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**State Government Committee**

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**HB 2725**

**Brief Description:** Replacing the blanket primary with party caucuses.

**Sponsors:** Representatives Hunt and McDermott.

**Brief Summary of Bill**

- Authorizes the Secretary of State and county auditors to accept the results of political party nominating caucuses and conventions, making only those nominees eligible for the general election ballot.

**Hearing Date:** 1/27/04

**Staff:** Katie Blinn (786-7114).

**Background:**

Blanket Primary:

Under Washington's blanket primary system for partisan elections, all eligible registered voters may participate because there is no process to register by party. Candidates for partisan office, however, may self-designate an affiliation with a political party when they file a declaration of candidacy in July. For each office that appears on the ballot, voters may vote for any of the candidates running, regardless of the candidate's party affiliation. In order to advance to the general election, a candidate must receive the highest number of votes cast for candidates of that party, as well as at least 1 percent of all the votes cast for that office. Only one candidate from each political party proceeds to the general election.

Minor Parties and Independent Candidates:

Minor party and independent candidates go through a separate process to appear on the primary election ballot. Minor parties and independent candidates hold a nominating convention at the end of June to nominate a candidate for partisan office. Nomination requires both a nominating certificate and a nominating petition. The certificate must specify the name of the minor party, the name of the candidate, and the office. The nominating petition must include the signatures of at least 200 registered voters for candidates for President, U.S. Senate, or a statewide office, and at least 25 signatures for any other partisan office. The independent or minor party candidate must still pay the filing fee and file a declaration of candidacy, and receive at least 1 percent of all votes cast for that office in order to advance to the general election.

Litigation:

In 1996, voters in California approved an initiative that established a blanket primary modeled after Washington's blanket primary. However, one aspect of California's previous closed primary system, party registration, was retained. Four political parties in California sued the California Secretary of State, arguing that the blanket primary system is unconstitutional because it allows voters who are not affiliated with a political party to select that party's nominees, thereby violating the political parties' right to freely associate. The system was upheld in U.S. District Court and the Ninth Circuit Court of Appeals, but struck down in June 2000 by the U.S. Supreme Court in *California Democratic Party, et al. v. Jones*, 350 U.S. 567 (2000).

The Supreme Court noted that, with the right to associate is the right *not* to associate, and that the right of association would prove meaningless if associations could not limit control over their decisions to those who share their same interests. The Supreme Court affirmed that special protection is given to the process by which political parties select their nominees since a nominee acts as a standard bearer and spokesperson for the party, communicating the party's ideology and preferences to the general public. The Supreme Court concluded that California's blanket primary violates the political parties' right of free association because it allows voters who are not affiliated with a party to participate in that party's nominating process.

In July 2000, the three major political parties in Washington, the Democratic Party, the Republican Party, and the Libertarian Party, sued the Washington Secretary of State. The political parties sought a permanent injunction prohibiting the Secretary of State from conducting any future partisan primaries under the blanket system. Finding that Washington election law and the Washington State Constitution were sufficiently different from California to distinguish Washington circumstances from the *California Democratic Party, et al. v. Jones* opinion, the U. S. District Court upheld the Washington blanket primary. However, in September 2003, the Ninth Circuit Court of Appeals reversed the District Court decision and, based on the U.S. Supreme Court opinion, found the Washington blanket primary unconstitutional. *Democratic Party of Washington State v. Reed*, 343 F.3d 1198 (9th Cir. 2003). The Ninth Circuit remanded the case back to the District Court for entry of summary judgment, declaratory judgment, and an injunction in favor of the political parties.

In November 2003, the Attorney General's Office, on behalf of the Secretary of State, filed a petition for writ of certiorari seeking review of the Ninth Circuit opinion by the U.S. Supreme Court. This is a strictly discretionary appeal. If the Supreme Court accepts the petition, it will hear the case sometime during its 2004-05 term. If the Court denies the petition, the ruling of the Ninth Circuit stands and the case will be remanded to the District Court. The Supreme Court is expected to issue its decision in February or March 2004.

Political parties are required to use the procedures established in state law to select their nominees for state office as long as the state procedures are not unconstitutional. On the other hand, political parties have inherent authority to hold conventions and caucuses. However, if a political party in Washington decides to select its nominees for public office through the caucus system, there is currently nothing in state law that authorizes the Secretary of State and the county auditors to accept the results of those caucuses as binding and place *only* those nominees on the general election ballot.

## **Summary of Bill:**

### Major Parties:

The primary election is only for nonpartisan offices. For partisan offices, major political parties may select their nominees through their own caucus and convention system. Major party candidates file for office in July as they currently do, and then the parties have nominating conventions sometime between filing week and the day of the nonpartisan primary. The bill is silent on exactly how the caucus system operates, leaving that up to the parties. However, the major parties can have multiple conventions for the nominating process.

Minor Parties and Independent Candidates:

Minor party and independent candidates continue to have the nominating conventions that they currently have, but the signature requirements are increased from 25 for local elections and 200 for federal and state elections, to 100 and 1000 respectively. The increased signature requirement is in place of the current 1 percent requirement necessary to appear on the general election ballot.

Only voters registered in the jurisdiction of an office may participate in the nominating process for that office. The parties certify who their nominated candidate is for each office, and then submit that certificate of nomination to either the county auditor or the Secretary of State. The county auditors and Secretary of State place the name of the person nominated by each party on the general election ballot. Statutes relating to the partisan primary are repealed. The order that names appear on the nonpartisan primary ballot remains at random, but county auditors no longer have to rotate the names.

**Appropriation:** None.

**Fiscal Note:** Requested on January 26, 2004.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.