



South Dakota Legislative Research Council

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DIRECT PRIMARIES AND THE DEMOCRATIZATION OF THE PARTY NOMINATING PROCESS

Introduction

When South Dakota achieved statehood in 1889, slightly over a century ago, the direct primary, which is today considered to be an essential feature of the American democratic system, was a virtually untried political novelty. At a time when almost all nominations for elective office were made in party caucuses and conventions, direct primaries were an obscure and unrecognized experiment in a few counties in Pennsylvania and New England. But, although no state was to adopt a statewide direct primary until after the turn of the century, by 1920 direct primaries were almost universal in America. Few electoral reforms have been so quickly and so universally accepted as the direct primary during the Progressive Era which is generally dated from about 1900 to 1920. And, along with term limits and campaign financing reform, primary reform, especially the enactment of open primaries, retains a high degree of relevancy in the contemporary political debate.

Background

In the highly charged atmosphere of the post-Civil War political system, public attitudes toward political parties were very different from attitudes that prevail today. In the

Midwest, which had borne the brunt of the military sacrifice to preserve the nation, adherence to the Republican Party, the party of Lincoln and union, was almost an article of faith. The Grand Army of the Republic, an organization of unionist army veterans, was the most powerful political institution in the Midwest and closely linked to the Republican Party. Membership in the Democratic Party, which was, at that time, identified with the unreconstructed South and with the anti-war copperheads of the eastern states, was widely viewed as perversely peculiar if not downright unpatriotic. Moreover, at a time when most government jobs were at the disposal of the spoils system, membership in the minority party foreclosed most opportunities for public employment.

Although South Dakota entered the Union solidly Republican (the primary impetus for admitting North Dakota, South Dakota, Montana, and Washington within the brief span of just nine days in November 1889 was to secure fourteen additional "safe" Republican electoral votes for the reelection of President Benjamin Harrison who had barely defeated Grover Cleveland and the resurgent Democrats in 1888 in one of America's tightest presidential contests), political dissent was growing rapidly. Low farm prices due to business failures in 1879 and 1893 spawned

severe economic distress and political dissatisfaction among the homesteaders and immigrants of the upper Midwest. This populist revolt expressed itself nationally in the nomination of William Jennings Bryan of Nebraska in 1896 with a pledge of free coinage of silver. In South Dakota, Henry L. Loucks launched the Farmer's Alliance which entered politics as the Independent Party in 1890 and transformed into the People's Party in 1892 with a platform of banking and railroad reform, free coinage of silver, and direct democracy in the form of the initiative and referendum, the recall, and the Australian ballot. Although the People's Party elected Andrew Lee to the office of Governor in 1896 and 1898, it proved to be a regional movement with little staying power. In the long run, its most significant impact on South Dakota's political environment may have been its contribution to the strengthening of a reform faction within the state's dominant Republican Party, led by our first great populist leader, Richard F. "Silver Dick" Pettigrew of Sioux Falls who would subsequently challenge A.B. Kittredge and the "Stalwart" faction for control of the Republican Party during the state's first twenty years of statehood.

As populism receded, it was largely subsumed by a "progressive" movement in the national Republican Party under the leadership of Theodore Roosevelt, Robert LaFollette, and Albert B. Cummins. The Progressives freely admitted the necessity for sweeping economic and political reforms including, after LaFollette's success in Wisconsin in 1903, the implementation of direct primaries to replace party caucuses and conventions. Coe I. Crawford, who had inherited the mantle of R.F. Pettigrew to become the leader of the Progressive faction in South Dakota, seized the issue of the enactment of a primary election law as a weapon in his war against Kittredge's

Stalwarts. In 1904, after failing the defeat of the Stalwarts in the state convention, Crawford joined forces with Richard O. Richards of Huron, a fiery enthusiast for the "Wisconsin Idea," to form the Republican State Primary League. After LaFollette toured South Dakota on the Chautauqua circuit in 1905, a statewide "Roosevelt League" was formed. By the time the state Republican convention convened in June 1906, the Progressive movement was irresistible, sweeping the Stalwarts from power and nominating Crawford for Governor. The Progressive majority in the 1907 Legislature quickly enacted a direct primary law.

Although the 1907 law, which was closely modeled on Wisconsin, satisfied the Progressive agenda, it was not radical enough to suit Richards, who almost immediately began agitating for a complicated, innovative primary system which came to be known as the Richards primary. Generally popular with the voters, the Richards primary contained many novel and sometimes exotic provisions such as mandatory public joint candidates' debates, requirements that candidates select and address "paramount issues," and "endorsement" primaries for postmasters and appointive officials. Few of these provisions found much support in the Legislature, however, even among the progressives. Although some of its provisions were enacted by initiative in 1912, many were subsequently amended or repealed by the Legislature. In 1918, Richards again initiated his primary law, this time in a definitive thirty-nine page version, which was approved by the electorate by a vote of 47,891 to 34,705. In the election of 1920, Richards challenged then Governor Peter Norbeck's Lieutenant Governor William H. McMaster for the Republican gubernatorial nomination. McMaster, himself a Progressive, debated Richards sixteen times during the primary, as prescribed by statute, which was

the only election ever held with most of the important Richards primary provisions in place. Shortly after assuming the governorship in 1921, McMaster began a piecemeal dismantling of the Richards primary law. By 1929, the remaining provisions were replaced by a traditional closed primary system which has continued with only minor modifications until the present time.

The Evolution of Open Primary Systems

If the momentum of primary electoral reform flagged in South Dakota after the tumultuous and extended debate over the Richards primary, which was a dominant political theme from 1904 to 1929, many other states continued to experiment with the primary as a means of responding to the changing American political scene. Throughout the twentieth century, three pervasive trends have repeatedly provided an impetus for adjustments to the political primary system.

First of these is the weakening of party loyalties. With the decline of regionalism and the introduction of civil service reform, political parties lost much of the leverage that they had used in the nineteenth century to command party loyalty. Fewer party faithful could be counted on to support inferior party candidates, and ticket-splitting came to be seen as a mark of independence and good citizenship rather than disloyalty to the party.

Secondly, political realignments caused by industrialization, the Great Depression, the civil rights movement, and the mass migration of laborers to the West Coast and the New South destroyed the one-party political systems that prevailed in most states at the turn of the century. In a legitimate two-party election, the swing-voter and the independent acquire far more influence because their votes more often

determine the outcome of the elections. Political parties are forced to spend more time courting nonparty voters and have less time and fewer resources to reward party loyalists.

Finally, voter participation has persistently and dramatically declined. As party membership lost significance due to the inability of the party to confer jobs or prestige on party members, committed membership slumped. As both parties intensified their appeals to the moderates and independents, many of the parties' defining positions on critical issues were gradually blurred and homogenized. As the parties began to exhibit fewer distinctive characteristics, many voters came to feel that there was little point in voting because the parties were becoming basically the same.

Political theorists attempted to respond to these highly significant trends. One point of attack was to suggest that primaries should be opened and made more democratic to provide a new incentive for the independent voter, the abstaining voter, and even the inactive party voter to return to the polls. If primaries could be opened to these growing and increasingly important classifications of the American electorate and if primaries could be given a more critical and decisive role in the electoral process, reformers believed that the public could be attracted back to traditional political activity.

Types of Open Primaries

Four types of primary elections are generally recognized by political scientists as existing in America today. These are the closed primary, the open primary, the blanket primary, and the nonpartisan primary. These all vary somewhat from state-to-state and, although relatively pure models do exist, it is increasingly common for distinctions to blur their

boundaries. Some academics consider the nonpartisan primary to be nothing but an extreme manifestation of the

STATE PRIMARIES

Closed:

Completely	Arizona, Connecticut, Delaware, Florida, Kentucky, Maryland, Nebraska, Nevada, New Mexico, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, South Dakota, West Virginia
Partially	Colorado, Iowa, Kansas, Maine, Massachusetts, New Hampshire, New Jersey, Ohio, Rhode Island

Open:

Partially	Alabama, Arkansas, Georgia, Illinois, Indiana, Mississippi, Missouri, Tennessee, Texas, Virginia, Wyoming
Completely	Hawaii, Idaho, Michigan, Minnesota, Montana, North Dakota, South Carolina, Utah, Vermont, Wisconsin

Blanket

Alaska, California, Washington

Nonpartisan

Louisiana

blanket primary, and registration provisions are so lenient in certain closed primary states that they are sometimes called “partially open” primaries. In addition, there have been serious proposals which as yet have not been enacted in any state which have been designated as “hybrid” primaries. Although experience varies greatly from state to state, the most common features of each type may be summarized fairly easily.

Closed Primary. The closed primary is the oldest and still the most prevalent form of direct primary. To participate in a closed primary, the qualified voter must declare a party preference prior to the primary election. This is usually accomplished by registering with the county auditor, secretary of state, or some other election officer. In a completely closed primary, registration must occur prior to election day. In South Dakota, which is a

closed primary state, the registration must occur fifteen days prior to the election (SDCL 12-4-5 and 12-6-26). This time period varies from state to state. In nine states, some voters may, under certain circumstances, which again vary widely from state to state, declare a party preference, or, in effect, register or reregister, on election day. These nine states are generally referred to as partially closed primaries. The other sixteen closed primary states are referred to as completely closed primaries. However, in either case, the primary voter must publicly declare a party preference, will receive only the ballot of the declared party, and may not vote for any other party’s candidates at that primary.

Open Primary. Twenty-one states have open primaries. The critical difference between a closed and an open primary is that the voter need not register as a member of any party as

in a completely closed primary or even publicly declare a preference as in most partially closed primaries. Open primaries are themselves generally divided into partially open and completely open categories. Although there are again significant differences from state to state, in the eleven partially open primary states, the voter must select one party's ballot upon arrival at the polling place. This does not constitute registration as a member of that party. Sometimes the voter's selection becomes a public record; sometimes it does not. Party poll watchers would, however, know the voter's name and the ballot the voter selected. In the ten completely open primary states, the voter is given all of the parties' ballots. In the seclusion of the voting booth, the voter decides which ballot he or she wants to vote; the choice is private. Only that one ballot will be accepted by the election official. The other ballots are returned unused or are disposed of.

Blanket Primary. The blanket primary is far more "open" than what is traditionally called the open primary. At present, only two states, Washington and Alaska, have blanket primaries. However, on March 26, 1996, California voters approved an initiative, Proposition 198, which, when implemented by legislation, will probably constitute the nation's third blanket primary.

In a blanket primary each qualified voter receives only one ballot which lists the names of all candidates who are seeking the nomination of any party for any office. The voter may vote for one candidate for each office and is not restricted to voting for the candidate of just one party. However, if two or more parties have a contested election for the nomination to a single office, the voter may vote for only one candidate. If the voter votes for more than one candidate for the same

office, the ballot is spoiled and invalid.

No type of primary has been subject to as much criticism or as many legal challenges as the blanket primary. However, Washington has utilized the blanket system successfully since 1935. In fact, the blanket primary is often called the "Washington system." If California proceeds to implement a true blanket primary pursuant to Proposition 198, the blanket primary is likely to receive a lot of renewed attention in the next few years.

Nonpartisan Primary. In 1975, Louisiana took the blanket primary one step further by, in effect, merging the primary and general elections. The characteristic difference between the "Louisiana system" and the "Washington system" is that if any candidate for any office receives a majority of all of the votes cast for all of the candidates for that office, that candidate is declared elected and there is no election for that office in the general election. Moreover, if no candidate receives a majority of all of the votes cast for all of the candidates for that office, the two candidates with the highest vote totals, not the two candidates with the majority of their respective parties' votes, contest the office in the general election. The general election becomes, in effect, a run-off election. Thus, for example, if candidates A, B, and C, all Democrats, and candidates D and E, both Republicans, run for the gubernatorial nomination, and they receive 30, 25, 15, 20, and 10 percent of the vote respectively, candidates A and B, though both Democrats, will face each other in the general election, and the two Republicans along with the third Democrat will be eliminated.

The nonpartisan primary would probably have received more attention and criticism but for the fact that it is unique to Louisiana, and

Louisiana is unique to the nation. During the 1970s, Louisiana was a one-party state, still dominated by the corrupt political machine of Huey Long, where the only real political division was between New Orleans and the bayous on one hand and the upstate hill country on the other. Critics have also alleged that the nonpartisan primary was a brazen attempt to submerge the emerging Afro-American vote. Today, Louisiana is evolving into a very different political environment with a competitive Republican Party and a politically-active Black constituency. As a result, many Louisianans are expressing concern about the continuing utility of the nonpartisan primary.

Hybrid Primary. Currently no state employs a hybrid primary, but it was seriously considered in Oregon in the late 1970s. Oregon would have given independent voters the right to vote in the primary of the political party of their choice without reregistration. As such, this Oregon hybrid proposal would have been neither a truly closed nor a truly open primary. Political support for the hybrid primary ultimately foundered on concerns about constitutional questions, including the First Amendment right of association and the Fourteenth Amendment right to equal protection.

Party Primaries in the Twenty-First Century

In 1996, the South Dakota Legislature enacted its most significant primary election law reform since the repeal of the Richards primary statute. House Bill 1014 was introduced by the Committee on Local Government at the request of the Secretary of State and passed unamended with only seven dissenting House votes and three dissenting Senate votes. It provides that:

Any political party in its constitution or bylaws as filed pursuant to § 12-5-1.1 may allow for participation in the party's primary elections by any person who is registered to vote with no party affiliation.

As such, it is clearly distinguishable from both the open and hybrid systems described above and yet attempts to accomplish certain of the goals of each. The state, by the passage of HB 1014, encourages and facilitates the participation of independent voters in closed party primaries. This gives the political parties the opportunity to reach out to nonaffiliated voters in a new and significant way. It also encourages and facilitates the participation of nonaffiliated voters in an important aspect of the election process. The state of Connecticut has successfully implemented similar provisions.

The possibility of attracting more independent and unaffiliated voters to participate in the nominating process has been the main reason cited for the significant shift from completely closed to more open primaries during the past twenty or so years. Few would argue that, to the extent that open primaries permit independents and unaffiliated voters to vote, they do contribute to a better turn out. That may also be reflected in a better general election turnout since studies indicate that independent voters who support a candidate at a primary election are likely to also turnout and vote for that candidate at the general election.

In the early nineteen hundreds, reformers viewed direct primaries as the most effective means of weakening party hierarchies that were widely considered to be too powerful. In contemporary America, political parties

exercise only a small percentage of the influence that they possessed a century ago. Today, consequently, many political scientists feel that political parties have become too weak to effectively fulfill their role in the political system and should be strengthened. Those who advocate the continued opening of the primary process believe that greater civic participation is more important than arresting the decline of the political parties.

The fact that, increasingly often, political offices are uncontested at the general election is another argument for open or blanket primaries. Too frequently the primary is the election at which the decisive contest takes place. Those who cannot vote in that primary contest are effectively disenfranchised.

Opponents of liberalizing the primary system often contend that open primaries promote raiding. Raiding occurs when members of one party vote in the opposing party's primary with the hope of nominating a weak candidate who might be more easily defeated by their party's candidate in the general election. Although raiding can occur by means of reregistration even in a closed primary, the threat is obviously greater in a more open primary. There is, however, little evidence to confirm the existence of raiding in the academic studies that have been conducted in an attempt to determine the extent to which it actually happens. Voters who take the trouble to support a candidate of an opposing party in a primary generally seem to do so out of a genuine preference for that candidate and usually go on to support the same candidate in the general election.

Adherents to the closed primary system often maintain that a political party represents a community of interests and that preservation of this community depends on the ability of the party to limit participation to individuals who are committed to those beliefs. That argument was more forceful in nineteenth century America than it is today. In modern American elections, success is generally achieved by appealing to uncommitted or independent voters or even swing voters from the opposing party. American political parties have little to gain from exclusivity, and the best tactic for winning elections is to appeal to broad, even if shallow, public support.

Conclusion

How open any direct primary election should be in order to promote the best interests of good civic government is a very subjective determination. Clearly, there are no compelling legal arguments favoring adoption of any particular closed or open primary system. Proponents of open systems point primarily to the benefits of attracting the growing numbers of dissatisfied citizens back into the system. Defenders of closed systems correctly maintain that even the most completely closed primary is open to anyone who is willing to register or reregister. The degree of flexibility which exists in all of the American primary models--closed, open, blanket, nonpartisan, and hybrid--probably accounts for the fact that primary reform has seldom been a major political issue since the nationwide conversion to the direct primary was accomplished in the 1920s.

This issue memorandum was written by Reuben D. Bezpaletz, Chief Analyst for Research and Legal Services for the Legislative Research Council. It is designed to supply background

information on the subject and is not a policy statement made by the Legislative Research Council.
