

League of Women Voters of New York State



LEAGUE OF WOMEN VOTERS®
OF NEW YORK STATE

Ballot Access Study Guide

2014

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Purpose and Scope

In New York State, candidates for elected office most often gain access to the general election ballot by obtaining political party ballot lines via various mechanisms. The League of Women Voters Ballot Access study will examine the role of political parties in the process of gaining access to the general election ballot. Specifically, we will explore the process of gaining party lines on the general ballot via (1) New York's closed primary system, (2) fusion voting, and (3) Wilson Pakula certificates. The study will include discussion and comparison of the different forms of primary systems and other states' experiences with fusion voting. In addition, we will explore the possible effects New York's ballot access process has on issues such as voter representation, corruption, voter turnout, and partisanship. At the conclusion of the study, we hope to be able to offer suggestions for ballot access best practices that ensure a thriving and functioning democracy.

How Study Was Adopted

At the Saturday Plenary of the 2013 LWVNY Convention, Lori Dawson, LWV of Saratoga, moved a notice of intent to move a non-recommended program item on a study to determine if another form of primary would be beneficial to the democratic process in New York State. This motion was seconded by Chris Hoffman, LWV of Geneva, and passed.

On Saturday evening, Mickey Edwards, Vice President at the Apsen Institute and former US Congressman from Oklahoma, spoke to the attendees at the dinner. His remarks focused on the impact of the party system on the ability of government to function and political decisions to be made. He blamed the two major parties in the US for polarizing citizens and encouraging the conflict and inaction caused by this polarization. He opined that the electoral system in particular needs to be revamped to allow participation by more candidates in both the primaries and the general elections. With less reliance on the parties, he believed that elected officials will have more flexibility in working together to pass legislation and effect change.

The proposed non-recommended study was discussed more during the Sunday plenary after which the study passed by local League delegates with the required 3/5 vote.

This action is consistent with the League's ongoing concern regarding New York State's low voter participation rate and high incumbent reelection rate. From 2002 to 2010 the statewide incumbent re-election rate in the legislature has averaged at about 96 percent.¹ For example, in 2014 the incumbent re-election rate for state legislative seats in New York City was still at 96.5 percent in the 2012 elections.² New York State has long struggled with some of the lowest voter

¹Citizens Union. (2012, November). *Fair elections for New York State: How public matching creates greater voter choice and competition*. Retrieved from http://www.citizensunion.org/www/cu/site/hosting/Reports/CU_Report_FairElectionsforNY_11_19_2012.pdf

²Citizens Union. (2014, March). *Fair elections for New York State, 2014 update: How public matching creates greater voter choice and competition*. Retrieved from http://www.citizensunion.org/www/cu/site/hosting/Reports/CUCompetitivenessReport_March2014.pdf

turnout rates in the county. Going as far back as the 1980 presidential election, New York's voter turnout rarely matched the national average. In 2012, New York State ranked 44th among all states and the District of Columbia in voter turnout. Only 53.2% of eligible New York voters cast a ballot; the national average that year was 58.2%, with a high of 75.7% in Minnesota and a low of 44.2% in Hawaii.³

Criteria for Evaluating Election Methods *

Political scientists, politicians, election administrators, and political activists have spent a great deal of time thinking about what makes a good election system. Virtually everyone agrees that a good system should promote majority rule, fair representation, high voter turnout, and stable government. Most of the political disagreements about election systems are usually over which criteria are most important, or over how well particular systems fulfill those criteria.

Some of the following criteria are interrelated, others overlap, and still others may be in conflict. Not all possible criterion are included, but are based on a listing of options from *Introduction to the Election Systems Study*, League of Women Voters of California Education Fund, 2000.

- **Ensure Majority Rule:** A good election system should ensure that winning candidates have the support of the majority of the electorate. Candidates can be elected with a plurality rather than a majority with some election systems. When elected officials represent only a minority of the electorate, their political legitimacy can be challenged and their policies have a greater chance of being opposed.
- **Encourage Minority Representation:** Minority representation encompasses two concepts. Minority can be defined by party affiliation. The minority parties need to feel their views are represented. Minority representation can also be defined in terms of race, ethnic background, sex, etc. Minority representation is essential to a fair election system. Minority rights should be protected and minorities must feel included in the election process.
- **Encourage Fair Gender Representation:** Currently, women are under-represented in the United States Congress. However, they receive better representation in local government. In particular, it seems that in voting systems where slates of party

³Tiberio, M. (2014, February). *Improving New York's voter turnout*. New York State Association of Counties. Retrieved from <http://nysac.org/news/nysac-news-winter-2014/improving-new-york%E2%80%99s-voter-turnout/>

Criteria for Evaluating Election Methods (Cont'd)

candidates are nominated to fill seats in multi-districts, women tend to be nominated more frequently and go on to win office more often.

- **Produce Fair and Accurate Representation of Different Political Views:** There are numerous political views and legislatures should accurately reflect the diverse political perspectives of their constituents. With accurate representation of views, public policies will more likely reflect the will of the constituents. A good election system will allow each party/political view a fair share of seats in any legislative body.
- **Increase Voter Participation:** Voter participation is essential to a healthy democracy. Low voter turnout can indicate voter apathy or alienation. A fair and impartial election system can create a reason for voters to participate.
- **Encourage Geographical Representation:** Geographical areas may have different needs and requirements. Having a representative accountable to a specific area ensures that local concerns have a voice in governing bodies.
- **Encourage “Sincere” Voting:** “Sincere” voting happens when individuals vote for their first choice candidate without the worry that their vote for a third party candidate may result in the election of their least favorite major party candidate. This may result in “strategic” voting, where voters select someone other than their first choice in order to be genuine participants in elections that all too often involve only two viable candidates. A fair and objective election system minimizes “strategic” voting and maximizes “sincere” voting.
- **Maximize Effective Votes/Minimize “Wasted” Votes:** Effective votes contribute to the election of a candidate while “wasted” votes do not elect a candidate of the voter’s choice. If a voter’s candidate loses, she has cast what political scientists call a “wasted” vote and is not represented. A sound election system will reduce the number of “wasted” votes and increase the number of effective votes thereby increasing the number of people actually represented in a legislative body. (“Wasted” votes are inevitable in a single seat election.)
- **Provide a Reasonable Range of Voter Choice:** American voters often complain that they lack real choices at the polls. The type of system used for elections has a very large impact on both the number of candidates and the variety of political parties present on the ballot. Some election systems, plurality-majority systems in particular, tend to discourage minor parties from running candidates because they stand so little chance of winning under those rules. In contrast, proportional representation systems make it easier for minor party candidates to get elected, and more of them can appear on the ballot. Election systems can also affect the range of choices among candidates of the

Criteria for Evaluating Election Methods (Cont'd)

same party.

- **Prevent Fraud and Political Manipulation:** To the greatest extent possible, an election system should discourage fraud and political manipulation. Most current election systems have safeguards that make outright fraud unlikely. But political manipulation of the rules and how they are applied does occur. The most common example of this in the United States is the use of gerrymandering: the drawing of voting district lines to favor certain incumbents or parties. Election systems differ dramatically on how much they facilitate or discourage gerrymandering and other kinds of political manipulation.
- **Encourage Competitive Elections:** Many voters are concerned about the lack of competitive elections in the United States. In November of 2004, 401 of the 435 sitting members of the U.S. House of Representatives sought reelection. Of those 401, all but five were reelected. In other words, incumbents seeking reelection to the House had a better than 99 percent success rate. In the U.S. Senate, only one incumbent seeking reelection was defeated in 2003, while 25 out of 26 or 96 percent were reelected. Without competitive elections, it is difficult for voters to hold politicians accountable.
- **Easy to Use and Administer:** An objective election system also should allow citizens to easily cast their votes and understand the results of elections. Overly complex election systems or lengthy ballots may discourage some people from effectively casting their vote. Related concerns involve the ease and expense of administering various election systems including the cost of switching to those systems, and the ease of auditing the results.
- **Other important considerations include:** promoting healthy political parties, ensuring stable government, encouraging issue-oriented campaigns, protecting fundamental rights which include freedom of speech and association, discouraging extremism, helping manage political conflict, being responsive to changes in public opinion, producing results viewed as legitimate, reducing campaign spending, establishing close links between constituents and representatives and evaluating whether or not an election method has a proven track record.

* Excerpted from LWV Oregon's 2008 Election Method's Study

Primary Elections

Purpose and Types of Primaries *

Primary elections are held to select candidates for the general election.

In today's partisan elections the major party nominees to the general election are selected. In other words, a party endorsement process is a government paid function. In the 20th century, before primaries were widely adopted, major party bosses controlled the selection of nominees at political conventions. Minor political parties typically select their candidates at nominating conventions that must comply with state regulations, but costs are covered by the minor party.

Primary systems vary from completely closed primaries to open primaries, with various hybrid systems existing in different states combining different elements from closed and opened primary systems.

In closed primaries the electorate must affiliate with one of the majority parties by a specified date in order to participate. A voter has the right to change party affiliation, but this could take an entire election cycle. Independent voters and non-affiliated voters are excluded from voting in the primary election, but it strengthens the party's ability to elect candidates that most reflect party platform. The assumption is that those affiliated with a party have distinct views from the other party. Depending on internal party rules, in some states the major parties allow nonaffiliated voters to vote in closed primaries, resulting in what are sometimes called semi-closed primaries. There can be a greater chance of fluidity with a decrease in clarity of candidate.

An open primary is the opposite of a closed primary, but can be a confusing term because it is used loosely to describe a wide range of primary options. Open primaries provide voters with the maximum flexibility, but weakens the party's ability to elect a candidate that best reflects party ideology. The most common form of open primary is found in the 22 states whose voter registration process does not require the voter to state a party preference.

In some of these states, such as Indiana, voters choose either a Democratic or Republican ballot, both of which include any applicable nonpartisan races. Voters make a public declaration of which party nominees they want to vote on by virtue of requesting either a Republican or Democratic ballot. Nonaffiliated voters can participate in the primary and request either a Republican or Democratic ballot. A person who typically votes for Republican candidates can request a Democratic ballot or vice versa.

In other states, such as Wisconsin, ballots include a Democratic or Republican column and voters choose their party in the privacy of the voting booth. Any voter, regardless of party affiliation or nonaffiliation can vote, but the voter must pick one party's column. Crossover

voting is not allowed, and if it occurs, no votes cast in any partisan races are counted (i.e. if a voter votes in more than one column, their ballot will not be counted).

Blanket primary is a term used for completely open primaries when any voter, regardless of party or nonaffiliation, can vote for a nominee from either major party. In other words, everyone receives the same ballot, and crossover voting is allowed. This term is often used to describe the primary system used in Washington State from 1935 until legal challenges against California's adoption of the blanket primary in 1996. The blanket primary was ruled unconstitutional in 2000 by the Supreme Court due to the First Amendment of Freedom of Association. The Supreme Court found that the blanket primary strips political parties of the ability to control their own nominating process and define their identity.⁴

The Top Two Vote Getter (TTVG) primary system is often what is meant when referring to an "open primary." An open/top two primary means that primary elections for partisan offices are open to all voters regardless of party affiliation or nonaffiliation. In addition, all candidates regardless of party affiliation or nonaffiliation run in this form of primary. In other words, this primary system is no longer a state-paid mechanism for major parties to select their general election nominees. No political party, major or minor, could use the primary election to select their candidates and will presumably find other mechanisms to do so, such as caucuses or conventions. The next step is that the top two vote recipients from the primary continue to the general election. No other means to appear on the November ballot are available. This can mean that the two general election candidates can be from the same party. A brief analysis of this system is provided further in this section.

Louisiana adopted an open/top two primary in the 1970s. In 2004 Washington voters adopted an open/top two primary initiative that went into effect during the 2008 primary season. California is the most recent state to adopt TTVG, with voters approving the system by referendum in 2010 and the system going into effect in 2012.

***Largely Adapted from LWV Oregon's 2008 Election Method's Study**

New York Closed Primary System

New York State currently has a closed primary system that requires participating voters to register with one of the parties on the primary ballot. Voters can only vote in the primary of the party in which they are registered. The result is considered to produce stronger candidates that support the party's platform. Independent voters that do not register with a majority party are

⁴Greenhouse, L. (2000, June 27). The Supreme Court: Freedom of association; court strikes down California primary placing all parties on a single ballot. *The New York Times*. Retrieved from <http://www.nytimes.com/2000/06/27/us/supreme-court-freedom-association-court-strikes-down-california-primary-placing.html>

excluded from the primary election and changing party affiliation can take an entire election cycle.⁵

The New York City Charter Commission submitted a study in June 2003 regarding primary options and New York City. The findings concluded that immigrants and young voters tended to be non-affiliated and consequently excluded from primary elections. Incumbents were re-elected nearly 100% of the time even when participation was on the decline.

The electorate that has a strong connection to a political party tends to vote at higher numbers.

Ranked Choice

In electing single candidates to a single office in a single seat district, New York, like many states, uses an unranked, first-past-the-post system in which a candidate may win with a plurality vote. Unranked plurality systems are inexpensive to administer. However, they have disadvantages as well. They may violate majority rule by allowing a candidate to win with less than a majority of the vote. Single-member plurality voting may encourage supporters of third party and independent candidates to abandon their first (i.e. “sincere”) choice and cast a “strategic” vote for the lesser-of-two-evils among the major party candidates. Plurality voting may not always help major parties. At times independent or third party candidates can take away enough votes from one major party candidate to ensure the victory of another candidate who would not have won otherwise.

Ranked systems can be used to assure that the winner wins by a majority vote. The two majority methods that are among the most familiar alternative election methods are the Top Two Vote Getter (TTVG) primary system and Instant Runoff Voting (IRV). In TTVG, the ranking is done in the primary election with the top two vote getters advancing to the general election where, by definition, the winner will have a majority vote. With IRV a majority decision may be made in just one election as described later in this section. The two systems were often compared during the debate over whether California should adopt TTVG, with some opponents of the TTVG measure arguing that California should instead adopt IRV, in part, so as not to shut out third parties. Proponents of TTVG countered that if IRV is desired, then TTVG is a step towards adopting IRV in California because the TTVG measure takes the first step of making primaries nonpartisan.⁶

Top Two Vote Getter Analysis

Top Two Vote Getter (TTVG) is a system that is an option for an open primary. Any registered voter can vote for any candidate from any party and the two candidates receiving the most

⁵League of Women Voters national and state positions on election law and voting rights already would support shortening New York’s long period of disaffiliation for voters seeking to change parties.

⁶Lucas, G.. (2010, April 29). Top two open primary vs. instant run-off: which is the best way forward for nonpartisan elections?. *The Independent Voter Network*. Retrieved from <http://ivn.us/2010/04/29/top-two-open-primary-vs-instant-run-which-best-way-forward-nonpartisan-elections/>

votes go on to compete in the general election regardless of party affiliation. These top two candidates can be from the same party or from opposing parties. It is possible for a major party to not be represented on the ballot in the fall election. In California's TTVG system, write-in candidates for voter-nominated offices can still run in the primary election, but a write-in candidate can only advance to the general election if the write-in candidate is one of the top two vote-getters in the primary (i.e. Write-in candidates for the general election are not allowed).⁷

The TTVG system relies on a solid turnout by voters in order to have a general election ballot that is reflective of the electorate as a whole. This increases the importance of primary turnout and may increase the cost of running a primary-focused campaign so the candidate can reach a broader constituency. The major political parties will not control the primary election process and voters will have more choices. However, transparency may decrease if political parties endorse candidates at caucuses or conventions that are open to party activists. In addition, TTVG may result in restricting third parties' access to a ballot line if such access depends, in part, on the number of votes the third parties' candidates receive in the general election, as it does in New York.⁸

In closed primary systems, independent voter turnout is little more than 10% of the total primary electorate. With an open system using TTVG, the independent voter gets the same ballot as partisan voters increasing the potential of higher turnout simply by allowing more registered voters the opportunity to participate equally.

There is a potential for crossover voting utilizing TTVG system allowing voters to select candidates from another party. It could open up elections to sabotage or attract more moderate candidates that appeal to a more diverse electorate.

There was a decrease in votes cast in general elections when the Top Two Vote Getters were from the same party compared to ballots cast. Higher office elections showed no significant change in participation. Meaning some voters were skipping the lower offices and voting only in the higher office races if same-party contests were on the ballot. The view being that the seat in the lower office was secured by the party and there was no competition. The higher office still had appeal even with same-party candidates.

See Appendix A for more analysis of primary systems. See Appendix B for a chart comparing states' voter participation rates to type of primary.

⁷League of Women Voters of California. *Voting in the Primary Election*. Retrieved May1, 2014 from <http://cavotes.org/vote/primary>

⁸Wildermuth, J. (2014, May 27). 'Top-two' primary elections spell end for many minor parties. *SFGate*. Retrieved from <http://www.sfgate.com/politics/article/Top-two-primary-elections-spell-end-for-many-5504314.php#src=fb>

Open/Top Two Primary *

Proponents Say:

- Candidates reflecting the views of a broader range of the electorate may be more successful.
- Nonaffiliated voters (NAV) would have a voice in nominating general election partisan candidates.
- More contested general elections, including between members of the same party, could enable more discussion of issues.
- General election competition may be increased because two candidates from the same party could face each other instead of having one candidate in districts heavily dominated by one party.
- Spoiler effect will be eliminated during the general election since there can be only two candidates on the November ballot.
- The major political parties will not control the primary election process.
- Third parties and nonaffiliated candidates will be treated the same as major parties and can compete in the primary.
- Voters will have more choices during the primary.
- Primary election voter turnout may increase.
- The open/top two primary is straightforward reform that is easier to understand than other election reform options.

Opponents Say:

- Extreme candidates could win or crowd out moderates since a large number of candidates could split votes to the extent that top vote getters could advance with relatively few votes from partisan voters on either the right or the left.
- An incentive for major party registration is removed which might reduce the effectiveness of political parties.
- Voters in many legislative districts may actually see less choice because the top two vote recipients in the general election could be from the same party.
- Primary campaigns and fundraising may increase because of the necessity to outreach to a broader constituency.
- General election campaigns and fundraising may increase in districts dominated by one party because of increased competition in the general election.
- General election ballot access may be lost for third parties and may reduce their opportunity to educate voters about their particular issues.
- Political party endorsement processes, such as caucuses or conventions, may decrease transparency and access to all but party activists and give too much clout to party leaders.
- Voters may have fewer choices during the general election with less chance for independents or minor party candidates to succeed.
- General election voter turnout may decrease because voters will have less choice since only the “top two” candidates appear on the November ballot.

	<ul style="list-style-type: none"> • Other reforms such as public funding campaign finance reform and alternative voting systems may be better options to address partisanship, gerrymandering, and problems “solved” by the open/top two primary.
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* Adapted from LWV Oregon’s 2008 Election Methods Study

Instant runoff voting (IRV) *

What is Instant Runoff Voting?

Instant Runoff Voting can be used in partisan and nonpartisan elections and will elect a majority winner in just one election. It is used when electing one person. Instant runoff voting is also known as "IRV" and "majority preferential voting." In Australia, where this system is used to elect its lower house of parliament, it is called the "alternative vote." IRV was first invented in the 1870s by a professor at the Massachusetts Institute of Technology.

Proponents of IRV claim that IRV has the advantages of the two-round system while avoiding many of its disadvantages.

Instant Runoff Voting - How It Works

All candidates are listed on the ballot. But instead of voting for only one candidate, voters rank the candidates in the order of their preference. This ranking process is illustrated on the following ballots. Voters simply write a "1" next to their first choice, a "2" next to their second choice, and so on.

Voters can also rank candidates on an AccuVote ballot, a computer-readable ballot that is used in the Cambridge, Massachusetts's municipal elections. It is similar to marking answers on the standardized tests used in schools. On this ballot voters fill in numbered boxes to indicate their ranking of the candidates.

The counting of the ballots is also different from plurality voting. First, all the number one preferences of the voters are counted. If a candidate receives over 50 percent of the first choice votes, he or she is declared elected.

If no candidate receives a majority, then the candidate with the fewest votes is eliminated. The ballots of supporters of this defeated candidate are then transferred to whichever of the remaining candidates they marked as their number two choice. It is as if you told the supporters of the last place candidate, "Your candidate cannot possibly win, so who among the other remaining candidates would you like your vote to go to?"

After this transfer, the votes are then recounted to see if any candidate now receives a majority of the vote. The process of eliminating the lowest candidate and transferring his/her votes continues until one candidate receives a majority of the continuing votes and wins the election.

This transfer process is illustrated below. In this hypothetical election, no candidate receives over 50 percent of the vote in the first round. So the lowest candidate, Ruth Rendell, is eliminated and her ballots are transferred to her supporter's second choices. 1,000 of Rendell's supporters gave Rex Stout as their second choice, and 6,000 indicated Agatha Christie as their second choice.

The new totals show that no one yet has a majority, so Rex Stout is eliminated. 4,000 of Stout's votes are transferred to Agatha Christie and 5,000 are given to Ellery Queen. If some of Stout's ballots had listed Rendell as the second choice, they would have been transferred to their third choice, since Rendell had been eliminated. After this latest transfer it is clear that Agatha Christie now has over 50 percent of the vote and she is declared the winner.

As this example illustrates, this system essentially operates as a series of runoff elections, with progressively fewer candidates each round, until one candidate gets a majority of the vote.

-- Transfer Process in Instant Runoff Voting --

CANDIDATES & PARTIES	First Count	Second Count		Third Count	
	Original First Choice Votes	Transfer of Rendell's Votes	New Totals	Transfer of Stout's Votes	New Totals
Ellery Queen (Democrat)	43,000	+0	43,000	+5,000	48,000
* Agatha Christie (Republican)	42,000	+6,000	48,000	+4,000	52,000
Rex Stout (Independent)	8,000	+1000	9,000	--	--
Ruth Rendell (Libertarian)	7,000	--	--	--	--
* Winning Candidate					

* Excerpted from LWV California's 2001 Election Systems Study

A Local League Position

In New York State, one local League of Women Voters has already studied and taken a position on Instant runoff voting. Below is a brief summary of their work and position.

**Excerpt from *Ahead of the Curve: The LWVNYC and Instant Runoff Voting*
(Authored and Published by LWVNYC in their fall 2013, Vol.31, No.1 *Inside the New York City League*)**

On Tuesday, October 1, New York City spent approximately \$13 million to hold a runoff election in the Democratic primary for the office of Public Advocate -- an office that has an annual budget of less than \$2.3 million and three dozen full-time staff. It was estimated that only 100,000 to 175,000 voted. Since there is no Republican candidate, this primary election virtually determined who would become the Public Advocate.

The high cost of an election for a low-budget office inspired Glenn Coleman in the September 27, 2013 issue of Crain's New York Business to suggest that the primary be decided by a coin toss. He counseled the two candidates: "...Seriously. Save these millions to be spent on your job search and use them instead to help the hungry and the homeless. Heads, you win the public advocate's office and its mighty responsibilities; tails, you might be long remembered as a true example of a public servant (and maybe emerge a campaign winner another year because you sacrificed today)."

In 2009, the LWVNYC began studying an alternative to costly, low-turnout runoffs: Instant Runoff Voting (IRV). IRV allows voters to rank their choice of candidates on the ballot in order of preference, eliminating the need for separate runoff elections and ensuring whoever wins has captured substantial support from the voters.

In New York City, this would mean that if no candidate for the city-wide elections wins the 40% minimum percentage required to win, the last-place finisher would be eliminated, and those votes would be redistributed according to the preferences noted on the ballots. The process would continue until a candidate achieved a majority of the vote

In February, 2010, the LWVNYC Board adopted the position in concurrence with the LWV of Minnesota in favor of IRV for the following reasons:

- IRV saves taxpayer dollars by eliminating the need for a second separate election and for matching funds in the runoff.
- IRV helps absentee and military voters because the 2-week turn-around between elections doesn't allow adequate time to order, receive and return a ballot.
- IRV would allow better protection of the majority principle because with a 40% or less plurality, the winning candidate can be the last choice of a majority of the voters.
- IRV reduces negative campaigning because candidates may need the second ranking of their opponent and may not get it if the opponents' supporters are antagonized.

To test the reliability and advantages of IRV, the LWVNYC supported using IRV on a trial basis

first, in filling vacancies on the City Council, and for military and absentee ballots in the 2013 citywide primaries which required second, separate runoff elections if no candidate received 40% of the vote. The results of these instant runoff initiatives could be used to determine the feasibility of substituting Instant Runoff Voting for the runoff elections in New York City, or for other elections in New York City or State.

Unfortunately, the trials did not happen. But the notable expense of the recent NYC runoff election has given new momentum to those in favor of IRV.

See Appendix C for more information from LWVNYC on runoff voting and IRV in New York City.

Jurisdictions with Instant Runoff Voting

Several jurisdictions across the country use instant runoff voting. As of November 2013, Minneapolis, Berkeley, San Francisco, Oakland, and St. Paul use it for mayoral and city council races. Several smaller municipalities have tried pilot programs or use it for just mayoral races. Arkansas, Louisiana, and South Carolina use IRV for overseas voters for runoff elections. It is also used in several countries outside of the U.S.⁹

Instant Runoff Voting*

Proponents Say:	Opponents Say:
<ul style="list-style-type: none"> • Promotes majority rule since winning with only a plurality of voters cannot occur • Addresses the spoiler effect of a third party or nonaffiliated candidate helping a major party candidate win with only a plurality of votes cast • May provide more choices and may increase the likelihood of third party or nonaffiliated candidates because of a reduced opportunity for the spoiler affect • May encourage voter turnout by those who don't vote if the ballot doesn't provide enough choices or their top choice could be a spoiler candidate 	<ul style="list-style-type: none"> • May create confusion because both ballot and system are unfamiliar to most American voters and Board of Election Administrators • Reduces cost savings because of the need for educational outreach to address voter confusion • Increases costs and election administration difficulties due to the need for changes in vote tally equipment • May create large candidate fields and turn elections into name recognition contests, with minimal opportunities for meaningful

⁹ FairVote. (2013, November). *Where instant runoff is used*. Retrieved from <http://www.fairvote.org/reforms/instant-runoff-voting/where-instant-runoff-is-used/>

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* Excerpted from LWV Oregon's 2008 Election Methods Study

Fusion Voting

Fusion, also referred to as cross-endorsement or open ballot voting, is the practice of multiple political parties nominating the same candidate for the same office. A common nineteenth-century practice, fusion formed a key part of the political system that resulted in the vigorous third parties and highly competitive elections of that century. As the major political parties fought to retain control of their positions, bans on fusion were enacted and, with the exception of New York, were upheld in court.

Today only eight states permit fusion for candidates in general elections with two variations. In one variation, candidates nominated by multiple parties appear only once, but with the names of all parties that nominated that candidate listed underneath. In the second variation, the ballot lists a candidate multiple times, once per party. The votes for all lines where the candidate's name appears are added together to arrive at a grand total of votes for the candidate.

The second variation is unique to New York. Supporters of the New York fusion system believe that it has several advantages while opponents of fusion voting have several concerns.

¹⁰ Citizens Union. (2013, May). *Issue brief and position statement: Instant runoff voting and the New York City runoff election*. Retrieved from http://www.citizensunion.org/www/cu/site/hosting/IssueBriefs/CU_IRV_IssueBrief_May2013.pdf

¹¹ Aslaksen, H. & McGuire, G.. (2004). *Mathematical aspects of Irish elections*. Retrieved from <http://www.math.nus.edu.sg/aslaksen/papers/voting.pdf>

Fusion Voting

Proponents Say:	Opponents Say:
<ul style="list-style-type: none">• Fusion promotes effective third parties and gives voice to a full range of public opinion. By allowing voters to have the option to support a party that reflects their values without “spoiling” a race and still let the candidate know how their vote is based, voters feel empowered.• Fusion may mobilize voters and encourage turnout.• Fusion may encourage major parties to differentiate themselves, thus offering voters clearer choices.• Fusion voting may allow voters to influence important issues and invite attention to those issues by the major parties.	<ul style="list-style-type: none">• Fusion voting may encourage patronage, if politicians make concessions just to gain support from special interest groups and if third parties exist only to get special privileges.• Fusion voting may give too much power or influence to groups with a single agenda or extreme groups with certain agendas.• Fusion voting may threaten the identity of all political parties.• Fusion voting may threaten the two-party system.• Fusion voting may create the illusion that the so-called spoiler effect of third party or independent candidates is eliminated. However, this effect is only eliminated if that third party or independent candidate is also endorsed by and has a ballot line for one of the two major parties.

New York’s fusion system has one component that is currently being debated. Known as Wilson-Pakula (after its original legislative sponsors) and adopted in 1947, a Wilson Pakula is an authorization given by a political party to a candidate for public office which allows a candidate not registered with that party to run as its candidate in a general election. See Appendix C for the text of Wilson-Pakula.

Some, including Governor Cuomo, are urging that Wilson-Pakula be eliminated. Without the Wilson-Pakula requirement candidates from one party hoping to run on another party’s ballot would need to submit petitions with signatures of registered members of that party rather than seeking the permission of party leaders. Proponents of this change argue that minor parties have on occasion offered their party line to the highest bidder, thus contributing to the corruption or appearance of corruption plaguing state government.

Opponents of eliminating Wilson-Pakula believe that would threaten the integrity of political parties, lead to major parties invading minor parties, and mean the demise of third parties. Party leaders of all stripes believe that they should have a say in screening their own candidates. Opponents also consider the proposal to ban Wilson-Pakula a distraction from the major challenges facing our political system, such as the influence of big money, campaign finance reform, and other election reforms.

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Appendix A

Summaries of Initial Intro Articles on Primaries Sent in Fall 2013

SUMMARY

Primary Elections Systems and Representation

Elisabeth R. Gerber and Rebecca B. Morton

Source: Journal of Law, Economics & Organization, Vol. 14, No. 2 (Oct. 1998)

The purpose of this research was to examine empirically how differences in candidate nomination procedures in non-presidential elections affect one aspect of election outcomes: the relationship between winning candidates' policy positions and their constituencies' preferences in races for positions in the U.S. House of Representatives.

The hypotheses tested were:

- 1) Closed primary systems will produce more extreme general election winners, relative to their constituencies' general election median voter, than more open primary systems.
- 2) Semi-closed primary systems will produce the most moderate general election winners.
- 3) Open, blanket and non-partisan primary winners will be more moderate than closed primary winners.

To test these hypotheses, all non-presidential primaries for U.S. Representatives between 1982 and 1990 were analyzed statistically. This time period was chosen because there had been no redistricting changes made and no significant changes had been made in state election laws. Key variables were

- 1) Winner Ideology as determined by measuring the candidate's score on the Americans for Democratic Action scale constructed to measure a single liberal-conservative dimension.
- 2) District Ideology defined as the average of the percent in the district voting for Mondale in 1984 and for Dukakis in 1988.
- 3) Type of primary: open, semi-closed, blanket, non-partisan vs. closed primary.

Key findings support the hypotheses listed above. In addition the article discusses crossover voting, acknowledging that, while it plays a role in voter behavior, its impact on primary election outcomes was not measured in this study. The relative proportions between sincere crossover voting (voters voting for their most preferred candidates in the other party) and strategic crossover voting (voters voting for less preferred candidates whose nomination provide a strategic advantage to a more preferred candidate in their own party) may be significant but are difficult to anticipate.

The authors are careful to note that, while this study demonstrates that differences in primary systems can have significant effects on the types of candidates elected, it is unclear which system is desirable from a normative point of view. There are social values and political factors to be considered by policy makers.

SUMMARY

A Promise Fulfilled? Open Primaries and Representation
Karen M. Kaufmann, James G. Gimpel, & Adam H. Hoffman
THE JOURNAL OF POLITICS, Vol. 65, No. 2, May, 2003

This article explores the general assumption that open and modified-open primaries attract a more representative electorate than closed ones, i.e., electorates closer in ideology to those of the general elections. This assumption was tested empirically using state-level exit poll data from 113 primaries held during presidential election years from 1988 to 2000. Variables analyzed included ideology, age, income, and region as well as type of primary.

KEY FINDINGS

- Open primaries do result in the ideological convergence of the parties' primary electorates. However, the extent of this convergence is strongly influenced by the attractiveness/competitiveness of the candidates themselves.
- Open and modified-open primaries attract more ideologically centrist and more demographically representative primary electors.
- Competitiveness of candidates and timing of primaries matter as much as the type of primary.
- Primary electorates tend to be older than general electorates, though open primaries attract more younger voters (especially when combined with same-day registration).
- Modified-open primaries do not meaningfully alter the demographic composition of primary electorates for Democrats or Republicans because the independents participating offer little in the way of significant diversity.
- Crossover voters are mostly independents and third-party identifiers.

AUTHORS' OBSERVATIONS/FOOD FOR THOUGHT

The study focused only on outcomes related to representativeness. However, the authors noted other important issues generated by proposed changes in primary election methods.

- Open and modified-open primaries may have the potential to wreak havoc on political parties and their tentative control over nominations.
- Open and modified-open primaries run the risk of nominating candidates with few real differences and offering little in the way of meaningful choice, thus fostering voter apathy.
- Representativeness is only one value to be considered. Another may be the role of a healthy two-party system.

Appendix B

Voter turnout/primary chart

Highest Voter Turnout				
State	Turnout	Primary	Registration deadline	
1	Minnesota	76.1%	Open	Election day
2	Wisconsin	73.2%	Open	Election day
3	Colorado	71.1%	Hybrid	Election day
4	New Hampshire	70.9%	Hybrid	One week prior/election day option
5	Iowa	70.2%	Hybrid	Specified dates
6	Maine	69.2%	Closed	Election day
7	Virginia	66.9%	Hybrid	Specified dates
8	Maryland	66.8%	Hybrid	Specified dates
9	Massachusetts	66.6%	Hybrid	Specified dates
10	Michigan	65.3%	Open	Specified dates
Lowest Voter Turnout				
51	Hawaii	44.5%	Open	Specified dates /permanent absentee ballots
50	West Virginia	46.8%	Hybrid	Specified dates
49	Oklahoma	49.6%	Hybrid	Specified dates
48	Texas	50.1%	Hybrid	Specified dates
47	Arkansas	51.0%	Open	Specified dates
46	Tennessee	52.6%	Hybrid	Election day with affidavit
45	Arizona	53.3%	Hybrid	Specified dates
44	New York	53.6%	Closed	Specified dates
43	New Mexico	54.9%	Closed	Specified dates
42	Kentucky	54.9%	Closed	Specified dates

Note: While putting this chart together, the committee found that the States with the higher voter turnout also had easier to navigate websites.

Appendix C

Runoff Voting in New York City

By Adrienne Kivelson, 2/7/14

The runoff primary was established in New York City after the 1969 election in which the City Comptroller Mario Procaccino, a candidate in a 5-person Democratic Mayoral Primary, won with 33% of the vote. John Lindsay, who ran on the Liberal party line, defeated him in the general election. The runoff primary was to come into play when none of the candidates in a primary for one of the three citywide offices received 40% or more of the vote. The two candidates with the highest votes for that office would compete in the runoff.

Since then we have had eight runoffs: three for Mayor; two for Comptroller; three for Public Advocate, and one for City Council President, before that office was eliminated.

Proponents of the current runoff primary system contend that candidates for citywide office should not be selected by a small plurality of the voters. Letitia James, one of four candidates in the initial 2013 Democratic Primary for Public Advocate, received the most votes (36%). She then went on to win a majority of votes in the runoff.

The high cost and low turnout of the 2013 runoff to select the Democratic candidate for Public Advocate re-energized earlier calls for an end to or a change in the runoff process.

Proponents of eliminating the runoff argue that the cost of the runoff, estimated at nearly \$13 Million in 2013, and the traditionally low voter turnout in runoffs do not justify retaining the runoff in a city that elects all of its other officials by plurality vote.

State legislation and city charter amendments have also been proposed to substitute Instant Runoff Voting (IRV) for the second primary. IRV allows voters to rank their choice of candidates on their ballots in order of preference. With IRV, when the votes are counted in a multiple candidate primary, the candidate with the fewest number of votes is eliminated. The ballots for the eliminated candidate are then re-tabulated and allocated to the candidates listed as the voter's second choice. The process of eliminating candidates is repeated until one candidate has 50%, plus one.

Proponents of Instant Runoff Voting favor eliminating the second primary while supporting a process that ensures that whoever wins has captured substantial support from the voters. They argue that IRV saves taxpayer dollars and eliminates the need for matching funds in the runoff. They also believe that IRV reduces negative campaigning because candidates may need the second ranking of their opponent and may not get it if the opponents' supporters are antagonized.

Opponents of Instant Runoff Voting argue that IRV does not treat all ballots equally because those whose first choice candidates are not eliminated in the first rounds have their votes counted only once, as opposed to those whose second or third choices are counted.. Some also believe that IRV elections can be manipulated by candidates who campaign for first and second choice votes. They also contend that IRV confuses voters and adds to the complexity of the ballot.

While problems encountered in the 2013 election cycle precipitated the calls for change, the sooner legislation, regulation and computer modifications can be developed, debated and decided, the more opportunity there is to educate voters and encourage greater citizen participation in the electoral process for the 2017 citywide election.

Appendix D

Text of Wilson-Pakula Law

Available via [http://public.leginfo.state.ny.us/LAWSSEAF.cgi?QUERYTYPE=LAWS+&QUERYDATA=\\$SELN6-120\\$\\$@TXELN06-120+&LIST=LAW+&BROWSER=BROWSER+&TOKEN=01930745+&TARGET=VIEW](http://public.leginfo.state.ny.us/LAWSSEAF.cgi?QUERYTYPE=LAWS+&QUERYDATA=$SELN6-120$$@TXELN06-120+&LIST=LAW+&BROWSER=BROWSER+&TOKEN=01930745+&TARGET=VIEW)

§ 6-120. Designation and nomination; restrictions.

1. A petition, except as otherwise herein provided, for the purpose of designating any person as a candidate for party nomination at a primary election shall be valid only if the person so designated is an enrolled member of the party referred to in said designating petition at the time of the filing of the petition.
2. Except as provided in subdivisions three and four of this section, no party designation or nomination shall be valid unless the person so designated or nominated shall be an enrolled member of the political party referred to in the certificate of designation or nomination at the time of filing of such certificate.
3. The members of the party committee representing the political subdivision of the office for which a designation or nomination is to be made, unless the rules of the party provide for another committee, in which case the members of such other committee, and except as hereinafter in this subdivision provided with respect to certain offices in the city of New York, may, by a majority vote of those present at such meeting provided a quorum is present, authorize the designation or nomination of a person as candidate for any office who is not enrolled as a member of such party as provided in this section. In the event that such designation or nomination is for an office to be filled by all the voters of the city of New York, such authorization must be by a majority vote of those present at a joint meeting of the executive committees of each of the county committees of the party within the city of New York, provided a quorum is present at such meeting. The certificate of authorization shall be filed not later than four days after the last day to file the designating petition, certificate of nomination or certificate of substitution to which such authorization relates. The certificate of authorization shall be signed and acknowledged by the presiding officer and the secretary of the meeting at which such authorization was given.
4. This section shall not apply to a political party designating or nominating candidates for the first time, to candidates nominated by party caucus, nor to candidates for judicial offices.

Glossary

Ballot Access – The conditions under which a candidate is either entitled to stand for election or to appear on voters' ballots. The 2013 LWVNY Ballot Access study examines ballot access to the general election and expands the League's [current understanding of ballot access](#) to explore issues beyond solely the petitioning process. For League position on petitioning process see: <http://lwny.org/advocacy/impact/issues/election/PetitioningProcess-BallotAccess.pdf>

Blanket Primary – Completely open primary in which any voter, regardless of party or nonaffiliation, can vote for a nominee from either major party. In other words, everyone receives the same ballot, and crossover voting is allowed. The blanket primary was ruled unconstitutional in 2000 by the Supreme Court due to the First Amendment of Freedom of Association.

Closed Primary – Only voters who are registered as members of a political party prior to the primary date may vote in the party's primary.

Cross-endorsement – See Fusion Voting.

Fusion Voting – Also known as cross-endorsement. The practice of multiple political parties nominating the same candidate for the same office.

Hybrid Primaries - Many states use primary election systems that fall somewhere in between "open" and "closed." Procedures are unique from state to state, and how to categorize these primaries is a judgment call. Some states allow voters to cross party lines to vote. Depending on the state, choosing a ballot may actually be a form of registration in the party. States in this category also vary according to how they treat unaffiliated voters. They may or may not be permitted to vote in party primaries. In some states, such as Alaska, political parties may decide for themselves whether to permit voters who are unaffiliated or are members of another party to participate in their primary. Semi-closed primaries are a type of hybrid primary.

Instant Runoff Voting (IRV) – Also known as Ranked Choice Voting. IRV is a way of electing a single winner among a field of three or more candidates instead of allowing a candidate to win a race without the majority of the votes. IRV requires voters to vote for every candidate by ranking them. If no candidate receives a majority of the vote, the candidate with the lowest number of votes is removed. The ballots assigned to that candidate are then recounted and go to the candidate marked "2." This process continues until a single candidate secures a majority of support.

Open Primary – A confusing term because it is used loosely to describe a wide range of primary options, but un generally refers to a broad category of primary systems in which voters do not have to declare party preference as a prerequisite to vote or do so on election day

Proportional Representation - A system in which the number of seats held by members of a political party in a legislature (such as a parliament) is determined by the number of votes its candidates receive in an election

Plurality voting – Type of election whereby the candidate with the greatest number of votes wins. As a result, some of our most powerful elected offices can be filled with candidates who were not supported by the majority of voters. In races with only two candidates (excluding write-ins) it is certain that one will receive a majority of the votes. However, without a majority requirement for victory, a plurality race with three or more candidates can see a winner elected with far less than half of the vote. In fact, the winner of an election may even have been disliked by a majority of the population.

Semi-Closed Primary – Registered party members can only vote in their own party's primary. However, unlike closed primaries, unaffiliated voters can vote in a primary of their choice. Depending on the state, unaffiliated voters either make their choice of party primary privately, inside the voting booth, or publicly by registering with a party on election day.

Spoiler Effect - Since plurality races with three or more candidates allow a winner to be elected with less than 50% of the vote, two like-minded candidates can split their base of support, allowing a less desired candidate to win. This is known as the "spoiler effect." This winning candidate, if elected with less than 50% of votes, does not necessarily have the support of most voters and may in fact represent views in conflict with the majority of voters. In some instances, vote-splitting between two candidates can lead to the election of a candidate whose views are the polar opposite of the majority of voters.

Top-Two Primary – In top-two primaries all candidates, regardless of party affiliation, are listed on one ballot. Voters choose their favorite candidate, and the top two vote-getters become the candidates in the general election. Two candidates of the same party can advance to the second round. The top-two model is used in California, Washington, Louisiana, and Nebraska, but in Louisiana, a second-round runoff only takes place if a candidate fails to win more than 50% of the vote in the first round. Sometimes called "Open Primary."

Wilson-Pakula Certificate – Authorization given by a political party to a candidate for public office in New York State which allows a candidate not registered with that party to run as its candidate in a given election. The Wilson-Pakula Act of 1947 bars candidates from collecting nominating petitions or running in primaries unless they are enrolled in that party or are granted permission by party leaders.