

Deborah A. Ferguson, ISB No. 5333
Craig H. Durham, ISB No. 6428
FERGUSON DURHAM, PLLC
223 N. 6th Street, Suite 325
Boise, Idaho, 83702
(208) 484-2253
daf@fergusondurham.com
chd@fergusondurham.com

Attorneys for Petitioners

IN THE SUPREME COURT OF THE STATE OF IDAHO

IDAHOANS FOR OPEN PRIMARIES
and RECLAIM IDAHO,
Petitioners,

v.

RAÚL R. LABRADOR, in his official
capacity as the Idaho Attorney General ,
and PHIL MCGRANE, in his official
capacity as the Idaho Secretary of State,

Respondents.

Case No. 50940-2023

**VERIFIED PETITION
FOR WRITS OF CERTIORARI
AND MANDAMUS**

INTRODUCTION

1. Idahoans for Open Primaries and Reclaim Idaho bring this original action seeking the Court's review of the short and long ballot titles drafted by the Attorney General for the Idaho Open Primaries Initiative (the "Initiative"). The titles assigned by the Attorney General contain material inaccuracies concerning the nature and purpose of

the Initiative and reflect his public opposition to it. The prejudice created by the Attorney General's ballot titles leaves Petitioners with little choice but to challenge their sufficiency and fairness. As set forth in Idaho Code section 34-1809(3)(c), Petitioners ask the Court to examine the Idaho Open Primaries Initiative, hear argument, and in its decision to certify to the Secretary of State the long and short ballot titles provided by the Petitioners which conform with Idaho Code section 34-1809.

2. Petitioners respectfully ask that the Court expedite this time sensitive matter so that the Petitioners can immediately begin to circulate the Initiative petition for signatures upon the certification of new ballot titles.

3. Even under an expedited litigation schedule, this necessary challenge to the Attorney General's deficient ballot titles causes great hardship as it shortens the already limited time to circulate the Initiative petition for signatures. This delay alone may doom the possibility of the Initiative reaching the ballot. To address this reality, Petitioners ask the Court to extend the time in which petitions may be submitted to the Secretary of State beyond the statutory deadline of April 30, 2024, for a period of time commensurate with the delay. Petitioners also seek a writ of mandamus directed to Secretary of State Phil McGrane, ordering him as the State's Chief Election Officer to take all steps necessary to prepare his office and the county clerks for an adjustment in the initiative schedule as it would apply to their duties to review the Initiative's qualification for the ballot.

JURISDICTION

4. The Court has “original jurisdiction to issue writs of mandamus, certiorari, prohibition, and 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; I.A.R. 5(a).

5. A writ of certiorari or review may be granted by any court when an officer is exercising judicial functions, and has exceeded their jurisdiction, and there is no appeal, nor, in the judgment of the court, any plain, speedy, and adequate remedy. Idaho Code § 7-202; Idaho Code § 7-303.

6. The Court has determined that the Attorney General performs a ministerial “quasi-judicial function” when drafting titles for initiatives or referendums as part of his official duties. The law requires that he do so as a disinterested and impartial officer. Idaho Code § 34-1908(2)(e).

7. A writ of mandamus may be issued by the Supreme Court to any inferior tribunal, corporation, board or person, to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station. Idaho Code § 7-302; Idaho Code § 1-203. The writ must be issued in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law. Idaho Code § 7-303.

8. The issue is one of statewide importance and arises from the people's fundamental constitutional right to initiate or repeal legislation, as set forth in Article III, § 1 of the Idaho Constitution. Petitioners have no other adequate remedy at law.

9. Under Idaho law, the number of signatures the law requires is great and valid signatures must be collected from a large number of voters in each of 18 legislative districts. Idaho's initiative requirements are among the most challenging in the country. The Idaho Open Primaries Initiative cannot be circulated for signatures until the Court certifies the ballot titles.

10. The matter is urgent and calls for the Court's expedited review and certification of titles. The exigencies of the exercise of the initiative right are also reflected in the short twenty-day time frame to appeal the Attorney General's ballot titles, as set forth in Idaho Code section 34-1809(3)(a). Delay alone could doom the Initiative from qualifying for the ballot and deny the citizens of Idaho the opportunity to vote on the important electoral reform the Idaho Open Primaries Initiative seeks to enact. The Petitioners therefore also seek additional time to collect the requisite signatures, to compensate the citizens of Idaho for the delay caused by the Attorney General's defective ballot titles.

PARTIES

11. Petitioner Idahoans for Open Primaries is a coalition of member organizations including Reclaim Idaho, the Idaho Task Force of Veterans for Political Innovation, North Idaho Women, and the Hope Coalition. The coalition is actively working to qualify the Idaho Open Primaries Initiative for the 2024 general election ballot. Idahoans for Open Primaries alleges a distinct and palpable injury if the Attorney General's ballot titles are certified for the Initiative, as the titles are not accurate or impartial. The titles drafted by the Attorney General will create prejudice against the measure.

12. Petitioner Reclaim Idaho is an Idaho-based political action committee, registered with the Idaho Secretary of State. Reclaim Idaho is a grassroots organization designed to protect and improve the lives of working Idahoans. It advocates for policies and initiatives that improve the electoral system, strengthen public schools, protect citizen-initiative rights, and extend healthcare to working families. It is actively pursuing the Idaho Open Primaries Initiative to qualify it for the 2024 general-election ballot. Reclaim Idaho alleges a distinct and palpable injury if the Attorney General's ballot titles are certified for the Initiative, as the titles are insufficient as they are not accurate or impartial. The titles drafted by the Attorney General will create material prejudice against the measure.

13. Respondent Raúl Labrador is named in his official capacity as the Attorney General of Idaho. It is the Attorney General's responsibility to provide ballot titles under Idaho Code section 34-1809(2)(a), a quasi-judicial task delegated to him by the legislature. The law requires him to give a true and impartial statement of the purpose of the measure, and not intentionally argue or draft titles that are likely to create prejudice either for or against the measure. Idaho Code § 34-1809(2)(e). Further, the law requires that the short title be distinctive and reflect how the measure is commonly referred to or spoken of.

14. 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 as set forth in Idaho Code section 34-201. Under Idaho law he also has responsibilities concerning the ballot titles. It is his responsibility to transmit the ballot titles to the sponsor of the measure, and to print the titles the Court certifies for the official ballot. Idaho Code §§ 34-1809(2)(b); 34-1809(3)(c). He also directs the county clerks who verify the signatures on the petitions, and then tallies the verified signatures to determine whether there are sufficient signatures to qualify an initiative for the ballot.

STATUTORY FRAMEWORK

15. The right to legislate directly is a power reserved to the people in Article III, § 1 of the Idaho Constitution. This fundamental right is on equal footing to the Legislature's power to make laws.

16. The Legislature sets the conditions and the manner for citizens to exercise their right to initiate laws under Article III, § 1 of the Idaho Constitution.

17. Idaho Code section 34-1809 establishes the procedure by which citizen initiatives and referendums are assigned ballot titles before a measure can be circulated for signatures and a procedure to challenge insufficient or unfair ballot titles.

18. Section (2)(a) of Idaho Code section 34-1809 provides that "[w]ithin ten (10) working days after receiving copies of the petition, the Attorney General shall provide ballot titles as provided for in this subsection and return one (1) copy of the petition to the Secretary of State, with its ballot title."

19. In turn, section (b) requires that the Secretary of State provide a copy of the Attorney General's ballot title to the person or organization under whose authority the measure is initiated or referred along with the approved form of any initiative or referendum petition.

20. Idaho Code section 34-1809 directs how the Attorney General must draft the ballot titles, both as to substance and form.

21. As to the short title, the Attorney General must draft a “distinctive” short title that cannot exceed twenty words which must reflect how “the measure is commonly referred to or spoken of...” Idaho Code § 34-1809(2)(d)(i).

22. In making the general or long ballot title, the Attorney General must “give a true and impartial statement of the purpose of the measure” not more than two hundred words in length. Idaho Code § 34-1809(2)(d)(ii) and (e).

23. The statute also charges the Attorney General with carefully selecting language for the ballot title that “shall not be intentionally an argument or likely to create prejudice either for or against the measure.” Idaho Code § 34-1809(2)(e).

24. The Court has characterized the role of the Attorney General as drafter of ballot titles for citizen initiatives as a “quasi-judicial” function of the position, emphasizing the objectivity with which this duty must be approached and instructing that he must not be an advocate or an adversary. *In re The Petition of Idaho State Federation of Labor (AFL)*, 75 Idaho 367, 374 (1954).

25. Idaho Code section 34-1809 includes a remedy for persons dissatisfied with the short or long ballot titles, allowing them to appeal by petition to the Idaho Supreme Court, and to request different ballot titles, setting forth the reason the titles are insufficient or unfair. Idaho Code § 34-1809(3).

26. The statutory framework to challenge a ballot title contemplates that the Petitioner will provide a different title for the Court's consideration. *Id.*

27. When ballot titles are challenged, the statute requires the Court to examine the measure, hear argument, and certify a general or long ballot title and a short title to the Secretary of State in accord with the intent of Idaho Code section 34-1809(3)(c).

28. The Secretary of State is required to print the certified title on the official ballot. Idaho Code § 34-1809(3)(c).

FACTS COMMON TO THE CLAIMS

29. On May 2, 2023, Petitioners sent a copy of the Idaho Open Primaries Initiative petition to the Secretary of State signed by at least twenty qualified electors of the state. *See* Exhibit A. The Secretary of State's office filed the petition and immediately transmitted it to the Attorney General for the issuance of the certificate of review within twenty working days as provided in Idaho Code Section 34-1809.

30. That same day after receiving the Idaho Open Primaries Initiative, the Attorney General publicly released disparaging remarks about the Initiative on his Twitter social media platform. He voiced his strong opposition and desire to defeat the Initiative, stating: "Let's defeat these bad ideas coming from liberal outside groups." *See* Exhibit B.

31. Likewise, the Attorney General 's Solicitor General Theo Wold then quickly tweeted his view that the Attorney General 's office should actively oppose the Initiative expressing the belief that: "State AGs are the strongest line of defense against the Left's national campaign to force ranked choice voting on our elections. Leave this failed idea in NYC and Oakland." *See* Exhibit C.

32. On May 31, 2023, the Attorney General issued his certificate of review on the Initiative. *See* Exhibit D. The Attorney General's twelve-page certificate found a multitude of alleged deficiencies with the Initiative. Under Idaho law, the recommendations of the Attorney General are advisory only and a petitioner may accept or reject them in whole or in part. Idaho Code § 34-1809(1)(b).

33. After a careful analysis of the certificate of review by its proponents, modifications were made to the Initiative based on the certificate of review and a revised and finalized Initiative was sent to the Secretary of State, along with an explanatory cover letter. *See* Exhibit E.

34. On June 30, 2023, the Attorney General 's office hand delivered the ballot titles for the Initiative to the Secretary of State who immediately transmitted the titles to the Petitioners. *See* Exhibit F.

35. The short ballot title drafted by the Attorney General states:

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

36. The long ballot title drafted by the Attorney General states:

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.

37. In his cover letter that accompanied the ballot titles, the Attorney General threatened to sue the sponsors of the Initiative in his capacity as Attorney General if the Initiative garners sufficient support from the citizens of Idaho to qualify for the ballot. See Exhibit F. Reiterating his strong opposition to the Initiative, as he had done on social media and in his certificate of review, he again asserted that the Initiative violates the constitutional and statutory single-subject rule and, in his unequivocal opinion, it was “ineligible for placement on the ballot.”

38. The Petitioners bring this challenge to the Attorney General's ballot titles for the Idaho Open Primaries Initiative as they are inaccurate and do not comply with Idaho Code section 34-1809 in several material respects. The Petitioners submit to the Court fair and impartial short and long titles for its consideration, which are fully in accord with the intent of Idaho Code sections 34-1809(2) and (3).

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

The short ballot title the Attorney General assigned to the Idaho Open Primaries Initiative violates Idaho Code Section 34-1809.

39. Petitioners incorporate the preceding paragraphs.

40. The law requires that the short title assigned be distinctive and the language reflect how "the measure is commonly referred to or spoken of." The short title must not exceed twenty words. Idaho Code § 34-1809(2)(d)(i). The short title must also be a true and impartial statement of the purpose of the measure, and not likely to create prejudice or intentionally argue for or against it. Idaho Code § 34-1809(2)(e).

41. The short title drafted by the Attorney General is required to be "distinctive" and is not. Idaho Code § 34-1809(2)(d)(i). It does not acquaint a voter with the primary characteristics of the Initiative or distinguish this proposed measure and alert voters that the Initiative would create an open primary system.

42. The short title drafted by the Attorney General is also infirm because it should be the words by which the Initiative is commonly referred to or spoken of, and it is not. Idaho Code § 34-1809(2)(d)(i). The initiative is commonly referred to or spoken of as a measure that would create an open primary system, hence the name “Idaho Open Primaries Initiative.” But the short title does not contain the words “open primary”. Rather than use that simple, easily understood two-word phrase, the short title begins instead with a confusing non-parallel ten-word clause that reads: “Measure to (1) replace voter selection of party nominees with nonparty blanket primary;”. “Nonparty blanket primary” is not a commonly known term and is not the term by which the public refers to open nonpartisan primaries. A “nonparty blanket primary” is an obscure term that is almost entirely absent from common usage. To date, the term has not been commonly used by either proponents or opponents of the Idaho Open Primaries Initiative in Idaho, or the media, or in other jurisdictions with open primaries.

43. The Attorney General’s short title must also be a true and impartial statement of the purpose of the Initiative and not likely to create prejudice or intentionally argue for or against the measure. Idaho Code § 34-1809(2)(e). The phrase “replace voter selection of party nominees ” is problematic as it has a negative restrictive connotation that the Initiative would restrict and limit a voter’s choice. The short title indicates the Initiative would *replace* voter selection and *require* something else- a process called a

“nonparty blanket primary.” The short title fails to communicate to voters one of the Initiative’s major effects: it would open Idaho’s primaries to all voters, increasing voter choice, not replace or limit voter selection.

44. The short title also fails to conform to the law because it inaccurately states that the measure would “*require* ranked-choice voting for general elections.” This is a misleading statement, especially in the context of the long title. Section 25 of the Idaho Open Primaries Initiative contradicts this claim in plain language: “Voters are not required to rank every candidate. A ballot will be tabulated...regardless of how many candidates the voter has ranked.” The text of the initiative makes clear that voters would be allowed to rank multiple candidates, but not required to. If a voter decided to vote for only a single candidate, they would be free to do so.

45. As stated, the law requires that the Attorney General draft a short ballot title that shall not intentionally be an argument or be likely to create prejudice either for or against the measure. Idaho Code § 34-1809(2)(e).

46. The Attorney General intentionally argues against the Initiative when he artificially divides the 20-word short title into parts (1) and (2). The Attorney General has threatened to bring a lawsuit asserting the Idaho Open Primaries Initiative violates the single-subject rule applicable to legislation. Gratuitously dividing the short title into two parts bolsters the lawsuit he intends to bring. The purpose of the Initiative is a multi-part

reform of the electoral system in Idaho and includes multiple policy changes that fall under the single common subject of elections. The Initiative substantially amends Chapter 1, Title 34 of the Idaho Code, and contains 42 Sections. Dividing the short title into two enumerated parts is unneeded and done intentionally to set up the premise that the Initiative violates the single-subject rule.

47. For these reasons and others, the short title prepared by the Attorney General is insufficient and unfair and should not be certified.

48. Considering the severity of the flaws contained in the short title prepared by the Attorney General, Petitioners find it insufficient merely to replace particular words. Instead, the concerns outlined in this Petition warrant a replacement of the entire short title. A short title that would address these concerns could read:

An initiative to allow all Idaho voters the right to participate in open primary elections and to establish an instant runoff general election.

49. This short title amounts to 20 words—not including the words of the clause “An initiative to.” The Court has held that the preposition clause of the short ballot title (such as “An initiative to”) is not part of the restrictive word count. *In re The Petition of Idaho State Fed’n of Lab. (AFL)*, 75 Idaho 367, 370(1954). The Petitioners ask the Court to certify this or some similar version of it as the short title for the Idaho Open Primaries Initiative, as provided by Idaho Code section 34-1809 (3)(c).

SECOND CLAIM FOR RELIEF

The long ballot title the Attorney General assigned to the Idaho Open Primaries Initiative violates Idaho Code section 34-1809.

50. Petitioners incorporate the preceding paragraphs.

51. The law requires that the long ballot title give a true and impartial statement of the purpose of the Initiative and use language that does not intentionally argue or create prejudice for or against the measure. The long title must not exceed two hundred words. Idaho Code § 34-1809(2)(d)(ii) and (e).

52. The Attorney General's long title is not a true and impartial statement of the purpose of the measure. Nowhere does it inform voters that the purpose of the law is to create an open primary and establish an instant runoff general election. The Initiative would open Idaho's primaries to all voters, increasing voter choice, not replace or limit voter selection.

53. The long ballot title is replete with loaded terms that allude to restrictions on voting that would create prejudice against the Initiative. The Attorney General's long title advises voters that the initiative would "*require* ranked-choice voting"; "*abolish* Idaho's party primaries"; and "*require* voting for each candidate" [italics added].

54. The long title contains the false claim that the Initiative requires voters to rank more than one candidate—including candidates they don't support. The Attorney General's title states that "ranked-choice voting would require voting for each candidate

on the ballot in order of preference.” Section 25 of the Idaho Open Primaries Initiative contradicts this claim in plain language: “Voters are not required to rank every candidate. A ballot will be tabulated...regardless of how many candidates the voter has ranked.” The text of the initiative makes clear that voters would be allowed to rank multiple candidates, but not required to do so.

55. The Attorney General’s long title repeats the misconception that multiple rankings in instant runoff elections equate to multiple votes by a single voter and makes the false claim that the Idaho Open Primaries Initiative requires voters to cast multiple votes in a single election. This claim is explicitly contradicted in Section 4 of the Initiative which states: “each ballot counts as a single vote for its highest-ranked active candidate.” The text of the Initiative makes clear that each person casts only one vote. Voters may rank multiple candidates, but multiple rankings do not equate to multiple votes.

56. The long title prepared by the Attorney General appears to imply that votes cast for an eliminated candidate will not be counted and is ambiguous at best. The long title states once a candidate is eliminated “votes for that candidate in later rounds would not be counted.” This is ambiguous as it could be construed to mean a ballot will no longer be counted once its first choice is eliminated. Section 36 of the Initiative states that when a ballot’s first choice is eliminated, that ballot’s vote will still count as a vote for

that ballot's highest-ranked candidate who has not yet been eliminated: "In a round of tabulation, each ballot counts as a vote for its highest-ranked active candidate."

57. The Attorney General's long title also makes the false statement to voters that "Candidates could list any affiliation on the ballot,...and need not be associated with the party they name ." Not so. Section 22 of the Initiative requires that "the candidate is registered as affiliated with the political party or political group" they list as their affiliation on the ballot.

58. The Attorney General's long title also violates the requirements of Idaho Code section 34-1809(2)(e) because it intentionally creates an argument against the Initiative. The Attorney General has threatened to challenge the Initiative if it qualifies for the ballot, asserting it violates the single-subject rule. *See* Exhibit F. Like the short title, the Attorney General's proposed long title was then crafted to frame this challenge. The long title states: "[t]his measure proposes *two distinct changes* to elections for most public offices." The long title is then divided into two paragraphs, underscored by the introductory clauses "First" and "Second". But the Initiative proposes more than two policy changes, although all the policy changes concern the single subject of elections. This artificial division of the multiple amendments to Title 34 of the Idaho Code into two distinct changes does not change the fact that both the establishment of an open primary and an instant runoff general election concern the subject of elections.

59. For these reasons and many others, the long title prepared by the Attorney General is insufficient and unfair and should not be certified.

60. Considering the high number of inaccurate and misleading statements contained in the long title prepared by the Attorney General, Petitioners find it insufficient merely to revise particular words or provisions. Instead, the concerns outlined in this Petition warrant a replacement of the long title. A fair and objective proposed long title that would address these concerns could read:

This measure establishes a top-four open primary election in which all voters are allowed the right to participate regardless of party affiliation. Candidates for United States Congress, state legislature, elective state office, or county office will appear on the same ballot regardless of party affiliation. Candidates can list their party affiliation if they so choose, but party affiliation will not indicate an official endorsement or nomination by a party. The four candidates who receive the most votes advance to the general election. The initiative also establishes an instant runoff general election in which voters may choose one candidate or rank candidates by order of preference. After the first choices of all ballots are counted, the candidate receiving the fewest votes is eliminated. All votes for the eliminated candidate are counted toward the voter's next choice. This process repeats until only two candidates remain and the candidate receiving the highest number of votes wins.

61. The Petitioners ask the Court to certify this or some similar version of it as the long title for the Idaho Open Primaries Initiative, as provided by Idaho Code section 34-1809 (3)(c).

THIRD CLAIM FOR RELIEF

The delay inherent in seeking the Court's much needed review may doom the Initiative and equitable relief is necessary to expand the time in which to collect signatures for the Initiative.

62. Petitioners incorporate the preceding paragraphs.

63. The ballot titles the Attorney General assigned to the Idaho Open Primaries Initiative violate Idaho Code section 34-1809. The titles reflect his strong bias against the Initiative and his intention to use his power to defeat it. Even if the defective ballot titles are cured by the Court, the time lost in the signature collection period may doom the initiative effort which requires the collection of approximately 100,000 signatures of registered voters, or 63,000 verified signatures. And no signatures can be collected until the ballot titles have been certified by the Court

64. To remedy this injustice, Petitioners seek an extension of the April 30, 2024 deadline for petitions to be submitted to the Secretary of State commensurate with the delay caused by this litigation.

65. Petitioners ask the Court to issue a writ of mandamus to Secretary of State Phil McGrane, directing him as the Chief Election Officer to take all steps necessary to prepare his office and the county clerks for an adjustment in the initiative schedule as it would apply to their duties to prepare the Initiative for the ballot.

PRAYER FOR RELIEF

Petitioners respectfully request that this Court:

- (a) Expedite this petition for review and mandamus to preserve the opportunity for the citizens of Idaho to exercise their fundamental right of the initiative;
- (b) Conduct any hearing the Court may require pursuant to Idaho Appellate Rule 5(d) and as set forth in Idaho Code section 34-1809(3)(c);
- (c) Find that neither the short nor long title prepared by the Attorney General for the Idaho Open Primaries Initiative are in accordance with Idaho Code section 34-1809 and both therefore are deficient;
- (d) Certify to the Secretary of State the long and short ballot titles for the Idaho Open Primaries Initiative provided by the Petitioners, or some similar version of these titles, in accord with the intent of Idaho Code section 34-1809;
- (e) In the alternative, the Court should order the Attorney General to immediately prepare ballot titles consistent with the proposed titles provided by the Petitioners set forth in this petition. The Court should further retain jurisdiction to review the revised titles to ensure the Attorney General's compliance with the Court's order in light of his opposition to the Initiative; and expressed desire to defeat it;
- (f) Extend the time in which petitions may be submitted to the Secretary of State for the Idaho Open Primaries Initiative beyond the statutory deadline of April 30,

2024, for a time commensurate with the length of the delay caused by this necessary challenge;

(g) Issue a writ of mandamus to Secretary of State Phil McGrane, directing him as the Chief Election Officer to take all steps necessary to prepare his office and the county clerks for an adjustment in the initiative schedule as it would apply to their duties to verify signatures and prepare the Initiative for the ballot;

(h) Award attorney fees and costs of this action to the Petitioners pursuant to Idaho Code section 12-117(1) as the Attorney General in his official capacity has acted without a reasonable basis in fact or law, and failed to fairly perform a duty placed on him by law; and pursuant to Idaho Code section 12-121, as the case was defended frivolously, unreasonably or without foundation, or as otherwise provided by law; and

(i) For any other relief that the Court deems just and equitable under these extraordinary circumstances.

Filed on this 10th day of July, 2023.

/s/Deborah A. Ferguson

Deborah A. Ferguson

/s/Craig H. Durham

Craig H. Durham

FERGUSON DURHAM, PLLC

Attorneys for Petitioners

VERIFICATION

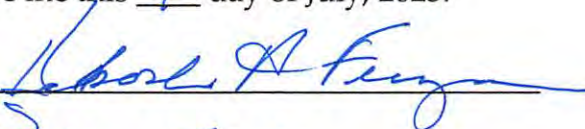
STATE OF IDAHO)
)
) ss.
)
COUNTY OF ADA)

I, Luke Mayville, co-founder of Reclaim Idaho, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing petition; that I know the contents thereof; and that the matters and allegations therein set forth are true to be best of my knowledge and belief.



Luke Mayville

SUBSCRIBED and SWORN to before me this 9th day of July, 2023.

Notary Public: 

Residing at Bals, Idaho

My commission expires:



CERTIFICATE OF SERVICE

This VERIFIED PETITION FOR WRITS OF CERTIORARI AND MANDAMUS
has been served on the following on this 10th day of July, 2023, by filing through the
Court's e-filing and serve system to:

aglabrador@ag.idaho.gov
theodore.wold@gmail.com

Attorneys for Respondents Phil McGrane and Raúl Labrador

/s/Deborah A. Ferguson
Deborah A. Ferguson

Exhibit A to Verified Petition



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

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.

~~(2)~~ (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.

~~(3)~~ (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 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 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.**

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.

Exhibit B to Verified Petition



Raúl R. Labrador

@Raul_Labrador

Funny that those pushing ranked choice voting consider themselves the “Empire.” But then again, I always thought of myself as a member of the Rebel Alliance. Let’s defeat these bad ideas coming from liberal outside groups.



Sisyphus Idaho @Sisyphus43 · 14h

The Empire Strikes Back. After #idgop #idleg did a preemptive strike outlawing ranked choice voting, moderates and independents unify to repeal that law and open the primaries wide.

This would solve a lot of #idpol problems.
idahocapitalsun.com/2023/05/02/new...

Exhibit C to Verified Petition



Theo Wold

@RealTheoWold



State AGs are the strongest line of defense against the Left's national campaign to force ranked choice voting on our elections. Leave this failed idea in NYC and Oakland.



Raúl R. Labrador @Raul_Labrador · 7h

Funny that those pushing ranked choice voting consider themselves the "Empire." But then again, I always thought of myself as a member of the Rebel Alliance. Let's defeat these bad ideas coming from liberal outside groups.
[twitter.com/Sisyphus43/sta...](https://twitter.com/Sisyphus43/status/1651234567890)

3:24 PM · May 2, 2023 · **953** Views

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Exhibit D to Verified Petition



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

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IDAHO SECRETARY OF STATE

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 ‘log-rolling’ 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.

¹The 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://tinyurl.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,

A handwritten signature in black ink that reads "Raúl R. Labrador". The signature is stylized with a large, bold "R" and a cursive "Labrador".

RAÚL R. LABRADOR
Attorney General

Analysis by:

Lincoln Davis Wilson
Chief, Civil Litigation and
Constitutional Defense

James E. "Jim" Rice
Deputy Attorney General

Ballot initiative: Idaho open primaries

100 Word Fiscal Impact

May 30, 2023

Under this initiative, new software for tabulating ballots via instant runoff voting is needed; no federally certified software exists for this process, though there is open-source software for tabulation. We cannot estimate the cost of software for tabulation.

Seventeen counties need to purchase an election management software at an estimated cost of \$300,000. Material costs for a May primary election have been above \$800,000. By 2026, the (inflated, population) adjusted value is \$1,600,000. The software update may increase to \$600,000 were the purchase postponed.

Assumptions

- (1) Voter turnout rates in Idaho elections are unaffected by the passage of the ballot initiative.
- (2) Counties continue to use tabulation patterns (either at the precinct or at a central location) as they already do.
- (3) Existing election management software already in use by 27 counties is capable of producing ranked-choice ballots and continues to function and be sufficient.
- (4) CPI inflation reasonably captures price increases in the narrow market which is election machines/software/supplies.
- (5) Training costs and poll-worker costs are unaffected — training already occurs before each election.

Exhibit E to Verified Petition



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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IDAHO 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.

~~(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.**

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 2:28 AM '53
IDAHO SECRETARY OF STATE

Exhibit F to Verified Petition



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

JUN 30 '23 PM3:19
IDAHO SECRETARY OF STATE

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,

A handwritten signature in blue ink that reads "Raúl R. Labrador".

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.

JUN 30 2023 PM 5:19
IDAHO 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.

~~(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.**

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 _____