If an elector shall fail or refuse to make such a selection, the county clerk shall enter on the registration records that such elector is "unaffiliated."

(3) In order to provide an elector with the appropriate primary election ballot, pursuant to section 34-904A, Idaho Code, the poll book for primary elections shall include the party affiliation or designation as unaffiliated; for each elector so registered. An unaffiliated; elector shall declare to the poll worker which primary election ballot the elector chooses to vote in, pursuant to section 34-904A, Idaho Code, and the poll worker or other authorized election personnel shall record such declaration in the poll book. The poll book shall contain checkoff boxes to allow the poll worker or other authorized election personnel to record such unaffiliated elector's selection. An elector does not need to be affiliated with a party or make any declaration about party affiliation in order to receive an open primary ballot.

(4) In order to provide electors who are already registered to vote, and who remain registered electors, with an opportunity to select a party affiliation or to select their status as "unaffiliated" the poll book for the 2012 primary election shall include checkoff boxes by which the poll worker or other appropriate election personnel shall record such elector's choice of party affiliation or choice to be designated as "unaffiliated"; After the 2012 primary election, the county clerk shall record the party affiliation or "unaffiliated"; designation so selected in the poll book as part of such an elector's record within the voter registration system as provided for in section 34-437A, Idaho Code.

(5) After the 2012 primary election, electors who remain registered voters and who did not vote in the 2012 primary election or who have not selected party affiliation or who have not selected to be designated as "unaffiliated," shall be designated as "unaffiliated" and the county clerk shall record that designation for each such elector within the voter registration system as provided for in section 34-437A, Idaho Code.

SECTION 10. That Section 34-411A, Idaho Code, be, and the same is hereby amended to read as follows:

34-411A. PRIMARY AND OPEN PRIMARY ELECTIONS – CHANGING PARTY AFFILIATION – UNAFFILIATED ELECTORS. (1) For a primary election, an elector may change such elector's political party affiliation or become "unaffiliated" by filing a signed form with the county clerk no later than the last day a candidate may file for

partisan political office prior to such primary election, as provided for in section 34-704, Idaho Code. An "unaffiliated" elector may affiliate with the party of the elector's choice by filing a signed form up to and including election day. The application form described in section 34-1002, Idaho Code, shall also be used for this purpose.

(2) For a primary election, an "unaffiliated" elector may select a political party affiliation only prior to voting in the primary election. An elector may make such selection on or before election day, by declaring such political party affiliation to the poll worker or other appropriate election personnel. The poll worker or other appropriate election personnel shall then record in the poll book the elector's choice. After the primary election, the county clerk shall record the party affiliation so recorded in the poll book as part of such elector's record within the voter registration system as provided for in section 34-437A, Idaho Code.

(3) For an open primary election, an elector does not need to be affiliated with a political party in order to vote.

SECTION 11. That Section 34-501, Idaho Code, be, and the same is hereby amended to read as follows:

34-501. "POLITICAL PARTY" DEFINED -- PROCEDURES FOR CREATION OF A POLITICAL PARTY. (1) A "political party" within the meaning of this act, is an organization of electors under a given name. A political party shall be deemed created and qualified to participate in elections in any of the following three (3) ways:

(a) By having three (3) or more candidates for state or national office listed under the party name or indicating affiliation with that party pursuant to section 34-704A, Idaho Code, at the last general election, provided that those individuals seeking the office of president, vice president and president elector shall be considered one candidate, or

(b) By polling at the last general election for any one of its candidates for state or national office at least three per cent (3%) of the aggregate vote cast ~~for governor or for presidential electors~~ or at least three percent (3%) of the aggregate of votes cast for all candidates indicating their affiliation with that party pursuant to section 34-704A, Idaho Code, in any round of tabulation in a general election for governor.

(c) By an affiliation of electors who shall have signed a petition which shall:

(A) State the name of the proposed party in not more than six (6) words;

(B) State that the subscribers thereto desire to place the proposed party on the ballot;

(C) Have attached thereto a sheet or sheets containing the signatures of at least a number of qualified electors equal to two per cent (2%) of the aggregate vote cast for presidential electors in the state at the previous general election at which presidential electors were chosen;

(D) Be filed with the secretary of state on or before August 30 of even numbered years;

(E) The format of the signature petition sheets shall be prescribed by the secretary of state and shall be patterned after, but not limited to, such sheets as used for state initiative and referendum measures;

(F) The petitions and signatures so submitted shall be verified in the manner prescribed in section 34-1807, Idaho Code.

(G) The petition shall be circulated no earlier than August 30 of the year preceding the general election.

(2) Upon certification by the secretary of state that the petition has met the requirements of this act such party shall, under the party name chosen, have all the rights of a political party whose ticket shall have been on the ballot at the preceding general election.

(3) The newly certified party shall proceed to hold a state convention in the manner provided by law; provided, that at the initial convention of any such political party, all members of the party shall be entitled to attend the convention and participate in the election of officers and the nominations of candidates. Thereafter the conduct of any subsequent convention shall be as provided by law.

SECTION 12. That Section 34-702, Idaho Code, be, and the same is hereby amended to read as follows:

34-702. REQUIREMENTS FOR WRITE-IN CANDIDATES AT OPEN PRIMARY AND PRIMARY. (1) In addition to possessing all other qualifications, in order to become a candidate ~~of a political party~~ at the general election, those candidates whose names are written in at ~~the~~ an open primary election must:

(a) Receive at least the following number of write-in votes at the primary election:

- (i) One thousand (1,000) for any statewide office;
- (ii) Five hundred (500) for a congressional district office;
- (iii) Fifty (50) for a legislative district office; or
- (iv) Five (5) for a county office; and

(b) File a declaration of intent for that office, pursuant to section 34-702A, Idaho Code.

(2) Any write-in candidate at an open primary who does not meet the requirements of subsection (1) of this section is not eligible to advance to the general election and shall not be included in the top four (4) candidates regardless of the number of votes received by that candidate.

(3) In addition to possessing all other qualifications, in order to become a candidate of a political party at the general election, those candidates whose names are written in at the primary election must:

- (a) Receive at least five (5) write-in votes at the primary election; and
- (b) File a declaration of intent for that office, pursuant to section 34-702A, Idaho Code.

~~(4)~~ (4) Candidates who are required to file with the secretary of state shall pay the filing fee required for that office no later than the deadline for filing a declaration of intent pursuant to section 34-702A, Idaho Code, or shall file a petition pursuant to section 34-626, Idaho Code.

~~(5)~~ (5) No write-ins shall be allowed for judicial office.

SECTION 13. That Section 34-702A, Idaho Code, be, and the same is hereby amended to read as follows:

34-702A. DECLARATION OF INTENT FOR WRITE-IN CANDIDATES. (1) No write-in vote for any office in a primary, open primary, special, or general election shall be counted unless a completed declaration of intent form has been filed indicating that the person desires the office and is legally qualified to assume the duties of said office if elected. The declaration of intent shall be filed with the secretary of state if for a federal, state, or legislative district office and with the county clerk if for a county or party precinct committeeman office. Such declaration of intent shall be filed no later than the eighth Friday

before the day of election. For a write-in candidate for president, the declaration shall include a certification of the write-in candidate's vice presidential and presidential electors, all of whom must be qualified to serve in their respective offices. The secretary of state shall prescribe the form for said declarations.

(2) In those counties that utilize optical scan ballots, an elector shall not place on the ballot a sticker bearing the name of a person or use any other method or device, except writing, to vote for a person whose name is not printed on the ballot.

(3) In general elections conducted by instant runoff voting, a write-in candidate who has not submitted a declaration of intent pursuant to this section is not considered an active candidate and a ranking containing such a write-in candidate shall be treated in the same manner as a ranking containing an eliminated candidate for the purposes of tabulation.

SECTION 14. That Section 34-703, Idaho Code, be, and the same is hereby amended to read as follows:

34-703. NOMINATION AT PRIMARY OR OPEN PRIMARY. (1) All political party candidates for United States senator and representative in congress, and all political party candidates for elective state, district and county offices, ~~except candidates for judicial office,~~ at general elections shall be nominated at the primary elections, or shall have their names placed on the general election ballot as provided by law, and shall comply with the provisions of this act.

(2) All candidates for judicial office shall be nominated or elected at the primary election, as provided by section 34-1217, Idaho Code.

(3) Independent candidates shall not be voted on at primary elections.

(4) All candidates for United States senate, United States house of representatives, state legislature, elective state office or county elective office at general elections must advance from an open primary election or have their names placed on a general election ballot as otherwise provided by law. Open primary elections shall comply with the following provisions:

(a) All candidates participating in an open primary election shall appear on the same ballot, regardless of party affiliation.

(b) Each qualified elector, regardless of party affiliation, may vote for one (1) candidate.

(c) Subject to the provisions of section 34-702(1), Idaho Code:

(i) The four (4) candidates who receive the most votes shall advance to the general election and appear on the general election ballot.

(ii) If fewer than four (4) candidates receive votes, all candidates receiving votes shall advance to the general election and appear on the general election ballot.

(iii) If it cannot be determined which four (4) candidates received the most votes because two (2) or more candidates are tied with an equal number of votes, that tie shall be broken pursuant to the provisions of section 34-1216, Idaho Code.

SECTION 15. That Section 34-704, Idaho Code, be, and the same is hereby amended to read as follows:

34-704. DECLARATION OF CANDIDACY. (1) Any person legally qualified to hold such office is entitled to become a candidate and file his declaration of candidacy. Each political party candidate for precinct ~~or, state, district or county~~ office shall file his declaration of candidacy in the proper office between 8:00 a.m. on the twelfth Monday preceding the primary election and 5:00 p.m. on the tenth Friday preceding the primary election. All political party candidates shall declare their party affiliation in their declaration of candidacy and shall be affiliated with a party at the time of filing. A candidate shall be deemed affiliated with the political party if the candidate submits a party affiliation form along with the declaration of candidacy to the filing official. The filing official shall reject any declaration of candidacy for partisan office in a primary election from candidates who are not affiliated with a political party. Candidates

for nonpartisan office and for United States senate, United States house of representatives, state legislature, or any elective state office or county elective office shall file during the period provided for in this section.

(2) Candidates who file a declaration of candidacy under a party name and are not nominated at the primary election shall not be allowed to appear on the general election ballot under any other political party name, nor as an independent candidate.

(3) Candidates for United States senate, United States house of representatives, state legislature, or any elective state office or county elective office shall file their declarations of candidacy in the manner provided in section 34-704, Idaho Code. Independent candidates shall file their declaration of candidacy in the manner provided in section 34-708, Idaho Code.

(4) All information in declarations of candidacy shall be made publicly available upon request.

SECTION 16. That Chapter 7, Title 34, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 34-704A, Idaho Code, and to read as follows:

34-704A. DECLARATION OF CANDIDACY FOR OPEN PRIMARY ELECTIONS. (1) Any person who desires to offer himself as a candidate for United States senate, United States house of representatives, state legislature, or any elective state office or county elective office may do so by complying strictly with the provisions of this section. In order to be recognized as a candidate in an open primary election, each such candidate must file with the proper officer as provided in section 34-705, Idaho Code, a declaration of candidacy, during the period specified in section 34-704, Idaho Code. Such declaration must declare the office for which the candidate seeks election, the political party with which the candidate is registered as affiliated, or whether the candidate prefers a nonpartisan or undeclared designation placed after the candidate's name on the ballot. Each such candidate who files a declaration of candidacy shall at the same time pay a filing fee, or a petition containing signatures in lieu of a filing fee, pursuant to the provisions of Chapter 6, Title 34, Idaho Code.

(2) If all of the requirements of this section have been met, the proper officer shall cause the name of each candidate who has qualified to be placed on the open primary ballot, according to the instructions of the secretary of state.

SECTION 17. That Section 34-705, Idaho Code, be, and the same is hereby amended to read as follows:

34-705. WITH WHOM DECLARATIONS FILED. (1) All candidates for county offices, whether political party candidates or independent candidates, and all political party candidates for precinct offices shall file their declarations of candidacy with the county clerk of their respective counties. All candidates for district, state and federal offices shall file their declarations of candidacy with the secretary of state

(2) The secretary of state shall certify to the county clerks, within ten (10) days after the filing deadline, the names of the ~~political party~~ candidates who filed for federal, state and district offices and are qualified for placement on the ballot.

(3) The secretary of state shall certify the name of a candidate being appointed by the appropriate central committee pursuant to section 34-714, Idaho Code, by no later than the next business day after the appointment is received in the secretary of state's office, if received after the certification of candidates to the county clerks under subsection (2) of this section.

SECTION 18. That Section 34-706, Idaho Code, be, and the same is hereby amended to read as follows:

34-706. NOTIFICATION TO PARTIES. Within three (3) days after the deadline for filing declarations of political party candidacy the county clerk shall notify the county central committee of each political party of the candidates who have filed for ~~county and~~ precinct offices under the party name and are qualified.

~~Within three (3) days after the deadline for filing declarations of political party candidacy the secretary of state shall notify the legislative district central committee of each political party of the legislative candidates who have filed under the party name and are qualified.~~

~~Within three (3) days after the deadline for filing declarations of political party candidacy the secretary of state shall notify the state central committee of each political party of the candidates who have filed for federal and state offices under the party name and are qualified.~~

SECTION 19. That Section 34-708, Idaho Code, be and the same is hereby repealed

SECTION 20. That Section 34-712, Idaho Code, be, and the same is hereby amended to read as follows:

34-712. SAMPLE FORM FOR PRIMARY AND OPEN PRIMARY ELECTION BALLOTS. (1) The secretary of state shall provide the sample form of the primary and open primary election ballot to each of the county clerks no later than forty (40) days prior to the primary.

(2) The primary election sample ballot shall contain the proper political party candidates to be voted upon within the county whose declarations were filed and certified in the office of the secretary of state with instructions for the placing of political party candidates seeking the political party nomination for county and precinct offices.

(3) The open primary election sample ballots shall contain the proper candidates for open primary elections and certified in the office of the secretary of state with instructions for the placing of the candidates.

(4) If a county is within more than one (1) legislative district, the secretary of state shall provide a sample ballot for each legislative district which includes part of the county.

SECTION 21. That Section 34-713, Idaho Code, be, and the same is hereby amended to read as follows:

34-713. PREPARATION OF PRIMARY AND OPEN PRIMARY BALLOTS. (1) Upon receipt of the sample ballot and instructions from the secretary of state, each county clerk shall print and prepare the official primary and open primary ballots for the forthcoming election. The printing of the ballots shall be a county expense and paid out of the county treasury.

(2) Each county clerk shall cause to be published on the earliest date possible in May the names of all the political party candidates who shall appear on the primary ballot and all candidates who shall appear on the open primary ballot. The names shall be listed alphabetically under each particular office title.

SECTION 22. That Section 34-714, Idaho Code, be, and the same is hereby amended to read as follows:

34-714. FILLING VACANCIES IN SLATE OF POLITICAL PARTY CANDIDATES OCCURRING PRIOR TO PRIMARY ELECTION. (1)(a) Vacancies that occur before the primary election in the slate of candidates of any political party because of the death, disqualification for any reason, or withdrawal from the nomination process by the candidate, shall be filled in the following manner by the county central committee if the vacancy occurs for the office of precinct committeeman if only one (1) candidate declared for that particular office+.

~~(a) By the county central committee if the vacancy occurs for the office of precinct committeeman or for a county office.~~

~~(b) By the legislative district central committee if the vacancy occurs for the office of state representative or state senator.~~

~~(c) By the state central committee if the vacancy occurs for a federal or state office.~~

(b) The county and legislative district central committee shall fill the vacancy within fifteen (15) days from the date the vacancy occurred. ~~The state central committee shall fill the vacancy within thirty (30) days from the date the vacancy occurred.~~

(c) Any political party candidate so appointed by the proper central committee must, in order to have his name on the primary ballot, file a declaration of candidacy and pay the required filing fee.

(2) No central committee shall fill any vacancy which occurs within ten (10) days prior to the primary election. Vacancies which occur during this ten (10) day period because of the death, disqualification for any reason, or withdrawal from the nomination process by the candidate shall be filled according to the provisions of section 34-715, Idaho Code.

(3) Vacancies that occur in a slate of candidates for precinct committeeman within ten (10) days prior to the primary election shall not be filled.

SECTION 23. That Section 34-715, Idaho Code, be, and the same is hereby amended to read as follows:

34-715. FILLING OF VACANCIES OCCURRING BEFORE OR AFTER PRIMARY ELECTION. (1)(a) Vacancies that occur during the ten (10) day period before a primary election, or after the primary election but at least ten (10) days before the general election in the slate of candidates of any political party, except candidates for precinct committeeman, shall be filled in the following manner: by the county central committee.

~~(1) By the county central committee if it is a vacancy by a candidate for a county office.~~

~~(2) By the legislative district central committee if it is a vacancy by a candidate for the state legislature.~~

~~(3) By the state central committee if it is a vacancy by a candidate for a federal or a state office.~~

(b) The county and legislative district central committee shall fill the vacancy within fifteen (15) days from the date the vacancy occurred. The state central committee shall fill the vacancy within thirty (30) days from the date the vacancy occurred.

(c) Any political party candidate so appointed by the proper central committee must, in order to have his name on the general ballot, file a declaration of candidacy and pay the required filing fee.

(d) Vacancies that occur in a slate of candidates for precinct committeeman within ten (10) days prior to the primary election shall not be filled.

(2)(a) Vacancies in races for United States senate or United States house of representatives, state legislature, or any elective state office or county elective office that occur after the open primary election but at least ten (10) days before the general election shall be filled by advancing the candidate, if any, who received the most votes in the open primary but did not qualify to advance to the general election pursuant to the provisions of section 34-703(4)(c), Idaho Code.

(b) If it cannot be determined which candidate received the most votes because two (2) or more candidates are tied with an equal number of votes, that tie shall be broken pursuant to the provisions of section 34-1216, Idaho Code.

SECTION 24. That Section 34-904, Idaho Code, be, and the same is hereby amended to read as follows:

34-904. PRIMARY AND OPEN PRIMARY ELECTION BALLOTS. (1) There shall be a separate primary election ballot for each political party upon which its ticket shall be printed; however, a county may use a separate ballot ~~for county offices and~~ for the office of precinct committeeman. All candidates who have filed their declarations of candidacy and are subsequently certified shall be listed under the proper office titles on their political party ticket. The secretary of state shall design the primary election ballot to allow for write-in candidates when needed.

(2) The office titles for open primary elections shall be listed in order beginning with the highest federal office and ending with legislative district offices ~~precinct offices~~. The secretary of state has the discretion and authority to arrange the classifications of offices as provided by law.

(3) It is not necessary to print a primary ballot for a political party which does not have candidates for more than half of the federal or statewide offices on the ballot if no more than one (1) candidate files for nomination by that party for

any of the offices on the ballot. The secretary of state shall certify that no primary election is necessary for that party if such is the case and shall certify to the county clerk the names of candidates for that party for the general election ballot only.

(4) Ballots for open primary elections shall list all candidates who have qualified pursuant to section 34-704A, Idaho Code. After each candidate's name, the ballot shall include that candidate's indicated party affiliation, if any, and the ballot shall contain a disclaimer stating that a candidate's indicated party affiliation does not represent an endorsement or nomination by that party.

SECTION 25. That Section 34-904A, Idaho Code, be, and the same is hereby amended to read as follows:

34-904A. ELIGIBILITY TO VOTE IN PRIMARY AND OPEN PRIMARY ELECTIONS. (1) Except as provided in subsection (2) of this section, an elector who has designated a party affiliation shall be allowed to vote only in the primary election of the political party for which such an elector is so registered.

(2) A political party qualified to participate in elections pursuant to section 34-501, Idaho Code, may, no later than the last Tuesday in the November prior to a primary election, notify the secretary of state in writing that the political party elects to allow, in addition to those electors who have registered with that political party, any of the following to vote in such party's primary election:

(a) Electors designated as "unaffiliated";

(b) Electors registered with a different political party qualified to participate in elections pursuant to section 34-501, Idaho Code. In the event a state chairman of a political party elects to allow electors to vote in that party's primary election pursuant to this paragraph, the state chairman shall identify which political parties' registrants are allowed to vote in such primary election.

(3) In the event that more than one (1) political party allows "unaffiliated" electors to vote in their party's primary election, an "unaffiliated" elector shall designate which political party's primary election the elector chooses to vote in by declaring such designation to the poll worker or other appropriate election personnel, who shall then record in the poll book the elector's choice. The county clerk shall record such choice as part of the elector's voting history within the voter registration system as provided for in section 34-437A, Idaho Code.

(4) In the event no more than one (1) political party allows "unaffiliated" electors to vote in their party's primary election, an "unaffiliated" elector may designate that political party's primary election as the election the elector chooses to vote in by declaring such designation to the poll worker or other appropriate election personnel, who shall then record in the poll book the elector's choice. The county clerk shall record such choice as part of the elector's voting history within the voter registration system as provided for in section 34-437A, Idaho Code.

(5) An "unaffiliated" elector having declared such designation as provided for in subsection (3) or (4) of this section shall not be permitted to vote in the primary election of any other party held on that primary election date.

(6) If an "unaffiliated" elector does not declare a choice of political party's primary election ballot, the elector shall not be permitted to vote in any political party's primary election but shall receive a nonpartisan ballot when such a ballot is available.

(7) In the event that one (1) or more political parties allow electors affiliated with a different political party to vote in their primary election pursuant to this section, an elector affiliated with a different political party shall declare to the poll worker or other appropriate election personnel in which primary election ballot such elector wishes to vote. The county clerk shall record such choice as part of the elector's voting history within the voter registration system as provided for in section 34-437A, Idaho Code.

(8) Provided that all other provisions of this act are complied with, nothing in this section shall be construed to prohibit an elector designated as "unaffiliated"; from voting in the primary election of a different party held in subsequent years. Notwithstanding any other provision of this act, if a political party allows "unaffiliated" electors to vote in that political party's primary election pursuant to this section, a vote by an "unaffiliated"; elector in such primary election shall not change or affect the elector's "unaffiliated"; designation.

(9) Every qualified elector shall be allowed to vote in the open primary election, regardless of party affiliation.

SECTION 26. That Section 34-906, Idaho Code, be, and the same is hereby amended to read as follows:

34-906. BALLOTS FOR GENERAL ELECTIONS – INSTANT RUNOFF VOTING BALLOTS. (1) There shall be a single general election ballot on which the complete ticket of each political party shall be printed for precinct committeeman elections. Each political party ticket shall include that party's nominee for each particular office. The secretary of state shall design the general election ballot to allow for write-in candidates when needed.

(2) The office titles shall be listed in order beginning with the highest federal office. The secretary of state has the discretion and authority to arrange the above classifications of offices as provided by law.

(3) At any general election at which the electors are to vote upon constitutional amendments or other issues, the secretary of state shall provide separate general election ballot forms on which such amendments and issues shall be printed.

(4) General election ballots for offices elected by instant runoff voting, including statewide, congressional, legislative district, and county elective offices, shall contain only those candidates who advanced from the open primary election pursuant to section 34-703(4), Idaho Code, and space for one (1) write-in candidate per race. Instant runoff voting ballots shall:

(a) Allow voters to rank each candidate in order of preference;

(b) Contain a statement instructing electors on how to assign rankings and prohibiting the assigning of the same ranking to more than one (1) candidate, ranking any candidate more than once, or skipping a ranking;

(c) Include after each candidate's name that candidate's party affiliation pursuant to section 34-704A, Idaho Code, if any; and

(d) A disclaimer stating that a candidate's indicated party affiliation does not represent an endorsement or nomination by that party.

SECTION 27. That Section 34-908, Idaho Code, be, and the same is hereby amended to read as follows:

34-908. EACH BALLOT TO CARRY OFFICIAL ELECTION BALLOT IDENTIFICATION ON OUTSIDE – MARKING OF BALLOT BY VOTER. (1) Every ballot used at any primary, open primary, general or special election shall be marked on the outside with the official election ballot identification before it is given to the voter. At this time the election official distributing the ballots shall give the voter instructions in regard to folding the ballot after he has voted.

(2) The Except as required by subsection (4) of this section, the voter shall mark his ballot with a cross (X) or other mark sufficient to show his intent in the place provided after the name of the candidate for whom he intends to vote for each office.

(3) If Except as required by subsection (4) of this section, if a person votes by writing the name of a candidate on the ballot, such act shall constitute a vote for the person's name who appears without the necessity of placing a mark after the name written on the ballot, unless such a mark is required by a vote tally system.

(4) In elections conducted by instant runoff voting, the voter shall mark his ballot with a mark sufficient to show his intent in the place provided that indicates the specific ranking order the voter wishes to assign to each candidate. The voter may assign a ranking order to each candidate listed on the ballot and (1) write-in candidate per race.

SECTION 28. That Section 34-909, Idaho Code, be, and the same is hereby amended to read as follows:

34-909. GENERAL ELECTION SAMPLE BALLOTS FORWARDED TO COUNTIES BY SECRETARY OF STATE. (1) The secretary of state, no later than September 7, shall provide the necessary general election sample ballot layout to each of the county clerks.

(2) The sample ballot layout shall contain the proper office titles, order of offices and ballot layout for the general election, with instructions for placement of candidates seeking election for federal, state, legislative, county and precinct offices and candidates seeking judicial office or retention. If a county is within more than one (1) legislative district, the secretary of state shall provide instructions on the requirements for a separate ballot for each legislative district that is within the county.

(3) The secretary of state shall certify to the county clerks the names and political party or party affiliation, as applicable, of the candidates qualified for placement on the general election ballot for all federal, state and legislative district offices on the sample ballots, along with any judicial candidates, by no later than the ninth Friday prior to the general election.

(4) The secretary of state shall certify the name of a candidate being appointed by the appropriate central committee as provided by section 34-715, Idaho Code, by no later than the next business day after the appointment is received in the secretary of state's office, if received after the certification of candidates to the county clerks under subsection (3) of this section.

SECTION 29. That Section 34-1201, Idaho Code, be, and the same is hereby amended to read as follows:

34-1201. CANVASS OF VOTES. (1) When the polls are closed, the judges must immediately proceed to count the ballots cast at such election. The counting must be continued without adjournment until completed and the result declared.

(2) If the precinct has duplicate ballot boxes, the counting may begin after five (5) ballots have been cast. At this time, the additional clerks shall close the first ballot box and retire to the counting area and count the ballots. Upon completion of this counting, the clerks shall return the ballot box and then proceed to count all of the ballots cast in the second box during this period. This counting shall continue until the polls are closed, at which time all election personnel shall complete the counting of the ballots.

(3) The county clerk may designate paper ballots be returned to a central count location for counting by special counting boards. If the paper ballots are to be counted at a central count location, a procedure may be adopted to deliver the voted ballots to the county clerk prior to the closing of the polls. The results of this early count shall not be released to the public until after 8:00 p.m. of election day.

(4) After being counted, all ballots shall be sealed and stored until such time as the recount period has passed or a recount has been completed. Ballots may be unsealed and resealed as part of a postelection audit conducted pursuant to section 34-1203A, Idaho Code.

(5) Elections conducted by instant runoff voting shall be canvassed pursuant to the provisions of section 34-1218, Idaho Code.

SECTION 30. That Section 34-1203, Idaho Code, be, and the same is hereby amended to read as follows:

34-1203. COUNTING OF BALLOTS – CERTIFICATES OF JUDGES. (1) Subject to the provisions of section 34-1218, Idaho Code, the ~~The~~ ballots and polls lists agreeing, the election personnel shall then proceed to tally the votes cast. Under each office title, the number of votes for each candidate and such other information required by the secretary of state shall be entered in the tally books together with the total of the above figures in the manner prescribed by the secretary of state. Any ballot or part of a ballot from which it is impossible to determine the elector's choice shall be void and shall not be counted. When a ballot is sufficiently plain to determine therefrom a part of the voter's intention, it shall be the duty of the judges to count such part.

(2) Following the counting, the judges must transmit a copy of the results to the county clerk.

(3)(a) For any election in which at least one (1) office election or ballot question in the county occurs in both time zones in Idaho, the county clerk shall release no election results to the public until all voting places in the state have closed on election day.

(b) If no office election or ballot question in the county occurs in both time zones in Idaho, the county clerk may release the election results to the public at any time after all voting places in the county have closed on election day.

(4) The secretary of state shall issue directives or promulgate administrative rules adopting standards that define what constitutes a vote and what will be counted as a vote for each category of voting system used in this state.

SECTION 31. That Section 34-1203A, Idaho Code, be, and the same is hereby amended to read as follows:

34-1203A. POSTELECTION AUDIT OF SELECTED BALLOTS.

(1)(a) After the completion of all county canvasses for any primary or general election, the secretary of state shall identify and order a postelection audit

of certain paper ballots cast in any election, shall immediately post to the website of the office of the secretary of state a list of the elections, counties, and precincts selected for audit, and shall immediately notify each affected county clerk and county sheriff of the same. Upon receiving such notification, the county sheriff shall immediately impound and take into custody the affected ballots pursuant to the procedures in chapter 23, title 34, Idaho Code. Upon completion of the postelection audit, the ballots shall be resealed and returned to the custody of the county clerk, or the county sheriff in the event that the ballots are subject to a recount pursuant to chapter 23, title 34, Idaho Code.

(b) A postelection audit authorized pursuant to paragraph (a) of this subsection may be ordered for:

- (i) Any or all federal elections held in Idaho;
- (ii) The election for governor;
- (iii) The statewide office election having the narrowest percentage margin of votes;
- (iv) The statewide ballot question election having the narrowest percentage margin of votes; and
- (v) One (1) legislative office election within the county.

(c) The precincts selected for audit pursuant to paragraph (a) of this subsection shall:

(i) Be selected by lot by the secretary of state without the use of a computer at an open public meeting governed by the provisions of chapter 2, title 74, Idaho Code; and

(ii) Not exceed five percent (5%) of the precincts in the county or one (1) precinct, whichever is greater. Provided, however, that multiple precincts may be selected in any county if the number of ballots from the precincts so selected is less than two thousand one hundred (2,100).

(d) The secretary of state, in lieu of auditing the early or absentee ballots from any precincts selected for postelection audit, may select days, batches, legislative districts, or tabulation machines of early or absentee ballots for audit until the number of ballots selected equals or exceeds the number of early or absentee ballots that were cast from the precincts selected for postelection audit. Such days, batches, legislative districts, or tabulation machines shall be selected under the same requirements by which precincts were selected. The provisions of this paragraph apply only to a county that:

- (i) Does not organize the storage of its early or absentee ballots by precinct;
- (ii) Organizes the storage of such ballots by day, batch, legislative district, or tabulation machine; and
- (iii) Publicly reports the election results for early or absentee ballots by day, batch, legislative district, or tabulation machine on the county's website prior to the secretary of state's selection of precincts to be audited.

(2) The secretary of state shall conduct, and the county clerks shall facilitate, any postelection audit ordered pursuant to subsection (1) of this section. Such an audit shall be open to attendance by news media personnel. By directive issued at least sixty (60) days prior to the election, the secretary of state shall determine the procedures by which the postelection audit is to be conducted. Such procedures shall be developed in consultation with county clerks and shall include provisions allowing each interested candidate and political party, and each political committee that publicly reported expending money on a ballot question for which the results will be audited, to appoint a designated observer. Within the time specified in the directive, the secretary of state shall report the results of any postelection audits on the website of the office of the secretary of state and to the county clerk of each county in which paper ballots were audited.

(3) The secretary of state may order additional postelection audits, without regard to the election or precinct limitations provided in subsection (1) of this section, if he determines that such action is warranted by the

findings of the audits ordered pursuant to subsection (1) of this section. The secretary of state shall limit such orders for additional postelection audits to the types of problems identified by the audits performed pursuant to subsection (1) of this section.

(4) The office of the secretary of state shall pay for the cost of any postelection audits conducted pursuant to this section, including reimbursing county clerks for any costs associated with facilitating such audits.

(5) Postelection audits for elections using instant runoff voting shall be conducted using procedures established pursuant to rules promulgated by the secretary of state pursuant to chapter 52, title 67, Idaho Code.

SECTION 32. That Section 34-1206, Idaho Code, be, and the same is hereby amended to read as follows:

34-1206. BOARD'S STATEMENT OF VOTES CAST. (1) The board shall examine and make a statement of the total number of votes cast for all candidates or special questions that shall have been voted upon at the election. The statement shall set forth the special questions and the names of the candidates for whom the votes have been cast. It shall also include the total number of votes cast for each candidate for office by precinct or polling location for elections conducted pursuant to chapter 14, title 34, Idaho Code, and the total number of affirmative and negative votes cast for any special question by precinct or polling location for elections conducted pursuant to chapter 14, title 34, Idaho Code. The board shall certify that such statement is true, subscribe their names thereto, and deliver it to the county clerk.

(2) The secretary of state shall promulgate rules pursuant to chapter 52, title 67, Idaho Code, to address statements of votes cast for candidates elected by instant runoff voting.

SECTION 33. That Section 34-1214, Idaho Code, be, and the same is hereby amended to read as follows:

34-1214. CERTIFICATES OF NOMINATION OR ELECTION TO FEDERAL, STATE, DISTRICT OR NONPARTISAN OFFICES AFTER OPEN PRIMARY. (1) Immediately after the open primary election canvass, the secretary of state shall issue certificates of nomination to the ~~political party~~ candidates of each party who receive the ~~highest a sufficient~~ number of votes for their particular federal, state or district office to advance to the general election pursuant to 34-703(4), Idaho Code. The candidates so certified shall have their names placed on the general election ballot.

(2) Immediately after the primary election canvass, the secretary of state shall issue certificates of nomination to the nonpartisan candidate or candidates who receive the highest number of votes for the number of vacancies which are to be filled for a particular office and also to the same number of candidates who receive the second highest number of votes for the particular office. The candidates so certified shall have their names placed on the general election ballot. If it appears from the canvass that a particular candidate has received a majority of the total vote cast for the particular office, he shall be issued a certificate of election instead of a certificate of nomination and no candidates shall run for the particular office in the general election.

SECTION 34. That Section 34-1216, Idaho Code, be, and the same is hereby amended to read as follows:

34-1216. TIE VOTES - IN STATE OR DISTRICT ELECTIONS. In the case of a tie vote between the candidates at a primary, open primary, or general election, or the final round of a general election conducted by instant runoff voting, which tie must be broken in order to determine which candidate is elected or which

candidates will advance to the general election, the interested parties or their authorized agents shall appear before the secretary of state within two (2) days after the canvass and the tie shall be determined by a toss of a coin.

SECTION 35. That Chapter 12, Title 34, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 34-1218, Idaho Code, and to read as follows:

34-1218. INSTANT RUNOFF VOTING – DEFINITIONS -- TABULATION. (1) For the purpose of instant runoff voting elections, unless the context or usage indicates otherwise, the following words have the following meanings:

- (a) “Active candidate” means any candidate who has not been eliminated and has not withdrawn his candidacy according to law.
- (b) “Highest-ranked active candidate” means the active candidate assigned to a higher ranking than any other active candidate.
- (c) “Overvote” means an instance in which a voter has ranked more than one (1) candidate at the same ranking.
- (d) “Ranking” or “ranking order” means the number available to be assigned by a voter to a candidate to express the voter’s choice for that candidate. The number “1” is the highest ranking, followed by “2” and then “3” and so on.
- (e) “Round” means an instance of the sequence of voting tabulation as provided in subsection (4) of this section.

(2) All general elections and all special elections to fill vacancies, as applicable, for congress, state elective office, county elective office or the state legislature involving three (3) or more candidates shall be conducted using instant runoff voting.

(3) Tabulation for elections conducted by instant runoff voting shall proceed in rounds. In a round of tabulation, each ballot counts as a vote for its highest-ranked active candidate. Tabulation shall proceed sequentially as follows:

- (a) In any round, if an active candidate has a majority of votes, that candidate is elected and tabulation is complete.
- (b) In the first round only, if no active candidate has a majority of votes in and there is at least one (1) write-in candidate who has filed a declaration of intent pursuant to section 34-702A, Idaho Code, then each such write-in candidate who received fewer than one hundred (100) votes or fewer votes than any active non-write-in candidate, shall be eliminated simultaneously and votes for these candidates shall be transferred to each ballot’s next-highest-ranked active candidate.
- (c) In any round other than those described in paragraphs (a) and (b) of this subsection, if no active candidate has a majority of votes, the active candidate with the fewest votes shall be eliminated and votes for that candidate shall be transferred to each ballot’s next-highest-ranked active candidate, and a new round is conducted. This process shall be repeated until a candidate meets the requirements of paragraph (a) of this subsection.

(4) An inactive ballot does not count as a vote for any ranked active candidate. A ballot becomes inactive if:

- (a) It does not contain rankings for any active candidate; or
- (b) It contains an overvote that includes its highest-ranked candidate.

(5) (a) If two (2) or more candidates are tied with the fewest votes and tabulation cannot continue until the candidate with the fewest votes is defeated, then the candidate to be defeated shall be determined by lot.

(b) If there is a tie in a final round of tabulation and the winner cannot be determined until the tie is broken, that tie shall be broken as provided by law.

(6) (a) In order to determine a party’s vote share under section 2, article III of the constitution of the state of Idaho or for any other purpose not otherwise provided by law, the aggregate total of all votes cast in the first round of tabulation for candidates who have indicated their affiliation with that party on the ballot pursuant to section 34-704A, Idaho Code, shall be used.

(b) In order to determine a candidate or elected official’s party affiliation for the purpose of filling a vacancy or any other purpose, the party affiliation indicated on the ballot pursuant to section 34-704A, Idaho Code, by that candidate or elected official shall be used, unless otherwise provided by law.

(7) The secretary of state shall promulgate administrative rules pursuant to chapter 52, title 67, Idaho Code, for elections conducted by instant runoff voting, including rules for canvassing and tabulation.

SECTION 36. That Chapter 14, Title 34, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 34-1416, Idaho Code, and to read as follows:

34-1416. SPECIAL VACANCY ELECTIONS. Special elections to fill vacancies in the United States house of representatives pursuant to chapter 9, title 59, Idaho Code, shall be conducted by instant runoff voting according to section

34-1218, Idaho Code. Such vacancies shall be filled in a single election with all candidates appearing on the same ballot, regardless of the number of candidates who have qualified for placement on the ballot.

SECTION 37. That Section 34-2410, Idaho Code, be, and the same is hereby amended to read as follows:

34-2410. SPECIFICATIONS FOR VOTING MACHINES OR VOTE TALLY SYSTEMS. (1) No voting machine or vote tally system shall be approved by the secretary of state unless it is constructed so that it:

- (a) Secures to the voter secrecy in the act of voting.
- (b) Provides facilities for voting for the candidates of as many political parties or organizations as may make nominations and for or against as many measures as may be submitted.
- (c) Permits the voter to vote for any person for any office and upon any measure that he has the right to vote for.
- (d) Permits the voter, except at primary elections, to vote for all the candidates of one (1) party or in part for the candidates of one (1) party and in part for the candidates of one or more other parties.
- (e) Permits the voter to vote for as many persons for an office as he is lawfully entitled to vote for but no more.
- (f) Prevents the voter from voting for the same person more than once for the same office.
- (g) Correctly registers or records all votes cast for any and all persons and for or against any and all measures.
- (h) Can be adjusted so that the counting mechanism rejects any vote cast on the tabulating card in excess of the number which the voter is entitled to vote.

~~(i) Provides that a vote for more than one (1) candidate cannot be cast by one (1) single operation of the machine or vote tally system.~~

- (2) A vote tally system shall be:
 - (a) Capable of correctly counting votes on ballots or ballot cards on which the proper number of votes have been marked for any office or question or issue that has been voted.
 - (b) Capable of ignoring the votes marked for any office or question or issue where more than the allowable number of votes have been marked, but shall correctly count the properly voted portions of the ballot card.
 - (c) Capable of accumulating a count of the specific number of ballots or ballot cards tallied for a precinct, accumulating total votes by a candidate for each office; and accumulating total votes for and against each question and issue of the ballots or ballot cards tallied for a precinct.
 - (d) Capable of tallying votes from ballots or ballot cards of different political parties, from the same precinct, in the case of a primary election.
 - (e) Capable of accommodating rotation of candidates' names on the ballot or ballot card, provided that all ballots or ballot cards from one (1) precinct shall be of the same rotation sequence.
 - (f) Capable of automatically producing precinct totals in either printed, marked, or punched form, or combinations thereof.

(g) Capable of tabulating votes in an instant runoff election pursuant to section 34-1218, Idaho Code.

(3) For the purpose of instant runoff voting elections, a voting machine shall be capable of conducting an instant runoff voting election pursuant to section 34-1218, Idaho Code.

SECTION 38. That Section 34-2305, Idaho Code, be, and the same is hereby amended to read as follows:

34-2305. MANNER OF RECOUNTING. At the time and place fixed for recounting the ballots cast in any precinct all ballots shall be recounted in plain view of the candidates or their representatives. The recount shall commence at the time and place so ordered, and shall continue until the recount is finished and the results tabulated. The attorney general shall be the final authority

concerning any question which arises during the recount for federal, state, county or municipal elections. The county prosecuting attorney shall be the final authority concerning any question that arises during the recount of other elections. The secretary of state shall promulgate administrative rules pursuant to chapter 52, title 67, Idaho Code, for the conduct of recounts of instant runoff voting elections.

SECTION 39. That Section 34-903B, Idaho Code, be and the same is hereby repealed.

SECTION 40. All statutes inconsistent with the provisions of this act are hereby repealed and the Idaho Code Commission shall include such repealers in the annual codifiers' corrections bill as necessary.

SECTION 41. SEVERABILITY. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.

SECTION 42. This act shall be in full force and effect on and after January 1, 2026. **END.**

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shall be submitted to the qualified electors of the State of Idaho, for their approval or rejection at the regular General Election, to be held on the fifth (5th) day of November, A.D., 2024, and each for himself says: I have personally signed this petition; I am a qualified elector of the State of Idaho; my residence and post office are correctly written after my name.

Signature	Printed Name	Residence Street and Number	City	Date	Official Use Only Legislative District
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					
11.					
12.					

Any person signing a petition may remove their signature pursuant to Section, 34-1803B, Idaho Code.

STATE OF IDAHO

ss

County of _____

I, _____, being first duly sworn, say: That I am a resident of the State of Idaho and at least eighteen (18) years of age: that every person who signed this sheet of the foregoing petition signed his or her name thereto in my presence: I believe that each has stated his or her name, address and residence correctly, that each signer is a qualified elector of the State of Idaho, and a resident of the county of _____.

Signed _____
Post-office address _____

Subscribed and sworn to before me this _____ day of _____, _____

(Notary Seal)

Signed _____
Notary Public
Residing At _____

My Commission expires on _____

Funding Source Statement for the Idaho Open Primaries Act

The Idaho Open Primaries Act will be funded by an augmentation of existing state and county expenditures for advertising and tabulation. Implementation of the act will require 1.) A public awareness effort to inform voters, candidates, and election workers about changes to the election process, and 2.) The purchase of ballot tabulation equipment capable of conducting instant runoff elections.

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STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
RAÚL R. LABRADOR

May 31, 2023

VIA HAND DELIVERY

The Honorable Phil McGrane
Idaho Secretary of State
Statehouse

RE: Certificate of Review
Proposed Initiative Amending Title 34, Idaho Code, to change Idaho's elections for U.S. House and Senate, State Offices, Legislative Offices, and County Offices.

Dear Secretary of State McGrane:

An initiative petition was filed on May 2, 2023, proposing to amend title 34 of the Idaho Code. Pursuant to Idaho Code § 34-1809, this office has reviewed the petition and prepared the following advisory comments. Given the strict statutory timeframe within which this office must review the petition, our review can only isolate areas of concern and cannot provide in-depth analysis of each legal or constitutional issue that may present problems. This letter therefore addresses only those matters of substance that are "deemed necessary and appropriate" to address at this time and does not address or catalogue all problems of substance or of form that the proposed initiative may pose under federal or Idaho law. Idaho Code § 34-1809(1)(a). Further, under the review statute, the Attorney General's recommendations are "advisory only," and the petitioners are free to "accept or reject them in whole or in part." *Id.* § 34-1809(1)(b). This office offers no opinion with regard to the policy issues raised by the proposed initiative or the potential revenue impact to the state budget from likely litigation over the initiative's validity.

SUMMARY OF PROPOSED INITIATIVE

The proposed initiative broadly addresses two distinct subjects in Idaho law: (I) the replacement of Idaho's current party primary system for most offices with what the proposed initiative calls an "open primary"; and (II) the institution of an "instant run-off," otherwise known as "ranked choice voting," for the general election. The initiative contains a severability clause in the event that any of its provisions are

declared unconstitutional and, if passed, would take effect January 1, 2026. Pet. §§ 41–42.

I. “Open Primary”

The proposed initiative would replace Idaho’s system of party primary elections with what it calls an “open primary.” *Id.* § 5. The new primary system would apply to elections for United States Senator, Member of the United States House of Representatives, and elective state, district and county offices. *Id.* § 14. The new system would consist of a single primary for all voters regardless of affiliation. *See id.* §§ 9–10.

Idaho’s current primary system allows each political party to nominate general election candidates by conducting a primary election in which the political party may limit participation to only those voters with particular party affiliations. Idaho Code § 34-404. The proposed initiative, by contrast, would create a single primary election where all voters, regardless of affiliation, narrow the field of eligible candidates for the general election. *See* Pet. §§ 10, 25. All candidates for a given office would appear on the same ballot and would be allowed to select any party affiliation, or nonpartisan or undeclared. Pet. § 16, Idaho Code § 34-704A(1). Each voter would be allowed to vote for a single candidate for each office whom they desire to advance to the general election. Pet. § 14.

Under the proposed initiative, the four top vote-earners for each office would advance to the general election ballot. *Id.* §§ 14, 26. The general election ballot would include each candidate’s stated party affiliation along with a disclaimer stating that a candidate’s indicated party affiliation does not represent an endorsement or nomination by that party. *Id.* § 26. Write-in candidates from the open primary could advance to the general election ballot only by meeting certain vote totals and filing a declaration of intent. *Id.* § 12–13.

The proposed initiative would abolish the process of parties nominating candidates for office. Under Idaho’s current election system, a primary candidate may declare an affiliation with any party, but on the general election ballot, a candidate may express that affiliation only if they have been nominated by that party in the primary. Idaho Code § 34-1214(1). The proposed initiative, in contrast, would permit candidates to express any party affiliation they wished, both in the “open primary” and, if they advanced, on the general election ballot. *See* Pet. §§ 5, 24. The general election ballot would state that the candidate’s listed affiliation was not an endorsement of that candidate by the party. *Id.* § 24.

The proposed initiative then makes a series of other changes to Idaho statutory law intended to implement the provisions described above. *Id.* §§ 12, 15–23. This includes other changes to repeal aspects of Idaho election law where political parties

have a role in the process, such as the ability to replace candidates for office on the primary and general election ballots. *Id.* §§ 22–23.

II. Instant Run-off General Election

The proposed initiative would also repeal Idaho statutes that prohibit instant runoff or ranked-choice voting. Idaho Code § 34-903B (effective 7/1/23). The proposed initiative would institute an “instant run-off” process for each covered elective office, Pet. § 6, provided that three or more candidates have advanced to the general election. *Id.* § 35, Idaho Code § 34-1218(2). While current Idaho law allows voters to vote for no more than one candidate for each office in the general election, the instant run-off system would require voters to rank all general election candidates in order of preference. Pet. § 6. The votes in this system would then be tabulated in rounds as follows:

- In each round, each ballot counts as a vote for its highest-ranked candidate still remaining in that round. Pet. § 35, Idaho Code § 34-1218(3).
- If in any round of voting, an active candidate has a majority of votes, that candidate is elected. *Id.*, Idaho Code § 34-1218(3)(a).
- In the first round, if no candidate has a majority and there are write-in candidates who have filed a declaration of intent but received fewer than 100 votes or fewer than any non-write-in candidate, then the votes for that candidate are transferred to the next-highest ranked active candidate on each ballot. *Id.*, Idaho Code § 34-1218(3)(b); *see also* Pet. § 12.
- In subsequent rounds, if no candidate has a majority, then the active candidate with the fewest votes is eliminated and the votes for that candidate are transferred to the next-highest ranked active candidate on each ballot. Pet. § 35, Idaho Code § 34-1218(3)(b).
- A ballot is inactive if it does not contain rankings for an active candidate or it contains an overvote—that is, two candidates with the same ranking—for its highest-ranked candidate. *Id.*, Idaho Code § 34-1218(4).
- Tie votes, both for candidate elimination and wins, are broken by lot. *Id.*, Idaho Code § 34-1218(5); Pet. § 34.

The proposed initiative also makes changes to determination of party vote share under article III, section 2, of the Idaho Constitution, which allows the two largest political parties to nominate members for the legislative redistricting commission. Under current law, party vote share is determined by the votes for party nominees in the general election. In contrast, under the proposed initiative, party vote share is determined by total votes in the first round for candidates who have indicated

an affiliation for that party, regardless of whether they have been nominated or supported by that party. Pet. § 35, § 34-1218(6). The proposed initiative makes related changes to the statute setting forth the methods for creating a political party. Pet. § 11.

The proposed initiative then makes a series of other changes to Idaho statutory law intended to implement the provisions above. See Pet. §§ 28–32, 36–40.

MATTERS OF STYLE AND FORM

This office has identified the following matters of style and form that may affect the validity of the proposed initiative.

I. Misleading Use of “Open Primary”

The use of the term “open primary” in the proposed initiative is misleading. “Open primary” is a term that refers to primaries that do not require voters to declare party affiliation to vote in a party’s primary contest to nominate a candidate for the general election. See *State Primary Election Types*, NAT’L CONF. OF STATE LEGISLATURES, <https://tinyurl.com/nhz8n5jm> (Updated Jan. 5, 2021). Under current law, Idaho is best characterized as having a “partially closed” primary because it allows parties to “let in unaffiliated voters, while still excluding members of opposing parties,” thus giving parties “more flexibility from year-to-year about which voters to include.” *Id.* The proposed initiative would not create an open primary system; it abolishes the system of party primaries for most offices. To avoid misleading voters, the proposed initiative should select terminology other than “open primary.” For example, courts have referred to similar systems as a “blanket primary,” which “is distinct from an ‘open primary.’” *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 445 n.1 (2008).

II. Inconsistent Treatment of Party Nomination/Endorsement

The proposed initiative contains inconsistent and potentially misleading language regarding whether candidates are nominees of a party. For example, the initiative requires the Secretary of State to issue “certificates of nomination” to candidates who advance from the “open primary” to the general election. Pet. § 33. This is problematic because the initiative states elsewhere that advancing to the general election does not reflect that a candidate has been nominated by the party that the candidate claims. *Id.* § 26. The proposed initiative also provides conditions for write-in candidates of political parties to appear on the general election ballot, *id.* § 12, yet at the same time it otherwise prohibits candidates for “open primary” offices from being the nominees of a political party. And the proposed initiative makes parties’ rights under Idaho law contingent on the general election performance of candidates who express

an affiliation with them, yet at the same time it abolishes the parties' ability to nominate candidates for any office.

III. Miscellaneous Matters

Sections 1 and 2 of the proposed initiative contain, respectively, the law's title and its findings and purposes, but as this office understands these sections, they will not be codified in the Idaho Code. Only sections 3 through 38 are in proper legislative format for showing new statutory provisions.

Sections 6 and 7 of the proposed initiative are identical and thus redundant of one another.

Sections 14, 15, and 19 of the initiative appear to prohibit independent candidates from appearing on any primary election ballot. Section 14 retains current law that independent candidates shall not be voted on at primary elections, which is problematic if party primaries no longer exist. And while section 15 requires independent candidates to file their declaration of candidacy pursuant to Idaho Code § 34-708, section 19 then repeals Idaho Code § 34-708. As a result, the initiative would prohibit independent candidates from running for United States Senate, United States House of Representatives, any state office, and any county office by having them declare their candidacy in the manner provided by a statute that does not exist, prohibiting them from participation in the blanket primary, and prohibiting them from appearing on the general election ballot.

Section 16 requires candidates for the blanket primary to file a declaration of candidacy no later than the tenth Friday preceding the primary election, per Idaho Code § 34-704. However, section 13 of the initiative allows write-in candidates to file their declaration of candidacy no later than the eighth Friday before the election, per Idaho Code § 34-702A. As a result, write-in candidates for the blanket primary are instructed that they may timely file a declaration of candidacy for two additional weeks, but if they file within that period of time they cannot be recognized as a candidate in the blanket primary. This conflict should be addressed.

Section 17 of the proposed initiative provides for political party candidates for county offices to file with the county clerk. This appears to conflict with section 26, which only allows candidates who advanced from the blanket primary to be included on the general election ballot.

Section 24 of the initiative provides for the printing of primary election ballots for party nominations for federal or statewide offices and provides that unopposed party candidates for party nomination advance to the general election ballot. This conflicts with section 26, which prohibits such candidates from being included on the general election ballot.

Section 25 states that electors who have designated a party affiliation may only vote in the primary election of their party but also contains a new provision that allows all electors to vote in the blanket primary. These clauses appear to be in conflict with each other.

Section 26 purports to limit the inclusion of party candidates on the general election ballot to party candidates for precinct committeeman. This could be construed to prohibit the inclusion of party candidates for President from appearing on the general election ballot in Idaho. It also would move precinct committeeman elections to the general election instead of the primary election where they currently occur. This would conflict with Idaho Code § 34-502 which requires that the new officers of county central committees be elected at a meeting held within 10 days after the primary election, and Idaho Code § 34-503, which requires the same of the legislative district committees within 11 days after the primary election. This portion of the initiative should be clarified.

Section 40 of the initiative is a general repeal of “[a]ll statutes inconsistent with the provisions of this act.” The general nature of this prevents voters from having fair notice of what the initiative might be repealing and would be difficult to make effective because different people may have a different understanding of whether something is inconsistent. In addition, this section purports to accomplish this reconciliation by requiring the codifiers correction bill to include a repeal of any such statute, but an initiative cannot require the Legislature to write or pass any particular bill.

MATTERS OF SUBSTANTIVE IMPORT

These problems of style and form give way to more serious legal defects. Broadly considered, the initiative conflicts with (I) statutory requirements for a ballot initiative; (II) state and federal constitutional dictates about elections for specific offices; (III) party rights of expression and association; and (IV) voter rights of expression and association.

I. The Proposed Initiative Violates Statutory Requirements.

Idaho statutory law imposes specific requirements for the submission of ballot initiatives. The proposed initiative fails to meet these in two critical respects.

A. The Proposed Initiative Violates the Single-Subject Rule.

The single-subject rule, adopted by the Legislature in 2020, provides that “[a]n initiative petition shall embrace only one (1) subject and matters properly connected with it.” Idaho Code § 34-1801A. This standard codifies for initiatives Idaho’s single-subject rule for constitutional amendments, Idaho Constitution article XX, section 2, and legislative acts, *id.* article III, section 16. That rule considers whether a proposed

change can “be divided into subjects distinct and independent, ... any one of which be adopted without in any way being controlled, modified or qualified by the other.” *Idaho Watersheds Project v. State Bd. Of Land Comm’rs*, 133 Idaho 55, 60, 982 P.2d 358, 363 (1999). This rule is intended to prevent initiatives from addressing multiple subjects at the same time and “forcing the voter to approve or reject such amendment as a whole.” *Id.* (citation omitted). Voters cannot be “required to either support both proposals or to reject both.” *Id.* Thus, the rule stops “the pernicious practice of ‘logrolling’ in the submission of a constitutional amendment.” *Id.* (citation omitted).

The proposed initiative plainly violates Idaho Code § 34-1801A. It addresses two distinct subjects: (1) the so-called “open primary” that eliminates party primaries; and (2) the institution of ranked choice voting for the general election. These two matters are separate subjects and neither one depends on the other. The presence of these two distinct subjects is also apparent from the “Findings and Intent” section of the initiative, which separately describes two different purposes for each of these two voting measures. Pet. § 2.

Idaho voters cannot be required to either adopt the “open primary” system and the ranked choice voting method of general election voting or to reject both of them. That is the very type of “logrolling” the Idaho Supreme Court has held violates the single subject requirement. *Idaho Watersheds Project*, 133 Idaho at 60.

B. The Proposed Initiative Cannot Provide Its Own Ballot Title.

To the extent the proposed initiative attempts to provide its own ballot title, it violates Idaho statutory law. Idaho law makes it the duty of the Attorney General to provide a ballot title that gives a “true and impartial statement of the purpose of the measure and in such language that the ballot title shall not be intentionally an argument or likely to create prejudice either for or against the measure.” Idaho Code § 34-1809(2)I. That consists of a “[d]istinctive short title not exceeding twenty (20) words by which the measure is commonly referred to or spoken of” and “[a] general title expressing in not more than two hundred (200) words the purpose of the measure.” *Id.* § 34-1809(2)(d)(i)–(ii). Here, however, the proposed initiative provides both its own short and general titles, describing itself as “The Idaho Open Primaries Act” and making detailed descriptions of the purported “findings and intent” for the law. Pet. §§ 1–2. As noted above, these sections would not be enacted in Idaho Code as part of the law itself. And rather than being written as “true and impartial” descriptions of what the law accomplishes, the descriptions contain misleading phrases such as “open primary” that, for the reasons noted above, are likely to confuse voters about what the proposed initiative would do. Unlike a statutory enactment approved by the legislature, a proposed ballot initiative is not the product of legislative give-and-take, inclusive of amendments, nor is it tested against expert testimony. As such, it’s inappropriate for the proposed initiative to assert “findings and intent” for the law.

II. Both Constitutions Impose Election Requirements for Certain Offices.

A. State Constitution Sets Vote Thresholds for State Executives.

The proposed initiative's application of ranked choice voting for state executive office violates the Idaho Constitution. The Idaho Constitution provides that for the statewide executive branch offices, the candidate "having the highest number of votes for the office voted for shall be elected." IDAHO CONST. art. IV, § 2. This means that a majority of the votes cast is not necessary; instead, whoever gets the most votes wins. In contrast, the proposed initiative sets the threshold to win election to any office at a majority of the remaining vote through a sequential tabulation process. The proposed initiative states that if no candidate receives a majority of the votes upon the count of the vote in the election, the election goes to a series of what it calls "instant runoff elections," but which are really subsequent rounds tabulating lower-ranked votes cast on general election ballots. The candidate with the fewest votes is eliminated in each round until one candidate has received a majority of ranked votes.

Other state supreme courts have addressed whether procedures like this run afoul of similar state constitutional provisions setting vote thresholds at less than a majority. The Supreme Court of Maine unanimously held that this method of voting violated a state constitutional provision stating that candidates for governor or the legislature win election if they receive more votes than their opponents for the race. *Opinion of the Justices*, 162 A.3d 188 (Me. 2017). "[W]hen a statute—including one enacted by citizen initiative—conflicts with a constitutional provision, the Constitution prevails." *Id.* At 198. Ranked choice voting "prevents the recognition of the winning candidate when the first plurality is identified," but the state constitution required "a candidate who receives a plurality of the votes would be declared the winner in that election." *Id.* At 211. Because the instant runoff method "would not declare the plurality candidate the winner of the election but would require continued tabulation until a majority is achieved or all votes are exhausted," it was "in direct conflict with the Constitution." *Id.*

In contrast, the Alaska Supreme Court upheld the state's ranked-choice election system as consistent with a similar provision of the Alaska Constitution. *Kohlhaas v. State*, 518 P.3d 1095 (Alaska 2022). It concluded that the system was in fact a single election in which the vote count was complete only when all rounds of counting and elimination of candidates had concluded. *Id.* at 1120. It rejected the reasoning of the Maine Supreme Court that "each round of vote *tabulation* is a separate round of *voting*" and thus "that the system is akin to a series of runoff elections." *Id.* at 1121.

This office believes that the opinion of the Maine Supreme Court better accords with principles of interpretation as they relate to the Idaho Constitution and the proposed initiative. The proposed initiative's clear emphasis is on obtaining majority

support to elect a candidate, even though the Idaho Constitution nowhere states that a majority is required. *See* Pet. §§ 2, 35. As the Maine Supreme Court explained, the constitution requires that a candidate who wins a plurality be elected, yet the system set out in the proposed initiative demands further rounds of vote counting and sets a threshold far exceeding a plurality.

This office disagrees with the Alaska Supreme Court's explanation that ranked choice voting constitutes a single round of voting that "is not complete until the final round of tabulation." *Kohlhaas*, 518 P.3d at 1121. Under the system proposed here, lower-ranked candidate choices on ballots will never be considered, much less tabulated, if a candidate attains a majority in an earlier round. And the final round of tabulation is deemed "final" only because a candidate has attained a majority of ranked votes cast: a different standard than that required by the Idaho Constitution.

A related problem arises for the method for breaking ties in the proposed initiative. Unlike both Maine and Alaska, article IV, section 2 of the Idaho Constitution provides that in the event of a tie in the election for statewide executive branch officials, the election result is determined by vote of the Legislature. The instant runoff election system violates this provision by stating that ties will be broken by proceeding to another round of eliminating the candidate with the least votes and counting the lower choices of those whose candidate is eliminated.¹ Thus, this aspect of the instant runoff election system also violates the Idaho Constitution as applied to statewide executive branch officials.

B. U.S. Constitution Commits Congressional Elections to Legislature.

The proposed initiative likely violates the Federal Constitution with respect to the election of United States Senators and Representatives. The United States Constitution states that "[t]he times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each state by the legislature thereof." U.S. CONST. art. I, § 4 (the "Elections Clause"). Because the U.S. Constitution commits the manner for electing Senators and Representatives to state legislators, there are substantial questions surrounding whether it can lawfully be changed via the initiative process. The U.S. Supreme Court in *Arizona State Legislature v. Arizona Independent Redistricting Commission*, 576 U.S. 787 (2015), upheld a redistricting commission that operated independent of the legislature, while four dissenting justices held that this was contrary to the history and plain language of the constitution.

¹ The proposed initiative also states that, if there is still a tie after all rounds are completed, then the tie is broken by a coin toss by the Secretary of State, which is the same method provided for breaking ties in Idaho statutory law. *See* Pet. § 34, Idaho Code § 34-1216. For the reasons above, this office believes that this coin toss provision—both in the proposed initiative and in current law—is plainly unconstitutional for state executive officers under article IV, section 2 of the Idaho Constitution.

Id. at 824 (Roberts, C.J., dissenting). More recently, however, the Supreme Court granted certiorari and has heard oral argument in *Moore v. Harper*, 142 S. Ct. 2901 (2022), which may revisit aspects of *Arizona State Legislature*. *Moore* concerns whether the Elections Clause prohibits a state supreme court from construing the state constitution contrary to the will of the legislature with respect to congressional elections. Thus, if the U.S. Supreme Court revisits its holding in *Arizona State Legislature*, it may prevent the proposed initiative from changing the legislature's prescribed manner for electing Senators and Representatives.

III. The Proposed Initiative May Violate the Rights of Parties.

By abolishing the party primary system for most offices, the proposed initiative may violate state and federal constitutional provisions that protect the expression, association, and political rights of political parties. The party primary system, adopted in Idaho and most other U.S. jurisdictions, was instituted to make political parties accountable to their members. Under the prior system, party bosses made the decision about which candidates would run in the general election. See *Political Primaries: How Are Candidates Nominated?*, LIBRARY OF CONGRESS, <https://tiinyurl.com/mrxbehyc> (last visited May 30, 2023). Primaries were adopted so that members of recognized parties could vote on the candidates that they wished to represent their interests in the general election. *Id.* By going through that process, a party creates a formal association with a candidate that the party presents as its nominee for a given office. See *Cal. Democratic Party v. Jones*, 530 U.S. 567, 573 (2000).

The ability of a political party to nominate a candidate for public office is a powerful right of speech and association in the democratic process. The U.S. Supreme Court has “continually stressed that when States regulate parties’ internal processes they must act within limits imposed by the Constitution.” *Id.* “Representative democracy” in our country requires that citizens be able “to band together in promoting among the electorate candidates who espouse their political views,” which is a right “that the First Amendment protects.” *Id.* at 574. That “necessarily presupposes the freedom to identify the people who constitute the association, and to limit the association to those people only,” that is, the right not to associate just as much as the right to associate. *Id.* (citation omitted). “Freedom of association would prove an empty guarantee if associations could not limit control over their decisions to those who share the interests and persuasions that underlie the association’s being.” *Id.* at 574–75 (citation omitted).

There is “no area” of a political party’s association right to exclude that is “more important than ... the process of selecting its nominee.” *Id.* at 575. Thus, the U.S. Supreme Court has “vigorously affirm[ed] the special place the First Amendment reserves for, and the special protection it accords, the process by which a political party selects a standard bearer who best represents the party’s ideologies and preferences.”

Id. (citation omitted). In doing so, it has overturned a California law that created a single primary in which voters could vote for non-party members to select party nominees, *see id.*, but it upheld against a facial challenge a Washington law that created a single primary but did not make any candidate the nominee of the party. *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442 (2008).

The proposed initiative alters the rights of political parties granted by the Idaho Constitution. Significantly, the Idaho State Constitution accords political parties rights that do not exist in every state constitution. For example, Idaho has made the expressive rights of parties fundamental to its constitution by according the two largest parties rights to select members of the redistricting commission. Specifically, “[t]he leaders of the two largest political parties of each house of the legislature” are each entitled to designate one member of the redistricting commission, as are “the state chairmen of the two largest political parties, determined by the vote cast for governor in the last gubernatorial election.” IDAHO CONST. art. III, § 2.

By removing the ability of the parties to nominate a candidate through the primary process, the constitutionally granted right of parties to designate members of the redistricting commission is impaired, if not entirely voided. Pet. §§ 2(1), 5. No analogous constitutional provision was addressed in *Washington State Grange*. Unlike in *Washington State Grange*, the issue with the proposed initiative is not simply the removal of the party primary nomination process. Instead, the proposed initiative also circumscribes the right of political parties to participate in redistricting in the form and manner laid out in the Idaho State Constitution. If this change does not significantly impair the right, it will certainly dilute it.

IV. The Proposed Initiative Violates Rights of Voters.

The proposed initiative also violates voters’ rights of suffrage under the Idaho Constitution, which states that “[n]o power, civil or military, shall at any time interfere with or prevent the free and lawful exercise of the right of suffrage.” IDAHO CONST. art. 1, § 19. In an ordinary election, a voter may vote for one of the candidates on the ballot, a write-in candidate, or no candidate at all. But the proposed initiative interferes with suffrage by requiring voters to vote for all candidates on the ballot. It does so through its instruction prohibiting the voter from, among other things, skipping a ranking of candidates, Pet. § 26, and its requirement that the voter “shall” mark his ballot to indicate the specific ranking order the voter wishes to assign to each candidate. *Id.* § 27. Taken separately or together, these provisions require voters to rank every candidate in the election and thus to cast ballots in favor of candidates they may not support. And these “shall” provisions are not without teeth: the potential consequence of failing to rank a candidate is to have one’s ballot not considered in successive rounds of the tabulation procedure. Pet. § 35, Idaho Code § 34-1218(4).

Idaho caselaw suggests this constitutes direct interference with the right to vote only for candidates the voter supports. In *Van Valkenburgh v. Citizens for Term Limits*, 135 Idaho 121, 127–28, 15 P.3d 1129, 1135–36 (2000), the Idaho Supreme Court struck down a statute that provided for the inclusion of a statement regarding the candidates making of a term limits pledge as interfering with the right to vote. The court reasoned that including this information on the ballot was equivalent to having a state official in the voting booth telling the voter what was important to consider in voting. If that indication on the ballot interfered with the right to vote, then instructing the voter to cast ranked votes for every candidate on their ballot represents a much greater interference with the right to vote.

These requirements of ranked choice voting not only violate the prohibition of interfering with suffrage, but also likely violate constitutional protections for free speech by compelling citizens to confess by act their faith in candidates they do not support. See *Janus*, 138 S. Ct. at 2463. “As Justice Jackson memorably put it: ‘If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.’” *Id.* (citing *W. Va. Bd. of Ed. v. Barnette*, 319 U.S. 624, 642 (1943)). The proposed initiative thus unlawfully compels speech from voters in connection with casting their ballots.

CERTIFICATION

I HEREBY CERTIFY that the enclosed measure has been reviewed for form, style, and matters of substantive import. The recommendations set forth above have been communicated to the Petitioner via copy of this Certificate of Review, deposited in the U.S. Mail to Ashley Prince, 1424 S. Loveland Street, Boise, ID 83705.

Sincerely,



RAÚL R. LABRADOR
Attorney General

Analysis by:

Lincoln Davis Wilson
Chief, Civil Litigation and
Constitutional Defense

James E. “Jim” Rice
Deputy Attorney General



15 June 2023

To the Honorable Phil McGrane, Secretary of State of the State of Idaho:

Following the review of our initiative petition by the office of the Idaho Attorney General, we are now filing a modified version of our initiative petition for assignment of long and short ballot titles.

Regarding the assignment of ballot titles, we would like to submit the following for consideration by the office of the Attorney General:

The Attorney General's Certificate of Review suggested the term "blanket primary" as an appropriate term to describe our proposed primary system. However, "blanket primary" is a technical term that has been recognized by state and federal courts to describe a different system than the system proposed by our initiative. Unlike the system we're proposing, which advances the top four candidates who win the highest number of votes regardless of party, blanket primaries advance nominees of parties. See *California Democratic Party v. Jones* (2000). With this in mind, a ballot title for our proposed initiative that contains the term "blanket primary" would not accurately express the purpose of the measure and would not survive a legal challenge. We suggest "top four primary" or "top four open primary" as alternatives.

Sincerely,

Ashley Prince

info@openprimariesid.org
208-971-3000

1424 S Loveland St
Boise, ID 83705

WARNING

It is a felony for anyone to sign any initiative or referendum petition with any name other than his own, or to knowingly sign his name more than once for the measure, or to sign such petition when he is not a qualified elector.

INITIATIVE PETITION

To the Honorable Phil McGrane, Secretary of State of the State of Idaho:

“We the undersigned citizens and qualified electors of the State of Idaho, respectfully demand the following proposed law, effective January 1, 2025 to wit:

Be It Enacted by the People of the State of Idaho:

SECTION 1. That Section 34-103, Idaho Code, be, and the same is hereby amended to read as follows:

34-103. "SPECIAL ELECTION" DEFINED. "Special election" means any election other than a general, or primary, or top four primary election held at any time for any purpose provided by law.

SECTION 2. That Section 34-113, Idaho Code, be, and the same is hereby amended to read as follows:

34-113. "CANDIDATE" DEFINED. "Candidate" means and includes every person for whom it is contemplated or desired that votes be cast at any political convention, primary, top four primary, general or special election, and who either tacitly or expressly consents to be so considered, except candidates for president and vice-president of the United States.

SECTION 3. That Chapter 1, Title 34, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 34-118, Idaho Code, and to read as follows:

34-118. "TOP FOUR PRIMARY ELECTION" DEFINED. "Top four primary election" means an election, other than a judicial nominating election, held for the purpose of determining the candidates who will appear on the general election ballot. In top four primary elections, all candidates will appear on the same ballot regardless of party affiliation, and all qualified electors may participate regardless of party affiliation. Top four primary elections do not determine any party's nominee and candidates who advance from a top four primary election to a general election are not considered nominees of any political party. Top four primary elections shall be held on the same day as primary elections.

SECTION 4. That Chapter 1, Title 34, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 34-119, Idaho Code, and to read as follows:

34-119. "INSTANT RUNOFF VOTING" DEFINED. "Instant runoff voting" means the method of casting and tabulating votes described in section 34-1218, Idaho Code, in which voters may rank candidates by order of preference, each ballot counts as a single vote for its highest-ranked active candidate, and votes are tabulated in rounds, with the candidate receiving the fewest votes eliminated and votes for that candidate transferring to each ballot's next-highest ranked active candidate until tabulation is complete and the candidate receiving the highest number of votes wins.

SECTION 5. That Chapter 1, Title 34, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 34-120, Idaho Code, and to read as follows:

34-120. "COUNTY ELECTIVE OFFICE" DEFINED. "County elective office" means county commissioner, sheriff, prosecuting attorney, coroner, clerk, assessor, and treasurer.

SECTION 6. That Chapter 1, Title 34, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 34-121, Idaho Code, and to read as follows:

34-121. "ELECTIVE STATE OFFICE" DEFINED. "Elective state office" means governor, lieutenant governor, secretary of state, state controller, state treasurer, attorney general, and superintendent of public instruction.

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SECTION 7. That Section 34-404, Idaho Code, be, and the same is hereby amended to read as follows:

34-404. REGISTRATION OF ELECTORS. (1) All electors must register before being able to vote at any primary, top four primary, general, special, school or any other election governed by the provisions of title 34, Idaho Code. Registration of a qualified person occurs when a legible, accurate and complete registration application is received in the office of the county clerk or is received at the polls pursuant to section 34-408A, Idaho Code.

(2) Each elector may select on the registration application an affiliation with a political party qualified to participate in elections pursuant to section 34-501, Idaho Code, or may select to be designated as "unaffiliated." The county clerk shall record the party affiliation or "unaffiliated" designation so selected as part of the elector's registration record. If an elector shall fail or refuse to make such a selection, the county clerk shall enter on the registration records that such elector is "unaffiliated."

(3) In order to provide an elector with the appropriate primary election ballot, pursuant to section 34-904A, Idaho Code, the poll book for primary elections shall include the party affiliation or designation as unaffiliated for each elector so registered. An unaffiliated elector shall declare to the poll worker which primary election ballot the elector chooses to vote in, pursuant to section 34-904A, Idaho Code, and the poll worker or other authorized election personnel shall record such declaration in the poll book. The poll book shall contain checkoff boxes to allow the poll worker or other authorized election personnel to record such unaffiliated elector's selection. An elector does not need to be affiliated with a party or make any declaration about party affiliation in order to receive a top four primary ballot.

(4) In order to provide electors who are already registered to vote, and who remain registered electors, with an opportunity to select a party affiliation or to select their status as "unaffiliated" the poll book for the 2012 primary election shall include checkoff boxes by which the poll worker or other appropriate election personnel shall record such elector's choice of party affiliation or choice to be designated as "unaffiliated." After the 2012 primary election, the county clerk shall record the party affiliation or "unaffiliated" designation so selected in the poll book as part of such an elector's record within the voter registration system as provided for in section 34-437A, Idaho Code.

(5) After the 2012 primary election, electors who remain registered voters and who did not vote in the 2012 primary election or who have not selected party affiliation or who have not selected to be designated as "unaffiliated," shall be designated as "unaffiliated" and the county clerk shall record that designation for each such elector within the voter registration system as provided for in section 34-437A, Idaho Code.

SECTION 8. That Section 34-411A, Idaho Code, be, and the same is hereby amended to read as follows:

34-411A. PRIMARY AND TOP FOUR PRIMARY ELECTIONS — CHANGING PARTY AFFILIATION — UNAFFILIATED ELECTORS. (1) For a primary election, an elector may change such elector's political party affiliation or become "unaffiliated" by filing a signed form with the county clerk no later than the last day a candidate may file for partisan political office prior to such primary election, as provided for in section 34-704, Idaho Code. An "unaffiliated" elector may affiliate with the party of the elector's choice by filing a signed form up to and including election day. The application form described in section 34-1002, Idaho Code, shall also be used for this purpose.

(2) For a primary election, an "unaffiliated" elector may select a political party affiliation only prior to voting in the primary election. An elector may make such selection on or before election day, by declaring such political party affiliation to the poll worker or other appropriate election personnel. The poll worker or other appropriate election personnel shall then record in the poll book the elector's choice. After the primary election, the county clerk shall record the party affiliation so recorded in the poll book as part of such elector's record within the voter registration system as provided for in section 34-437A, Idaho Code.

(3) For a top four primary election, an elector does not need to be affiliated with a political party in order to vote.

SECTION 9. That Section 34-501, Idaho Code, be, and the same is hereby amended to read as follows:

34-501. "POLITICAL PARTY" DEFINED -- PROCEDURES FOR CREATION OF A POLITICAL PARTY. (1) A "political party" within the meaning of this act, is an organization of electors under a given name. A political party shall be deemed created and qualified to participate in elections in any of the following three (3) ways:

(a) By having three (3) or more candidates for state or national office listed under the party name or indicating affiliation with that party pursuant to section 34-704A, Idaho Code, at the last general election, provided that those individuals seeking the office of president, vice president and president elector shall be considered one candidate, or

(b) By polling at the last general election for any one of its candidates for state or national office at least three per cent (3%) of the aggregate vote cast for ~~governor or~~ for presidential electors or at least three percent (3%) of the aggregate of votes cast for all candidates indicating their affiliation with that party pursuant to section 34-704A, Idaho Code, in any round of tabulation in a general election for governor.

(c) By an affiliation of electors who shall have signed a petition which shall:

- (A) State the name of the proposed party in not more than six (6) words;
- (B) State that the subscribers thereto desire to place the proposed party on the ballot;
- (C) Have attached thereto a sheet or sheets containing the signatures of at least a number of qualified electors equal to two per cent (2%) of the aggregate vote cast for presidential electors in the state at the previous general election at which presidential electors were chosen;
- (D) Be filed with the secretary of state on or before August 30 of even numbered years;
- (E) The format of the signature petition sheets shall be prescribed by the secretary of state and shall be patterned after, but not limited to, such sheets as used for state initiative and referendum measures;
- (F) The petitions and signatures so submitted shall be verified in the manner prescribed in section 34-1807, Idaho Code.
- (G) The petition shall be circulated no earlier than August 30 of the year preceding the general election.

(2) Upon certification by the secretary of state that the petition has met the requirements of this act such party shall, under the party name chosen, have all the rights of a political party whose ticket shall have been on the ballot at the preceding general election.

(3) The newly certified party shall proceed to hold a state convention in the manner provided by law; provided, that at the initial convention of any such political party, all members of the party shall be entitled to attend the convention and participate in the election of officers and the nominations of candidates. Thereafter the conduct of any subsequent convention shall be as provided by law.

SECTION 10. That Section 34-702, Idaho Code, be, and the same is hereby amended to read as follows:

34-702. REQUIREMENTS FOR WRITE-IN CANDIDATES AT TOP FOUR PRIMARY AND PRIMARY. (1) In addition to possessing all other qualifications, in order to become a candidate of ~~a political party~~ at the general election, those candidates whose names are written in at the a top four primary election must:

(a) Receive at least the following number of write-in votes at the primary election:

- (i) One thousand (1,000) for any statewide office;
- (ii) Five hundred (500) for a congressional district office;
- (iii) Fifty (50) for a legislative district office; or
- (iv) Five (5) for a county office; and

(b) File a declaration of intent for that office, pursuant to section 34-702A, Idaho Code.

(2) Any write-in candidate at a top four primary who does not meet the requirements of subsection (1) of this section is not eligible to advance to the general election and shall not be included in the top four (4) candidates regardless of the number of votes received by that candidate.

~~(2)~~ (3) Candidates who are required to file with the secretary of state shall pay the filing fee required for that office no later than the deadline for filing a declaration of intent pursuant to section 34-702A, Idaho Code, or shall file a petition pursuant to section 34-626, Idaho Code.

~~(3)~~ (4) No write-ins shall be allowed for judicial office.

SECTION 11. That Section 34-702A, Idaho Code, be, and the same is hereby amended to read as follows:

34-702A. DECLARATION OF INTENT FOR WRITE-IN CANDIDATES. (1) No write-in vote for any office in a primary, top four primary, special, or general election shall be counted unless a completed declaration of intent form has been filed indicating that the person desires the office and is legally qualified to assume the duties of said office if elected. The declaration of intent shall be filed with the secretary of state if for a federal, state, or legislative district office and with the county clerk if for a county or party precinct committeeman office. Such declaration of intent shall be filed no later than the eighth Friday before the day of election. For a write-in candidate for president, the declaration shall include a certification of the write-in candidate's vice presidential and presidential electors, all of whom must be qualified to serve in their respective offices. The secretary of state shall prescribe the form for said declarations.

(2) In those counties that utilize optical scan ballots, an elector shall not place on the ballot a sticker bearing the name of a person or use any other method or device, except writing, to vote for a person whose name is not printed on the ballot.

(3) In general elections conducted by instant runoff voting, a write-in candidate who has not submitted a declaration of intent pursuant to this section is not considered an active candidate and a ranking containing such a write-in candidate shall be treated in the same manner as a ranking containing an eliminated candidate for the purposes of tabulation.

SECTION 12. That Section 34-703, Idaho Code, be, and the same is hereby amended to read as follows:

34-703. NOMINATION AT PRIMARY OR TOP FOUR PRIMARY. (1) All political party candidates for United States senator and representative in congress, and all political party candidates for elective state, district and county offices, except candidates for judicial office, at general elections shall be nominated at the primary elections, or shall have their names placed on the general election ballot as provided by law, and shall comply with the provisions of this act.

~~(2)~~(1) All candidates for judicial office shall be nominated or elected at the primary election, as provided by section 34-1217, Idaho Code.

~~(3)~~ Independent candidates shall not be voted on at primary elections.

~~(3)~~(2) All candidates for United States senate, United States house of representatives, state legislature, elective state office or county elective office at general elections must advance from a top four primary election or have their names placed on a general election ballot as otherwise provided by law. Top four primary elections shall comply with the following provisions:

(a) All candidates participating in a top four primary election shall appear on the same ballot, regardless of party affiliation.

(b) Each qualified elector, regardless of party affiliation, may vote for one (1) candidate.

(c) Subject to the provisions of section 34-702(1), Idaho Code:

(i) The four (4) candidates who receive the most votes shall advance to the general election and appear on the general election ballot.

(ii) If fewer than four (4) candidates receive votes, all candidates receiving votes shall advance to the general election and appear on the general election ballot.

(iii) If it cannot be determined which four (4) candidates received the most votes because two (2) or more candidates are tied with an equal number of votes, that tie shall be broken pursuant to the provisions of section 34-1216, Idaho Code.

SECTION 13. That Section 34-704, Idaho Code, be, and the same is hereby amended to read as follows:

34-704. DECLARATION OF CANDIDACY. (1) Any person legally qualified to hold such office is entitled to become a candidate and file his declaration of candidacy. Each political party candidate for precinct, state, district or county office shall file his declaration of candidacy in the proper office between 8:00 a.m. on the twelfth Monday preceding the primary election and 5:00 p.m. on the tenth Friday preceding the primary election. All political party candidates shall declare their party affiliation in their declaration of candidacy and shall be affiliated with a party at the time of filing. A candidate shall be deemed affiliated with the political party if the candidate submits a party affiliation form along with the declaration of candidacy to the filing official. The filing official shall reject any declaration of candidacy for partisan office in a primary election from candidates who are not affiliated with a political party. Candidates for nonpartisan office and for United States senate, United States house of representatives, state legislature, or any elective state office or county elective office shall file during the period provided for in this section.

(2) Candidates who file a declaration of candidacy under a party name and are not nominated at the primary election shall not be allowed to appear on the general election ballot under any other political party name, nor as an independent candidate.

(3) Candidates for United States senate, United States house of representatives, state legislature, or any elective state office or county elective office shall file their declarations of candidacy in the manner provided in section 34-704A, Idaho Code. Independent candidates shall file their declaration of candidacy in the manner provided in section 34-708, Idaho Code.

(4) All information in declarations of candidacy shall be made publicly available upon request.

SECTION 14. That Chapter 7, Title 34, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 34-704A, Idaho Code, and to read as follows:

34-704A. DECLARATION OF CANDIDACY FOR TOP FOUR PRIMARY ELECTIONS. (1) Any person who desires to offer themselves as a candidate for United States senate, United States house of representatives, state legislature, or any elective state office or county elective office may do so by complying strictly with the provisions of this section. In

order to be recognized as a candidate in a top four primary election, each such candidate must file with the proper officer as provided in section 34-705, Idaho Code, a declaration of candidacy, during the period specified in section 34-704, Idaho Code. Such declaration must declare the office for which the candidate seeks election, the political party with which the candidate is registered as affiliated, or whether the candidate prefers a nonpartisan or undeclared designation placed after the candidate's name on the ballot. Each such candidate who files a declaration of candidacy shall at the same time pay a filing fee, or a petition containing signatures in lieu of a filing fee, pursuant to the provisions of Chapter 6, Title 34, Idaho Code.

(2) If all of the requirements of this section have been met, the proper officer shall cause the name of each candidate who has qualified to be placed on the top four primary ballot, according to the instructions of the secretary of state.

SECTION 15. That Section 34-705, Idaho Code, be, and the same is hereby amended to read as follows:

34-705. WITH WHOM DECLARATIONS FILED. (1) All candidates for county offices, ~~whether political party candidates or independent candidates,~~ and all political party candidates for precinct offices shall file their declarations of candidacy with the county clerk of their respective counties. All candidates for district, state and federal offices shall file their declarations of candidacy with the secretary of state.

(2) The secretary of state shall certify to the county clerks, within ten (10) days after the filing deadline, the names of the ~~political party~~ candidates who filed for federal, state and district offices and are qualified for placement on the ballot.

(3) The secretary of state shall certify the name of a candidate being appointed by the appropriate central committee pursuant to section ~~34-714~~, Idaho Code, by no later than the next business day after the appointment is received in the secretary of state's office, if received after the certification of candidates to the county clerks under subsection (2) of this section.

SECTION 16. That Section 34-706, Idaho Code, be, and the same is hereby amended to read as follows:

34-706. NOTIFICATION TO PARTIES. Within three ~~(3)~~ days after the deadline for filing declarations of political party candidacy the county clerk shall notify the county central committee of each political party of the candidates who have filed for ~~county and~~ precinct offices under the party name and are qualified.

~~Within three (3) days after the deadline for filing declarations of political party candidacy the secretary of state shall notify the legislative district central committee of each political party of the legislative candidates who have filed under the party name and are qualified.~~

~~Within three (3) days after the deadline for filing declarations of political party candidacy the secretary of state shall notify the state central committee of each political party of the candidates who have filed for federal and state offices under the party name and are qualified.~~

SECTION 17. That Section 34-708, Idaho Code, be, and the same is hereby amended to read as follows:

34-708. INDEPENDENT CANDIDATES. ~~(1)~~ No person may offer himself as an independent candidate for precinct committeemen at the primary election.

~~(2) Any person who desires to offer himself as an independent candidate for federal, state, district, or county office may do so by complying strictly with the provisions of this section. In order to be recognized as an independent candidate, each such candidate must file with the proper officer as provided by section 34-705, Idaho Code, a declaration of candidacy as an independent candidate, during the period specified in section 34-704, Idaho Code. Such declaration must state that he is offering himself as an independent candidate, must declare that he has no political party affiliation, and must declare the office for which he seeks election. Each such declaration must be accompanied by a petition containing the following number of signatures of qualified electors:~~

- ~~(a) One thousand (1,000) for any statewide office;~~
- ~~(b) Five hundred (500) for any congressional district office;~~
- ~~(c) Fifty (50) for any legislative district office;~~
- ~~(d) Five (5) for any county office.~~

~~(3) Signatures on the petitions required in this section shall be verified in the manner prescribed in section 34-1807, Idaho Code, on a form similar to that used for recall petitions under chapter 17, title 34, Idaho Code, as prescribed by the secretary of state.~~

~~(4) If all of the requirements of this section have been met, the proper officer shall cause the name of each independent candidate who has qualified to be placed on the general election ballot, according to instructions of the secretary of state.~~

SECTION 18. That Section 34-712, Idaho Code, be, and the same is hereby amended to read as follows:

34-712. SAMPLE FORM FOR PRIMARY AND TOP FOUR PRIMARY ELECTION BALLOTS. (1) The secretary of state shall provide the sample form of the primary and top four primary election ballot to each of the county clerks no later than forty (40) days prior to the primary.

(2) The primary election sample ballot shall contain the proper political party candidates to be voted upon within the county whose declarations were filed and certified in the office of the secretary of state with instructions for the placing of political party candidates seeking the political party nomination for ~~county and precinct~~ offices.

(3) The top four primary election sample ballots shall contain the proper candidates for top four primary elections whose declarations were filed and certified in the office of the secretary of state with instructions for the placing of the candidates.

(4) If a county is within more than one (1) legislative district, the secretary of state shall provide a sample ballot for each legislative district which includes part of the county.

SECTION 19. That Section 34-713, Idaho Code, be, and the same is hereby amended to read as follows:

34-713. PREPARATION OF PRIMARY AND TOP FOUR PRIMARY BALLOTS. (1) Upon receipt of the sample ballot and instructions from the secretary of state, each county clerk shall print and prepare the official primary and top four primary ballots for the forthcoming election. The printing of the ballots shall be a county expense and paid out of the county treasury.

(2) Each county clerk shall cause to be published on the earliest date possible in May the names of all the political party candidates who shall appear on the primary ballot and all candidates who shall appear on the top four primary ballot. The names shall be listed alphabetically under each particular office title.

SECTION 20. That Section 34-714, Idaho Code, be, and the same is hereby amended to read as follows:

34-714. FILLING VACANCIES IN SLATE OF POLITICAL PARTY CANDIDATES OCCURRING PRIOR TO PRIMARY ELECTION. (1)(a) Vacancies that occur before the primary election in the slate of candidates of any political party because of the death, disqualification for any reason, or withdrawal from the nomination process by the candidate, shall be filled in the following manner by the county central committee if the vacancy occurs for the office of precinct committeeman if only one (1) candidate declared for that particular office:

~~(a) By the county central committee if the vacancy occurs for the office of precinct committeeman or for a county office.~~

~~(b) By the legislative district central committee if the vacancy occurs for the office of state representative or state senator.~~

~~(c) By the state central committee if the vacancy occurs for a federal or state office.~~

~~(b) The county and legislative district central committee shall fill the vacancy within fifteen (15) days from the date the vacancy occurred. The state central committee shall fill the vacancy within thirty (30) days from the date the vacancy occurred.~~

~~(c) Any political party candidate so appointed by the proper central committee must, in order to have his name on the primary ballot, file a declaration of candidacy and pay the required filing fee.~~

(2) No central committee shall fill any vacancy which occurs within ten (10) days prior to the primary election. Vacancies which occur during this ten (10) day period because of the death, disqualification for any reason, or withdrawal from the nomination process by the candidate shall be filled according to the provisions of section 34-715, Idaho Code.

(3) Vacancies that occur in a slate of candidates for precinct committeeman within ten (10) days prior to the primary election shall not be filled.

SECTION 21. That Section 34-715, Idaho Code, be, and the same is hereby amended to read as follows:

34-715. FILLING OF VACANCIES OCCURRING BEFORE OR AFTER PRIMARY ELECTION OR AFTER TOP FOUR PRIMARY ELECTION. Vacancies that occur during the ten (10) day period before a primary election, or after the primary election but at least ten (10) days before the general election in the slate of candidates of any political party, except candidates for precinct committeeman, shall be filled in the following manner:

~~(1) By the county central committee if it is a vacancy by a candidate for a county office.~~

(2) By the legislative district central committee if it is a vacancy by a candidate for the state legislature.

(3) By the state central committee if it is a vacancy by a candidate for a federal or a state office.

The county and legislative district central committee shall fill the vacancy within fifteen (15) days from the date the vacancy occurred. The state central committee shall fill the vacancy within thirty (30) days from the date the vacancy occurred.

Any political party candidate so appointed by the proper central committee must, in order to have his name on the general ballot, file a declaration of candidacy and pay the required filing fee.

(1) Vacancies that occur in a slate of candidates for precinct committeeman within ten (10) days prior to the primary election shall not be filled.

(2) Vacancies in races for United States senate or United States house of representatives, state legislature, or any elective state office or county elective office that occur after the top four primary election but at least ten (10) days before the general election shall be filled by advancing the candidate, if any, who received the most votes in the top four primary but did not qualify to advance to the general election pursuant to the provisions of section 34-703(2)(c), Idaho Code.

(3) If it cannot be determined which candidate received the most votes because two (2) or more candidates are tied with an equal number of votes, that tie shall be broken in a manner similar to the provisions of section 34-1216, Idaho Code at a time determined by the secretary of state.

SECTION 22. That Section 34-904, Idaho Code, be, and the same is hereby amended to read as follows:

34-904. PRIMARY AND TOP FOUR PRIMARY ELECTION BALLOTS. (1) There shall be a separate primary election ballot for each political party upon which its ticket shall be printed; however, a county may use a separate ballot for the office of precinct committeeman. All candidates who have filed their declarations of candidacy and are subsequently certified shall be listed under the proper office titles on their political party ticket. The secretary of state shall design the primary election ballot to allow for write-in candidates when needed.

(2) The office titles for top four primary elections shall be listed in order beginning with the highest federal office and ending with county offices precinct offices. The secretary of state has the discretion and authority to arrange the classifications of offices as provided by law.

(3) It is not necessary to print a primary ballot for a political party which does not have candidates for more than half of the federal or statewide offices on the ballot if no more than one (1) candidate files for nomination by that party for any of the offices on the ballot. The secretary of state shall certify that no primary election is necessary for that party if such is the case and shall certify to the county clerk the names of candidates for that party for the general election ballot only.

(4) Ballots for top four primary elections shall list all candidates who have qualified pursuant to section 34-704A, Idaho Code. After each candidate's name, the ballot shall include that candidate's indicated party affiliation, if any, and the ballot shall contain a disclaimer informing the voter that a candidate's designated affiliation does not imply that the candidate is nominated or endorsed by the political party or group or that the party or group approves of or associates with that candidate, but only that the candidate is registered as affiliated with the political party or political group.

SECTION 23. That Section 34-904A, Idaho Code, be, and the same is hereby amended to read as follows:

34-904A. ELIGIBILITY TO VOTE IN PRIMARY AND TOP FOUR PRIMARY ELECTIONS. (1) Except as provided in subsection (2) of this section, an elector who has designated a party affiliation shall be allowed to vote only in the primary election of the political party for which such an elector is so registered.

(2) A political party qualified to participate in elections pursuant to section 34-501, Idaho Code, may, no later than the last Tuesday in the November prior to a primary election, notify the secretary of state in writing that the political party elects to allow, in addition to those electors who have registered with that political party, any of the following to vote in such party's primary election:

(a) Electors designated as "unaffiliated";

(b) Electors registered with a different political party qualified to participate in elections pursuant to section 34-501, Idaho Code. In the event a state chairman of a political party elects to allow electors to vote in that party's primary election pursuant to this paragraph, the state chairman shall identify which political parties' registrants are allowed to vote in such primary election.

(3) In the event that more than one (1) political party allows "unaffiliated" electors to vote in their party's primary election, an "unaffiliated" elector shall designate which political party's primary election the elector chooses to vote in by declaring such designation to the poll worker or other appropriate election personnel, who shall then record in the poll book the elector's choice. The county clerk shall record such choice as part of the elector's voting history within the voter registration system as provided for in section 34-437A, Idaho Code.

(4) In the event no more than one (1) political party allows "unaffiliated" electors to vote in their party's primary election, an "unaffiliated" elector may designate that political party's primary election as the election the elector chooses to vote in by declaring such designation to the poll worker or other appropriate election personnel, who shall then record in the poll book the elector's choice. The county clerk shall record such choice as part of the elector's voting history within the voter registration system as provided for in section 34-437A, Idaho Code.

(5) An "unaffiliated" elector having declared such designation as provided for in subsection (3) or (4) of this section shall not be permitted to vote in the primary election of any other party held on that primary election date.

(6) If an "unaffiliated" elector does not declare a choice of political party's primary election ballot, the elector shall not be permitted to vote in any political party's primary election but shall receive a nonpartisan ballot when such a ballot is available.

(7) In the event that one (1) or more political parties allow electors affiliated with a different political party to vote in their primary election pursuant to this section, an elector affiliated with a different political party shall declare to the poll worker or other appropriate election personnel in which primary election ballot such elector wishes to vote. The county clerk shall record such choice as part of the elector's voting history within the voter registration system as provided for in section 34-437A, Idaho Code.

(8) Provided that all other provisions of this act are complied with, nothing in this section shall be construed to prohibit an elector designated as "unaffiliated" from voting in the primary election of a different party held in subsequent years. Notwithstanding any other provision of this act, if a political party allows "unaffiliated" electors to vote in that political party's primary election pursuant to this section, a vote by an "unaffiliated" elector in such primary election shall not change or affect the elector's "unaffiliated" designation.

(9) Every qualified elector shall be allowed to vote in the top four primary election, regardless of party affiliation.

SECTION 24. That Section 34-906, Idaho Code, be, and the same is hereby amended to read as follows:

34-906. BALLOTS FOR GENERAL ELECTIONS — (1) There shall be a single general election ballot on which the names of the candidates that advanced from the top four primary and such other candidates and questions as provided by law the complete ticket of each political party shall be printed. Each political party ticket shall include that party's nominee for each particular office. The secretary of state shall design the general election ballot to allow for write-in candidates when needed.

(2) The office titles shall be listed in order beginning with the highest federal office. The secretary of state has the discretion and authority to arrange the above classifications of offices as provided by law.

(3) For elections conducted by instant runoff voting, the ballots shall:

(a) Allow voters to rank each candidate in order of preference;

(b) Contain a statement instructing electors on how to assign rankings and prohibiting the assigning of the same ranking to more than one (1) candidate or ranking any candidate more than once;

(c) Include after each candidate's name that candidate's party affiliation pursuant to section 34-704A, Idaho Code, if any; and

(d) Include a disclaimer informing the voter that a candidate's designated affiliation does not imply that the candidate is nominated or endorsed by the political party or group or that the party or group approves of or associates with that candidate, but only that the candidate is registered as affiliated with the political party or political group.

(3) (4) At any general election at which the electors are to vote upon constitutional amendments or other issues, the secretary of state shall provide separate general election ballot forms on which such amendments and issues shall be printed. The secretary of state has the discretion and authority to provide separate general election ballot forms on which the names of candidates shall be printed as needed.

(5) Instead of the disclaimer provided by subsection (3) of this section, when candidates for president and vice-president of the United States appear on a general election ballot, the ballots shall include a disclaimer informing the voter that a candidate's designated affiliation does not imply that the candidate is nominated or endorsed by the political party or political group or that the political party or political group approves of or associates with that candidate, but only that the candidate is registered as affiliated with the party or group. The election for president and vice-president of the United States is different. Some candidates for president and vice-president are the official nominees of their political party.

SECTION 25. That Section 34-908, Idaho Code, be, and the same is hereby amended to read as follows:

34-908. EACH BALLOT TO CARRY OFFICIAL ELECTION BALLOT IDENTIFICATION ON OUTSIDE — MARKING OF BALLOT BY VOTER. (1) Every ballot used at any primary, top four primary, general or special election

shall be marked on the outside with the official election ballot identification before it is given to the voter. At this time the election official distributing the ballots shall give the voter instructions in regard to folding the ballot after he has voted.

(2) The Except as required by subsection (4) of this section, the voter shall mark his ballot with a cross (X) or other mark sufficient to show his intent in the place provided after the name of the candidate for whom he intends to vote for each office.

(3) If Except as required by subsection (4) of this section, if a person votes by writing the name of a candidate on the ballot, such act shall constitute a vote for the person's name who appears without the necessity of placing a mark after the name written on the ballot, unless such a mark is required by a vote tally system.

(4) In elections conducted by instant runoff voting, the voter shall mark the voter's ballot with a mark sufficient to show the voter's intent in the place provided that indicates the specific ranking the voter wishes to assign to each candidate. The voter may assign a ranking to each candidate listed on the ballot and one (1) write-in candidate per race. Voters are not required to rank every candidate. A ballot will be tabulated pursuant to section 34-1218, Idaho Code, regardless of how many candidates the voter has ranked.

SECTION 26. That Section 34-909, Idaho Code, be, and the same is hereby amended to read as follows:

34-909. GENERAL ELECTION SAMPLE BALLOTS FORWARDED TO COUNTIES BY SECRETARY OF STATE. (1) The secretary of state, no later than September 7, shall provide the necessary general election sample ballot layout to each of the county clerks.

(2) The sample ballot layout shall contain the proper office titles, order of offices and ballot layout for the general election, with instructions for placement of candidates seeking election for federal, state, legislative, county and precinct offices and candidates seeking judicial office or retention. If a county is within more than one (1) legislative district, the secretary of state shall provide instructions on the requirements for a separate ballot for each legislative district that is within the county.

(3) The secretary of state shall certify to the county clerks the names and political party or party affiliation, as applicable, of the candidates qualified for placement on the general election ballot for all federal, state and legislative district offices on the sample ballots, along with any judicial candidates, by no later than the ninth Friday prior to the general election.

(4) The secretary of state shall certify the name of a candidate being appointed by the appropriate central committee as provided by section 34-715, Idaho Code, by no later than the next business day after the appointment is received in the secretary of state's office, if received after the certification of candidates to the county clerks under subsection (3) of this section.

SECTION 27. That Section 34-1201, Idaho Code, be, and the same is hereby amended to read as follows:

34-1201. CANVASS OF VOTES. (1) When the polls are closed, the judges must immediately proceed to count the ballots cast at such election. The counting must be continued without adjournment until completed and the result declared.

(2) If the precinct has duplicate ballot boxes, the counting may begin after five (5) ballots have been cast. At this time, the additional clerks shall close the first ballot box and retire to the counting area and count the ballots. Upon completion of this counting, the clerks shall return the ballot box and then proceed to count all of the ballots cast in the second box during this period. This counting shall continue until the polls are closed, at which time all election personnel shall complete the counting of the ballots.

(3) The county clerk may designate paper ballots be returned to a central count location for counting by special counting boards. If the paper ballots are to be counted at a central count location, a procedure may be adopted to deliver the voted ballots to the county clerk prior to the closing of the polls. The results of this early count shall not be released to the public until after 8:00 p.m. of election day.

(4) After being counted, all ballots shall be sealed and stored until such time as the recount period has passed or a recount has been completed. Ballots may be unsealed and resealed as part of a postelection audit conducted pursuant to section 34-1203A, Idaho Code.

(5) Elections conducted by instant runoff voting shall be canvassed pursuant to the provisions of section 34-1218, Idaho Code.

SECTION 28. That Section 34-1203, Idaho Code, be, and the same is hereby amended to read as follows:

34-1203. COUNTING OF BALLOTS — CERTIFICATES OF JUDGES. (1) Subject to the provisions of section 34-1218, Idaho Code, the The ballots and polls lists agreeing, the election personnel shall then proceed to tally the votes

cast. Under each office title, the number of votes for each candidate and such other information required by the secretary of state shall be entered in the tally books together with the total of the above figures in the manner prescribed by the secretary of state. Any ballot or part of a ballot from which it is impossible to determine the elector's choice shall be void and shall not be counted. When a ballot is sufficiently plain to determine therefrom a part of the voter's intention, it shall be the duty of the judges to count such part.

(2) Following the counting, the judges must transmit a copy of the results to the county clerk.

(3)(a) For any election in which at least one (1) office election or ballot question in the county occurs in both time zones in Idaho, the county clerk shall release no election results to the public until all voting places in the state have closed on election day.

(b) If no office election or ballot question in the county occurs in both time zones in Idaho, the county clerk may release the election results to the public at any time after all voting places in the county have closed on election day.

(4) The secretary of state shall issue directives or promulgate administrative rules adopting standards that define what constitutes a vote and what will be counted as a vote for each category of voting system used in this state.

SECTION 29. That Section 34-1203A, Idaho Code, be, and the same is hereby amended to read as follows:

34-1203A. POSTELECTION AUDIT OF SELECTED BALLOTS.

(1)(a) After the completion of all county canvasses for any primary or general election, the secretary of state shall identify and order a postelection audit of certain paper ballots cast in any election, shall immediately post to the website of the office of the secretary of state a list of the elections, counties, and precincts selected for audit, and shall immediately notify each affected county clerk and county sheriff of the same. Upon receiving such notification, the county sheriff shall immediately impound and take into custody the affected ballots pursuant to the procedures in chapter 23, title 34, Idaho Code. Upon completion of the postelection audit, the ballots shall be resealed and returned to the custody of the county clerk, or the county sheriff in the event that the ballots are subject to a recount pursuant to chapter 23, title 34, Idaho Code.

(b) A postelection audit authorized pursuant to paragraph (a) of this subsection may be ordered for:

(i) Any or all federal elections held in Idaho;

(ii) The election for governor;

(iii) The statewide office election having the narrowest percentage margin of votes;

(iv) The statewide ballot question election having the narrowest percentage margin of votes; and

(v) One (1) legislative office election within the county.

(c) The precincts selected for audit pursuant to paragraph (a) of this subsection shall:

(i) Be selected by lot by the secretary of state without the use of a computer at an open public meeting governed by the provisions of chapter 2, title 74, Idaho Code; and

(ii) Not exceed five percent (5%) of the precincts in the county or one (1) precinct, whichever is greater. Provided, however, that multiple precincts may be selected in any county if the number of ballots from the precincts so selected is less than two thousand one hundred (2,100).

(d) The secretary of state, in lieu of auditing the early or absentee ballots from any precincts selected for postelection audit, may select days, batches, legislative districts, or tabulation machines of early or absentee ballots for audit until the number of ballots selected equals or exceeds the number of early or absentee ballots that were cast from the precincts selected for postelection audit. Such days, batches, legislative districts, or tabulation machines shall be selected under the same requirements by which precincts were selected. The provisions of this paragraph apply only to a county that:

(i) Does not organize the storage of its early or absentee ballots by precinct;

(ii) Organizes the storage of such ballots by day, batch, legislative district, or tabulation machine; and

(iii) Publicly reports the election results for early or absentee ballots by day, batch, legislative district, or tabulation machine on the county's website prior to the secretary of state's selection of precincts to be audited.

(2) The secretary of state shall conduct, and the county clerks shall facilitate, any postelection audit ordered pursuant to subsection (1) of this section. Such an audit shall be open to attendance by news media personnel. By directive issued at least sixty (60) days prior to the election, the secretary of state shall determine the procedures by which the postelection audit is to be conducted. Such procedures shall be developed in consultation with county clerks and shall include provisions allowing each interested candidate and political party, and each political committee that publicly reported expending money on a ballot question for which the results will be audited, to appoint a designated observer. Within the time specified in the directive, the secretary of state shall report the results of any postelection audits on the website of the office of the secretary of state and to the county clerk of each county in which paper ballots were audited.

(3) The secretary of state may order additional postelection audits, without regard to the election or precinct limitations provided in subsection (1) of this section, if he determines that such action is warranted by the findings of the

audits ordered pursuant to subsection (1) of this section. The secretary of state shall limit such orders for additional postelection audits to the types of problems identified by the audits performed pursuant to subsection (1) of this section.

(4) The office of the secretary of state shall pay for the cost of any postelection audits conducted pursuant to this section, including reimbursing county clerks for any costs associated with facilitating such audits.

(5) Postelection audits for elections using instant runoff voting shall be conducted using procedures established pursuant to rules promulgated by the secretary of state pursuant to chapter 52, title 67, Idaho Code.

SECTION 30. That Section 34-1206, Idaho Code, be, and the same is hereby amended to read as follows:

34-1206. BOARD'S STATEMENT OF VOTES CAST. (1) The board shall examine and make a statement of the total number of votes cast for all candidates or special questions that shall have been voted upon at the election. The statement shall set forth the special questions and the names of the candidates for whom the votes have been cast. It shall also include the total number of votes cast for each candidate for office by precinct or polling location for elections conducted pursuant to chapter 14, title 34, Idaho Code, and the total number of affirmative and negative votes cast for any special question by precinct or polling location for elections conducted pursuant to chapter 14, title 34, Idaho Code. The board shall certify that such statement is true, subscribe their names thereto, and deliver it to the county clerk.

(2) The secretary of state shall promulgate rules pursuant to chapter 52, title 67, Idaho Code, to address statements of votes cast for candidates in elections conducted by instant runoff voting.

SECTION 31. That Section 34-1208, Idaho Code, be, and the same is hereby amended to read as follows:

34-1208. CERTIFICATES OF NOMINATION OR ELECTION. Immediately after the top four primary election canvass the county clerk shall issue certificates of nomination to the ~~political party candidates of each party~~ who receive the highest a sufficient number of votes for their particular county office to advance to the general election pursuant to 34-703(2), Idaho Code. ~~and the~~ The candidates so certified shall have their names placed on the general election ballot. On or before the eighth day after the primary election canvass, the county clerk shall issue certificates of election to the precinct committeemen of each political party who receive the highest number of votes in their precinct. Provided that to be elected, a precinct committeeman shall receive a minimum of five (5) votes. In the event no candidate receives the minimum number of votes required to be elected, a vacancy in the office shall exist and shall be filled as otherwise provided by law. The county clerk shall also certify by registered mail the results of the primary election to the secretary of state. The form for such certificate shall be prescribed by the secretary of state and be uniform throughout the state.

SECTION 32. That Section 34-1209, Idaho Code, be, and the same is hereby amended to read as follows:

34-1209. CERTIFICATES OF ELECTION TO COUNTY CANDIDATES AFTER GENERAL ELECTION. Immediately after the general election canvass, the county clerk shall issue a certificate of election to the county candidates who received the highest number of votes for that particular office and they shall be considered duly elected to assume the duties of the office for the next ensuing term. For elections conducted by instant runoff voting, the secretary of state shall issue certificates of election to the candidates who received the highest number of votes after a complete instant runoff tabulation pursuant to section 34-1218, Idaho Code.

SECTION 33. That Section 34-1214, Idaho Code, be, and the same is hereby amended to read as follows:

34-1214. CERTIFICATES OF NOMINATION OR ELECTION TO FEDERAL, STATE, DISTRICT OR NONPARTISAN OFFICES AFTER PRIMARY AND TOP FOUR PRIMARY. (1) Immediately after the top four primary election canvass, the secretary of state shall issue certificates of nomination to the ~~political party candidates for United States senate, United States house of representatives, state legislature, and elective state office of each party~~ who receive the highest a sufficient number of votes for their particular ~~federal, state or district~~ office to advance to the general election pursuant to 34-703(2), Idaho Code. The candidates so certified shall have their names placed on the general election ballot.

(2) Immediately after the primary election canvass, the secretary of state shall issue certificates of nomination to the nonpartisan candidate or candidates who receive the highest number of votes for the number of vacancies which are to be filled for a particular office and also to the same number of candidates who receive the second highest number of votes for the particular office. The candidates so certified shall have their names placed on the general election ballot. If it appears from the canvass that a particular candidate has received a majority of the total vote cast for the particular office, he shall be issued a certificate of election instead of a certificate of nomination and no candidates shall run for the particular office in the general election.

SECTION 34. That Section 34-1215, Idaho Code, be, and the same is hereby amended to read as follows:

34-1215. CERTIFICATES OF ELECTION TO FEDERAL, STATE AND DISTRICT OFFICES AFTER GENERAL ELECTION. Immediately after the general election canvass, the secretary of state shall issue certificates of election to the federal, state and district candidates who received the highest number of votes for the particular office and they shall be considered duly elected to assume the duties of the office for the next ensuing term. For elections conducted by instant runoff voting, the secretary of state shall issue certificates of election to the candidates who received the highest number of votes after a complete instant runoff tabulation pursuant to section 34-1218, Idaho Code.

SECTION 35. That Section 34-1216, Idaho Code, be, and the same is hereby amended to read as follows:

34-1216. TIE VOTES — IN STATE OR DISTRICT ELECTIONS. In the case of a tie vote between the candidates at a primary, top four primary, or general election, or the final round of a general election conducted by instant runoff voting, which tie must be broken in order to determine which candidate is elected or which candidates will advance to the general election, the interested parties or their authorized agents shall appear before the secretary of state within two (2) days after the canvass and the tie shall be determined by a toss of a coin. Tie votes in the final round of general elections for executive office conducted by instant runoff voting shall be broken under Section 2, Article IV, Idaho Constitution.

SECTION 36. That Chapter 12, Title 34, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 34-1218, Idaho Code, and to read as follows:

34-1218. INSTANT RUNOFF VOTING – DEFINITIONS – TABULATION. (1) For the purpose of instant runoff voting elections, unless the context or usage indicates otherwise, the following words have the following meanings:

- (a) “Active candidate” means any candidate who has not been eliminated and has not withdrawn his candidacy according to law.
- (b) “Highest-ranked active candidate” means the active candidate assigned to a higher ranking than any other active candidate.
- (c) “Overvote” means an instance in which a voter has ranked more than one (1) candidate at the same ranking.
- (d) “Ranking” means the number available to be assigned by a voter to a candidate to express the voter’s choice for that candidate. The number “1” is the highest ranking, followed by “2” and then “3” and so on.
- (e) “Round” means an instance of the sequence of voting tabulation as provided in subsection (3) of this section.

(2) All general elections and all special elections to fill vacancies, as applicable, for congress, state elective office, county elective office or the state legislature involving three (3) or more candidates shall be conducted using instant runoff voting.

(3) Tabulation for elections conducted by instant runoff voting shall proceed in rounds. In a round of tabulation, each ballot counts as a vote for its highest-ranked active candidate. Tabulation shall proceed sequentially as follows:

- (a) If two (2) or fewer active candidates remain, the candidate with the highest number of votes is elected and tabulation is complete.
- (b) In the first round only, if more than two (2) active candidates remain and there is at least one (1) write-in candidate who has filed a declaration of intent pursuant to section 34-702A, Idaho Code, then each such write-in candidate who received fewer than one hundred (100) votes or fewer votes than any active non-write-in candidate, shall be eliminated simultaneously and votes for those candidates shall be transferred to each ballot’s next-highest-ranked active candidate.
- (c) In any round other than those described in paragraphs (a) and (b) of this subsection, if more than two (2) active candidates remain, the active candidate with the fewest votes shall be eliminated and votes for that candidate shall be transferred to each ballot’s next-highest-ranked active candidate. This process shall be repeated until two (2) or fewer candidates remain.

(4) An inactive ballot does not count as a vote for any ranked active candidate. A ballot becomes inactive if:

- (a) It does not contain rankings for any active candidate; or
- (b) It contains an overvote that includes its highest-ranked candidate.

(5) (a) If two (2) or more candidates are tied with the fewest votes and tabulation cannot continue until the candidate with the fewest votes is defeated, then the candidate to be defeated shall be determined by lot.

(b) If there is a tie in a final round of tabulation and the winner cannot be determined until the tie is broken, that tie shall be broken as provided by law or the constitution of the state of Idaho as the case may be.

(6) (a) In order to determine a party's vote share under section 2, article III of the constitution of the state of Idaho or for any other purpose not otherwise provided by law, the aggregate total of all votes cast in the first round of tabulation for candidates who have indicated their affiliation with that party on the ballot pursuant to section 34-704A, Idaho Code, shall be used.

(b) In order to determine a candidate or elected official's party affiliation for the purpose of filling a vacancy or any other purpose, the party affiliation indicated on the ballot pursuant to section 34-704A, Idaho Code, by that candidate or elected official shall be used, unless otherwise provided by law.

(7) The secretary of state shall promulgate administrative rules pursuant to chapter 52, title 67, Idaho Code, for elections conducted by instant runoff voting, including rules for canvassing, for tabulation, and for releasing unofficial preliminary round-by-round results as soon as feasible after the polls close and at regular intervals thereafter until the counting of ballots is complete.

SECTION 37. That Section 34-2410, Idaho Code, be, and the same is hereby amended to read as follows:

34-2410. SPECIFICATIONS FOR VOTING MACHINES OR VOTE TALLY SYSTEMS. (1) No voting machine or vote tally system shall be approved by the secretary of state unless it is constructed so that it:

(a) Secures to the voter secrecy in the act of voting.

(b) Provides facilities for voting for the candidates of as many political parties or organizations as may make nominations and for or against as many measures as may be submitted.

(c) Permits the voter to vote for any person for any office and upon any measure that he has the right to vote for.

(d) Permits the voter, except at primary elections, to vote for all the candidates of one (1) party or in part for the candidates of one (1) party and in part for the candidates of one or more other parties.

(e) Permits the voter to vote for as many persons for an office as he is lawfully entitled to vote for but no more.

(f) Prevents the voter from voting for the same person more than once for the same office.

(g) Correctly registers or records all votes cast for any and all persons and for or against any and all measures.

(h) Can be adjusted so that the counting mechanism rejects any vote cast on the tabulating card in excess of the number which the voter is entitled to vote.

(i) ~~Provides that a vote for more than one (1) candidate cannot be cast by one (1) single operation of the machine or vote tally system.~~ Can conduct an instant runoff voting election pursuant to section 34-1218, Idaho Code.

(2) A vote tally system shall be:

(a) Capable of correctly counting votes on ballots or ballot cards on which the proper number of votes have been marked for any office or question or issue that has been voted.

(b) Capable of ignoring the votes marked for any office or question or issue where more than the allowable number of votes have been marked, but shall correctly count the properly voted portions of the ballot card.

(c) Capable of accumulating a count of the specific number of ballots or ballot cards tallied for a precinct, accumulating total votes by a candidate for each office; and accumulating total votes for and against each question and issue of the ballots or ballot cards tallied for a precinct.

(d) Capable of tallying votes from ballots or ballot cards of different political parties, from the same precinct, in the case of a primary election.

(e) Capable of accommodating rotation of candidates' names on the ballot or ballot card, provided that all ballots or ballot cards from one (1) precinct shall be of the same rotation sequence.

(f) Capable of automatically producing precinct totals in either printed, marked, or punched form, or combinations thereof.

(g) Capable of tabulating votes in an instant runoff election pursuant to section 34-1218, Idaho Code.

SECTION 38. That Section 34-2305, Idaho Code, be, and the same is hereby amended to read as follows:

34-2305. MANNER OF RECOUNTING. At the time and place fixed for recounting the ballots cast in any precinct all ballots shall be recounted in plain view of the candidates or their representatives. The recount shall commence at the time and place so ordered, and shall continue until the recount is finished and the results tabulated. The attorney general shall be the final authority concerning any question which arises during the recount for federal, state, county or municipal elections. The county prosecuting attorney shall be the final authority concerning any question that arises during the recount of other elections. The secretary of state shall promulgate administrative rules pursuant to chapter 52, title 67, Idaho Code, for the conduct of recounts of instant runoff voting elections.

SECTION 39. That Section 34-903B, Idaho Code, be and the same is hereby repealed.

SECTION 40. All statutes enacted before the effective date of this act that are inconsistent with the provisions of this act are hereby repealed and the Idaho Code Commission shall include such repealers in the annual codifiers' corrections bill as necessary.

SECTION 41. SEVERABILITY. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.

SECTION 42. This act shall be in full force and effect on and after January 1, 2025. **END.**

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shall be submitted to the qualified electors of the State of Idaho, for their approval or rejection at the regular General Election, to be held on the fifth (5th) day of November, A.D., 2024, and each for himself says: I have personally signed this petition; I am a qualified elector of the State of Idaho; my residence and post office are correctly written after my name.

Signature	Printed Name	Residence Street and Number	City	Date	Official Use Only Legislative District
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					
11.					
12.					

Any person signing a petition may remove their signature pursuant to Section, 34-1803B, Idaho Code.

STATE OF IDAHO

ss

County of _____

I, _____, being first duly sworn, say: That I am a resident of the State of Idaho and at least eighteen (18) years of age: that every person who signed this sheet of the foregoing petition signed his or her name thereto in my presence: I believe that each has stated his or her name, address and residence correctly, that each signer is a qualified elector of the State of Idaho, and a resident of the county of _____.

Signed _____
Post-office address _____

Subscribed and sworn to before me this _____ day of _____, _____

(Notary Seal)

Signed _____
Notary Public
Residing At _____
My Commission expires on _____

Funding Source Statement for the Idaho Open Primaries Act

The Idaho Open Primaries Act will be funded by an augmentation of existing state and county expenditures for advertising and tabulation. Implementation of the act will require 1.) A public awareness effort to inform voters, candidates, and election workers about changes to the election process, and 2.) The purchase of ballot tabulation equipment capable of conducting instant runoff elections.

MAY 2 23 AM '53
IDAHO SECRETARY OF STATE

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**EXHIBIT
D**

JUN 30 '23 PMS:19
IDAHO SECRETARY OF STATE

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
RAÚL R. LABRADOR

June 30, 2023

BY HAND DELIVERY

The Honorable Phil McGrane
Secretary of State
Statehouse

Dear Sec. McGrane:

Per Idaho Code § 34-1809(2), enclosed please find a copy of Petition 23-86137 with its ballot title prepared by this office. Although we have furnished a ballot title as required by Idaho statute, for the reasons set forth in my Certificate of Review, we maintain that this Petition violates the constitutional and statutory single-subject rule and is therefore ineligible for placement on the ballot. We will litigate that objection if and when it becomes ripe—i.e., if the sponsors of the Petition seek to have it enrolled on the ballot.

Sincerely,

RAÚL R. LABRADOR
Attorney General

Enclosure



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
RAÚL R. LABRADOR

JUN 20 10:23 AM '19
IDAHO SECRETARY OF STATE

INITIATIVE PETITION 23-86137 – BALLOT TITLES

Short Title (20 words)

Measure to (1) replace voter selection of party nominees with nonparty blanket primary; (2) require ranked-choice voting for general elections.

General Title (200 words)

This measure proposes two distinct changes to elections for most public offices.

First, this measure would abolish Idaho's party primaries. Under current law, political parties nominate candidates through primary elections in which party members vote for a candidate to represent the party in the general election. The initiative would create a system where all candidates participate in a nonparty blanket primary and all voters vote on all candidates. The top four vote-earners for each office would advance to the general election. Candidates could list any affiliation on the ballot, but would not represent political parties, and need not be associated with the party they name.

Second, the measure would require ranked-choice voting for the general election. Under current law, voters may select one candidate for each office, and the candidate with the most votes wins. Instead, ranked-choice voting would require voting for each candidate on the ballot in order of preference. The votes would be counted in successive rounds for each order of preference. The candidate with the fewest votes in each round would be eliminated, and votes for that candidate in later rounds would not be counted. The candidate with the most votes in the final round would win.

WARNING

It is a felony for anyone to sign any initiative or referendum petition with any name other than his own, or to knowingly sign his name more than once for the measure, or to sign such petition when he is not a qualified elector.

INITIATIVE PETITION

To the Honorable Phil McGrane, Secretary of State of the State of Idaho:

"We the undersigned citizens and qualified electors of the State of Idaho, respectfully demand the following proposed law, effective January 1, 2025 to wit:

Be It Enacted by the People of the State of Idaho:

SECTION 1. That Section 34-103, Idaho Code, be, and the same is hereby amended to read as follows:

34-103. "SPECIAL ELECTION" DEFINED. "Special election" means any election other than a general, or primary, or top four primary election held at any time for any purpose provided by law.

SECTION 2. That Section 34-113, Idaho Code, be, and the same is hereby amended to read as follows:

34-113. "CANDIDATE" DEFINED. "Candidate" means and includes every person for whom it is contemplated or desired that votes be cast at any political convention, primary, top four primary, general or special election, and who either tacitly or expressly consents to be so considered, except candidates for president and vice-president of the United States.

SECTION 3. That Chapter 1, Title 34, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 34-118, Idaho Code, and to read as follows:

34-118. "TOP FOUR PRIMARY ELECTION" DEFINED. "Top four primary election" means an election, other than a judicial nominating election, held for the purpose of determining the candidates who will appear on the general election ballot. In top four primary elections, all candidates will appear on the same ballot regardless of party affiliation, and all qualified electors may participate regardless of party affiliation. Top four primary elections do not determine any party's nominee and candidates who advance from a top four primary election to a general election are not considered nominees of any political party. Top four primary elections shall be held on the same day as primary elections.

SECTION 4. That Chapter 1, Title 34, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 34-119, Idaho Code, and to read as follows:

34-119. "INSTANT RUNOFF VOTING" DEFINED. "Instant runoff voting" means the method of casting and tabulating votes described in section 34-1218, Idaho Code, in which voters may rank candidates by order of preference, each ballot counts as a single vote for its highest-ranked active candidate, and votes are tabulated in rounds, with the candidate receiving the fewest votes eliminated and votes for that candidate transferring to each ballot's next-highest ranked active candidate until tabulation is complete and the candidate receiving the highest number of votes wins.

SECTION 5. That Chapter 1, Title 34, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 34-120, Idaho Code, and to read as follows:

34-120. "COUNTY ELECTIVE OFFICE" DEFINED. "County elective office" means county commissioner, sheriff, prosecuting attorney, coroner, clerk, assessor, and treasurer.

SECTION 6. That Chapter 1, Title 34, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 34-121, Idaho Code, and to read as follows:

34-121. "ELECTIVE STATE OFFICE" DEFINED. "Elective state office" means governor, lieutenant governor, secretary of state, state controller, state treasurer, attorney general, and superintendent of public instruction.

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IDHO SECRETARY OF STATE

SECTION 7. That Section 34-404, Idaho Code, be, and the same is hereby amended to read as follows:

34-404. REGISTRATION OF ELECTORS. (1) All electors must register before being able to vote at any primary, top four primary, general, special, school or any other election governed by the provisions of title 34, Idaho Code. Registration of a qualified person occurs when a legible, accurate and complete registration application is received in the office of the county clerk or is received at the polls pursuant to section 34-408A, Idaho Code.

(2) Each elector may select on the registration application an affiliation with a political party qualified to participate in elections pursuant to section 34-501, Idaho Code, or may select to be designated as "unaffiliated." The county clerk shall record the party affiliation or "unaffiliated" designation so selected as part of the elector's registration record. If an elector shall fail or refuse to make such a selection, the county clerk shall enter on the registration records that such elector is "unaffiliated."

(3) In order to provide an elector with the appropriate primary election ballot, pursuant to section 34-904A, Idaho Code, the poll book for primary elections shall include the party affiliation or designation as unaffiliated for each elector so registered. An unaffiliated elector shall declare to the poll worker which primary election ballot the elector chooses to vote in, pursuant to section 34-904A, Idaho Code, and the poll worker or other authorized election personnel shall record such declaration in the poll book. The poll book shall contain checkoff boxes to allow the poll worker or other authorized election personnel to record such unaffiliated elector's selection. An elector does not need to be affiliated with a party or make any declaration about party affiliation in order to receive a top four primary ballot.

(4) In order to provide electors who are already registered to vote, and who remain registered electors, with an opportunity to select a party affiliation or to select their status as "unaffiliated" the poll book for the 2012 primary election shall include checkoff boxes by which the poll worker or other appropriate election personnel shall record such elector's choice of party affiliation or choice to be designated as "unaffiliated." After the 2012 primary election, the county clerk shall record the party affiliation or "unaffiliated" designation so selected in the poll book as part of such an elector's record within the voter registration system as provided for in section 34-437A, Idaho Code.

(5) After the 2012 primary election, electors who remain registered voters and who did not vote in the 2012 primary election or who have not selected party affiliation or who have not selected to be designated as "unaffiliated," shall be designated as "unaffiliated" and the county clerk shall record that designation for each such elector within the voter registration system as provided for in section 34-437A, Idaho Code.

SECTION 8. That Section 34-411A, Idaho Code, be, and the same is hereby amended to read as follows:

34-411A. PRIMARY AND TOP FOUR PRIMARY ELECTIONS — CHANGING PARTY AFFILIATION — UNAFFILIATED ELECTORS. (1) For a primary election, an elector may change such elector's political party affiliation or become "unaffiliated" by filing a signed form with the county clerk no later than the last day a candidate may file for partisan political office prior to such primary election, as provided for in section 34-704, Idaho Code. An "unaffiliated" elector may affiliate with the party of the elector's choice by filing a signed form up to and including election day. The application form described in section 34-1002, Idaho Code, shall also be used for this purpose.

(2) For a primary election, an "unaffiliated" elector may select a political party affiliation only prior to voting in the primary election. An elector may make such selection on or before election day, by declaring such political party affiliation to the poll worker or other appropriate election personnel. The poll worker or other appropriate election personnel shall then record in the poll book the elector's choice. After the primary election, the county clerk shall record the party affiliation so recorded in the poll book as part of such elector's record within the voter registration system as provided for in section 34-437A, Idaho Code.

(3) For a top four primary election, an elector does not need to be affiliated with a political party in order to vote.

SECTION 9. That Section 34-501, Idaho Code, be, and the same is hereby amended to read as follows:

34-501. "POLITICAL PARTY" DEFINED -- PROCEDURES FOR CREATION OF A POLITICAL PARTY. (1) A "political party" within the meaning of this act, is an organization of electors under a given name. A political party shall be deemed created and qualified to participate in elections in any of the following three (3) ways:

(a) By having three (3) or more candidates for state or national office listed under the party name or indicating affiliation with that party pursuant to section 34-704A, Idaho Code, at the last general election, provided that those individuals seeking the office of president, vice president and president elector shall be considered one candidate, or

(b) By polling at the last general election for any one of its candidates for state or national office at least three per cent (3%) of the aggregate vote cast for governor or for presidential electors or at least three percent (3%) of the aggregate of votes cast for all candidates indicating their affiliation with that party pursuant to section 34-704A, Idaho Code, in any round of tabulation in a general election for governor.

(c) By an affiliation of electors who shall have signed a petition which shall:

- (A) State the name of the proposed party in not more than six (6) words;
- (B) State that the subscribers thereto desire to place the proposed party on the ballot;
- (C) Have attached thereto a sheet or sheets containing the signatures of at least a number of qualified electors equal to two per cent (2%) of the aggregate vote cast for presidential electors in the state at the previous general election at which presidential electors were chosen;
- (D) Be filed with the secretary of state on or before August 30 of even numbered years;
- (E) The format of the signature petition sheets shall be prescribed by the secretary of state and shall be patterned after, but not limited to, such sheets as used for state initiative and referendum measures;
- (F) The petitions and signatures so submitted shall be verified in the manner prescribed in section 34-1807, Idaho Code.
- (G) The petition shall be circulated no earlier than August 30 of the year preceding the general election.

(2) Upon certification by the secretary of state that the petition has met the requirements of this act such party shall, under the party name chosen, have all the rights of a political party whose ticket shall have been on the ballot at the preceding general election.

(3) The newly certified party shall proceed to hold a state convention in the manner provided by law; provided, that at the initial convention of any such political party, all members of the party shall be entitled to attend the convention and participate in the election of officers and the nominations of candidates. Thereafter the conduct of any subsequent convention shall be as provided by law.

SECTION 10. That Section 34-702, Idaho Code, be, and the same is hereby amended to read as follows:

34-702. REQUIREMENTS FOR WRITE-IN CANDIDATES AT TOP FOUR PRIMARY AND PRIMARY. (1) In addition to possessing all other qualifications, in order to become a candidate of a political party at the general election, those candidates whose names are written in at the a top four primary election must:

(a) Receive at least the following number of write-in votes at the primary election:

- (i) One thousand (1,000) for any statewide office;
- (ii) Five hundred (500) for a congressional district office;
- (iii) Fifty (50) for a legislative district office; or
- (iv) Five (5) for a county office; and

(b) File a declaration of intent for that office, pursuant to section 34-702A, Idaho Code.

(2) Any write-in candidate at a top four primary who does not meet the requirements of subsection (1) of this section is not eligible to advance to the general election and shall not be included in the top four (4) candidates regardless of the number of votes received by that candidate.

(3) Candidates who are required to file with the secretary of state shall pay the filing fee required for that office no later than the deadline for filing a declaration of intent pursuant to section 34-702A, Idaho Code, or shall file a petition pursuant to section 34-626, Idaho Code.

(4) No write-ins shall be allowed for judicial office.

SECTION 11. That Section 34-702A, Idaho Code, be, and the same is hereby amended to read as follows:

34-702A. DECLARATION OF INTENT FOR WRITE-IN CANDIDATES. (1) No write-in vote for any office in a primary, top four primary, special, or general election shall be counted unless a completed declaration of intent form has been filed indicating that the person desires the office and is legally qualified to assume the duties of said office if elected. The declaration of intent shall be filed with the secretary of state if for a federal, state, or legislative district office and with the county clerk if for a county or party precinct committeeman office. Such declaration of intent shall be filed no later than the eighth Friday before the day of election. For a write-in candidate for president, the declaration shall include a certification of the write-in candidate's vice presidential and presidential electors, all of whom must be qualified to serve in their respective offices. The secretary of state shall prescribe the form for said declarations.

(2) In those counties that utilize optical scan ballots, an elector shall not place on the ballot a sticker bearing the name of a person or use any other method or device, except writing, to vote for a person whose name is not printed on the ballot.

(3) In general elections conducted by instant runoff voting, a write-in candidate who has not submitted a declaration of intent pursuant to this section is not considered an active candidate and a ranking containing such a write-in candidate shall be treated in the same manner as a ranking containing an eliminated candidate for the purposes of tabulation.

SECTION 12. That Section 34-703, Idaho Code, be, and the same is hereby amended to read as follows:

34-703. NOMINATION AT PRIMARY OR TOP FOUR PRIMARY. (1) All political party candidates for United States senator and representative in congress, and all political party candidates for elective state, district and county offices, except candidates for judicial office, at general elections shall be nominated at the primary elections, or shall have their names placed on the general election ballot as provided by law, and shall comply with the provisions of this act.

(2)(1) All candidates for judicial office shall be nominated or elected at the primary election, as provided by section 34-1217, Idaho Code.

(3) Independent candidates shall not be voted on at primary elections.

(2)(2) All candidates for United States senate, United States house of representatives, state legislature, elective state office or county elective office at general elections must advance from a top four primary election or have their names placed on a general election ballot as otherwise provided by law. Top four primary elections shall comply with the following provisions:

(a) All candidates participating in a top four primary election shall appear on the same ballot, regardless of party affiliation.

(b) Each qualified elector, regardless of party affiliation, may vote for one (1) candidate.

(c) Subject to the provisions of section 34-702(1), Idaho Code:

(i) The four (4) candidates who receive the most votes shall advance to the general election and appear on the general election ballot.

(ii) If fewer than four (4) candidates receive votes, all candidates receiving votes shall advance to the general election and appear on the general election ballot.

(iii) If it cannot be determined which four (4) candidates received the most votes because two (2) or more candidates are tied with an equal number of votes, that tie shall be broken pursuant to the provisions of section 34-1216, Idaho Code.

SECTION 13. That Section 34-704, Idaho Code, be, and the same is hereby amended to read as follows:

34-704. DECLARATION OF CANDIDACY. (1) Any person legally qualified to hold such office is entitled to become a candidate and file his declaration of candidacy. Each political party candidate for precinct, state, district or county office shall file his declaration of candidacy in the proper office between 8:00 a.m. on the twelfth Monday preceding the primary election and 5:00 p.m. on the tenth Friday preceding the primary election. All political party candidates shall declare their party affiliation in their declaration of candidacy and shall be affiliated with a party at the time of filing. A candidate shall be deemed affiliated with the political party if the candidate submits a party affiliation form along with the declaration of candidacy to the filing official. The filing official shall reject any declaration of candidacy for partisan office in a primary election from candidates who are not affiliated with a political party. Candidates for nonpartisan office and for United States senate, United States house of representatives, state legislature, or any elective state office or county elective office shall file during the period provided for in this section.

(2) Candidates who file a declaration of candidacy under a party name and are not nominated at the primary election shall not be allowed to appear on the general election ballot under any other political party name, nor as an independent candidate.

(3) Candidates for United States senate, United States house of representatives, state legislature, or any elective state office or county elective office shall file their declarations of candidacy in the manner provided in section 34-704A, Idaho Code. Independent candidates shall file their declaration of candidacy in the manner provided in section 34-708, Idaho Code.

(4) All information in declarations of candidacy shall be made publicly available upon request.

SECTION 14. That Chapter 7, Title 34, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 34-704A, Idaho Code, and to read as follows:

34-704A. DECLARATION OF CANDIDACY FOR TOP FOUR PRIMARY ELECTIONS. (1) Any person who desires to offer themselves as a candidate for United States senate, United States house of representatives, state legislature, or any elective state office or county elective office may do so by complying strictly with the provisions of this section. In

order to be recognized as a candidate in a top four primary election, each such candidate must file with the proper officer as provided in section 34-705, Idaho Code, a declaration of candidacy, during the period specified in section 34-704, Idaho Code. Such declaration must declare the office for which the candidate seeks election, the political party with which the candidate is registered as affiliated, or whether the candidate prefers a nonpartisan or undeclared designation placed after the candidate's name on the ballot. Each such candidate who files a declaration of candidacy shall at the same time pay a filing fee, or a petition containing signatures in lieu of a filing fee, pursuant to the provisions of Chapter 6, Title 34, Idaho Code.

(2) If all of the requirements of this section have been met, the proper officer shall cause the name of each candidate who has qualified to be placed on the top four primary ballot, according to the instructions of the secretary of state.

SECTION 15. That Section 34-705, Idaho Code, be, and the same is hereby amended to read as follows:

34-705. WITH WHOM DECLARATIONS FILED. (1) All candidates for county offices, ~~whether political party candidates or independent candidates,~~ and all political party candidates for precinct offices shall file their declarations of candidacy with the county clerk of their respective counties. All candidates for district, state and federal offices shall file their declarations of candidacy with the secretary of state.

(2) The secretary of state shall certify to the county clerks, within ten (10) days after the filing deadline, the names of the ~~political party~~ candidates who filed for federal, state and district offices and are qualified for placement on the ballot.

(3) The secretary of state shall certify the name of a candidate being appointed by the appropriate central committee pursuant to section ~~34-714~~, Idaho Code, by no later than the next business day after the appointment is received in the secretary of state's office, if received after the certification of candidates to the county clerks under subsection (2) of this section.

SECTION 16. That Section 34-706, Idaho Code, be, and the same is hereby amended to read as follows:

34-706. NOTIFICATION TO PARTIES. Within three (3) days after the deadline for filing declarations of political party candidacy the county clerk shall notify the county central committee of each political party of the candidates who have filed for ~~county and precinct offices under the party name and are qualified.~~

~~Within three (3) days after the deadline for filing declarations of political party candidacy the secretary of state shall notify the legislative district central committee of each political party of the legislative candidates who have filed under the party name and are qualified.~~

~~Within three (3) days after the deadline for filing declarations of political party candidacy the secretary of state shall notify the state central committee of each political party of the candidates who have filed for federal and state offices under the party name and are qualified.~~

SECTION 17. That Section 34-708, Idaho Code, be, and the same is hereby amended to read as follows:

34-708. INDEPENDENT CANDIDATES. ~~(1)~~ No person may offer himself as an independent candidate for precinct committeemen at the primary election.

~~(2) Any person who desires to offer himself as an independent candidate for federal, state, district, or county office may do so by complying strictly with the provisions of this section. In order to be recognized as an independent candidate, each such candidate must file with the proper officer as provided by section 34-705, Idaho Code, a declaration of candidacy as an independent candidate, during the period specified in section 34-704, Idaho Code. Such declaration must state that he is offering himself as an independent candidate, must declare that he has no political party affiliation, and must declare the office for which he seeks election. Each such declaration must be accompanied by a petition containing the following number of signatures of qualified electors:~~

- ~~(a) One thousand (1,000) for any statewide office;~~
- ~~(b) Five hundred (500) for any congressional district office;~~
- ~~(c) Fifty (50) for any legislative district office;~~
- ~~(d) Five (5) for any county office.~~

~~(3) Signatures on the petitions required in this section shall be verified in the manner prescribed in section 34-1807, Idaho Code, on a form similar to that used for recall petitions under chapter 17, title 34, Idaho Code, as prescribed by the secretary of state.~~

~~(4) If all of the requirements of this section have been met, the proper officer shall cause the name of each independent candidate who has qualified to be placed on the general election ballot, according to instructions of the secretary of state.~~

SECTION 18. That Section 34-712, Idaho Code, be, and the same is hereby amended to read as follows:

34-712. SAMPLE FORM FOR PRIMARY AND TOP FOUR PRIMARY ELECTION BALLOTS. (1) The secretary of state shall provide the sample form of the primary and top four primary election ballot to each of the county clerks no later than forty (40) days prior to the primary.

(2) The primary election sample ballot shall contain the proper political party candidates to be voted upon within the county whose declarations were filed and certified in the office of the secretary of state with instructions for the placing of political party candidates seeking the political party nomination for ~~county and precinct~~ offices.

(3) The top four primary election sample ballots shall contain the proper candidates for top four primary elections whose declarations were filed and certified in the office of the secretary of state with instructions for the placing of the candidates.

(4) If a county is within more than one (1) legislative district, the secretary of state shall provide a sample ballot for each legislative district which includes part of the county.

SECTION 19. That Section 34-713, Idaho Code, be, and the same is hereby amended to read as follows:

34-713. PREPARATION OF PRIMARY AND TOP FOUR PRIMARY BALLOTS. (1) Upon receipt of the sample ballot and instructions from the secretary of state, each county clerk shall print and prepare the official primary and top four primary ballots for the forthcoming election. The printing of the ballots shall be a county expense and paid out of the county treasury.

(2) Each county clerk shall cause to be published on the earliest date possible in May the names of all the political party candidates who shall appear on the primary ballot and all candidates who shall appear on the top four primary ballot. The names shall be listed alphabetically under each particular office title.

SECTION 20. That Section 34-714, Idaho Code, be, and the same is hereby amended to read as follows:

34-714. FILLING VACANCIES IN SLATE OF POLITICAL PARTY CANDIDATES OCCURRING PRIOR TO PRIMARY ELECTION. (1)(a) Vacancies that occur before the primary election in the slate of candidates of any political party because of the death, disqualification for any reason, or withdrawal from the nomination process by the candidate, shall be filled in the following manner by the county central committee if the vacancy occurs for the office of precinct committeeman if only one (1) candidate declared for that particular office:

- ~~(a) By the county central committee if the vacancy occurs for the office of precinct committeeman or for a county office.~~
- ~~(b) By the legislative district central committee if the vacancy occurs for the office of state representative or state senator.~~
- ~~(c) By the state central committee if the vacancy occurs for a federal or state office.~~

~~(b) The county and legislative district central committee shall fill the vacancy within fifteen (15) days from the date the vacancy occurred. The state central committee shall fill the vacancy within thirty (30) days from the date the vacancy occurred.~~

~~(c) Any political party candidate so appointed by the proper central committee must, in order to have his name on the primary ballot, file a declaration of candidacy and pay the required filing fee.~~

(2) No central committee shall fill any vacancy which occurs within ten (10) days prior to the primary election. Vacancies which occur during this ten (10) day period because of the death, disqualification for any reason, or withdrawal from the nomination process by the candidate shall be filled according to the provisions of section 34-715, Idaho Code.

(3) Vacancies that occur in a slate of candidates for precinct committeeman within ten (10) days prior to the primary election shall not be filled.

SECTION 21. That Section 34-715, Idaho Code, be, and the same is hereby amended to read as follows:

34-715. FILLING OF VACANCIES OCCURRING BEFORE OR AFTER PRIMARY ELECTION OR AFTER TOP FOUR PRIMARY ELECTION. Vacancies that occur during the ten (10) day period before a primary election, or after the primary election but at least ten (10) days before the general election in the slate of candidates of any political party, except candidates for precinct committeeman, shall be filled in the following manner:

- ~~(1) By the county central committee if it is a vacancy by a candidate for a county office.~~

(2) By the legislative district central committee if it is a vacancy by a candidate for the state legislature.

(3) By the state central committee if it is a vacancy by a candidate for a federal or a state office.

The county and legislative district central committee shall fill the vacancy within fifteen (15) days from the date the vacancy occurred. The state central committee shall fill the vacancy within thirty (30) days from the date the vacancy occurred.

Any political party candidate so appointed by the proper central committee must, in order to have his name on the general ballot, file a declaration of candidacy and pay the required filing fee.

(1) Vacancies that occur in a slate of candidates for precinct committeeman within ten (10) days prior to the primary election shall not be filled.

(2) Vacancies in races for United States senate or United States house of representatives, state legislature, or any elective state office or county elective office that occur after the top four primary election but at least ten (10) days before the general election shall be filled by advancing the candidate, if any, who received the most votes in the top four primary but did not qualify to advance to the general election pursuant to the provisions of section 34-703(2)(c), Idaho Code.

(3) If it cannot be determined which candidate received the most votes because two (2) or more candidates are tied with an equal number of votes, that tie shall be broken in a manner similar to the provisions of section 34-1216, Idaho Code at a time determined by the secretary of state.

SECTION 22. That Section 34-904, Idaho Code, be, and the same is hereby amended to read as follows:

34-904. PRIMARY AND TOP FOUR PRIMARY ELECTION BALLOTS. (1) There shall be a separate primary election ballot for each political party upon which its ticket shall be printed; however, a county may use a separate ballot for the office of precinct committeeman. All candidates who have filed their declarations of candidacy and are subsequently certified shall be listed under the proper office titles on their political party ticket. The secretary of state shall design the primary election ballot to allow for write-in candidates when needed.

(2) The office titles for top four primary elections shall be listed in order beginning with the highest federal office and ending with county offices precinct offices. The secretary of state has the discretion and authority to arrange the classifications of offices as provided by law.

(3) It is not necessary to print a primary ballot for a political party which does not have candidates for more than half of the federal or statewide offices on the ballot if no more than one (1) candidate files for nomination by that party for any of the offices on the ballot. The secretary of state shall certify that no primary election is necessary for that party if such is the case and shall certify to the county clerk the names of candidates for that party for the general election ballot only.

(4) Ballots for top four primary elections shall list all candidates who have qualified pursuant to section 34-704A, Idaho Code. After each candidate's name, the ballot shall include that candidate's indicated party affiliation, if any, and the ballot shall contain a disclaimer informing the voter that a candidate's designated affiliation does not imply that the candidate is nominated or endorsed by the political party or group or that the party or group approves of or associates with that candidate, but only that the candidate is registered as affiliated with the political party or political group.

SECTION 23. That Section 34-904A, Idaho Code, be, and the same is hereby amended to read as follows:

34-904A. ELIGIBILITY TO VOTE IN PRIMARY AND TOP FOUR PRIMARY ELECTIONS. (1) Except as provided in subsection (2) of this section, an elector who has designated a party affiliation shall be allowed to vote only in the primary election of the political party for which such an elector is so registered.

(2) A political party qualified to participate in elections pursuant to section 34-501, Idaho Code, may, no later than the last Tuesday in the November prior to a primary election, notify the secretary of state in writing that the political party elects to allow, in addition to those electors who have registered with that political party, any of the following to vote in such party's primary election:

(a) Electors designated as "unaffiliated";

(b) Electors registered with a different political party qualified to participate in elections pursuant to section 34-501, Idaho Code. In the event a state chairman of a political party elects to allow electors to vote in that party's primary election pursuant to this paragraph, the state chairman shall identify which political parties' registrants are allowed to vote in such primary election.

(3) In the event that more than one (1) political party allows "unaffiliated" electors to vote in their party's primary election, an "unaffiliated" elector shall designate which political party's primary election the elector chooses to vote in by declaring such designation to the poll worker or other appropriate election personnel, who shall then record in the poll book the elector's choice. The county clerk shall record such choice as part of the elector's voting history within the voter registration system as provided for in section 34-437A, Idaho Code.

(4) In the event no more than one (1) political party allows "unaffiliated" electors to vote in their party's primary election, an "unaffiliated" elector may designate that political party's primary election as the election the elector chooses to vote in by declaring such designation to the poll worker or other appropriate election personnel, who shall then record in the poll book the elector's choice. The county clerk shall record such choice as part of the elector's voting history within the voter registration system as provided for in section 34-437A, Idaho Code.

(5) An "unaffiliated" elector having declared such designation as provided for in subsection (3) or (4) of this section shall not be permitted to vote in the primary election of any other party held on that primary election date.

(6) If an "unaffiliated" elector does not declare a choice of political party's primary election ballot, the elector shall not be permitted to vote in any political party's primary election but shall receive a nonpartisan ballot when such a ballot is available.

(7) In the event that one (1) or more political parties allow electors affiliated with a different political party to vote in their primary election pursuant to this section, an elector affiliated with a different political party shall declare to the poll worker or other appropriate election personnel in which primary election ballot such elector wishes to vote. The county clerk shall record such choice as part of the elector's voting history within the voter registration system as provided for in section 34-437A, Idaho Code.

(8) Provided that all other provisions of this act are complied with, nothing in this section shall be construed to prohibit an elector designated as "unaffiliated" from voting in the primary election of a different party held in subsequent years. Notwithstanding any other provision of this act, if a political party allows "unaffiliated" electors to vote in that political party's primary election pursuant to this section, a vote by an "unaffiliated" elector in such primary election shall not change or affect the elector's "unaffiliated" designation.

(9) Every qualified elector shall be allowed to vote in the top four primary election, regardless of party affiliation.

SECTION 24. That Section 34-906, Idaho Code, be, and the same is hereby amended to read as follows:

34-906. BALLOTS FOR GENERAL ELECTIONS — (1) There shall be a single general election ballot on which the names of the candidates that advanced from the top four primary and such other candidates and questions as provided by law the complete ticket of each political party shall be printed. Each political party ticket shall include that party's nominee for each particular office. The secretary of state shall design the general election ballot to allow for write-in candidates when needed.

(2) The office titles shall be listed in order beginning with the highest federal office. The secretary of state has the discretion and authority to arrange the above classifications of offices as provided by law.

(3) For elections conducted by instant runoff voting, the ballots shall:

(a) Allow voters to rank each candidate in order of preference;

(b) Contain a statement instructing electors on how to assign rankings and prohibiting the assigning of the same ranking to more than one (1) candidate or ranking any candidate more than once;

(c) Include after each candidate's name that candidate's party affiliation pursuant to section 34-704A, Idaho Code, if any; and

(d) Include a disclaimer informing the voter that a candidate's designated affiliation does not imply that the candidate is nominated or endorsed by the political party or group or that the party or group approves of or associates with that candidate, but only that the candidate is registered as affiliated with the political party or political group.

(3) (4) At any general election at which the electors are to vote upon constitutional amendments or other issues, the secretary of state shall provide separate general election ballot forms on which such amendments and issues shall be printed. The secretary of state has the discretion and authority to provide separate general election ballot forms on which the names of candidates shall be printed as needed.

(5) Instead of the disclaimer provided by subsection (3) of this section, when candidates for president and vice-president of the United States appear on a general election ballot, the ballots shall include a disclaimer informing the voter that a candidate's designated affiliation does not imply that the candidate is nominated or endorsed by the political party or political group or that the political party or political group approves of or associates with that candidate, but only that the candidate is registered as affiliated with the party or group. The election for president and vice-president of the United States is different. Some candidates for president and vice-president are the official nominees of their political party.

SECTION 25. That Section 34-908, Idaho Code, be, and the same is hereby amended to read as follows:

34-908. EACH BALLOT TO CARRY OFFICIAL ELECTION BALLOT IDENTIFICATION ON OUTSIDE — MARKING OF BALLOT BY VOTER. (1) Every ballot used at any primary, top four primary, general or special election

shall be marked on the outside with the official election ballot identification before it is given to the voter. At this time the election official distributing the ballots shall give the voter instructions in regard to folding the ballot after he has voted.

(2) The Except as required by subsection (4) of this section, the voter shall mark his ballot with a cross (X) or other mark sufficient to show his intent in the place provided after the name of the candidate for whom he intends to vote for each office.

(3) If Except as required by subsection (4) of this section, if a person votes by writing the name of a candidate on the ballot, such act shall constitute a vote for the person's name who appears without the necessity of placing a mark after the name written on the ballot, unless such a mark is required by a vote tally system.

(4) In elections conducted by instant runoff voting, the voter shall mark the voter's ballot with a mark sufficient to show the voter's intent in the place provided that indicates the specific ranking the voter wishes to assign to each candidate. The voter may assign a ranking to each candidate listed on the ballot and one (1) write-in candidate per race. Voters are not required to rank every candidate. A ballot will be tabulated pursuant to section 34-1218, Idaho Code, regardless of how many candidates the voter has ranked.

SECTION 26. That Section 34-909, Idaho Code, be, and the same is hereby amended to read as follows:

34-909. GENERAL ELECTION SAMPLE BALLOTS FORWARDED TO COUNTIES BY SECRETARY OF STATE. (1) The secretary of state, no later than September 7, shall provide the necessary general election sample ballot layout to each of the county clerks.

(2) The sample ballot layout shall contain the proper office titles, order of offices and ballot layout for the general election, with instructions for placement of candidates seeking election for federal, state, legislative, county and precinct offices and candidates seeking judicial office or retention. If a county is within more than one (1) legislative district, the secretary of state shall provide instructions on the requirements for a separate ballot for each legislative district that is within the county.

(3) The secretary of state shall certify to the county clerks the names and political party or party affiliation, as applicable, of the candidates qualified for placement on the general election ballot for all federal, state and legislative district offices on the sample ballots, along with any judicial candidates, by no later than the ninth Friday prior to the general election.

(4) The secretary of state shall certify the name of a candidate being appointed by the appropriate central committee as provided by section 34-715, Idaho Code, by no later than the next business day after the appointment is received in the secretary of state's office, if received after the certification of candidates to the county clerks under subsection (3) of this section.

SECTION 27. That Section 34-1201, Idaho Code, be, and the same is hereby amended to read as follows:

34-1201. CANVASS OF VOTES. (1) When the polls are closed, the judges must immediately proceed to count the ballots cast at such election. The counting must be continued without adjournment until completed and the result declared.

(2) If the precinct has duplicate ballot boxes, the counting may begin after five (5) ballots have been cast. At this time, the additional clerks shall close the first ballot box and retire to the counting area and count the ballots. Upon completion of this counting, the clerks shall return the ballot box and then proceed to count all of the ballots cast in the second box during this period. This counting shall continue until the polls are closed, at which time all election personnel shall complete the counting of the ballots.

(3) The county clerk may designate paper ballots be returned to a central count location for counting by special counting boards. If the paper ballots are to be counted at a central count location, a procedure may be adopted to deliver the voted ballots to the county clerk prior to the closing of the polls. The results of this early count shall not be released to the public until after 8:00 p.m. of election day.

(4) After being counted, all ballots shall be sealed and stored until such time as the recount period has passed or a recount has been completed. Ballots may be unsealed and resealed as part of a postelection audit conducted pursuant to section 34-1203A, Idaho Code.

(5) Elections conducted by instant runoff voting shall be canvassed pursuant to the provisions of section 34-1218, Idaho Code.

SECTION 28. That Section 34-1203, Idaho Code, be, and the same is hereby amended to read as follows:

34-1203. COUNTING OF BALLOTS — CERTIFICATES OF JUDGES. (1) Subject to the provisions of section 34-1218, Idaho Code, the The ballots and polls lists agreeing, the election personnel shall then proceed to tally the votes

cast. Under each office title, the number of votes for each candidate and such other information required by the secretary of state shall be entered in the tally books together with the total of the above figures in the manner prescribed by the secretary of state. Any ballot or part of a ballot from which it is impossible to determine the elector's choice shall be void and shall not be counted. When a ballot is sufficiently plain to determine therefrom a part of the voter's intention, it shall be the duty of the judges to count such part.

(2) Following the counting, the judges must transmit a copy of the results to the county clerk.

(3)(a) For any election in which at least one (1) office election or ballot question in the county occurs in both time zones in Idaho, the county clerk shall release no election results to the public until all voting places in the state have closed on election day.

(b) If no office election or ballot question in the county occurs in both time zones in Idaho, the county clerk may release the election results to the public at any time after all voting places in the county have closed on election day.

(4) The secretary of state shall issue directives or promulgate administrative rules adopting standards that define what constitutes a vote and what will be counted as a vote for each category of voting system used in this state.

SECTION 29. That Section 34-1203A, Idaho Code, be, and the same is hereby amended to read as follows:

34-1203A. POSTELECTION AUDIT OF SELECTED BALLOTS.

(1)(a) After the completion of all county canvasses for any primary or general election, the secretary of state shall identify and order a postelection audit of certain paper ballots cast in any election, shall immediately post to the website of the office of the secretary of state a list of the elections, counties, and precincts selected for audit, and shall immediately notify each affected county clerk and county sheriff of the same. Upon receiving such notification, the county sheriff shall immediately impound and take into custody the affected ballots pursuant to the procedures in chapter 23, title 34, Idaho Code. Upon completion of the postelection audit, the ballots shall be resealed and returned to the custody of the county clerk, or the county sheriff in the event that the ballots are subject to a recount pursuant to chapter 23, title 34, Idaho Code.

(b) A postelection audit authorized pursuant to paragraph (a) of this subsection may be ordered for:

(i) Any or all federal elections held in Idaho;

(ii) The election for governor;

(iii) The statewide office election having the narrowest percentage margin of votes;

(iv) The statewide ballot question election having the narrowest percentage margin of votes; and

(v) One (1) legislative office election within the county.

(c) The precincts selected for audit pursuant to paragraph (a) of this subsection shall:

(i) Be selected by lot by the secretary of state without the use of a computer at an open public meeting governed by the provisions of chapter 2, title 74, Idaho Code; and

(ii) Not exceed five percent (5%) of the precincts in the county or one (1) precinct, whichever is greater. Provided, however, that multiple precincts may be selected in any county if the number of ballots from the precincts so selected is less than two thousand one hundred (2,100).

(d) The secretary of state, in lieu of auditing the early or absentee ballots from any precincts selected for postelection audit, may select days, batches, legislative districts, or tabulation machines of early or absentee ballots for audit until the number of ballots selected equals or exceeds the number of early or absentee ballots that were cast from the precincts selected for postelection audit. Such days, batches, legislative districts, or tabulation machines shall be selected under the same requirements by which precincts were selected. The provisions of this paragraph apply only to a county that:

(i) Does not organize the storage of its early or absentee ballots by precinct;

(ii) Organizes the storage of such ballots by day, batch, legislative district, or tabulation machine; and

(iii) Publicly reports the election results for early or absentee ballots by day, batch, legislative district, or tabulation machine on the county's website prior to the secretary of state's selection of precincts to be audited.

(2) The secretary of state shall conduct, and the county clerks shall facilitate, any postelection audit ordered pursuant to subsection (1) of this section. Such an audit shall be open to attendance by news media personnel. By directive issued at least sixty (60) days prior to the election, the secretary of state shall determine the procedures by which the postelection audit is to be conducted. Such procedures shall be developed in consultation with county clerks and shall include provisions allowing each interested candidate and political party, and each political committee that publicly reported expending money on a ballot question for which the results will be audited, to appoint a designated observer. Within the time specified in the directive, the secretary of state shall report the results of any postelection audits on the website of the office of the secretary of state and to the county clerk of each county in which paper ballots were audited.

(3) The secretary of state may order additional postelection audits, without regard to the election or precinct limitations provided in subsection (1) of this section, if he determines that such action is warranted by the findings of the

audits ordered pursuant to subsection (1) of this section. The secretary of state shall limit such orders for additional postelection audits to the types of problems identified by the audits performed pursuant to subsection (1) of this section.

(4) The office of the secretary of state shall pay for the cost of any postelection audits conducted pursuant to this section, including reimbursing county clerks for any costs associated with facilitating such audits.

(5) Postelection audits for elections using instant runoff voting shall be conducted using procedures established pursuant to rules promulgated by the secretary of state pursuant to chapter 52, title 67, Idaho Code.

SECTION 30. That Section 34-1206, Idaho Code, be, and the same is hereby amended to read as follows:

34-1206. BOARD'S STATEMENT OF VOTES CAST. (1) The board shall examine and make a statement of the total number of votes cast for all candidates or special questions that shall have been voted upon at the election. The statement shall set forth the special questions and the names of the candidates for whom the votes have been cast. It shall also include the total number of votes cast for each candidate for office by precinct or polling location for elections conducted pursuant to chapter 14, title 34, Idaho Code, and the total number of affirmative and negative votes cast for any special question by precinct or polling location for elections conducted pursuant to chapter 14, title 34, Idaho Code. The board shall certify that such statement is true, subscribe their names thereto, and deliver it to the county clerk.

(2) The secretary of state shall promulgate rules pursuant to chapter 52, title 67, Idaho Code, to address statements of votes cast for candidates in elections conducted by instant runoff voting.

SECTION 31. That Section 34-1208, Idaho Code, be, and the same is hereby amended to read as follows:

34-1208. CERTIFICATES OF NOMINATION OR ELECTION. Immediately after the top four primary election canvass the county clerk shall issue certificates of nomination to the ~~political party candidates of each party~~ who receive the highest a sufficient number of votes for their particular county office to advance to the general election pursuant to 34-703(2), Idaho Code. ~~and the~~ The candidates so certified shall have their names placed on the general election ballot. On or before the eighth day after the primary election canvass, the county clerk shall issue certificates of election to the precinct committeemen of each political party who receive the highest number of votes in their precinct. Provided that to be elected, a precinct committeeman shall receive a minimum of five (5) votes. In the event no candidate receives the minimum number of votes required to be elected, a vacancy in the office shall exist and shall be filled as otherwise provided by law. The county clerk shall also certify by registered mail the results of the primary election to the secretary of state. The form for such certificate shall be prescribed by the secretary of state and be uniform throughout the state.

SECTION 32. That Section 34-1209, Idaho Code, be, and the same is hereby amended to read as follows:

34-1209. CERTIFICATES OF ELECTION TO COUNTY CANDIDATES AFTER GENERAL ELECTION. Immediately after the general election canvass, the county clerk shall issue a certificate of election to the county candidates who received the highest number of votes for that particular office and they shall be considered duly elected to assume the duties of the office for the next ensuing term. For elections conducted by instant runoff voting, the secretary of state shall issue certificates of election to the candidates who received the highest number of votes after a complete instant runoff tabulation pursuant to section 34-1218, Idaho Code.

SECTION 33. That Section 34-1214, Idaho Code, be, and the same is hereby amended to read as follows:

34-1214. CERTIFICATES OF NOMINATION OR ELECTION TO FEDERAL, STATE, DISTRICT OR NONPARTISAN OFFICES AFTER PRIMARY AND TOP FOUR PRIMARY. (1) Immediately after the top four primary election canvass, the secretary of state shall issue certificates of nomination to the ~~political party candidates for~~ United States senate, United States house of representatives, state legislature, and elective state office of each party who receive the highest a sufficient number of votes for their particular federal, state or district office to advance to the general election pursuant to 34-703(2), Idaho Code. The candidates so certified shall have their names placed on the general election ballot.

(2) Immediately after the primary election canvass, the secretary of state shall issue certificates of nomination to the nonpartisan candidate or candidates who receive the highest number of votes for the number of vacancies which are to be filled for a particular office and also to the same number of candidates who receive the second highest number of votes for the particular office. The candidates so certified shall have their names placed on the general election ballot. If it appears from the canvass that a particular candidate has received a majority of the total vote cast for the particular office, he shall be issued a certificate of election instead of a certificate of nomination and no candidates shall run for the particular office in the general election.

SECTION 34. That Section 34-1215, Idaho Code, be, and the same is hereby amended to read as follows:

34-1215. CERTIFICATES OF ELECTION TO FEDERAL, STATE AND DISTRICT OFFICES AFTER GENERAL ELECTION. Immediately after the general election canvass, the secretary of state shall issue certificates of election to the federal, state and district candidates who received the highest number of votes for the particular office and they shall be considered duly elected to assume the duties of the office for the next ensuing term. For elections conducted by instant runoff voting, the secretary of state shall issue certificates of election to the candidates who received the highest number of votes after a complete instant runoff tabulation pursuant to section 34-1218, Idaho Code.

SECTION 35. That Section 34-1216, Idaho Code, be, and the same is hereby amended to read as follows:

34-1216. TIE VOTES — IN STATE OR DISTRICT ELECTIONS. In the case of a tie vote between the candidates at a primary, top four primary, or general election, or the final round of a general election conducted by instant runoff voting, which tie must be broken in order to determine which candidate is elected or which candidates will advance to the general election, the interested parties or their authorized agents shall appear before the secretary of state within two (2) days after the canvass and the tie shall be determined by a toss of a coin. Tie votes in the final round of general elections for executive office conducted by instant runoff voting shall be broken under Section 2, Article IV, Idaho Constitution.

SECTION 36. That Chapter 12, Title 34, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 34-1218, Idaho Code, and to read as follows:

34-1218. INSTANT RUNOFF VOTING — DEFINITIONS — TABULATION. (1) For the purpose of instant runoff voting elections, unless the context or usage indicates otherwise, the following words have the following meanings:

- (a) "Active candidate" means any candidate who has not been eliminated and has not withdrawn his candidacy according to law.
- (b) "Highest-ranked active candidate" means the active candidate assigned to a higher ranking than any other active candidate.
- (c) "Overvote" means an instance in which a voter has ranked more than one (1) candidate at the same ranking.
- (d) "Ranking" means the number available to be assigned by a voter to a candidate to express the voter's choice for that candidate. The number "1" is the highest ranking, followed by "2" and then "3" and so on.
- (e) "Round" means an instance of the sequence of voting tabulation as provided in subsection (3) of this section.

(2) All general elections and all special elections to fill vacancies, as applicable, for congress, state elective office, county elective office or the state legislature involving three (3) or more candidates shall be conducted using instant runoff voting.

(3) Tabulation for elections conducted by instant runoff voting shall proceed in rounds. In a round of tabulation, each ballot counts as a vote for its highest-ranked active candidate. Tabulation shall proceed sequentially as follows:

- (a) If two (2) or fewer active candidates remain, the candidate with the highest number of votes is elected and tabulation is complete.
- (b) In the first round only, if more than two (2) active candidates remain and there is at least one (1) write-in candidate who has filed a declaration of intent pursuant to section 34-702A, Idaho Code, then each such write-in candidate who received fewer than one hundred (100) votes or fewer votes than any active non-write-in candidate, shall be eliminated simultaneously and votes for those candidates shall be transferred to each ballot's next-highest-ranked active candidate.
- (c) In any round other than those described in paragraphs (a) and (b) of this subsection, if more than two (2) active candidates remain, the active candidate with the fewest votes shall be eliminated and votes for that candidate shall be transferred to each ballot's next-highest-ranked active candidate. This process shall be repeated until two (2) or fewer candidates remain.
- (4) An inactive ballot does not count as a vote for any ranked active candidate. A ballot becomes inactive if:
 - (a) It does not contain rankings for any active candidate; or
 - (b) It contains an overvote that includes its highest-ranked candidate.

(5) (a) If two (2) or more candidates are tied with the fewest votes and tabulation cannot continue until the candidate with the fewest votes is defeated, then the candidate to be defeated shall be determined by lot.

(b) If there is a tie in a final round of tabulation and the winner cannot be determined until the tie is broken, that tie shall be broken as provided by law or the constitution of the state of Idaho as the case may be.

(6) (a) In order to determine a party's vote share under section 2, article III of the constitution of the state of Idaho or for any other purpose not otherwise provided by law, the aggregate total of all votes cast in the first round of tabulation for candidates who have indicated their affiliation with that party on the ballot pursuant to section 34-704A, Idaho Code, shall be used.

(b) In order to determine a candidate or elected official's party affiliation for the purpose of filling a vacancy or any other purpose, the party affiliation indicated on the ballot pursuant to section 34-704A, Idaho Code, by that candidate or elected official shall be used, unless otherwise provided by law.

(7) The secretary of state shall promulgate administrative rules pursuant to chapter 52, title 67, Idaho Code, for elections conducted by instant runoff voting, including rules for canvassing, for tabulation, and for releasing unofficial preliminary round-by-round results as soon as feasible after the polls close and at regular intervals thereafter until the counting of ballots is complete.

SECTION 37. That Section 34-2410, Idaho Code, be, and the same is hereby amended to read as follows:

34-2410. SPECIFICATIONS FOR VOTING MACHINES OR VOTE TALLY SYSTEMS. (1) No voting machine or vote tally system shall be approved by the secretary of state unless it is constructed so that it:

(a) Secures to the voter secrecy in the act of voting.

(b) Provides facilities for voting for the candidates of as many political parties or organizations as may make nominations and for or against as many measures as may be submitted.

(c) Permits the voter to vote for any person for any office and upon any measure that he has the right to vote for.

(d) Permits the voter, except at primary elections, to vote for all the candidates of one (1) party or in part for the candidates of one (1) party and in part for the candidates of one or more other parties.

(e) Permits the voter to vote for as many persons for an office as he is lawfully entitled to vote for but no more.

(f) Prevents the voter from voting for the same person more than once for the same office.

(g) Correctly registers or records all votes cast for any and all persons and for or against any and all measures.

(h) Can be adjusted so that the counting mechanism rejects any vote cast on the tabulating card in excess of the number which the voter is entitled to vote.

(i) ~~Provides that a vote for more than one (1) candidate cannot be cast by one (1) single operation of the machine or vote tally system.~~ Can conduct an instant runoff voting election pursuant to section 34-1218, Idaho Code.

(2) A vote tally system shall be:

(a) Capable of correctly counting votes on ballots or ballot cards on which the proper number of votes have been marked for any office or question or issue that has been voted.

(b) Capable of ignoring the votes marked for any office or question or issue where more than the allowable number of votes have been marked, but shall correctly count the properly voted portions of the ballot card.

(c) Capable of accumulating a count of the specific number of ballots or ballot cards tallied for a precinct, accumulating total votes by a candidate for each office; and accumulating total votes for and against each question and issue of the ballots or ballot cards tallied for a precinct.

(d) Capable of tallying votes from ballots or ballot cards of different political parties, from the same precinct, in the case of a primary election.

(e) Capable of accommodating rotation of candidates' names on the ballot or ballot card, provided that all ballots or ballot cards from one (1) precinct shall be of the same rotation sequence.

(f) Capable of automatically producing precinct totals in either printed, marked, or punched form, or combinations thereof.

(g) Capable of tabulating votes in an instant runoff election pursuant to section 34-1218, Idaho Code.

SECTION 38. That Section 34-2305, Idaho Code, be, and the same is hereby amended to read as follows:

34-2305. MANNER OF RECOUNTING. At the time and place fixed for recounting the ballots cast in any precinct all ballots shall be recounted in plain view of the candidates or their representatives. The recount shall commence at the time and place so ordered, and shall continue until the recount is finished and the results tabulated. The attorney general shall be the final authority concerning any question which arises during the recount for federal, state, county or municipal elections. The county prosecuting attorney shall be the final authority concerning any question that arises during the recount of other elections. The secretary of state shall promulgate administrative rules pursuant to chapter 52, title 67, Idaho Code, for the conduct of recounts of instant runoff voting elections.

SECTION 39. That Section 34-903B, Idaho Code, be and the same is hereby repealed.

SECTION 40. All statutes enacted before the effective date of this act that are inconsistent with the provisions of this act are hereby repealed and the Idaho Code Commission shall include such repealers in the annual codifiers' corrections bill as necessary.

SECTION 41. SEVERABILITY. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.

SECTION 42. This act shall be in full force and effect on and after January 1, 2025. **END.**

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shall be submitted to the qualified electors of the State of Idaho, for their approval or rejection at the regular General Election, to be held on the fifth (5th) day of November, A.D., 2024, and each for himself says: I have personally signed this petition; I am a qualified elector of the State of Idaho; my residence and post office are correctly written after my name.

Signature	Printed Name	Residence Street and Number	City	Date	Official Use Only Legislative District
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					
11.					
12.					

Any person signing a petition may remove their signature pursuant to Section, 34-1803B, Idaho Code.

STATE OF IDAHO

ss

County of _____

I, _____, being first duly sworn, say: That I am a resident of the State of Idaho and at least eighteen (18) years of age: that every person who signed this sheet of the foregoing petition signed his or her name thereto in my presence: I believe that each has stated his or her name, address and residence correctly, that each signer is a qualified elector of the State of Idaho, and a resident of the county of _____.

Signed _____
Post-office address _____

Subscribed and sworn to before me this _____ day of _____, _____

(Notary Seal)

Signed _____
Notary Public
Residing At _____
My Commission expires on _____



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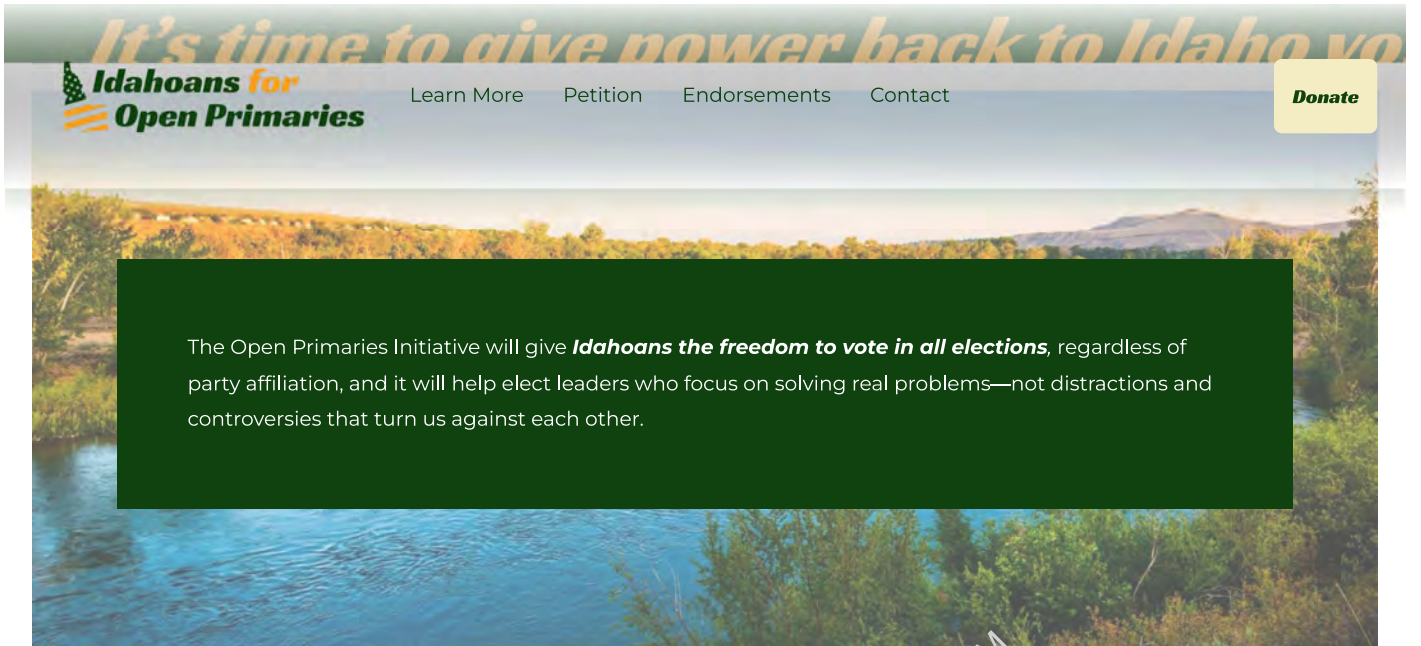
[Donate](#)



Idaho's closed primary system blocks 270,000 independent voters from voting in the most important elections.

Too many of our leaders are handpicked by political party committees, not by the people they're supposed to serve.





The Open Primaries Initiative will give **Idahoans the freedom to vote in all elections**, regardless of party affiliation, and it will help elect leaders who focus on solving real problems—not distractions and controversies that turn us against each other.

Help us qualify for the ballot!

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[PRINT THE PETITION](#)

[VOLUNTEER](#)

Republicans for Open Primaries



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of the most precious rights that Americans have. Every registered voter should have the right to weigh in on choosing our leaders. Independents, including a lot of military veterans, have been excluded from having their say because of the closed GOP primary."

-Former Governor Butch Otter

[CLICK HERE FOR THE FULL LIST OF REPUBLICAN COMMUNITY LEADERS ENDORSING THE OPEN PRIMARIES INITIATIVE](#)



Idahoans for Open Primaries is a coalition of community groups and civic organizations that supports the Open Primaries ballot initiative.

The coalition includes the Veterans for Idaho Voters, Idaho Chapter of Mormon Women for Ethical Government, North Idaho Women, the Hope Coalition, Reclaim Idaho, and Republicans for Open Primaries.

Would you like a member of the coalition to speak to your organization or group about the Open Primaries Initiative?



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Stay in touch

Sign up to receive updates on the Open Primaries Initiative

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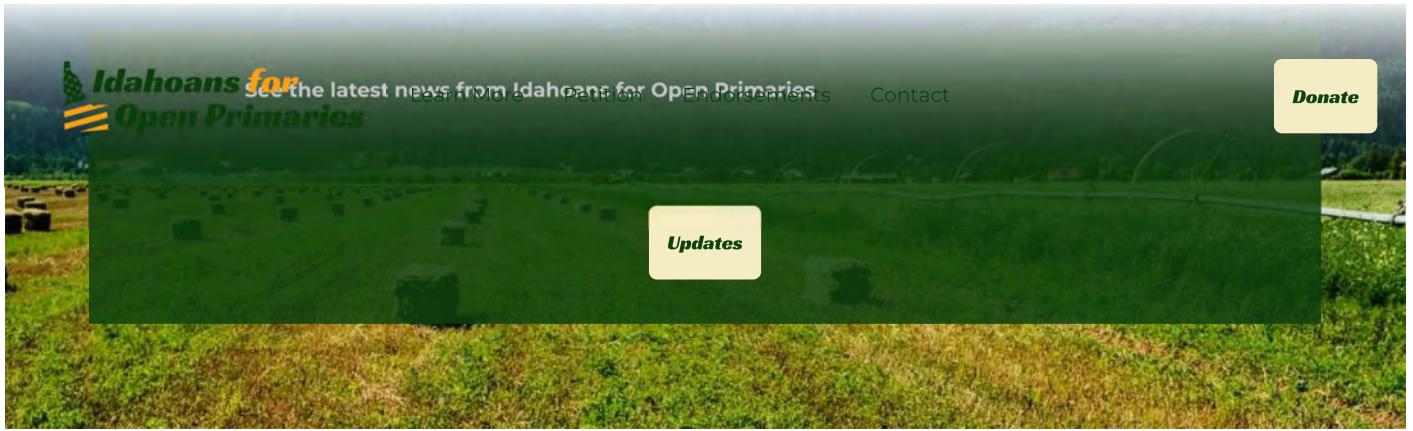
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The Open Primaries Initiative will give Idahoans *more freedom and better leadership*

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Volunteer to help get the Open Primaries Initiative on the November 2024 ballot

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PO Box 2971, Boise, ID 83707

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Where can I sign the petition?

Thank you for supporting our effort! To sign the petition, you must be registered to vote in Idaho. Check your voter registration status [here](#).

In order for your signature to count, you must sign in the presence of a signature gatherer. Electronic signatures do not count.

Boise Signing Location!

Reclaim Idaho Office

Address: 2605 W Kootenai St, Boise, ID 83705

Office Hours:

Monday-Friday

10am-2pm

Note: the Reclaim Idaho office requires individuals to climb a flight of stairs. If you need accommodations please email organizer@reclaimidaho.org



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La Chic Boutique

Address: 107 Main St, Sandpoint, ID 83864

Hours:

Monday-Saturday

10:30-5:00pm

Sunday

11:00-4:00pm

Rexburg Signing Location!

Rigby, Andrus, & Rigby Law office

Address: 25 N 2nd E St, Rexburg, ID 83440

Hours:

Monday-Friday

9am-5pm

Idaho Falls Signing Location!

**Outside of the Idaho Falls Public Library
(weather permitting)**

Address: 457 W Broadway St, Idaho Falls, ID 83402

Hours:

Saturdays

11am-2pm

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Minidoka-Cassia Signing Location!



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Hours:

Monday-Friday

8am-5pm

Get info on how to sign the petition!

Fill out the form below and the campaign will connect you to a volunteer signature gatherer or signing location in your community!

Name (required)

First Name	Last Name
<input type="text"/>	<input type="text"/>

Email (required)

Phone (required)

Town (required)

SUBMIT

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Upcoming events

The campaign posts upcoming events as they are scheduled!

Do you know a public event we should be at?

SUBMIT EVENT

Additional questions?

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Want to get involved?

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Frequently Asked Questions

How it works

- ✓ ***Which offices does the Open Primaries Initiative apply to?***
- ✓ ***Will a candidate's party still be listed on the ballot?***
- ✓ ***Can candidates of any party run in the primary?***
- ✓ ***Which party benefits more from this initiative—Democrats or Republicans?***
- ✓ ***Are write-in candidates included?***
- ✓ ***Which states and localities are using this?***



Can parties still choose a specific candidate to endorse?

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✓ ***If only four people run in the primary, do all four advance?***

∧ ***In the instant-runoff general election, will the counting of votes stop as soon as one candidate receives at least 50% of the vote?***

No. The counting of votes will continue in rounds until only two candidates remain. Once only two candidates remain, the candidate with the most votes wins.

The initiative is designed in this way so that the final count provides more accurate information about the level of support each candidate received. For example: If all counting were to stop in the first round just because a candidate received 51% of the vote, we would never know if the winning candidate received support from just 51% of the electorate or from a much higher percentage.

Qualifying for the ballot

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✓ **How many signatures are required for the initiative to qualify for the ballot?**

✓ **How long do we have to collect signatures?**

✓ **Who can sign the initiative?**

∧ **Who can collect signatures?**

Any Idaho resident over the age of 18. Volunteers under the age of 18 can still participate in signature collection, but they must be accompanied by an adult.

Constitutionality

✓ **Will the Open Primaries Initiative be struck down by a court as unconstitutional?**



Does the Open Primaries Initiative violate the first-amendment rights of political parties?

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✓ **Does the Open Primaries Initiative violate the single-subject rule?**

✓ **Does the Open Primaries Initiative violate the “plurality provision” in the Idaho Constitution by requiring winning candidates to obtain a majority of the vote, and not just a plurality?**

✓ **Does the Open Primaries Initiative violate the democratic principle of “one person, one vote”—a principle enshrined in the United States Constitution?**

∧ **Didn't the Idaho Legislature pass a bill that bans ranked choice voting?**

Yes. But the Open Primaries Initiative contains a provision that would repeal the ban.

Other

✓ **Why propose a Top Four Primary with an Instant Runoff in the general election? Why not a simpler reform like the Top Two system in Washington state?**



Will the new voting system cost money to implement?

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Is it accurate to use the term “open primary” to describe this initiative?



Didn't the Idaho Supreme Court say the term “top four primary” is more accurate?

“Open primary” is an accurate term to describe this initiative. It's true that the Idaho Supreme Court took the view that the term “open primary” describes the primary system Idaho used to have, and that the old Idaho system was distinct from what our initiative proposes. Our view, which is common among reformers across the country, is that there are multiple types of “open primary.” One type is the partisan open primary system, which is the system we used to have in Idaho. Another type is the nonpartisan open primary, which is the type of open primary established in Alaska and other states. Both systems are correctly called “open primaries” because they both give all voters—regardless of party affiliation—the right to participate in primary elections.



Why is the initiative called the “Open Primaries Initiative” and not the “Ranked Choice Voting Initiative”? Isn't this initiative all about ranked choice voting?



If the Open Primaries Initiative is approved by voters, doesn't the Idaho Legislature have the power to repeal it?

Still have a question?



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^ ***Why is the initiative called the “Open Primaries Initiative” and not the “Ranked Choice Voting Initiative”? Isn’t this initiative all about ranked choice voting?***

It makes good sense to call it the “Open Primaries Initiative” because the initiative’s chief goal is to end closed primaries and allow all Idaho voters—regardless of party affiliation—the right to participate in primary elections. The initiative also establishes an instant runoff (also called “ranked choice voting”) in general elections. But the instant runoff is a secondary feature of the reform. It’s included mainly to make sure that, once four candidates have advanced from an open primary, the final winner has support from a broad coalition of voters and not just a narrow slice of the electorate.

✓ ***If the Open Primaries Initiative is approved by voters, doesn’t the Idaho Legislature have the power to repeal it?***

Still have a question?



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Supporting Fair Elections

Idaho Open Primaries Initiative

Fairness

Idaho's closed primaries lock out 270,000 registered voters from voting in the most important elections!

Accountability

Elected officials should represent the people, not just the small slice of voters allowed to vote in closed primaries.

Voter Choice

Voters should be able to vote for any candidate they want.

Unity Over Division

Idaho is strongest when all voters feel that their voice is heard.

What are Idaho's closed primaries? ▼

Most people are surprised to learn that a small minority of Idaho voters effectively decide the majority of our elections in partisan primaries. That's right, most of our elections are decided in the primaries! Because the majority of Idaho's legislative districts and all of our congressional districts lean so heavily in favor of one of the two major parties, whoever wins the primary of the dominant party will win the general election. As such, Idaho's closed primaries block 270,000 registered independent voters from participating in the most important elections. Open primaries give all voters a fair chance to choose their elected leaders.

Restoring Idaho's open primaries ▼

For nearly one hundred years, Idaho had open primaries. This changed in 2011 when the Idaho legislature closed them. This law required voters to register with a party in order to participate in the primary election. Restoring open primaries prioritizes individual Idaho voters over political party politics.

Open primaries lead to better outcomes and accountable leaders ▼

Restoring open primaries will make room for candidates who enjoy broad support. Because fewer voters can participate in closed primaries, elected officials have become increasingly insulated from the average voter and feel less accountability to them.

Open primaries will increase meaningful voter participation and choice ▼

Restoring open primaries is a way to support and defend representative government - one that is of the people, by the people and for the people. In an open primary, every registered voter can meaningfully participate by choosing the candidate they prefer and know that their voice will be heard.

**EXHIBIT
J**





ADAMS TEAM



Team Total: 51

 **Open Primaries
Initiative**

BABE VOTE TEAM



Team Total: 4385

 **Open Primaries
Initiative**

BANNOCK TEAM



Team Total: 3600

 **Open Primaries
Initiative**

BLAINE TEAM



Team Total: 2637

 **Open Primaries
Initiative**

BONNER TEAM



Team Total: 3325

 **Open Primaries
Initiative**

BONNEVILLE TEAM



Team Total: 4663



BOUNDARY TEAM



Team Total: 443



CALDWELL TEAM



Team Total: 877



CLARK TEAM



Team Total: 46

 **Open Primaries
Initiative**

CLEARWATER TEAM



Team Total: 332

 **Open Primaries
Initiative**

EAST BOISE TEAM



Team Total: 5114

 **Open Primaries
Initiative**

ELMORE TEAM



Team Total: 331

 **Open Primaries
Initiative**

FREMONT TEAM



Team Total: 147

 **Open Primaries
Initiative**

GEM TEAM



Team Total: 166

 **Open Primaries
Initiative**

GOODING TEAM



Team Total: 149

 **Open Primaries
Initiative**

IDAHO COUNTY TEAM



Team Total: 862

 **Open Primaries Initiative**

KOOTENAI TEAM



Team Total: 5521



LATAH TEAM



Team Total: 2594



LEMHI TEAM



Team Total: 344



MADISON TEAM



Team Total: 701

 **Open Primaries
Initiative**

NEZ PERCE COUNTY TEAM



Team Total: 2301

 **Open Primaries
Initiative**

NORTH BOISE TEAM



Team Total: 13,225

 **Open Primaries
Initiative**

NW BOISE + GARDEN CITY TEAM



Team Total: 7595

 **Open Primaries
Initiative**

PAYETTE TEAM



Team Total: 162

 **Open Primaries
Initiative**

TETON TEAM



Team Total: 1974

 **Open Primaries
Initiative**

TWIN FALLS TEAM



Team Total: 3504

 **Open Primaries
Initiative**

VALLEY TEAM



Team Total: 1873

 **Open Primaries
Initiative**

VISTA TEAM



Team Total: 3948

 **Open Primaries
Initiative**

WASHINGTON TEAM



Team Total: 304

 **Open Primaries
Initiative**

WEST ADA TEAM



Team Total: 1887

 **Open Primaries
Initiative**

WEST BOISE TEAM



Team Total: 3494



 **Idahoans for Open Primaries** @OpenPrimariesID · Sep 15, 2023

Idaho deserves better. It's time for Open Primaries.

"...the grownups within Idaho's dominant political party have joined the fight. And the state's 32nd chief executive has offered the rallying cry: 'Idaho deserves better.'"

Today's Lewiston Tribune:

[Intribune.com/opinion/opinio...](https://www.intribune.com/opinion/opinio...)



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14 29 109 10K



Idahoans for Open Primaries

@OpenPrimariesID

"...the vote will not be a question of whether candidates will be chosen in open or closed primaries but whether candidates will be chosen in open primaries or by Idaho Republican Chair Dorothy Moon."

#idpol



Idaho Statesman @IdahoStatesman - Oct 11, 2023

Ada County Republican Party committee resignations show need for open primaries | Opinion idahostatesman.com/opinion/letter...

10:21 AM · Oct 11, 2023 · **2,116** Views



↳ Idahoans for Open Primaries reposted



Veterans for Idaho Voters (V4IV) ✓

@Vets4IDVoters

Thanks to the Mountain Express for carrying the first of our Veterans Day OpEds.

#idpol

#openprimaries

Have more choice and better elections with open primaries
mtexpress.com/opinion/guest_... via @IdahoMtExpress

Idaho Mountain Express

Have more choice and better elections with open primaries

From mtexpress.com

4:29 PM · Nov 9, 2023 · **507** Views





Idahoans for Open Primaries

@OpenPrimariesID

"The choice is stark—either keep the closed GOP primary and perpetuate the nasty, dysfunctional politics we now have, or adopt an open primary system that will allow the people to elect reasonable, problem-solving candidates to serve them."

#idpol



From magicvalley.com

12:39 PM · Dec 21, 2023 · **5,148** Views

22

35

118

1





Idahoans for Open Primaries @OpenPrimariesID · Mar 18

...

We had so many volunteers in Caldwell this weekend that we almost ran out of doors to knock.

Idahoans across the spectrum are fed up with closed primaries that shut out independent voters.

Let's go back to the days when all Idaho voters had a voice in our elections.

#idpol

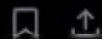


23

38

162

5.5K







Veterans for Idaho Voters (V4IV)  @Vets4IDVoters · Sep 13, 2023

Fact check: Idaho's primaries were open for 80 years until a small group of far right extremists sued to close them in 2011.

Open and accessible *is* the Idaho Way



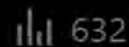
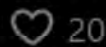
Maria Olsen Nate   @MariaOlsenNate · Sep 13, 2023

Remember when Otter was considered too conservative?

Now he's out there supporting the destruction of our voting system.

This initiative is more than just open primaries...it's about ranked-choice ...

[Show more](#)





Idahoans for Open Primaries

October 9, 2023 · 🌐

Today, the Idaho chapter of Mormon Women for Ethical Government joins the Idahoans for Open Primaries coalition in supporting representative government through safe and open elections. This support is a manifestation of our commitment to peacemaking within our community and our determination to advocate for democratic processes wherein every vote

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@mwegidaho

**The Open Primaries
ballot initiative is
intended to restore
Idaho's open electoral
system and return
political power to the
people.**

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Idaho women in particular were among the first in the
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As women inspired by faith, we can no longer sit by as partisa
ures. We will work tirelessly to secure
neutral and fair elections within our state. We believe this will help heal our divisions and
ensure that all Idahoans enjoy a more responsive and effective state government.



Mormon Women for Ethical Government - Idaho Chapter

October 7, 2023 · 🌐

Today the Idaho chapter of Mormon Women for Ethical Government joins the [Idahoans for Open Primaries](#) coalition in supporting representative government through f... See more

👍👍👍 10

👍👍👍 5



Idahoans for Open Primaries @OpenPrimariesID · Apr 12

...

Important op-ed from Karole Honas in support of the Open Primaries Initiative:

"In fact, until 2011, Idaho had open primaries. That meant anyone could vote for any candidate, regardless of party affiliation. And you know what? I miss those days."

#idpol



From postregister.com

12

24

78

2.2K



↳ Idahoans for Open Primaries reposted

 **Veterans for Idaho Voters (V4IV)**  @Vets4IDVoters · Jan 28

[#mustread](#) on damage done from closed primaries, Idaho is prominently featured

For 80 years, until 2011, Idaho had open primaries

True Idahoans support [#OpenPrimaries](#)
[#idpol](#) [#idleg](#) [#Veterans](#)

Closed primaries shut out millions of voters, divide Americans into 'warring camps'

[Show more](#)

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Idahoans for Open Primaries

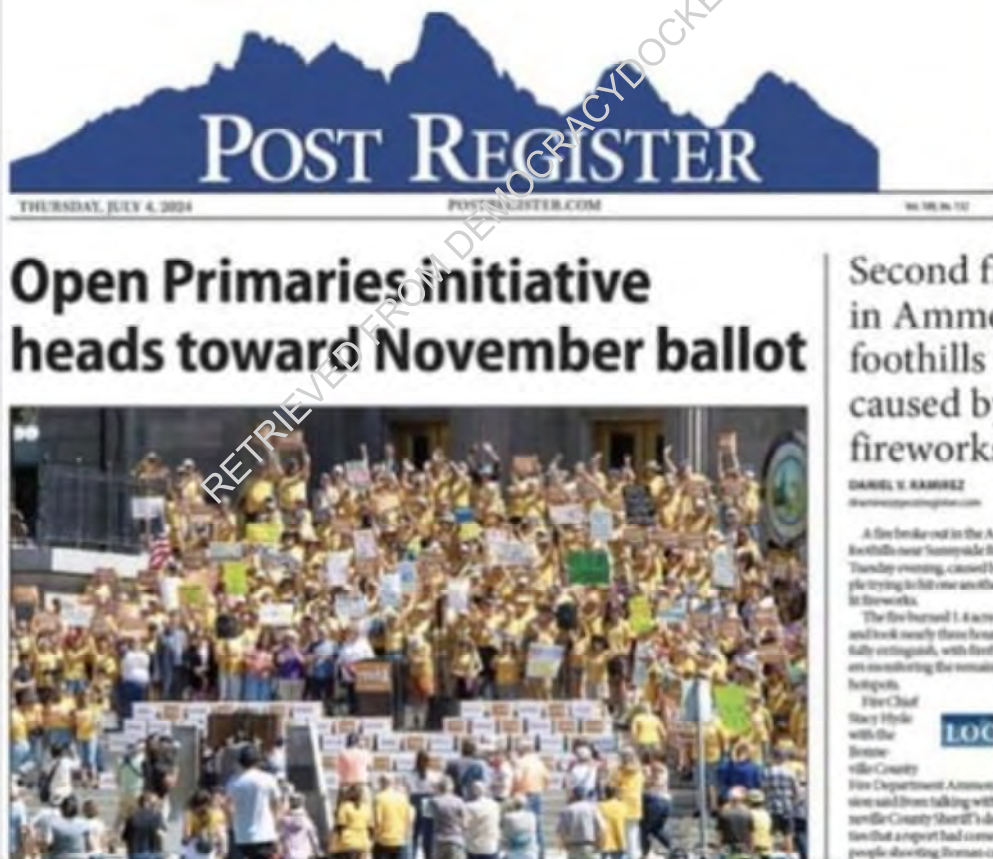
6 days ago · 🌐

Front page of today's Post Register.

Let's vote YES on 1 to establish open primaries and give power back to the people of Idaho.

Happy Independence Day!

#idpol



Please take a moment to read this important column from Randy Stapilus:

****Idahoans can ensure choices aren't co-opted by a few****

"At the end of a long road to ballot qualification, Idahoans will get to decide whether all the voters, or only a tiny sliver of them, will pick the leaders of its government going forward.

That's the core of what's really a simple proposition. There is no lack of efforts to confuse and distract, of course, from what the open primaries initiative actually would do; confusion and distraction are just about the best tools the opposition has.

For example, this from an op-ed by Morgan McGill of the Idaho Family Policy Center (a pro-Republican group): 'Through open primaries, Democrats will slowly take greater control over Gem State politics as they build a coalition with more moderate or 'squishy' Republican candidates that can flip seats historically held by more conservative Republican candidates.'

The sense of that falls apart when you recognize that the initiative would not change the people of Idaho or their candidates either. It simply would bring more people into the process of selecting their leaders. The only rational reason for opposing the initiative is if you think that's a bad idea, as a good many people in current state Republican leadership clearly do.

So how does it work?

There are two steps, one at the primary election, one at the general.

At the primary, instead of a convoluted system of trying to figure out which Idaho voters can vote for what, the answer would be this: Everyone (who is a qualified voter) gets to vote for everything. For instance: If there are five people — say, three Republicans, one Democrat and an independent — running for the state Senate seat where you live, you vote for whichever one you prefer. When the votes are tallied, the four candidates who get the most votes go on to November.

In November, once again you get to vote for whichever of the four you prefer — but you also can make another choice, if you want to: You can indicate the candidate who is your second choice (if your first choice doesn't win), and your third choice (if neither of the top two come out on top). This is the "ranked choice" system, the terminology of which has tangled a lot of understanding about what's really a pretty simple process.

The idea is that a candidate should have to get more than half of the vote to be elected. (Many of Idaho's cities operate on this principle in their elections, and mayoral runoffs are not rare.)

This would mean that the people who are supposed to be in charge in this state — the voters, all who choose to participate — would get a voice in selecting their leaders. As it is now, because of the convoluted system governing party elections, only a small fraction do.

That's it. Nothing terribly hard to understand about it.

What would be the effect? State Republican Chair Dorothy Moon wrote July 3, "In a winner-take-all election, the candidate with the most votes wins—the candidate that the most voters want. However, in an RCV election, the winner is the candidate a majority can tolerate. This shifts the focus, incentivizing candidates to avoid taking strong stands on issues."

That's one way of putting it: A move toward leadership by the broadly acceptable rather than bitter extremes. Here's another: Wins under the open primary system would go to whoever has the most support among the most voters — as opposed to (in the current setup) whoever gets the backing of a small in-group, often a tiny fraction of the voters. Or: Do you want leadership representative of most of us, or of just a few of us?

Of course, looking ahead, all this depends too on the Idaho Legislature. Initiatives pass laws just as the legislature does, but just as no legislature can bind a later one, the legislature can change — or repeal completely — any initiative passed by the voters. Given how little regard the Idaho Legislature has had in recent years for the voters, the open primary law — if voters do pass it — may have a shaky future.

In the meantime, Idaho voters have a decision to make, about whether they want to be respected as vital participants in a system of self-governance. Or not."

👍 75

🗨️ 24

👍 Like

🗨️ Comment

↑ Idahoans for Open Primaries reposted

 **Sam Sandmire** @SamSandmire · Jun 7

"Most of Idaho's legislators are beneficiaries of the closed primary system and have no appetite to change it. But Idahoans can do so themselves. A voter initiative will likely be on the ballot this November. It proposes open primaries...." #idpol

 **Idaho Statesman** @IdahoStatesman · Jun 7

The closed Republican primary has bred growing extremism in Idaho. It can be stopped | Opinion idahostatesman.com/opinion/reader...

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ELECTION 2024

GOVERNMENT + POLITICS

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Idaho open primary ballot initiative reaches 50,000 signature milestone

Supporters hope to collect 100,000 signatures by the state’s May 1 deadline

BY: **CLARK CORBIN** - DECEMBER 15, 2023 4:30 AM



📷 Reclaim Idaho and Mormon Women for Ethical Government collect signatures before their event announcing their combined efforts working on the Open Primary Initiative in Meridian on October 7, 2023. (Otto Kitsinger for Idaho Capital Sun)

Organizers with Idahoans for Open Primaries announced Wednesday the coalition has gathered more than 50,000 signatures as part of its effort to qualify a ballot initiative for the November 2024 general election.

Idahoans for Open Primaries needs to gather signatures from about 63,000 registered Idaho voters and collect signatures from at least 6% of voters in 18 of Idaho’s 35 legislative districts by May 1.

The coalition is seeking to gather more than the minimum number of signatures in case some signatures cannot be verified or are invalid.

“Our coalition has set a goal of collecting 100,000 signatures before submitting to the Secretary of State’s Office to be certified,” Margaret Kinzel, one of the co-leaders of the Idaho Chapter of [Mormon Women for Ethical Government](#) said in a written statement. Along with Reclaim Idaho, which pushed for the successful 2018 Medicaid expansion ballot initiative, Mormon Women for Ethical Government is one of several groups supporting the open primary ballot initiative.

“The fact that volunteers have already reached 50,000 signatures in just four months is a testament to how passionate Idahoans are about the prospect of an open primary,” Kinzel added



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How would the open primary initiative work in Idaho?

A ballot initiative is a form of direct democracy where the voters of Idaho decide at the ballot box whether to pass a proposed law – rather than the Idaho Legislature.

The open primary ballot initiative would make changes to Idaho’s primary and general elections if it qualifies for the ballot and at least 50% of Idaho voters vote to pass it.

First, the initiative would replace Idaho’s closed party primary elections with a single open primary election that all candidates and voters would participate in, regardless of party affiliation. The top four candidates in the primary election with the most votes would all advance to the general election, regardless of party affiliation.

The ballot initiative would also transform Idaho’s general election by creating ranked choice, or an instant runoff election system. Under that system, voters would pick their favorite candidate and then be able to rank the remaining candidates in order of preference. The candidate receiving the fewest votes would be eliminated, and the votes for that candidate would then be transferred to the second choice candidate on each of those voters’

ballots. That process would continue until there are two candidates remaining, and the candidates with the most votes would be elected the winner.

Under that system, Idahoans would only vote in the general election once because their ranked choices on their ballots would determine the instant runoff races.

Need to get in touch?

Have a news tip?

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Idaho has had a closed primary law in place since 2011, which means that political parties don't have to let voters who are not affiliated with their political party vote in their primary elections. The law also allows political parties to choose to open their primary elections to other voters. During the most recent elections in 2022, only the Democratic Party opened its primary election to other voters. The Republican, Constitution Party and Libertarian primary elections were all closed, the Idaho Secretary of State's Office previously told the Idaho Capital Sun.

Supporters of the open primary initiative said their ballot initiative will force political candidates to be accountable to a wider range of voters because all voters would be able to participate in primary elections.

Opponents of the open primary initiative are led by Idaho Republican Party Chairwoman Dorothy Moon and Idaho Attorney General Raúl Labrador, who have said the open primary initiative would interject confusion into Idaho elections and benefit more progressive candidates.

How is the open primary signature drive going?

The Idahoans for Open Primaries coalition has gained ground steadily. Hundreds of volunteers have been [canvassing neighborhoods across the state](#) carrying clipboards and using

mobile phone apps loaded up with a database of registered voters' names and addresses as they gather signatures.

Organizers launched their signature drive Aug. 19 after a [legal dispute with Labrador](#) over the ballot titles that would be used to identify the initiative.

By Oct. 11, the coalition had gathered 25,000 signatures, the [Idaho Capital Sun previously reported](#).

On Wednesday, organizers announced they had reached 50,000 signatures. Idahoans for Open Primaries also announced Wednesday it had reached the 6% threshold in seven legislative districts and had obtained more than half of the necessary signatures in seven additional districts.

The coalition has until May 1 to turn in its signatures. If ballot initiative qualifies for the November 2024 general election, it would take a simple majority of voters to approve it.

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CLARK CORBIN  

Idaho Capital Sun senior reporter Clark Corbin has more than a decade of experience covering Idaho government and politics. He has covered every Idaho legislative session since 2011 gavel-to-gavel. Prior to joining the Idaho Capital Sun he reported for the Idaho Falls Post Register and Idaho Education News. His reporting in Idaho has helped uncover a multimillion-dollar investment scam and exposed inaccurate data that school districts submitted to the state.

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The Open Primaries Initiative gives power back to people, not party elites

Our closed primaries prevent nearly 300,000 Idahoans from participating in some of our most important elections.



Sign up to get news from the campaign, information about the initiative, and election information and reminders!

First Name

Last Name

Email Address

SIGN UP



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The Open Primaries Initiative will give Idahoans the freedom to vote in all elections without having to align with a political party. Open Primaries will give the power back to people, not political party elites, so we can elect leaders who focus on solving real problems—not distractions and controversies that turn us against each other.

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"The right to vote is one of the most precious rights that Americans have. Every registered voter should have the right to weigh in on choosing our leaders. Independents, including a lot of military veterans, have been excluded from having their say because of the closed



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-Former Governor Butch Otter

[See the full list of Republican community leaders endorsing the Open Primaries Initiative.](#)



Idahoans for Open Primaries is a coalition of community groups and civic organizations that supports the Open Primaries ballot initiative.

The coalition includes the Veterans for Idaho Voters, Idaho Chapter of Mormon Women for Ethical Government, North Idaho Women, the Hope Coalition, Reclaim Idaho, and Republicans for Open Primaries.

Would you like a member of the coalition to speak at your organization or group about the Open Primaries Initiative?

[REQUEST A SPEAKER](#)

The Open Primaries Initiative will give Idahoans *more freedom and better leadership*



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Volunteer to help us pass the Open Primaries Initiative in November!

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Paid for by: Idahoans for Open Primaries | Bruce Newcomb, Treasurer

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Frequently Asked Questions

How it works

^ **Which offices does the Open Primaries Initiative apply to?**

The initiative applies to all offices that currently involve partisan primaries, with the exceptions of President and precinct committeeman. The initiative will not apply to elections that are currently nonpartisan (mayor, city council, school board, etc.).

✓ **Will a candidate's party still be listed on the ballot?**

✓ **Can candidates of any party run in the primary?**

✓ **Which party benefits more from this initiative—Democrats or Republicans?**

✓ **Are write-in candidates included?**

✓ **Which states and localities are using this?**

✓ **Can parties still choose a specific candidate to endorse?**

✓ **If only four people run in the primary, do all four advance?**



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Constitutionality

✓ Will the Open Primaries Initiative be struck down by a court as unconstitutional?

✓ Does the Open Primaries Initiative violate the first-amendment rights of political parties?

∧ Does the Open Primaries Initiative violate the single-subject rule?

No. Attorney General Raúl Labrador has threatened to file a lawsuit against the Open Primaries Initiative on the grounds that it violates the single-subject rule. But legal experts including a former Chief Justice of the Idaho Supreme Court say that any lawsuit filed by Labrador is certain to fail.

It is true that the Idaho Constitution requires ballot initiatives to deal with a single subject. However, "single subject" has been construed very broadly by the Idaho Supreme Court. It does not mean that an initiative can't deal with multiple policy reforms. It simply means that an initiative must have only "one general subject, object, or purpose" and that all provisions are "germane" to a general subject. See *Cole v. Fruitland Canning Ass'n*, 64 Idaho 505, 134 P.2d 603, 606 (1943).

In the case of the Open Primaries Initiative, the general subject is elections. Clearly, all provisions in the initiative are germane to the general subject of elections.

✓ Does the Open Primaries Initiative violate the "plurality provision" in the Idaho Constitution by requiring winning candidates to obtain a majority of the vote, and not just a plurality?



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- ✓ **Didn't the Idaho Legislature pass a bill that bans ranked choice voting?**

Other Questions

- ✓ **Why propose a Top Four Primary with an Instant Runoff in the general election? Why not a simpler reform like the Top Two system in Washington state?**
- ✓ **Will the new voting system cost money to implement?**
- ✓ **Is it accurate to use the term “open primary” to describe this initiative? Didn't the Idaho Supreme Court say the term “top four primary” is more accurate?**
- ✓ **Why is the initiative called the “Open Primaries Initiative” and not the “Ranked Choice Voting Initiative”? Isn't this initiative all about ranked choice voting?**
- ✓ **If the Open Primaries Initiative is approved by voters, doesn't the Idaho Legislature have the power to repeal it?**

Still have a question?

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