

EXHIBIT 14

RFP 08-02

OSOS CONTRACT No. P-3961

CONTRACT FOR PERSONAL SERVICES

Between

**THE STATE OF WASHINGTON
OFFICE OF THE SECRETARY OF STATE**

And

DANIELS-BROWN COMMUNICATIONS INC AND MEDIA PLUS+

RECEIVED

JUN 09 2008

FISCAL

This Contract is made and entered into by and between the State of Washington, Office of the Secretary of State ("AGENCY"), and Daniels-Brown Communications, Inc and Media Plus+ ("CONTRACTORS").

PURPOSE

The State of Washington, acting by and through the AGENCY, issued a Request for Proposals ("RFP") #08-02, dated April 11, 2008, to conduct a statewide radio, television, and print ad campaign on issues related to Washington State elections.

STATEMENT OF WORK

The CONTRACTORS will provide services and staff and otherwise do all things necessary for or incidental to the performance of work set forth below:

This campaign must inform and educate voters about the "Top Two" primary, in which the top two vote getters advance to the General Election, regardless of political party preference. The CONTRACTORS are responsible for developing a campaign theme, marketing plan, printed and electronic design/production/distribution, and media placement.

The CONTRACTORS shall produce the following deliverables:

1. June 2, 2008 - Meet with AGENCY and discuss all deliverables. Determine changes to the media plan prior to implementation. Review key messaging for the primary and discuss messaging for the general.
2. June 5, 2008 - Confirm messaging with AGENCY. Issue availability request to radio and TV that outlines all deliverables with responses due June 12, 2008. Provide AGENCY with creative logo.
3. June 5 – June 11, 2008 – Contact all ethnic print and determine insertion and closing dates. Contact all internet sites, determine impression availability and place orders.
4. Coordinate talking points and messaging to ethnic newspaper and radio stations for translation into applicable language.
5. June 13 – June 27, 2008 – Negotiate and place paid TV and radio schedules for both the primary and general. Negotiate value-added options. Review station creative for the primary.
6. July 7 – July 11, 2008 – Handle any last minute creative issues prior to TV schedule start.
7. July 7, 2008 – Provide internet sites with creative elements so those internet sites can produce internet ads for July 21, 2008 start. Provide ethnic print messaging information and any visual elements so ethnic print publications can start producing ads.
8. July 7, 2008 – Provide radio scripts for produced spots to AGENCY for approval. Handle any script changes during this week.
9. July 14, 2008 – TV schedule starts. Review ethnic print ads for approval. Review internet ads for approval.
10. July 14, 2008 – Cut-off for July 2008 media billing. Review affidavits for paid and value-added components. Prepare June media billing and transmit to AGENCY.
11. July 21, 2008 – Internet and ethnic print schedule starts.
12. July 28, 2008 – Radio starts.

13. August 13, 2008 – Cut-off for July 2008 media billing. Review affidavits for paid and value-added components. Prepare July 2008 media billing and transmit to AGENCY.
14. August 25, 2008 – Review and confirm messaging for general.
15. September 2, 2008 – Provide radio and TV with fact sheets that indicate key messaging for the general election so radio and TV stations can begin producing spots.
16. September 15, 2008 – Provide internet and ethnic media information so internet sites and ethnic media can produce ads.
17. September 15, 2008 – Cut-off for August 2008 media billing. Review affidavits for paid and value-added components. Prepare August 2008 media billing and transmit to AGENCY.
18. September 15 – September 24, 2008 – As it becomes available, provide AGENCY with station produced material for AGENCY approval. Review and approve ethnic and internet creative for October 6, 2008 start.
19. Coordinate with translation services to make all material in English/Spanish/Chinese and broadcast to the appropriate demographic market.
20. September 29, 2008 – TV starts and possible radio.
21. October 13, 2008 – Cut-off for September 2008 media billing. Review affidavits for paid and value-added components. Prepare September 2008 media billing and transmit to AGENCY.
22. November 12, 2008 – Cut-off for October 2008 media billing. Review affidavits for paid and value-added components. Prepare October 2008 media billing and transmit to AGENCY.
23. November 24, 2008 – Cut-off date for station to get MediaPlus all invoices and affidavits for November.
24. Conduct a final assessment of the campaign's effectiveness upon completion of the project and submit a report and billing to the AGENCY's Communications Director and Project Manager by December 8, 2008.

All written reports required under this Contract must be delivered to Joanie Deutsch, the AGENCY Project Manager, in accordance with the schedule above. Any oral reports required under this Contract must be presented at the location requested by the AGENCY.

Exhibit A to this Contract contains the General Terms and Conditions governing the work to be performed under this Contract, the nature of the relationship between the AGENCY and the CONTRACTOR, and specific obligations of both parties.

PERIOD OF PERFORMANCE

Subject to other contract provisions, the period of performance under this Contract, irrespective of the date of execution, will be from May 30, 2008 through December 15, 2008.

OFM FILING REQUIREMENT

Under the provisions of chapter 39.29 RCW, this personal service contract is required to be filed with the Office of Financial Management ("OFM"). No contract required to be filed is effective and no work shall commence nor payment made until ten (10) business days following the date of filing, and if required, until approved by OFM. In the event OFM fails to approve the contract, the contract shall be null and void.

COMPENSATION AND PAYMENT

Amount of Compensation

Pursuant to Option 1 of the CONTRACTORS' proposal, which is attached as Exhibit C and incorporated herein by reference, the AGENCY shall pay an amount not to exceed \$799,080, which includes all

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deliverables and costs related to this Contract, for the performance of all things necessary for or incidental to the performance of work set forth in the Statement of Work.

BILLING PROCEDURES

AGENCY will pay CONTRACTOR upon receipt and approval of properly completed invoices, which shall be submitted to the Agency not more than once a month. The invoices shall describe and document to the AGENCY'S satisfaction a description of the work performed, the progress of the project, and fees. .

Payment shall be considered timely if made by the AGENCY within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the CONTRACTOR.

The AGENCY may, in its sole discretion, terminate the Contract or withhold payments claimed by the CONTRACTOR for services rendered if the CONTRACTOR fails to comply satisfactorily with any term or condition of this Contract.

Invoices shall be submitted for expenses on the following annual schedule:

For expenses	Submit by
From October 1 through June 30	July 31
From July 1 through September 30	October 31

No payments in advance or in anticipation of services or supplies provided under this Contract shall be made by the AGENCY.

CONTRACT MANAGEMENT

The Project Manager for each of the parties shall be the contact person for all communications and billings regarding the performance of this Contract.

The Communications Director for the AGENCY is David Ammons, P.O. Box 40220, Olympia, WA 98504, phone (360) 902-4140, fax (360) 586-5629, email dammons@secstate.wa.gov .

The Project Manager for the AGENCY is Joanie Deutsch, P.O. Box 40220, Olympia, WA 98504, phone (360) 902-4182, fax (360) 586-5629, email jdeutsch@secstate.wa.gov .

The Project Manager for the CONTRACTORS is Stephen Daniels-Brown, 2510 RW Johnson Blvd SW, Suite 103, Tumwater, WA 98512, phone (360) 705-3058, fax (360) 754-2630, email stephen@danielsbrown.com .

The Billing Contact for the AGENCY is Bea Huynh-Tien, P.O. Box 6330, Olympia, WA 98504, phone (360) 586-2062, fax (360) 586-4311, email bhuyntien@secstate.wa.gov.

ORDER OF PRECEDENCE

Each of the Exhibits listed below is by this reference incorporated herein. In the event of an inconsistency in this Contract, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable Federal and State of Washington statutes and regulations.
- Special Terms and Conditions as contained in this basic contract instrument.
- Exhibit A -- General Terms and Conditions.
- Exhibit B -- Request for Proposals No. 08-02.
- Exhibit C -- Contractors' Proposal for RFP 08-02
- Any other provision, term, or material incorporated herein by reference or otherwise incorporated.

GOVERNING LAW

This Contract is entered pursuant to and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this Contract shall be construed and interpreted in accordance with those laws. The venue of any action brought hereunder shall be in the Superior Court for Thurston County.

CONFORMANCE

If any provision of this Contract violates any statute or rule of law of the State of Washington, it is considered modified to conform to that statute or rule of law.

ENTIRE AGREEMENT

This Contract, including referenced exhibits, represents all the terms and conditions agreed upon by the parties. No other understandings or representations, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties hereto.

APPROVAL

This Contract shall be subject to the written approval of the AGENCY'S authorized representative and shall not be binding until approved. This Contract may be altered, amended, or waived only by a written amendment executed by the parties.

THIS CONTRACT, consisting of 4 pages and 2 exhibits, is executed by the persons signing below who warrant that they have the authority to execute this Contract.

Washington State UBI No.: 601-139-422
Federal Employer ID No./SSN: 91-6001106


Exhibit A: General Terms and Conditions
Exhibit B: Request for Proposals No. 08-02
Exhibit C: Contractors' Proposal to RFP 08-02

DANIELS-BROWN COMMUNICATION

OFFICE OF THE SECRETARY OF STATE

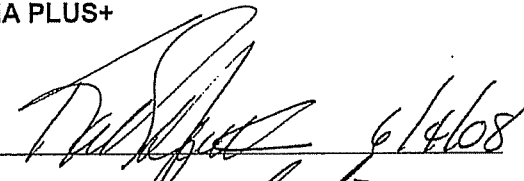
 6.7.08

Title: President Date

 6-10-08

Linda Shea Dan Speck
Financial And Support Services Manager
Deputy Secretary of State Date

MEDIA PLUS+

 6/14/08

Title: President

APPROVED TO FORM:
Assistant Attorney General

EXHIBIT B

RFP No. 08-02

**STATE OF WASHINGTON
OFFICE OF THE SECRETARY OF STATE
OLYMPIA, WASHINGTON**

**REQUEST FOR PROPOSALS
RFP No. 08-02**

PROJECT TITLE: Washington State Election Public Education Ad Campaign

PROPOSAL DUE DATE: Thursday, May 1, 2008

EXPECTED TIME PERIOD FOR CONTRACT: May 30, 2008 through December 15, 2008

CONSULTANT ELIGIBILITY: This procurement is open to those CONSULTANTS that satisfy the minimum qualifications stated herein and are available for work in Washington State

CONTENTS OF THE REQUEST FOR PROPOSALS

- 1. Introduction**
- 2. General Information for CONSULTANTS**
- 3. Proposal Contents**
- 4. Evaluation and Award**
- 5. Exhibits**
 - A. Certifications and Assurances**
 - B. Checklist for Proposal Submission**
 - C. Sample Personal Services Contract**
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1. INTRODUCTION

1.1 PURPOSE AND BACKGROUND

Purpose

To conduct a statewide radio, television, and print ad campaign on issues related to Washington State elections.

To be successful, this campaign must:

Inform and educate voters about the "Top Two" primary, in which the top two vote getters advance to the General Election, regardless of political party preference.

This Request for Proposals (RFP) is to solicit proposals from full-service advertising and/or media-buying agencies ("CONSULTANT").

The selected CONSULTANT will be responsible for developing a campaign theme, marketing plan, printed and electronic design/production/distribution, and media placement.

The development of the public education ad campaigns will begin and end as determined by the resulting CONTRACT.

****Please Note:** sales people from television and radio stations will be contacted directly by the selected CONSULTANT. Individual media outlets are not encouraged to submit a proposal.

Background

In August 2008, the State will conduct a primary using I-872, Elections for Partisan Offices. 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.

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 votes in the Primary Election qualify for the General Election. It allows candidates to file for partisan office and list on the ballot a party affiliation, regardless of whether the candidate has been nominated or endorsed by that party. Voters do not have to declare a party affiliation.

1.2 DELIVERABLES

Deliverables

The following deliverables pertain to the period of performance of the initial agreement from the date of execution. All deliverables must have prior approval of the AGENCY's Project Manager Joanie Deutsch.

The CONSULTANT shall meet the following deliverables:

1. Provide creative concept, produce, and manage the traffic for the distribution of television, radio, and user-friendly print ads. Content for the 2008 campaign must have prior approval by the AGENCY's Project Manager by June 1, 2008.
2. Contact sales representatives from television, radio stations, and newspapers to leverage paid broadcast, radio, and electronic media spots.
3. Pursue value-added media exposure through television station websites and public service announcements.
4. Ads will air from mid-July 2008 through the General Election in November 2008.
5. Coordinate with translation services to make all material in English/Spanish/Chinese and broadcast to the appropriate demographic market. Provide all materials in bulk audiocassette and on Compact Disc for distribution to the visually impaired.
6. Provide bulk video appropriate for distribution.
7. The campaigns should be structured so their messages will maintain relativity to the 2008 election cycles.
8. Present a full accounting after each campaign, within four weeks of the conclusion of the campaigns, to ensure ads aired during purchased time.
9. Conduct a final assessment of the campaign's effectiveness upon completion of the project and submit a report to the AGENCY's Communications Director and Project Manager by December 8, 2008.

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Evaluation**1.3 MINIMUM QUALIFICATIONS**

CONSULTANTS responding to this RFP must have the following qualifications:

1. Licensed to do business in the State of Washington.
2. Ten years experience as a full-service advertising firm.
3. Experience in successfully placing paid media in all markets statewide.

1.4 FUNDING

The AGENCY has budgeted an amount not to exceed \$800,000 for services covered by this solicitation.

Any contract awarded as a result of this procurement is contingent upon the availability of funding. Funding is provided through the Help America Vote Act ("HAVA") contingent upon the decisions of the AGENCY. The AGENCY reserves the right to increase or decrease the amount available.

If any court of competent jurisdiction finds the funding provided for in this agreement or the underlying appropriation to be invalid or unlawful for any reason, this contract will be terminated by the AGENCY under the "Termination for Convenience" clause without the ten (10) calendar day notice requirements.

1.5 PERIOD OF PERFORMANCE

The period of performance of any contract resulting from this RFP is tentatively scheduled to begin May 30, 2008 and end on December 15, 2008. Amendments extending the period of performance, if any, shall be at the sole discretion of the AGENCY. The AGENCY reserves the right to extend the contract for three consecutive one-year periods. The AGENCY retains sole, executive ownership of all material, concepts, themes, logos, audio/visual media, and strategies produced as a result of the final contract.

1.6 AMERICAN WITH DISABILITIES ACT OF (ADA) OF 1990

The AGENCY complies with the Americans with Disabilities Act (ADA). CONSULTANTS may contact the RFP Coordinator to receive this RFP in Braille or on tape.

2. GENERAL INFORMATION FOR CONSULTANTS**2.1 RFP COORDINATOR**

The RFP Coordinator is the sole point of contact in the AGENCY for this procurement. All communication between the CONSULTANT and the AGENCY upon receipt of this RFP shall be with the RFP Coordinator as follows:

Name	Joanie Deutsch
Address	PO Box 40220
Street Address	416 Sid Snyder Avenue
City, State, ZIP Code	Olympia, WA 98504-0220
Phone Number	360-902-4182
Fax Number	360-586-5629
E-Mail Address	jdeutsch@secstate.wa.gov

Any other communication will be considered unofficial and non-binding upon the AGENCY. CONSULTANTS are to rely on written statements issued by the RFP Coordinator. Communication directed to parties other than the RFP Coordinator may result in disqualification of the CONSULTANT.

2.2 INFORMATION WILL BE POSTED ON THE WEB

This RFP will be posted on the AGENCY'S website <http://www.secstate.wa.gov/office/procurements.aspx> on or after April 11, 2008. The Agency will also post on the same website any written questions received and the Agency's responses to those questions that the Agency deems to be relevant to the solicitation and any addendum changes to the RFP.

It is the responsibility of the CONSULTANT to check the website for information related to this RFP. The Agency will not mail the supplemental information to bidders and will not be responsible for bidder's failure to be aware of clarifying information or addendum to the RFP.

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2.3 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES

Issue Request for Proposals	April 11, 2008
Question and answer period	April 11-April 28, 2008
Letter of Intent to Bid due (Emails to RFP Coordinator are acceptable, with a hard copy of the Letter of Intent to Bid to follow)	April 28, 2008
Proposals due	10 AM PST, May 1, 2008
Evaluate proposals	May 5-7, 2008
Conduct oral interviews with finalists, (Optional)	May 9, 2008
Announce "Apparent Successful Contractor" and send notification via fax or e-mail to unsuccessful CONSULTANT	May 10, 2008
Negotiate contract	May 10-May 14, 2008
File contract with OFM	May 15, 2008
Begin contract work	May 30, 2008

The AGENCY reserves the right to revise the above schedule.

2.4 SUBMISSION OF PROPOSALS

CONSULTANTS are required to submit six copies of their proposal and samples of work. Of the six copies submitted, two copies must have original signatures and four copies may be photocopied signatures. The proposal must arrive at the AGENCY no later than 10:00 a.m. PST, on May 1, 2008.

In a joint effort to save costs, reduce waste, and produce energy savings, CONSULTANTS are encouraged to use double-sided printing and recyclable materials. CONSULTANTS are discouraged from submitting RFP responses in 3-ring binders, spiral bindings, and/or other non-recyclable presentation folders.

The proposal is to be sent to the RFP Coordinator at the address noted in Section 2.1. The envelope should be clearly marked to the attention of the RFP Coordinator.

CONSULTANTS mailing proposals should allow normal mail delivery time to ensure timely receipt of their proposals by the RFP Coordinator. CONSULTANTS assume the risk for the method of delivery chosen. The AGENCY assumes no responsibility for delays caused by any delivery service. Proposals may not be transmitted using electronic media.

Late proposals will not be accepted and will be automatically disqualified from further consideration.

2.5 PROPRIETARY INFORMATION/PUBLIC DISCLOSURE

All materials submitted in response to this competitive procurement become the property of the AGENCY and will not be returned to the Proposer.

All proposals received shall remain confidential until the contract, if any; resulting from this RFP is signed by the Assistant Secretary of State or his delegate and the apparent successful CONSULTANT. Thereafter, the proposals shall be deemed public records as defined in the Revised Code of Washington (RCW) 42.17.250 to 42.17.340, "Public Records."

Any information in the proposal that the CONSULTANT desires to claim as proprietary and exempt from disclosure under the provisions of RCW 42.17.250 to 42.17.340 must be clearly designated. The page must be identified as well as the particular exception from disclosure upon which the CONSULTANT is making the claim. Each page claimed to be exempt from disclosure must be clearly identified by the word "Confidential" printed on the lower right hand corner of the page.

Any information in the proposal that the CONSULTANT desires to claim as proprietary and exempt from disclosure under the provisions of RCW 42.17 and chapter 143-06 of the Washington Administrative Code (WAC). Marking the entire proposal exempt from disclosure will not be honored. The CONSULTANT must be reasonable in designating information as confidential. If any information is marked as proprietary in the proposal, such information will not be made available until the affected proposer has been given an opportunity to seek a court injunction against the requested disclosure.

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A charge will be made for copying and shipping outlined in RCW 42.17.300. No fee shall be charged for inspection of contract files, but twenty-four (24) hours notice to the RFP Coordinator is required. All requests for information should be directed to the RFP Coordinator.

2.6 REVISIONS TO THE RFP

In the event it becomes necessary to revise any part of this RFP, addenda will be published on the AGENCY website as follows: <http://www.secstate.wa.gov/office/procurements/aspX>. For this purpose, any pertinent information and answers to substantive questions by CONSULTANTS shall be considered an addendum to the RFP.

The AGENCY also reserves the right to cancel or reissue the RFP in whole or in part prior to execution of a contract.

2.7 MINORITY & WOMEN-OWNED BUSINESS PARTICIPATION

In accordance with the legislative findings and policies set forth in chapter RCW 39.19, the state of Washington encourages participation in all of its contracts by CONSULTANTS certified by the Office of Minority and Women's Business Enterprises (OMWBE). Participation may be either on a direct basis in response to this solicitation or on a subcontractor basis. However, no preference will be included in the evaluation of proposals. No minimum level of OMWBE participation shall be required as a condition for receiving an award, and proposals will not be rejected or considered non-responsive on that basis. Any affirmative action requirements set forth in federal regulations or statutes included or referenced in the contract documents will apply.

The established annual procurement participation goals for MBE is 8 percent and for WBE 4 percent for this type of project. These goals are voluntary. Bidders may contact OMWBE at (360) 753-9693 to obtain information on certified CONSULTANTS.

2.8 RESPONSIVENESS

All proposals will be reviewed by the RFP Coordinator to determine compliance with administrative requirements and instructions specified in this RFP. The CONSULTANT is specifically notified that failure to comply with any part of the RFP may result in rejection of the proposal as non-responsive.

The AGENCY also reserves the right, however, at its sole discretion to waive minor administrative irregularities.

2.9 MOST FAVORABLE TERMS

The AGENCY reserves the right to make an award without further discussion of the proposal submitted. Therefore, the proposal should be submitted initially on the most favorable terms, which the CONSULTANT can propose. There will be no best and final offer procedure. The AGENCY does reserve the right to contact a CONSULTANT for clarification of its proposal.

The CONSULTANT should be prepared to accept this RFP for incorporation into a contract resulting from this RFP. Contract negotiations may incorporate some or all of the CONSULTANT's proposal. It is understood that the proposal will become a part of the official procurement file on this matter without obligation to the AGENCY.

2.10 CONTRACT AND GENERAL TERMS & CONDITIONS

The apparent successful contractor will be expected to enter into a contract, which is substantially the same as the sample contract and its general terms and conditions attached as Exhibit C. In no event is a CONSULTANT to submit its own standard contract terms and conditions in response to this solicitation. The CONSULTANT may submit exceptions as allowed in the Certifications and Assurances section, Exhibit A, to this solicitation. The AGENCY will review requested exceptions and accept or reject the same at its sole discretion.

If a contract cannot be negotiated with the apparent successful contractor, the Agency may terminate negotiations and pursue an agreement with the next highest rated proposal, repeating this procedure until a successful contract can be reached or all proposals rejected.

2.11 COSTS TO PROPOSE

The AGENCY will not be liable for any costs incurred by the CONSULTANT in preparation of a proposal submitted in response to this RFP, in conduct of a presentation, or any other activities related to responding to this RFP.

2.12 NO OBLIGATION TO CONTRACT

This RFP does not obligate the State of Washington or the AGENCY to contract for services specified herein.

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2.13 REJECTION OF PROPOSALS

The AGENCY reserves the right at its sole discretion to reject any proposals received without penalty and not to issue a contract as a result of this RFP.

2.14 COMMITMENT OF FUNDS

The Assistant Secretary of State and his delegates are the only individuals who may legally commit the AGENCY to the expenditures of funds for a contract resulting from this RFP. No cost chargeable to the proposed contract may be incurred before receipt of a fully executed contract.

2.15 ELECTRONIC PAYMENT

The State of Washington prefers to utilize electronic payment in its transactions. The successful contractor will be provided a form to complete with the contract to authorize such payment method.

2.16 INSURANCE COVERAGE

Should a contract be awarded pursuant to this RFP, the Contractor will be required to provide insurance coverage as described in Exhibit C, Personal Service Contract with General Terms and Conditions.

2.17 WORKER'S COMPENSATION COVERAGE

The Contractor will at all times comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable. The State will not be held responsible in any way for claims filed by the Contractor, sub-contractors, or their employees for services performed under the terms of this contract.

3. PROPOSAL CONTENTS

Proposals must be submitted on eight and one-half by eleven (8 1/2 x 11) inch paper with tabs separating the major sections of the proposal. The six (6) major sections of the proposal are to be submitted in the order noted below:

- Letter of Submittal, including signed Certifications and Assurances (Exhibit A to this RFP)
- Technical Proposal
- Management Proposal
- Samples of Work
- Cost Proposal
- References

Proposals must provide information in the same order as presented in this document with the same headings. This will not only be helpful to the evaluators of the proposal, but should assist the CONSULTANT in preparing a thorough response.

3.1 NOTICE OF INTENT TO BID

Vendors, planning to submit a response to this RFP shall send a Notice of Intent to Bid to the AGENCY by April 28, 2008, 4:30 p.m.

3.2 LETTER OF SUBMITTAL (MANDATORY)

The Letter of Submittal and the attached Certifications and Assurances form (Exhibit A to this RFP) must be signed and dated by a person authorized to legally bind the CONSULTANT to a contractual relationship, e.g., the President or Executive Director if a corporation, the managing partner if a partnership, or the proprietor if a sole proprietorship. Along with introductory remarks, the Letter of Submittal is to include by attachment the following information about the CONSULTANT and any proposed subcontractors:

1. Name, address, principal place of business, telephone number, and fax number/e-mail address of legal entity or individual with whom contract would be written.
2. Name, address, and telephone number of each principal officer (President, Vice President, Treasurer, Chairperson of the Board of Directors, etc.).
3. Legal status of the CONSULTANT (sole proprietorship, partnership, corporation, etc.) and the year the entity was organized to do business as the entity now substantially exists.
4. Federal Employer Tax Identification number or Social Security number and the Washington Uniform Business Identification (UBI) number issued by the State of Washington Department of Revenue.
5. Location of the facility from which the CONSULTANT would operate.

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6. Identify any State employees or former State employees employed or on the CONSULTANT's governing board as of the date of the proposal. Include their position and responsibilities within the CONSULTANT's organization. If following a review of this information, it is determined by the AGENCY that a conflict of interest exists, the CONSULTANT may be disqualified from further consideration for the award of a contract.

3.3 TECHNICAL PROPOSAL (SCORED)

The Technical Proposal must contain a comprehensive description of services including the following elements:

- A. **Project Approach/Methodology** – Include a complete description of the CONSULTANT's proposed approach and methodology for the project. This section should convey the CONSULTANT's understanding of the proposed project.
- B. **Work Plan** – Include all project requirements and the proposed tasks, services, activities, etc. necessary to accomplish the scope of the project defined in this RFP. This section of the technical proposal must contain sufficient detail to convey to members of the evaluation team the CONSULTANT's knowledge of the subjects and skills necessary to complete successfully the project. Include any required involvement of AGENCY staff. The CONSULTANT may also present any creative approaches that might be appropriate and may provide any pertinent supporting documentation.
- C. **Project Schedule** – Include a project schedule indicating when the elements of the work will be completed and when deliverables, if any, will be provided.
- D. **Deliverables** – Fully demonstrate your experience in creatively placing paid and unpaid radio and television advertising.
- E. **Outcomes and Performance Measurement** – Describe the impacts/outcomes the CONSULTANT's propose to achieve as a result of the delivery of these services including how these outcomes would be monitored, measured and reported to the AGENCY.

3.4 MANAGEMENT PROPOSAL (SCORED)**A. Project Management**

1. **Project Team Structure/Internal Controls** - Provide a description of the proposed project team structure and internal controls to be used during the course of the project, including any subcontractors. Provide an organizational chart of the CONSULTANT, indicating lines of authority for personnel involved in performance of this potential contract and relationships of this staff to other programs or functions of the CONSULTANT. This chart must also show lines of authority to the next senior level of management. Include who within the ad agency will have prime responsibility and final authority for the work.
2. **Staff Qualifications/Experience** – Identify staff, including subcontractors, who will be assigned to the potential contract, indicating the responsibilities and qualifications of such personnel, and include the amount of time each will be assigned to the project. Provide resumes for the named staff, which include information on the individual's particular skills related to this project, education, experience, significant accomplishments and any other pertinent information. The CONSULTANT must commit that staff identified in its proposal will actually perform the assigned work. Any staff substitution must have the prior approval of the AGENCY.

B. Experience of the CONSULTANT

1. Indicate the experience the CONSULTANT and any subcontractors have in the following areas:
 - i. Levels of experience the contractor and any subcontractors have in meeting the deliverables listed in Section 1.2; and
 - ii. Levels of experience in highly desirable areas listed in Section 3.3 B (2) below.
2. Describe the CONSULTANT's experience in the following areas:
 - i. Ability to leverage paid and unpaid broadcast, radio, and electronic media PSA's.
 - ii. Experience in planning, providing, and placing radio and television advertising.
 - iii. Ability to compose, produce and mail print material statewide.
3. Indicate other relevant experience that demonstrates the qualifications of the CONSULTANT, and any subcontractors, for the performance of the potential contract.
4. Include a list of contracts the CONSULTANT has had during the last five years that relate to the CONSULTANT's ability to perform the services needed under this RFP. List contract reference numbers, contract period of performance, contact persons, telephone numbers, and fax numbers/e-mail addresses.

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5. Describe any limitations on travel, to meet and work with AGENCY staff in Olympia, and attend meetings with the AGENCY.
6. Business Information.
 - i. State the name, address, principal place of business, telephone number, and fax number/e-mail address of legal entity or individual with whom contract would be written.
 - ii. State the name, address, and telephone number of each principal officer (President, Vice President, Treasurer, Chairperson of the Board of Directors, etc.), if applicable.
 - iii. Provide the legal status of the CONSULTANT (sole proprietorship, partnership, corporation, etc.) and the year the entity was organized to do business as the entity now substantially exists.
 - iv. Provide the Federal Employer Tax Identification number or Social Security number and the Washington Uniform Business Identification (UBI) number issued by the State of Washington Department of Revenue.
 - v. Provide the location of the facility from which the CONSULTANT would operate.
 - vi. Identify any State employees or former State employees employed or on the CONSULTANT's governing board as of the date of the proposal. Include their position and responsibilities within the CONSULTANT's organization.

C. Related Information (MANDATORY)

1. If the CONSULTANT or any subcontractor contracted with the State of Washington during the past 24 months indicate the name of the agency, the contract number and project description and/or other information available to identify the contract.
2. If the CONSULTANT's staff or subcontractor's staff was an employee of the State of Washington during the past 24 months, or is currently a Washington state employee, identify the individual by name, the agency previously or currently employed by, job title or position held and separation date.
3. If the CONSULTANT has had a contract terminated for default in the last five years, describe such incident. Termination for default is defined as notice to stop performance due to the CONSULTANT's non-performance or poor performance and the issue of performance was either (a) not litigated due to inaction on the part of the Proposer, or (b) litigated, and such litigation determined that the Proposer was in default.
4. Submit full details of the terms for default including the other party's name, address, and phone number. Present the CONSULTANT's position on the matter. The AGENCY will evaluate the facts and may, at its sole discretion, reject the proposal on the grounds of the past experience. If no such termination for default has been experienced by the CONSULTANT in the past five years, so indicate.

D. OMWBE Certification (Optional)

Include proof of certification issued by the Washington State Office of Minority and Women-Owned Business if certified minority-owned CONSULTANT and/or women-owned CONSULTANT(s) will participate on this project.

3.5 SAMPLES OF WORK (MANDATORY)

Submit **audio, video, and print** samples of ad campaigns completed during the past ten (10) years, which are relevant to this potential contract. Six copies should be provided. Samples must be in CD or DVD format. We will not accept VHS or audio cassettes. Scoring will be based on a sample's quality and creativity, the CONSULTANT's media plan, and the CONSULTANT's history of placed communications.

3.6 COST PROPOSAL (MANDATORY)

Cost proposals must be \$800,000 or less to be considered responsive to this RFP. The AGENCY reserves the right to spend less than the full amount specified.

The evaluation process is designed to award this procurement not necessarily to the CONSULTANT of least cost, but rather to the CONSULTANT whose proposal best meets the requirements of this RFP.

A. Identification of Costs

Describe the CONSULTANT's proposal fees, ad placement commissions, or recoupment of production costs.

Identify all costs including expenses to be charged for performing the services necessary to accomplish the objectives of the contract. The CONSULTANT is to submit a fully detailed budget including staff costs and any expenses necessary to accomplish the tasks and to produce the deliverables under the contract. CONSULTANTS are required to collect and pay Washington state sales tax, if applicable.

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Costs for subcontractors are to be broken out separately. Please note if any subcontractors are certified by the Office of Minority and Women's Business Enterprises.

B. Computation

The score for the cost proposal will be computed by dividing the lowest cost bid received by the CONSULTANT's total cost. Then the resultant number will be multiplied by the maximum possible points for the cost section.

3.7 REFERENCES (MANDATORY)

List names, addresses, telephone numbers, and fax numbers/e-mail addresses of three business references for which work has been accomplished and briefly describe the type of service provided. The CONSULTANT must grant permission to the AGENCY to contact the references. Do not include current AGENCY staff as references. References will be contacted for the top-scoring proposal(s) only.

4. EVALUATION AND CONTRACT AWARD**4.1 EVALUATION PROCEDURE**

Responsive proposals will be evaluated strictly in accordance with the requirements stated in this solicitation and any addenda issued. The evaluation of proposals shall be accomplished by a six-member evaluation team, to be designated by the AGENCY, which will determine the ranking of the proposals.

The AGENCY, at its sole discretion, may elect to select the top-scoring CONSULTANT as finalists for an oral presentation.

4.2 EVALUATION WEIGHTING

The following weighted percentages will be assigned to the proposal for evaluation purposes:

Creative concept	40%
Media buying capability, including traffic management, discounted fees, and leveraging media buy with PSA's and website presence	40%
Technical ability to execute electronic media (TV & Radio)	10%
Technical ability to execute print component	10%
Total	100%

4.3 ORAL INTERVIEWS MAY BE CONDUCTED

Written submittals and oral interviews, if considered necessary, will be utilized in selecting the winning proposal. The AGENCY, at its sole discretion, may elect to select the top scoring finalists from the written evaluation for an oral interview and final determination of contract award. Should the AGENCY elect to hold oral interviews, it will contact (no later than June 8, 2008) the top-scoring CONSULTANT(s) to schedule a date, time, and location. Commitments made by the CONSULTANT at the oral interview, if any, will be considered binding. The score from the oral interview will be considered independently and will determine the apparently successful proposer.

4.4 NOTIFICATION TO PROPOSERS

CONSULTANTS whose proposals have not been selected for further negotiation or award will be notified via FAX or by e-mail.

4.5 DEBRIEFING OF UNSUCCESSFUL PROPOSERS

Upon request, a debriefing conference will be scheduled with an unsuccessful CONSULTANT. The request for a debriefing conference must be received by the RFP Coordinator within three (3) business days after the Notification of Unsuccessful CONSULTANT letter is faxed/e-mailed to the CONSULTANT. The debriefing must be held within three (3) business days of the request.

Discussion will be limited to a critique of the requesting CONSULTANT's proposal. Comparisons between proposals or evaluations of the other proposals will not be allowed. Debriefing conferences may be conducted in person or on the telephone and will be scheduled for a maximum of one hour.

4.6 PROTEST PROCEDURE

This procedure is available to CONSULTANTS who submitted a response to this solicitation document and who have participated in a debriefing conference. Upon completing the debriefing conference, the CONSULTANT is

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allowed three (3) business days to file a protest of the acquisition with the RFP Coordinator. Protests may be submitted by facsimile, but should be followed by the original document.

CONSULTANTS protesting this procurement shall follow the procedures described below. Protests that do not follow these procedures shall not be considered. This protest procedure constitutes the sole administrative remedy available to CONSULTANTS under this procurement.

All protests must be in writing and signed by the protesting party or an authorized Agent. The protest must state the grounds for the protest with specific facts and complete statements of the action(s) being protested. A description of the relief or corrective action being requested should also be included. All protests shall be addressed to the RFP Coordinator.

Only protests stipulating an issue of fact concerning the following subjects shall be considered:

- A matter of bias, discrimination, or conflict of interest on the part of the evaluator.
- Errors in computing the score.
- Non-compliance with procedures described in the procurement document or AGENCY policy.

Protests not based on procedural matters will not be considered. Protests will be rejected as without merit if they address issues such as: 1) an evaluator's professional judgment on the quality of a proposal, or 2) AGENCY'S assessment of its own and/or other agencies needs or requirements.

Upon receipt of a protest, a protest review will be held by the AGENCY. The AGENCY director or an employee delegated by the Director who was not involved in the procurement will consider the record and all available facts and issue a decision within five business days of receipt of the protest. If additional time is required, the protesting party will be notified of the delay.

In the event a protest may affect the interest of another CONSULTANT which submitted a proposal, such CONSULTANT will be given an opportunity to submit its views and any relevant information on the protest to the RFP Coordinator.

The final determination of the protest shall:

- Find the protest lacking in merit and uphold the AGENCY's action; or
- Find only technical or harmless errors in the AGENCY's acquisition process and determine the AGENCY to be in substantial compliance and reject the protest; or
- Find merit in the protest and provide the AGENCY options which may include:
 - Correct the errors and re-evaluate all proposals, and/or
 - Reissue the solicitation document and begin a new process, or
 - Make other findings and determine other courses of action as appropriate.

If the AGENCY determines that the protest is without merit, the AGENCY will enter into a contract with the successful CONSULTANT. If the protest is determined to have merit, one of the alternatives noted in the preceding paragraph will be taken.

5. RFP EXHIBITS

- Exhibit A Certifications and Assurances
- Exhibit B Checklist for Proposal Submission
- Exhibit C Sample Personal Service Contract including General Terms and Conditions (GT&Cs)
- Exhibit D Certificate of Debarment and Suspension

EXHIBIT C

3.3 TECHNICAL PROPOSAL

Overview

In 2004, after many years of maintaining an "open primary" system, Washington Voters were forced into a "pick a party" primary, followed by a general election revolt via an initiative that instituted a top-two system that advances the top-two vote-getters, regardless of party, in partisan primary races. Despite both Democrat and Republican efforts to kill the top-two primary, the U.S. Supreme Court, in a 7-2 decision last month, upheld 1-872. Even though both parties are set to argue this decision before a federal judge, we are proceeding on the belief that come 7/31, or thereabouts, when ballots are mailed, the top-two primary will prevail.

Key messages that will need to be conveyed for the primary include:

- a. Voters can freely choose any candidate on the ballot,
- b. Voters will no longer have to identify themselves by political party,
- c. Candidates decide their party affiliation, not political parties. Parties can hold nominating conventions and formally endorse a candidate, but that endorsement cannot be indicated on the ballot.
- d. Only the top-two vote-getters advance to the general, regardless of party.

This puts far greater importance on the primary than ever before. The political parties will argue that if people don't vote in the primary, they may not see their candidate or, more likely, political party represented in the general. If we do our jobs right, we should see a greater turnout for the primary and minimize the number of voters confused by their ballots in the general.

Key messages that will need to be conveyed for the general election include:

- a. Voter can freely choose any candidate on the ballot,
- b. The candidate can designate party affiliation – or not – but party endorsements cannot be indicated on the ballot,
- c. In the primary, the top-two vote-getters advanced to the general, regardless of party affiliation, which is why voters may not see the party that they affiliate with on the ballot, which will likely only occur in a handful of voting districts.

A. Project Approach and Methodology

The project approach and methodology recommended by Daniels-Brown Communications (DBC) and Media Plus+ (M+) may be a departure from other proposals you will evaluate. We think our approach best maximizes the limited resources available to broadly communicate with all residents of Washington, and, in particular, the 3.3 million active registered voters.

Media outlets talk to their audiences in several different ways. Quite often, advertisers use the media to convey desired messages utilizing pre-produced spots or ads produced by the advertiser or their agency. This is accomplished by buying time in selected programming and airing the prepared spot. The voice of the promotional spot comes from the advertising. And so, by its nature, it is biased toward the advertiser and carries less credibility with the audience. This form of advertising has its place in the market and serves a worthy purpose.

Media outlets also provide their own locally-produced content such as news, public and local affairs programming, local talk shows and the like, to establish their own dialog with their audience. In many cases, the audience develops an affinity with, and even loyalty to, these personalities. In a sense, they are more trusted because they are not direct agents of an advertiser. They are viewed as more objective (with the exception of talk show personalities!). Public relations professionals use "earned

media" to get news organizations to embrace their messages and broadcast those messages out as news or information in the public good.

To maximize the media placement dollars that would be available under this contract, DBC and M+ recommends that rather than provide the media with creative that blankets the market with the same prepared message, we allow the media to use the assets they have worked long and hard to create – their established relationships with their audience, to help convey the Washington State Election Public Education Campaign top-two primary message.

We suggest that we prepare a fact sheet outlining all the specifics relating to the top-two primary and provide to media to use as their guide in preparing their own creative messages for paid media (which we will strongly supplement with leveraged value-added spots). We recommend that the Secretary of State's office continue with the "Your Vote Is Your Voice, Be Heard" theme used in past public awareness campaigns.

The advantages of allowing the media the freedom to convey the campaigns messages are many:

- a. Saves the cost of expensive production and talent fees (although we will allow media to charge production against their value-added requirement, which we discuss later in this proposal). This also allows us to change messaging from the primary to the general without, again, assuming the cost of expensive production. Allows us to put more of our money into conveying the message, rather than spending on creating it.
- b. The top-two message is more of a news and information message than it is a creative one. As such, we are confident that news departments will embrace this concept and use their news anchors to talk about this issue. People will hear it coming from a noted news source that will add that much more credibility and interest as discussed above.
- c. We also want the media to use other station personalities that talk to a different "niche" audiences like younger viewers/listeners, or primarily women. Kent Phillips on Northwest Afternoon has a strong female audience that he carries over into his time slot on KPLZ radio.

KCPQ's morning show skews younger. They have a fun weather anchor named M.J. McDermott. She would put her own spin on this message that listeners will embrace probably much less suspiciously than a pre-produced message. Ken Schram and John Carlson are notable local pundits who could easily convey our message. Likewise, there are great station personalities from all media types both horizontally targeted, as well as vertically – i.e. conservative, liberal, ethnic, religious, PBS types, etc. all over the state that we can employ to convey our message.

- d. Works well with radio, which tends to segment more by demographics than TV. Given that the probable Democratic presidential candidate of choice will be Obama, there will be a greater need to reach younger voters, although Obama's name will only appear on the general election ballot, so we anticipate the young voter turnout will continue to be traditionally low in the primary. Radio stations that appeal to younger voters are very personality driven and it is these personalities that we can employ to convey our message. Similarly, any texting dialog we can employ through the station will add extra awareness to this audience.
- e. Can incorporate ethnic media into our mix where trust is a particular issue. A number of major Hispanic media outlets in the state have local news/information personalities who can be employed to convey the message. Asian publications are the news source of choice for many of our Asian communities.

Now, this may sound like it is hard to maintain control, but it's not. We've done this before. Television and some radio stations will pre-produce spots using station talent. We will require them to let us review their final product before it airs. Some stations, more likely radio, will discuss this live. They

will use our fact sheets so they will know "the facts" and convey them, but beyond that, the benefit of live dialogue is feedback. This we will encourage. In this type of format, however, we do advise clients that people listen to personalities because they like the personality and while the client may find their delivery sometimes off-putting, the audience doesn't. That's why they listen.

Because we will incorporate small market radio into this strategy as a way of ensuring our message reaches into every nook and cranny of the state, we also recommend preparing at least two 60 second radio spots for stations that do not have on-air personalities to drive our message or who may feel uncomfortable being left to their own devices.

Included as an attachment is a DVD/CD that support a state-funded program that has a message in the public good. All of the spots included were produced under the strategy outlined for RFP 08-02. Fact sheets and creative icons were provided to the media. They used their station's production facilities and talent to create and air the spots you see. When we first engaged in this type of program, we were amazed at the quality and in many instances, the creativity, of the spots. A brief description of what is on this DVD/CD is as follows:

- a. One spot was station produced to support the Department of Licensing, Enhanced ID campaign. It aired February and March of 2008. Examples reflect work done by KOMO in Seattle (we think this one is particularly clever) and KHQ in Spokane.
- b. Other spots support the Secretary of State Public Education Campaigns in 2004 and 2005. Examples are from KING and KOMO in Seattle. Spots were produced in :30 and :15 versions.
- c. In the Washington Traffic Safety Commission using Deputy Craig note that when M+ first started working on WTSC and started to encourage stations to produce their own value-added spots, KAYU in Spokane did not have a talent to use. Deputy Craig was brought in and has now been a feature in several WTSC campaigns.
- d. One spot features KOMO talent Kent Phillips for the Department of Social and Health Services.

On the radio side, we include just a few examples of how we have encouraged radio stations to embrace our message. Spot one highlights WTSC Click It or Ticket campaign on KUBE, a younger skewing station in Seattle. We think KUBE did a particularly effective job here. Another was done by KQBE in Ellensburg. For this campaign, they found a person in the community affected by this issue and turned the message into a personal story. The final radio produced spot was done by KUOW, the PBS station in Seattle. Spot lengths on PBS stations are much shorter than normal (usually :20).

Regarding "Value-Added" as referred to above. Several years ago, M+ instituted a value-matching policy for state-funded accounts that have a message in the public good. We require that stations that agree to air a paid schedule (and accept money for it) must agree to air a no-charge schedule equal to the dollar value of the paid. We allow stations to satisfy this requirement in several ways:

- a. Air a no-charge schedule equal to the dollar value of the paid,
- b. Conduct an on-air promotion or interviews to which we attached value,
- c. Produce station spot using station talent or someone in the community affected by promoted issue,
- d. Help facilitate participation in community event,
- e. Other as the idea presents itself.

In the scheduling portion of this proposal, we will suggest that we start this campaign early to allow the stations to satisfy their no-charge requirement while they have the inventory to do so and air the paid schedule during the higher demand period closer to the election.

EXHIBIT 15

Exhibit 15 Does Not Exist

**See Declaration of David T. McDonald
Paragraph 16**

EXHIBIT 16

**The Very Partisan Non-Partisan Top-Two Primary: Understanding What Voters
Don't Understand**

Dr. Mathew Manweller
Central Washington University
Political Science Department
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Paper presented at the Western Political Science Association's Annual Meeting in San
Francisco, Ca April 1st-3rd, 2010.

ABSTRACT

In 2008, following a series of legal battles, Washington State adopted an open nonpartisan "Top-Two" primary system in which only the top two vote getters, regardless of party affiliation, advance to the general election. The new primary system is described as a non-partisan primary but allows candidates to describe their "political party preference." Therefore, the state allows candidates to place on the ballot "Prefers Republican Party" or "Prefers Democratic Party" next to their name while continuing to insist that the primary is non-partisan. Upon adoption, both political parties objected, arguing that they were being forced to associate with candidates they did not select. The state countered that the winners of the Top-Two primary are not "nominees" because the new election is not a primary but a "winnowing election" for the purposes of producing a general election ballot.

After the Top-Two primary was struck down on its face by the U.S. 9th Circuit Court of Appeals, the US Supreme Court in *Grange v. Republican Party* (2008) reversed the decision arguing the new system may be unconstitutional as applied but only if the parties could demonstrate the new primary caused "voter confusion." This paper measures the extent of voter confusion caused by the Top-Two primary system.

The findings are based on a series of cognitive experiments run on Washington State voters. Participants were asked to read and answer questions about one of three mock ballots modeled off of Washington State's traditional partisan ballots and newer Top-Two ballot. The questions were designed to determine if voters could distinguish between the older partisan primary where the winning candidate was the "nominee" of the party and the newer Top-Two system in which the winner is not the "nominee" of the party.

Results indicate that voters are highly confused by the new Top-Two system.

Ever since the McGovern-Fraser Commission of 1968 started the process of making primary elections more open and transparent, elected officials, party managers, and political scientists have paid ever increasing attention to state primary systems. In the decades that followed the Commission, state legislatures across the United States passed a multitude of laws trying to limit the influence political parties have over their primary election procedures. In almost every instance, political parties challenged the reforms on the grounds they violate 1st Amendment's rights to association.¹ A political party's right to association rests on the notion that private groups are permitted to determine their own leadership and internal procedures, as well as with whom they will or will not associate. The attempt by legislatures to decouple political parties from their own nomination processes has to numerous federal court battles.

The success of such ligation has been mixed. In 1986 the Connecticut Republican Party successfully challenged a state statute preventing them from inviting independent voters to participate in their primary.² A few years later, the San Francisco Democratic Party successfully challenged a California statute that prevented parties from making endorsements in primary elections.³ In 1999, both parties in California successfully in invalidated the state's "blanket primary" which allowed voters from competitor parties to select the other party's nominee.⁴ While winning some legal battles, the political parties also faced setbacks. In Minnesota, the courts upheld the state's "anti-fusion" law which barred a party from nominating another party's nominee as their own.⁵ In 2005, the courts upheld an Oklahoma statute that prevented the Libertarian party from inviting Republicans and Democrats to participate in their primary elections.⁶ The Court has sent mixed signals, but parties prevail often enough that they continue to seek the Court's protection from citizens and legislatures that want to interfere with their internal procedures.

The US Supreme Court typically assesses the constitutionality of a state's regulation of primaries with a single-pronged test. If, absent a compelling state interest (the Court's highest standard of review), the law burdens the Associational rights of political parties and their members, the statute is invalidated. In 2007, however, the Court issued a ruling in *Washington State Grange v. Washington State Republican Party* that suggested an additional standard for determining the legality of state interference in primary elections—voter confusion. The Court held that if a state crafts a primary ballot that confuses voters, particularly in terms of confusing voters as to whether or not they are selecting or voting for a party's official nominee, the statute may be invalid.

The “voter confusion” standard is, in part, a response to the increasing popularity of nonpartisan primaries, especially nonpartisan primaries that allow the use of partisan labels (Republican or Democrat) on the ballot. In 2008 Washington State adopted such a primary, calling it the Top-Two, and California is considering a similar process.⁷ The emergence of nonpartisan primaries that allow the use of partisan labels on the state printed ballot has presented a unique problem for the Court. The state's use of partisan labels makes the state subject to Association Clause challenges by the political parties, but the development of nonpartisan primaries has been a way to avoid such challenges. The use of partisan labels *within* a nonpartisan primary creates a type of legal paradox. The Court's *Grange* decision was a first attempt to navigate this new dilemma. The standard created in the *Grange* case mandates that states creating nonpartisan ballots do not confuse voters into thinking they are voting for or selecting official nominees of a political party.

In 2004 Washington State voters approved Initiative-872, creating a nonpartisan primary called the “Top-Two” primary system.⁸ The system, modeled on Louisiana's Cajun primary system, purports to create a non-partisan process for electing partisan offices. Under the Top-Two primary, any registered voter may “cast a vote for any candidate for each office without any limitation based on party preference or affiliation of either the voter or the candidate (Wash. Rev. Code 29A.04.127).” Such a

system lumps all candidates for a particular office into a single primary and allows all voters to participate.⁹

After its adoption, but before its implementation, the major parties in Washington State filed suit in federal district court seeking to enjoin the state from using the new system which would violate the parties' 1st Amendment Associational rights. The parties prevailed at both the District Court and 9th Circuit Court of Appeals and the Top-Two primary was held invalid. The US Supreme Court, however, reversed the lower courts, holding that it was unclear if the Top-Two primary was unconstitutional. The Supreme Court asserted that the constitutionality of the primary depended on whether the Top-Two system created "voter confusion." The Court reasoned that if voters of Washington mistakenly thought they were selecting or electing the *nominees* of political parties, the initiative would be unconstitutional. Since the Top-Two primary had never been used, however, the Court noted they had no way of determining if such a system created voter confusion, and until they did, the State of Washington had to be given an opportunity to craft a ballot that would avoid such confusion. The Court left the door open to the political parties noting that if Washington State created a confusing ballot, the political parties could re-litigate their case.

Since the Supreme Court's ruling in *Washington State Grange v. Washington State Republican Party* (2007), Washington State crafted Top-Two primary and general election ballots and used them in the 2008 elections. Did those ballots confuse Washington voters? If the ballot design created "widespread voter confusion" (*Grange*, 552 U.S., at 14) that led Washington voters to believe they were selecting party nominees, the Supreme Court's reasoning suggests the primary (or at least the primary ballots) is unconstitutional. If, however, Washington voters understood that they were simply narrowing down many primary candidates to two general election candidates and that those candidates were not nominated or necessarily affiliated with the political parties, the system should survive legal scrutiny.

Answering that question is the purpose of this paper. In the *Grange* case Chief Justice Roberts' Concurring Opinion notes "Nothing in my analysis requires the parties to produce studies regarding voter perceptions on this score [voter confusion] but I would wait to see what the ballot says before deciding whether it is unconstitutional (*Id.*, at 4 Roberts concurring in judgment)." Until this paper, no one has taken Justice Roberts up on his suggestion. Now that we can "see what the ballot says" and study the voters who have used it, we can determine if those voters were confused.

It is important to assess the level of voter confusion caused by nonpartisan ballots. The spread of nonpartisan open primaries would profoundly affect the electoral process in the United States. In the past decade, both California and Oregon have proposed or implemented primary systems similar to the Top-Two primary.¹⁰ With 'anti-party' sentiments on the rise (van Heerde and Bowler, 2007; Gaines and Tam Cho, 2002), other states may want to strip political parties of their control over primary elections and their nomination power in particular. Given the importance of primary elections in our democratic system, such a change could fundamentally alter the way Americans conduct elections. Just as the Populist and Progressive era reforms brought us private ballots, direct election of Senators, the referendum and recall process, and women's suffrage—much of it initiated on anti-party sentiments (Ware, 2002), a new round of reforms generated from similar sentiments could significantly alter the way we select our candidates.

Stripping political parties of their nomination power could have profound effects on American democracy. Two effects are immediately apparent. Political parties, in addition to nominating candidates, spend considerable resources creating a "brand" for themselves. Research has shown that partisan brands are the single most powerful information cue voters have when they cast their ballot (Conover, 1981; Rahn, 1993; Dalton, 2007). In non-partisan primaries, voters would have less information and have more difficulty identifying candidates who hold similar values. The proliferation of a top-two primary system could ultimately result in the rise of "stealth candidates" so common in other

types of nonpartisan elections (Barnhizer, 2001; Deckman, 2004). Additionally, the type of primary a state uses goes a long way in determining the “ideological purity” or extremism of candidates (Oak, 2006). Open primaries tend to nominate more moderate candidates while closed primaries tend to nominate candidates more in line with the values of a particular party.¹¹ One mechanism that states may adopt for the purpose of electing more moderate candidates is Washington’s scheme of the nonpartisan open primary. Before states begin to move in that direction by decoupling political parties from the nomination process, they must first know which “rules of the game” are acceptable to the federal courts. Ultimately, it will fall to the courts to flesh out the holding in the *Grange* case and provide more detailed criteria to the ambiguous notion of “voter confusion.” Social scientists can assist such a process in that the concept of voter confusion is as much an empirical question as it is a legal question.

The Legal and Political History of the Top-Two Primary

In 1935, Washington State adopted a “blanket primary.” In a blanket primary voters are given a ballot that presents the partisan primary elections of both parties. Voters are allowed to cast a vote for only one candidate for each office, but can chose either party’s primary in which to participate. Unlike other primary systems, voters can move back and forth between parties as they move down the ballot and vote on various races. Therefore, one can vote in the Democratic primary for Governor but the Republican primary for State Representative.

Following the ruling in *Democratic Party v. Jones* (1999) which invalidated California’s blanket primary, both political parties in Washington successfully challenged Washington State’s version of the blanket primary.¹² That legal decision necessitated that Washington use, for the first time since 1934, a partisan primary in 2006. Voters expressed extreme distaste for the partisan primary, and following

numerous court battles and legislative maneuvering, Washington State adopted a Top-Two primary system as a replacement for the blanket primary.

The Top-Two primary is slightly different than a blanket primary and an open primary. Like an open primary, any voter may participate regardless of political affiliation. Candidates, however, are not identified with the traditional "D" or "R" next to their name. Instead, candidates can place the language "prefers Republican Party" or "prefers Democratic Party" next to their name on the ballot.¹³

Additionally, all candidates, whether they "prefer" the Republican Party or "prefer" the Democratic Party are lumped into a single election (as opposed to having one Republican primary and one Democratic primary). Instead of electing one Republican top vote getter and one Democratic top vote getter, the top two vote earners move on to the General Election regardless of party preference. It is possible to have a General Election with two candidates who "prefer" the same party.

It is the use of the term "prefers" that generates the constitutional questions regarding the Top-Two primary. Supporters of the process argue that the Top-Two primary does not technically identify Republican or Democratic candidates, it simply notes which party each candidate prefers. The winners of the primary, they assert, are therefore not official nominees of any political party. In fact, the language of I-872 refers to their primary election as a "winnowing election" not a nominating election. If the winners are not nominees of the party, then neither political party can claim that their Associational rights have been violated.

Political parties contend that the Top-Two primary "forces the Party to be associated publically with candidates who have not been nominated by the party, who will alter the political message and agenda the Party seeks to advance, and who will confuse the voting public with respect to what the Party and its adherents stand for (*Republican Party v. Logan* 377 F. Supp. 2nd 907 at 1)." In essence, voters will believe that candidates with "prefers Democratic Party" next to their name, on a state ballot, are in fact the nominee of the Democratic Party, when in fact, they are not. The Washington State

Democratic Party also contends that the Top-Two primary “permit[s] non-affiliates of the Democratic Party to participate in its nomination process...[and] allows cross-over voting in violation of the Party’s Associational rights (*Id.*, at 2).” In essence, people who are not members of the party get to select the nominee of the party.

Immediately following the adoption of the Top-Two primary, both political parties sought an injunction to prevent its use. The United States District Court for Western Washington granted that injunction and invalidated the measure noting that “in all constitutionally relevant respects, Initiative 872 is identical to the blanket primary invalidated” and that “an individual has no right to associate with a political party that is an unwilling partner (*Id.*, at 12-13).” Upon review, the District Court’s ruling was upheld by the 9th Circuit Court of Appeals which noted that the addition of the term “prefers” in front of a candidates party identification are “distinctions without a difference (*Democratic Party of Washington State v. Reed* 343 F.3rd 1198 at 5).”

The US Supreme Court took a more cautious approach. Relying on a legal standard of review technicality, they opted to punt on the case until more information could be collected. The political parties challenged the Top-Two primary “on its face” which is a legal standard that asserts that the Court does not need to see the law applied, but can strike it down based on the simple language of the statute. The Court however, preferred an “as applied” standard which demands that the law actually be implemented and its effects be assessed before determining its constitutionality. Writing for the majority, Justice Clarence Thomas notes “a plaintiff can only succeed in a facial challenge by ‘establishing that no set of circumstances exists under which the Act would be valid’ (*Grange*, 552 U.S., at 6)” but “the ballot could conceivably be printed in such a way as to eliminate the possibility of widespread voter confusion and with it the perceived threat to the First Amendment (*Id.*, at 13).” Thomas concludes “it is possible that voters will misinterpret the candidates’ party-preference designation as reflecting endorsement by the parties. But these cases involve a facial challenge, and we

cannot strike down I-872 on its face based on the mere possibility of voter confusion (*Id.*, at 12). Justices Roberts and Alito concur, writing “because respondents brought this challenge before the State of Washington had printed ballots for use under a new primary regime, we have no idea what those ballots will look like (*Grange*, 552 U.S., Roberts concurring in judgments at 3).” The heart of the Supreme Court’s reversal is the belief that political parties must show the Court that voters were actually confused by ballots developed by the state before they will rule the Top-Two unconstitutional.

Ballot Experiment—Methods and Instrument

Subsequent to the *Grange* decision, Washington State developed ballots for the Top-Two system that were used during the 2008 primary and general elections. By doing so, they provided us with a unique opportunity to test the hypotheticals posed in the *Grange* case. Using a series of cognitive experiments based on voter perceptions of hypothetical ballots I was able to test whether the new Top-Two ballots cause voter confusion.

Participants in the experiment were asked to look at one and only one sample ballot and then respond to a battery of questions. The experiments utilized three different ballot types—a traditional partisan general election ballot, a Top-Two primary election ballot, and a Top-Two general election ballot. The traditional **partisan** ballot mimics the exact design Washington State employed when Washington used a partisan election process in 2006. Candidates’ names are identified with the traditional “D” or “R” or “I” next to their names. The Top-Two **primary** ballot also mimics the exact design Washington State used in 2008 employing the new “prefers Republican Party” (or Democratic Party) designation next to candidates’ names. On the primary ballot, there is more than one candidate with the same party preference. In the Top-Two **general** election ballot, the new “prefers” language is used just like the primary ballot, but there are only two candidates on the ballot (as the Top-Two requires). When the state developed Top-Two ballots, they added disclaimer language noting that candidates were not nominated by parties.¹⁴ That exact language adopted by the state was added to

the Top-Two ballots (primary and general) utilized in the experiment. See *Appendix A* for all three ballot designs.

Participants were allowed to examine only one of the three ballots designs and then asked to respond to eight questions.¹⁵ Participants were asked if, after reading the ballot and accompanying ballot instructions, whether they believed various candidates were nominees of, affiliated with, representatives of or associated with, a particular political party. See *Appendix B* for the slate of questions.

The experiment was conducted on three separate populations of Washington citizens. Research shows that not all citizens have the same level of political knowledge (Verba, Scholzman and Brady, 1995; Delli Carpini and Keeter, 1996). Newer voters or voters with little civic participation exhibit lower levels of political knowledge than voters who participate in some type of civic activities or who have participated in the political process for a longer period of time (Neuman, 1986; Luskin, 1987; Zaller, 1990). To determine how different types of voters responded to the experiment differently, the experiment was conducted on a population of newer or first time voters, a general group of registered voters, and a group of politically active voters. Using the group of registered voters as a baseline, it is likely that if voter confusion manifests itself, newer voters will exhibit the most voter confusion, highly politically active voters will demonstrate the least voter confusion, and the general population of registered voters will be somewhere in the middle.

The sample population for newer voters was drawn from the student population at Central Washington University. The hypothetical ballots were disseminated in person to 183 students ranging between 18 and 24 years old. Given the age range, these students could have voted anywhere between zero and 2 times. Students were handed a ballot, asked to read the instructions, and answer the accompanying questions. No follow-up questions were answered by the proctors.

The sample population for registered voters was drawn from a population of registered voters garnered from the Washington State Secretary of State's office. The Secretary of State's office recently created an online mechanism for registering to vote. The online registration process enabled contact via email. The hypothetical ballots were disseminated via an online survey research company to 1,500 Washington State registered voters. Respondents were contacted via email (with three follow-ups) and asked to participate in an experiment. They were directed to a link that allowed them to view the sample ballot and respond to the questions.

The sample population for the highly active voters was drawn from a population of voters who had elected to receive emails from and/or had donated to one of the two major political parties in Washington State. Both the Washington State Republican and Democratic parties made 3,000 emails available (for a total of 6,000 contacts) drawn from their membership databases. Hypothetical ballots were disseminated per the same procedure as the registered voter population.

Findings and Analysis

Of interest are three questions. First, do voters mistakenly believe that unaffiliated candidates in a nonpartisan Top Two election are the official nominees of a particular political party? Second, in a nonpartisan Top Two election, do voters mistakenly perceive a relationship, other than that as nominee, between unaffiliated candidates and political parties? Third, if the answer to the first two questions is yes, how do the error rates differ from a traditional partisan primary and how do rates of error vary by demographic characteristics?

Unaffiliated Candidates or Party Nominees?

The most important question is the legal issue of "voter confusion." Of interest to the courts is whether voters mistakenly believe that candidates in nonpartisan elections are perceived as the official

nominees of political parties. The data from the ballot experiment indicates that voter confusion exists at differing levels depending on ballot type and voter demographics.

Each of the three hypothetical ballots contains a candidate named "John Smith". On the partisan ballot he is identified with a (D) and on the nonpartisan ballots (Top Two) he is identified with "prefers Democratic Party". Each ballot also contains a candidate named "Mark Allen".¹⁶ On the partisan ballot he is identified with an (R) and on the nonpartisan (Top-Two) ballots he is identified with a "prefers Republican Party". In each case, respondents were asked if they believed that Mr. Smith was the Democratic nominee and whether they believe Mr. Allen was the Republican nominee.

Voter confusion was tested by measuring how often respondents incorrectly answered questions about the hypothetical candidates' status as the official nominee of a political party. From the Court's perspective, respondents are "confused" if they identify candidates on the Top-Two ballots as official party nominees. Under the legal framework established by the nonpartisan Top Two primary, candidates are not nominees nor even affiliated with political parties. Voter confusion, therefore, can be assessed by measuring how many respondents incorrectly identify candidates on a Top-Two ballot as the nominee of a political party. Table 1 summarizes the error rates for each ballot type delineated by demographic group.

Voter confusion rates for the traditional partisan general election ballot were used to establish a baseline. One third of respondents were asked to examine a traditional partisan ballot where candidates were identified with a (D) or (R) next to their names. With these ballots, as with all ballots, respondents were asked if they believed the candidates were the nominee of a political party. The correct answer with partisan ballots is "yes" as candidates in a traditional party elections *are* the official nominees of the political parties. Therefore, voter confusion on the traditional partisan ballot was assessed by measuring how many respondents incorrectly answered "no" when asked if candidates were the

nominee of a political party. Although the Court did not express interest in measuring voter confusion caused by traditional partisan ballots, it is important to include that data for comparative purposes. When measuring voter confusion caused by Top-Two ballots, there are two measurements to be assessed. The first is to simply measure the aggregate level of voter confusion found when using a Top-Two ballot. For example, the data show that 25.7% of new voters were confused by the Top-Two primary ballot. That figure, however, does not tell us whether the Top-Two primary was **more confusing** than a traditional partisan ballot. It is inaccurate to assume that there is no voter confusion on a traditional ballot and in fact the data show that 18.6% of new voters were confused about the status of candidates on those ballots as well. From a comparative perspective, the Top-Two primary does not necessarily cause 25.7% confusion but appears to be more confusing by about 7%. By first assessing the level of voter confusion on traditional partisan ballots, we can juxtapose those results with the level of voter confusion on the nonpartisan ballots and determine if they cause more or less voter confusion.

<<Insert Table 1 Here>>

The data in Table 1 indicate that voter confusion with traditional partisan ballots ranges from a low of 18% to a high of 24%--meaning approximately 1 in 5 voters do not believe candidates on a partisan ballot are the nominees of the parties when in fact they are. The error rates associated with the Top Two primary ballot are slightly higher than those on the traditional partisan ballot. Voter confusion with the nonpartisan Top Two primary ballot ranges from a low of 19% to a high of approximately 30%--meaning approximately 1 in 4 voters mistakenly believe candidates are the nominees of political parties when in fact they are not. New and registered voters had error rates 7 and 10 percent higher when interpreting a nonpartisan ballot. Active voters, however, were slightly less confused by the Top Two primary ballot. The small dip in confusion rates for active voters can most likely be explained by the fact that these voters were drawn from a population of party activists who regularly received email updates

and literature from the political parties containing information about changes in the primary system and the ongoing legal battles to overturn that system.

It is the difference in voter confusion rates between the traditional partisan ballot and the Top Two general election ballot that tell the most interesting story. Newer voters mistakenly identified candidates with the “prefers Republican/Democratic party” language as the nominee of the party a staggeringly high 56% of the time. Registered voters made the same mistake 30% of the time and active voters misidentified candidates 35% of the time. Taken together, the data in Table 1 suggests that approximately 1 in 3 voters fail to understand that candidates on nonpartisan ballots are not the political party’s nominee. These error rates are significantly higher than the other two ballots and clearly suggest the state’s use of language indicating a candidate’s party preference on an official state ballot leads many voters to believe that those candidates are the official nominees of the political parties.

The variance in error rates between the Top Two primary ballot and the Top Two general election ballot merit examination. The obvious question is why are voters less confused on the primary ballot than on the general election ballot when both ballots use the exact same language? A simple answer emerges. On the Top Two primary ballot, there are multiple candidates with the same party identification language. Therefore, respondents to the experiment (and voters) look at ballots where there is more than one candidate which “prefers [the] Democratic Party” and more than one candidate which “prefers [the] Republican Party.” Given that respondents are examining a ballot that has two people with the exact same identifying language, logic, as much as any political knowledge, suggests that both candidates cannot be the (singular) nominee of a party. In contrast, when respondents examine a Top Two general election ballot, they have a ballot with only one candidate who “prefers [the] Democratic Party” and only one candidate that “prefers [the] Republican Party.” It is much more

likely that in such an environment, voters will assume that candidates are officially affiliated with the respective parties.

Statistical significance of difference: If one is interested in the sheer magnitude of error rates, or voter "confusion," the aggregate data provided in Table 3 suffices. If, however, one is interested in whether the confusion rates for Top-Two ballots are statistically significantly different that confusion rates found on a traditional partisan ballot, then chi-square (or with smaller data sets, Fisher Exact tests) can illuminate. Table 1.5 (for now) summarizes the pair-wise chi-square tests of significance between the partisan general ballot and the two forms of Top-Two ballot.

Perceived relationship between candidates and political parties

The term "nominee" has a specific legal and political meaning. Not all voters may be cognizant of the term's narrow definition. Given the partisan labels attached to the nonpartisan state ballot, voters may perceive a relationship between candidates and parties that cannot be captured by the term "nominee." To better understand the manner in which respondents perceive a relationship between candidates on a nonpartisan ballot and political parties, they were also asked a battery of questions that assesses that relationship in more abstract or general terms. Respondents were also asked if they believed candidates were "the Representative of," "affiliated" or "associated" with a political party. Tables 2-4 summarize how respondents indicated their perceptions.

For comparative purposes, the data in Table 1 measuring respondents' belief that candidates are the nominee of a political party are reproduced in Tables 2-4. When that data is compared with voter perceptions of the relationship between candidates and political parties, as measured by the other three questions, the data clearly indicate that far greater percentage of voters perceive some type of official relationship between candidates and political parties. As indicated in Table 2, newer voters

examining a nonpartisan Top Two primary ballot incorrectly identified candidates as “representatives” of one of the two political parties 47% of the time. Error rates increased significantly when respondents were asked if they believed candidates were “affiliated” or “associated” with a political party. The data show respondents responded incorrectly to those questions 73% and 80% of the time respectively.

Error rates increase across the board when respondents examine the nonpartisan general election ballot. Almost 57% of respondents incorrectly identify candidates as the “representative” of the party. Eighty-five percent felt the candidates were “affiliated” with a political party and 93% of voters incorrectly noted that candidates were “associated” with a political party. Interestingly, the perceptions voters hold about candidates on the nonpartisan Top-Two general election ballot are surprisingly similar to the perceptions they hold about candidates on the partisan general election ballot. Surprising in that the entire purpose of the nonpartisan ballot is to separate candidates from partisan attachments. The data here indicate the state has failed in that goal as 93% of voters continue to see, at least at some level, a partnership between candidate and party.

<<Insert Table 2 Here>>

As indicated in Table 3, registered voters fared slightly better than newer voters, but consistently recorded high error rates. Registered voters examining the nonpartisan Top Two primary ballot mistakenly identified candidates as the “representative of” the party 35% of the time. Error rates rose to 64% and 82% when asked about candidates “affiliation” and “association.” As with newer voters, error rates increased across the board when respondents examined the Top Two general election ballot. Forty-two percent felt candidates were the party’s representative and 73% and 82% voters indicated that candidates had an affiliation and association with a party. Although these error rates are not as high as those manifested by newer voters, they are still high enough to suggest the state

has not severed the cognitive link that voters have between candidates and political parties. By allowing candidates to place partisan labels next to their name on a state ballot, voters continue to perceive a relationship between candidate and party regardless of disclaimer language on the ballot.

<<Insert Table 3 Here>>

Table 4 indicates that active voters, presumably those voters who have more political knowledge than others, have essentially the same perceptions as registered voters. Active voters mistakenly assume candidates are the representative of the party between 37 and 49 percent of the time depending on ballot type. Error rates for the affiliation and association questions range between 70 and 80 percent. Regardless of how one parses the data, a clear picture emerges. Voters, whether new voters, registered voters, or highly active voters, exhibit far more voter confusion when interpreting the new nonpartisan Top Two ballots than when examining the traditional partisan ballot. Furthermore, the error rates are significantly higher. The median error rate for all respondents examining nonpartisan ballots is 73% while the medium error rate for all respondents examining the traditional partisan ballot is 11%. This represents a difference in medium error rates of 62%.

<<Insert Table 4 Here>>

Variation in error rates by age, gender and education

In addition to looking at aggregate error rates, it is also informative to look at how error rates differ by demographic characteristics. Simple cross tab analysis is appropriate for such an examination. Before doing so, however, it is important to remember that experiments such as the one conducted in this study measure comprehension and cognition, not attitudes or values. In this study, respondents were asked if they understood specific aspects of a primary system. They were not asked subjective questions concerning their approval or disapproval of the system. It is typical of polling or survey research methodologies to ask demographic questions regarding race, gender, religion, age, and

education because responses to normative questions are often affected by these demographic characteristics. There is nothing in the extant literature to suggest that *comprehension* of political knowledge is affected by traditional demographic traits such as gender, race, ethnicity or religion. Accordingly, respondents were not asked about their race, ethnicity, or religion.

Respondents were queried about their age, education, and gender. It is reasonable to assume that political knowledge will be affected by age and education with the reasonable hypothesis that older and more educated voters will exhibit more political knowledge (Nie, Junn and Stehlik-Barry, 1996). Gender information was collected simply to confirm the existing literature and demonstrate the political comprehension is not a function of gender or similar demographic characteristics like race and religion.

Tables 5-7 summarize the crosstab analysis of the aggregate dataset. Results are separated based on the ballot type.¹⁷ Unfortunately, analysis of error rates by demographic variables offers very little explanatory value. As predicted, there is no relationship between gender and error rates. Somewhat surprising is that age also has no effect on error rates.

<<Insert Table 5 Here>>

Table 5 summarizes the crosstab data for gender. Examination of the data shows minimal variation of error rates between men and women. Men did slightly better on the traditional partisan ballot and women did slightly better on both nonpartisan ballots but in neither case are the differences statistically significant. Table 6 summarizes the crosstab data for age. No consistent relationship between age and error rates emerges. Error rates for the Partisan General election are parabolic (vertex up) and error rates for the Top Two primary are parabolic (vertex down). The error rates for the Top-Two general ballot are completely random.

<<Insert Table 6 Here>>

Only levels of education appear to have an effect on voters' ability to correctly interpret ballots. Higher levels of education are weakly correlated with lower error rates and even then, only with respect

to the nonpartisan ballots. On the partisan general ballot, respondents with high school diplomas and associates degrees actually did better than those with Master's and Ph.D. degrees. On the nonpartisan ballots, in general, respondents with higher levels of education had lower error rates. The exception being that high school graduates had lower error rates on the Top-Two primary than those with degrees of any type except those with a Master's degree. Take in their entirety, the finding suggests that voters, if educated, might have a marginally better understanding of nonpartisan ballots and the role they play within the context of a larger electoral system.

Conclusion

Looking at all the data together suggests a number of conclusions. In the all important legal question concerning whether voters mistakenly believe candidates on a nonpartisan ballot are the nominees of political parties, the data implies that between one-fifth to one-four of the voters misinterpret primary ballots and between a third to one-half misinterpret general election ballots. Whether these error rates are enough to represent "widespread voter confusion" will ultimately fall to the courts to decide. On the second question looking at whether voters perceive an official relationship between candidates on a nonpartisan ballot and political parties, the evidence is stronger. Across all voter types, respondents consistently misinterpreted both primary and general election ballots 80-90 percent of the time. Given those numbers, there can be no doubt that voters using the new Top-Two primary are suffering a significant level of voter confusion. Again, however, it will fall to the courts to decide if misperceiving a relationship between candidate and party, but not necessarily identifying candidates as official nominees of a party meets Justice Thomas' standard of widespread voter confusion.

Of concern to those who are responsible for implementing nonpartisan elections while meeting judicially imposed standards about voter confusion, is the apparent lack of effect education has on

lessening voter confusion rates. Given the findings of this research, it is clear that ballots, as crafted in Washington State (and potentially others), confuse voters. If changing the ballot is not an option, because its structure is mandated by statute, voter education emerges as the most likely alternative. The data, however, suggests that voter education may have a limited impact on lowering rates of voter confusion.

Appendix A

Partisan General Election Ballot

Directions: Examine the sample ballot below and pretend that you will be participating in an election to select one of the candidates below. After reading the ballot carefully, answer the questions on the other side of the page.

KITTITAS COUNTY BALLOT
General Election November 5th, 2008

<p>Marking your ballot: Please use a black or blue INK PEN to mark your ballot. To vote for your choice in each contest, completely fill in the box provided to the left of your choice. To vote for a person whose name does not appear on the ballot, completely fill in the box next to the words "write-in" and write in the candidate's name on the line provided.</p>	<p>STATE PARTISAN OFFICES</p> <p>Governor 4 year term Vote for ONE</p> <p><input type="checkbox"/> John Smith (D)</p> <p><input type="checkbox"/> Mark Allen (R)</p> <p><input type="checkbox"/> Kirk Freeman (I)</p> <p><input type="checkbox"/> Write-in _____</p>
	<p>LEGISLATIVE PARTISAN OFFICES</p> <p>State Representative Legislative District 1, Pos. 1</p> <p><input type="checkbox"/> Jane Miller (R)</p> <p><input type="checkbox"/> Mary Johnson (D)</p> <p><input type="checkbox"/> Kate Bell (I)</p> <p><input type="checkbox"/> Write-in _____</p>

Nonpartisan Top-Two Primary Ballot

Directions: Examine the sample ballot below and pretend that you will be participating in an election to select one of the candidates below. After reading the ballot carefully, answer the questions on the other side of the page.

KITTITAS COUNTY BALLOT

Primary Election August 25th, 2008

<p>Marking your ballot: Please use a black or blue INK PEN to mark your ballot. To vote for your choice in each contest, completely fill in the box provided to the left of your choice. To vote for a person whose name does not appear on the ballot, completely fill in the box next to the words "write-in" and write in the candidate's name on the line provided.</p>	<p style="text-align: center;">STATE PARTISAN OFFICES</p> <p>Governor 4 year term Vote for ONE</p> <p><input type="checkbox"/> John Smith (Prefers Democratic Party)</p> <p><input type="checkbox"/> George Marker (Prefers Republican Party)</p> <p><input type="checkbox"/> Mark Allen (Prefers Republican Party)</p> <p><input type="checkbox"/> Joe Keen (Prefers Democratic Party)</p> <p><input type="checkbox"/> Kirk Freeman (States No Party Preference)</p> <p><input type="checkbox"/> Write-in _____</p>
<p>VOTER-PLEASE 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.</p>	<p style="text-align: center;">LEGISLATIVE PARTISAN OFFICES</p> <p>State Representative Legislative District 1, Pos. 1</p> <p><input type="checkbox"/> Jane Miller (Prefers Republican Party)</p> <p><input type="checkbox"/> Mary Johnson (Prefers Democratic Party)</p> <p><input type="checkbox"/> Kate Bell (States No Party Preference)</p> <p><input type="checkbox"/> Write-in _____</p>

Nonpartisan Top-Two General Election Ballot

Directions: Examine the sample ballot below and pretend that you will be participating in an election to select one of the candidates below. After reading the ballot carefully, answer the questions on the other side of the page.

KITTITAS COUNTY BALLOT

General Election November 5th, 2008

<p>Marking your ballot: Please use a black or blue INK PEN to mark your ballot. To vote for your choice in each contest, completely fill in the box provided to the left of your choice.</p> <p>To vote for a person whose name does not appear on the ballot, completely fill in the box next to the words "write-in" and write in the candidate's name on the line provided.</p>	<p style="text-align: center;">STATE PARTISAN OFFICES</p> <p>Governor 4 year term Vote for ONE</p> <p><input type="checkbox"/> John Smith (Prefers Democratic Party)</p> <p><input type="checkbox"/> Mark Allen (Prefers Republican Party)</p> <p><input type="checkbox"/> Write-in _____</p>
	<p style="text-align: center;">LEGISLATIVE PARTISAN OFFICES</p> <p>State Representative Legislative District 1, Pos. 1</p> <p><input type="checkbox"/> Jane Miller (Prefers Republican Party)</p> <p><input type="checkbox"/> Mary Johnson (Prefers Democratic Party)</p> <p><input type="checkbox"/> Write-in _____</p>
<p>VOTER-PLEASE 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.</p>	

Appendix B

Based on the information presented in the sample ballot above, in the Governor's race,

1. Would you consider Candidate John Smith the **nominee** of the Democratic Party?
 - a) Yes
 - b) No
2. Would you consider Candidate John Smith **affiliated** with the Democratic Party?
 - a) Yes
 - b) No
3. Would you consider Candidate John Smith a **representative** of the Democratic Party?
 - a) Yes
 - b) No
4. Would you consider Candidate John Smith **associated** with the Democratic Party?
 - a) Yes
 - b) No
5. Would you consider Candidate Mark Allen a **nominee** of the Republican Party?
 - a) Yes
 - b) No
6. Would you consider Candidate Mark Allen **affiliated** with the Republican Party?
 - a) Yes
 - b) No
7. Would you consider Candidate Mark Allen a **representative** of the Republican Party?
 - a) Yes
 - b) No
8. Would you consider Candidate Mark Allen **associated** with the Republican Party?
 - a) Yes
 - b) No

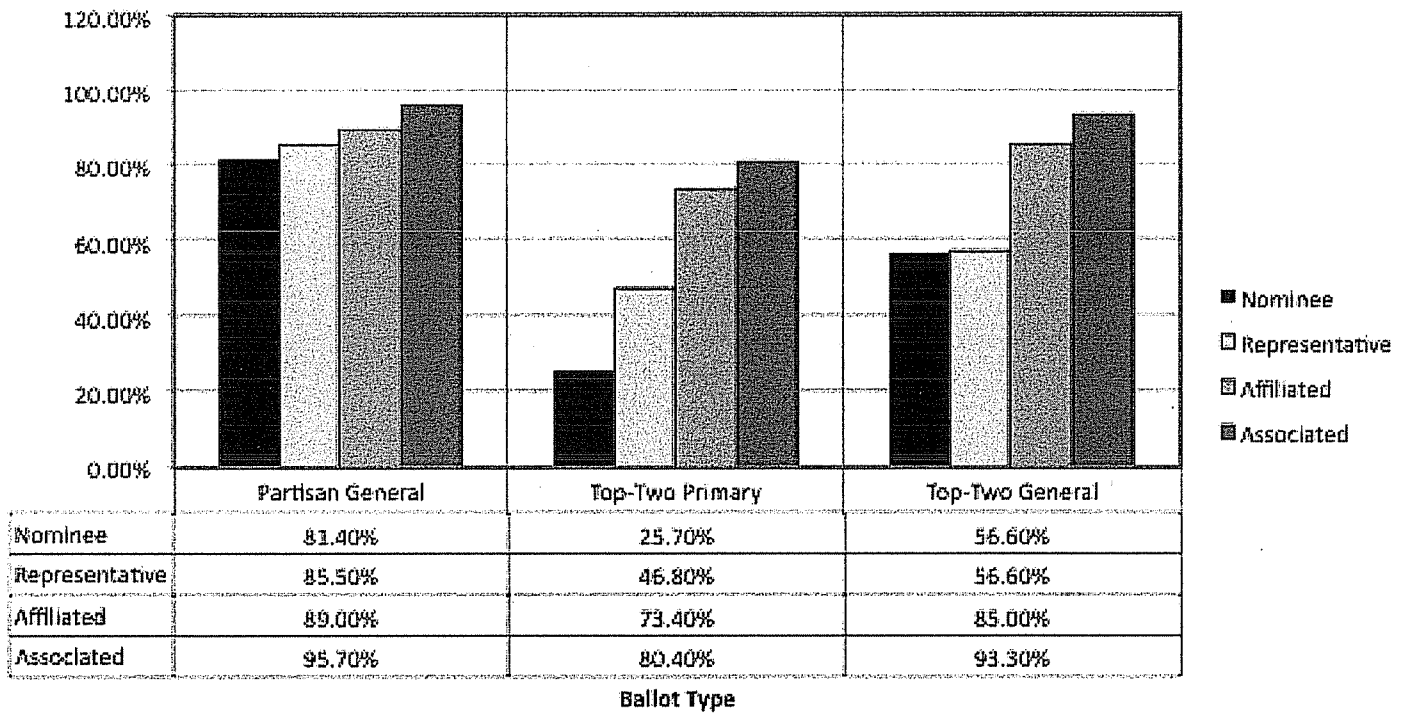
Table 1: Voter Confusion Rates by Ballot Type

	Partisan General		Top-Two Primary		Top-Two General	
New Voters	22/118 N=59	18.6%	33/128 N=64	25.7%	68/120 N=60	56.6%
Registered Voters	12/62 N=31	19.3%	23/78 N=41	29.4%	18/60 N=30	30%
Active Voters	86/351 N=180	24.5%	51/266 N=138	19.1%	162/462 N=231	35%

Chi-Square and Fisher Exact Tests of Difference

	Partisan General to Top-Two Primary	Partisan General to Top-Two General	Top-Two Primary to Top-Two General
New Voters	Not Significant (Pearson = 1.8) P = .17 Fisher .11	Significant (Pearson = 36.58) P < .0001 Fisher < .0001	Significant (Pearson = 24.47) P < .0001 Fisher < .0001
Registered Voters	Not Significant (Pearson = 1.9) P = .16 Fisher .11	Not Significant (Pearson = 1.86) P = .17 Fisher .12	Not Significant (Pearson = 0) P = 1 Fisher .54
Active Voters	Not Significant (Pearson = 2.49) P = .11 Fisher .06	Significant (Pearson = 10.5) P < .001 Fisher < .0007	Significant (Pearson = 20.6) P < .0001 Fisher < .0001

Table 2 - New Voters
Perceived Relationship of Candidate to Party



**Table 3 - Registered Voters
Perceived Relationship of Candidate to Party**

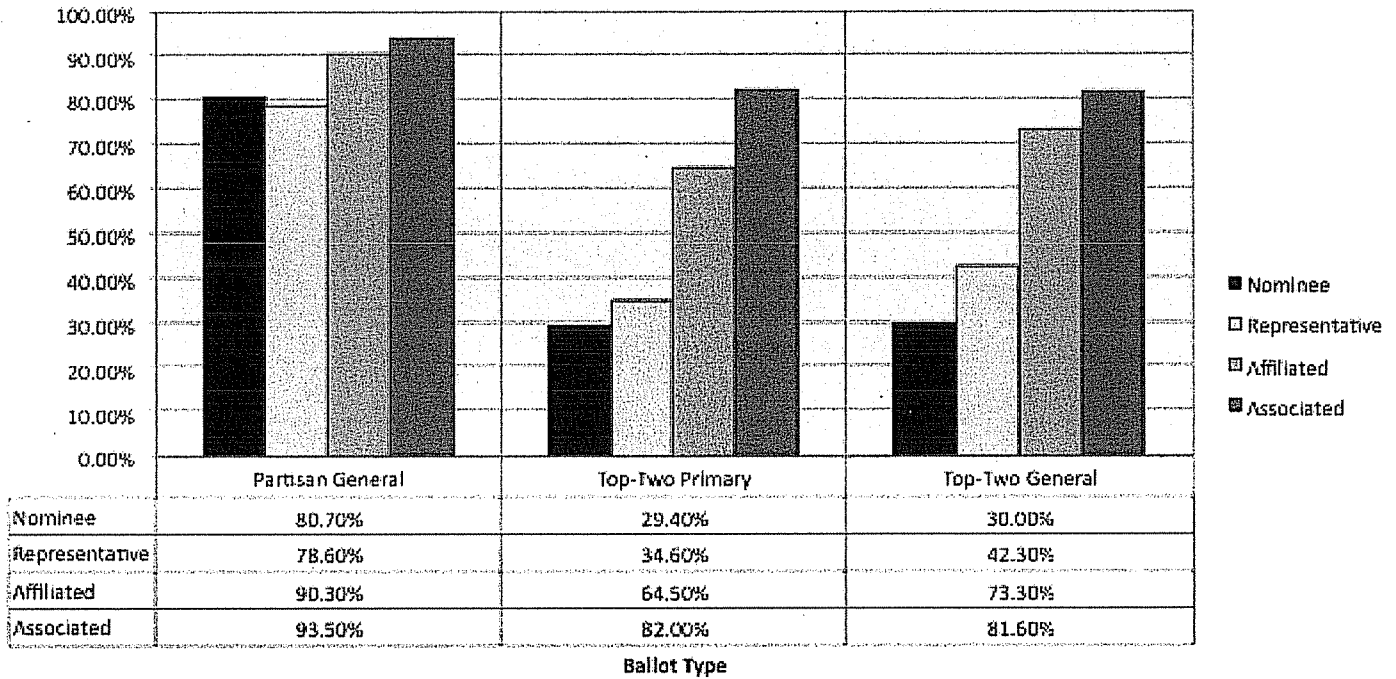


Table 4 - Active Voters
Perceived Relationship of Candidate to Party

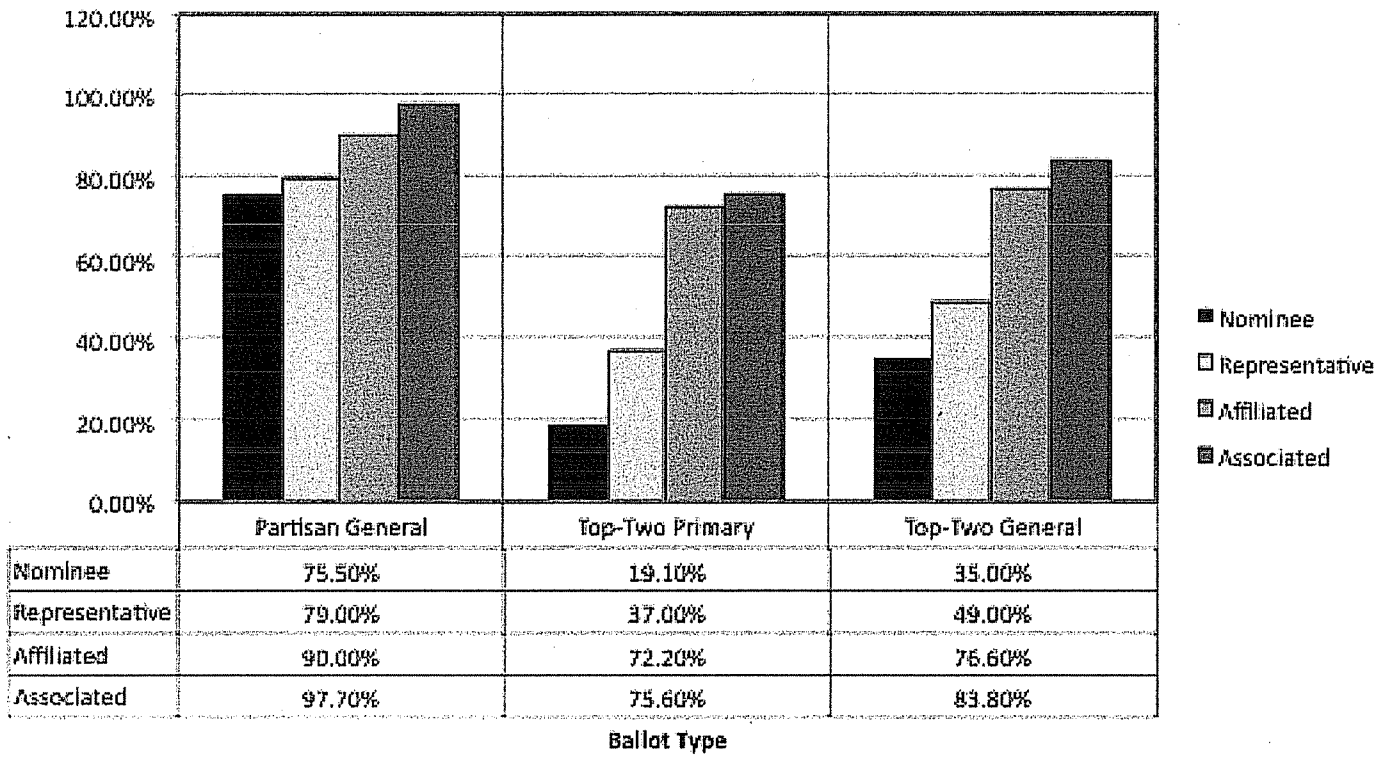


Table 5: Error Rates (Nominee) by Gender

	Male	Female
Partisan General	22.3%	26.6%
Top-Two Primary	24.0%	19.7%
Top-Two General	37.4%	32.5%

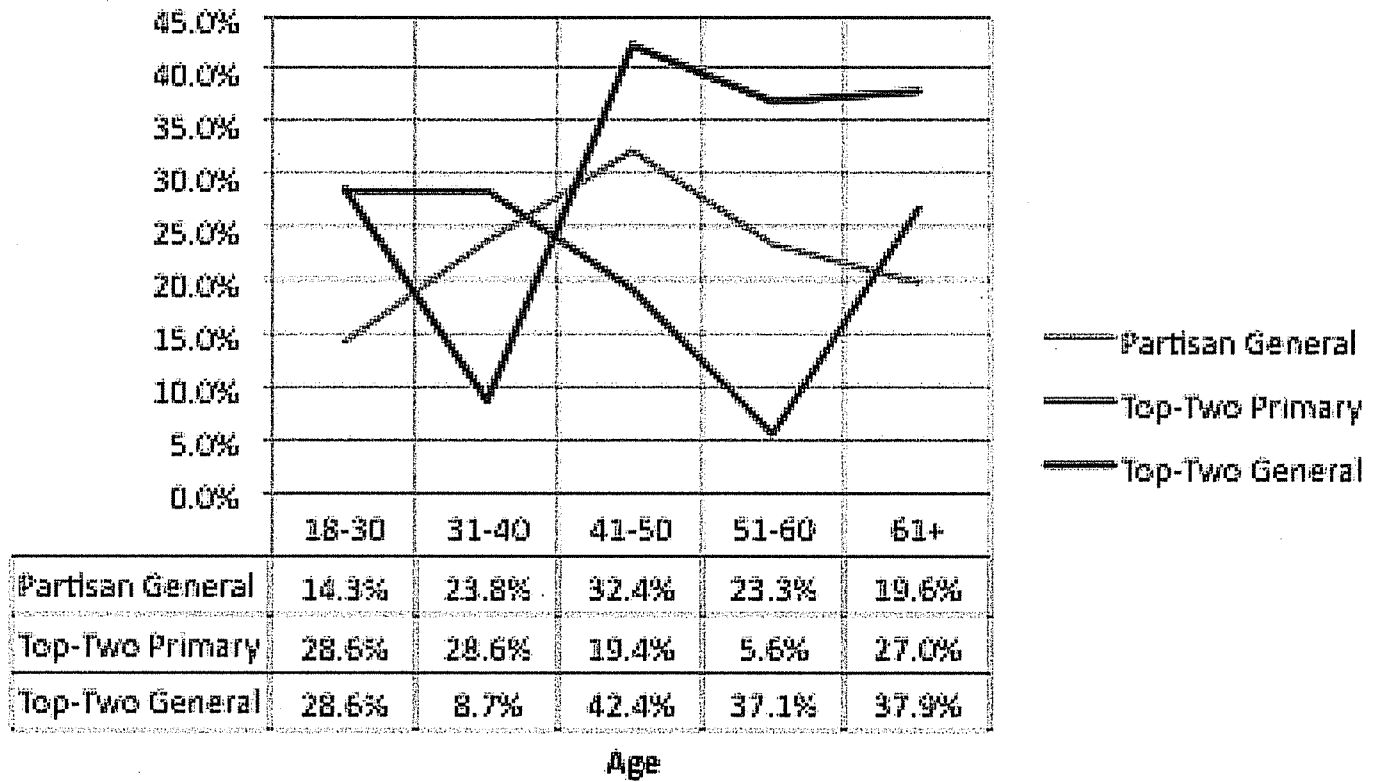
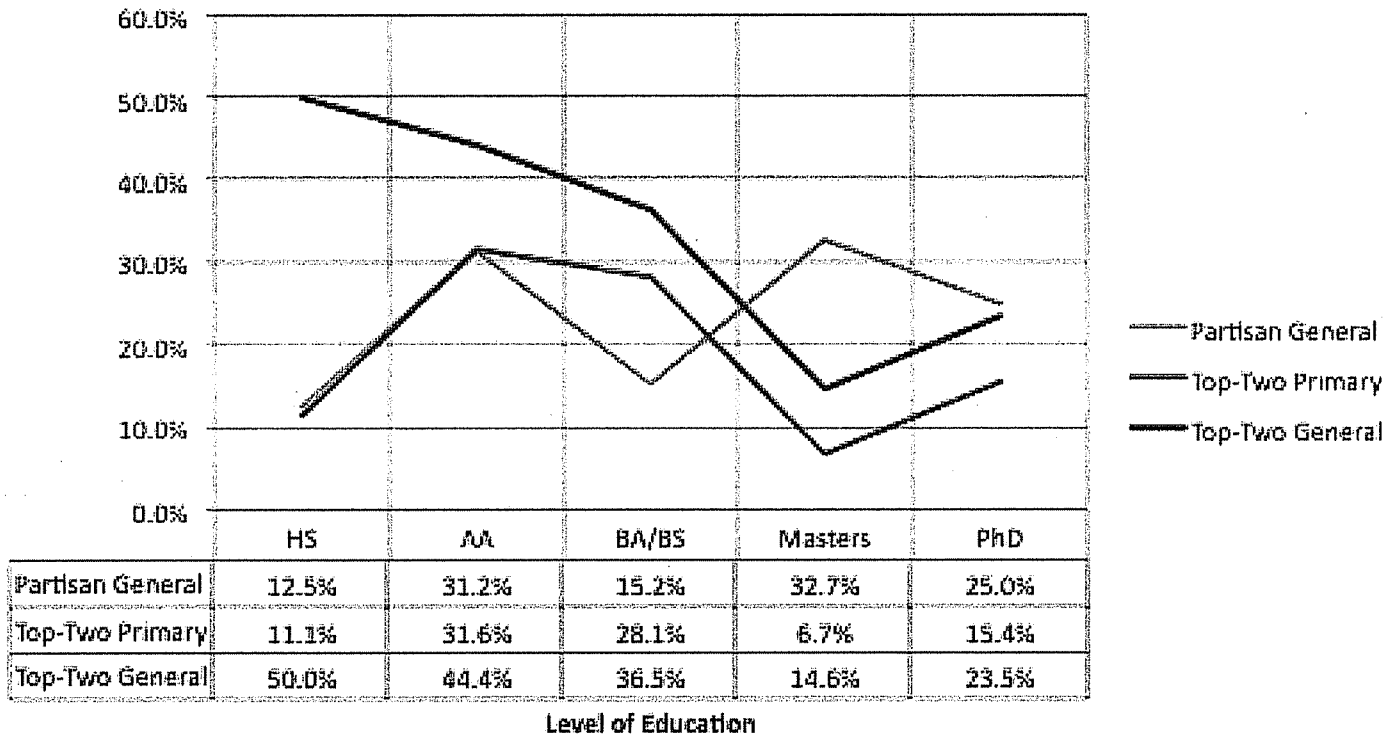
Table 6: Error Rates (Nominee) by Age

Table 7: Error Rates (Nominee) by Education

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¹ First established in *NAACP v. Alabama* (1958), the Court held that the 1st Amendment protected "lawful private interests privately and to associate freely with others... [for the] advancement of beliefs and ideas." Since then, private political parties have sought the same protections granted the NAACP and successfully defended their rights to determine who they will and will not associate with.

² See *Tashjian v. Republican Party of Connecticut* (1986).

³ See *Eu v. San Francisco Democratic Committee* (1989).

⁴ See *Democratic Party v. Jones* (1999). Following the Court's ruling in *Jones*, both Washington State political parties utilized the ruling to invalidate the blanket primary that was being used in Washington State.

⁵ See *Timmons v. Twin Cities Area New Party* (1997).

⁶ See *Clingman v. Beaver* (2005).

⁷ In 2010 California voters will be presented with the option to adopt a top-two primary with Proposition 14.

⁸ The Top-Two primary system is sometimes referred to as the "Louisiana primary" or a "non-partisan winnowing election."

⁹ Except Presidential and Vice Presidential primaries which are governed by federal law.

¹⁰ California followed Washington's lead and adopted a Blanket Primary in 1999 and may follow Washington again if the Top-Two is held constitutional. In 2008, Gov. Schwarzenegger endorsed a California ballot measure to make California's elections non-partisan. Oregon voters, via initiative in 2008, submitted a primary system almost identical to Washington's Top-Two but it failed pass.

¹¹ For example, Senator John McCain did not win a single closed Republican primary in the 2008 presidential election until after Super Tuesday. His delegate lead was solely due to winning open primaries in which independents and Democrats could vote.

¹² See *Democratic Party of Washington State v. Reed*, 343 F. 3rd 1198 (2003).

¹³ Candidates can use up to 17 letters and may identify any party. For example, in the 2008 election some candidates identified themselves "prefers GOP party," "prefers Green Party," and "prefers no party preference".

¹⁴ The language reads "VOTER-PLEASE READ: Each candidate for partisan office may state a political party the he or she prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party of that the party approves of or associates with that candidate."

¹⁵ Participants were limited to examining only one type of ballot to prevent “leaning” during the course of the experiment. If participants were allowed to examine all three ballot types, it would be easy to identify the differences between the ballots and then conclude that the same 8 questions to three different ballot types necessarily elicited three different answers.

¹⁶ Both hypothetical names were male and not overtly ethnic names in order to eliminate gender and ethnicity as a possible factor in explaining different response rates.

¹⁷ The overall N for Tables 5-7 is less than the N reported in Tables 1-4. Tables 5-7 exclude data collected on the newer voters. Because all the newer voters were collected from a university setting, all respondents were essentially the same age (18-24) and had the same education (graduated high school, but not college). At the time, there did not appear to be any reason to collect demographic data on such a homogeneous group of respondents. Later, when data collection opportunities expanded into registered voters and highly active voters, this oversight was corrected, but too late to return to the original body of respondents and collect the missing demographic data.

EXHIBIT 17

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WASHINGTON STATE REPUBLICAN)	
PARTY, et al.,)	
)	
Plaintiffs,)	NO. CV05-0927-JCC
)	
WASHINGTON STATE DEMOCRATIC)	
CENTRAL COMMITTEE, et al.,)	
)	
Plaintiff Intervenors,)	
)	
LIBERTARIAN PARTY OF)	
WASHINGTON STATE, et al.,)	
)	
Plaintiff Intervenors,)	
)	
vs.)	
)	
STATE OF WASHINGTON, et al.,)	
)	
Defendant Intervenors,)	
)	
WASHINGTON STATE GRANGE,)	
et al.,)	
)	
Defendant Intervenors)	

DEPOSITION UPON ORAL EXAMINATION OF NICK HANDY

Monday, August 16, 2010
Olympia, Washington

WHITE (Nick Handy, 8/16/10)

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1 sides would count. So that's an example of where we
2 thought we had a uniform rule, and the canvassing boards
3 took two different interpretations of it, and we learned in
4 the middle of an election that we had an issue.

5 So we responded by developing a voter intent manual,
6 which is a 45-page or 60-page, very detailed book that
7 established how marks on a ballot should be interpreted by
8 a canvassing board to take away whatever discretion existed
9 out there on that.

10 That's kind of a long-winded answer, but that's an
11 example of where we thought we had a uniform standard, and
12 it was being interpreted differently.

13 Q In 2004 did the ballot contain instructions on how to fill
14 it out?

15 A Yes.

16 Q Approximately how many ballots in the 2004 election did
17 voters do something with their ballots other than follow
18 the instructions on the ballot itself?

19 A I don't have that number. I know that King County
20 duplicated, I believe, 90,000 ballots in the 2004 general
21 election. Part of those would be provisional ballots cast
22 where the voter cast their marks on a ballot they weren't
23 entitled to vote their entire ballot on. Some of those
24 would have been damaged ballots. But the vast majority of
25 those would typically be situations where a voter did

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1 something other than perfectly fill in the oval or fill in
2 the box and the tabulator could not then accurately capture
3 the voter's intent.

4 MR. GROVER: Can you read the first sentence of
5 his answer, please?

6 THE COURT REPORTER: Answer: "I don't have that
7 number."

8 MR. GROVER: No.

9 THE COURT REPORTER: Second sentence?

10 MR. GROVER: It's okay. I'll just follow. I'm
11 sorry for interrupting, Counsel.

12 Q (By Mr. White) In 2004 King County was using a
13 Scantron-type ballot?

14 A They had an optical scan ballot system.

15 Q And for how many elections before 2004 had King County been
16 using an optical scan?

17 A I don't know the exact number of years, but it's my
18 understanding that they've been using optical scan for
19 quite a number of years.

20 Q What is involved in the education and outreach program that
21 you mentioned that were part of your duties?

22 A The education -- okay, education and outreach, not
23 certification and training?

24 Q Education and outreach, yes.

25 A Education and outreach. The most prominent responsibility

McDONALD (Nick Handy, 8/16/10)

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1 of the response, and then moving on to the next point, or
2 was it done in some other fashion?

3 A I think that's -- I think that's how it occurred. They
4 moved sequentially through a number of issues.

5 Q Who decided to have the focus group; do you recall?

6 A It was probably -- I don't remember exactly, but no one
7 person in the Elections Division typically made a decision.
8 Everything is collaborative. And I assume our management
9 team talked about this, and we decided that it would be a
10 good thing to do.

11 King County had done a lot of focus groups, much more
12 work than we had, and we always thought that that was a
13 good way -- a good way to go on these kinds of issues,
14 so. . . .

15 Q Did you do a focus group before the Pick-A-Party education
16 process?

17 A I don't think we did, but -- we were pressed on the Top
18 Two, but not like we were on the Pick-A-Party. The
19 Pick-A-Party, the Locke veto went to the State Supreme
20 Court in June, and I think we had a decision in June or
21 July, and we were absolutely on top of the Pick-A-Party in
22 terms of the deadlines that we had there.

23 Q As you understood it, what was the purpose of the focus
24 group in April of 2008?

25 A The purpose of the focus group was to present some

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1 different language choices to the groups to see how they
2 reacted to those. We wanted -- we wanted the voters to
3 understand that these were candidates making
4 self-declarations of what their political party preferences
5 were, and we wanted to have a disclaimer on the ballot
6 itself and a disclaimer in an independent mailing to the
7 voter as well as disclaimers that would be a part of a
8 statewide public affairs campaign that did everything we
9 could to let the voters know that these designations were
10 self-designations by the candidates and did not necessarily
11 affiliate that candidate with the party, nor were these
12 candidates, you know, that the nomination or the
13 endorsement process hadn't occurred by the party. So we
14 were looking for the right language that would help the
15 voters understand that.

16 Q Were you concerned --

17 A And it was really -- it really grew out of a paragraph in
18 the US Supreme Court decision that basically said we, you
19 know, we -- we can conceive of the State administering this
20 Top Two Primary in a way that would be constitutional and
21 would avoid, you know, voter confusion. It would include
22 disclaimer language on the ballot. And so we were looking
23 for the language -- the set of words and the language that
24 would best help our voters understand exactly what was
25 going on with this primary and --

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1 disclaimer, were they not, before they evaluated it?

2 A It sequenced through, so information was parceled out to
3 the focus member groups as we went, and I don't remember
4 the exact sequencing of the parceling out. I think there
5 were certain questions that were given without very much
6 background, and then there would be -- the next sequence
7 says, "Now, if we told you in addition that this, this, and
8 this, then what is your reaction?" Then they would be
9 asked, and then they would be given additional information.
10 Your original description of the parcelling out of
11 information and sequencing through was the process.

12 Q Was there any -- well, strike that.

13 Has there been any testing after the fact of the
14 actual disclaimer used in order to determine whether there
15 has been any confusion?

16 A Not by the -- not by the Elections Division that I know of.
17 There may be as a part of the defense of this lawsuit.

18 Q Are you aware of any that's been done?

19 A I'm not.

20 Q By anybody?

21 A I'm not. Let me just say that I know that the Attorney
22 General's office has retained experts, and I don't know
23 what all is going on there.

24 MR. MCDONALD: Can I have Reed Exhibit 1 or
25 could the witness have Reed Exhibit 1?

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1 people haven't followed the instructions. One of them
2 might be they didn't read them. Another might be that they
3 didn't want to.

4 Q Is it fair to say that you assumed that most people read
5 instructions in connection with ballots, but you don't
6 assume that all people read instructions?

7 A I think that's a fair statement.

8 Q You indicated that there was a voter intent manual of
9 something like 45 to 60 pages. I can't remember what it
10 was.

11 A Correct.

12 Q How many different situations get covered in that manual?
13 Any idea?

14 A I can bring the manual out and show it to you, but every
15 page if it's -- I believe it's in the 40- to 60-page range,
16 this book. It's a substantial book, and each page presents
17 a different kind of a scenario, and so, you know, just off
18 the top of my head I would say that there's 50 or 60
19 different scenarios that are addressed by the voter intent
20 manual. And that's the intent of the manual, is any time
21 we identify a situation, a marking on the ballot, that
22 needs interpretation, we have a statewide committee. We
23 convene the committee. The committee makes a determination
24 as to whether that particular marking should be a vote or
25 not be a vote, and then we amend the manual to update that.

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1 Q Is each of those situations drawn from real life or
2 experience?

3 A Yes.

4 Q Is it fair to say that there appear to be at least
5 somewhere around 50 or 60 situations in which voters have
6 not followed the instructions in connection with how to
7 fill out their ballot and it's occurred frequently enough
8 that it's worth writing a manual about?

9 A Yes.

10 Q Does the Elections Division monitor, in any fashion, press
11 discussion about the Top Two Primary?

12 A Yes.

13 Q And do you have --

14 A I would say not just the Top Two Primary. We just monitor
15 all press activity on anything to do with election
16 administration, but, of course, we read stories about the
17 Top Two Primary.

18 Q Do you have -- by you, I mean the Elections Division -- any
19 program for correcting misstatements about the law by
20 members of the press?

21 A Katie Blinn is particularly active calling voters, calling
22 a reporter, but I will too. If I see that a reporter has
23 made a misstatement or a mischaracterization about some
24 aspect of election administration, I will call the reporter
25 or e-mail them. And Katie will do the same. That's

C E R T I F I C A T E

I, DIXIE J. CATTELL, a duly authorized Notary Public in and for the State of Washington, residing at Olympia, do hereby certify:

That the foregoing deposition of NICK HANDY was taken before me and completed on the 16th day of August, 2010, and thereafter transcribed by me by means of computer-aided transcription; that the deposition is a full, true and complete transcript of the testimony of said witness;

That the witness, before examination, was, by me, duly sworn to testify the truth, the whole truth, and nothing but the truth, and that the witness reserved signature;

That I am not a relative, employee, attorney or counsel of any party to this action or relative or employee of such attorney or counsel, and I am not financially interested in the said action or the outcome thereof;

That I am herewith securely sealing the deposition of NICK HANDY and promptly serving the same upon MR. JOHN WHITE.

IN WITNESS HEREOF, I have hereunto set my hand and affixed my official seal this _____ day of _____, 2010.

Dixie J. Cattell, CSR#2346
Notary Public in and for the State
Of Washington, residing at Olympia.

Concluded at 3:56 p.m.