



## Top Two Primary Frequently Asked Questions

### **What is a Top Two Primary?**

A Top Two Primary is a new type of primary that allows voters to choose among all candidates running for each office. The two candidates who receive the most support from voters in the Primary Election qualify for the General Election. It allows candidates to file for partisan office and list on the ballot a party that they prefer, regardless of whether the candidate has been nominated or endorsed by that party. Voters do not have to declare a party affiliation.

### **What does the candidate's party preference mean in a Top Two Primary?**

It is simply a statement by the candidate of his or her preference, if any, for a political party. When candidates file for office, they will be permitted to express a preference for a political party, and this preference will appear on the ballot. This does not mean that the party has nominated or endorsed that candidate, or even that it approves of the candidate. Nor does it mean that the candidate represents that party. It is simply a statement by the candidate of his or her personal preference.

### **How did the Top Two Primary become law?**

The Top Two Primary was passed by the people in 2004 as an initiative. I-872 passed by almost 60%.

### **What happened after I-872 passed?**

In May 2005, before the new primary system was implemented, the state Democratic, Republican and Libertarian parties sued in federal court to prevent its implementation. The political parties argued that the new primary system violated their right to free association.

The federal District Court agreed with them and issued an order in July 2005 prohibiting the State from implementing the Top Two Primary. The State appealed, but the Court of Appeals also agreed with the parties in an order issued in 2006. The State appealed to the U.S. Supreme Court.

### **What did the U.S. Supreme Court decide?**

The court upheld the constitutionality of I-872. The Supreme Court reasoned that, since this form of primary has never been used, the political parties' challenge was based on assumptions. The Court decided that it would not nullify the vote of the people based on speculation.

**What does this mean for voters?**

In August, the state will conduct a primary using I-872. Voters will not have to pick a party ballot and will be able to choose among all candidates for each office. In each race, the two candidates with the most votes will advance to the general election.

**What does this mean for candidates?**

Candidates must still file a declaration of candidacy with the County Auditor or the Secretary of State, depending on the office. Candidates will be allowed to state on the declaration of candidacy which political party they prefer, and that information will be listed on the ballot.

This is strictly an expression of that candidate's preference. It does not denote or imply that the party prefers, endorses, or has nominated that candidate. For purposes of conducting the elections, people running for office are not members of a particular party or candidates of a particular party. Rather, they are candidates running for office, and are provided the opportunity to express a preference for a political party.

**Can the Democratic and Republican parties prevent a candidate from expressing a preference for their party?**

No. Candidates will be permitted to express a preference for any political party. The court ruled that the ability of candidates to express a preference for a party does not severely burden the rights of the party.

**Can the political parties still nominate candidates?**

Yes. State law no longer dictates how political parties conduct their nominations. Now, the state and local parties decide how to conduct their nominations. The rules for party-run nominations vary party to party, and even between the state and local parties. Political parties can nominate multiple candidates for the same race. The Court stated:

Whether parties nominate their own candidates outside the state-run primary is simply irrelevant. In fact, parties may now nominate candidates by whatever mechanism they choose because I-872 repealed Washington's prior regulations governing party nominations.

**Can the political parties require that their nominees be distinguished on the ballot?**

No. I-872 does not allow or authorize any special designation on the ballot for candidates who have been nominated by a political party. All candidates are treated the same.

And the political parties do not have a constitutional right to have their nominees distinguished on the ballot. The Supreme Court was very clear on this point when it said:

It is true that parties may no longer indicate their nominees on the ballot, but that is unexceptionable: The First Amendment does not give political parties a right to have their nominees designated as such on the ballot. ... Parties do not gain such a right simply because the State affords candidates the opportunity to indicate

their party preference on the ballot. “Ballots serve primarily to elect candidates, not as forums for political expression.”

**Can candidates advertise themselves as nominees of a political party?**

Yes. Candidates can promote themselves in voters’ pamphlets, advertisements, and other forums as the nominees of a political party.

**If the political parties oppose the design of the primary ballots, can they sue to prevent use of the Top Two this year?**

Yes they can sue, but probably not prevent use of the Top Two Primary. As part of its ruling, the Supreme Court said it would not set the Top Two Primary aside based on speculation about what might happen, or based on "hypothetical" or "imaginary" cases. It is likely that something more will have to be shown to block use of the Top Two Primary.

**Could a race at the General Election include two candidates who prefer the same party?**

Yes. The candidates in each race who advance to the General Election will be the two who receive the most votes in the Primary. It is possible that both candidates who advance to the General Election prefer the same party.

**Are minor party candidates still required to conduct conventions and collect signatures in order to run for office?**

No. All candidates use the same procedures to file for office and appear on the Primary Election ballot. The Top Two Primary evens the playing field for candidates. Candidates may list any party as the party that they prefer.

**After filing week, can a major party fill vacancies on the major party ticket?**

No. This process was specifically repealed in I-872 because there is no major party ticket in a Top Two Primary. All candidates are treated the same.

A race will only be reopened for a special filing period if there is a void in candidacy, meaning no candidates filed during the regular filing period.

**Does the U.S. Supreme Court opinion impact the Presidential Primary?**

No. The Top Two Primary is for local, state and Congressional races. The Presidential Primary is a separate system that only applies to nominating candidates for President, and how the major parties allocate their delegates to the national conventions.