

STATE OF WASHINGTON
ETHICS ADVISORY COMMITTEE
ETHICS OPINION 20-04

Question:

Per the Secretary of State website

(<https://www.sos.wa.gov/elections/voters/presidential-primary-faqs-.aspx>), “For the March 10 Presidential Primary **only**, the major political parties require voters to choose a party in order to participate in the nomination process...Each major party wrote its declaration and provided wording to the Secretary of State’s Office for ballot materials. Attempts to change the party declaration could result in your ballot not being counted.”

The two party declarations read as follows:

- **Democratic Party Declaration:** I declare that my party preference is the Democratic Party and I will not participate in the nomination process of any other political party for the 2020 Presidential election.
- **Republican Party Declaration:** I declare that I am a Republican and I have not participated and will not participate in the 2020 precinct caucus or convention system of any other party.

Canon 4, Rule 4.1(A)(5) prevents judges from public identification as a member of a political organization, but paragraph (a) of that section does exempt such an identification “as required to vote.” (See comment 6.)

The one ethics opinion listed online regarding “participat[ion] in presidential preference primary,” Opinion 92-04, appears to have been withdrawn 3/3/2011.

(http://www.courts.wa.gov/programs_orgs/pos_ethics/?fa=pos_ethics.dispopin&mode=9204)

Given the strict prohibition on a judge publically aligning with a political party, and the language of the party affiliation declarations required of anyone who wishes to vote in the current March 10, 2020 presidential primary, does the Code of Judicial Conduct, and particularly Rule 4.1(A)(5), allow a judicial officer to sign either of the party declarations required to vote in the 2020 presidential primary?

Answer:

CJC 4.1(A)(5) prohibits judges from publicly identifying himself or herself as a member or candidate of a political organization except (a) as required to vote, or (b) for participation in a precinct caucus limited to selection of delegates to a nominating convention for the office of the President of the United States. Comment [6] to that rule states that judges retain the right to participate in the political process as voters in both primary and general elections.

Effective July 29, 2019, RCW 29A.56.050 was amended to require a voter's declaration of a political party as a condition of voting in the presidential primary for that party's candidate. Those votes are tabulated and reported separately from other votes cast at the primary and may be used by a major political party in its allocation of delegates from this state to the national nominating convention under the rules of that party.

Judges are required to comply with the law and the Code of Judicial Conduct. CJC 1.1. Although marking a box on the ballot has the appearance of endorsing a political party in violation of CJC 4.1(A)(5), the Committee interprets the action of marking a party declaration for purposes of having the judge's ballot count in Washington's presidential primary as acting in compliance with the statute and the CJC. Therefore, in light of RCW 29A.56.050, CJC 4.1(A)(5)(a) allows judges to make a party declaration for the presidential primary.