

PRIMARIES in MARYLAND (for June Convention workshop)

Open vs. Closed? Top Two/Four or by Party? Plurality or Majority?

1. LWV PRIMARY ELECTION POSITION AND BACKGROUND FOR THE STUDY

The 2015 LWVMD Convention adopted a two-year study about Maryland primaries, focused on the state position supporting a “closed primary election,” adopted in 1993. The study is to determine if Maryland residents would be better served:

- by closed primaries or a change to open primaries;
- by allowing a simple plurality for declaring winners (e.g., winner-take-all) or if a majority vote is needed to win; and
- if a majority vote is preferred, should it be by a run-off election, ranked choice voting, or designating a specific number of winners (top-two/four/etc.) to move to the general election ballot.

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.

The basic public policy positions of the LWVUS promote an open governmental system that is representative, accountable, and responsive. It works to protect and enhance *voting rights of every citizen..., assuring opportunities for citizen participation, [and] working for open, accountable, representative and responsive government at every level.*

This study was adopted in part because, despite Maryland’s rising voter registration numbers, new registrants increasingly do not affiliate with the two major political parties. Over the past two decades, the percentage of registered unaffiliated voters rose from 11.1% in 1996 to 17.3% in 2016. As of January 2017, over 19% of Maryland voters cannot participate in Maryland’s state-funded closed principal party primary elections, because they are registered as unaffiliated or are registered with a minor party (1.6%). Nonetheless, these unaffiliated voters have an interest in the principal party primaries, as evidenced in the April 2016 primary. Of the total number of primary provisional ballots rejected, 37.5% were not counted for the party nomination races because these 9,000 plus voters were not registered in the party of the ballot they requested.

Another motivation for the study is a declining percentage of registered voters participating in most primary elections. For gubernatorial primary elections, the last two decades have seen a 3 to 5% decrease in voter turnout from one gubernatorial primary to the next. A similar trend occurred in the less competitive presidential primary elections when an incumbent president was running (1996, 2004, 2012). However, the three open-seat presidential primaries (2000, 2008, 2016) had increasing or fairly stable turnouts. Also, in 2000, the Maryland Republican Party allowed unaffiliated voters to vote in their primary election, and almost 52,000 unaffiliated voters participated.

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

Party primaries have evolved from earlier methods of deciding which candidates would be listed on the general election ballot. The various methods (party caucuses, conventions, or nominating petitions) measure the level of public support for any candidate. Candidates for local offices were chosen by party leaders or other methods for nearly a century, gradually being replaced by nominating primaries. The primary election system in the USA emerged in the late 19th and early

20th century as a reaction against strong party organizations and their control over nominations.

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

- the introduction of secret ballots
- the rejection of the party convention system for candidate selection.

But the underlying assumption and current reason for state-conducted political party primaries remains that a party represented a large number of voters and the person chosen by a party therefore had enough public support to merit being placed on the ballot for consideration by all voters.

a. Role of the Political Party in Primaries

In a series of eleven decisions, the Supreme Court has recognized both the rights of citizens to vote and of political parties and their members to associate as fundamental rights under the First and Fourteenth Amendments, but these rights are sometimes in conflict. Political parties have successfully challenged state primary systems that allowed all voters to choose the nominees of a particular party, with the Supreme Court holding that a party may require some sign of affiliation (whether through official voter registration rolls or by promising to support the nominee of the party) or at least be able to exclude voters who are aligned with an opposing party. The Court has also held that the states have a legitimate interest in ensuring orderly elections, including the denial of ballot access to frivolous candidates.

The Court's decisions have sought to balance these competing considerations. For example, requiring unaffiliated candidates to submit signatures is no more burdensome than winning a partisan primary, provided that the required number is not too high (decision said 5% is ok, 15% is too high). Banning write-in candidates is allowed when other opportunities for participation exist. The resulting system is one in which party primaries are the principal means for placing a candidate's name on the general election ballot, with nomination by petition required as an alternative for candidates and voters who want to work outside the party structures.

Perhaps the most significant factor that distinguishes the various primary systems is the role of the parties in selecting candidates. The writers of the Constitution expressed grave concerns about the negative consequences of "factions" and strove to create a governmental system that would not encourage or require them. The governmental system has endured, but "factions" arose almost immediately and have evolved into our major political parties.

Political parties can play some positive roles when they:

- recruit, train, and help fund candidates;
- create a party platform that can provide a "short-cut" for voters to focus on a smaller pool of party-affiliated candidates when the voter agrees with one or more of the party platform positions; and
- provide an organizational framework for "like-minded" representatives to work together to advance the party's goals during the campaign and when governing.

However, many of these same strengths can also be perceived as weaknesses. Political parties can be disruptive to the election process and the functioning of government when:

- they encourage voters to select candidates by party label rather than evaluating them on their individual views;

- the desire of the party to advance its goals, increase its strength and elect more party members may override the needs of the citizens;
- they discourage legislators from advocating for policies not in line with the party platform, and discourage them from working with members of other parties.

b. Access to the Ballot

In order to be placed on the Maryland ballot, a candidate for state or federal office must meet a variety of complex, state-set filing requirements and deadlines. An individual may become a candidate for office in the general election by:

- seeking the nomination of a state-recognized political party,
- running as an unaffiliated candidate after meeting a petition requirement, or
- running as a write-in candidate.

Maryland state law requires ballot access for **principal political parties** (Democratic and Republican) through primary elections. Internal party rules govern a principal party's decision whether or not to permit voters not affiliated with the party to participate in its primary election. Since 2003, the Maryland Republican or Democratic central committee that decides to allow unaffiliated voters to participate in its primary election must provide notice to the State Board of Elections of this decision at least six months prior to the date of the primary. The Maryland Republican Party allowed unaffiliated voters to participate in its primary election in 2000; neither principal political party has allowed unaffiliated voters to vote in primary elections since that date.

The non-principal parties recognized by the state (Green and Libertarian in 2016) do not participate in the state-run primary elections, but nominate candidates by petition or in accordance with their own organization's constitution and bylaws. They must fund their own nominating apparatus, and do not receive assistance from the state to provide notices to their own party's affiliated registered voters about their nominating process.

Minor parties have sometimes had a difficult time retaining party status. Since 1998, for a non-principal party to remain certified by the state, its candidate for President or Governor must receive 1% of the total vote or it must have an affiliation by at least 1% of the total number of the state's registered voters. In 2016, the required 28,000 votes out of the 2,800,000 was achieved easily by both Libertarian and Green parties with, respectively, 79,605 and 35,945 votes for their Presidential candidate. Neither party achieved the alternative status retaining test of 1% affiliation of the 4,000,000 Maryland registrants (40,000) with the Greens having over 20,000 and the Libertarians under 10,000. Over the last two decades, six other non-principal parties have appeared on the ballot for one to six of the election cycles

Candidates for 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 (for example, \$290 for a state-wide office, \$25 for County Executive). Unlike in many other states, a candidate for a party's nomination in Maryland is not required to submit petition signatures. This low threshold to qualify for the ballot results in large numbers of candidates; in 2016, there were 10 candidates each for the Republican and Democratic nominations for U.S. Senate.

Unaffiliated petition candidates do not run in primary elections. Their filings must be completed

by July of the election year, including a petition with 10,000 signatures for a statewide elective office, or at least 1% of the eligible voters for the appropriate district.

Write-In candidates also do not run in primary elections, but to have their general election votes tabulated, they must file a Certificate of Candidacy and Statement of Organization for the candidate campaign committee.

3. EVALUATING AN ELECTION SYSTEM

In 2009, LWV of Montgomery County, MD conducted a local study of different ways of conducting elections and of counting the votes. The county study committee suggested the following criteria or goals for an election system, later adopted as part of the county consensus:

1. *We believe it is important that election systems:*
 - a) *produce representation that reflects community sentiment,*
 - b) *help increase voter participation by encouraging a broader range of candidates and more civil campaigns; and*
 - c) *are feasible to implement.*
2. *We also prefer election systems that:*
 - a) *are easy for the voter to understand, both in terms of how to vote and how their vote is counted,*
 - b) *help ensure minority views and interests have some influence in selecting elected officials,*
 - c) *help raise the level of political campaigns by encouraging a focus on the issues and discouraging negative campaigning,*
 - d) *maximize the power of each voter's vote, and*
 - e) *help promote more openness and responsiveness between candidates and constituents.*

In the deliberations of this state study committee, the members used these criteria from Montgomery County and the LWVUS public policy goals for representative, accountable and responsive government to evaluate the variety of primary electoral choices. The members also reviewed assessments of political scientists on how different types of primary elections affected the composition and operation of government.

In evaluating the choices presented in the consensus questions, members should consider the relative importance to them of factors such as: increasing voter engagement (more people voting and choosing candidates who reflect community sentiment), the openness of the government process (that unaffiliated and minor party voters can participate, that women and minorities can be elected), electoral accountability of officials (that incumbent officials can be replaced), and legislative functionality (legislators evaluate policies on their merits rather than party positions).

The committee also asks for state concurrence with the Montgomery County criteria for primary elections, anticipating that the criteria will help guide future League leaders in interpreting our positions and writing testimony on future primary election proposals.

4. TYPES OF PRIMARY ELECTIONS

The manner in which primary elections are conducted varies widely from state to state, as each state's unique political environment evolved, subject to constitutional limits in the Supreme Court decisions summarized previously.

Primary election systems may be categorized by (1) whether candidates on the general election ballot are selected to represent the political parties or as individuals and (2) which registered voters get to participate in the primary:

Party Nominating Primaries: the parties require candidates to be members of the party and the winners are the party's nominees in the general election.

- *Closed Primary* – only party-affiliated voters can participate in the primary election. Voters receive the party ballot reflecting their voter registration affiliation. Non-affiliated voters cannot vote in partisan races.
- *Open Primary* – all voters may participate in any single party primary election, without regard to their registration affiliation. All voters ask for the primary ballot of the party of their choice.
- *Hybrid Primary* – all party-affiliated voters participate in the primary of the party matching their registration, as in a closed primary. However, non-affiliated voters may request the primary ballot of any party inviting them to participate.

Individual Candidate Primaries: all candidates and all voters participate in a single primary, with a pre-determined number (two or more) of winners appearing on the general election ballot, but all voters may choose candidates from different parties, regardless of the candidate's or their own affiliation. The general election becomes similar to a run-off between the designated number of primary winners. No party is guaranteed a position on the general election ballot, and more than one candidate from a party may appear.

- *Multi-Candidate Primary (Top Two, Top Four, etc.)* – all candidates are listed with their party designation.
- *Nonpartisan Primary* – candidates on ballot have no party designations. In many Maryland counties, this is the method for selecting Board of Education candidates.

5. STRENGTHS AND WEAKNESSES OF EACH PRIMARY ELECTION SYSTEM

- *Closed Primaries:*

Advantage: Parties can ensure that a candidate who appeals to its members and supports its policies will appear on the general election ballot.

Disadvantage: Non-affiliated voters are excluded from participation in the primary election.

- *Open or Hybrid Primaries:*

Advantages:

- Voters do not have to affiliate with political parties in order to participate in the primary election.
- Candidates have an incentive to appeal and respond to all voters by having positions that are less partisan and more moderate.

Disadvantage: The winning primary candidates may be less supportive of the goals of the political party that they represent, especially if cross-over voters chose a weaker candidate on an opposing party's ballot.

- **Multi-Candidate or Nonpartisan Primary:**

- Advantages:

- All voters have a greater choice of primary candidates from which to choose, regardless of their or the candidates' party affiliation, and may select candidates from a variety of parties on one ballot.
 - Candidates have an incentive to appeal and respond to all voters by having positions that are less partisan and more moderate.

- Disadvantages:

- Political party and unaffiliated candidates are not guaranteed to be on the general election ballot
 - Voters during the primary process have to study a large number of candidates with a variety of viewpoints.
 - Voters may find it more difficult to choose a candidate when a party affiliation is not listed on a nonpartisan primary.

6. COUNTING VOTES

The predicted effect of any change to the selection of candidates through the primary system also depends, in part, on the method used for determining the winner. The counting method can alter how the campaign is run, what issues are discussed, who chooses to participate, and how the resulting legislative body or executive governs. A definition and potential advantages and disadvantages of each counting method follow:

Plurality electoral systems - the candidate with the highest number, but not necessarily a majority, of votes wins. This is also known as "first-past-the-post" voting.

- Advantages:

- Largest vote-getter being winner is simple to understand.
 - Does not require the extra time, expense or policies for a second round of voting.

- Disadvantages:

- Winners could represent the interests of only a small percentage of the electorate
 - More votes may be cast against the winner than in support, if those opposition votes are split among two or more candidates.
 - May discourage voters from supporting their first choice, instead voting strategically for a candidate whom they guess is more likely to win.

Majority electoral systems - a winning candidate needs at least 50%-plus-one-vote to win.

- Advantages:

- Strives to be more representative, a democratic tenet
 - Could reduce the "my vote doesn't count" feelings

- Disadvantages:

- Requires extra time and cost if a second round of voting (run-off) is required.
 - May require changes in voting procedure or equipment if Instant Runoff Voting is used

A **majority vote** can be reached through a runoff election or ranked choice voting.

- **Run-off Election:** When the requisite number of candidates for an office do not achieve a majority of the votes during the first (primary) election, a few states require a second round of voting. Those elections are often a month or more after the initial ballot, and only

a predetermined number of candidates from the first round (usually the top two) are allowed to participate. Voters may indicate only one choice for each office on the ballot.

- o Advantage: is simple to understand.
- o Disadvantages:
 - If only the top two candidates move on to the general election, the majority of voters may divide their votes among several candidates with similar views while two candidates supported by small, unified factions finish in first and second place.
 - Requires extra time and expense for a second round of voting.
 - Fewer voters generally participate in a second election.
- **Ranked Choice Voting:** In the primary election, voters indicate their first, second, third, etc. choice of candidates on the ballot for an office, and the counting software compiles all the first place votes each candidate receives. If no candidate receives at least 50% of the vote, the lowest scoring candidate is dropped, and the second choice votes of those who voted for the dropped candidate are distributed among the others remaining. Lowest scoring candidates continue to be dropped, with their “next choice” vote added to those remaining until someone reaches the 50% plus one level.
 - o Advantages:
 - Strives to be more representative, a democratic tenet. It increases the chances that the winning candidate is the first or second choice of a large number of voters.
 - Reduces the “my vote doesn’t count” feelings with ability to vote true preferences.
 - Reduces negative campaigning since candidates attempt to garner as many ranked votes as possible.
 - Achieved in one election without additional time delay and greater costs.
 - o Disadvantages:
 - Requires more thoughtful review of candidates to determine ranking.
 - May require more voter education to explain process.
 - Additional software is needed for new voting system.

7. Implementation issues

In order to institute almost any change to our primary system or to the method used to determine the winner, the General Assembly and Governor would need to support a constitutional amendment, which would also have to be approved by the electorate. Our current voting equipment can handle a multi-candidate or nonpartisan ballot. With additional software, ranked choice voting also can be used on our new voting equipment. Most jurisdictions using different voting or counting methods have found it fairly easy to offer the needed voter education through sample ballots, demonstrations and online videos.

CONCURRENCE and CONSENSUS QUESTIONS: League members throughout Maryland are involved in this study and may respond to questions differently from your local League. Please give us your opinion on **all** options of **all** of these questions so a statewide consensus can be determined. Please include total numbers of participants and actual number of votes for Y=yes, N=no, or A=abstain.

Question 1. Should LWVMD concur with LWVMC election system criteria? (Y, N, A)

- 1) *We believe it is important that election systems:*
 - a) *produce representation that reflects community sentiment,*
 - b) *help increase voter participation by encouraging a broader range of candidates and more civil campaigns and*
 - c) *are feasible to implement.*
- 2) *We also prefer election systems that:*
 - a) *are easy for the voter to understand, both in terms of how to vote and how their vote is counted,*
 - b) *help ensure minority views and interests have some influence in selecting elected officials,*
 - c) *help raise the level of political campaigns by encouraging a focus on the issues and discouraging negative campaigning,*
 - d) *maximize the power of each voter's vote and*
 - e) *help promote more openness and responsiveness between candidates and constituents .*

Question 2. Should LWVMD retain our current state position supporting closed primary elections? (Y, N, A)

Question 3. Should LWVMD support a more open style of primary elections? (Y, N, A)

If the statewide consensus is yes, please indicate all styles of primaries you support:

- a. Party-nomination – with each party's winning candidate moving to general ballot
 - 1) hybrid: open only to party members and non-affiliated registrants (Y, N, A)
 - 2) open: all voters have choice of all candidates (Y, N, A)
- b. Individual Candidate-based – all voters have choice of all candidates with a pre-set number or pre-set vote percentage of candidates moving to general election ballot without regard to partisan affiliation
 - 1) candidates have partisan label on ballot (Y, N, A)
 - 2) candidates appear without any partisan label (Y, N, A)

Question 4. In primary and general elections when there are more than two candidates, should the winner be determined by plurality (largest number of votes) or should a majority be required? (Plurality, Majority, Abstain)

If the statewide consensus is for majority, please indicate all ways you support reaching majority:

- a. Run-off elections (Y, N, A)
- b. Ranked Choice Vote (Instant Runoff) in primary and general elections (Y, N, A)

Question 5. Should all recognized parties have access to taxpayer funded primary elections? (Y, N, A)

Question 6. Regardless of your response to other questions, should non-principal (“third”) parties and non-affiliated candidates have easier access to the ballot? (Y, N, A)

If the statewide consensus is yes, please indicate all choices you support:

- a. Easing party's ability to put candidates on the general election ballots by
 - 1) reducing the number of signatures required for initial recognition as a party; (Y, N, A)
 - 2) reducing the number of general election votes required for a party to retain its recognition (Y, N, A) and/or
 - 3) permitting a party to retain its status if the number of registered voters affiliated with that party is equal to or greater than the number of signatures required to gain initial recognition; (Y, N, A)
- b. Easing non-affiliated individual candidate's access to the general election ballot by reducing the number of signatures required on petitions. (Y, N, A)

The state committee members who prepared this study were Elaine Apter, Carol Blackburn, Grace Kubofcik, Mary Lanigan, Judy Morenoff, Donna Sauerburger, Ralph Watkins, and co-chairs, Lu Pierson and Barbara Sanders.