



ELECTION LAW REVIEW AND UPDATE

Part 2: Primary Elections

ADOPTED BY LWVPA STATE CONVENTION, JUNE 7, 2015

**Deadline for Local Leagues to submit consensus question responses:
December 1, 2017**

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LEAGUE OF WOMEN VOTERS OF PENNSYLVANIA ELECTION LAW REVIEW AND UPDATE

As recommended by the State Board, delegates to the June 2015 State Convention voted to approve the following update:

“Review and update Election Laws Positions, focusing specifically on apportionment and redistricting, election procedures, registration requirements, alternatives to closed primaries and alternatives to ‘winner take all’ election systems.”

Rationale for recommending the update:

“While both LWVUS and LWVPA have positions on many aspects of election law, there are many areas of concern not adequately addressed by either. It is unclear when our current Election Laws position was adopted. Some changes have been made in recent years including the addition of a ballot access position, a position supporting voter verifiable paper ballots as the official ballot, support for no excuse necessary absentee voting and dropping our support for the closed primary. However, the rationale behind many of the other positions is unclear, making it difficult to lobby in their support. Over the past decades there have been many changes in registration and voting technology and election administration which suggest that a comprehensive review of our present position is needed.”

Following the Convention, the Board formed an Update Committee to prepare materials for Local Leagues to use in preparing their members for participation in and arriving at consensus. First, the committee reviewed the current LWVPA positions, as presented in *Where We Stand*, the LWVUS position as presented in *Impact on Issues*, and various other LWVUS and LWVPA documents. This included testimony presented at the national and state levels.

The committee found that existing materials already covered well most of the issues presented for review and update. Knowing that LWVPA could take action at the state level, based on national positions, the committee narrowed the scope of the study to 25 topics grouped into four broad categories.

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In reviewing these materials, members might want to remember these principles.

- The League of Women Voters believes that voting is a fundamental citizen right that should be guaranteed.
- Elections should be accessible, transparent, fair, and secure.
- Voters should have meaningful choices when they go to the polls.
- Election policies should aim to achieve universal voter participation.
- Access to voting should be barrier-free.
- Every vote should count, and every vote should matter.
- Outcomes should reflect the values and opinions of all Americans.

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4. [Primary Elections](#)

Why do we have primary elections? They were not always a part of American politics: Until the early 20th century, political party power brokers – the traditional smoke-filled backroom – chose the nominees, not the wider range of that party’s membership. Pennsylvania has a long history of utilizing the direct primary procedure, with some counties employing this method of selection even before the Civil War, although it was a strictly local initiative and not a statewide practice. The greater change was part of the late 19th and early 20th Century Progressive Movement to make the election process more democratic. Pennsylvania authorized the direct primary system in 1912 for the presidential race and in 1914 for both federal and statewide elections.

Even after adoption of the direct primary system, primary elections were still mainly the concern of party regulars, not of the average voter, especially in presidential races. The 1960s and 1970s saw a change in the public’s attitude regarding the role of political conventions. There were several contentious Republican conventions during that period. The 1968 Democratic convention in Chicago was not merely contentious, but resulted in violence, observed by American voters through television and the press. Today, some observers feel that the system of primary elections only serves to make politics more polarized as, at least until 2016, it was often only a party’s more strident and extreme members who voted.

As noted by the [Primer on Primaries](#), issued by the National Conference of State Legislatures, determining when and how to hold primary elections often puts partisan political considerations front and center. However, there are other considerations.

It is up to state legislatures to establish rules and procedures for selecting candidates to run in general elections, taking federal requirements, voter needs, and costs into account. These ground rules are always subject to change. Within the past five years, over 40 states have seen the introduction of more than 130 bills proposing changes to primaries. Currently, primaries use a variety of systems. Some states even employ different formats in presidential and non-presidential years.

Primaries categories can include open, closed, or somewhere in between. In this study, references to political parties implies one of the nation’s two major parties, Republican and Democratic.

Closed primary

In a closed primary, only those voters registered with a political party can vote in the primary for that party. This is the current system for primary elections in Pennsylvania. Eleven states use this primary election system.

Open primary

An open primary permits any registered voter to vote in a primary regardless of his or her political affiliation. However, open primaries can take several, possibly confusing forms. In one form, voters may receive a primary ballot without ever declaring a party preference. Another common option allows a registered voter to choose a party at the polling place on primary day.

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This second variant permits crossover voting: e.g., a Democrat can crossover and cast a vote in a Republican primary, or vice versa. Ten states currently use this system.

Variations on the open primary

To complicate the issue, twenty-five states use either semi-open or semi-closed primary formats. In the semi-open primary, unaffiliated voters may participate in either primary. However, they must either publicly declare their ballot choice at the time of the primary or their ballot selection may become a *de facto* form of registration with the ballot party selected. Some states accept the request for a party's ballot as a public declaration, while a few states actually require voters to state their preference aloud in the presence of all in the polling location.

In a semi-closed primary, party members may only vote in the primary for their own party. Unaffiliated voters may have access to a party's ballot, at the discretion of the state party organization.

Blanket primary

All candidates for each office, from all parties, appear on the ballot. Voters select their choice for each office, with no restriction to one party or another. Thus, a voter could choose a candidate from one party for one office and a candidate from another party for another office. The top vote getters from each party then advance to the general election. Washington State used this system from 1936 to 2003.

California had also adopted it. The political parties legally challenged it several times. Then, in 2000, the [United States Supreme Court](#) declared it unconstitutional, under the U.S. Constitution's First Amendment Freedom of Association clause, saying that parties had the right to select their candidates.

Top two primary

Four states use some form of the top two primary system, although only for state and local elections, not for presidential races. The ballot lists all candidates for each office from all parties. Voters may choose any candidate from any party in any race. Based on the vote tallies, the top two vote getters, regardless of their party affiliation, are the candidates on the slate for the general election. These candidates may be from the same party. This is sometimes called the modified blanket primary. The top four primary simply increases the number of candidates who move on to the general election.

The map and tables in Appendix I summarize the type of primary that each of the 50 states and the District of Columbia uses. Appendix II does this for the four major variations, described above.

Pennsylvania Primaries

Pennsylvania has a closed primary system. To participate, voters must register with one of the two major political parties (Democratic or Republican) at least 30 days before the primary. Minor parties generally are not able to participate in the primary system. The taxpayers, regardless of

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party affiliation status, pay most of the cost of holding primaries in each of the state's 67 counties.

Delegates to the 2013 LWVPA Convention voted to drop its position in favor of closed primaries for the following reasons:

- Fairness. Under Pennsylvania law, only the Democratic and Republican parties usually qualify to participate in the primaries. State and county tax dollars fund the primaries; therefore, it is unfair to preclude participation by voters who do not want to register with either party.

- Cross filing. Any Pennsylvanian running for a commonwealth judicial office or for a position as a director on school board may file and submit petitions to appear on the primary ballot for both the Democratic and Republican parties. This is cross filing.

Cross filing is unique to Pennsylvania. LWVPA has a position supporting cross filing in school board elections, as opposed to an alternative: making these elections nonpartisan. With cross filing, the primary election decisions may completely determine the election process outcome, cutting potential minor party and independent candidates out of the decision altogether.

Independent and minor party candidates could try getting on the General Election ballot, to include all voters in the choice. However, they would have to overcome Pennsylvania's restrictive ballot access rules.

- Impact on candidate behavior. Conventional wisdom suggests that closed primaries lead candidates to cater to strong partisans. In turn, these voters are also most likely to vote in the primary.

Whether the move-to-the-extreme effect is real, a competitive general election should encourage greater voter participation. This would push serious candidates to take positions more representative of the general population.

If a district is uncompetitive, because of geography or gerrymandering, candidates have no incentive to move toward the mainstream of registered voters in the district. The anticipated result of closed primaries is legislative bodies composed of extreme partisans, unwilling to compromise for fear of retribution in the next election cycle.

There are additional problems with closed primaries specific to Pennsylvania.

- Ballot questions. The primary ballot may include questions and referenda. Voters, unaffiliated with either major party, may vote on the questions. However, this option is difficult to explain, and many voters do not bother to vote just for ballot questions.
- Special elections. When a vacancy occurs in an office, party leaders have the option of filling the vacancy in a special election held at the same time as the primary. Again, it is difficult to explain to unaffiliated voters that they can go to the polls just to vote in the special election. The party in power sometimes strategically schedules special elections to occur separately from a regular primary, according to how well its leadership believes their favored candidate will fare. Separately scheduled special elections mean added taxpayer costs.

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The following tables summarize arguments for and against closed primaries. Within these charts, open primaries also includes semi open and semi closed primaries as well as the top two/top four format (see Alternative Elections/[Runoffs](#)).

Closed Primaries—Potential Advantages	Open Primaries—Potential Advantages
Discourage strategic votes that set up weak candidates of another party or select candidates not representative of the party's positions	Favor all voter wishes over registered party voters' desires as candidates reflecting the views of a broader range of the electorate may be more successful
Encourage participation by all party activists	Encourage participation by independents and third parties who do not run their own primaries
Party nominees are believed to lead to stability and representation of the wishes of party members	Guard confidentiality about party affiliation and protect voter privacy
Protect the right of free association	Can spur new, moderate coalitions; can protect against rigid ideological orthodoxy
For the Commonwealth of Pennsylvania, requires no change in the election system	Preserve the right of political parties to endorse candidates
	May produce competitive, substantive general elections
	The major political parties will not control the primary election process
Closed Primaries—Potential Disadvantages	Open Primaries—Potential Disadvantages
May discourage registered Independents and members of third parties from participating, at least in the primaries	May discourage engagement by core political party activists and people who believe in the principles espoused by a political party
Given the political makeup of some voting districts, may account for low voter turnout in general elections, as voters see the primary as the actual election	Nominees who have stated a party preference may have beliefs inconsistent with party views
May encourage extremism on both left and right	May require changes in procedures, particularly if Pennsylvania were to move to a truly open primary with all candidates from all parties on one ballot
Tends to support two-party systems and discourage minority party and Independent candidates	Extreme candidates could win or crowd out moderates since a large number of candidates could split votes to the extent that top vote getters could advance with relatively few votes from partisan voters

One potential advantage of the top two format is that voters could still have a choice between candidates representing different parties in the general election, even in districts with a single

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dominant party. However, this method does not prevent sending only candidates from one party on to the general election.

One of the problems, often cited in favor of closed over open primaries, is strategic voting. Adopting an alternative election system, such as instant runoff voting for single winner elections, could mitigate this problem in Pennsylvania (see [Alternative Elections/Runoffs](#)).

An example is the 2016 Primary, when three or more candidates ran in the primary for the Democratic Party's nomination for Attorney General and U.S. Senate. Instant runoffs maximize the chance that the ultimate winner has the support of more than half the voters. Some have suggested that instant runoffs in the 2016 Republican Party primaries would have eliminated some of the numerous candidates early on.

A second voting option can mitigate the problem with closed primaries, created by the Pennsylvania system of allowing candidates to cross-file for certain offices. This would employ a party-neutral ballot, one open to all those eligible to vote in each primary, as currently occurs when the primary election includes ballot questions.

- For districts that use paper ballots, create an additional ballot listing only candidates for offices that permit cross-filing and for ballot questions.
- For districts that use electronic voting, modify software to create an additional ballot listing only candidates for offices that permit cross-filing and for ballot questions.
- For districts that use mechanical voting machines, add a paper ballot option, listing only candidates for offices that permit cross-filing and for ballot questions.

Primaries and ballot access for minor parties and independents

In Pennsylvania, only the Democratic and Republican parties currently meet the criteria necessary to qualify automatically for participation in primary elections. Minor party and independent candidates can run in the general election only by collecting a sufficient number of signatures on nomination papers.

Nominations papers must obtain signatures from electors of the district equal to at least two percent of the largest entire vote cast for an elected candidate in the last election within the district. Note that the signer must only be a registered elector, including registered Democrats, Republicans, a member of a state recognized minor party, or no party.

The number of required signatures to get on the ballot for a statewide office, such as governor or attorney general, will differ from the number required to get on the ballot for a local office, such as mayor. In either case, the number of required signatures is often prohibitively large. LWVPA believes that the number of signatures required should be the same for all candidates for the same office, whether for the primary or the general election.

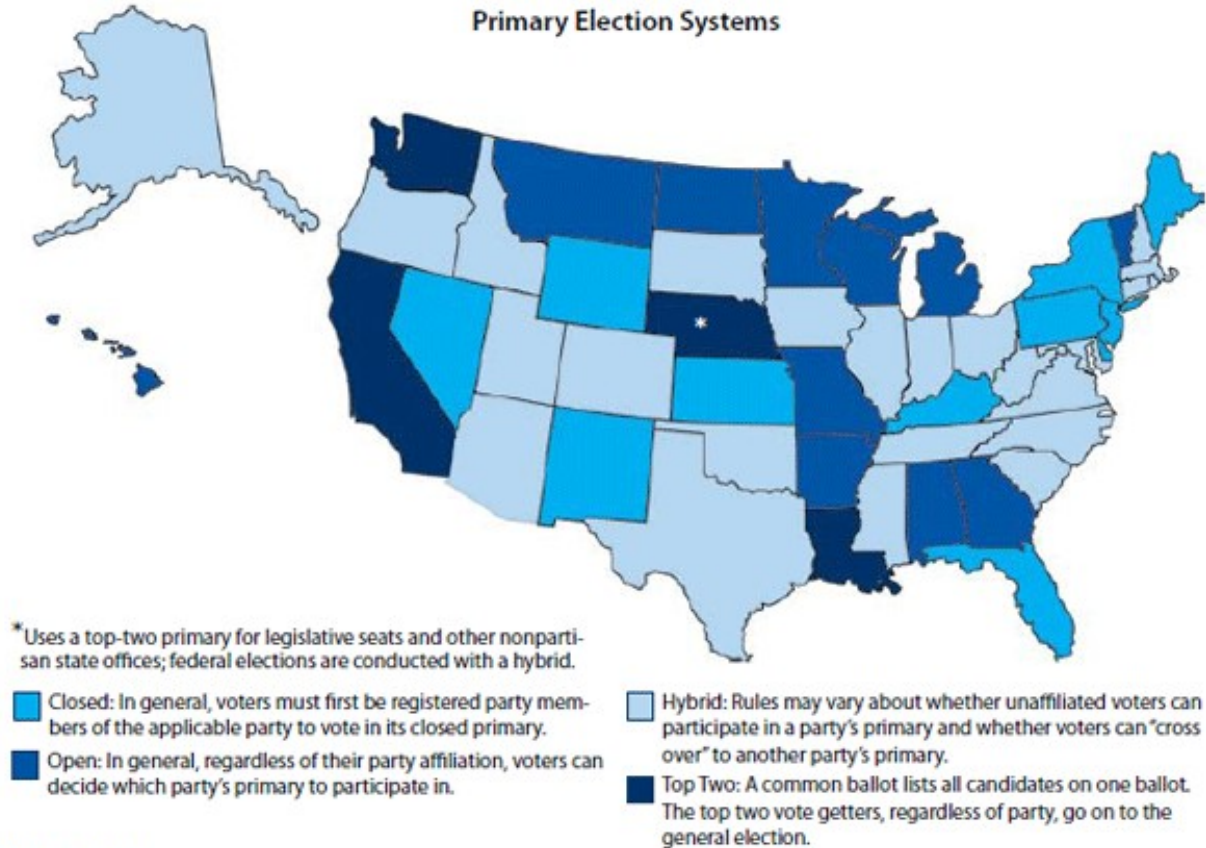
Reducing the barriers for a place on the primary ballot would increase the chance for minor party and independent candidates to appear on the ballot in general elections. In turn, this should increase voter participation in both the primary and the general elections, by eliminating the required affiliation with either dominant party to vote in the primary. In this case, under the LWVPA position, the number of required signatures should be the same for all candidates.

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Appendix I Primary Election Systems



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Appendix II

Types of Primary by State¹

(States in **boldface** practice partisan voter registration.)

Alabama	Closed Primary – request ballot for the party they for which they will vote.
Alaska	Closed Primary – party affiliation 30 days prior determines ballot given.
Arizona	Closed – registered independents may choose one party ballot on election day.
Arkansas	Open Primary ² – no party affiliation required.
California	Top Two Open Primary – took effect January 2011; controversial
Colorado	Closed Primary – Independents may choose 1 party; Presidential Caucus.
Connecticut	Closed – Independents choose 1 party day before; change party 90 days.
Delaware	Closed Primary – must vote as affiliated on registration.
DC	Closed Primary – only voters registered as sanctioned party may vote.
Florida	Closed Primary – only voters registered as sanctioned party may vote.
Georgia	Open – must declare on election day oath of intent to affiliate with a party.
Hawaii	Republican primary is open. Democratic primary is closed.
Idaho	Democrats: Semi-Closed. Unaffiliated voters may vote on primary day, then are bound to the party. Republicans: Closed. Open Primaries until 2011 when Republicans obtained ruling of unconstitutional.
Illinois	Semi-Closed. Voter declares party at polling place; official repeats in loud voice; if no one challenges, voter votes that party.
Indiana	Closed Primary – voter requests ballot for party for which they will vote.
Iowa	Closed Primary – may change parties on election day.
Kansas	Semi-Closed. Republicans permit same-day registration. Democrats permit affiliated and Independents to vote.
Kentucky	Closed – only those registered as Democratic or Republican may vote.
Louisiana	Open Primary for state and local; closed for presidential.
Maine	Closed Primary – may change parties 15 days in advance.

¹ Provided by the League of Women Voters Education Fund.

² Within this chart, Open includes the top two/top four format.

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Maryland	Closed Primary – may change parties 21 days in advance.
Massachusetts	Open – but to vote for another party, must change enrollment.
Michigan	Open – no need to declare party, but can vote for only one party.
Minnesota	Open – but only voters affiliated with a party may vote in a primary.
Mississippi	Open – but to participate, voters must support party nominees.
Missouri	Open Primary.
Montana	Open/Private Choice – receive all ballots & select party in private.
Nebraska	Closed – voter gets only non-partisan ballots if not party-affiliated.
Nevada	Closed – only those registered Democratic or Republican may vote.
New Hampshire	Closed Primary – must vote Democratic or Republican; become a registered party member by voting.
New Jersey	Closed – may change party 55 days in advance; independents may declare party election day.
New Mexico	Closed – only Democrats or Republicans may vote partisan ballot.
New York	Closed Primary – only those affiliated with a party may vote that ballot.
North Carolina	Open – may choose party at polls; remain Independent on the rolls.
North Dakota	Open – state abandoned voter registration in 1951. Feel small population and small precincts protect against voter fraud.
Ohio	Closed Primary – right to vote subject to challenge for lack of affiliation.
Oklahoma	Closed – person who does not wish to affiliate with a political party is not entitled to influence the selection of its nominees.
Oregon	Closed – Republicans voted in 2012 to allow independents to vote.
Pennsylvania	Closed Primary – must vote for party of affiliation.
Rhode Island	Semi-Closed – Independents may vote any party; then seen as member.
South Carolina	Open Primary – no party affiliation required.
South Dakota	Republican: Closed. Democrats: Independents may choose to vote.
Tennessee	Open Primary – no party affiliation requirement.
Texas	Open – may choose party or unaffiliated; in runoff must vote same party.
Utah	Democrats: Open Primary. Republicans: Closed Primary.

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	(Utah registers by party, but does not report data.)
Vermont	Open Primary. For presidential primary, must declare party.
Virginia	Open. Republicans require loyalty oath signed for presidential primary.
Washington	Open/Private Choice. Top two primary.
West Virginia	Semi-Closed – Independents may request ballot for one party.
Wisconsin	Open Primary – no party affiliation requirement.

Summary of Registration and Primaries

Voter registration

Partisan	31	61%
Non-Partisan	19	37%
No Registration (North Dakota)	1	2%

Primaries (50 states and the District of Columbia)

	State/Local 2012-13		Presidential	
Open	17	33%	16	31%
Semi-Open	6	12%	3	6%
Semi-Closed	8	16%	5	10%
Closed	17	33%	18	35%
Closed Caucuses	0	0%	4	8%
Open Caucuses	0	0%	3	6%
Semi-Open Caucuses	0	0%	1	2%
Semi-Closed Caucuses	0	0%	1	2%
Top Two Open (CA & WA)	2	4%	--	--
Non-Partisan	1	2%		

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Primaries Consensus Questions

Issue review

There are six options for primaries.

- i. In a closed primary (current Pennsylvania practice), voters may cast a ballot only for the political party of affiliation.
- ii. In an open primary, voters may select the party ballot of their choice for voting, regardless of political party affiliation.
- iii. In a semi-open primary, affiliated voters must vote in the primary of their registration. Unaffiliated voters may vote in either primary, but must publically announce their choice before voting and they may only vote in that party primary.
- iv. In a semi-closed primary, the parties shall decide whether to allow unaffiliated voters to vote in their primary.
- v. In a top two primary, voters receive ballots with all candidates for office, and they may vote for whomever they wish, without regard to party preference. Subsequently, the two candidates receiving the most votes appear on the ballot for the general election.
- vi. In a top four primary, voters receive ballots with all candidates for office, and they may vote for whomever they wish, without regard to party preference. Subsequently, in a top four primary, the four candidates receiving the most votes are on the ballot for the general election.

1. LWVPA believes that changing the primary structure would increase voter participation.

1. Strongly disagree___ 2. Disagree___ 3. Neutral/no consensus___ 4. Agree ___ 5. Strongly agree___

2. LWVPA believes that changing the primary system could reduce political polarization.

1. Strongly disagree___ 2. Disagree___ 3. Neutral/no consensus___ 4. Agree ___ 5. Strongly agree___

3. LWVPA should take a position on open or closed primaries.

1. Strongly disagree___ 2. Disagree___ 3. Neutral/no consensus___ 4. Agree ___ 5. Strongly agree___

4. Please rank support for the following six primary options, with 5 indicating the strongest support and 0 indicating opposition or the least support.

a. LWVPA should support adoption of open primaries.

1. Strongly disagree___ 2. Disagree___ 3. Neutral/no consensus___ 4. Agree ___ 5. Strongly agree___

b. LWVPA should support adoption of semi open primaries.

1. Strongly disagree___ 2. Disagree___ 3. Neutral/no consensus___ 4. Agree ___ 5. Strongly agree___
2.

c. LWVPA should support the current practice of closed primaries.

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1. Strongly disagree___ 2. Disagree___ 3. Neutral/no consensus___ 4. Agree ___ 5. Strongly agree___

d. LWVPA should support adoption of semi-closed primaries.

1. Strongly disagree___ 2. Disagree___ 3. Neutral/no consensus___ 4. Agree ___ 5. Strongly agree___

e. LWVPA should support adoption of top two primaries.

1. Strongly disagree___ 2. Disagree___ 3. Neutral/no consensus___ 4. Agree ___ 5. Strongly agree___

f. LWVPA should support adoption of top four primaries.

1. Strongly disagree___ 2. Disagree___ 3. Neutral/no consensus___ 4. Agree ___ 5. Strongly agree___

5. LWVPA should adopt a different primary system for presidential vs. state/local races?

1. Strongly disagree___ 2. Disagree___ 3. Neutral/no consensus___ 4. Agree ___ 5. Strongly agree___

6. LWVPA believes that if primaries remain closed, they should not be publicly funded.

1. Strongly disagree___ 2. Disagree___ 3. Neutral/no consensus___ 4. Agree ___ 5. Strongly agree___

Comments: