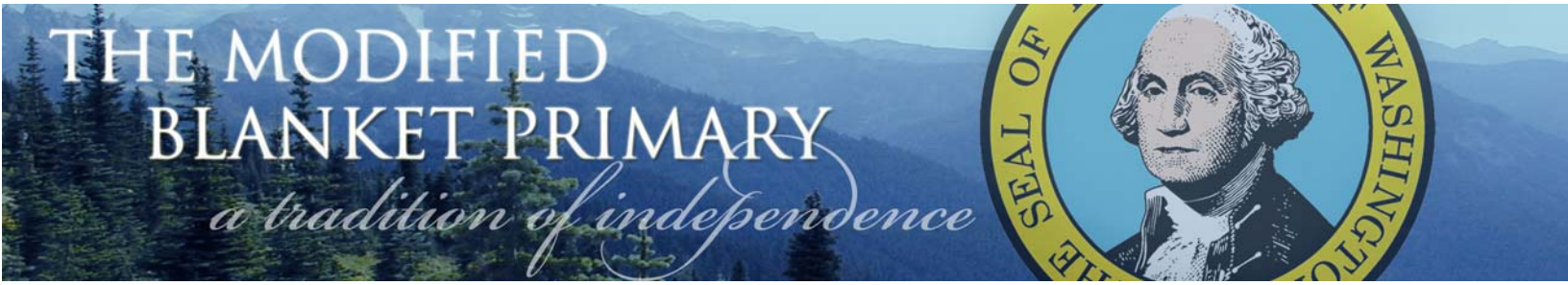

The constitutionality of Reed's proposal

Qualifying (Modified Blanket) Primary
Substitute Senate Bill 6453
House Bill 3177

Office of the Secretary of State
February 2004

According to the United States Supreme Court and the 9th Circuit Court of Appeals, a qualifying (modified blanket) primary is constitutional.

In California Democratic Party v. Jones, 530 U.S. 585-86 (2000), Justice Scalia, speaking for the majority opinion, stated:

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