

NO. 18-35208

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

ROQUE DE LA FUENTE,
Respondent,

v.

SECRETARY OF STATE KIM WYMAN,
Appellant.

ON APPEAL FROM THE
UNITED STATES DISTRICT COURT
DISTRICT OF WASHINGTON
AT TACOMA

No. 16-cv-05801-BHS
The Honorable Benjamin H. Settle
United States District Court Judge

**SECRETARY OF STATE KIM WYMAN'S
OPENING BRIEF**

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I. INTRODUCTION

Washington imposes minimal notice requirements on minor party and independent presidential candidates seeking to have their names placed on the state ballot after a convention. While five other minor party and independent candidates satisfied Washington's statutory public notice requirement and appeared as presidential candidates on the 2016 general election ballot, Roque "Rocky" De La Fuente undisputedly failed to do so. He then challenged the constitutionality of the public notice requirement that he failed to meet. Ignoring the State's important interests in transparency and Washington voters' right to a full opportunity to participate in minor party nominating conventions if they choose, the trial court struck down Washington's public notice requirement.

Under the proper balancing test for ballot access regulations, Washington's notice requirement, Wash. Rev. Code § 29A.56.620, and the corresponding requisite for minor party and independent candidate certificates of nomination, Wash. Rev. Code § 29A.56.640(6), easily withstand scrutiny. *See, e.g., Ariz. Green Party v. Reagan*, 838 F.3d 983, 988-89 (9th Cir. 2016) (describing balancing test). A reasonably diligent minor party or independent candidate can easily comply with the public notice requirement to obtain a valid certificate of nomination. Sixteen minor party and independent candidates have

submitted public notices of their conventions in the last three presidential election cycles. Moreover, Wash. Rev. Code § 29A.56.620 serves Washington's important interest in notifying the public of when nominating conventions for minor party and independent candidates will occur and who is sponsoring the event. Public notification ensures interested voters can attend the convention to learn about, evaluate, and (if they wish) challenge the prospective candidate(s) and party platform. It also informs anyone who wants to serve as the minor party's nominee or as an elector for the minor party or independent candidate about when and where the convention will be held so that he or she can show up and seek selection. The statute also legitimately requires newspaper publication, a means of public notice that the State requires for myriad purposes and one that Washington voters have come to expect for electoral events.

Because Washington's notice requirement imposes a minimal burden and serves important government interests, the prerequisite to ballot access for minor party and independent candidates is constitutional. This Court should reverse, and remand with an order requiring the trial court to lift its injunction against enforcement of Wash. Rev. Code § 29A.56.620 and .640(6).

II. JURISDICTIONAL STATEMENT

The district court had jurisdiction to hear this matter under 28 U.S.C. § 1331. The district court entered an order granting summary judgment to Mr. De La Fuente and denying summary judgment to the Washington Secretary of State on February 22, 2018. ER 4-16 (ECF No. 43). The district court entered final judgment in favor of Mr. De La Fuente on March 7, 2018, disposing of the case. ER 1 (ECF No. 46). The Washington Secretary of State timely appealed on March 13, 2018. ER 33 (ECF No. 47). This Court has jurisdiction under 28 U.S.C. § 1291.

III. STATEMENT OF THE ISSUES

Does Washington impose a severe burden on the First and Fourteenth Amendment rights of minor parties and independent candidates for President when it requires them to give the public notice in a newspaper of general circulation at least ten days before their nominating convention?

If not, are the interests that the notice statute serves, including promoting public access to information about the candidates, transparency, and full opportunity for voter participation, sufficiently important interests?

IV. STATUTE AT ISSUE

Wash. Rev. Code § 29A.56.620 provides:

Each minor party or independent candidate must publish a notice in a newspaper of general circulation within the county in which the party or the candidate intends to hold a convention. The notice must appear at least ten days before the convention is to be held, and shall state the date, time, and place of the convention. Additionally, it shall include the mailing address of the person or organization sponsoring the convention.

Additional statutes are included in an addendum (A-1).

V. STATEMENT OF THE CASE

A. Overview of the Requirements for Minor Party and Independent Presidential Candidates to Be Placed on the Ballot in Washington

A minor party or independent candidate for President can be nominated by a convention in Washington. Wash. Rev. Code §§ 29A.56.600-.670. The legislature has defined “convention” to mean “an organized assemblage of registered voters representing an independent candidate or candidates or a new or minor political party, organization, or principle.” Wash. Rev. Code § 29A.56.600. The convention must occur between the first Saturday in May and the fourth Saturday in July in a presidential election year. Wash. Rev. Code § 29A.56.610. A minor party or independent candidate may hold more than one convention, but “[t]o be valid, a convention must be attended by at least one hundred registered voters[.]” Wash. Rev. Code § 29A.56.610; *see also* ER 252 (ECF No. 15-1 (“At least 100 registered Washington voters must attend each meeting.”)). To appear on the ballot, the minor party or independent candidate

must submit a certificate of nomination made at a convention, evidencing the signatures and addresses of at least 1,000 registered Washington voters on a nominating petition for the candidate of their choice. Wash. Rev. Code § 29A.56.640(5). The candidate or party may add together the signatures collected at multiple conventions in order to meet the 1,000-signature requirement. Wash. Rev. Code § 29A.56.610. Washington voters may sign only one petition to nominate an independent or minor party presidential candidate. Wash. Rev. Code § 29A.56.630.

Wash. Rev. Code § 29A.56.620 provides that “[e]ach minor party or independent candidate must publish a notice in a newspaper of general circulation within the county in which the party or the candidate intends to hold a convention. The notice must appear at least ten days before the convention is to be held, and shall state the date, time, and place of the convention.” The notice must also include the mailing address of the person or organization sponsoring the event. Wash. Rev. Code § 29A.56.620. This requirement has been in place since 1937. Wash. Rev. Code § 29A.56.620; former Wash. Rev. Code § 29A.20.131 (2004-2013); former Wash. Rev. Code § 29.24.025 (1989-2004); former Wash. Rev. Code § 29.24.030 (1937-1989) (all attached as an addendum (A-2)). The Secretary of State’s Guide for Minor Party and Independent

Presidential Candidates explains this notice requirement and provides a sample public notice of convention, a template, and a sample affidavit of publication. ER 252-53 (ECF No. 15-1).

Wash. Rev. Code § 29A.56.640 requires the minor party or independent candidate to file a certificate evidencing that his or her nomination was “made at a convention.” The certificate “must” be “verified by the oath of the presiding officer and secretary” of the convention, be accompanied by a nominating petition “bearing the signatures and addresses of at least one thousand registered [Washington] voters,” and “[c]ontain proof of publication of the notice of calling the convention.” Wash. Rev. Code § 29A.56.640. The certificate of nomination must be submitted to the Secretary of State “not later than the first Friday of August” in the presidential election year. Wash. Rev. Code § 29A.56.640. Under Wash. Rev. Code § 29A.56.670, the Secretary of State’s Office must then determine whether the requirements listed in Wash. Rev. Code § 29A.56.640 have been met and notify the presiding officer of the convention of the Secretary of State’s decision. The Secretary of State does not have discretion to ignore or unilaterally waive the statutory requirements. *See, e.g., In re Detention of A.S.*, 138 Wash. 2d 898, 927 n.3, 982 P.2d 1156 (1999) (Madsen, J., dissenting) (“shall” and “must” are read to create mandatory obligations).

In addition, minor party and independent candidate conventions that nominate candidates for President and Vice President must select presidential electors. Wash. Rev. Code § 29A.56.660. The list of presidential electors selected at the convention must be submitted to the Secretary of State not later than ten days after the adjournment of the convention. Wash. Rev. Code § 29A.56.660.

Any minor party or independent presidential candidate that does not follow these requirements may still access the ballot by submitting a declaration of candidacy as a write-in candidate. Wash. Rev. Code § 29A.24.311(1). Upon doing so, any voter may write-in the candidate's name for President and that vote will be counted the same as if the name had been printed on the ballot. Wash. Rev. Code § 29A.24.311(2); *see also* Wash. Rev. Code § 29A.60.021(1).

For the 2016 presidential election, five minor party candidates were able to meet all of Washington's statutory requirements, including the requirement that there be public notice of their minor party conventions. ER 92 (ECF No. 33-1). All five of those minor party candidates appeared on the general election ballot. In 2012, six minor party candidates were able to meet all of Washington's statutory requirements and appeared as presidential candidates on the general election ballot. ER 92 (ECF No. 33-1). In 2008, five minor party candidates and

one independent candidate were able to meet all of Washington's statutory requirements and appeared as presidential candidates on the general election ballot. ER 92 (ECF No. 33-1). To the Secretary of State's knowledge, no minor party or independent presidential candidate seeking placement on Washington's ballot has ever failed to meet the public notice requirement found in Wash. Rev. Code § 29A.56.620—except for Mr. De La Fuente. ER 93 (ECF No. 33-1).

B. Mr. De La Fuente Failed to Meet the Statutory Requirements, So the Secretary of State's Office Rejected His Certificate of Nomination

In June 2016, the Secretary of State's Office began communicating by phone and by email with Trenton Pool who indicated he was a consultant working for Mr. De La Fuente. ER 232 (ECF No. 15). On June 20, 2016, the Secretary of State's Office sent Mr. Pool the Secretary of State's Office's Presidential Guide for Minor Party and Independent Candidates. ER 232-33 (ECF No. 15); ER 249-68 (ECF No. 15-1). The guide explains all of the requirements for minor party and independent candidates, and at pages four and five describes the convention notice requirement and provides a sample public notice of convention, a template, and a sample affidavit of publication. ER 252-53 (ECF No. 15-1). Mr. Pool received the guide five weeks before the deadline for completing minor party and independent candidate conventions, July 23, 2016. Wash. Rev. Code § 29A.56.610.

Mr. Pool submitted a certification of minor party nomination for the American Delta Party, identifying Mr. De La Fuente as its nominated candidate for President. ER 233 (ECF No. 15); ER 270-93 (ECF No. 15-1). The certificate of nomination clearly identified Mr. De La Fuente as the nominee of the American Delta Party, not as an independent candidate. ER 271 (ECF No. 15-1). The certification did not contain the required proof of convention notice publication. ER 270-93 (ECF No. 15-1). The Secretary of State's Office explained to Mr. Pool that the American Delta Party would need to submit proper proof of the notice of publication. ER 295-96 (ECF No. 15-1). It also explained that the deadline for submitting the required proof was August 5, 2016. ER 295-96 (ECF No. 15-1).

Mr. Pool attempted to cure the defect in the certification, but his submission, an unsworn personal statement with no affidavit of publication from a newspaper, still did not meet the statutory requirements. ER 298-301 (ECF No. 15-1). Mr. Pool's submission also mentioned nothing about having any concerns about the convention notice requirements. ER 298 (ECF No. 15-1). Instead, he described their process as being a "very successful series of conventions" garnering "signatures of 2,600 Washington voters who attended

the conventions” based on their “wide-spread publication.” ER 298 (ECF No. 15-1).

While Mr. De La Fuente produced evidence after this litigation commenced that someone had posted notice of the convention via a single Facebook post, ER 108 (ECF No. 33-2), neither Mr. De La Fuente nor Mr. Pool provided copies or documentation of the Facebook post to the Secretary of State’s Office. ER 233-34 (ECF No. 15). Nevertheless, given the plain statutory requirement, the Facebook post would not have been accepted as proper proof of convention notice publication because Facebook is not a newspaper of general circulation. ER 233-34 (ECF No. 15).

Neither Mr. Pool nor any other representative of Mr. De La Fuente was able to provide the required proof that notice of the nominating convention(s) was ever published as required. ER 234 (ECF No. 15). The Secretary of State’s Office therefore rejected the certificate of nomination for insufficiency under Wash. Rev. Code §§ 29A.56.620, .640, and .670 on August 8, 2016. ER 317-18 (ECF No. 15-1). The rejection letter was addressed to the presiding officer of the convention as required by statute, Wash. Rev. Code § 29A.56.670, and the Secretary of State’s Office provided the statutory appeal process and deadlines. ER 317-18 (ECF No. 15-1). A representative of Mr. De La Fuente then asked

the Secretary of State to reconsider, but that request was denied on August 11, 2016. ER 94 (ECF No. 33-1).

C. Procedural History

On September 21, 2016, Mr. De La Fuente filed this action and sought an emergency temporary restraining order asking the district court to enjoin the Secretary from enforcing Wash. Rev. Code. § 29A.56.620 and to reprint the ballots for the 2016 general election. ER 332 (ECF No. 1). The district court declined, denying Mr. De La Fuente's motion for temporary injunction. ER 230 (ECF No. 18). Mr. De La Fuente then successfully filed a declaration of candidacy as a write-in candidate for President for the 2016 general election. ER 98 (ECF No. 33-1).

The district court then proceeded to determine whether a permanent injunction should be entered enjoining the Secretary of State from enforcing the statutory public notice requirement in the future. The district court heard cross motions for summary judgment. ER 17 (ECF No. 41). The district court concluded that the public notice requirement did not impose a severe burden on minor parties or independent candidates. ER 11 (ECF No. 43). Nevertheless, the district court concluded that the public notice requirement was not reasonably related to an important state interest. ER 12-16 (ECF No. 43). The district court

entered a judgment enjoining the State from enforcing the public notice requirement in the future. ER 3 (ECF No. 46). The Secretary of State timely appealed.

VI. SUMMARY OF ARGUMENT

The district court was correct to conclude that Washington's public notice statute for minor party and independent candidate nominating conventions does not severely burden any party or candidate. The burden at most is minimal, or slight as the district court found. But the district court erred when it concluded that the State does not have a sufficiently important interest in public notice of nominating conventions. The United States Supreme Court has held that the State has an important regulatory interest in ensuring voters have information about candidates and the public notice requirement promotes this informational interest. In addition, the public notice requirement promotes transparency and voters' ability to participate in the conventions, if they desire, by seeking their own nomination as the minor party's presidential candidate or as a presidential elector. These are all important regulatory interests that help ensure the integrity of the election process. The State's important regulatory interests outweigh any minimal burden that the notice requirement imposes. This Court should reverse.

VII. ARGUMENT

This Court reviews a grant of summary judgment de novo. *Cal. First Amendment Coal. v. Calderon*, 150 F.3d 976, 980 (9th Cir. 1998). A district court's ruling on the constitutionality of a state statute is also reviewed de novo. *Id.*

The United States Supreme Court has long recognized a state's expansive power to prescribe the election process within broad constitutional bounds. *E.g.*, *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 451 (2008); *Clingman v. Beaver*, 544 U.S. 581, 586 (2005); *Bullock v. Carter*, 405 U.S. 134, 141 (1972). Mr. De La Fuente has a "heavy burden of persuasion" to show that Wash. Rev. Code § 29A.56.620 is unconstitutional in all, or even some, of its applications. *See Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 200 (2008); *Wash. State Grange*, 552 U.S. at 450. To succeed with his facial claim, Mr. De La Fuente must "establish that no set of circumstances exists under which [Wash. Rev. Code § 29A.56.620] would be valid, or that the statute lacks any plainly legitimate sweep." *United States v. Stevens*, 559 U.S. 460, 472 (2010) (citation omitted) (internal quotation marks omitted).

A second type of facial attack exists in the First Amendment context where "a law may be invalidated as overbroad if a substantial number of its

applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep." *Stevens*, 559 U.S. at 473 (internal quotation marks omitted) (quoting *Wash. State Grange*, 552 U.S. at 449 n.6). This latter doctrine will not be applied if the plaintiff fails to describe the statute's overbreadth, *Wash. State Grange*, 552 U.S. at 449 n.6, and even then the doctrine is to be used "sparingly" and "only as a last resort." *N.Y. State Club Ass'n, Inc. v. City of New York*, 487 U.S. 1, 14 (1988); see also *United States v. Williams*, 553 U.S. 285, 293 (2008) ("Invalidation for overbreadth is strong medicine that is not to be casually employed." (Internal quotation marks omitted.)).

Regardless of the type of facial inquiry, Mr. De La Fuente must not ask this Court "to go beyond the statute's facial requirements and speculate about 'hypothetical' or 'imaginary' cases." *Wash. State Grange*, 552 U.S. at 450. The Court must instead construe Wash. Rev. Code § 29A.56.620 as it is written because only then can the Court determine whether it reaches "too far" in prohibiting any expressive activity. See *Williams*, 553 U.S. at 293, 297.

Contrary to Mr. De La Fuente's claims, Wash. Rev. Code § 29A.56.620 does not bar political speech or restrict petitioning activity in Washington. Instead, the convention notice requirement constitutes a legitimate ballot regulation that only minimally burdens candidates' access to the ballot and

further Washington's interest in notifying the public of when independent candidate and minor party nominating conventions will occur and who will sponsor the event. This public notice protects Washingtonians' right to attend, to examine and dissent from a candidate's views on issues, to compete with a candidate for a minor party nomination, and to seek to become a presidential elector if they choose. This is all that is necessary to satisfy the Constitution under the courts' well-established balancing test for ballot access regulations. *See, e.g., Ariz. Green Party*, 838 F.3d at 988-89 (citing *Anderson v. Celebrezze*, 460 U.S. 780 (1983); *Burdick v. Takushi*, 504 U.S. 428 (1992)). Despite a conclusion that the burden imposed was not severe, the district court ignored these important state interests.

A. Wash. Rev. Code § 29A.56.620 Does Not Impose a Severe Burden

As the United States Supreme Court has recognized, states have “a legitimate interest in regulating the number of candidates on the ballot.” *Bullock*, 405 U.S. at 145. The states' interest also includes the “duty” to protect the integrity of the political process from frivolous or fraudulent candidacies. *Id.* Accordingly, “States have significant flexibility in implementing their own voting systems.” *John Doe I v. Reed*, 561 U.S. 186, 195 (2010). “To the extent a regulation concerns the legal effect of a particular activity in that process, the

government will be afforded substantial latitude to enforce that regulation.” *Id.* at 195-96. This is because the Court recognizes that “as a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes.” *Anderson*, 460 U.S. at 788 (quoting *Storer v. Brown*, 415 U.S. 724, 730 (1974)).

Accordingly, the Supreme Court has rejected resolving challenges to state election laws by “any ‘litmus-paper test.’” *Anderson*, 460 U.S. at 789 (quoting *Storer*, 415 U.S. at 730). Instead, the Court has chosen to apply a flexible approach that weighs the “character and magnitude of the asserted injury” against “the precise interests put forward by the State as justifications for the burden imposed by its rule.” *Anderson*, 460 U.S. at 789. “In passing judgment, the Court must not only determine the legitimacy and strength of each of those interests; it also must consider the extent to which those interests make it necessary to burden the plaintiff’s rights.” *Id.*

Only if a state election law imposes “‘severe’ restrictions” must it also be “narrowly drawn to advance a state interest of compelling importance” to pass constitutional muster. *Burdick*, 504 U.S. at 434 (quoting *Norman v. Reed*, 502 U.S. 279, 289 (1992)). If, on the other hand, the law imposes “only ‘reasonable,

nondiscriminatory restrictions,’” then the State’s “‘important regulatory interests’” generally suffice to justify the restrictions. *Burdick*, 504 U.S. at 434 (quoting *Anderson*, 460 U.S. at 788).

Under this analysis, the appropriate level of scrutiny depends upon the severity of the burden, which the plaintiff bears the burden of specifically proving. *Burdick*, 504 U.S. at 434; *Ariz. Green Party*, 838 F.3d at 989. If the burden on the plaintiff’s rights is severe, then this Court must apply strict scrutiny. *Wash. State Republican Party v. Wash. State Grange*, 676 F.3d 784, 793 (9th Cir. 2012). But if the state’s ballot access regulation imposes only a slight burden, the requirements will survive review so long as they further the state’s “important regulatory interests.” *Id.* at 794 (quoting *Nader v. Brewer*, 531 F.3d 1028, 1035 (9th Cir. 2008)); *see also Anderson*, 460 U.S. at 788.

When determining whether a burden is severe, this Court has looked to whether “‘reasonably diligent’ minor party candidates can normally gain a place on the ballot, or if instead they only rarely will succeed.” *Ariz. Libertarian Party v. Reagan*, 798 F.3d 723, 730 (9th Cir. 2015); *see also Storer*, 415 U.S. at 742 (posing the question: “could a reasonably diligent independent candidate be expected to satisfy the . . . requirements”?); and considering candidates’ past

success or failure in obtaining ballot access); *Wash. State Republican Party*, 676 F.3d at 794.

Here, the burden imposed by the convention notice requirement is slight as evidenced by the multiple minor party and independent candidates who have been able to gain access to the Washington ballot as presidential candidates in recent history. ER 92 (ECF No. 33-1). Five other minor party presidential candidates were successful in meeting the convention publication requirements in 2016. ER 92 (ECF No. 33-1). For example, the Libertarian Party held conventions in multiple counties that were structured so that there were sometimes multiple meeting times and locations in a single county. ER 320-31 (ECF No. 15-1). The notices also provided that the conventions would meet at a time and date certain, but the convention could then be continued to such time as necessary until all of the convention business was completed. *Id.* Likewise, the Green Party also published notices and held conventions in multiple counties, deciding it was “good party building activity.” ER 116-20 (ECF No. 33-2 (Grage Dep. 20:22-21:11, 24:20-25:2)).

Prior presidential election years have produced similar results. In 2012, six minor party candidates were able to meet all of Washington’s statutory requirements and appeared as presidential candidates on the general election

ballot. ER 92 (ECF No. 33-1). In 2008, five minor party candidates and one independent candidate were able to meet all of Washington's statutory requirements and appeared as presidential candidates on the general election ballot. ER 92 (ECF No. 33-1); *contrast with Nader v. Brewer*, 531 F.3d 1028, 1031 (9th Cir. 2008) (no minor candidate had qualified for the ballot in 15 years). This undisputed historical evidence demonstrates that reasonably diligent presidential candidates have often met Washington's convention notice requirement and gained access to Washington's general election ballot.

Finally, Washington's history of placing multiple minor party and independent candidates on the presidential ballot shows that its regulations are far from being the type of "stringent ballot access requirements" for presidential elections that have troubled minor parties in other states. *See* ER 112-123 (ECF No. 33-2 (Grage Dep. at 12:5-18, 14:4-15, 16:20-17:3, 34:16-35:3, describing ease of Washington's requirements in comparison to other states)). Unlike the impermissible early filing deadline in *Anderson*, Washington's notice requirement does not place a significant state-imposed restriction on the nationwide electoral process such that federal minor party candidates cannot gain access to the state ballot. *See Anderson*, 460 U.S. at 795. Indeed, there is no proof that the purported "costs" of complying with Washington's public notice

requirement have impaired any campaign from accessing Washington's ballot. *See* ER 220 (ECF No. 30). Instead, as shown, the notice requirement can be easily met and federal minor party and independent candidates have regularly achieved ballot access in Washington, assuming they apply reasonable diligence.

In order to escape the deference that courts give to reasonable state electoral requirements and to invoke strict scrutiny, Mr. De La Fuente contended below that Washington's convention notice requirement bars "core political speech" by restricting "petitioning activity." *See* ER 211 (ECF No. 30). He also likened the notice requirement to a "temporary prior restraint" that censored speech within a specified area. ER 213-14 (ECF No. 30). But, in making these arguments, Mr. De La Fuente conflated the notice requirement found in Wash. Rev. Code § 29A.56.620 with the State's other requirements for minor party and independent candidate conventions, which he failed to challenge in this case. *See* Wash. Rev. Code §§ 29A.56.600, .610, .630-.660. Mr. De La Fuente cannot explain how the convention notice requirement alone, which serves to ensure that interested voters have an opportunity to participate in the minor party and independent candidate convention process and to serve as electors, somehow amounts to a burden on the right to petition or a prior restraint. The trial court

rejected his argument. Should he raise this assertion again, this Court should reject it also.

Mr. De La Fuente also established no proof that the statutory convention requirements are “watered down” so much that minor party and independent candidate conventions are simply door-to-door canvassing or petition signature-gathering campaigns. While he asserted without citation that this is true, the record shows otherwise. *See* ER 126 (ECF No. 33-2 (Augino Dep. 43:6-20, describing differences); *see also* ER 113 (ECF No. 33-2, (Grage Dep. 13:7-14:15, “I don’t think circulate is the right word.”)). Nor would such an interpretation carry any weight because it conflicts with the plain language of the statutory requirements. Wash. Rev. Code § 29A.56.600 (convention is “an organized assemblage of registered voters representing an independent candidate or candidates or a new or minor political party, organization, or principle”); Wash. Rev. Code § 29A.56.610 (“[t]o be valid, a convention must be attended by at least one hundred registered voters”).

Moreover, the State’s convention notice requirement does not restrict who can collect nominating petition signatures at the conventions. Unlike the cases that Mr. De La Fuente cited below, the State’s convention notice requirement does not place any requirement on who can collect nominating petition

signatures. ER 212-13 (ECF No. 30) (citing *e.g.*, *Buckley v. Am. Constitutional Law Found., Inc.*, 525 U.S. 182 (1999) (requirement that signature gatherers be registered voters of the state); *Meyer v. Grant*, 486 U.S. 414 (1988) (prohibition on paid signature gatherers)). Any advocate for a minor party candidate can attend a convention and promote the candidate's nomination by helping to collect signatures from attendees.

Similarly, Wash. Rev. Code § 29A.56.620 imposes no restriction on where or when minor parties and independent candidates may hold their conventions. The statute's only requirement is that the public receive notice of the date, time, and location so that interested voters can attend if they so choose. Mr. De La Fuente also raised an argument as to the timing of nominating conventions in relation to the notice requirement. But, as applied in this case, Mr. De La Fuente's representative was notified of the publication requirements on June 20, 2016, more than a month before the window for holding a convention closed on July 23, 2016. ER 267-68 (ECF No. 15-1). He had plenty of time to publish timely notice and hold a convention or series of conventions within the statutory timeframe. Further, the fact that minor party and independent candidate campaigns must organize themselves with some reasonable diligence does not establish that Wash. Rev. Code § 29A.56.620 amounts to an unconstitutional

restriction. See *Libertarian Party of Wash. v. Munro*, 31 F.3d 759, 762-63 (9th Cir. 1994), *overruled on other grounds*, *Pub. Integrity All., Inc. v. City of Tucson*, 836 F.3d 1019, 1025 (9th Cir. 2016).

The State did not impose a prior restraint on speech in any way, and the convention publication notice requirement certainly imposes no prior restraint. Despite Mr. De La Fuente's strained analogy below, requiring public notice of a convention is not akin to obtaining a state permit or other state permission to hold a convention. The notice publication requirement does not in any way restrict what someone can say at an independent candidate or minor party convention. No government permit is required for supporters of a candidate to talk to voters and gather signatures at a convention. Supporters of De La Fuente could—and did—obtain nominating signatures without any evidence of government interference. Mr. De La Fuente cannot legitimately claim a prior restraint on anyone's speech.

Finally, Mr. De La Fuente's argument below that Wash. Rev. Code § 29A.56.620 restricts voters' speech about minor party or independent candidates is belied by its plain text and application. The law does not regulate any speech, but instead is a reasonable regulation for minor party and independent presidential candidates to access Washington's ballot. There is

nothing content-based about a reasonable prerequisite that is neutrally applied to every minor party and independent candidate seeking access to the Washington ballot. *Cf. Burdick*, 504 U.S. at 437-38 (rejecting argument that election regulation that “channeled” voter activity to certain candidates at the polls was content-based); *see also id.* at 440 n.10 (“It seems to us that limiting the choice of candidates to those who have complied with state election law requirements is the prototypical example of a regulation that, while it affects the right to vote, is eminently reasonable.”). Further, courts have long rejected the arguments that ballot regulations that affect only minor parties must be reviewed with stricter scrutiny, “so long as the law at issue [does] not severely burden a minor party’s constitutional rights.” *Ariz. Libertarian Party*, 798 F.3d at 730 n.8 (internal quotation marks omitted). The trial court was correct to conclude that Wash. Rev. Code § 29A.56.620 does not.

B. Washington has an Important Interest in Ensuring Public Notice of Minor Party and Independent Candidate Nominating Conventions

Because Wash. Rev. Code § 29A.56.620 does not severely burden any minor party or independent candidate’s rights, it is therefore valid if it furthers the State’s “important regulatory interests.” *Wash. State Republican Party*, 676 F.3d at 793-94. Contrary to the district court’s belief, the public notice requirement does support the State’s important interests.

The voting public has a strong interest in participation in, and therefore having notice of, minor party and independent candidate conventions. The United States Supreme Court has held that ensuring voters have full access to information about candidates is a sufficiently important regulatory interest to withstand this level of scrutiny. *Wash. State Grange*, 552 U.S. at 458 (finding Washington’s asserted interest in informing voters about candidates to be a sufficiently, important regulatory interest); *see also Anderson*, 460 U.S. at 796 (“There can be no question about the legitimacy of the State’s interest in fostering informed and educated expressions of the popular will in a general election.”). The trial court appears to have ignored these cases entirely when it analyzed the sufficiency of the State’s asserted interest. *See* ER 12-16 (ECF No. 43).

Ensuring minor party and independent candidate nominating conventions are public gatherings is important because they often provide the voting public with the first opportunity to learn about a minor party or an independent candidate and their platform. Registered voters who want to support a minor party or independent candidate must choose well because they can sign only one nominating petition. Wash. Rev. Code § 29A.56.630. Moreover, members and potential members of minor parties can attend and engage in debate both about

the platform and about who the standard-bearer should be. If a party member does not support a potential nominee, he or she can suggest another nominee or compete with the existing candidate for the nomination. Without a public notice requirement, a candidate or party faction might avoid this debate or competition through selective invitation or by holding a secret convention in the dead of night. These informational and evaluation functions of the convention, as well as the opportunity for dissent or competition, can be fulfilled only if the public has access to adequate notice of the convention's time, place, and location. Contrary to the trial court's conclusion, public notice protects the integrity of the process by helping to ensure transparency and open debate.

Washington voters also have an interest in knowing who is sponsoring a particular convention and having a point of contact if they want to know more about the minor party or independent candidate, as well as the party's process for establishing who will be the nominee. The public notice requirement serves this important informational interest by requiring publication of the mailing address of the person or organization sponsoring the convention.

Minor party and independent candidate conventions must also select a slate of presidential electors. Wash. Rev. Code § 29A.56.660; *see also* Wash. Rev. Code § 29A.56.320 ("In the year in which a presidential election is held,

each major political party and each minor political party or independent candidate convention that nominates candidates for president and vice president of the United States shall nominate presidential electors for this state.”). If a Washingtonian wants to be selected to serve as an elector for a minor party or independent candidate on behalf of the State, he or she must know when and where to show up for the convention. A public notice requirement avoids exclusion of potential presidential elector candidates through targeted or selective notice provided only to certain people. Again, public notice preserves the integrity of the process by ensuring that everyone who wants to serve as an elector can show up and ask to be selected.

Finally, requiring the public notice to be by newspaper is a permissible, reasonable policy choice of the state. *Cf. Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 365 (1997) (state need not narrowly tailor the means chosen if regulatory burdens are not severe). Newspaper publication is a widely accepted means of public notice. *E.g.*, Wash. Rev. Code § 4.28.110 (civil service by publication); Wash. Rev. Code § 6.21.030 (notice of real property sale).¹ It is

¹ *See also* Wash. Rev. Code § 7.60.200 (Notice to creditors and other parties in interest); Wash. Rev. Code § 15.28.060 (Notice of nominating meetings for the Soft Tree Fruit Commission); Wash. Rev. Code § 15.65.070 (Notice of hearing on proposal for Agricultural Commodity Boards); Wash. Rev. Code § 17.06.050 (Notice of meeting of Intercounty Weed Districts); Wash.

also the statutorily required means of giving public notice for major electoral events in the state including, for example, giving notice of primary, general, and special elections. *E.g.*, Wash. Rev. Code § 29A.52.355. Notice in a newspaper of general circulation has been the method of notice for minor party and independent candidate conventions for decades. *See* former Wash. Rev. Code § 29.20.131 (2004-2013); former Wash. Rev. Code § 29.24.025 (1989-2004); former Wash. Rev. Code § 29.24.030(2) (1937-1989). It is thus reasonable to conclude that given these longstanding state practices, newspaper publication is the means through which interested citizens expect to be notified of independent and minor party conventions. Moreover, anyone looking for a particular newspaper notice, including notice of a minor party or independent convention, can find the notices on the Internet. *See, e.g.*, <http://www.wapublicnotices.com/> (last visited June 13, 2018). Thus, unlike a Facebook post or other means of private publication, newspaper publication helps to ensure that convention notices are publically available and accessible to anyone.

Rev. Code § 28A.320.025 (Notice of hearing for school district name change); Wash. Rev. Code § 29A.36.230 (Notice of election for regional transportation investment districts); Wash. Rev. Code § 31.12.681 (Notice of claims against credit union in receivership); and many others.

Nevertheless, the district court faulted the State for not presenting evidence that newspaper notification results in an increase in the public's election participation. ER 14 (ECF No. 43). That is not the State's burden. *Timmons*, 520 U.S. at 364 (court does not require "elaborate, empirical verification of the weightiness of the State's asserted justifications"). Instead, given the low burden that the newspaper notice requirement imposes, the State merely had to show that giving public notice by such means furthers its valid state interests. *Id.* The trial court ignored the State's important interests in ensuring notice of nominating conventions through a singular, universally accepted public source. Notice ensures public opportunity to participate, to compete with the candidate for the minor party's nomination if desired, and to otherwise become informed. Notice also ensures that everyone has the chance to seek to become a presidential elector for the minor party or independent candidate. Public notice promotes transparency and therefore fairness. Transparency and fairness protect the integrity of the election process.

This Court should reverse and conclude that Washington's convention notice requirement imposes a minimal burden on parties and candidates, but it serves important government interests. As a result, the notice requirement is a

constitutional prerequisite to ballot access for minor party and independent candidates.

VIII. CONCLUSION

Washington law afforded Mr. De La Fuente reasonable opportunity to gain access to the State's presidential ballot. That he chose not to avail himself of that opportunity through reasonable diligence does not make the state regulation unconstitutional. The State has an important interest in public notice to ensure that all who wish to participate have an opportunity to do so. Requiring the publication to be by newspaper is a reasonable, nondiscriminatory means of furthering that interest. This Court should reverse and remand to the trial court to grant summary judgment to the State.

RESPECTFULLY SUBMITTED this 21st day of June, 2018.

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STATEMENT OF RELATED CASES

Pursuant to Ninth Circuit Rule of Appellate Procedure 28-2.6, Appellant, by and through her undersigned counsel, hereby states that she is unaware of any related cases to the instant appeal that are currently pending in this Court.

s/ Callie A. Castillo
CALLIE A. CASTILLO
Deputy Solicitor General

CERTIFICATE OF COMPLIANCE

I certify that pursuant to Federal Rule of Appellate Procedure 32(a)(7)(C) and Ninth Circuit Rule of Appellate Procedure 32-1, the attached brief is proportionately spaced, has a typeface of 14 points or more and contains 6279 words.

s/ Callie A. Castillo
CALLIE A. CASTILLO
Deputy Solicitor General

CERTIFICATE OF SERVICE

I hereby certify, under penalty of perjury, that I electronically filed a true and correct copy of the foregoing document with the Clerk of the Court of the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

DATED this 21st day of June 2018, at Olympia, Washington.

s/ Callie A. Castillo
CALLIE A. CASTILLO
Deputy Solicitor General

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Wash. Rev. Code § 29A.56.600 Convention.

A "convention" for the purposes of this chapter, is an organized assemblage of registered voters representing an independent candidate or candidates or a new or minor political party, organization, or principle.

Wash. Rev. Code § 29A.56.610 Nomination by convention—Dates.

Nominations of candidates for president and vice president of the United States, other than by a major political party, may be made at a convention conducted not earlier than the first Saturday in May and not later than the fourth Saturday in July in the year that president and vice president appear on the general election ballot. A minor political party may hold more than one convention but in no case shall any such party nominate more than one candidate for president or more than one candidate for vice president. To be valid, a convention must be attended by at least one hundred registered voters, but a minor party or independent candidate holding multiple conventions may add together the number of signatures of different individuals from each convention in order to obtain and submit to the secretary of state the signatures of at least one thousand registered voters of the state of Washington.

Wash. Rev. Code § 29A.56.620 Convention—Notice.

Each minor party or independent candidate must publish a notice in a newspaper of general circulation within the county in which the party or the candidate intends to hold a convention. The notice must appear at least ten days before the convention is to be held, and shall state the date, time, and place of the convention. Additionally, it shall include the mailing address of the person or organization sponsoring the convention.

Wash. Rev. Code § 29A.56.630 Nominating petition—Requirements.

A nominating petition submitted under this chapter shall clearly identify the name of the minor party or independent candidate convention as it appears on the certificate of nomination as required by *RCW 29A.20.161(3). The petition shall also contain a statement that the person signing the petition is a registered voter of the state of Washington and shall have a space for the voter to sign his or her name and to print his or her name and address. No person may sign more than one nominating petition under this chapter for an office for an election.

Wash. Rev. Code § 29A.56.640 Certificate of nomination—Requisites.

A certificate evidencing nominations made at a convention must:

- (1) Be in writing;
- (2) Contain the name of each person nominated, his or her residence, the office for which he or she is named, and a sworn statement from both nominees giving their consent to the nomination;
- (3) Identify the minor political party or the independent candidate on whose behalf the convention was held;
- (4) Be verified by the oath of the presiding officer and secretary;
- (5) Be accompanied by a nominating petition or petitions bearing the signatures and addresses of at least one thousand registered voters of the state of Washington;
- (6) Contain proof of publication of the notice of calling the convention; and
- (7) Be submitted to the secretary of state not later than the first Friday of August.

Wash. Rev. Code § 29A.56.650 Multiple certificates of nomination.

(1) If two or more valid certificates of nomination are filed purporting to nominate different candidates for the same position using the same party name, the filing officer must give effect to both certificates. If conflicting claims to the party name are not resolved either by mutual agreement or by a judicial determination of the right to the name, the candidates must be treated as independent candidates. Disputes over the right to the name must not be permitted to delay the printing of either ballots or a voters' pamphlet. Other candidates nominated by the same conventions may continue to use the partisan affiliation unless a court of competent jurisdiction directs otherwise.

(2) A person affected may petition the superior court of the county in which the filing officer is located for a judicial determination of the right to the name of a minor political party, either before or after documents are filed with the filing officer. The court shall resolve the conflict between competing claims to the use of the same party name according to the following principles: (a) The prior established public use of the name during previous elections by a party composed of or led by the same individuals or individuals in documented succession; (b) prior established public use of the name earlier in the same election cycle; (c) the nomination of a more complete slate of candidates for a number of offices or in a number of different regions of the state; (d) documented affiliation with a national or statewide party organization with an established use of the name; (e) the first date of filing of a certificate of nomination; and (f) such other indicia of an established right to use of the name as the court may deem relevant. If more than one filing officer is involved, and one of them is the secretary of state, the petition must be filed in the superior court for Thurston county. Upon resolving the conflict between competing claims, the court may also address any ballot designation for the candidate who does not prevail.

Wash. Rev. Code § 29A.56.660 Presidential electors—Selection at convention.

A minor political party or independent candidate convention nominating candidates for the offices of president and vice president of the United States shall, not later than ten days after the adjournment of the convention, submit a list of presidential electors to the office of the secretary of state. The list shall contain the names and the mailing addresses of the persons selected and shall be verified by the presiding officer of the convention.

**Wash. Rev. Code § 29A.56.670 Certificate of nomination—Checking signatures—
Appeal of determination.**

Upon the receipt of the certificate of nomination, the secretary of state shall check the certificate and canvass the signatures on the accompanying nominating petitions to determine if the requirements of RCW 29A.56.640 have been met. Once the determination has been made, the secretary of state shall notify the presiding officer of the convention and any other persons requesting the notification, of his or her decision regarding the sufficiency of the certificate or the nominating petitions. Any appeal regarding the secretary's determination must be filed with the superior court of Thurston county not later than five days from the date the determination is made, and shall be heard and finally disposed of by the court within five days of the filing. Nominating petitions shall not be available for public inspection or copying.

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Precincts

29A.20.201

the required instruction and is qualified to perform his or her duties in connection with the handling and tallying of ballots for that primary or election. [2013 c 11 § 23; 2011 c 10 § 24; 2003 c 111 § 312. Prior: 1990 c 59 § 29; 1977 ex.s. c 361 § 69. Formerly RCW 29.33.340, 29.34.143.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.013.

Additional notes found at www.leg.wa.gov

29A.12.150 Recording requirements. The secretary of state shall not certify under this title any voting device or machine for use in conducting a primary or general or special election in this state unless the device or machine correctly records on a separate ballot the votes cast by each elector for any person and for or against any measure and such separate ballots are available for audit purposes after such a primary or election. [2013 c 11 § 24; 2003 c 111 § 315; 1998 c 245 § 26; 1991 c 363 § 30; 1990 c 184 § 1. Formerly RCW 29.04.200.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

29A.12.170 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 29A.16 RCW PRECINCTS

(Formerly: Precinct and polling place determination and accessibility)

Sections

29A.16.070 Precincts—Boundary changes—Registration transfer.

29A.16.070 Precincts—Boundary changes—Registration transfer. If the boundaries of any city, township, or rural precinct are changed in the manner provided by law, the county auditor shall update the registration records of every registered voter whose place of residence is affected thereby. It shall not be necessary for any registered voter whose registration has been changed from one precinct to another, by a change of boundary, to apply to the county auditor for a transfer of registration. The county auditor shall mail a notice to each registered voter. [2013 c 11 § 78; 2003 c 111 § 1903; 1971 ex.s. c 202 § 27; 1965 c 9 § 29.10.060. Prior: 1933 c 1 § 17; RRS § 5114-17. Formerly RCW 29A.76.030, 29.10.060.]

Chapter 29A.20 RCW QUALIFICATIONS, TERMS, AND REQUIREMENTS FOR ELECTIVE OFFICES

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29A.20.191 Recodified as RCW 29A.56.670.

29A.20.201 Repealed.

29A.20.010 Recodified as RCW 29A.24.072. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.20.021 Recodified as RCW 29A.24.075. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.20.030 Recodified as RCW 29A.60.270. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.20.040 Recodified as RCW 29A.60.280. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.20.111 Recodified as RCW 29A.56.600. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.20.121 Recodified as RCW 29A.56.610. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.20.131 Recodified as RCW 29A.56.620. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.20.141 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.20.151 Recodified as RCW 29A.56.630. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.20.161 Recodified as RCW 29A.56.640. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.20.171 Recodified as RCW 29A.56.650. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.20.181 Recodified as RCW 29A.56.660. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.20.191 Recodified as RCW 29A.56.670. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.20.201 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

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**Chapter 29A.24 RCW
FILING FOR OFFICE**

Sections

29A.24.020	Designation of short terms, full terms, and unexpired terms—Filing declarations—Election to both short and full terms.
29A.24.030	Repealed.
29A.24.031	Declaration of candidacy.
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29A.24.120	Repealed.
29A.24.311	Write-in voting—Candidates, declaration.
29A.24.320	Write-in candidates—Notice to auditors, ballot counters.

29A.24.020 Designation of short terms, full terms, and unexpired terms—Filing declarations—Election to both short and full terms. If at the same election there are short terms or full terms and unexpired terms of office to be filled, the filing officer shall distinguish them and designate the short term, the full term, and the unexpired term, as such, or by use of the words "short term," "unexpired two year term," or "four year term," as the case may be.

When both a short term and a full term for the same position are scheduled to be voted upon, or when a short term is created after the close of the filing period, a single declaration of candidacy accompanied by a single filing fee shall be construed as a filing for both the short term and the full term and the name of such candidate shall appear upon the ballot for the position sought with the designation "short term and full term." The candidate elected to both such terms shall be sworn into and assume office for the short term as soon as the election returns have been certified and shall again be sworn into office for the full term. [2013 c 11 § 30; 2003 c 111 § 602. Prior: 1990 c 59 § 92; 1975-'76 2nd ex.s. c 120 § 4; 1965 c 9 § 29.21.140; prior: (i) 1927 c 155 § 1, part; 1925 ex.s. c 68 § 1, part; 1921 c 116 § 1, part; 1919 c 85 § 1, part; 1911 c 101 § 1, part; 1909 c 82 § 11, part; 1907 c 209 § 38, part; RRS § 5212, part. (ii) 1933 c 85 § 1, part; RRS § 5213-1, part. Formerly RCW 29.15.140, 29.21.140.]

Term of person elected to fill vacancy: RCW 42.12.030.

Vacancies in public office, how filled: RCW 42.12.010.

Additional notes found at www.leg.wa.gov

29A.24.030 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.24.031 Declaration of candidacy. A candidate who desires to have his or her name printed on the ballot for election to an office other than president of the United States, vice president of the United States, or an office for which ownership of property is a prerequisite to voting shall complete and file a declaration of candidacy. The secretary of state shall adopt, by rule, a declaration of candidacy form for the office of precinct committee officer and a separate standard form for candidates for all other offices filing under this chapter. Included on the standard form shall be:

(1) A place for the candidate to declare that he or she is a registered voter within the jurisdiction of the office for which he or she is filing, and the address at which he or she is registered;

(2) A place for the candidate to indicate the position for which he or she is filing;

(3) A place for the candidate to state a party preference, if the office is a partisan office;

(4) A place for the candidate to indicate the amount of the filing fee accompanying the declaration of candidacy or for the candidate to indicate that he or she is filing a filing fee petition in lieu of the filing fee under RCW 29A.24.091;

(5) A place for the candidate to sign the declaration of candidacy, stating that the information provided on the form is true and swearing or affirming that he or she will support the Constitution and laws of the United States and the Constitution and laws of the state of Washington.

In the case of a declaration of candidacy filed electronically, submission of the form constitutes agreement that the information provided with the filing is true, that he or she will support the Constitutions and laws of the United States and the state of Washington, and that he or she agrees to electronic payment of the filing fee established in RCW 29A.24.091.

The secretary of state may require any other information on the form he or she deems appropriate to facilitate the filing process. [2013 c 11 § 31; 2004 c 271 § 158.]

29A.24.072 Preservation of declarations of candidacy. The secretary of state and each county auditor shall preserve all declarations of candidacy filed in their respective offices for six months. All declarations of candidacy must be open to public inspection. [2003 c 111 § 501; 1965 c 9 § 29.27.090. Prior: 1921 c 178 § 1, part; 1915 c 11 § 1, part; 1907 c 130 § 1, part; 1889 p 402 § 7, part; Code 1881 § 3067, part; 1865 p 30 § 1, part; RRS § 5171, part. Formerly RCW 29A.20.010, 29.27.090.]

29A.24.075 Qualifications for filing, appearance on ballot. (1) A person filing a declaration of candidacy for an office shall, at the time of filing, be a registered voter and possess the qualifications specified by law for persons who may be elected to the office.

(2) Excluding the office of precinct committee officer or a temporary elected position such as a charter review board member or freeholder, no person may file for more than one office.

(3) The name of a candidate for an office shall not appear on a ballot for that office unless, except for judge of the superior court and as provided in RCW 3.50.057, the candidate is, at the time the candidate's declaration of candidacy is filed, properly registered to vote in the geographic area represented by the office. For the purposes of this section, each geographic area in which registered voters may cast ballots for an office is represented by that office. If a person elected to an office must be nominated from a district or similar division of the geographic area represented by the office, the name of a candidate for the office shall not appear on a primary ballot for that office unless the candidate is, at the time the candidate's declaration of candidacy is filed, properly registered to vote in that district or division. The officer with whom declarations of candidacy must be filed under this title shall review each such declaration filed regarding compliance with this subsection.

(4) The requirements of voter registration and residence within the geographic area of a district do not apply to candidates for congressional office. Qualifications for the United

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open to public inspection. [2003 c 111 § 501; 1965 c 9 § 29.27.090. Prior: 1921 c 178 § 1, part; 1915 c 11 § 1, part; 1907 c 130 § 1, part; 1889 p 402 § 7, part; Code 1881 § 3067, part; 1865 p 30 § 1, part; RRS § 5171, part. Formerly RCW 29.27.090.]

29A.20.021 Qualifications for filing, appearance on ballot. (1) A person filing a declaration of candidacy for an office shall, at the time of filing, be a registered voter and possess the qualifications specified by law for persons who may be elected to the office.

(2) Excluding the office of precinct committee officer or a temporary elected position such as a charter review board member or freeholder, no person may file for more than one office.

(3) The name of a candidate for an office shall not appear on a ballot for that office unless, except as provided in RCW 3.46.067 and 3.50.057, the candidate is, at the time the candidate's declaration of candidacy is filed, properly registered to vote in the geographic area represented by the office. For the purposes of this section, each geographic area in which registered voters may cast ballots for an office is represented by that office. If a person elected to an office must be nominated from a district or similar division of the geographic area represented by the office, the name of a candidate for the office shall not appear on a primary ballot for that office unless the candidate is, at the time the candidate's declaration of candidacy is filed, properly registered to vote in that district or division. The officer with whom declarations of candidacy must be filed under this title shall review each such declaration filed regarding compliance with this subsection.

(4) The requirements of voter registration and residence within the geographic area of a district do not apply to candidates for congressional office. Qualifications for the United States congress are specified in the United States Constitution. [2004 c 271 § 153.]

29A.20.030 Local officers, beginning of terms—Organization of district boards of directors. The term of every city, town, and district officer elected to office on the first Tuesday following the first Monday in November of the odd-numbered years begins in accordance with RCW 29A.20.040. However, a person elected to less than a full term shall assume office as soon as the election returns have been certified and he or she is qualified in accordance with RCW 29A.04.133.

Each board of directors of every district shall be organized at the first meeting held after one or more newly elected directors take office. [2003 c 111 § 503; 1979 ex.s. c 126 § 14; 1965 c 123 § 6; 1965 c 9 § 29.13.050. Prior: 1963 c 200 § 8; 1959 c 86 § 1; prior: 1951 c 257 § 6. (i) 1949 c 161 § 9; Rem. Supp. 1949 § 5146-1. (ii) 1949 c 163 § 1; 1921 c 61 § 4; Rem. Supp. 1949 § 5146. Formerly RCW 29.13.050.]

Purpose—1979 ex.s. c 126: See RCW 29A.20.040(1).

29A.20.040 Local elected officials, commencement of term of office—Purpose. (1) The legislature finds that certain laws are in conflict governing the assumption of office of various local officials. The purpose of this section is to provide a common date for the assumption of office for all the

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elected officials of counties, cities, towns, and special purpose districts other than school districts where the ownership of property is not a prerequisite of voting. A person elected to the office of school director begins his or her term of office at the first official meeting of the board of directors after certification of the election results. It is also the purpose of this section to remove these conflicts and delete old statutory language concerning such elections which is no longer necessary.

(2) For elective offices of counties, cities, towns, and special purpose districts other than school districts where the ownership of property is not a prerequisite of voting, the term of incumbents ends and the term of successors begins after the successor is elected and qualified, and the term commences immediately after December 31st following the election, except as follows:

(a) Where the term of office varies from this standard according to statute; and

(b) If the election results have not been certified prior to January 1st after the election, in which event the time of commencement for the new term occurs when the successor becomes qualified in accordance with RCW 29A.04.133.

(3) For elective offices governed by this section, the oath of office must be taken as the last step of qualification as defined in RCW 29A.04.133 but may be taken either:

(a) Up to ten days prior to the scheduled date of assuming office; or

(b) At the last regular meeting of the governing body of the applicable county, city, town, or special district held before the winner is to assume office. [2003 c 111 § 504; 1999 c 298 § 3; 1980 c 35 § 7; 1979 ex.s. c 126 § 1. Formerly RCW 29.04.170.]

Severability—1980 c 35: See note following RCW 28A.343.300.

MINOR PARTY AND INDEPENDENT CANDIDATE NOMINATIONS

29A.20.110 Definitions—"Convention" and "election jurisdiction." A "convention" for the purposes of this chapter, is an organized assemblage of registered voters representing an independent candidate or candidates or a new or minor political party, organization, or principle. As used in this chapter, the term "election jurisdiction" shall mean the state or any political subdivision or jurisdiction of the state from which partisan officials are elected. This term shall include county commissioner districts or council districts for members of a county legislative authority, counties for county officials who are nominated and elected on a county-wide basis, legislative districts for members of the legislature, congressional districts for members of Congress, and the state for president and vice president, members of the United States senate, and state officials who are elected on a statewide basis. [2003 c 111 § 505; 1977 ex.s. c 329 § 1; 1965 c 9 § 29.24.010. Prior: 1955 c 102 § 2; prior: 1937 c 94 § 2, part; RRS § 5168, part. Formerly RCW 29.24.010.]

Minor political party defined: RCW 29A.04.097.

Voter registration: Chapter 29A.08 RCW.

29A.20.111 Definitions—"Convention" and "election jurisdiction." A "convention" for the purposes of this

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chapter, is an organized assemblage of registered voters representing an independent candidate or candidates or a new or minor political party, organization, or principle. As used in this chapter, the term "election jurisdiction" shall mean the state or any political subdivision or jurisdiction of the state from which partisan officials are elected. This term shall include county commissioner districts or council districts for members of a county legislative authority, counties for county officials who are nominated and elected on a county-wide basis, legislative districts for members of the legislature, congressional districts for members of Congress, and the state for president and vice president, members of the United States senate, and state officials who are elected on a statewide basis. [2004 c 271 § 188.]

29A.20.121 Nomination by convention or write-in—Dates—Special filing period. (1) Any nomination of a candidate for partisan public office by other than a major political party may be made only: (a) In a convention held not earlier than the last Saturday in June and not later than the first Saturday in July or during any of the seven days immediately preceding the first day for filing declarations of candidacy as fixed in accordance with RCW 29A.28.041; (b) as provided by RCW 29A.60.021; or (c) as otherwise provided in this section. Minor political party and independent candidates may appear only on the general election ballot.

(2) Nominations of candidates for president and vice president of the United States other than by a major political party may be made either at a convention conducted under subsection (1) of this section, or at a similar convention taking place not earlier than the first Sunday in July and not later than seventy days before the general election. Conventions held during this time period may not nominate candidates for any public office other than president and vice president of the United States, except as provided in subsection (3) of this section.

(3) If a special filing period for a partisan office is opened under RCW 29A.24.211, candidates of minor political parties and independent candidates may file for office during that special filing period. The names of those candidates may not appear on the general election ballot unless they are nominated by convention held no later than five days after the close of the special filing period and a certificate of nomination is filed with the filing officer no later than three days after the convention. The requirements of RCW 29A.20.131 do not apply to such a convention.

(4) A minor political party may hold more than one convention but in no case shall any such party nominate more than one candidate for any one partisan public office or position. For the purpose of nominating candidates for the offices of president and vice president, United States senator, United States representative, or a statewide office, a minor party or independent candidate holding multiple conventions may add together the number of signatures of different individuals from each convention obtained in support of the candidate or candidates in order to obtain the number required by RCW 29A.20.141. For all other offices for which nominations are made, signatures of the requisite number of registered voters must be obtained at a single convention. [2004 c 271 § 110.]

29A.20.130 Convention—Notice. Each minor party or independent candidate must publish a notice in a newspaper of general circulation within the county in which the party or the candidate intends to hold a convention. The notice must appear at least ten days before the convention is to be held, and shall state the date, time, and place of the convention. Additionally, it shall include the mailing address of the person or organization sponsoring the convention. [2003 c 111 § 507. Prior: 1989 c 215 § 1. Formerly RCW 29.24.025.]

29A.20.131 Convention—Notice. Each minor party or independent candidate must publish a notice in a newspaper of general circulation within the county in which the party or the candidate intends to hold a convention. The notice must appear at least ten days before the convention is to be held, and shall state the date, time, and place of the convention. Additionally, it shall include the mailing address of the person or organization sponsoring the convention. [2004 c 271 § 189.]

29A.20.141 Convention—Requirements for validity. (1) To be valid, a convention must be attended by at least one hundred registered voters.

(2) In order to nominate candidates for the offices of president and vice president of the United States, United States senator, United States representative, or any statewide office, a nominating convention shall obtain and submit to the filing officer the signatures of at least one thousand registered voters of the state of Washington. In order to nominate candidates for any other office, a nominating convention shall obtain and submit to the filing officer the signatures of one hundred persons who are registered to vote in the jurisdiction of the office for which the nominations are made. [2004 c 271 § 111.]

29A.20.151 Nominating petition—Requirements. A nominating petition submitted under this chapter shall clearly identify the name of the minor party or independent candidate convention as it appears on the certificate of nomination as required by RCW 29A.20.161(3). The petition shall also contain a statement that the person signing the petition is a registered voter of the state of Washington and shall have a space for the voter to sign his or her name and to print his or her name and address. No person may sign more than one nominating petition under this chapter for an office for an election. [2004 c 271 § 112.]

29A.20.161 Certificate of nomination—Requisites. A certificate evidencing nominations made at a convention must:

- (1) Be in writing;
- (2) Contain the name of each person nominated, his or her residence, and the office for which he or she is named, and if the nomination is for the offices of president and vice president of the United States, a sworn statement from both nominees giving their consent to the nomination;
- (3) Identify the minor political party or the independent candidate on whose behalf the convention was held;
- (4) Be verified by the oath of the presiding officer and secretary;

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to fill an unexpired term of an elective office of any city, town, or district, such special election shall be held in concert with the next general election which is to be held by the respective city, town, or district concerned for the purpose of electing officers to full terms: *Provided*, That this section shall not apply to any city of the first class whose charter provision relating to elections to fill unexpired terms are inconsistent herewith. [1972 ex.s. c 61 § 7.]

Severability—1972 ex.s. c 61: See note following RCW 29.21.350.

Chapter 29.24

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29.24.010	Definitions—"Convention" and "election jurisdiction."
29.24.020	Nomination by convention or write-in—Date for convention—Multiple conventions by single party.
29.24.025	Notice of convention.
29.24.030	Requirements for validity of convention.
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29.24.070	Declarations of candidacy required, exceptions—Payment of fees.

Special procedures for United States senate vacancy in 1983: Chapter 1, Laws of 1983 3rd ex. sess. (uncodified).

29.24.010 Definitions—"Convention" and "election jurisdiction." A "convention" for the purposes of this chapter, is an organized assemblage of registered voters representing an independent candidate or candidates or a new or minor political party, organization, or principle. As used in this chapter, the term "election jurisdiction" shall mean the state or any political subdivision or jurisdiction of the state from which partisan officials are elected. This term shall include county commissioner districts or council districts for members of a county legislative authority, counties for county officials who are nominated and elected on a county-wide basis, legislative districts for members of the legislature, congressional districts for members of congress, and the state for president and vice president, members of the United States senate, and state officials who are elected on a state-wide basis. [1977 ex.s. c 329 § 1; 1965 c 9 § 29.24.010. Prior: 1955 c 102 § 2; prior: 1937 c 94 § 2, part; RRS § 5168, part.]

Minor political party defined: RCW 29.01.100.

Registration of voters: Chapter 29.07 RCW.

29.24.020 Nomination by convention or write-in—Date for convention—Multiple conventions by single party. Any nomination of a candidate for partisan public office by other than a major political party shall only be made either: (1) In a convention held not earlier than the last Saturday in June and not later than the first Saturday in July or during any of the seven days immediately preceding the first day for filing declarations of candidacy as fixed in accordance with RCW 29.68.080;

or (2) as provided by RCW 29.51.170. A minor political party may hold more than one convention but in no case shall any such party nominate more than one candidate for any one partisan public office or position. For the purpose of nominating candidates for the offices of president and vice-president, United States senator, or a state-wide office, a minor party or independent candidate holding multiple conventions may add together the number of signatures of different individuals from each convention obtained in support of the candidate or candidates in order to obtain the number required by RCW 29.24.030. For all other offices for which nominations are made, signatures of the requisite number of registered voters must be obtained at a single convention. [1989 c 215 § 2; 1977 ex.s. c 329 § 2; 1965 c 9 § 29.24.020. Prior: 1955 c 102 § 3; prior: (i) 1937 c 94 § 1; RRS § 5167. (ii) 1937 c 94 § 4; RRS § 5170. (iii) 1937 c 94 § 10; RRS § 5170–6. (iv) 1907 c 209 § 26, part; RRS § 5203, part.]

Primaries, when held: RCW 29.13.070.

29.24.025 Notice of convention. Each minor party or independent candidate must publish a notice in a newspaper of general circulation within the county in which the party or the candidate intends to hold a convention. The notice must appear at least ten days before the convention is to be held, and shall state the date, time, and place of the convention. Additionally, it shall include the mailing address of the person or organization sponsoring the convention. [1989 c 215 § 1.]

29.24.030 Requirements for validity of convention. (1) To be valid, a convention must be attended by at least twenty-five registered voters.

(2) In order to nominate candidates for the offices of president and vice-president of the United States, United States senator, or any state-wide office, a nominating convention shall obtain and submit to the filing officer the signatures of at least two hundred registered voters of the state of Washington. In order to nominate candidates for any other office, a nominating convention shall obtain and submit to the filing officer the signatures of twenty-five persons who are registered to vote in the jurisdiction of the office for which the nominations are made. [1989 c 215 § 3; 1977 ex.s. c 329 § 3; 1965 c 9 § 29.24.030. Prior: 1955 c 102 § 4; prior: (i) 1937 c 94 § 2, part; RRS § 5168, part. (ii) 1937 c 94 § 3; RRS § 5169.]

29.24.035 Nominating petition—Name—Registered voters. A nominating petition submitted under this chapter shall clearly identify the name of the minor party or independent candidate convention as it appears on the certificate of nomination as required by *RCW 29.24.030(3). The petition shall also contain a statement that the person signing the petition is a registered voter of the state of Washington and shall have a space for the voter to sign his or her name and to print his or her name and address. No person may sign more than one nominating petition under this chapter for an office for a primary or election. [1989 c 215 § 5.]

***Reviser's note:** The reference to RCW 29.24.030(3) appears to be erroneous. The section governing the certificate of nomination is RCW 29.24.040(3).

29.24.040 Certificate of nomination—Requisites. A certificate evidencing nominations made at a convention must:

- (1) Be in writing;
- (2) Contain the name of each person nominated, his residence, and the office for which he is named, and if the nomination is for the offices of president and vice-president of the United States, a sworn statement from both nominees giving their consent to the nomination;
- (3) Identify the minor political party or the independent candidate on whose behalf the convention was held;
- (4) Be verified by the oath of the presiding officer and secretary;
- (5) Be accompanied by a nominating petition or petitions bearing the signatures and addresses of registered voters equal in number to that required by RCW 29.24.030;
- (6) Contain proof of publication of the notice of calling the convention; and
- (7) Be submitted to the appropriate filing officer not later than one week following the adjournment of the convention at which the nominations were made. If the nominations are made only for offices whose jurisdiction is entirely within one county, the certificate and nominating petitions must be filed with the county auditor. If a minor party or independent candidate convention nominates any candidates for offices whose jurisdiction encompasses more than one county, all nominating petitions and the convention certificates must be filed with the secretary of state. [1989 c 215 § 4; 1977 ex.s. c 329 § 4; 1965 c 9 § 29.24.040. Prior: 1955 c 102 § 5; prior: 1937 c 94 § 5, part; RRS § 5170-1, part.]

Requirements of candidates for public office under subversive activities act: Chapter 9.81 RCW.

29.24.055 Presidential electors—Selection at convention. A minor political party or independent candidate convention nominating candidates for the offices of president and vice-president of the United States shall, not later than ten days after the adjournment of the convention, submit a list of presidential electors to the office of the secretary of state. The list shall contain the names and the mailing addresses of the persons selected and shall be verified by the presiding officer of the convention. [1989 c 215 § 6.]

29.24.060 Certificate of nomination—Checking signatures—Appeal of determination. Upon the receipt of the certificate of nomination, the officer with whom it is filed shall check the certificate and canvass the signatures on the accompanying nominating petitions to determine if the requirements of RCW 29.24.030 have been met. Once the determination has been made, the filing officer shall notify the presiding officer of the convention and any other persons requesting the notification, of his or her decision regarding the sufficiency of the certificate or the nominating petitions. Any appeal regarding the filing officer's determination must be filed

with the superior court of the county in which the certificate or petitions were filed not later than five days from the date the determination is made, and shall be heard and finally disposed of by the court within five days of the filing. Nominating petitions shall not be available for public inspection or copying. [1989 c 215 § 7; 1977 ex.s. c 329 § 6; 1965 c 9 § 29.24.060. Prior: 1937 c 94 § 6; RRS § 5170-2.]

29.24.070 Declarations of candidacy required, exceptions—Payment of fees. Not later than the Friday immediately preceding the first day for candidates to file, the secretary of state shall notify the county auditors of the names and designations of all minor party and independent candidates who have filed valid convention certificates and nominating petitions with that office. Except for the offices of president and vice-president, persons nominated under this chapter shall file declarations of candidacy as provided by RCW 29.18.030 and 29.18.040. The name of a candidate nominated at a convention shall not be printed upon the primary ballot unless he pays the fee required by law to be paid by candidates for the same office to be nominated at a primary. [1989 c 215 § 8; 1977 ex.s. c 329 § 7; 1965 c 9 § 29.24.070. Prior: 1955 c 102 § 7; prior: (i) 1937 c 94 § 7, part; RRS § 5170-3, part. (ii) 1907 c 209 § 26, part; RRS § 5203, part.]

Chapter 29.27

CERTIFICATES AND NOTICES

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29.24.010 Definition—Convention. A “convention” for the purposes of this chapter, is an organized assemblage of at least twenty-five registered voters representing a political party, organization or principle. [1937 c 94 § 2; RRS § 5168.]

29.24.020 Minor parties must hold convention on primary day. Any new or minor party is not entitled to participate in a primary election but must nominate candidates for public office in a convention held on the same day that primary elections are held. [(i) 1937 c 94 § 1; RRS § 5167. (ii) 1937 c 94 § 4; RRS § 5170. (iii) 1937 c 94 § 10; RRS § 5170-6. (iv) 1907 c 209 § 26, part; RRS § 5203, part.]

29.24.030 Minor party convention—Procedure. To be valid, a minor party convention must:

- (1) Be attended by at least twenty-five registered voters;
- (2) Have been called by a notice published in a newspaper of general circulation published in the county in which the convention is to be held at least ten days before the date of the primary election stating the date, hour, place of meeting and a general statement of the principles of the organization. [(i) 1937 c 94 § 2; RRS § 5168. (ii) 1937 c 94 § 3; RRS § 5169.]

29.24.040 Certificate of nomination—Requisites. A certificate evidencing nominations made at a minority party convention must:

- (1) Be in writing;
- (2) Contain the name of each person nominated, his residence, his business, and the office for which he is named;
- (3) Designate in not more than five words the party or principle which the convention represents;
- (4) Be verified by the oath of the presiding officer and secretary;

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(5) Be signed by at least twenty-five registered voters present at the convention and who did not vote at the primary election held on that day;

(6) Show the voting addresses of all signers;

(7) Contain proof of publication of the notice of calling the convention. [1937 c 94 § 5, part; RRS § 5170-1, part.]

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29.24.050 Certificate of nomination—What signatures invalid. The signature on a minor party nominating certificate of a person who voted in the primary held on the day of the convention is invalid. [1937 c 94 § 5, part; RRS § 5170-1, part.]

29.24.060 Certificate of nomination—Checking signatures. Upon the receipt of the certificate of nomination of a minor party nominating convention, the secretary of state shall check from the records the required signatures thereto to ascertain if the signers are registered voters and whether said signers voted at the primary election held on the same day as said convention. If the secretary of state finds that the certificate is defective or does not comply with law he shall refuse to file the same and any declarations of candidacy of candidates nominated by such convention. [1937 c 94 § 6; RRS § 5170-2.]

29.24.070 Declarations of candidacy required. If the nominating certificate is valid, each candidate nominated by a minor party convention may file with the secretary of state a declaration of candidacy as nearly as possible in the form prescribed for candidates subject to primary election, and each candidate must at the time of filing such declaration pay to the secretary of state the fee prescribed by law for candidates subject to primary election. The name of a candidate nominated at a minor party convention shall not be printed upon the election ballot unless he pays the fee required by law to be paid by candidates for the same office to be nominated at a primary election. [(i) 1937 c 94 § 7; RRS § 5170-3. (ii) 1907 c 209 § 26, part; RRS § 5203, part.]

29.24.080 Filing dates for certificates and declarations. The certificate of nominations made by a minor party convention, and the declarations of candidacy of the individual candidates nominated may be filed with the secretary of state at any time after said convention is held, but such filing must be complete within twenty days after the date of the September primaries. [(i) 1937 c 94 § 8; RRS § 5170-4. (ii) 1950 ex.s. c 14 § 19.]

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29.24.090 Transmittal of minor party nominations. If any nominations made by such convention are intended for county, district or other local offices and valid declarations of candidacy have been filed, the secretary of state shall transmit the same to the appropriate county officers for printing upon the official ballot at the same time and in the same manner as nominations for other offices are transmitted, and shall at the same time transmit the filing fees of such county, district or local candidates to the respective county treasurers. [1937 c 94 § 9; RRS § 5170-5.]

29.24.100 Nominating certificates for offices for which primaries are not required. Candidates for public offices other than those required to be nominated at primary elections, or at minor party conventions in lieu thereof, may be nominated as follows:

A certificate of nomination containing the name of the candidate, his residence and residence address, his business, the office for which he is nominated and a statement of principle not over five words in length shall be signed by not less than three hundred voters residing in the political subdivision in and for which the officer is to be elected. The signatures need not all be appended to one paper. Each signer shall add to his signature his residence address and his business.

This section is not applicable to township or school district elections. [1895 c 156 § 3.]

Reviser's note: Section 1352 of Ballinger's Code of 1897 (1895 c 156 § 3) has never been repealed. Remington & Ballinger dropped it upon the passage of chapter 209, Laws of 1907—the primary law—probably because they deemed it entirely superseded. It was superseded as to state, county, municipal, precinct and congressional elections but not as to any others. It is therefore rewritten so as to exclude

the exceptions. The provisions of sections 1350 and 1351 of Ballinger's Code (RRS §§ 5167 and 5168) have been repealed, but the references in section 1352 (of Ballinger) so far as they are applicable are included. Township "meetings" are also excluded as they were provided by an enactment subsequently passed. The school code was passed in 1909, so school elections are excluded.

29.24.110 Nominations in towns. Fourth class municipalities shall not hold primaries and the election of town officers shall be nonpartisan. Not less than ninety days prior to the holding of a town election, the town council shall by ordinance prescribe as the method for nominating candidates, either the holding of a caucus or caucuses, in which case it shall further prescribe regulations therefor, or the filing of declarations of candidacy.

If caucuses are provided for, the town clerk shall publish once in a newspaper having general circulation within the county at least ten days prior to the date thereof, a notice of any caucus. If there be no such newspaper, notice shall be posted ten days prior to date of the caucus, at the three most prominent places in town.

If declarations of candidacy are provided for, they shall be filed with the town clerk not more than sixty nor less than forty-five days

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prior to the election, and shall be accompanied by a filing fee equal to one percent of the annual salary of the office: *Provided*, That no filing fee shall be charged in the event that the office sought is without compensation. Declarations of candidacy shall substantially conform to the form set forth in RCW 29.18.030.

If, by law, the county auditor, as ex officio supervisor of elections, has jurisdiction over such town election, the town clerk shall at least thirty-five days prior thereto, submit to him a certified list of candidates. [1951 c 101 § 3; 1949 c 161 § 4; formerly Rem. Supp. 1949 § 5179-2.]

Publication of legal notices: Chapter 65.16. public office under subversive activities act: Chapter 9.81.

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CERTIFICATES AND NOTICES

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- 29.27.110 Certificates of election to other officers.
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29.27.010 Certifying list of offices for consolidated elections in class A and first class counties. The governing board of every political subdivision subject to the consolidated election law in class A and first class counties shall certify to the county supervisor of elections a list of the offices to be filled at an election at least forty-five days before the date of election. [1923 c 53 § 6, part; RRS § 5148-2, part.]

29.27.020 Certifying candidates before primary by secretary of state. At least thirty-five days before any September primary the secretary of state shall transmit to each county auditor a certified