

**Discussion Guide for PRIMARIES in MARYLAND:
Open vs. Closed? Top Two/Four or by Party? Plurality or Majority?
DL: Discussion Leader RP: if also have Resource Person from Study**

10/7/17 note: It takes about 40 minutes to just read through the DL and RP texts before the consensus questions on p. 8, **without** any time for discussion. *Time guidance* is given near the end of each page in box. References to the **Fact Sheet** pages are **bolded**, *Background* pages are *italicized*. *If you need it shorter, skip most of p.1, and the FairVote criteria on p. 3.*

DL: *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.” Our discussion today is to determine if Maryland residents would be better served by a different system. Our resource person, _____, was a member of the LWVMD study committee.*

RP: As discussed on **pg. 1 of the Fact Sheet**, this state study was partially motivated by the length of time since our current position’s adoption in 1993 and by the rise to over 19% of registered voters who are not affiliated with either of the two major political parties. [*Background p. 3-4*] There also has been a substantial increase in legislative changes since the closed primary policy’s adoption and a concern about primary turnout with increasing numbers of voters who currently cannot participate in primaries except for nonpartisan offices.

Despite the time devoted to this study, there are certain aspects of a primary election or closely connected issues that are outside the scope of this study:

- 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. You 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.
- 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. A national LWVUS apportionment position supports apportioning substantially on population. It also states there should not be dilution of the effective representation of minority citizens; nor should it be partisan. LWVMD has studied redistricting and adopted a position for an independent commission. 4 minutes

DL: *Are there any initial questions about the study itself, or general information about the fact sheet before we dive into the topics? We have six questions to discuss; one is*

concurrence and the others are consensus. If not, what are the concerns and complaints against our “closed” primary system.

RP: The biggest complaint of unaffiliated voters (AKA independents) in a closed primary state is that they are unable to vote for the vast majority of candidates in the primary election. If a person chooses to not affiliate with the principal recognized political parties, the voter is essentially disenfranchised when those parties’ general election candidates are being selected in publicly-financed 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 to tackle corruption. A series of reforms 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. *[Background p.8-9]*

As of June 2017, 19.2% of Maryland registered voters (unaffiliated and minority party members) were prohibited by law from participating in state sponsored and funded partisan primary elections, unless a principal party (Democratic or Republican) chooses to include them. For the month of June, the new registrations for those choosing not to affiliate with any of the recognized parties reached 25.8%, an even higher percentage than the overall rate. This causes many unaffiliated and “minor” party voters to question the fairness of an election system from which they are excluded.

The nonprincipal parties, currently Green and Libertarian, also have to subsidize all the costs of their own candidate nominating process while these costs are paid by the state for the two principal parties. *[Background p.8 for cost of primary elections.]* The unaffiliated voters question why they should have to affiliate with political parties in order to participate in the primary election.

Another issue that may disenfranchise voters is that in many Maryland counties one party dominates. In that instance, 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. Only Kent, Somerset and Wicomico of the 24 jurisdictions have nearly evenly divided partisan office-holders. The five more urban ones are heavily or exclusively Democratic – plus Charles and Dorchester, while Western Maryland, Eastern Shore and Southern Maryland counties are more Republican. *[Background p.7]*

5 minutes

DL: *Since the unaffiliated and minor party voters are a growing segment of the constituency, should we be looking at new policies as the constituency changes? What should be our goals or criteria for an election?*

RP: On the **middle of page 1 of the Fact Sheet**, we state the LWWUS criteria: “an open governmental system that is representative, accountable and responsive” and, **on page 4, Evaluating an Election System**, there is the criteria from Montgomery County, our concurrence question. Would someone like to read the italicized points?

Now, **lower on page 4** are the **bullet points** from the non-partisan, non-profit FairVote report, *Comparative Structural Reform: Assessing the Impact of 37 Structural Reforms*, that also explored what are the important goals of elections and how government operates. We have **half-page handouts** that give a little more detail on these goals or criteria. NOTE: A question was raised at the LWVMD workshop about whether there has been a study of how any of the various types of primaries affect voter turnout. Open Primaries, an organization supporting open primary elections, has concluded that it is not feasible to quantify this, which supports our futile efforts to find such a study.

***DL:** Did any of you review these criteria or the FairVote report? From your prior reading, or just from hearing this list, which of these goals, or what other aspects of the primary process, do you think are more important to consider when we review the possible alternatives to our closed primary?* 3 minutes

AFTER DISCUSSION: *As we work through this study, you might want to think about how the choices influence the criteria you find most important.*

*Let's look again at the criteria in **concurrence question 1 on page 8 of the Fact Sheet**, that we just read a few minutes ago. Just a reminder – this is a state study, so League members throughout the state are discussing this topic until next March, when all the local League recorder forms will be compiled to determine if we have new positions. So, we need to make sure that all members participating have signed in - and that total number is _____ for our Recorder.*

This first question on criteria is a concurrence with the position already adopted by the Montgomery County League – nothing can be changed – it is agree or disagree exactly as written. This criteria would be added to the state position and help guide our future leaders when determining the state positions on legislative proposals.

*Is there any more **DISCUSSION** on this question? If not, do we have **opinions in favor of adopting? Not adopting?** If we are in favor, the State LWV is requesting if it is a **strong** consensus (**nearly unanimous**) or **weaker (substantial number in favor but a small minority are opposed or abstaining)**. So we are recording that as _____ concurrence.* 3 minutes

*Now it's time to look at some different primary systems that are **detailed on page 5 of the Fact Sheet:***

RP: Several styles of primaries are used in the 50 states that can be categorized in two different ways – who they are selecting and who gets to vote. [Background p.18-19]

The selection of candidates for the general election ballot may be

- 1) to represent the political parties OR
- 2) only as individuals, with or without a personal partisan label.

Additionally, the primaries can be categorized by which registered voters get to participate in the election.

There are several kinds of **Party Nominating Primaries**:

- **Closed Primaries** –where voters must be **members of the party** holding the primary. **8 States**: Delaware, Florida, Kentucky, Nevada, New Mexico, New York, Oregon, Pennsylvania [Background p.21]

This is our current LWVMD position on primaries, adopted in 1993, when the basic argument for a closed primary was that party members should select their candidates, and other “crossover” voters might support the weakest candidate to enhance their preferred party’s chances.

- **Open Primaries** –where voters may **choose which primary to vote in private**. The voter’s choice of party ballot at the primary does not result in their being registered with that party. **15 States**: Alabama, Arkansas, Georgia, Hawaii, Michigan, Minnesota, Mississippi, Missouri, Montana, North Dakota, South Carolina, Texas, Vermont, Virginia, Wisconsin [Background p.21]
- **And three styles of Hybrid Nominating Primaries**
 - **Partially Closed** –where 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. **8 States**: Alaska, Connecticut, Idaho, **Maryland+**, North Carolina, Oklahoma, South Dakota, Utah [Background p.19]
 - **Partially Open** –where voters may choose which primary to vote in, but must either do so publicly by announcing at the polling place which party’s ballot they wish to receive and, depending on state law, their vote may be regarded as a form of registration with that party. **6 States**: Illinois, Indiana, Iowa, Ohio, Tennessee, Wyoming
 - **Open to Unaffiliated Voters** –where **unaffiliated voters may choose** which party primary they want to vote in, but voters affiliated with other parties may not cross over. **9 States**: Arizona, Colorado, Kansas, Maine, Massachusetts, New Hampshire, New Jersey, Rhode Island, West Virginia

The **Individual Candidate Primaries** work somewhat like a preliminary election that then requires a run-off between the top candidates.

- **Multi-Candidate Primary (currently only Top Two)** –where all candidates appear on the same ballot and everyone can vote; the top two vote-getters advance to the general election regardless of party. **3 States**: California, Louisiana, Washington. **NOTE**: the number of candidates who can appear on a multi-candidate primary ballot is regulated by state ballot access laws which may

include filing required documents, paying a filing fee or submitting petition signatures. **Fact Sheet, p. 3** has discussion on access to MD ballot.

- **Nonpartisan Primary** –candidates have no party designations and everyone registered can vote. **NO states** use this exclusively, but it is the method used for selecting Board of Education candidates in many Maryland counties.

DL: Have you or members of your family or friends participated in any of these styles of primaries other than Maryland's? Let's talk about the different styles, thinking about your experience and the **strengths and weaknesses listed on page 5 and 6 of the Fact Sheet** and the **criteria/goals** you would like to see in an election on **page 4 and the handout**. What do you see as the more important advantages and disadvantages that we list or you have experienced? 7 minutes

(Allow time for **DISCUSSION**)

RP: We have a few extra comments that we think may be germane to the discussion.

- An Associated Press-NORC [formerly National Opinion Research Center] 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.
- California's "Top Two" primary system, adopted in 2010, is incurring some criticism: 1) substantial restriction of voter choices based on the results of low turnout primaries, 2) California also prohibits write-in candidates in the general election, 3) If only the top two candidates move on to the general election, the majority of voters may divide their votes among 4-5 candidates with similar views, while two candidates supported by small unified factions may finish in first and second place despite their minority registration numbers. [*Background p.19-20 for Supreme Court decisions on primaries/ballot access.*]

Let's give a hypothetical top two example: Of the candidates for a particular office on a top-two primary ballot, there are 5 moderate candidates (say Teddy Roosevelt, Abraham Lincoln, William Howard Taft, Nelson Rockefeller and Charles Matthias), 1 very conservative candidate (Barry Goldwater) and 1 very liberal candidate (Ralph Nader). It is possible that the 5 moderates will divide 60% of the vote so that each gets approximately 12% of the vote, while the conservative and liberal candidates each receive 20% of the vote and move on to the general election ballot as the top two vote getters. Neither of the two general election choices 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 of voters wanted a female candidate.

With four or more candidates moving to the general election, there is a better chance that a candidate with views supported by a greater number of voters will be on the general election ballot. [*Background p.22-23*] 5 minutes

DL: Are there any questions on the different styles of primaries? Moving on to counting the votes in our Maryland primary, **in the Fact sheet on p. 6-7**, we currently select the candidate(s) with the highest number of votes to move to the general election ballot. This is called a plurality. When we are electing in multi-member districts (for a two or three member General Assembly district, or for several at-large seats on a county legislative body) the top two, three or four vote-getters are selected. Is this the typical way candidates are elected in the United States?

RP: Plurality winners are common in the United States, but currently **ten states** [Alabama, Arkansas, Georgia, Mississippi, North Carolina, Oklahoma, South Carolina, South Dakota, Texas and Vermont] require at least some of their offices' winners to have a majority of the votes cast. When a majority is not achieved in a single election, there are usually primary run-offs a month or so later, between a predetermined (but usually the top two) candidates. [Background p. 23,26-7, correction 10, not 11 states]

DL: Do you see advantages or disadvantages to using a plurality instead of requiring a majority? Are any of you familiar with elections that require a majority vote, especially through run-offs? 3 minutes

[IF NECESSARY] We have some recent examples of plurality voting in the 2016 CD 8 race and the 2017 special election majority-required run-off in Georgia's 6th CD to fill HHS Secretary Tom Price's seat in the House of Representatives. [Background p. 24-5]

Both plurality (first past the post) and run-off elections are fairly familiar ways of voting, but there is another way to achieve a majority vote, known as Ranked Choice or Instant Runoff Voting (IRV).

LWVMD convention delegates in 2015 concurred with a Montgomery County position supporting Instant Runoff Voting/Ranked Choice Voting to fill **vacancies** in any single seat or executive office elections, at the local, county or state level. This requires the winner to receive a majority of the votes in a single special election, instead of conducting both political party primaries and a special general election. Let's review Instant Runoff Voting/Ranked Choice Voting. [Background, p. 27-28]

RP: In an election using ranked choice voting, voters indicate up to a pre-specified or personal number of their first, second, third, etc. choice of acceptable candidates on the ballot for an office. The counting software compiles all the first place votes each candidate receives. If no one candidate receives more than 50% of the vote for the office, the lowest scoring candidate is dropped, and those ballots are redistributed based on their second choice, and the software recounts the combined first and second choice ballots. This continues until someone reaches the 50%, plus one level.

IRV/RCV has the effect of avoiding split votes from like-minded voters among multiple candidates with similar views. As a simple example, suppose there are two candidates with similar views, A and B, and a third with different views, C. First preference totals are 35% for candidate A, 25% for B and 40% for C. In a plurality voting election, candidate C may win with 40% of the votes, even though 55-60% of electors prefer both

A and B over C.

Alternatively, voters are pressured sometimes to choose the seemingly stronger candidate of either A or B, despite a personal preference for the other, in order to help ensure the defeat of C. With IRV, the voters backing B as their first choice could rank A as second choice. It is likely that candidate A will pick up sufficient second choice votes from B that A would win by 55-60% to the 40-45% candidate C might get. One of the candidates preferred as 1st or 2nd choice by a majority is elected, despite the split vote among similar candidates in first choices. (Source: Wikipedia, "Instant Runoff Voting") [Background p.27 for IRV/RCV for multi-member legislative or at-large county districts.]

Maine is the only state to have chosen to use ranked choice voting (congressional and state elections) but it has not yet been implemented. There are several cities use ranked choice and a legislative proposal allowing it was introduced in Maryland last year, and will be again in 2018. [Background, p. 27] 5 minutes

DL: Are there any questions on either the types of primaries or on the different ways of determining a winner or how they might work together? Before we discuss the consensus questions, what needs to happen to implement any changes we support?

RP - First, as we noted before, Maryland **does** allow the principal parties to open their primaries to voters not affiliated with their party provided they notify the State Board of Elections six months in advance of the Primary. The Republican Party did open their 2000 Presidential primary election to independents or non-affiliated voters. There was about a 12% spike in the turnout of independent voters vs. preceding presidential elections in the 1990s and 2004. But there are some inconsistencies in reporting registration affiliations during this period, and there are major differences in primaries with open seats vs. incumbent office-holders. [Background p.4-5]

We sent a questionnaire to the recognized parties (Democrats, Republicans, Green and Libertarians) during this study, but did not receive responses from the two major parties, despite follow-up, and the two nonprincipal parties both prefer their own party-run primaries to be closed to registered party members. [Background p.28-29]

As mentioned **on p. 7 of the Fact Sheet**, most changes to the style of primary would require legislative passage, as well as voter passage of a state constitutional amendment. There have been judicial decisions and continue to be legislative efforts to change our election system, as noted in the proposed ranked choice voting legislative being written for the 2018 session. [Background p.11-13] 3 minutes

*DL – Okay, let's review the **consensus process** again. As a LWVMD study, our county's consensus results will be combined with other counties. Our total number of people voting is ____, and we'll note the strength of support or of opposition to each question. Only members can vote. Our Resource Person can help with details.*

Would our recorder please read the direction before, and then, **question 2?**

Thinking about what is important to you from the criteria we discussed (**Fact Sheet p. 4**), how LWVMD adopted this position and how things have changed, and the strengths and weaknesses of each primary election system (**Fact Sheet p. 5–6**), does anyone have any statements to make about this question?

AFTER DISCUSSION: From the discussion it appears we have OR do we need to raise hands to indicate if we have

- nearly unanimous support for the position OR
- support but with some opposed or not voting for the position OR
- opposition to the position OR
- no clear consensus.

Are there any comments to be recorded for the consensus committee about this question?

Repeat boxed procedure for question 3

Repeat for question 4

with recorder reading the direction and the initial question 3, ask if any more statements, then decide consensus, and repeat for all the parts in each question.

referring to advantages/disadvantages of the counting methods (**Fact Sheet p. 6-7**), with the initial question*, AND all the parts. These counting decisions apply to **both primary and general elections, whether single candidate** is being selected/elected (50% +1 majority) or **multi-members** (majority determined by number of candidates).

Repeat for question 5

referring to our initial discussions about the changes in our electorate that helped LWVMD adopt this study (**Fact Sheet p. 1**), how primaries are currently conducted in Maryland (**Fact Sheet p. 3**), and their cost to the taxpayers.

Repeat for question 6

referring again to the changes in the electorate (**Fact Sheet page 1**) and differing regulations on the recognition of political parties and the ways candidates have access to the primary or general election ballot (**Fact Sheet p. 3-4; Background, p.11-17**)

DL – Are there any comments to be recorded for the consensus committee on a specific question? Do we need to review the responses to any or all the questions? ...were there issues raised subsequent to our initial discussion of a question that changes your opinion previously expressed? Have all our comments been expressed to the State

study group and the consensus committees? The consensus reports are due to the state League by early March, so the final statewide concurrence/consensus results may not be known until April or May. Great job on working through these important issues!