
SENATOR FOR A DAY PROGRAM

SENATE BILL

NO. 4
Session of 2020

INTRODUCED BY _____ March 5, 2020

REFERRED TO SENATE STATE GOVERNMENT COMMITTEE

Pennsylvania Open Primaries

All primaries shall be open to all voters of any party as long as they are registered with a party as filed with the Department of State or Independent.

If an individual would like to switch parties, they must do so at least six months before the upcoming primary in order to be eligible to vote in the primary. The cost to switch parties shall be \$15.00. This money shall go to fund administrative duties at the Department of State related to voter registration.

This bill shall take effect immediately.

Arguments for and against closed primaries

A **closed primary** is a type of primary election in which a voter must affiliate formally with a political party in advance of the election date in order to participate in that party's primary. Other primary election types include: 1) open primaries, in which a voter either does not have to formally affiliate with a political party in order to vote in its primary or can declare his or her affiliation with a party at the polls on the day of the primary; 2) hybrid primaries, in which previously unaffiliated voters may participate in the partisan primary of their choice; and 3) top-two primaries, in which all candidates are listed on the same primary ballot and the top two vote-getters, regardless of their partisan affiliations, advance to the general election.

In 13 states, at least one political party conducts closed primaries for congressional and state-level offices. In 11 of these states, all political parties conduct closed primaries. Rules may differ by state and party for presidential elections. [Click here for more details.](#)

Whether primary elections should be closed is the subject of debate.

Supporters of closed primaries argue that parties have a right to allow only members to select nominees, that other primary systems allow non-members to sabotage the nominating process, that closed primaries don't disenfranchise non-party members, that closed primaries don't produce more ideologically extreme nominees, and that public funding doesn't preclude closed primaries.

Opponents of closed primaries argue that they disenfranchise voters who aren't affiliated with a major party, that primaries should be open to all registered voters because they are publicly funded, that closed primaries could produce more ideologically extreme nominees, that primary elections often decide races in some locations, and that instances of sabotage in non-closed primaries are rare.

Arguments at a glance

This section includes quotes briefly summarizing some of the most prevalent arguments for and against closed primaries.

Support:

"Political parties at every level of government choose their nominees through primaries. That's the most important decision a party can make—and an organization's most important decisions should be made by members of that organization. Joining a political party in the United States is a pretty simple procedure. ... Allowing Independents and

Republicans to select the Democrats' next nominees, or some other combination, is a good way to destroy a party and its meaning."

-Seth Masket, University of Denver political science professor (2018)[1]

Oppose:

"Closed primaries are a fetter. They produce elected officials more accountable to their party than to their constituents. They restrict participation and reinforce division. They exclude independent voters, the largest and fastest growing sector of the electorate. And closed primaries make it more difficult for the American people—voters and elected officials alike—to come together across ideological lines."

-Open Primaries (2019)

Support arguments in detail

Five arguments in favor of closed primaries are that parties have a right to allow only members to select nominees, that other primary systems allow non-members to sabotage the nominating process, that closed primaries don't disenfranchise non-party members, that closed primaries don't produce more ideologically extreme nominees, and that public funding doesn't preclude closed primaries. This section details those arguments from a variety of sources arranged by topic.

Claim: Parties have a right to allow only members to select nominees

Andy Schmookler, a radio talk show host who ran as a Democrat in Virginia's 6th Congressional District election in 2012, argued that political parties have a right to allow only members to select their nominees.

“ I am not a member of the Rotary Club, or the Kiwanis, or Ruritan, or Lions, or any other organization of that kind. And I would not claim to have any right to tell them who their leaders should be. Why should a Democrat or Independent have the right to tell Republicans, for example, who have formed a party, who their leaders should be?
...

Constitutionally speaking, the issue might fall under the right of “association.” Part of that right, surely, is the right for people who choose to associate to make their own decision on what path to take as an organized group. If someone wants to join the association, fine— join in and you get a say.

But to barge in and wield the power of the vote in someone else’s association— does that not erode the rights of those who have exercised their freedom of association and formed a party?^[3]”

—Andy Schmookler (2017)^[4]

Claim: Open primaries allow non-party members to sabotage the process

Bill Armistead, chairman of the Republican Party of Alabama, argued in an interview with *The Washington Times* that closed primaries are preferable to open primaries because the latter enable members of opposing political parties to sabotage the nominating processes of those parties. He said the following in reference to the 2014 Republican primary runoff election for U.S. Senate in Mississippi:

“ The Mississippi primary shows what can happen when you have an open primary. Most often it is for mischief. The Democrats who vote in our primary either want to support the weaker candidate so they will have a better shot at winning in the general election, or they have been coerced into voting in our party’s primary to elect a candidate more closely aligned with their party’s views and philosophy.^[3] ”

—Bill Armistead (2014)^[5]

Claim: Closed primaries don't disenfranchise non-party members

Seth Masket, University of Denver political science professor, argued that joining a political party is easy to do if people want to vote in primaries and that every registered voter has the right to vote in general elections regardless of affiliation.

“ Joining a political party in the United States is a pretty simple procedure; it most often requires that you check a box on a voter registration form. American parties do not require membership dues or loyalty oaths. ...
You have a right to vote in a general election. That's where we choose who represents us in government. This is a vital task in a representative democracy and barriers to voting should be as low as possible. But this does not extend to primary elections, which are used to determine nominees for parties. A party is not a government, and your rights are not being violated if you're told you can't vote in a primary because you're not a member of that party.^[3] ”

—Seth Masket (2018)^[1]

Claim: Closed primaries don't produce more ideologically extreme nominees

Seth Masket also argued that closed primaries do not result in more ideologically extreme nominees than open primaries.

“ The logic of the open primary is pretty straightforward. Under a closed primary, only people who are registered party members (usually for some time) are permitted to vote. Those party registrants tend to be die-hard partisans, and the candidates they pick will tend to be from the ideological extremes. Independent voters, who might legitimately want a more moderate set of nominees, are forbidden from participating. Allow them in, and you end up not only with more moderate nominees, but nominees who recognize it's in their interests to keep moderate independent voters happy while they serve in office. ”

Eric McGhee, Boris Shor, Nolan McCarty, Steve Rogers, and I tested this assumption in a large-scale study a few years ago. We looked at two decades of voting behavior by state legislators across all 50 states, and we compared legislators based on the type of primary system that nominated them. Quite a few state parties have changed their primary rules one way or another over this time period, allowing us a good deal of leverage on the question.

What we found was somewhat surprising. Legislators elected from closed primary systems are no more or less extreme than those from open primary systems. There are a few very modest effects California's experience with a blanket primary system in the late 1990s actually may have moderated legislators slightly, for example but the overwhelming finding is one of no effect at all.^[3]

—Seth Masket (2016)^[6]

Claim: Public funding doesn't preclude closed primaries

In November 2018, the group Open Primaries Education Fund filed a lawsuit against New Mexico Secretary of State Maggie Toulouse Oliver (D) arguing that states should not fund closed primaries because those primaries are exclusionary and benefit political parties. Oliver argued that primary elections, including closed primaries, are essential government functions meriting state funding:

“ Election Code provisions govern virtually every nuance of the primary election process, including a chapter devoted specifically to primaries. ... Our primaries are administered and run solely by the Secretary of State and county clerks...; political parties play no formal role in administering the conduct of primary elections. Polling place locations are determined and administered by county government...and standardized voting systems (i.e. voting machines) are purchased by the State, and maintained, stored and deployed by counties. All expenditures made from the public fisc for the purpose of funding primaries are allocated to, and expended by the Secretary or county clerks. No public monies are paid to political parties for the conduct of primary elections. The government runs and controls primary elections, and maintains complete control over taxpayer funds expended for that purpose.

That primary elections like New Mexico's have evolved into a well-established government function has become something of a truism. Indeed, in determining that U.S. constitutional protections apply to protect the primary electorate (generally with respect to racial discrimination), and that political parties are “state actors” for such purposes, the United States Supreme Court has long held that primaries are government functions.^[3]

”

—Maggie Toulouse Oliver, New Mexico secretary of state (2018)^[7]

Opposition arguments in detail

Five arguments against closed primaries are that they disenfranchise voters not affiliated with a major party, that primaries should be open to all registered voters because they are publicly funded, that closed primaries could produce more ideologically extreme nominees, that primary elections often decide races in some locations, and that instances of sabotage in non-closed primaries are rare. This section details those arguments from a variety of sources arranged by topic.

Claim: Closed primaries disenfranchise voters not affiliated with a major party

In a piece for *The Orlando Sentinel*, columnist Beth Kassab argued that closed primaries disenfranchise voters and that open or hybrid primaries would be an effective remedy to this issue:

“ [There are] 3.2 million voters in Florida who are barred from having a say in Tuesday's presidential primary because they aren't registered with one of the two major political parties. Think about that. More than a quarter of the state's voters are left out. They will be forced to sit on the sidelines — completely disenfranchised — during one of the most contentious primaries in recent history.^[3] ”

—Beth Kassab (2016)^[8]

Claim: Primaries should be open to all registered voters because they are publicly funded

The group Open Primaries Education Fund referred to publicly funded closed primaries as "taxation without representation." Open Primaries Education Fund describes its mission as "to conduct research, host educational forums, and educate the public about primary election systems."^[9] It is affiliated with the group Open Primaries, which advocates for open and nonpartisan primaries, according to its website.^[10]

“ Primaries are funded by the public. But the parties – private organizations – decide who can and cannot vote. That’s wrong. It’s unfair. And it’s taxation without representation.^[3] ”

—Open Primaries Education Fund (2019)^[11]

Open Primaries Education Fund filed a lawsuit against the secretary of state of New Mexico in November 2018 alleging that the state should not fund closed primaries. Its complaint included the following:

“ By qualifying as a major political party, the party receives the substantial benefit of inclusion in the statutorily required, state-run and state-funded primary elections, a benefit that minor political parties and independent voters are deprived of. Only major political parties may participate in the state-funded primary election. ... A minor political party, in contrast, must spend its own funds to nominate its candidates according to internal procedures. ... Independents may not run for nomination or vote in the primary election. ... The election code thus establishes a closed, exclusionary system in which the major political parties are relieved of the financial burden of ”

choosing their own representatives, thereby receiving an improper benefit of the expenditure of public money.^[3]

—Open Primaries Education Fund (2018)^[12]

Claim: Closed primaries could produce more ideologically extreme candidates

Dave Denslow, retired University of Florida economics professor, argued in *The Gainesville Sun* that open primaries could lead to more moderate nominees.

“ Open primaries intuitively offer a major advantage. Presumably people who bother to vote in primary elections are more extreme ideologically than those who vote only in general elections. In closed primaries, it was thought, candidates have to tailor their platforms to those more extreme voters, resulting in greater polarization.

Most party leaders favor closed primaries, which give them more control and favor candidates who reflect their relatively non-centrist views. Open primaries could help reduce political polarization.

The evidence favoring the view that open primaries encourage moderation is at best mixed, however, with some studies finding it does and others that it does not. In state elections, it turns out, voters in primary elections are neither more nor less ideologically motivated than those in general elections, or at least any difference is small. Legislators chosen through open primaries are neither much more nor much less polarized than those chosen through closed systems.

At the local level, not here but generally, there appears to be no convincing evidence about whether open primaries reduce polarization. Lacking information, we can still hope open primaries would give us more pragmatic candidates.^[3] ”

—Dave Denslow, retired University of Florida economics professor (2018)^[13]

Claim: In some locations, the primary election decides the race

State Rep. and House Majority Leader Dave Reed (R) introduced HB 2448 into the Pennsylvania House of Representatives in 2018. The bill, which died in committee, would have allowed independent and non-affiliated voters to cast ballots in party primaries. Reed argued that many races are decided in primary elections, such as those in which only one major party has candidates running.

“ With nearly 750,000 of our state’s voters now registered as independent or non-affiliated, the time has come stop excluding them from a significant portion of our electoral process. Too many races, especially local races, find finality in the spring election, and these voters should not be left out.^[3] ”

—Dave Reed, Pennsylvania state representative (2018)^[14]

Claim: Instances of non-members trying to sabotage the nominating process in non-closed primaries are rare

Mark Z. Barabak, staff writer with the *Los Angeles Times*, argued against the idea that closed primaries are necessary to prevent non-party members from sabotaging the nominating process.

“ Extensive research in California, a proving ground for various voting permutations over the last two decades, shows that that type of electoral sabotage is just about as prevalent as black-lagoon creatures bidding for a seat on the City Council.

The most recent work grows out of a study of California’s top-two primary, a change intended to bring moderation to Sacramento and the state’s congressional delegation by pitting the leading vote-getters in a November runoff. (In brief, the study said it was too soon to draw definitive conclusions but suggested voters would have to be more engaged and attentive for the change to work as supporters hoped.)

As part of his research, New York University’s Jonathan Nagler focused on California’s 2012 Assembly races and a survey of 2,500 registered voters. He found an exceedingly low rate of crossover balloting: Just 5.5% of Democrats voted for a Republican candidate and 7.6% of Republicans supported a Democrat.

Most of those who voted for a candidate from the other party did so not to undermine the opposition, Nagler found, but because registration was so heavily weighted against their own party it was pointless to support one of their own.

The incidence of “raiding,” as political scientists call the act of meddling voting, was so minimal it did not even register.

Those findings support research done after California’s 1998 “blanket primary,” another system that allowed voters to cast ballots without regard to party membership.^[3]

Open primaries lead to more, not less political polarization, studies show

JONATHAN LAI
Philadelphia Inquirer

MAY 31, 2018

Top Pennsylvania state legislators think they've figured out why compromise has become more difficult and little seems to get done in a polarized Harrisburg: closed primaries.

House and Senate leaders are calling for changing state election law to allow for "open" primaries, in which voters unaffiliated with the two major parties, colloquially called independents, could vote to choose the nominees of either party — on the principle that involving less-partisan voters would have a moderating influence.

Under the current "closed" system that limits voting to registered party members, in low-turnout primaries party nominees can be chosen by a small percentage of zealous voters, they argue.

"The extremes of the parties have taken over the primary process," Senate President Pro Tempore Joe Scarnati, R-Jefferson, told reporters after the May 15 state primaries. He cited the upset of a Republican state senator in western Pennsylvania by a conservative insurgent and the defeat of two veteran Democratic state representatives at the hands of candidates endorsed by Democratic Socialists of America to buttress his argument. He said he is introducing legislation to open the primaries.

Though it seems to make intuitive sense, academic research and political scientists suggest that an open primary system would not bleach the elections of polarization and extremism; in fact, it might have do the opposite.

"We can rule out the possibility that it's closed primaries that are explaining a vast majority of polarization," said Marc Meredith, a political science professor at the University of Pennsylvania. With open

primaries, he said, “at best it’s going to make a small dent in a mountain of polarization.”

The problem: Most unaffiliated voters have strong partisan or ideological leanings masked by their independent status.

“We find that the openness of a primary election has little, if any, effect on the extremism of the politicians it produces,” a team of academic researchers wrote in one study. In fact, it said, “most of the effects we have found tend to be the opposite of those that are typically expected: The more open the primary system, the more liberal the Democrat and the more conservative the Republican.”

What political science says about independent voters and primary elections

About 750,000, or 8.8 percent, of Pennsylvania’s 8.46 million voters are registered as unaffiliated. Most — 86 percent — are registered Democrat or Republican.

“Some areas had 15 percent turnout,” said state Rep. Dave Reed of Indiana County, the leader of the House Republicans, who also is introducing legislation that includes opening the primaries. “That doesn’t seem like it’s representative of the entire populace and giving the most mainstream choices headed into the fall election cycle.” He held that would change under an open system.

“All of a sudden, if you get more people coming out to a primary,” he said, “the candidates have to be more considerate of everybody’s views, not just the eight percent that in some areas can be fairly extreme.”

But Mr. Reed is operating under a common misconception that “makes a lot of assumptions about independents,” said Robin Kolodny, the chair of the political science department at Temple University. Among the assumptions: “That they’re just as engaged, they’re just as interested, that they would actually want to participate in a party’s primary. Because of course, they chose to say they’re independent.”

She adds, “When you hear independent, everyone immediately thinks moderate, instead of fringe.”

But while voters choose not to associate with a party for varied reasons, and the parties are increasingly unpopular, voters are still largely partisan and tend to vote strictly within one party. Those moderate, independent voters? An already-small group. Say goodbye to the swing voter.

Lawmakers aren't wrong that polarization is increasing — and hostility for the opposing party is entrenched — but the problem evidently is unrelated to closed primaries. The researchers say that people showing up to vote in primary elections tend to be similar to other party members; it's not that extreme voters are showing up to the polls and hijacking the election.

What open primaries could do

The best argument for open primary elections isn't polarization, Mr. Meredith said — it's that some places are so dominated by one party that the primary election is more important than the general election. Places like, well, Philly.

“By and large the general is the primary election in the sense that who wins the primary election in Philadelphia is going to decide who holds office,” he said. “So I think there's definitely a good case to be made that you might want to open up the process, especially at the local level. Because there are probably lots of Republicans in Philadelphia who have opinions about something like who should be mayor and essentially don't have a voice in the process right now.”

Under the closed system, those voters would have to switch party registrations back and forth, becoming Democrats for local primary elections and Republicans for presidential ones.

Mr. Reed, the House GOP leader, said that giving all voters a voice in those local primaries is one his main concerns: “We are excluding an entire segment of our population, almost 750,000 people in the state, from deciding who their local elected officials are.”

What the politicians say

Leaders from both parties expressed support for open primaries, although for differing reasons, and said they are hoping this is just the

beginning of a larger discussion about structural reforms to Pennsylvania's election system.

"People should have the opportunity, independents and others, because they need to participate in the process," said state Sen. Jay Costa, D-Forest Hills, the head of the Senate Democrats. "I'm not looking to do it for the same reasons that Sen. Scarnati's trying to do it. I think for our democracy to work right, the more people need to participate in the process."

State Senate Majority Leader Sen. Jake Corman, R-Centre, said he has long been opposed to open primaries — "I believe that you belong to a party and nominate a person from that party to represent you in the fall" — but now is open to the proposal.

"I'm not sure I'd say I'm opposed anymore. I'm more neutral, more willing to listen, to research a little further," he said.

As a leader, Mr. Corman said, his job is to get votes. That historically has meant seeking compromise and working with the other side. Corman said he's concerned that the state legislature is becoming less and less willing to compromise.

State Rep. Frank Dermody, head of the House Democrats, said he was "happy to take a look at" proposals to open primaries but would wait to see that legislation before taking a position.

"You've got to read it first, but independent voting in a primary may make some sense," he said.

Gov. Tom Wolf's office said he generally supports the idea, too.

"This is a conversation that's ripe right now," Mr. Costa said. "I think the issue certainly has been raised, and I think now is the time to do it."