

Statement on the Supreme Court Decision  
From Dwight Pelz, Chair, Washington State Democratic Party  
March 20, 2008

On March 18, 2008 the United State Supreme Court issued an opinion reversing the summary judgment of the United States District Court in Seattle which had held that I-872 was unconstitutional on its face. The Supreme Court opinion does not hold that I-872 is constitutional. Rather it holds that until the State actually implements the top two primary and provides a ballot design for use under the initiative the question of constitutionality cannot be determined. That is, the Initiative is still vulnerable to “as applied” challenges.

Five of the Supreme Court Justices indicated in their opinion that if the implementation of I-872 creates a risk of widespread voter confusion about whether candidates stating a Democratic preference are in fact the Democratic nominees then the Initiative would be subject to strict scrutiny and thus would almost certainly be unconstitutional. Two of the other Supreme Court Justices indicated that I-872 would be subject to strict scrutiny unless the State implements I-872 in such a manner that “no reasonable person” could be confused about whether a person stating a Democratic preference is a member of, approved by or a candidate of the Democratic Party. The remaining two Justices simply stated flat out that it was impossible to implement I-872 in a constitutional manner.

The Supreme Court also reaffirmed our right to nominate our candidates by whatever process we choose since I-872 removed the requirement that we nominate candidates in a public primary. The Court confirmed, however, that under I-872 there will be no designation on the ballot as to which candidate is our nominee; only an indication as to which party a candidate personally prefers. It remains to be seen whether the form of that preference statement will cause confusion when actually used on ballots. That is one of the “as applied” issues still to be decided by the courts.

Our challenge to the Initiative is still pending in Court. In its 2005 opinion the District Court in Seattle expressly reserved for further proceedings any “as applied” challenges related to the actual implementation of the Initiative.

Because the State no longer requires us to select our candidates in an unconstitutional blanket primary and has indicated that it will not conduct in 2008 the “Montana” style primary that has been in use for the past three years, party organizations should plan on nominating candidates pursuant to the rules adopted by the Washington State Democratic Central Committee in April 2005. These rules generally provide that PCOs will vote on nominations at meetings held prior to May 23, 2008. The nominating process is separate from the current process of selecting delegates for the state and national conventions.