



WYOMING LEGISLATIVE SERVICE OFFICE

Research Memo

06 RM 030

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Re: Open Primary Elections

QUESTION

1. Summarize Wyoming's, as well as other states', statutory provisions related to primary elections, including which states have open primaries.

ANSWER

1. Wyoming has a partially open primary system which allows qualified electors to register or change political parties at the polling place, but the qualified elector may only vote in one political party's primary election. A Wyoming voter may also change political parties prior to Election Day, but must do so before 30 days prior to Election Day. It should be noted that qualified electors in Wyoming also vote a non-partisan ballot for local elections. According to the National Conference of State Legislators, 12 states have a partially open primary system, while 12 states have completely open primary systems. Of the remaining 26 states, 24 have closed or partially closed primaries while the other two states have adopted nonpartisan elections in which the top two primary vote recipients advance.

BACKGROUND

A completely open primary allows qualified electors to vote on any party's ballot during the primary election. Often times, the states with completely open primary elections do not have political party registration and each voter is given two ballots and the voter must decide which ballot to complete once inside the polling booth. In other words, the voter's choice of which ballot to vote is private.

A partially open primary allows qualified voters to choose their political party or ballot at the polling place. A qualified elector may be already registered and change party affiliation, or register at the polling place. A partially open primary allows qualified electors to change their party affiliation at the polling place, but the voter receives only one ballot. This is somewhat more restrictive than a completely open primary system. The elector's choice of ballot can be seen by anyone, as opposed to the open primary where the voter usually receives both ballots and selects in the polling booth. Wyoming currently has a partially open primary system.

A partially closed primary requires qualified voters to pre-register but the voters may change their political party affiliation on Election Day. The main difference between a partially closed primary and partially open primary is that a partially closed primary requires the voter to pre-register, while a partially open primary does not.

A completely closed primary requires voters to register with a political party before the primary election. A change in party affiliation is possible, but the voter must make the change a certain amount of time before the primary so the change is registered. In other words, a completely closed primary does not allow for any

party changes on Election Day. See Table 1 for a breakdown of which states have open or closed primary systems and whether they are partially or completely open or closed, according to NCSL.

Table 1: Open and Closed Primary Systems.

Completely Open Primary		Partially Open Primary		Partially Closed Primary		Completely closed primary	
Arizona	Minnesota	Alabama	Mississippi	Colorado	New Jersey	Connecticut	New York
Florida	Montana	Alaska	Missouri	Iowa	Ohio	Delaware	North Carolina
Georgia	North Dakota	Arkansas	Tennessee	Kansas	Oklahoma	Kentucky	Oregon
Hawaii	South Carolina	California	Texas	Maine	Rhode Island	Maryland	Pennsylvania
Idaho	Vermont	Illinois	Virginia	Massachusetts	West Virginia	Nebraska	South Dakota
Michigan	Wisconsin	Indiana	Wyoming	New Hampshire		Nevada	Utah
						New Mexico	West Virginia

Source: LSO summary of National Conference of State Legislatures data.

Note: Louisiana and Washington conduct nonpartisan elections with the top two candidates advancing, regardless of political party.

SURROUNDING STATES

Colorado has a partially closed open primary where unaffiliated voters may declare party affiliation at the polls, which enrolls them with that party. Nebraska, South Dakota, and Utah have completely closed primary elections which require pre-registration and changes in party affiliation must be completed some period of time before the primary election.

Idaho, Montana, and North Dakota have completely open primary system. Idaho does not have party registration and there is a single primary election ballot on which all parties' complete tickets are printed. The qualified elector then chooses one political party's primary to vote in once entering the polling booth. Montana's primary election system generally operates the same as Idaho's primary system. Similarly, North Dakota does not have party registration but voters choose between which political party's ballot (among the two ballots) to complete in the polling booth. Below are the primary election statutes for Idaho, Montana, and North Dakota authorizing an open primary system.

•Idaho Primary Election Statute:

34-904. Primary Election Ballots.

There shall be a single primary election ballot on which the complete ticket of each political party shall be printed; however, a county may use a separate ballot for the office of precinct committeeman. Each political ticket shall be separated from the others by a perforated line that will enable the elector to detach the ticket of the political party voted from those remaining. All candidates who have filed their declarations of candidacy and are subsequently certified shall be listed under the proper office titles on their political party ticket. The secretary of state shall design the primary election ballot to allow for write-in candidates under each office title.

The office titles shall be listed in order beginning with the highest federal office and ending with precinct offices. The secretary of state has the discretion and authority to arrange the classifications of offices as provided by law.

It is not necessary to print a primary ballot for a political party which does not have candidates for more than

half of the federal or statewide offices on the ballot if no more than one (1) candidate files for nomination by that party for any of the offices on the ballot. The secretary of state shall certify that no primary election is necessary for that party if such is the case and shall certify to the county clerk the names of candidates for that party for the general election ballot only.

● **Montana primary election statutes:**

13-10-301. Casting of ballot.

(1) Unless otherwise provided by law, the conduct of the primary election, the voting procedure, the counting, tallying, and return of ballots and all election records and supplies, the canvass of votes, the certification and notification of nominees, recounts, procedures upon tie votes, and any other necessary election procedures must be at the same times and in the same manner as provided for in the laws for the general election.

(2) At a primary election, the elector shall cast votes on only one of the party ballots, preparing the ballot as provided in 13-13-117. After casting votes on any other ballots received other than the party ballots, the elector shall ensure the proper disposition of the ballots in accordance with instructions provided pursuant to 13-13-112.

(3) The election judge shall handle the elector's ballot as prescribed in 13-13-117.

13-13-117. Method of voting.

(1) (a) Upon receipt of a paper ballot or, if a nonpaper ballot is used, after marking the precinct register pursuant to 13-13-115, an elector shall immediately retire to a voting station and prepare the elector's ballot in the manner prescribed in the instructions provided pursuant to 13-13-112.

(b) An elector who spoils the elector's ballot must be provided with another ballot in place of the spoiled ballot.

(2) (a) After the elector has completed voting, the elector shall ensure the proper disposition of the elector's ballot in accordance with instructions provided pursuant to 13-13-112.

(b) If a paper ballot was cast, an election judge shall place the ballot in the ballot box immediately without opening or examining the ballot. Only an election judge may put a ballot in a ballot box, and nothing other than a ballot may be put in a ballot box.

● **North Dakota Primary Election Statutes:**

16.1-11-22. Primary election ballot - Form - Voters to vote for candidates of only one party.

At the primary election there may be only one ballot for all parties or principles. The ballot must be in the following form:

1. The ballot must be entitled the "consolidated primary election ballot".
2. Each party or principle having candidates at the primary election must have a separate column on the ballot.
3. At the head of each column must be printed the name of the political party or principle which it represents.
4. In each column below the party or principle title must be printed: "You may vote for the candidates of only one party at the primary election. If you cast votes in more than one party column and vote for candidates of more than one party, your party ballot will be rejected."
5. Immediately below the warning against voting for candidates of more than one party must be printed: "To vote for the candidate of your choice, you must darken the oval opposite the name of the candidate. To vote for a person whose name is not printed on the ballot, write that person's name in the blank space provided for that purpose and darken the oval opposite the space provided."
6. The offices specified in section 16.1-11-26 must be arranged in each column with the name of

each office in the center of each party column at the head of the names of all the aspirants for the office.

7. Immediately under the name of each office must be printed: "Vote for no more than _____ name (or names)."
8. Immediately preceding and on the same line as the name of each aspirant must be printed an oval in which the voter is to mark the voter's choice by darkening the oval next to the name of the candidate chosen.
9. The political party or principle which cast the largest vote for governor at the most recent primary election at which the office of governor was voted upon must have the left-hand column, and the party or principle casting the next largest vote must have the next column, and so on.

The judges and the inspector of elections shall inform each elector at the primary, before voting, that if the voter votes for candidates of more than one party the voter's party ballot will be rejected.

16.1-11-24. No-party primary ballot - Contents.

There must be a separate ballot at all primary elections which must be entitled "no-party primary ballot". The names of aspirants for nomination to each office must be arranged on the no-party primary ballot in separate groups in their order. The separate ballot may be on the same paper or electronic ballot, but the list of offices and candidates must be entitled "no-party primary ballot" in a manner to indicate clearly the separation of the no-party list of offices and candidates from the party list of offices and candidates. The names of all candidates for any of the offices mentioned in section 16.1-11-08 must be placed on the ballot without party designation. Immediately under the name of each office must be placed the language "Vote for no more than _____ name (or names)." The number inserted must be the number to be elected to the office at the next succeeding general election.

16.1-11-25. Preparation, printing, distributing, canvassing, and returning of no-party ballot.

The no-party ballot must be prepared, printed, distributed, canvassed, and returned in the same manner provided for other primary election ballots.

OPEN PRIMARY VS. CLOSED PRIMARY CONSIDERATIONS

According to the National Conference of State Legislatures (NCSL), the general idea in support of an open primary system is ideological moderation. Proponents believe that an open primary system will be voted in by a broader electorate, more closely resembling the public that will vote in the general election. An open primary, which results in a more moderate primary, is believed to result in either more moderate candidates or a broader ideological spectrum of candidates qualifying for the general election. Open primary proponents claim that closed primaries, in which only party members may participate, may attract an extreme electorate and produce candidates out of the main stream public view. In addition, NCSL indicated that various statistics show that a large number of female and minority voters register as Independents or remain unaffiliated which would indicate that open primary systems better represent minority populations. Open primary systems are also generally believed to be easier to administer than a closed primary because of pre-registration and the timelines associated with closed primaries. LSO Research staff was unable to identify definitive evidence of these claims.¹

¹ See Kaufman, Karen M., Gimpel, James G., and Hoffman, Adam H., "A Promise Fulfilled? Open Primaries and Representation," *The Journal of Politics*, 2003, for one such review of possible considerations between open and closed primaries. Reference is not intended to be an LSO endorsement of the research or conclusions.

On the other hand, opponents of open primary systems indicate that closed primary systems are in the best interest of any political party attempting to elect a candidate who represents the party's views and agenda. This is because a closed primary only allows electors with a vested interest in the political party to participate. NCSL also indicated that opponents of open primaries contend that organized voting drives from opposing parties could result in the least attractive candidate being nominated. In other words, parties may fear that the opposite party could be intentionally mischievous in an open primary system by using political gamesmanship to alter election outcomes. Closed primary systems may also provide better record keeping because a list of registered voters and party affiliation is maintained, while often times, open primaries, have no registration requirements.

If you have any further questions, do not hesitate to contact me at 777-7881.