

**Background Materials for PRIMARIES in MARYLAND:
Open vs. Closed? Top Two/Four or by Party? Plurality or Majority?**

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*Citations and available web links to these background materials, along with additional articles and websites, are listed in the accompanying document, **Resource Materials for PRIMARIES in MARYLAND**, available at http://www.lwvmd.org/fact_sheets.*

1. LWVMD PRIMARY ELECTION POSITION AND BACKGROUND FOR THE STUDY

Limits of Study

The 2015 LWVMD Convention adopted a two-year study about Maryland primaries, focused on the state position, adopted in 1993, which simply states “*support for a closed primary election.*” The study committee recognized that the primary election system is closely connected to several other issues that are outside the scope of this study.

- Gerrymandering to create safe districts for candidates of a particular party can result in the party’s primary election effectively serving as the general election. Thus, unaffiliated and non-principal (minority) parties are excluded from participation in the selection of officials.
- The nomination of candidates for President is a national process involving all of the states. Maryland cannot change that system acting on its own, so this study is limited to the function of the primary in nominating candidates for state and local offices.
- Campaign financing has been addressed in other studies and is therefore not included here. Readers may want to consider whether the influence of money may be greater in a party primary where fewer voters participate, particularly in counties or districts where one party is so dominant that its nominee is the sure winner in the general election.

Additional reasons for reviewing the closed primary position include the number of legislative changes since its adoption. These include the procedures for access to the ballot and participation in primary elections, especially for the number of petition signatures for the recognition of non-principal parties and for independent candidate access to the ballot. With only the Democratic and Republican parties having access to a state-financed primary nominating procedures, an increasing number of voters, both non-affiliated and non-principal party members, are on their own to gain access to the general election ballot.

LWV Positions and Studies

National, Maryland and local LWV positions and studies from other jurisdictions are cited in the Resource Guide. The recent Oregon study summarizes many state and a few local positions. The League of Women Voters of the District of Columbia (LWVDC) also conducted a study from 2013-2015, “Elections Process in the District of Columbia.”

When we sent surveys to LWVs in all other states to find out about any other studies of primaries, we only heard positively from LWV Tennessee. In Tennessee, primaries function as open primaries, although they are technically closed but parties do not enforce the requirement of a loyalty oath in order for people to vote for their ballot, The Tennessee’s League study regarding support for an open or closed primary did not reach consensus.

Maryland Registration, Party and Election Data*Election Day Registration by Party & percentage of total registration*

	Democrat		Republican		Minor		Unaffiliated		Total
1996	1,512,143	59.1%	774,161	30.3%	4,515	0.2%	287,051	11.2%	2,557,870
2000	1,549,628	57.0%	806,896	29.7%	5,897	0.2%	357,215	13.1%	2,719,636
2004	1,699,558	55.4%	901,617	29.4%	31,802	1.0%	437,122	14.2%	3,070,099
2006	1,733,432	55.1%	909,733	28.9%	13,183	0.4%	488,496	15.5%	3,144,844
2008	1,945,311	56.7%	926,399	27.0%	25,753	0.8%	531,472	15.5%	3,428,735
2010	1,957,279	56.0%	925,614	26.7%	57,120	1.6%	528,703	15.2%	3,468,716
2012	2,059,544	55.7%	959,858	26.0%	60,371	1.6%	614,887	16.6%	3,694,669
2014	2,036,281	55.0%	949,564	25.6%	57,392	1.5%	658,428	17.7%	3,704,665
2016	2,150,795	55.1%	1,014,307	26.0%	60,163	1.5%	674,825	17.3%	3,900,090

Active Election Registration by Party or Unaffiliated Status, April 2017

Democratic:	2,161,345	54.9%
Republicans:	1,022,100	26.0%
Green:	9,328	0.2%
Libertarian:	20,302	0.5%
Unaffiliated:	692,038	17.6%
Other:	32,157	0.8%

Active Registration: 3,937,270

MD Primary Elections 1996 - 2016

	<i>Presidential</i>	<i>Primary</i>	<i>Turnout</i>	<i>General</i>	<i>Turnout</i>
1996	incumbent - Clinton	576,667	24.96%	1,793,991	69.61%
2000	No incumbent & Rep primary opened to unaffiliated	894,433	34.68%	2,036,455	74.88%
2004	incumbent Bush	667,457	23.68%	2,395,791	78.03%
2008	No incumbent	1,224,318	42.86%	2,661,905	77.63%
2012	incumbent Obama	596,706	18.78%	2,734,062	74.00%
2016	No incumbent	1,431,751	41.71%	2,807,322	71.98%
	<i>Gubernatorial</i>	<i>Primary</i>	<i>Turnout</i>	<i>General</i>	<i>Turnout</i>
1998	incumbent Glendening	686,555	28.64%	1,556,994	60.59%
2002	No incumbent	841,395	30.76%	1,717,068	61.85%
2006	incumbent Ehrlich	855,465	29.60%	1,809,237	57.53%
2010	incumbent O'Malley	802,981	25.35%	1,873,541	54.02%
2014	open	739,678	21.81%	1,745,104	46.81%

These turnout percentages of all registered voters demonstrate that primary turnout is generally higher in presidential cycles and much lower in gubernatorial primary elections, even though almost all the state and local officials are also nominated at the same time. Additionally, turnout also usually is lower when there is an incumbent president or governor seeking reelection than it is when there is no incumbent, and the nominations are open.

Such differences from year to year make it hard to determine whether there are any trends in voter turnout at primary elections. However, if we look only at primaries in both presidential and gubernatorial elections where this is an incumbent seeking reelection, we can notice that over the last 20 years, there is a general decrease in voter turnout.

There are a variety of factors that might affect turnout. When an incumbent is running or in jurisdictions with a strong major party, there sometimes are not any other viable candidates, in the same or the opposing parties, in the primary and/or the general election. In Maryland, the date for primary elections has changed often in the last two decades, making it harder for some voters to participate. Another factor, also highly relevant to this study, is the growing number of registered voters not permitted to participate in the major party primaries because they are members of a minor party or have chosen to remain unaffiliated.

Voter Turnout Data for Open Republican Primary 2000

As allowed by Maryland statute, the Republicans opened their primary election in 2000 to “independents,” that is, those not affiliated with any other party. The State Board of Elections (SBE) turnout figures of “Decline to affiliate” voters was higher in 2000, the year with the open Republican primary, than in previous or ensuing years.

*Presidential Primary Elections:
Statewide Voter Turnout* of Registered Voters By Party, 1992 – 2016*
[*rounded to nearest tenths, non-principal party/parties turnout not included]

Year	# Voting Democratic	% Dem Turnout	# Voting Republican	% Rep Turnout	# Voting Unaffiliated*	% Unaffiliated Turnout*
1992	585,801	45.0	246,947	39.0	5514	3.0
1996	314,404	22.0	257,092	35.0	5169	4.0
2000	514,653	34.7	327,864	42.6	51278	16.0
2004	486,449	30.9	170,667	20.2	10287	2.6
2008	878,736	50.5	324,422	36.3	20668	9.5
2012	335,910	17.1	250,912	26.8	8956	3.5
2016	923,541	44.1	462,495	46.5	42438	13.2

* Unaffiliated definition changes, see text below

* SBE unaffiliated turnout data is not captioned or reported in a consistent manner over this range of years, which makes comparisons a little difficult:

- For 1992 and 1996, the Unaffiliated figure in the above chart includes all registered voters who are not Democrats and Republicans. This number includes “Decline to

affiliate” as well as members of the recognized non-principal or “third” parties and “others” who register with a party not recognized by the state.

- *From 2000 – 2008, the recognized non-principal party/parties are reported separately from the “Declines and others.”*
- *Beginning in 2012, “Others” also received a separate report.*
- *Subsequent sections, Political Party Recognition (pg. 13) and Recent History of Recognized Non-Principal Parties (pg. 15) provide additional background.*

A *Baltimore Sun* article in 2013 reported that the Republicans again considered opening their primary to independent voters in 2014 in an attempt to win more statewide victories. Opinions within the party were divided, with some fearing it would result in a dilution of party values. The Republican Party has discussed opening its primary but has not done so since 2000.

2016 Presidential Primary Election Provisional Voting

This State Board of Elections chart gives the number of provisional ballots by county, the number accepted in full, accepted in part, or rejected, as well as the reasons for the rejections. The largest number of ballots rejected were coded "Not eligible to receive a provisional ballot," which represented 51.4% of all rejected ballots. These were the Republican or Democratic party ballots requested and given to unaffiliated voters, who were only eligible to vote the nonpartisan ballot. "Wrong party" represented 37.5% of all rejected provisional ballots. These were voters who were affiliated with one party but asked for the ballot of another.

2016 Presidential Primary Election Provisional Voting

County	Provisional Ballots Cast	# Accepted in Full		# Accepted in Part		# Rejected	
Allegany	376	134	35.60%	119	31.60%	123	32.70%
Anne Arundel	5,374	1,562	29.10%	486	9.00%	3,326	61.90%
Baltimore City	8,214	3,383	41.20%	1,627	19.80%	3,204	39.00%
Baltimore County	7,982	2,334	29.20%	1,115	14.00%	4,533	56.80%
Calvert	317	226	71.30%	8	2.50%	83	26.20%
Caroline	171	49	28.70%	0	0.00%	122	71.30%
Carroll	939	426	45.40%	34	3.60%	479	51.00%
Cecil	373	154	41.30%	1	0.30%	218	58.40%
Charles	1,499	479	32.00%	15	1.00%	1,005	67.00%
Dorchester	98	55	56.10%	12	12.20%	31	31.60%
Frederick	1,301	753	57.90%	81	6.20%	467	35.90%

Garrett	243	59	24.30%	0	0.00%	184	75.70%
Harford	907	506	55.80%	60	6.60%	341	37.60%
Howard	2,334	959	41.10%	167	7.20%	1,208	51.80%
Kent	54	32	59.30%	8	14.80%	14	25.90%
Montgomery	8,594	4,568	53.20%	445	5.20%	3,581	41.70%
Prince George's	8,982	3,018	33.60%	1,384	15.40%	4,580	51.00%
Queen Anne's	328	115	35.10%	2	0.60%	211	64.30%
Saint Mary's	416	262	63.00%	27	6.50%	127	30.50%
Somerset	206	66	32.00%	92	44.70%	48	23.30%
Talbot	82	52	63.40%	6	7.30%	24	29.30%
Washington	833	390	46.80%	25	3.00%	418	50.20%
Wicomico	568	202	35.60%	67	11.80%	299	52.60%
Worcester	266	104	39.10%	18	6.80%	144	54.10%
State Totals	50,457	19,888	39.40%	5,799	11.50%	24,770	49.10%

**Reasons for Rejecting
Provisional Ballots**

01 - Applicant is not registered to vote	1661	6.70%
02 - Applicant returned a voted absentee ballot or already voted	171	0.70%
03 - Applicant voted the wrong party primary ballot	9292	37.50%
04 - No signature on application	343	1.40%
05 - Applicant not eligible to receive a provisional ballot	12726	51.40%
06 - Identification or DL# or SS# was not timely received	52	0.20%
07 - Incomplete information was provided on the application	89	0.40%
08 - DL# or SS# was received but was not verified	33	0.10%
09 - Identification was received but did not satisfy the identification requirements	4	0.00%
10 - No provisional ballot or more than one provisional ballot in envelope	149	0.60%
11 - No evidence to support voting unit malfunction	1	0.00%
14 - Identifying mark on the ballot	2	0.00%
16 - Underage	28	0.10%
17 - Proof of residency was not timely received	216	0.90%
18 - Proof of residency was received but did not satisfy the requirements	3	0.00%
Total	24,770	

Party Control of County Government

In many Maryland counties, the strength of one party may be so great as to exclude many voters from effective participation in local elections. A review of the party affiliation of 2017 local government officials in the *Maryland Manual* (such as County Executive, Council or Commissioner, Sheriff, and others) shows that a single party holds all or most of the offices in many Maryland counties.

<i>Exclusively Republican</i>	(6)	Allegany, Caroline, Carroll, Cecil, Garrett, Harford
<i>Exclusively Democratic</i>	(4)	Baltimore City, Charles, Montgomery, Prince George's
<i>Heavily Republican</i>	(8)	Anne Arundel, Calvert, Frederick, Queen Anne's, Saint Mary's, Talbot, Washington, Worcester
<i>Heavily Democratic</i>	(3)	Baltimore County, Dorchester, Howard
<i>Evenly Divided</i>	(3)	Kent, Somerset, Wicomico

In counties where one party is strongly dominant, the winner of the closed primary usually goes on to win the general election, which means that the candidate is essentially selected in the primary election. In these counties, the only way that voters can participate in the primary election and have a voice in local government is to choose to affiliate with the dominant party, even if their views do not align with that party or if they would prefer not to affiliate with any party.

Cost of Primary Elections

The biggest complaint of independents or unaffiliated voters in a closed primary state is that the public is funding a process for officially recognized political parties to select their candidates – a process that excludes anyone who does not choose to affiliate with those parties. That means that at the general election, the unaffiliated voters have to choose from among candidates who were selected in a process in which they had no role. Some would argue that by not selecting a party, those voters have chosen to opt out of the nominating process, but this may not be clear to all voters, particularly those who question why they should have to affiliate with political parties in order to participate in the primary election, as well as those who come from states with open primaries.

The origin of government-administered primaries begins in the late 1800s and early 1900s, when state governments began to intervene to curb the influence of party bosses and tackle corruption. A series of reforms – including regulations, the adoption of the Australian ballot (secret ballot printed by the government), and direct primaries (whereby party voters, not just delegates, select the party's nominees) – culminated in the formation of a hybrid system, whereby public funds are used to administer primary elections that in some states bar participation by unaffiliated voters.

The most significant step toward the public administration of primaries occurred with the adoption of mandatory direct primary laws. As the adoption of the mandatory direct primary rapidly spread, so too did the legal conception of political parties and the purported right of governments to manage their internal affairs. With the switch to the direct primary and the strict regulation of partisan activity, governments took over the responsibility of administering primary elections on the grounds that such elections were considered essentially public rather than private events.

The practice of subsidizing major parties' primary elections was cemented into place in 1972 when the Supreme Court ruled in *Bullock v. Carter* that parties requiring candidates to pay excessive fees to appear on a primary ballot imposed an unconstitutional burden on the candidates' Fourteenth Amendment right to equal protection. This ruling normalized the practice of having the public, not candidates or parties, pay for primary elections.

What about the costs of administering an election? Ballots and voting machines cost money, but figuring out the exact costs can be trickier, in large part because several levels of government are involved in running and paying for elections. Plus, every state's laws and practices are a little different, so it's hard to pin down election administration costs, even for a federal election.

Election Day costs fall in five critical categories: poll workers' pay, poll workers' meals, poll workers' training, equipment transportation, and poll-book printing. These categories represent the typical and significant costs of elections in each county as currently conducted. Not included in the cost of Election Day, however, is the purchase and maintenance of election equipment and the rather expensive and extensive administrative and personnel costs of maintaining state and local agencies necessary to administer election laws and regulations relating to voter registration, voter mailings, etc. A fiscal note prepared by Maryland Legislative Services for FY2014 estimated that the costs for the State Board of Elections was \$11.2 million, and costs for Local Election Boards was \$39.4 million, for a total of \$50.6 million. Only one statewide election took place during FY 2014, the June 2014 primary election.

Open Primaries, an organization whose mission is to advocate for open and nonpartisan primary systems, did an analysis of the cost of primary elections and found that the cost of the 2012 presidential primary/caucus in all 50 states was \$427,300,168; the cost of primary elections in closed primary states was \$287,806,312. Nationwide, 26,370,985 million voters were locked out of the primary process because they were not affiliated with a major political party.

Elections are an expensive responsibility of government. As of April 2017, 19.1% of Maryland registered voters were prohibited by law from participating in primary elections, unless a principal party chooses to include them. This causes many unaffiliated and minor party voters to question the fairness of paying to support an election system from which they are excluded. The minor parties have to subsidize all the costs of their own candidate nominating process. Unaffiliated and minor party voters are a growing segment of the constituency, and some believe that a healthy democracy would review and develop new policies as its constituency changes.

2. HISTORY and ROLE OF THE PRIMARY SYSTEM and ACCESS TO THE BALLOT

Two major developments are said to have led to the emergence of statewide primary elections:

- the introduction of secret ballots that enabled free voting for party nominees
- the rejection of the party convention system for candidate selection

The first statewide primary was held 1899 in Minnesota. Two years later, Minnesota instituted the first mandatory statewide primary system. The first presidential primary election was organized in 1901 in Florida and by 1916, presidential primary laws had been passed in 26 states. As of 2015, more than 40 of the 50 states held primary elections. In Maryland, some local jurisdictions held primaries earlier, but the first statewide primary election was held in Maryland in 1910.

The earliest method for nominating candidates was the caucus, which was adopted in colonial times for local offices and continued into the 19th century for state and national offices. Party conventions were instituted as a means of checking the abuses of the caucus system but conventions also became subject to abuses, which led first to their regulation and ultimately to their elimination for most offices except President and Vice President.

U.S. Supreme Court Ballot Access Doctrine

There have been several Supreme Court decisions regarding ballot access. State ballot access laws have been challenged as violating the 14th Amendment's Equal Protection Clause or Due Process rights. The Court recognizes both the opportunity to vote and for voters to associate with political parties as fundamental rights under the First and Fourteenth Amendments, but these rights are sometimes in conflict. In addition, a state's interest in regulating elections and keeping them free of chaos, including the denial of ballot access to frivolous candidates, has been deemed legitimate by the Court.

Key U.S. Supreme Court Decisions, by Topics

Top Two Primary

A primary in which all candidates appear on the same ballot used by all voters and the two candidates receiving the greatest number of votes, regardless of their party affiliation, advance to the general election ballot is constitutional. (Washington) *Washington State Grange v. Washington Republican Party*, 552 U.S. 442 (2008).

Blanket Primary

A primary in which all candidates appeared on the same ballot used by all voters, regardless of party, and the nominee for each party was the candidate within that party who received the largest number of votes violated the parties' right to freedom of association protected by the First Amendment. (California) *California Democratic Party v. Jones*, 530 U.S. 567 (2000).

New Parties and Unaffiliated Candidates

Requiring a new party's presidential nominee to get signatures totaling 15% of the total votes cast in the last gubernatorial election nine months before the national election unfairly discriminated against those who wished to vote for or participate in the new party and therefore violated the Equal Protection Clause. (Ohio) *Williams v. Rhodes*, 393 U.S. 23 (1968).

Requiring minor party nominees for President to obtain signatures equal to 5% of the total voters registered for the last general election was upheld because the state did not impose

an early filing date, allowed write-in candidates, and contained a less onerous percentage requirement. (Georgia) *Jenness v. Fortson*, 403 U.S. 431 (1971).

Requiring unaffiliated candidates had to get signature petitions before gaining access to the ballot, when candidates of recognized parties could get on the ballot by being nominated in a primary or a caucus, did not violate the Equal Protection clause. The petition requirements for the unaffiliated nominees were no more burdensome than the primary elections held by the major parties. (Texas) *American Party v. White*, 415 U.S. 767 (1974).

A statute that required independent or new party candidates to obtain 25,000 signatures if they sought statewide offices but required the signatures of 5% of the number of voters who cast their ballot at the previous election (almost 36,000 signatures in Chicago) if they sought local positions violated the Equal Protection Clause. (Illinois) *Illinois Elections Bd. v. Socialist Workers Party*, 440 U.S. 173 (1979).

Not allowing the candidate of a party access to all Cook County ballots because the candidate did not obtain enough signatures in a suburban district was unconstitutional because it violated the right to freedom of association. (Illinois) *Norman v. Reed*, 502 U.S. 279 (1992).

Candidates' Party Affiliation

A requirement that the candidate be a member of an independent party for over a year before being allowed to participate in that party's upcoming primary was held to be constitutional. The Court did not decide whether requiring signatures on petitions equal to 5% of votes in the last election impinged on a candidate's First and Fourteenth amendment rights. Three dissenting justices argued for strict scrutiny in all ballot access challenges, which would likely have resulted in striking down the law. (California) *Storer v. Brown*, 415 U.S. 724 (1974).

Filing Fees

Requiring payment of filing fee before a candidate could be placed on ballot held unconstitutional because it excluded both serious and frivolous candidates based on the ability to pay. (Texas) *Bullock v. Carter*, 405 U.S. 134 (1972).

Although in California the filing fees were smaller than the TX fees invalidated in *Bullock*, the court nonetheless found them equally unconstitutional, finding that states should give indigent candidates an alternative that still further the state's legitimate interests. (California) *Lubin v. Panish*, 415 U.S. 709 (1974).

Write-In Candidates

A ban on write-in candidates was constitutional where voters had ample opportunity to participate in elections. (Hawaii) *Burdick v. Takushi*, 504 U.S. 428 (1992).

Maryland Legislation on Access to Ballot, by Topics

This is the legislation introduced in the 1998 through 2017 sessions of the General Assembly about potential changes in the primary elections in Maryland (except those about the date of the primary):

Requirements to Obtain or Maintain Recognition of a Political Party

Senate Bill 123, **1998**. Required 10,000 signatures of registered voters on a petition to form a new political party. Thereafter, the new political party shall retain its certified status if it nominated a candidate for the highest office on the ballot and that candidate received 1% of the total vote, or the state voter registration totals show that at least 1% of the state's total registered voters are affiliated with the party. The new political party may nominate candidates by petition, or, if at least 1% of the state's registered voters are affiliated with the party as of Jan. 1 of the election year, by convention in accordance with rules adopted by the political party. **Passed/enacted.**

House Bill 1562, **2009**. Reducing the number of required petition signatures to form a new political party from 10,000 to 5,000. **Did not pass.**

Senate Bill 1032, **2014**. Altering the minimum from at least 1% of the state's registered voters to 10,000 registered voters in the state who must be affiliated with a political party as of December 31 each year in order for the political party to retain its status. **Did not pass.**

House Bill 626, **2015**. Re-introduction of the provisions of SB1032, 2014. **Did not pass.**

House Bill 1301, **2016**. Re-introduction of the provisions of HB 626, 2015. **Did not pass.**

House Bill 1559, **2016**. Non-principal party candidate can get on ballot for statewide office by filing petition with 10,000 signatures. Non-principal party candidate for office other than statewide office can get on ballot by filing petition with number of signatures equal to 1% of number of registered voters eligible to vote for that office. **Did not pass.**

House Bill 707, **2017**. Retention of status of political party from 1% of registered voters to 10,000, **Did not pass.**

Participation of Unaffiliated Voters in Primaries

House Bill 1059, **2000**. Notwithstanding any provision to the contrary in the constitution or bylaws of the political party, the party shall allow an eligible voter registered as an independent to vote in a primary election for the nomination of the party's candidate for public office. An eligible voter registered as an independent may not vote in the primary election for the nomination of more than one party's candidate for public office. **Did not pass.**

Senate Bill 313, **2003**. Requiring a political party to notify the State Board of Elections at least 6 months before the primary election if the party will allow voters not affiliated with the party to vote in its primary election. **Passed/enacted**

House Bill 344, **2016**. Amended voter registration form to include the statement: "You must register with a political party if you want to take part in that political party's primary election, caucus or convention. Check one box only." **Passed/enacted**

Senate Bill 64, **2017**. Provides that a registered voter who has declined to affiliate with a political party may change to a party affiliation at any time an individual may register to vote, including during voter registration during early voting. **Withdrawn**

Procedures for Obtaining Party Nomination to an Office

Senate Bill 129, **2006**. A new political party shall nominate candidates in accordance with the bylaws of the political party as submitted to State Board of Elections. Candidates affiliated with a non-principal party shall be nominated in accordance with the bylaws of that political party. Only candidates not affiliated with any political party may be nominated by petition. **Passed/enacted**

Participation in Primary by 17-year-old Voters

House Bill 271, **2010**. Individuals can register to vote at 16 years old. A registered voter under the age of 18 years may vote in a primary election in which candidates are nominated for a general or special election that will occur when the voter is at least 18 years old. **Passed/enacted.**

Maryland Task Forces and Commissions

The 1994 Maryland gubernatorial election resulted in a contentious legal challenge of the close results between Parris Glendening and Ellen Sauerbrey. In the following years, the state legislature created two different bodies to review the state's election law (1995), and then to revise the election code (1998).

Neither group discussed primary elections in the context relevant to our study. However, the 1995 Task Force did hear testimony about ballot access, suggesting that the number of petition signatures to run as an independent candidate was too high (about 73,000 at the time). Testimony also declared it was unfair that a group had to collect 10,000 signatures to be recognized as a political party and then they were also required to collect 10,000 signatures to have their nominee placed on the ballot. This signature requirement for independent candidates to be on the general election ballot had risen from only 2,000 signatures before 1941, then increased to 5,000, and again to 10,000 signatures in 1967.

The Commission to Revise the Election Code recommended that the State Board study the feasibility of a statewide voter registration database that could keep the voter's party affiliation noted, even if that party subsequently was not a certified party, in case the party became certified again.

Maryland Judicial Decisions about Primary Elections and Ballot Access

1905: *Kenneweg v. Allegany County*. Court of Appeals ruled that the Maryland Legislature has the authority to regulate primary elections, including which parties are to be included and that taxes can be collected to pay for them. (The General Assembly had enacted a primary election law in that year.)

2003: *Maryland Green Party, et al v. Maryland State Board of Elections*. The Court of Appeals held that requiring non-principal political parties' candidates to complete a nominating petition violates the equal protection component of Article 24 of the Maryland Declaration of Rights. According to the court, because non-principal political parties must

submit 10,000 petition signatures to become a political party, the additional burden of requiring petition signatures to place candidates on the ballot was not justifiable.

2004: *Seussmann v. Lamone*. The Court of Appeals re-affirmed that unaffiliated voters may not vote in judicial primary elections. Judicial primary elections are held by the Democratic and Republican parties, with judicial candidate cross-filing in both primaries. These elections are not nonpartisan elections.

2008: *State Board of Elections v. Snyder*. The Court of Appeals decided that all 17-year old registered voters who will be 18 before the next general election are entitled to vote in the primary election, including nonpartisan elections for county boards of education. Previously the State Board of Elections had determined that because 18 was the legal age to vote, they could not vote in elections that occurred prior to attaining that age. Both the Democratic and Republican Parties amended their by-laws to allow 17-year old registered voters to vote in their primaries. This Court decision allowed them to also vote in nonpartisan primary elections (nonpartisan school board elections).

2016. *Dorsey V. Lamone* (US District Court, case no. GLR-15-2170). Suit about whether a 2015 law requiring independent candidates to file a declaration of candidacy in February is unconstitutional. State Board of Elections conceded that the law was unconstitutional. State also acknowledged that its requirement that independent candidates for statewide office obtain over 40,000 signatures to gain access to the ballot for office was unconstitutional, in light of the fact that non-principal political parties need only obtain 10,000 signatures to get all of their candidates on the ballot.

Political Party Recognition

In Maryland, provisions for recognition of political parties by the State Board of Elections are established by law.

These party definitions are from *Md. Code, Election Law § 1-101 (2017)*:

(dd) "Majority party" means the political party to which the incumbent Governor belongs, if the incumbent Governor is a member of a principal political party. If the incumbent Governor is not a member of one of the two principal political parties, "majority party" means the principal political party whose candidate for Governor received the highest number of votes of any party candidate at the last preceding general election.

(jj) "Principal minority party" means the principal political party whose candidate for Governor received the second highest number of votes of any party candidate at the last preceding general election.

(kk) "Principal political parties" means the majority party and the principal minority party.

A Maryland statute requires that a principal political party use the primary election process to nominate its candidates to the ballot (Md. Code, Election Law, § 8-202, whereas a non-principal party may nominate its candidates to the ballot by any manner they have

established in accordance with their own organization's constitution and bylaws (Md Code, Election Law, § 4-102(f)).

Political parties using the primary

(a) In general. -- A principal political party, as determined by the statement of registration issued by the State Board:

(1) shall use the primary election to:

(i) nominate its candidates for public office; and

(ii) elect all members of the local central committees of the political party;

and

(2) may use the primary election in the year of a presidential election to elect delegates to a national presidential nominating convention.

(b) Requirements for nominees. -- Except for a nominee for President or Vice President, the name of a nominee of a principal political party may not appear on the ballot in a general election if the individual has not:

(1) been nominated in the primary election; or

(2) been designated to fill a vacancy in nomination in accordance with Title 5 of this article.

This section of law also allows nonaffiliated registered voters to vote in a partisan primary only if the central committee of the state party makes that decision and notifies the State Board of Elections by 6 months ahead of the primary

(c) Process to allow voting by persons unaffiliated with party. -- If a political party chooses to permit voters not affiliated with the party to vote in the party's primary election, the chairman of the party's state central committee shall so notify the State Board at least 6 months before the date of the primary election.

The provisions to form a political party in Maryland, are found in the *Md. Code, Election Law §§ 4-101 through 4-103*. A group of voters must file a valid petition in a timely manner with the State Board of Elections. However, non-principal parties, once recognized, do not retain that "consent" in perpetuity. Consent must be continually re-affirmed or the party will lose its status. That re-affirmation here in Maryland can be accomplished in any one of three methods: obtaining a minimum of one percent of the vote for their candidate for the highest office on the ballot; obtaining a minimum of one percent of the total registered voters affiliated with the party; or, obtaining 10,000 petition signatures.

To retain party status, however, either the party's candidate must poll 1% of the entire vote in the next general election, or at least 1% of the state's registered voters must be affiliated with the party by year's end (*Md. Code, Election Law § 4-103*). If neither of these criteria is met, then the party must re-qualify with the State Board of Elections by petition.

As of 2015, four political parties were recognized by the State Board of Elections: the Democratic Party, the Green Party, the Libertarian Party, and the Republican Party. The Americans Elect Party, the Constitution Party of Maryland, the Independent Party of Maryland, the Populist Party, and the Reform Party no longer are recognized as political parties by the State Board.

Recent History of Recognized Non-Principal Parties

The Constitution Party of Maryland formed in 1995 as the Taxpayers Party of Maryland. In 1996, it was recognized as an official party by the State Administrative Board of Election Laws, but returned to "partisan organization" status in 1998, when its candidates failed to receive 3% of the votes cast in the 1996 general election.

The Taxpayers Party of Maryland reformed as the Maryland Constitution Party in February 1998, was recognized by the State Board of Elections on August 18, 2000, and then lost its official party status in 2002.

The Maryland Constitution Party re-qualified on April 27, 2004, lost its official status on May 9, 2007 and was recognized as an official party by the State Board of Elections on August 25, 2008. The party was renamed the Constitution Party of Maryland on April 24, 2009.

By January 1, 2011, the Constitution Party of Maryland was unable to meet the requirements to retain its status as a recognized political party in Maryland (*Maryland Manual*).

The Americans Elect Party was recognized by the State Board of Elections on May 15, 2012, after submitting a valid petition to the board. The party retained its certification through December, 31, 2014. (*Maryland Manual*).

The Populist Party of Maryland (PPMD) is a self-declared populist political party active in Maryland since 2003. The PPMD originated as a vehicle for ballot access for the 2004 Ralph Nader presidential campaign. Unlike such groups in other states, the PPMD organization has survived beyond 2004, laboring to field candidates for local political offices. In August 2008, the Populist Party was reconstituted as the Independent Party. Its membership soared from 5 to 35,000 at one point in May 2010, after all independent voters were counted as members of the new party, blurring the distinction between 'independent' and 'Independent'. However, the Independent Party of Maryland was dissolved by the State Board of Elections on June 3, 2010 due to its inactive campaign finance account. (*Wikipedia*)

The Americans Elect Party, the Constitution Party of Maryland, the Independent Party of Maryland, the Populist Party, and the Reform Party no longer are recognized as political parties by the state board. Thus, a small number of new parties have gained access to the ballot in Maryland, but most have failed to maintain their status. In response to the loss of status by some parties, the Report of the Commission to Revise the Election Code (1998) recommended that the State Board of Elections study the feasibility of maintaining a state-wide voter registration list that would retain a voter's choice of party, even if the party lost recognition, so that they could be treated as a party member if that status was restored.

Ballot Access Requirements for Candidates

In order to get on the ballot in Maryland, a candidate for state or federal office must meet a variety of complex, state-specific filing requirements and deadlines. These regulations, known as ballot access laws, determine whether a candidate or party will appear on an election ballot. These laws are set at the state level. A candidate must prepare to meet ballot access requirements well in advance of primaries, caucuses, and the general election.

State lawmakers have developed ballot access procedures in an effort to prevent non-serious candidates from appearing on the ballot; meanwhile, critics contend that stringent ballot access requirements discourage candidate and voter participation in the electoral process.

There are three basic methods by which an individual may become a candidate for office in a state:

- An individual can seek the nomination of a state-recognized political party.
- An individual can run as an independent. Independent candidates often must petition in order to have their names printed on the general election ballot.
- An individual can run as a write-in candidate.

Principal party (Republican or Democratic) candidates: Primary candidates for principal party nominations to office must file a certificate of candidacy specifying the office sought, their party affiliation, and how their name should appear on the ballot. The candidate must also pay the appropriate filing fee, but no petitions are required.

Non-principal party (Green or Libertarian) candidates: Individuals with shared values of the party may request that the party “sponsor” them as a candidate on the ballot. In some cases, more than one individual may be seeking the party’s “sponsorship.” Because access to the ballot, in this case, has been granted to an entity by consent, not an individual by consent, the entity (party) may only present one individual to the voters on the ballot. In these instances, the party must decide which candidate will represent the party on the ballot.

Non-principal party candidates file paperwork in two phases. First, a candidate must file with the appropriate election board a declaration of intent to seek political party nomination by the first Monday in July. There is no filing fee for a declaration of intent. Also due by the first Monday in July is a Statement of Organization, which details the establishment of an authorized candidate campaign committee for campaign finance purposes.

Then, by the first Monday in August, the non-principal party candidate must file a certificate of candidacy and a certificate of nomination signed by the officers of the political party. The candidate must also submit at this time the same financial disclosure form as principal party candidates, and pay the same filing fees as principal party candidates.

Unaffiliated Candidates - General Election only: Unaffiliated candidates do not run in primary elections. They may be placed on the General Election ballot if they are nominated by petition. Such candidates must file a declaration of intent with the appropriate election board not later than the first Monday in July. There is no fee for filing the declaration of intent. Also due by the first Monday in July is a Statement of Organization, which details the establishment of an authorized candidate campaign committee for campaign finance purposes.

A candidate who seeks nomination by petition may not have his or her name placed on the general election ballot unless the candidate files petitions with the appropriate election board. The petitions must be signed by the lesser of 10,000 registered voters or 1% of the total number of registered voters who are eligible to vote for the office for which nomination is sought, except that there is a minimum requirement of at least 250 registered voters who

are eligible to vote for the office. Petitions are due to be filed by the first Monday in August. Also due on that date are a financial disclosure statement, certificate of candidacy and payment of the filing fee. A full list of candidate filing fees can be found at <http://www.elections.state.md.us/candidacy/requirements.html>.

General Election Write-In Candidates: A write-in candidate who intends to have his or her general election votes tallied must file a Certificate of Candidacy, a Statement of Organization to form an authorized campaign committee, and a financial disclosure form (the same as those required of all other candidates). The deadline for filing these materials with the appropriate office is the earlier of the following:

- seven days after a total expenditure of at least \$51 is made to promote the candidacy by the candidate's campaign finance entity or
- 5:00 p.m. on the Wednesday preceding the day of the election.

Maryland has a “sore loser” provision that prevents primary losers from appearing on the general election ballot as petition candidates, but a candidate who loses a primary may file as a write-in candidate and many do so.

Judicial Candidates – Maryland has a unique electoral system for selecting judges of the Circuit Court, the main trial court. Candidates for judge are nominated by the parties and appear on both principal parties’ ballots in the primary. Unaffiliated voters play no role in this step of the process.

Because the winners of the primary are considered to be nominees of the parties, the three judicial candidates receiving the most votes within each party will appear on the general election ballot. If the same three candidates finish at the top in both primaries, only their names will appear on the general election ballot and the unaffiliated voters effectively have no voice in the selection at this step either. If, however, candidates A, B, and C finish first on the Republican ballot but candidates B, C, and D finish at the top of the Democratic race, all four candidates will appear on the general election ballot as B and C are considered nominees of both parties while A is also a nominee of the Republican party and D is a nominee of the Democratic party. This is the only circumstance in which unaffiliated voters play a significant role; the system is confusing to all voters, however.

3. EVALUATING AN ELECTION SYSTEM

Effect of Electoral System on Desired Outcomes

As expressed at the beginning of this study, the League has many aspirations for elections. Academic research projects and studies by Leagues around the US are also looking at the best way to achieve some of these goals with structural changes to the way our elections operate. A discussion of criteria (Appendix 1) and 11 state LWV positions (Appendix 5) are summarized in Oregon’s report. Recently, the LWV of Washington DC also conducted a study and adopted electoral positions.

The nonpartisan, non-profit FairVote research/lobbying organization produced an extensive January 2016 report, *Comparative Structural Reform: Assessing the Impact of 37 Structural Reforms*. These structural reforms include changes to redistricting, primaries, legislative

process, voting systems, ballot access, and the Electoral College. Although many of these reforms are not within the scope of our study, we do think the criteria used by the political scientists to assess the impact of these reforms are similar to the goals expressed in many League and other political science studies of primaries.

The 16 criteria affect various aspects of voter engagement, the openness of the electoral process, electoral accountability of the candidates, and the functionality of legislative bodies:

Voter Engagement:

- increase in voters experiencing competitive elections
- increase in general election turnout
- increase in primary election turnout
- increase in voter information
- encouragement of year-round citizen engagement with officials

Opening the Process:

- influence of unaffiliated voters
- influence of independent and minor-party candidates
- representation of women
- representation of racial minorities
- breadth of opinion represented in elected office

Electoral Accountability:

- incumbent turnover
- voter ability to flip partisan control of chamber
- responsiveness of outcomes to electoral shifts

Legislative Functionality:

- evidence-based, long-term policymaking
- majoritarian policymaking
- independence of legislators from party leadership

Individuals will differ on the relative importance of each of these criteria and the effect they have on both the electoral and governing system. The FairVote report summarizes what the political scientists think are “the structural reforms with the greatest overall beneficial impact on American democracy,” as well as the reforms that most affect an individual criteria. Reviewing the structural reforms against personal preferences might help members evaluate the alternative primary and counting styles in this study. Members may use the list at consensus meetings to track how changes caused by the alternative primary and counting styles would affect the criteria of most importance to them

4. TYPES OF PRIMARY ELECTIONS

This is a summary of the style of primary used in the 50 states, published by the National Conference of State Legislatures. For additional details, see the 2016 report on their website:

Closed Primaries – 8 States

Voters must be members of the party holding the primary.

Delaware, Florida, Kentucky, Nevada, New Mexico, New York, Oregon, Pennsylvania

Partially Closed – 8 States

Voters must be registered members of the party holding the primary - but the parties may choose before the election to allow unaffiliated voters to participate.

Alaska, Connecticut, Idaho, Maryland+, North Carolina, Oklahoma, South Dakota, Utah

Partially Open – 6 States

Voters may choose which primary to vote in, but must either do so publicly or their vote may be regarded as a form of registration with that party.

Illinois, Indiana, Iowa, Ohio, Tennessee, Wyoming

Open to Unaffiliated Voters – 9 States

Unaffiliated voters may choose which party primary they want to vote in, but voters affiliated with other parties may not cross over.

Arizona, Colorado, Kansas, Maine, Massachusetts, New Hampshire, New Jersey, Rhode Island, West Virginia

Open – 15 States

Voters may choose which primary to vote in privately. The choice does not register with the party.

Alabama, Arkansas, Georgia, Hawaii, Michigan, Minnesota, Mississippi, Missouri, Montana, North Dakota, South Carolina, Texas, Vermont, Virginia, Wisconsin

Top Two – 3 States

All candidates appear on the same ballot and the top two vote-getters advance to the general election regardless of party.

California, Louisiana, Washington

+Maryland was listed as “Closed” in the NCSL chart, possibly because the law requires the party to give the Board of Elections 6 months advance notice, and only one party has ever allowed non-affiliated voters to participate and did not repeat the experiment.

Multi-Candidate Primary Elections

Three states have multi-candidate primary/general elections. California and Washington state each have top two primary elections, with the two candidates with the highest vote totals going on to the general election. Louisiana’s version is a little different – it does not have primary elections. It holds its first round of elections in November, when the rest of the country conducts general elections. All candidates and voters participate on a single ballot. If a candidate gets over 50 percent of the vote, they win the election. If, however, no candidate crosses the 50 percent threshold, a runoff election is held.

History of Top Two Primary Elections

One type of primary, the “blanket primary” was ruled unconstitutional by the Supreme Court of the United States in *California Democratic Party v. Jones*, as it forced political parties to accept as their nominees candidates they did not endorse. Efforts were then undertaken to establish primaries in which the top two candidates would advance to the general election ballot, regardless of their party, thus eliminating the problem of non-members selecting the nominees of the parties.

From 2001 to 2009, efforts to enact top two open primary systems were unsuccessful in New York City, Oregon, Pennsylvania, Mississippi, Oklahoma, Alaska, and Illinois. In California, an initiative to enact a Top Two primary was unsuccessful in 2005, but a subsequent effort in 2010 was successful.

The history of primaries in the state of Washington may add some insights for our consideration, as it reveals the preference of voters who were accustomed to being able to participate in primaries without having to affiliate with political parties.

For almost 70 years – 1935-2003 -- Washington had “blanket” primaries. With this system, except for presidential primaries, voters could vote for their choice at the primary election for any candidate for each office, regardless of political affiliation and without a declaration of political faith or adherence on the part of the voter.

In 2000, after the constitutionality of this primary system was challenged in the U.S. District Court by the state Democratic, Republican, and Libertarian parties, the Secretary of State gathered public input through a series of 11 hearings around the state.

The report of this study showed that Washington voters strongly favored retaining as many features of the blanket primary as possible. It stated that "most of the voters (in Washington) are independent and want to continue to participate in the primary without having to affiliate with a political party and without being restricted to the candidates of only one party in the primary." Voters particularly objected to any requirement that they publicly declare party affiliation, either by party registration or by making a choice at the polls.

In 2004, after a series of conflicting court decisions regarding the constitutionality of its “blanket” primary elections, the Washington State Legislature enacted a bill providing two alternative primary systems. One was a Top Two style primary system and the other, to be implemented if the Top Two system would be declared unconstitutional, was a “pick-a-party” nominating primary (the voter could affiliate temporarily and confidentially with a party and then vote only for candidates of that party).

When the governor vetoed the portions of the bill that established the Top Two primary, the September 2004 primary election used the pick-a-party system.

However, by early September the Secretary of State received more than 14,000 calls and letters from voters opposed to the pick-a-party primary, and surveys taken after the primary election revealed that only 21% of voters supported it. In the general election November 2, 2004, Initiative 872 to implement Top-Two primaries was approved by the voters by nearly 60 percent.

The following year, a lawsuit was filed by the state Republican Party. The U.S. District Court and the Ninth Circuit Court concluded that the Top Two Primary violated the political parties’ First Amendment right of free association, but on March 18, 2008, the Supreme Court overturned that decision. It ruled that the Top-Two initiative did not impose a severe burden on the political parties’ associational rights and that the parties’ arguments that voters would be confused could only be evaluated once the primary is implemented.

In August of that year, Washington conducted the first Top Two Primary in the country. Surveys afterwards revealed that 76% of voters liked it. Their preferences seem to reflect those of national organizations of unaffiliated voters (IndependentVoting.Org and its offshoot, Open Primaries). They state that healthy democracies should grow and develop as their

constituencies change, and since unaffiliated voters are a growing segment of the constituency, they shouldn't have to affiliate with political parties in order to participate in elections.

5. STRENGTHS AND WEAKNESSES OF EACH PRIMARY ELECTION SYSTEM

Closed Primaries

LWVMD studied the issue of open or closed primaries in the early 1990s, resulting in our current position in favor of closed primaries, adopted in 1993. The basic argument for closed primaries at that time was that the members of a party should be the ones to select their party's candidates. In addition, there was concern that crossover voters might support the weakest (or most radical) candidate of the other party in order to increase the likelihood that the candidate of their own party would be elected. For example, if a popular incumbent governor from Party A was running again, with no significant primary opposition, lots of voters who planned to vote for that candidate in the general election might cross over to Party B in the primary and vote for a candidate they thought could not possibly beat him. By doing that, these cross-over might deprive the members of Party B of the chance to nominate a viable candidate, which is sometimes called the "spoiler" effect.

The 1992 primary election voter registration figures indicate the percentage of registrants listed as declines (e.g., unaffiliated) or other parties was 8.1%. Although the number of people who couldn't participate in the primary was significant, it was a relatively low percentage compared with the substantially greater registration numbers in the two principle parties. The principal party concerns probably did hold greater sway in the LWVMD membership in deciding to support a closed primary at that time. However, an increase from 8.1 to 19.4 in the percentage of unaffiliated registrants and members of non-principal parties between 1993 and now was a major reason cited in the 2015 LWVMD convention discussion to re-study the issue.

Open Primaries

An Associated Press-NORC Center for Public Affairs Research poll following the 2016 election indicates that 70% of Americans want open primaries that include all voters. Many see open primaries as a necessary expansion of the traditional voting rights agenda.

Special Consideration for Top Two Primaries: If only the top two candidates move on to the general election, the majority of voters may divide their votes among candidates with similar views while two candidates supported by small, unified factions finish in first and second place.

For example, in district that is 60% Republican, imagine that moderate candidates such as Teddy Roosevelt, Abraham Lincoln, William Howard Taft, Nelson Rockefeller, and Charles Mathias are on the same ballot as Ralph Nader and Barry Goldwater, with extreme liberal and conservative views respectively. It is possible that the 5 moderates will divide 60% of the vote so that each gets approximately 12% of the vote, while Nader and Goldwater each receive 20% of the vote and move on to the general election ballot. Neither general election choice would reflect the values of the majority of voters. Similarly if 5 women and 2 men sought the nomination, both men could be declared winners even though a majority wanted a female candidate.

Top Four Primaries: Top Four operates like the top two primary used in California and Washington, but according to FairVote research it gives more voice to voters in the November election.

Similarities between Top Two and Top Four Primaries:

- All nominating primary elections are replaced with a single preliminary election.
- All candidates seeking office run against every other.
- All candidates appear on the same ballot irrespective of political party preference.
- All voters may participate irrespective of political party preference or nonaffiliated status.
- The designated number of candidates receiving the most votes in the primary move to the general election.

Why Top Four Gives More Voice to Voters:

- **More Choices.** Top Four gives more candidate choices in general election. This should give more diverse issue opinions from which voters can choose.
- **More Competition.** Top Four allows a better chance for both principal and “third” party candidates, and possibly a nonpartisan, to move to the general election ballot.
- **A More Representative Electorate.** Under Top Two, the typically smaller percentage of registered voters in the primary, who are often “older, more conservative, and less representative of racial minority populations” (source for this quote and the one following?) greatly restrict the choices of otherwise viable candidates. In Top Four, there should be a more diverse group of candidates when the “more representative general election voters” are participating.
- **Avoids “Vote Splitting.”** Top Four primary candidates only need the support of 20% plus one vote of the primary electorate, if there are five candidates. However, if there are a greater number of candidates on the primary ballot, a candidate can advance, often with far fewer votes. This leads to the probability that no single partisan or majority population captures all the general election ballot slots.

In a vote-for-one preliminary election with a large number of candidates, votes may split up in such a way that neither the first or second-place candidates are representative of a majority of voters. In California's Congressional District 31 in 2012, a majority Democratic, majority-minority district advanced only two white, conservative Republicans to the general election. This was because only those two Republicans ran, while four candidates ran as Democrats, splitting the Democratic vote too evenly among them. As another example, Louisiana's 2015 first round of election (note that although Louisiana does not use Top Two, the system operates similarly if no candidate wins a majority in the first round of election) eliminated all but one Republican, and that candidate was likely the weakest Republican in the race, ultimately leading to the election of a Democratic governor in an overwhelmingly Republican state. *

Additional evaluations of the effects of enlarging the candidate field moving from the primary to the general election (Top 2 to Top 4) are found in reports cited in the Resource Materials.

They also discuss the ramifications of using a ranked choice method of voting to determine the advancing candidates from the primary.

6. COUNTING VOTES

Plurality Versus Majority Electoral Systems and Overview by State

Some elections allow victory by plurality and some require a majority. A majority means that more than 50% of the voters voted for the candidate or issue in question. A plurality means that less than 50% voted for the candidate or issue but the winning candidate or issue received the greatest percentage of votes. In cases where a majority is required, the top 2 or 3 vote-getters may enter into another round of voting, until one receives a majority.

Winner-take-all in single winner districts ("plurality") is the norm in America. Used to elect the U.S. House Representatives, as well as many state and local legislatures, plurality is the most common and best-known electoral system currently in use in America. Under the plurality system, an area is divided into a number of geographically defined voting districts, each represented by a single elected official. Voters cast a single vote for their district's representative, with the highest total vote-getter winning election, even if he or she has received less than half of the vote.

According to the National Conference of State Legislatures, eleven states have provisions for primary runoff elections so that one candidate gets a majority of votes: Alabama, Arkansas, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, South Dakota, Texas and Vermont. Vermont holds runoffs only in the event of a tie. South Dakota only holds runoffs for the offices of U.S. Senator, U.S. Representative and the governor.

Plurality Electoral Systems

Plurality systems simply award a seat to the individual candidate who receives the most votes in an election. They are also called "first-past-the-post" or "winner-take-all" systems. The candidate need not get a majority (50%+) of the vote to win. As long as a candidate has a larger number of votes than all other candidates, he or she is declared the winner. Plurality systems normally depend on single-member constituencies, and allow voters to indicate only one vote on their ballot.

Such an electoral system, though, clearly does not represent the interests of all (or even most) voters. In fact, since a candidate need have only a plurality of votes to be elected, most voters may actually have voted *against* the winner (although their votes are split among several candidates).

**Top Four.* Fairvote. www.fairvote.org/top4#why_top_four

As an example of plurality, the chart below recounts the results of the April 26, 2016, primary election contest for U.S. House of Representatives from Congressional District 8 in Maryland. The winner of the Democratic primary, Jamie Raskin, received 33.6% of the votes and the winner of the Republican primary, Dan Cox, received 44.4% of the votes.

<i>2016 Primary Election, Congressional District 8 in Maryland - Democrats</i>		
Candidate	Votes	Percentage
Jamie Raskin	43,776	33.6%
David Trone	35,400	27.1%
Kathleen Matthews	31,186	23.9%
Ana Sol Gutierrez	7,185	5.5%
William Jawando	6,058	4.6%
Kumar P. Barve	3,149	2.4%
David M. Anderson	1,511	1.2%
Joel Rubin	1,426	1.1%
Dan Bolling	712	0.5%

<i>2016 Primary Election, Congressional District 8 in Maryland – Republicans</i>		
Candidate	Votes	Percentage
Dan Cox	20,647	44.4%
Jeffrey W. Jones	9,343	20.1%
Liz Matory	7,295	15.7%
Shelly Skolnick	5,835	12.5%
Aryeh Shudofsky	3,421	7.4%

According to FairVote, there are two main weaknesses with the plurality system. First, where the boundaries of districts are drawn can have a huge effect on who is likely to win election. As a result, gerrymandering to protect incumbents or weaken political enemies is common practice under plurality rules. This is a problem inherent in any single-winner system.

Second, plurality elections are prone to the “spoiler” effect. Where three or more viable candidates run and split the vote within a district, the “winner” of a plurality election can often be the candidate whom the majority of voters liked least. This characteristic of plurality elections leads some voters to not vote for their favorite candidate, but choose the one with the best chance of defeating the one they like least, as described [on page 21](#) above. Political parties or interest groups might try to persuade candidates from not running, to avoid this negative effect.

Majority Electoral Systems

Majority electoral systems attempt to provide for a greater degree of representativeness by requiring that candidates achieve a majority of votes in order to win. “Majority” is normally defined as 50%-plus-one-vote. If no candidate gets a majority of votes, then a second round of voting, a runoff election, is held. In the second round of voting, only a select number of candidates from the first round, usually the top two vote getters, are allowed to participate. Like plurality systems, majority systems usually rely on single-member constituencies, and allow voters to indicate only one preference on their ballot. A majority can also be achieved by using Ranked Choice (Instant Runoff) Voting.

For example, a special election was held on April 18, 2017, to elect a member of the U.S. House of Representatives for Georgia's 6th congressional district to fill the seat vacated by

U.S. Representative Tom Price following his appointment and confirmation as the U.S. Secretary of Health and Human Services in the Trump Administration. Under Georgia's rules for a special election, all candidates appear on the same ballot, regardless of party and voters may vote for any candidate, regardless of their party affiliation, and if no one achieves a majority, the top two move to a runoff election.

<i>Georgia's 6th Congressional District Primary Special Election (April 18, 2017)</i>			
Party	Candidate	Votes	%
Democratic	Jon Ossoff	92,390	48.1
Republican	Karen Handel	37,993	19.8
Republican	Bob Gray	20,755	10.8
Republican	Dan Moody	16,994	8.8
Republican	Judson Hill	16,848	8.8
Republican	Kurt Wilson	1,812	0.94
Republican	David Abrams	1,637	0.85
Democratic	Ragin Edwards	502	0.26
Democratic	Ron Slotin	488	0.25
Republican	Bruce LeVell	455	0.24
Republican	Mohammad Ali Bhuiyan	414	0.22
Republican	Keith Grawert	414	0.22
Republican	Amy Kremer	349	0.18
Republican	William Llop	326	0.17
Democratic	Rebecca Quigg	304	0.16
Democratic	Richard Keatley	227	0.12
Independent	Alexander Hernandez	121	0.06
Independent	Andre Pollard	55	0.03
Total votes		192,084	100

Since no candidate received a majority of the vote in the primary election, a runoff election was held on June 20, 2017, between the top two vote getters, Jon Ossoff (D) and Karen Handel (R). In the runoff, Karen Handel (R) defeated Jon Ossoff (D) by 52% to 48%.

<i>Runoff Election – Georgia 6th District – June 20, 2017</i>			
Party	Candidate	Votes	%
Republican	Karen Handel	134,799	51.78
Democratic	Jon Ossoff	125,517	48.22
Total votes		260,316	100

States with Primary Runoffs

Ten states, Alabama, Arkansas, Georgia, Mississippi, North Carolina, Oklahoma, South Carolina, South Dakota, Texas and Vermont, require a candidate to win with a majority of the votes. To make that happen, primary runoff elections are used. Vermont holds runoffs only in the event of a tie. South Dakota only holds runoffs for the offices of U.S. Senator, U.S. Representative and the governor.

Alabama — A runoff is required if no candidate gets a majority of the vote in the primary. The top two candidates in the primary go to the runoff. Runoff elections are held on Tuesday of the ninth week after the primary. For its uniform and overseas absentee voters only, Alabama uses instant runoff voting, also known as ranked choice voting.

Arkansas — As in most other states, a runoff between the two top candidates is required if no candidate gets a 50 percent majority in the primary. Runoff elections are normally held three weeks after the primary.

Georgia — If no candidate gets a majority of the votes cast, a runoff between the top two candidates is required. Runoff elections are held nine weeks after the primary.

Mississippi — A runoff is required between the top two candidates unless one candidate gets a majority. Runoff elections are normally held three weeks after the primary.

North Carolina — North Carolina used to have the same majority requirement that other states have but this was changed in 1989. Under the current statute, a runoff (they call it a second primary) is not required if a candidate gets a "substantial" plurality – which is defined as 40 percent of the vote plus one. A runoff is not required in any case unless the second highest vote getter calls for a runoff. Runoff elections are normally held seven weeks after the primary.

Oklahoma — Provisions are the same as in most other states, that is, a majority is required to preclude a runoff, otherwise the two top candidates go to the runoff. Runoff elections are held in August.

South Carolina — In South Carolina the primaries are the responsibility of the political parties, but they operate the same way that most states do – a majority precludes a runoff. Runoff elections are normally held two weeks after the primary.

South Dakota — In South Dakota a runoff is held only for the offices of U.S. Senator, U.S. Representative, or governor. This is called a "secondary" election. If, in a primary race involving three or more candidates, no candidate receives 35 percent of the vote, the two candidates receiving the highest number of votes move to a "secondary" election three weeks after the first primary election.

Texas — It is the same in Texas as in many other states; getting a majority precludes a runoff. Otherwise the two top vote getters go to a runoff. Runoff elections are normally held six weeks after the primary.

Vermont — Vermont conducts a runoff only in the event of a tie in the primary.

Note: Beginning in 1992, Kentucky held a primary runoff if no candidate for governor or lieutenant governor received 40 percent in the primary race for governor. This was repealed in 2008 (*2008 Ky. Acts, Chap. 129*).

Ranked Choice Voting

Some states use runoff elections for primaries; one state, Alabama, uses instant runoff elections for its uniformed and overseas citizen absentee voters (UOCAVA) voters. Instant-runoff voting (IRV) is a voting method that allows voters to rank all the candidates they find acceptable in single-seat elections. Ranked choice voting can also be used in multiple candidate elections like Maryland's multi-member legislative districts or for multiple at-large candidates used in some county councils or board of education.

Instead of requiring 50% plus 1 vote as required for the election of a single candidate by IRV, the percentage required depends on the number of candidates being elected. For three-member legislative districts, it requires that each of the multiple candidates gain 25% plus one vote of the total cast for all the candidates. For a two-member district, the percentage is 33.3% plus one vote. When electing four at-large candidates, the percentage is 20% plus one vote. In each case, the formula is the total vote cast divided by the figure that is one more than the number of candidates being elected, with one more vote added. That means you cannot elect any larger number of voters than the number being elected.

Maine is the only state in the country to have established the use of ranked choice voting for all congressional and state elections. The state adopted a citizens' initiative in November 2016, with 52.12 percent voting to enact the initiative that moved the state toward a system of ranked choice voting for elections for U.S. Senate, U.S. House, Governor, State Senator and State Representative starting in 2018. On May 23, 2017, however, the Maine Supreme Court issued an advisory opinion that the action violated the state constitution, which provides that elections for state offices are determined by a plurality of votes.

After the Court ruling there were two different legislative attempts, one which would have repealed the initiative and a second to propose a Constitutional amendment implementing ranked choice voting. Neither of the bills were passed during the legislative session, ending June 29, which does not reconvene until January 2018. Although funds were not appropriated for transitioning to ranked choice voting, Secretary of State Matthew Dunlap directed his office to prepare regulations to implement the system for the 2018 races. If the initiative is not implemented, its backers may bring the proposal to the voters again as an amendment to the state constitution.

Additionally, some cities in the U.S. use ranked choice voting including St. Paul, Minnesota, Portland, Maine, and four cities in California: San Francisco, Oakland, Berkeley, and San Leandro. A variation on ranked choice voting is used in some cities with multi-member districts, and is similar to Maryland's multi-member legislative district elections described above. In Cambridge, Massachusetts, and Minneapolis, Minnesota, the percentage of the vote needed to win a seat declines in relation to the number of seats to be elected.

In 2015 the delegates at the LWVMD convention concurred with a Montgomery County position for using ranked choice/instant runoff voting, to fill vacancies in state and local offices:

Filling Vacancies In State And Local Offices (1985, 1995, 2015)**Support for:**

1. *Special primary and special general elections to fill vacancies in the Maryland General Assembly to be held at the same time as other regularly scheduled elections (tie-in elections).*

a. *Support the option to use Instant Runoff Voting (IRV) to fill vacancies in any single seat or executive office elections, at the local, county or state level. This would require the winner to receive a majority of the votes, instead of conducting both special political party primaries and a special general election.*
(2015)

7. IMPLEMENTATION**Current Way to Open Primaries and Survey of Political Parties**

As previously mentioned in the ballot access section, Maryland law allows a principal political party to open its primary to voters not affiliated with its party, provided they notify the State Board of Elections six months in advance of the primary.

Annotated Code of Maryland, Election Law Article §8-202 (c).

(c) If a political party chooses to permit voters not affiliated with the party to vote in the party's primary election, the chairman of the party's State central committee shall so notify the State Board at least 6 months before the date of the primary election.

Since this legal flexibility exists in the Maryland, the Study Committee sent an email in January 2017 to the chairs of the four recognized political parties

Subject: Survey on Primary Elections

Questions asked:

- Has your central committee discussed [the provision to open your primary election to unaffiliated voters] this option in the recent past or for the future? Would you include just unaffiliated registrants or also members of other parties? *(for Democrats/Republicans)*

or

What is your opinion of how the state sponsored Primary Election should be run? If your party was allowed on the state primary ballot, would you open your primary to members of other parties and/or unaffiliated voters? *(for Green/Libertarians)*

- What would be the main advantages or disadvantages of allowing such participation?
- Do you have other suggestion for ways to encourage unaffiliated voters to participate in the electoral process?.

Response from Libertarian Party

- Prefers closed primary
- Prefers to nominate their candidates by convention
- Prefers people committed to principles of party – protect the ideology
- People who choose to be unaffiliated have a right to choose to not be part of the nominating process

Response from Green Party

State/national internal Green Party proposals support:

- expressly forbidding endorsing Democrats
- forbidding running fusion tickets with Democrats
- dues paying membership structure

Neither the Democrats nor Republicans responded to the questions in January; a second e-mail was sent in July, following an incidental meeting of a committee member with the State Democratic Chair. When questioned about opening the primary at the meeting, she was totally unaware of this ability and said she would investigate the possibility. No response has been received as of the end of August.

Recent Legislative Attempts to Open Party Primaries

In the 2017 legislative session of the Maryland General Assembly, State Senator Cheryl Kagan (D), Montgomery County District 17, introduced Senate Bill 64, Voter Registration - Affiliating with a Party. The synopsis of the bill reads: *“Allowing voters who have declined to affiliate with a political party to affiliate with a party at any time individuals may register to vote; altering provisions concerning the timing of requests to affiliate with a party to conform with the procedures for early voting; altering provisions relating to early voting to allow voters who have declined to affiliate with a political party to affiliate with a party and be issued a ballot to vote; etc.”*

There were no co-sponsors and it was not cross-filed in the House. The bill received an unfavorable report by the Education, Health, and Environmental Affairs Committee and was withdrawn. The Montgomery County Board of Elections discussed the bill at their January 23, 2017 meeting and voted to oppose the bill as they felt it would create an “open primary” for unaffiliated voters but not for others. This seven-member body appointed by the governor, with four members of administration’s party and three members of the other principal party, also thought it would create an incentive not to register with a party.

In early September 2017, the office of State Senator Cheryl Kagan (D), Montgomery County District 17, confirmed that her staff is working on ranked choice voting bills for the 2018 legislative session. It may be geared towards Montgomery County, but the wording has not been set.