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**SUPERIOR COURT OF WASHINGTON
IN AND FOR THURSTON COUNTY**

In re: The Ballot Eligibility of Donald J. Trump

No. 24-2-00119-34

FRANKEY ITHAKA, GWYN JOHNSON,
NICHOLAS ROBERTS, SHAYNA HARTLEY,
CONNOR SHELTON, MICHELLE HOWALD,
ROBERT BREM, STEFANIE SHELTON,

Petitioners/Affiants.

**ORDER DENYING PETITION FOR
ORDER TO REMOVE CANDIDATE
FROM PRIMARY BALLOT UNDER
RCW 29A.68.011, DECLINING TO
ADDRESS GENERAL BALLOT
REQUEST AND DISMISSING CASE
WITHOUT PREJUDICE**

THIS MATTER came before the court on January 18, 2024, on the Affidavit of Elector (“Affidavit”) signed by Frankey Ithaka, Gwyn Johnson, Nicholas Roberts, Shayna Hartley, Connor Shelton, Michelle Howald, Robert Brem, and Stefanie Shelton (“Petitioners”). The Petitioners seek an order under RCW 29A.68.011 removing Donald J. Trump’s name from the primary and general election ballots for the office of President of the United States.

The Petitioners appeared through attorney David Seth Vogel, Secretary of State Hobbs appeared through Deputy Solicitors General Karl David Smith and Tera Marie Heintz, the Washington State Republican Party appeared through attorney Joel Bernard Ard, Thurston County Auditor Hall appeared through Deputy Prosecutors Elizabeth Petrich and Karen Alexander Horowitz, and Eric Eugene Crowl submitted an amicus brief.

The Affidavit alleges that Donald J. Trump’s conduct on and after January 6, 2021, disqualifies him from holding public office under Section Three of the 14th Amendment to the United States Constitution.

1 Under RCW 29A.68.011, a judge of the superior court may issue an order requiring an
2 election official to correct an error or desist from a wrongful act with respect to the printing of
3 ballots or the placement of the name of a person on election ballots.

4 For the reasons explained below, the Court denies the requested relief as it pertains to
5 the presidential primary ballot and declines to reach the issue as it pertains to the general
6 election ballot.

7 Absent legislative and executive agreement setting a different date, Washington's
8 presidential primary is held on the second Tuesday in March in a presidential election year.
9 RCW 29A.56.020(1). Accordingly, this year Washington's presidential primary is scheduled
10 for March 12, 2024.

11 In 2019, the Washington Legislature adopted a law amending its procedures for
12 conducting presidential primary elections. Laws of 2019, ch. 7 (SB 5273). It made changes to
13 the presidential primary process and added a new section to chapter 29A.56 RCW giving
14 political parties the explicit right to determine which candidates would be placed on their
15 party's presidential primary ballot:

16 Each [political] party must determine which candidates are to be placed on the
17 presidential primary ballot for that party. The chair of each party must submit to the
18 secretary of state the names of the candidates to appear on the ballot for that party no
19 later than sixty-three days before the presidential primary. Once submitted, changes
must not be made to the candidates that will appear on the ballot.

20 RCW 29A.56.031.

21 Under this statute, the two major political parties were required to submit their
22 candidates by no later than January 9, 2024. The Secretary of State ("Secretary") received the
23 lists of candidates from the Republican Party and certified the candidates, including Donald J.
24 Trump, on January 9, 2024.¹

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28 ¹ The Secretary's certification is available on its website: https://www.sos.wa.gov/sites/default/files/2024-01/Official%20Certification%20of%20Candidates%20Presidential%20Primary%202024%20with%20both%20Major%20Political%20Parties_0.pdf?uid=65a712c32c49b

1 Washington provides a mechanism for electors to bring a court action to seek to require
2 election officers to correct errors or desist from wrongful acts. RCW 29A.68.011 provides, in
3 pertinent part:

4 Any justice of the supreme court, judge of the court of appeals, or judge of the superior
5 court in the proper county shall, by order, require any person charged with error,
6 wrongful act, or neglect to forthwith correct the error, desist from the wrongful act, or
7 perform the duty and to do as the court orders or to show cause forthwith why the error
8 should not be corrected, the wrongful act desisted from, or the duty or order not
9 performed, whenever it is made to appear to such justice or judge by affidavit of an
10 elector that:

11 (1) An error or omission has occurred or is about to occur in printing the name of any
12 candidate on official ballots; or

13 (2) An error other than as provided in subsections (1) and (3) of this section has been
14 committed or is about to be committed in printing the ballots; or

15 (3) The name of any person has been or is about to be wrongfully placed upon the
16 ballots.

17 An affidavit of an elector under this section when relating to a primary election must be
18 filed with the appropriate court no later than two days following the closing of the
19 filing period for such office and shall be heard and finally disposed of by the court not
20 later than five days after the filing thereof.

21 The Petitioners timely filed the Affidavit on January 10, 2024, the day after the deadline
22 for parties to submit their lists of candidates to the Secretary.

23 The Court must harmonize the two statutes at issue in this case, RCW 29A.68.011 and
24 RCW 29A.56.031. The plain language of RCW 29A.68.011 makes clear that the statute does
25 not contemplate an evidentiary hearing. The statute requires that the Court issue a final order
26 within five days of filing. The express language of the statute provides that the error,
27 omission, or wrongful act must be apparent from the Affidavit itself. Finally, the language and
28 context of both statutes are best read to say that the types of errors, omissions or wrongful acts
referred to are errors or inactions by election officials with responsibility for preparing ballots.

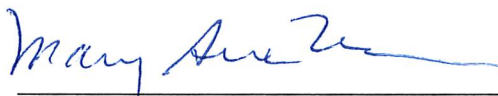
1 The Secretary's responsibility for certifying candidates in the presidential primary
2 process is specifically prescribed. Since 2019, RCW 29A.56.031 has required the Secretary to
3 accept the list of candidates submitted by political parties. "Once submitted, changes must not
4 be made to the candidates that will appear on the ballot." *Id.* Under RCW 29A.56.031, the
5 Secretary has no choice but to accept the candidates named by the major political parties.

6 Based on the application of the statutes to the Petitioners' Affidavit of Elector, the
7 Affidavit does not support a conclusion that the Secretary of State committed an error or
8 wrongful act under RCW 29A.68.011 when he certified the candidates.² Nor does the
9 Affidavit of Elector support a conclusion that county auditors will commit an error or wrongful
10 act when they include Donald J. Trump on the presidential primary ballot.

11 The Affidavit also requests the removal of Donald J. Trump's name from the general
12 election ballot. This request is premature under RCW 29A.68.011. Therefore, the Court
13 declines to address this request.

14 Having addressed all issues presented by the Affidavit of Elector, the Court, HEREBY:
15 Orders that this case is dismissed without prejudice.

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17 DATED: January 18, 2024

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19 _____
20 JUDGE MARY SUE WILSON
21 Thurston County Superior Court

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28 ² HB 2150, (2024) introduced on January 4, 2024, would amend RCW 29A.56.031 to require the Secretary of State to
exclude from presidential primary ballots the names of candidates disqualified from office under the Washington or United
States Constitutions. This may suggest the sponsors of the bill believe that RCW 29A.56.031 does not currently permit the
Secretary of State to take such action.