

Opening Pennsylvania's Primary: Theoretical and Practical Considerations

By Michael Coulter, Ph.D.¹

Primary systems, like other political structures, are products of political ideas and particular circumstances. And changing political institutions has consequences – both intended and unintended – as do all other policy changes. My comments today are not to advocate for a particular primary system, but to present some context and suggest some of the consequences and challenges that would come with changing the system that we have in Pennsylvania.

Purposes of Primaries

It is important to recall the purpose of a primary election. It is an open and public means for a party to choose a nominee for the general election. One could easily imagine a political system without primary elections. In fact, primary elections were an innovation that was implemented only in the late 19th and early 20th century, and they are quite rare in democratic orders outside of the United States. Political leaders in the late 19th and early 20th century – some within existing party organizations and some leaders of non-party organizations – supported primaries because they were responding to public opinion, and there was the view that implementing primaries would give greater legitimacy to the political system. Legitimacy is the essential political concept that people generally accept institutions and political arrangements as appropriate.² One might say that the corruption – real or perceived – of political parties created the need for implementing primaries. That several large states, which are blue

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² "Political Legitimacy" in Stanford Encyclopedia of Philosophy. <https://plato.stanford.edu/entries/legitimacy/>

and red, still have closed or partially closed primaries (or even allow situations in which there isn't a primary election at all) suggests that there isn't a similar crisis of legitimacy today.³

Types of Primaries: Pennsylvania in Context

In Pennsylvania we have a closed primary and as such only registered voters in major parties can participate. We are one of nine states with a fully closed primary (the others are Delaware, Florida, Kentucky, Maryland, Nevada, New Mexico, New York, and Oregon).⁴ At the opposite extreme are fully open primaries (Alabama, Arkansas, Georgia, Hawaii, Michigan, Minnesota, Mississippi, Missouri, Montana, North Dakota, South Carolina, Texas, Vermont, Virginia, and Wisconsin). In open primaries any registered voter can vote in any party's primary.⁵ It is not recorded in which party the person has voted. In several of the states with open primaries those states never recorded party registration whereas Pa has always given registrants the option of enrolling in a party.

Many states exist between fully closed and fully open primaries. There are six states that allow parties the choice of allowing unaffiliated voters to participate in their primary, but rarely do the parties in those states actually choose to allow unaffiliated voters to participate in primaries. There are six states (Illinois, Indiana, Iowa, Ohio, Tennessee, Wyoming) that are considered partially open, and they allow unaffiliated voters to vote in a major party primary, but those voters then become enrolled in that party in whose primary they participated in. That seems like a worthy compromise between parties getting to choose a nominee and enabling more people to participate in primaries. To be clear, there is no constitutional right to participate in a party primary. And there are a few states (Alaska, California, Washington, Nebraska), which are almost outside of the closed-open continuum, and in those states the top two or four go on to the general election; these states seem to have undermined the very function

³ Virginia and New York both allow parties not to have a primary election in some circumstances. Virginia can have a convention with special delegates in lieu of a direct primary. New York allows some parties in some jurisdictions to choose nominees at a caucus meeting.

⁴ Classification of states is taken from <https://www.ncsl.org/elections-and-campaigns/state-primary-election-types>

⁵ It should be noted that North Dakota is the only state that does not register voters.

primary elections and might be better served having a single election with ranked-choice voting. In sum, there is a wide range of primary systems.

The Proposed Bills and Pennsylvania

Neither of the proposed bills would make Pennsylvania an open primary state. We would be like those states which allow only independents or those not registered in a major party to vote (called 'partially open' by the NCSL).

In Pennsylvania, the vast majority of voters are affiliated with a major party. Only nine percent are not. Now that might be the case because not registering with a major party precludes participation in a primary. Nevertheless, most Pennsylvanians can already vote in primaries. If one considers states that allow unaffiliated voters to vote in a party primary those states tend to have a very large percentage of voters unaffiliated with a voter. For example, in Massachusetts, 61 percent of voters are unaffiliated. In the other eight states, the percentage of unaffiliated voters is significantly higher than Pennsylvania's – ranging from 46 to 23 percent (Rhode Island, 46; New Hampshire, 41; Colorado, 40; New Jersey, 36; Arizona, 34; Maine, 32; Kansas, 27; and West Virginia, 23). The argument for allowing unaffiliated voters to vote in primaries can be seen as more compelling when a majority or a plurality or even a significant minority of voters are unaffiliated with a major party.

The primary difference between the two proposed bills is the status of those voters not registered with a major party. One bill would allow all non-major party registrants to vote in a primary, and the other would allow only non-affiliated voters. Pennsylvania allows the possibility of registering as having no affiliation, but also allows the option of OTHER. This option enables voters to enroll in minor parties, and, despite being almost completely ineffectual, minor parties have a place within American political history and culture. There are minor parties attempting to recruit candidates and engage in electioneering activities, such as the Libertarian Party (which currently functions) or the Green Party (which previously engaged in electioneering activities in the state). But there are some people who

seem to fill in something under other - perhaps as a form of protest or making a political statement. In Mercer County where I live individuals have submitted many names under Other. There are eleven versions of independent (including Ind and several spellings of independent); other residents have written in "no affiliation," "human," "Not Sure," and "Wig" and "Whig." These individuals are functionally independent, but have listed a political party, which doesn't exist in any meaningful way (the Whigs last elected an office holder in 1854). If HB 979 were to be enacted and only allow non-affiliated registrants to vote in a primary, then many who registered as other and listed some spelling of independent would not be able to vote. And then if HB 976 were enacted, people who were a part of legitimate minor parties, such as the Libertarian Party, would be able to vote in a major party primary.

Some Practical Considerations

The intention of the supporters of HB 976 and HB 979 is to expand participation in political life, and that is a laudable goal. But that intention must be considered in light of the costs and potential unintended consequences of a policy change.

- There will be a challenge to educating voters regarding this change. Some voters will almost certainly regard this as a change to a fully open primary, and not understand that they cannot switch from one major party to another. The need for voter education will be particularly the case if HB 979 were to be enacted and only non-affiliated voters and not those who listed a non-functional party could vote. Parties and candidate organizations, for the most part, will not have the resources to reach out to non-affiliated voters.
- Election Day workers, already in short supply, will need to be educated about a new and potentially challenging process.
- There will be costs associated with providing ballots in the case of possible voters in those jurisdictions that use optical scan ballots.

- There will likely be few new voters. As noted above, only a small percentage of voters in Pennsylvania are not registered with a major party. I wasn't able to analyze recent county level data for this hearing, but in the past I have examined data in counties near me and those not registered with a major party were the least likely to vote in a general election. A Pew Survey in 2019 found that those individuals who did not lean towards either major party voted less often than those who identified with or leaned towards one of the two major parties. Only about 33 percent of 'non-leaners' voted in the 2018 mid-term, while 48 percent of Democratic leaners and 54 percent of Republican leaners voted in the general election.⁶ Part of the argument for an primary is that it will draw in voters that will lead to less partisan or more moderate candidates. There is mixed evidence in that regard in fully open or top two primaries. I could find no studies on party polarization in partially open states and the impact of allowing of not affiliated voters to vote in primary, but I would be surprised if any study would demonstrate a significant change in party polarization.

The intentions of the bills' authors/sponsors are desirable. But those costs and challenges of implementation weighed against the possible benefits should be carefully considered.

⁶ <https://www.pewresearch.org/short-reads/2019/05/15/facts-about-us-political-independents/>