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Abstract

Washington's experience with primary elections provides an opportunity to assess issues associated with implementing the top two primary and an opportunity to examine how changing to a top two primary may affect elections and voting. Although the Washington context is different from California (top two replaced an open partisan primary in Washington, rather than a closed partisan primary), Washington's experience suggests the effects of this reform have been rather limited. There may have been a slight increase in turnout and a minor increase in campaign expenditure after changing to top two, but it is difficult to link these changes to the primary system. Whatever the cause of the changes, the partisan structure of Washington's legislature appears unaltered by the new primary system.

Keywords: electoral reform, voter turnout, primary elections

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The Top Two Primary: What Can California Learn from Washington?

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Barring unlikely intervention by the courts, statewide and legislative candidates in California will be selected under a “top two” primary method. In June 2010, California voters approved Proposition 14, the legislature’s Top Two Primary Act. Proposition 14 would establish a primary election system quite similar to the method that Washington voters adopted upon approval of Initiative 872 in 2004. In both states, the top two primary allows any qualified voter to participate in a primary election where candidates for legislative and statewide offices—regardless of party—are listed on a single ballot.¹ In both states, candidates are allowed to list the political party they “prefer” on the official primary ballot. The first- and second-ranked candidates coming out of the primary win spots on the general election ballot, again regardless of party.

Proponents of Proposition 14 have set high expectations for this primary reform. Advocates claimed the reform would end “bickering” and “gridlock” in Sacramento,² increase voter participation, and put more moderate candidates into office. Similar arguments resonated with weak partisans and disaffected voters in 1996 when California voters approved a blanket primary system (Bowler and Donovan 2002). Clearly, it is too soon to evaluate how a change in the primary system might have any such effects. But Washington’s experience with primary elections provides an opportunity to assess issues associated with adopting the top two primary, and how the change to a top two primary has affected elections. The first part of this paper includes a survey of Washington’s experience with primary elections, as well as an overview of issues associated with implementing the top two primary. The second part of the paper evaluates how voting and elections may have changed after the adoption of top two in Washington.

¹ California’s law stipulates that judicial, school, city offices, and the superintendent of public instruction shall be nonpartisan contests. Washington’s election laws and ballots continued to refer to most offices as “partisan” in 2010 despite that the top two primary is said to be a nonpartisan nomination process.

² Statement in Voter’s Pamphlet.

History of Primary in Washington

Washington's experience with primary elections is unique, and its experience changing to a top two primary might not predict California's path. First, Washington does not have partisan registration. Second, Washington used an open, "blanket" primary from 1935–2000 that was similar to the top two. The Washington State Grange, an agricultural organization, and the AFL-CIO promoted an initiative to the legislature in 1934 that led the legislature to adopt a blanket primary.³ The blanket primary was similar to the top two but for one key feature: The blanket primary effectively selected partisan nominees. The top candidate from each major party earned a spot on the general election ballot—regardless of whether the candidate placed first or second in the primary. Third, Washington's political context is different. Washington does not have term limits and thus may have fewer opportunities (open seats) for a change in primary system to demonstrate effects.

After California's brief experiment with the blanket primary was ruled unconstitutional by the United States Supreme Court (*California Democratic Party et al. v. Jones* 2000), the Court soon forced Washington to adopt a new method for selecting candidates for the general election ballot (*Washington State Democratic Party et al. v. Reed* 2003). The Washington legislature adopted an open primary law in 2004, and open primaries were used in 2004 and 2006. Under the open primary any voter could participate in a major party's primary, but they were required to select a unique ballot from one party listing only candidates of that party. After years of legal proceedings, the U.S. Supreme Court ruled in 2007 that Initiative 872's top-two primary was constitutional (*Washington State Grange v. Washington Republican Party* 2008).

As of this writing, Washington had used the top two primary twice (2008 and 2010). In the discussion below, I assess some of the legal and political aspects of adopting and implementing the top two primary in Washington. In the section following that, I compare election results and turnout information from the 2004 and 2006 partisan primaries to those conducted under the top two.

It is important to note California's change in primary rules occurred in a different context than Washington's. Unlike California, Washington has no tradition of registering by party, no tradition of closed primaries, and a long tradition of using a nomination scheme quite similar to the top two system. Washington's switch to a top two system in 2008 came after a very brief flirtation with partisan primaries. As such, the adoption of the top two in Washington may have had limited ability to affect the larger electoral context that dates back to Washington's blanket primary

³ In 1934 Grange officials originally wanted a top two primary, thinking it would "undermine" parties and allow voters "to vote for the person instead of the political party's candidate." Legislative resistance to a top two led the Grange to re-write their bill as a blanket primary (Shea 1983, 127).

era. California's change from a closed primary system to a top two system may be more consequential than Washington's because it may represent a more fundamental departure from the state's status quo electoral context.

Legal Challenges to State Primary Laws

Washington and California's top two primary systems were born, in large part, in what appeared to be a minor remark near the end of the majority opinion that struck down the California blanket primary law (Proposition 198) that voters adopted in 1996. In *California Democratic Party v. Jones*, the Court ruled (7–2) that a blanket primary violated a political party's First Amendment right to free association. In *Jones*, the court ruled that a state violated this right if it compelled a party to allow voters who were not approved by the party to participate in the selection of the party's nominee.

In *Jones*, the Court explicitly rejected the idea that the state had an interest in using primaries to move debate “beyond the scope of partisan concerns,” and that the state had no compelling interest in designing primaries to weaken the influence of parties. It also rejected the idea that primary laws should be designed to encourage the nomination of political moderates. In the eyes of the Court, political parties are private associations, with the right to determine who their standard bearers will be. Writing for the majority, Justice Scalia emphasized that, “Proposition 198 forces political parties to associate with— to have their nominees, and hence their positions, determined by— those who, at best, have refused to affiliate with the party, and, at worst, have expressly affiliated with a rival.”⁴

Yet in the final part of the *Jones* decision, Justice Scalia opened the door for a top two system. Scalia noted that a state could employ a “*nonpartisan* blanket primary” (emphasis in the original), where the state could determine what qualifications it requires to place a candidate on the ballot, where:

Each voter, regardless of party affiliation, may then vote for any candidate, and the top two vote getters (or however many the State prescribes) then move on to the general election. This system has all the characteristics of the partisan blanket primary, save the constitutionally crucial one: Primary voters are not choosing a party's nominee. Under a nonpartisan blanket primary, a State may ensure more choice, greater participation, increased “privacy,” and a sense of “fairness”—all without severely burdening a political party's First Amendment right of association.⁵

Citing *Jones*, and arguing that a top two system was indistinguishable from a blanket primary, Washington's major parties won an injunction in U.S. District

⁴ *California Democratic Party v. Jones* 530 U.S. 9, Scalia (2000).

⁵ *California Democratic Party v. Jones* 530 U.S. 18, Scalia (2000).

Court blocking the implementation of I-872's top two primary in 2005.⁶ In 2006 the parties convinced the Ninth Circuit Court of Appeals that the top two primary, like the blanket primary, violated a party's right to free association because it continued the practice of allowing voters not affiliated with a party to participate in selecting a party's nominees. The political parties argued that the top two again forced parties to associate with candidates it might not have endorsed. The Ninth Circuit held that I-872:

severely burdens the political parties' associational rights because the party-preference designation on the ballot creates a risk that primary winners will be perceived as the parties' nominees and produces an "impression of association" between a candidate and his party of preference even when the party does not associate, or wish to be associated, with the candidate.⁷

Attorneys for the Washington State Grange had relied on the passage from *Jones* about a nonpartisan blanked primary (above) when crafting Initiative 872, as did the state attorney general's office when appealing the Appellate Court's ruling against Initiative 872. The notable difference they cited between the blanket and top two systems was that the former sent the top Democrat, and top Republican to the general election. The latter simply sends two candidates, regardless of party. The Grange and the state's arguments were that the top two primary thus is not a *partisan* nominating process, nor a means to select a party's nominee for the general election.

Implementation: Does Listing Party Preference Choose a Party's Nominee?

In 2008, the state's argument prevailed. The Supreme Court reversed the lower courts (7–2) in *Washington State Grange v. Washington Republican Party* (2008) and held that Initiative 872 was constitutional. Legal challenges to California's Proposition 14 will likely be constrained by the Washington case, since the Court has now established that a top two primary can, at least in theory, be designed such that it does not harm a party's First Amendment rights. The case, and Washington's implementation of I-872, may also sets some parameters for how California's ballots will be designed.

The majority in the Washington Grange decision ruled that I-872 did not "on its face" harm parties. Since no elections had yet been contested under top two, the majority ruled that the parties' claims of being harmed by voter confusion about a candidate's association with a party were hypothetical, and thus could not be substantiated. One key empirical question associated with the ruling in favor of the

⁶ *Washington State Republican Party v. Logan*, 377 F. Supp. 2d 907, 932 (W.D. Washington, 2005)

⁷ *Washington State Grange et al. v. Washington Republican Party* 460 F. 3d 1119 (9th Cir. 2006).

top two system is whether primary and general election ballots would give voters a false sense that candidates are associated with, nominated by, approved by, or endorsed by the party they say they prefer.

Initiative-872 required that the Court determine: (1) whether or not a primary system that lists a candidate's party preference on a ballot effectively chooses the parties' nominees; and (2) whether the ballot listing of the candidate's party preference harms the parties. In *Washington State Grange v. Washington Republican Party* (2008), the Supreme Court would seem to reject the first idea. The majority noted that regardless of whether or not ballots listed a candidate's party preference, the law does not treat any candidates as the nominee of a party. It should be noted that Justice Scalia dissented here—he wrote that the nonpartisan blanket primary that he had previously described as constitutional in *Jones* would require having no party labels on the ballot.

As to the second point above, the political parties contend that if voters mistakenly assume the parties are associated with and/or approve of candidates sharing their party name, they are thus forced to associate with candidates they do not approve of. In reviewing I-872 the Court called this “sheer speculation.”⁸ The majority held, in the absence of evidence, “There is simply no basis to presume that a well-informed electorate will interpret a candidate's party-preference designation to mean that the candidate is the party's chosen nominee or representative or that the party associates with or approves of the candidate.”⁹ Likewise, the majority noted, “If the ballot is designed in such a manner that no reasonable voter would believe that the candidates listed there are nominees or members of, or otherwise associated with, the parties the candidates claimed to ‘prefer,’ the I-872 primary system would likely pass constitutional muster.”¹⁰ Of course, this begs the legal and practical questions of what a reasonable voter is and of how one defines a “well-informed” electorate.

The Court concluded that whether or not voters would be confused by the party preference designation depended on how ballots were designed. The majority—noting that no election had yet been conducted—assumed the Washington had the ability to design ballots that could “eliminate the possibility of widespread voter confusion,” and it acknowledged that goal could be accomplished with prominent disclaimers clarifying that a candidate's party preference has no relationship with an official party endorsement. The majority, furthermore, noted that voter confusion about a candidate's association with a party could also be reduced if the state conducted voter education efforts stressing that a preference designation was the

⁸ *Washington State Grange v. Washington Republican Party* 552 U.S. 11 (2008).

⁹ *Washington State Grange v. Washington Republican Party* 552 U.S. 12, Thomas (2008).

¹⁰ *Washington State Grange v. Washington Republican Party* 552 U.S. 3, Roberts concurring (2008).

candidate's personal choice (not something determined by the party), and that confusion could be mitigated if explanatory material was included with ballots.

The Washington Secretary of State's office appears to have been guided by the Court's I-872 ruling when implementing the first statewide top two primary in 2008. Although the design of ballots varies across counties, all candidate listings on ballots state explicitly that the candidate "prefers" the listed party. Rather than designating a candidate as, "Jane Smith, Republican" ballots list a candidate as "Jane Smith, Prefers Republican Party." Ballots also include this prominent disclaimer:

READ: Each candidate for partisan office may state a political party that he or she prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate.

Voter's pamphlets prepared by many counties and the secretary of state's office also included separate statements similar to the disclaimer. Some counties inserted additional disclaimer information into ballots mailed to voters (all Washington elections are now conducted by mail). The secretary of state's office also conducted public education advertising campaigns about the new ballots in 2008 on radio, television, and on a state Web site.

Post Implementation of I-872: The Voter Confusion Argument

Washington's political parties returned to the voter confusion argument after Washington's first top two election in 2008. The result from the post implementation challenge in Washington may offer some hints as to the constraints California's parties face in challenging Proposition 14. Washington's political parties saw that *Washington State Grange v. Washington Republican Party* left an opportunity for additional challenges to the top two system.

Their post-implementation challenge had three related components. One was to produce empirical evidence showing that there was "widespread" voter confusion in Washington about how candidates were associated with political parties. A second was the argument that some party-preferred candidates were unable to advance to the general election. A third was to ask the Court to consider voter confusion in light of trademark law.

A Western Washington District Court judge rejected all of these challenges in 2011.¹¹ The judge dismissed the parties' trademark claim as having nothing to do with First Amendment associational rights. He also discounted that parties were harmed if their candidates did not appear on the general election ballot, noting

¹¹ *Washington State Republican Party et al. v. Washington State Grange et al*, Case C05-0927-JCC, (W.D. Washington 2011).

that the Supreme Court's ruling in *Washington State Grange* stated that the First Amendment does not give parties a right to have their nominees on the ballot.¹²

As for confusion, the parties produced data from an expert witness that the parties claimed demonstrated "widespread" voter confusion. These data came in the form of an unpublished study reporting results from survey experiments conducted on a nonrandom group of young university undergraduates, on a group of newly registered voters, and on a third nonrandom sample of unclear origin (Manweller 2010). The parties' study presented data illustrating that some subjects made "errors" in assessing a candidate's relationship with a party when they were presented with any sort of mock ballot (including mock partisan general election ballots).¹³ It also demonstrated that subjects presented with a mock ballot using the state's disclaimer were the subjects least likely to perceive a candidate as being the nominee of a party (Manweller 2010, 27–29). Nonetheless, some subjects made "errors," and the parties submitted this as evidence of widespread voter confusion.

The state countered with a report that critiqued the parties' expert research design and a report demonstrating that voter confusion about parties and electoral rules is common in real world settings.¹⁴ The trial court judge declared that, as applied, Washington's implementation of Initiative 872 eliminated the possibility of widespread voter confusion. This was based not on competing claims about levels of voter confusion, but on the judge's evaluation of the ballot design and of the state's efforts to educate voters about the limited meaning of a candidate's declared party preference. The judge held that the state's implementation closely followed the parameters for ballot design and voter education that the Supreme Court had laid out in *Washington State Grange v. Washington Republican Party*.

The District Court did address the empirical questions about voter confusion, albeit indirectly, by noting the standard the Court must use to evaluate the possibility of widespread confusion is the perspective of a "reasonable, well-informed electorate." The District Court held that evidence of confusion offered by the parties was "both irrelevant and unpersuasive." Evidence that voters may not read the disclaimer is irrelevant because, "a voter who ignores or refuses to read basic ballot instructions is no longer a reasonable voter, and surely not a well-informed

¹² *Washington State Republican Party et al v. Washington State Grange et al*, Case C05-0927-JCC, Order, p. 12 (W.D. Washington 2011).

¹³ An error was defined as subject responding that a candidate was the "nominee" or "representative" or was "affiliated" or "associated" with a party when presented a mock top-two primary or top-two general election ballot.

¹⁴ The author served as the state's expert. Evidence from Pew Surveys, and studies such as Delli Carpini and Keeter (1996) was used to establish that surveys regularly produce results showing voters make factual errors when asked survey questions about electoral politics.

one. The Court cannot and will not consider the constitutionality of I-872 from the viewpoint of such an unreasonable, uninformed voter.”¹⁵

The judge also wrote that:

the Court need not rely on Washington’s expert to conclude that the presence of general confusion about matters of politics and elections is common. If any political party—or voter for that matter—must only show the presence of some confusion in order to successfully challenge the constitutionality of an electoral system, then any method of conducting partisan elections would be vulnerable to constitutional attack. In a state whose population is fast approaching seven million residents, the political parties are bound to find voters who are confused about the electoral process. But the political parties have not shown that Washington’s implementation of I-872, as opposed to a basic misunderstanding of the electoral system, creates any widespread confusion. Moreover, it is unreasonable to conclude that Washington citizens may never change their electoral system simply because some voters have grown accustomed to and understand the current system.¹⁶

It remains to be seen exactly how California will design ballots for its top two elections and how the state will utilize disclaimers or voter education efforts. That said, the failure (at the time of this writing) of the Washington parties’ post-implementation challenge to I-872 suggests voter confusion (in addition to trademark and ballot access claims) may not be sufficient to convince a federal court to block Proposition 14.

What Changed When Washington Adopted Top Two?

One of the major claims of top two advocates was that the system would facilitate the election of political moderates. The lack of restrictions on participation in a blanket or top two primary raises the possibility that the primary electorate will include more independent voters (and, it is assumed, political moderates) than found in partisan primaries. Like the blanket primary, a top two allows for crossover voting (sincere or strategic), where voters can opt to support candidates having any party preference. If moderate candidates have limited support in a partisan primary electorate—particularly a closed partisan primary—they might gain broader support by appealing to independents and moderates in a blanket or top two system.

This could change the type of candidates sent on to the general election (Cain and Gerber 2002; Gerber and Morton 1998). Moderates do appear to have won more nominations in California in 1998 under a blanket primary than in 1996 under a partisan primary (Gerber 2002). Others suggest that a top two primary with a crowded field can facilitate polarization by rewarding candidates who appeal to

¹⁵ *Washington State Republican Party et al. v. Washington State Grange et al.*, Case C05-0927-JCC, Order, p. 12 (W.D. Washington 2011).

¹⁶ *Washington State Republican Party et al v. Washington State Grange et al*, Case C05-0927-JCC, Order, p. 15, fn. 8 (W.D. Washington 2011).

a fervent base of supporters and only need place second to make it to the general election (Sinclair 2010).

Given Washington's electoral context and its very brief use of partisan primaries, it is not possible to assess how the change to a top two affected the election of moderates. Washington had a reputation for electing moderates and "mavericks" prior to adoption of the top two system (Donovan 2011). This propensity might reflect the state's long history with the blanket primary, the lack of partisan registration, and adoption of a bipartisan redistricting commission in 1983.

Bipartisan redistricting can produce districts that are slightly more competitive than those resulting from bipartisan districting systems used in states such as California (Krebs and Winburn 2011; Kogan and McGhee 2011), and competitive districts have been shown to be more likely to produce centrist representatives (Donovan 2007). Several of Washington's state legislative and congressional representatives were elected from districts that regularly switched from Democratic to Republican control during this period.¹⁷ Since California is changing primary systems while also moving away from a partisan districting scheme (Kogan and McGhee 2011), in time it may be difficult to assess which factor (if either) had any consequences for the propensity of elections to produce ideological moderates.

Party Ballot Listings and Candidates Elected

This said, although it is not possible to assess how the change to a top two system affected partisan polarization in the Washington legislature, there is evidence that the top two system affected Washington's electoral landscape. Table 1 compares the general election party preferences that candidates used under the 2010 midterm top two election to the party labels candidates used in the 2006 midterm general election. Table 2 compares party preference listings candidates used at the 2008 presidential election (under top two) to party labels used in the 2004 presidential contest. Cross time comparisons in Table 1 might be more meaningful than those in Table 2 because the Libertarian Party had ballot access in 2004, increasing the total number of candidates in the general election that year.

Table 1 and Table 2 allow us to evaluate how the change to a top two primary may have affected the party system, at least in terms of how candidates were listed on the general election ballot and in terms of which parties' candidates were elected. When midterms are considered (Table 1), we see that the 2006 partisan primary produced a general election field where all but one candidate for state legislature

¹⁷ These included the 2nd CD, the 3rd CD (which switched from D to R in 2010), and the 8th CD, which Obama won with a 15% margin in 2008 while the seat was held by a moderate Republican. Several multiseat state legislative districts east of Seattle regularly split between Democrats and Republicans.

Table 1. Party Listings Before and After Adopting Top-Two, Midterm Elections

2010 Top Two Primary

<i>Party Preferences</i>	<i>Num. State Leg. Candidates</i>	<i>Num. U.S. House Candidates</i>
Prefers Republican Party	107*	8
Prefers Democratic Party	98*	9
Prefers GOP Party	3	
Prefers Independent Dem. Party	1*	
Prefers Bull Moose Party	1	
Prefers Conservative Party	1	
Prefers Constitution Party	1	
Prefers Independent - No Party		1
Prefers Lower Taxes Party	1	
Prefers Reluctantly R. Party	1	
Prefers (R) Problemfixer Party	1	
States No Party Preference	4	
Uncontested (winner = 100%):	20.3%	0
Contested, not traditional D vs. R:	8.9%+	11%
Contested, intraparty contest:	7.3%	0

2006 Partisan Primary

<i>Party Labels</i>		
Democrat	107	9
Republican	103	9
Independent		1
Progressive	1	
Uncontested (winner=100%):	28.6%	0
Contested, not D vs. R:	0	0
Contested, intraparty contest	0	0

* = Candidate(s) elected

+excludes contests with "GOP" candidates.

Source: Washington Secretary of State's Office.

Table 2. Party Listings Before and After Adopting Top-Two, Presidential Elections

2008 Top Two Primary

<i>Party Preferences</i>	<i>Num. State Leg. Candidates</i>	<i>Num. U.S. House Candidates</i>
Prefers Democratic Party	117*	9
Prefers Republican Party	74*	8
Prefers G.O.P. Party	22*	1
Prefers Progressive Dem. Party	1*	
Prefers R Party	1*	
Prefers Cut Taxes G.O.P. Party	1	
Prefers Green Party	1	
Prefers Independent Party	1	
Prefers Libertarian Party	1	
States No Party Preference	2	
Uncontested (winner= 100%)	19.3%	0
Contested, not traditional D vs. R:	4.8%+	0
Contested, intraparty contests	5.6%	0

2004 Partisan Primary

<i>Party Labels</i>	<i>Num. State Leg. Candidates</i>	<i>Num. U.S. House Candidates</i>
Democratic	121	9
Republican	109	9
Libertarian	28	4
Green	1	
Uncontested (winner=100%)	15.8%	0
Contested, not D vs. R:	1.6%	0
Contested, intraparty contests	0	0

* = Candidate(s) elected

+ = Excludes contests with candidates listed as “GOP” or “R”.

Source: Washington Secretary of State’s Office.

and all but one U.S. House candidate were listed either as a Democrat or Republican. Only Democrats and Republicans were elected in 2006.

In 2010, party preference listings under the top two were much more varied. Legislative candidates having 12 different party preferences appeared on the 2010 general election ballot, with four listing no party preference. One candidate was elected under the “Prefers Independent Dem. Party” listing, with all remaining candidates elected under Democratic or Republican preference listings. Table 2 also illustrates what might seem at first glance to be increased party diversity under top two. In 2008, 10 candidates were elected under the “Prefers G.O.P. Party” listing, one under the “Prefers Progressive Dem. Party” listing, one under the simple, “prefers R Party” listing, with all of the remaining winning candidates listed as preferring the Democratic or Republican party.

The increased diversity of “parties” (in terms of preference listings) under top two should not be taken as evidence of emerging multiparty politics in Washington, nor as evidence of any change in the partisan composition of the legislature. In 2006, in the face of widespread public disapproval of Republican President George W. Bush, many of the Republican Party establishment candidates (including U.S. Senate candidate Dino Rossi and the State House Republican Leader) made a strategic calculation that a “G.O.P” listing would be more popular with voters than a “Republican” listing.¹⁸ Moreover, the handful of candidates elected using other nontraditional party preferences were incumbents previously elected as Democrats or Republicans who continued to caucus with their party after re-election.

Contested Races, Intraparty Contests, and Moderates

As much as the partisan composition of the legislature appears unaffected by the change to a top two primary, general elections were somewhat different in several districts—particularly when the 2010 general is compared to the 2006 general. All else equal, we might expect that the top two increases the likelihood of having intraparty general election contests, and perhaps, increase the likelihood of having contested general election contests. Intraparty general election contests could be more common if multiple candidates with the same party preference compete in a top two primary in a district that is relatively safe for that party.

Table 1 illustrates that fewer legislative candidates (incumbents from safe districts) ran unopposed in 2010 than in 2006. This difference is not apparent when 2008 is compared to 2004. Both tables do demonstrate an increase in intraparty legislative contests after the change to top two. Some of these were close races. In 2010, four intraparty general election legislative contests were decided by margins

¹⁸ <http://seattletimes.nwsources.com/html/localnews/2004470167_postmanblog11m.html>.

of 54–46 or closer. Table 1 also demonstrates an increase in contests where one major party candidate faced a candidate who used a party preference listing other than the traditional “Republican,” “Democratic” or “GOP Party” or party listings (for example a “Prefers Democratic Party” vs. “Prefers Lower Taxes Party” contest).

Contrary to the idea that a top two would reward moderates and harm candidates preferred by party purists, a prominent “maverick” incumbent Republican state representative was resoundingly defeated by a “more reliable” Republican candidate in a 2010 intraparty general election contest.¹⁹ A progressive Democrat endorsed and funded by labor and environmental groups won an open State House general election contest between two Democrats in the 34th Legislative District that year. A moderate incumbent Democratic state senator was defeated a three-way 2010 38th District primary race between the incumbent, a second candidate listed as preferring Democratic, and a third listed as preferring the “Conservative Party.” The 38th was a safe Democratic seat.²⁰ Labor and progressive interests and a Democratic consultant spent over \$250,000 attacking the moderate Democrat while simultaneously backing an unknown “conservative” in a successful effort to set up a contest between the lesser known candidate and the liberal Democrat the groups also funded.²¹ The liberal Democrat was elected with 60% in the general.

Table 3 illustrates the total number of candidates in primary elections for statewide offices since 2000, the number of major party candidates who received at least 5% of total votes cast, and the share of the vote captured by the candidates with the first and second most total votes received. There was no intraparty general election contest for any statewide office after the adoption of the top two primary. Analysis of the effects of the top two on statewide races is difficult because there has been only one election (2008) of statewide executive contests since the adoption of top two, and few statewide contests have had open seats. Table 3 shows that slightly fewer major party candidates were competitive in the first top two primary, and that the one open seat (treasurer) attracted fewer candidates than found in open seats contested in the 2004 or 2000 primaries. This may reflect party elites clustering behind individual candidates for each statewide office prior to the primary in order to ensure the party does not dilute its vote by over nominatin

¹⁹ Rep. Tom Campbell, R-2nd, was defeated by J. T. Wilcox. Jordan Schrader. “Olympia’s New Shape.” *The Olympian*. Oct 3, 2010, <<http://www.theolympian.com/2010/10/03/v-print/1390839/olympias-new-shape.html>>.

²⁰ Obama carried the district with a 25% margin in 2008.

²¹ <<http://heraldnet.com/article/20101028/BLOG13/101029770/-1/news01>>.

Table 3. Number of Primary Candidates, Statewide Offices.

2008 Statewide Executive Races, Top Two Primary

	<i>Number of Candidates</i>	<i>Major Party Candidates^a</i>	<i>Top Two Vote %</i>
Governor	10	1 D, 1 R	94.6
Lt. Governor	5	1 D, 2 R	77.7
Secretary of State	4	1 D, 1 R	91.9
Treasurer*	3	2 D, 1 R	84.7
Auditor	3	1 D, 1 R	93.1
Attorney General	2	1 D, 1 R	100
Lands Commissioner	2	1 D, 1 R	100
Insurance Commissioner	2	1 D, 1 R	89.9

2004 Statewide Executive Races, Partisan Primary

	<i>Number of Candidates</i>	<i>Major Party Candidates^a</i>	<i>Top Two Vote %</i>
Governor*	12	2 D, 1 R	72.8
Lt. Governor	5	1 D, 3 R	75.8
Secretary of State	3	1 D, 1 R	98.8
Treasurer	3	1 D, 1 R	98.7
Auditor	3	1 D, 1 R	98.8
Attorney General*	5	2 D, 2 R	60.9
Lands Commissioner	3	1 D, 1 R	98.8
Insurance Commissioner	5	1 D, 1 R	81.2

2000 Statewide Executive Races, Blanket Primary

	<i>Number of Candidates</i>	<i>Major Party Candidates^a</i>	<i>Top Two Vote %</i>
Governor	5	1 D, 2 R	88.8
Lt. Governor	5	2 D, 2 R	67.8
Secretary of State*	11	3 D, 4 R	43.2
Treasurer	4	2 D, 1 R	88.3
Auditor	3	1 D, 1 R	62.6
Attorney General	5	1 D, 1 R	93.2
Lands Commissioner*	9	3 D, 2 R	62.2
Insurance Commissioner*	5	2 D, 2 R	62.6

Note: * = open seat. a = major party candidates with more than 5% total vote share.

Minor Parties

Minor parties have generally opposed adoption of the top two primary in Washington and California while opposing the blanket primary. Minor party opposition to both systems rests on an assumption shared with the major parties that these primary systems dilute the party's ability to control their message (Collet 2001). Minor parties may also have concerns about how the top two affects ballot access. As noted above, the increase in Washington general election contests with candidates listing nontraditional party preferences need not be seen as a large increase in minor party candidates reaching the general election. Most such party listings are variants of Democratic or Republican, and minor party general election candidates are very rare in legislative contests.

Under the blanket primary, individual independent and minor party candidates in Washington frequently advanced to the general election in statewide and legislative contests if they received at least 1% of the primary vote. Prior to 2008, minor parties obtained "major party status" (ballot access in the form of the ability to list candidates for any office) if one of the party's general election candidates won at least 5% support in a race for any statewide office. The Libertarian Party qualified for major party status in 2000, but failed to reach 5% the 2004 election. By 2010 only one legislative candidate who listed a preference for an established minor party (Constitution) reached the general election, while just two (one preferring Green, and one preferring Libertarian) reached the general ballot in 2008. No candidate for statewide office listing a minor party preference appeared on the 2008 general election ballot.

Campaign Spending

Some critics of California's Proposition 14 suggested the move to top two would increase campaign costs, although the causal logic here is not entirely clear. A California Assemblyman noted a top two would require candidate to run two separate election campaigns (Winger 2010)—this despite the fact that candidates run in primaries and general elections regardless of whether a top two system is used. Sinclair (2010) also suggests money will play a greater role—perhaps because of an increase in the number of candidates, or the need for candidates to target appeals to key groups of "fervent" supporters. Campaign costs may also increase if more voters participate in primaries: all else equal, candidates might need to spend more than before simply to keep pace with previous levels of campaigning (in terms of costs per voter).

Table 4 displays campaign spending for state legislative candidates from 2000–2010 in inflation adjusted (2010) dollars. Total spending and per candidate spending

Table 4. Campaign Spending, Washington State Legislative Races 2000–2010

<i>Year</i>	<i>Total Spending</i>	<i>Total spending, inflation adjusted</i>	<i>Number of Candidates</i>	<i>\$ per candidate</i>
2010 ^a	\$23,400,000	\$23,400,000	219	\$106,850
2008 ^a	\$21,443,000	\$21,717,000	221	\$98,957
2006 ^b	\$18,810,000	\$30,345,000	211	\$96,242
2004 ^b	\$18,704,000	\$21,590,000	259	\$83,359
2002 ^c	\$15,985,000	\$19,375,000	220	\$88,068
2000 ^c	\$16,571,000	\$20,983,000	272	\$77,143

Source: Washington Public Disclosure Commission

Note: ^aTop Two primary; ^bOpen Partisan Primary; ^cBlanket Primary.

was highest in 2010, but in real terms spending for *all* state legislative candidates increased by \$3.3 million over the decade—an increase of 11.6%, or less than 1.2% per year. This is far less than the rate that campaign spending has been increasing generally (Abrams and Settle 1976; Ansolabehere et al. 2001), and less than the growth of national income during this period.²²

Spending *per candidate* did increase more than total spending. However, higher per candidate spending in 2010 and 2008 reflects—at least partly—a lower total number of candidates than what was found in earlier years when the Libertarian Party had ballot status (2002 and 2004) and when minor and independent candidates advanced to the general with 1% of the primary vote (2000 and 2002). If we compare per candidate spending in 2006 (a partisan primary held after the Libertarians lost ballot status) to per candidate spending in 2010 (a top two primary), spending increased at a rate of less than 2.8% per year. All of this suggests that if the change to a top two system had consequences for campaign spending levels, the effects were very modest.

²² Ansolabehere, de Figueirde, and Snyder (2003) suggest that growth in campaign spending over time should be considered relative to the growth of national income.

Voter Turnout

California primary reform advocates contended that a top two system would expand the pool of voters participating in primaries. Similar arguments were made when California adopted the blanket primary (Cho and Gains 2002). Turnout could increase for at least two reasons. First, primary turnout could increase if the electorate eligible to participate in the primary was expanded, as is the case when changing from a closed primary. Second, if a rise in electoral competition in the primaries or general election increases voter mobilization, voter interest, and participation (Cox 1989; Hogan 1999; Bowler and Donovan 2008; Tolbert et al. 2008), turnout in both contests might increase.

Table 5 displays turnout in Washington from 2000 to 2010. Primary and general election turnout are expressed as a percent of registered voters. General election turnout of the state's voting eligible population (VEP) is also compared to VEP turnout nationally.²³ These data span elections conducted using three different primary systems, with midterm and presidential contests clustered separately. Washington's state executive contests are held in presidential years, and U.S. Senate races occurred every year except 2002 and 2008.²⁴

In addition to changes in the primary system, other factors might have affected voter turnout. The lack of a U.S. Senate contest in 2008 and 2002 could have resulted in less campaign activity those years compared to other years. Open seat contests for major statewide offices could increase voter mobilization in primaries, although these were rare during this period (see Table 3). There was an open seat U.S. Senate contest in 2000 and an open gubernatorial race in 2004. Ballot initiatives may also drive turnout, but Washington does not have initiatives on the primary ballot, and the highest number of initiatives (six) occurred in 2000 and 2010 (most other years there were three initiatives).²⁵

This means that apart from changes in the primary rules, many voter mobilization forces were rather constant across this period. Table 5 demonstrates that by any measure, turnout was highest in 2010 primary and general elections. Although national turnout in 2006 was similar to national turnout in 2010, general election turnout in Washington (with candidates selected under top two) was about 7% higher in 2010 than it was in 2006 (when candidates were selected from a partisan primary). Primary turnout in Washington increased by just over 2% from 2006 to 2010. General election turnout was higher in 2008 than previous presidential election years, and the increase in Washington between 2004 and 2008 also exceeded the national

²³ The Washington secretary of state's office reports turnout of registered voters. VEP and VAP turnout for primaries is not available.

²⁴ Maria Cantwell was elected in 2000 and 2006; Patty Murray was elected in 2004 and 2010.

²⁵ 2010 had higher campaign expenditures for initiatives than previous years.

Table 5. Washington Primary and General Election Voter Turnout: 2000–2010

<i>Year</i>	<i>WA Primary*</i>	<i>WA Gen.*</i>	<i>WA Gen/VEP</i>	<i>US Gen/VEP</i>
2010 ^a	40.97%	71.24%	54.3%	41.6%
2006 ^b	38.79%	64.55%	47.3%	41.3%
2002 ^c	34.21%	65.70%	43.5%	40.5%
2008 ^a	42.60%	84.61%	76.3%	62.2%
2004 ^b	45.14%	82.19%	67.5%	60.7%
2000 ^c	40.80%	75.56%	61.4%	55.3%

Sources: Washington Secretary of State's Office; United States Elections Project, http://elections.gmu.edu/voter_turnout.htm

Note: VEP is turnout of the voting eligible population based on total ballots counted.

^aTop Two primary; ^bOpen Partisan Primary; ^cBlanket Primary. Presidential primaries are held on different dates than these primary contests.

*Percent turnout of registered voters.

rate. However, primary turnout was lower in 2008 under top two than it was in 2004 under the partisan primary.

These data are consistent with the argument that the top two increases voter interest or voter mobilization—but the effects are most consistent and substantive in general, rather than in primary contests. The latter point is inconsistent with the advocates' claims that the new primary system would boost turnout in primaries. It is important to stress—again—that Washington changed from an open primary system. Independents could participate in primary elections prior to top two if they wished to vote a party ballot or a nonpartisan ballot listing local races. This being so, there may have been little room expanding Washington's primary electorate with a top two system. A change to top two from a closed primary might have larger consequences for turnout. But what of the increase in general election turnout under top two? Note that Table 1 indicates there were fewer uncontested general election state legislative contests under top two, and Table 4 demonstrates a modest increase in campaign activity per candidate under the top two. It is possible that this reflects a modest increase in general election voter mobilization—in part due to the change to top two. But this does not appear to be a large enough increase to fully explain the 7% increase in general election turnout from 2006 to 2010. There are simply too many variables and too few data points to tease out how the shift in primary systems affected general election turnout.

Net Effect of Changing to Top Two

To summarize, when we examine trends in voter turnout, campaign expenditures, candidate ballot listings, and electoral competition before and after adoption of the top two primary—results are quite mixed when compared to claims made by critics and advocates of the top two. While turnout may have increased after adoption, the substantive magnitude of the effect of the primary system on turnout increase is likely quite limited. It is likely that some general election state legislative contests that might have otherwise gone uncontested after a partisan primary may have ended up being contested under a top two system.

Part of the very modest increase in candidate spending could reflect this, but again, the substantive magnitude of the increase here is rather small. Ballot listings of “parties” did become much more diverse, and a handful of candidates using nontraditional party preferences were elected. Nearly all these ballot listings were different ways for candidates to state that they preferred the Democratic or Republican parties, and the few candidates elected using alternative party listings were partisan incumbents. The aggregate of all of this did not add up to a legislature that looked different or functioned differently from the legislature elected under a partisan primary.

Larger Forces

Advocates of electoral reforms often frame their arguments in terms of advancing sweeping normative goals such as increasing turnout, promoting fairness, building civic engagement, improving trust in government, or ending partisan gridlock. Yet when we examine the effects of changes in various electoral rules (e.g., the adoption of term limits, the adoption of proportional representation), the consequences of change often appear limited, nonexistent, or even counter to what reform advocates promoted (Bowler and Donovan 2012). This could reflect that reformers overstate their case. In some situations, advocates of electoral reforms may have less noble goals, but use claims about broad positive effects of reform to further their cause. If this is so, we might not be surprised when the reform does not appear to produce widespread changes in the nature of politics.

Beyond this, there are additional reasons to expect weak effects from electoral reforms such as the top two primary—particularly if the goal of reform is to change polarization in a legislature. First, any potential effects of a new primary system may be more apparent over time, as popular incumbents retire and create open seats. Second, polarization may have many other sources that are more consequential than the type of primary being used. Legislators may be quite responsive to their major campaign donors—people and groups with preferences that are quite

different than the median voter. Strong, distinctive issue positions may be the most effective way for candidates to build support with voters (Macdonald, Listhaug, and Rabinowitz 1991) and with donors. Voters may be increasingly sorting themselves into homogenous places (Bishop 2008) that make it quite difficult to draw districts that are two-party competitive, regardless of the redistricting practices or primary system being used. Representatives from seats safe for their party tend toward the ideological pole of their party (Theriault 2008; Donovan 2007), and legislative rules and processes have been shown to place major constraints on the discretion of individual members, reduce the room for compromise, and increase the power of legislative party leaders (Sinclair 2002). This too, can increase party polarization (Roberts and Smith 2003; Theriault 2008). California may experience more widespread changes than occurred when Washington changed to a top two primary, but the change would have to have far greater effects on candidates and the electorate in California if it is to alter the party system in the legislature.

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