



PHIL McGRANE
IDAHO SECRETARY OF STATE

July 3, 2024

Dear Legislative Council,

I am writing regarding the Top-Four Primary and Ranked-Choice Voting System Initiative recently filed by Idahoans for Open Primaries pursuant to Idaho Code §34-1802(4). While our office is currently verifying the petition certificates indicating the number of qualified signatures on each petition by the county clerks, every indication is that there are sufficient total signatures and signatures by legislative district to proceed to the General Election ballot. As the petition enters this next phase of the process and advances to the voters of Idaho, I feel it is necessary to make you, as members of the Legislature and overseers of appropriations, as well as the other parties involved, aware of some important considerations and potential implications regarding changes to our voting processes being proposed.

As Secretary of State, I serve in two capacities related to this initiative. First is that of the executive branch official charged with overseeing the initiative processes, receiving the filings, and ensuring that all appropriate steps are completed, including putting the proposed amendments before the voters of Idaho. In this role, my responsibility is to protect the people's right to petition and to ensure the processes outlined by the Legislature in Idaho Code Title 34 Chapter 18 are followed. The second is that of the state's chief election officer, pursuant to Idaho Code §34-201. Because this petition specifically aims to amend Idaho's election code and process, my office, in conjunction with the county clerks, will be tasked with implementing the proposed changes. I am writing today in this second role of chief election officer.

Proposed Changes – Top Four Primary Election & Instant Runoff Voting

While the Initiative proposes several amendments to Title 34, Idaho's election code, it ultimately proposes two key changes to our election process. The first is to change the Primary Election process by implementing a "Top Four Primary Election" for the offices of the United States Senate, United States House of Representatives, state legislature, elective state office, or county elective office. In comparison to our current primary election process, where ballots are issued by political party and only candidates for each political party appear on each ballot, in the Top Four Primary Election, all candidates would appear on the same primary election ballot regardless of party affiliation, and the four candidates receiving the highest number of votes would advance to the General Election.

The second is to change the general election process by implementing "Instant Runoff Voting." This is also referred to as ranked-choice voting in the ballot titles. This process would apply to the same offices as the Top Four Primary Election. In comparison to our current General Election voting process, where voters select one candidate among the nominees of each political

party and independent candidates, the Instant Runoff Voting method would allow voters to rank candidates by order of preference and implement a tabulation process involving multiple rounds where candidates with the fewest votes are eliminated until one highest ranked candidate is identified. (Please see the Initiative for more specific details regarding this process.)

Practical and Fiscal Implications

In writing to you, I aim to address some of the practical and fiscal implications of these proposed changes to our election process. Thus far, most of the arguments I have heard, both for and against the Initiative, have been philosophical in nature. There is good reason for this, as the proposed amendments aim to change how voters both engage and participate in the election process and how the final selection represents voters' will in representation for these offices. While some have touched on the practical and fiscal implications, there are a few that I would not expect any non-election official to easily identify, and I want to make you aware of them before submission of arguments and the question being put before voters.

A. Alaska model

In 2020, voters in Alaska approved a similar ballot measure implementing an Open Primary System, where the top four candidates advanced to a Ranked-Choice General Election. This system has been implemented by the State of Alaska and is currently in use. The design of the initiative being proposed here in Idaho is often referred to as the Alaska model. While the details of the text are specific to Idaho's election code, the substantive changes are the same.

To better understand the process and implications, our office contacted and met with the Alaska Division of Elections. While many things were learned, there are a few key takeaways. First, Idaho's 44 county clerks administer elections locally, which are overseen by the Secretary of State for uniformity. Alaska does not have county-level government. The state Division of Elections administers all elections at a state level, which is divided into five regional offices. Other government functions are similarly divided between either a state or municipal level.

Because elections are administered by the state Division of Elections, no additional coordination is necessary between counties to determine the final election results for state, legislative, and other district elections that cross multiple county boundaries. In Idaho, many elections require our office to combine results produced by varying systems, whether hand-counted or machine-tabulated, to determine the outcome of these races and measures.

Similarly, because elections are administered at the state level, Alaska uses only one vote tabulation system for the entire state. Presently, and prior to the implementation of these changes, Alaska uses Dominion Voting Systems. The Dominion Voting System has the capability to produce and tabulate a ranked-choice voting ballot.

Finally, Alaska made note of its voter education and awareness efforts. The state allocated \$3.5 million dollars to educate voters on the new system of voting. When speaking to Alaska's Election Director, they felt they could have used more funding for these efforts.

B. Top Four Primary Election

From an administrative perspective, minimal changes would be required to transition from our current primary election process to the proposed Top Four Primary process at the

county or state level. The same ballot design and tabulation systems could be used, and rather than identifying the top vote-getter for each party primary, the four candidates with the most votes would be identified. In many instances, counties may save money with this process as it would require fewer unique ballot styles by not having separate pre-printed ballots for each political party and non-partisan ballots at each polling location.

While funding a public awareness campaign would be highly recommended, the voting procedure would not change, as each voter still selects one candidate. The awareness efforts would focus on what candidates appear on each ballot and how this would change the process following the primary election. That said, all voters would see all candidates, regardless of party, for any given race, and this would likely be easier for voters to understand as it is currently more common for us to receive questions from voters on why particular local candidates are not on their ballot due to the ballots being by party.

C. Instant Runoff Voting

The changes required to implement the Instant Runoff Voting process for the general election are much more significant. This process has two parts: public awareness and ballot tabulation. The petitioner's Funding Statement notes both areas.

a. Public Awareness

In our discussion with Alaska, they highlighted the need for voter education and awareness efforts. Shifting from selecting one candidate to ranking the preference among four candidates is a significant enough change that it would not be intuitive to all voters. Alaska saw almost every possible permutation of votes cast and had to develop processes and rules for each. While most voters seemed to understand and intentionally ranked candidates or selected a single candidate, Alaska attributed much of this understanding to the awareness campaign they led. In Idaho, we would need to lead a similar voter education effort and would need to ensure that we could reach all voters, both urban and rural. Compared to Alaska, which currently has 594,276 registered voters, Idaho has 1,006,367 registered voters. This would likely require additional funding to achieve a similar awareness effort.

b. Tabulation

The vast majority of votes in Idaho are currently tabulated using a vote tabulation system, while a few smaller counties continue to hand count. Two vote tabulation system vendors, Elections Systems & Software (ES&S) and Hart InterCivic (Hart), are currently certified for use in Idaho. We have consulted with both vendors to determine if their systems could process an Instant Runoff Ballot. Each indicated that their system could design and produce a ranked-choice ballot layout. However, their systems are not currently capable of tabulating the results of these ballots. Each pointed to software provided by a separate non-profit, Ranked Choice Voting Resource Center (RCVRC), that could be used for tabulation.

Any vote tally system used in Idaho must be certified by the Secretary of State and the United States Election Assistance Commission (EAC) pursuant to Idaho Code §34-2409. Idaho has relied upon the EAC certification and testing process to ensure the accuracy and security of the voting systems used in our state. While it appears that the RCTab software provided by

RCVRC has gone through testing, it is not currently certified by the EAC, nor is it in the process of being certified.

The implications of this are that Idaho would either need to change our certifications standards and statutes, which I do not recommend, or transition to a different vote tabulation system that is certified by the EAC and capable of tabulating an Instant Runoff ballot. Our office has consulted with officials at the EAC, and there are currently two vendors with systems that have been certified or are in the process of being certified this fall that can tabulate these ballots. These vendors are Clear Ballot Group and Dominion Voting Systems. Due to Idaho's population and limited market, neither of these vendors has previously sought certification for their systems to do business in Idaho. That would likely change if our state were to seek to transition to one or more of these systems.

Transitioning vote tabulation systems would be a very significant undertaking. Currently, multiple systems are certified and in use from both ES&S and Hart in Idaho. Each county determines what system best fits its requirements and purchases the equipment needed. Without a competitive request for proposal process, it is not easy to estimate the cost of replacing our tabulation equipment. Our office has contacted other states to try. Still, there are too many differences between states to reliably predict what this might cost in Idaho. However, based on previous purchases made by counties, it would likely cost at least \$25M to \$40M dollars to replace the existing equipment throughout the state.

The final consideration regarding tabulation is the coordination between counties. Currently, each county conducts and tabulates its election results and then uploads the final results to the state election night results reporting tool. In order to process the multiple rounds of vote tabulation required by the proposed Instant Runoff Voting process, ballots would have to be centrally aggregated and processed, or ballot image information would have to be electronically shared to tabulate races that cross county lines. To establish the candidate receiving the fewest votes and subsequently eliminated in a round of tabulation, all the votes from each county involved need to be aggregated to ensure the same candidate is eliminated across all involved counties.

During the 2024 legislative session, we added a new provision to Idaho's voting system specifications prohibiting these machines from being connected to the Internet. This change is considered an industry best practice for security purposes and was recommended by an industry expert. This change also likely prevents counties from sharing the needed information electronically. As a result, we would need to develop a procedure to centralize the information required to process the multiple rounds of tabulation. This can be done, but it will take longer to produce initial election results (i.e., it will take longer for the public and candidates to know the winners of races).

D. Fiscal Impact Statement and Funding Source Statement

Given the information here, I feel it is important to address the fiscal impact statement and funding source statement included with the Initiative. Any person or group circulating a petition is required to propose a funding source as required by Idaho Code §34-1804(2). Additionally, Idaho Code §34-1812 provides the Division of Financial Management (DFM) twenty days to develop a fiscal impact statement. This process is relatively new. If you review each of these statements in this petition, you will see that they are broad and vague. The funding source statement generally identifies the same expense areas I have identified here. The fiscal

impact statement is similar but less clear. This is not a reflection of DFM. Our office worked with DFM and made multiple attempts to contact Alaska during the 20-day window to help develop the fiscal impact statement, but we were unable to do so. Much of the information contained here was learned over the past year while the petition was circulating. Additionally, some were subject to potential change over the course of the year.

Since this was a novel proposal that the state had not previously evaluated, the 20-day timeframe for developing the fiscal impact statement seemed insufficient. Further, there is no statutory ability to amend the statement after it has been issued. Having worked through this process, I recommend a statutory change to allow the fiscal impact statement to be amended with new information on future petitions after the completed petitions are filed with the Secretary of State, but before the question is added to the voter pamphlet and goes to voters. This would add greater transparency to the process, and a letter such as this may have been avoided.

Given my dual roles here, I am mindful of my outsized voice in the petition process and elections. My office has received many questions from people on both sides of this issue along the way, many of which we were not initially able to answer. I have tried to ensure we have approached this thoughtfully and done our due diligence. I have confidence in the voters of Idaho, and much like I have advocated during the legislative session for a voter's guide, I want voters to have the information needed to make an informed decision. It is with this in mind that I have written you today.

Sincerely,



Phil McGrane

Cc: Ashley Prince, Idahoans for Open Primaries