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**SUBSTITUTE SENATE BILL 5843**

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**State of Washington 67th Legislature 2022 Regular Session**

**By** Senate State Government & Elections (originally sponsored by Senators Frockt, Kuderer, Hunt, Keiser, Lovelett, Nguyen, Nobles, Salomon, and C. Wilson; by request of Office of the Governor)

AN ACT Relating to public officials and candidates who knowingly make false statements and claims regarding the election process and results; amending RCW 42.12.010 and 29A.24.031; adding a new section to chapter 29A.84 RCW; creating a new section; and prescribing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  (1) The legislature finds that:

(a) The state of Washington is a leader in the country regarding election security and voter accessibility. The state is routinely held up as a model for other states to implement practices that were early adopted by Washington such as vote by mail, same day registration, and prepaid ballot postage, all of which are secure and increase voter access. Unfortunately, during the 2020 election, false statements and claims regarding the validity of the 2020 election results were made by individuals who were attempting to undermine the election results because their preferred candidate or candidates were not successful in the 2020 general election. Thousands of Americans believed the false statements made by elected officials and candidates for office regarding the election results and sieged the United States capitol on January 6, 2021, with the intent to overturn the 2020 presidential election results.

(b) False statements or claims about our election system and its results are damaging, and such claims are even more damaging when elected officials and candidates for public office make them. In the aftermath of the events of January 6, 2021, false statements about the 2020 general election resulted in imminent lawlessness that included five deaths, hundreds of injuries including injuries to at least 137 law enforcement officers, and over $30 million in damage to the United States capitol. Washington state witnessed similar disorder, though on a lesser scale, including violence at the capitol and invasion of the governor's executive residence.

(c) The United States supreme court has ruled that while content-based restrictions on expression are presumptively unconstitutional, some categories of speech—including incitement and defamation—fall outside the protection of the speech clause. For example, with respect to incitement, the United States supreme court has ruled that states have the power to restrict speech that is directed to inciting or that produces imminent lawless action (*Brandenburg v. Ohio*). With respect to defamation of public figures, the supreme court has protected political debate by grafting constitutional protections onto the common law, including a requirement that the statements were made knowingly or with reckless disregard of their falsity.

(d) For other regulations based on content, the government generally bears the high burden of showing that the restrictions on speech are constitutional, but may meet this burden by demonstrating that the restriction is necessary to achieve a compelling interest, that there is a direct causal link between the restriction imposed and the injury to be prevented, and that the restriction is narrowly crafted (*Brown v. Entertainment Merchants*).

(e) The United States supreme court held in *United States v. Alvarez* that even verifiably false statements are not wholly outside the protections of the First Amendment. However, numerous laws prohibit false statements without offending the First Amendment, including laws prohibiting defamation, fraud, and perjury. *Alvarez* held that the law may not punish falsehoods solely on the basis that the statements are verifiably false, but indicates that laws which penalize falsehoods may survive constitutional scrutiny if the falsehoods harm others or unjustifiably benefit the speaker.

(f) Some restrictions on knowing falsehoods, like criminal sanctions imposed for committing perjury in a court of law, are necessary to protect the integrity of the judicial system. Integrity of the judicial system is also at stake when public officials and those who have failed to prevail in an election continue to contest election results even after courts have issued final judgments affirming those results and all appeals have been exhausted.

(g) Beyond the issue of judicial integrity, the integrity of democracy itself is at stake today. The damage inflicted by those who knowingly make false statements directed at undermining the integrity of our elections, the very foundation of our democracy, is incalculable.

(2) It is the intent of the legislature to hold elected officials and those that seek to hold an elected position who have taken an oath to uphold the Constitutions and laws of the United States and the state of Washington accountable for knowingly bringing forward false statements or claims with the purpose of casting doubt on one of our most sacred institutions.

NEW SECTION. **Sec.**  A new section is added to chapter 29A.84 RCW to read as follows:

(1) Any elected official or candidate who has filed for public office under chapter 29A.24 RCW and who thereafter knowingly, recklessly, or maliciously makes false statements or claims related to any pending or completed and certified election conducted in the state, regarding the legitimacy or integrity of the election process or election results, is guilty of a gross misdemeanor punishable under RCW 9A.20.021 if those false statements or claims:

(a) Are intended to incite or produce imminent lawless action and do incite or produce such action resulting in harm to a person or to property;

(b) Are made for the purpose of undermining the election process or the election results; or

(c) Falsely claim entitlement to an office that an elected official or candidate did not win after any lawful challenge made pursuant to this title is completed and the election results are certified.

(2) For the purpose of this section:

(a) "False statements or claims" are not dependent upon, or limited to, the use of any specific words or phrases. Instead, the totality of the statements or claims must be examined to determine if a reasonable person would believe that the candidate or elected official intended listeners to believe the falsehood.

(b) "Knowingly makes false statements or claims" means false statements or claims that are publicly made by an elected official or candidate who is aware of facts or circumstances that would lead a reasonable person in the same situation to believe that the statements or claims are not true.

(c) "Maliciously makes false statements or claims" means false statements or claims that are publicly made by an elected official or candidate with malice, as defined in RCW 9A.04.110.

(d) "Recklessly makes false statements or claims" means false statements or claims that are publicly made by an elected official or candidate when he or she knows of and disregards a substantial risk that a wrongful act may occur and his or her disregard of such substantial risk is a gross deviation from conduct that a reasonable person would exercise in the same situation, as defined in RCW 9A.08.010.

(e) "Undermining the election process or election results" means the elected official or candidate intended to deceive the public by knowingly making false statements or claims regarding: (i) The accuracy of voting systems, voting and canvassing equipment, or election practices and procedures; (ii) the official conduct or actions of election officials and their staff; (iii) the legitimacy of votes cast in an election; or (iv) any other similar false statements or claims regarding the integrity, accuracy, or lawfulness of any election process or the certified results of any election conducted in the state. "Undermining the election process or election results" does not include any lawful challenge made pursuant to this title.

(3) Nothing in this section shall be deemed to prohibit any person from asserting claims regarding election results in actions before any court of this state or the United States.

**Sec.**  RCW 42.12.010 and 1994 c 223 s 2 are each amended to read as follows:

Every elective office shall become vacant on the happening of any of the following events:

(1) The death of the incumbent;

(2) His or her resignation. A vacancy caused by resignation shall be deemed to occur upon the effective date of the resignation;

(3) His or her removal;

(4) Except as provided in RCW 3.46.067 and 3.50.057, his or her ceasing to be a legally registered voter of the district, county, city, town, or other municipal or quasi municipal corporation from which he or she shall have been elected or appointed, including where applicable the council district, commissioner district, or ward from which he or she shall have been elected or appointed;

(5) His or her conviction of a felony, a gross misdemeanor for knowingly making false statements or claims regarding the legitimacy of the election process or of the election results as described in section 2 of this act, or of any offense involving a violation of his or her official oath, except where removal from office is beyond the power of the state;

(6) His or her refusal or neglect to take his or her oath of office, or to give or renew his or her official bond, or to deposit such oath or bond within the time prescribed by law;

(7) The decision of a competent tribunal declaring void his or her election or appointment; or

(8) Whenever a judgment shall be obtained against that incumbent for breach of the condition of his or her official bond.

**Sec.**  RCW 29A.24.031 and 2013 c 11 s 31 are each amended to read as follows:

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 comply with the requirements of section 2 of this act and 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 comply with the requirements of section 2 of this act and 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.

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

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