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VIEWPOINTSOPINION

Protecting Party Primaries Is Crucial To Election Fairness

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Commentary

Are you one of those people who votes for candidates advocating smaller government—only to see government keep growing?

One reason for your frustration may be certain state statutes governing party primary elections: These measures—which we'll call "party dilution laws"—are jiggered to weaken candidates the wealthy center-left establishment considers "out of the mainstream." These laws strengthen candidates who either lean left or favor the status quo, and they handicap conservative reformers.

However, party dilution laws may be unconstitutional. They are under legal challenge in several states.

What Party Dilution Laws Look Like

Party dilution laws have been around for a long time, but in recent years center-left interests have pushed for wider adoption. Party dilution laws now exist in about half the states.

They fall into two principal categories. "Open primary" measures allow anyone to vote in a party's primary election. Open primaries are mandatory in at least 14 states.

"Semi-closed" primaries are mandatory in 10 states. They open primaries to independent/unaffiliated voters and are "semi-closed" only insofar as they prohibit a person registered with one party from voting in another party's primary.

In addition, some states, such as California and Louisiana, have adopted laws that create election systems that don't meddle with party selection procedures—but may (or may not) undermine political parties in other ways. The Supreme Court calls these systems "nonpartisan blanket primaries," but the term "jungle primaries" is more popular.

How Party Dilution Laws Work in Practice

Exactly how open and semi-closed primary laws work in a particular state depends on the makeup of the state's electorate. However, in general, they tend to bar free market candidates from the November ballot, or at least weaken them.

Here's why: Despite the fanfare now surrounding "democratic socialists," candidates in today's Democratic Party rarely differ much over policy. Conservatives and moderates have fled, so nearly all its candidates are liberal or "progressive." They favor expanding government programs, raising taxes, and adding regulations.

From a policy perspective, therefore, most Democratic primaries aren't very interesting.

But Republican contests are different. As I learned years ago when compiling legislative scorecards, the GOP covers a wider political spectrum, with bona fide Republicans differing on such issues as school choice, abortion, and whether and how much to cut back government. As a result, many Republican races feature fascinating policy contrasts between conservative and moderate candidates.

Party dilution laws allow liberal voters who refuse to register as Republicans to invade GOP primaries. Naturally, those voters tend to support more liberal candidates over conservatives.

Center-left groups are only a little cagey about this. They say they want party dilution laws to ensure that general election candidates are "more mainstream," "less extreme," "less partisan," "less divisive," and "more pragmatic." However, we know what they mean.

Some Examples

The highly publicized 2026 Los Angeles mayoral election was conducted under a "jungle primary" system, but it shows how a party dilution law can work.

Under a traditional closed primary law, the Los Angeles general election would have become a straight liberal versus conservative contest between incumbent liberal Mayor Karen Bass and conservative challenger Spencer Pratt. But under California's jungle primary system, late Democratic voters, apparently assured that Bass would make it to the general election, could divert their ballots to a socialist candidate. Intentionally or not, they managed to cut out Pratt entirely.

So in November, Los Angeles voters will be able to choose only between a left-leaning incumbent and an even-further-left challenger. (The same phenomenon very nearly occurred in the California gubernatorial primary.)

Colorado offers another case study. In 2016, the state adopted a measure allowing non-affiliated voters to cast ballots in party primaries. Democratic contests haven't changed much, but GOP races have been flooded with

liberal-leaning independent voters. In the 2022 Republican gubernatorial primary, nearly 39 percent of the votes came from people who were not Republicans at all. Those non-Republican votes amounted to five times the margin by which the more moderate candidate defeated a more conservative rival.

I'm personally familiar with another case, since I was a candidate in that election. In the 2000 Montana open gubernatorial primary, I placed second among five candidates. But one reason I didn't place first was that I'd announced for school choice and tax cuts, so the state's teachers union actively encouraged Democrats to cross over to vote against me. Those votes helped my more liberal competitor place first.

Even when crossovers do not change the nominee, they can affect the underlying message of the election. Suppose a tax-cutting insurgent runs against a moderate incumbent in a GOP primary, and the incumbent carries the Republican vote by 52 percent to 48 percent. That's close enough to send a powerful message to the incumbent, the media, and the public.

But if an open or semi-closed primary law allows left-leaning non-Republicans to vote in the GOP primary, they may swell the incumbent's victory to, say, 65 percent to 35 percent. That sends a very different message.

Why Open and Semi-Closed Primary Laws May Be Unconstitutional

The Supreme Court tells us that the First Amendment to the Constitution creates an implied right of freedom of association and that political parties are "associations." The court concludes, therefore, that a party may exclude from its decision-making procedures people who refuse to register with the party.

The Supreme Court has not yet ruled specifically that open and semi-closed primary laws are unconstitutional. But that day may be coming.

In a 1981 case, the Supreme Court decided that political parties may exclude non-members from their decision-making processes. The court struck down a Wisconsin law that required the state's delegates at the Democratic National Convention to vote for the presidential candidate who wins an open primary.

In 2000, the Supreme Court considered a law that created a "partisan blanket primary." The measure allowed people to switch from party to party on the ballot, so non-party members had an outsized say as to whom the parties nominated for each office. The court voided the law.

In 2026, a federal judge partially invalidated Colorado's semi-closed primary law. And an open primary law is now under legal challenge in Texas.

In addition, on June 30, the Supreme Court issued National Republican Senatorial Committee v. Federal Election Commission. In that case, the court further recognized and protected the First Amendment rights of political

parties.

Center-left advocates of open and semi-closed primary laws claim that closed primaries "disenfranchise" unaffiliated voters. Of course, this is nonsense, because anyone can qualify to vote in an intra-party contest merely by registering, even temporarily, as a party member. In many states, you can do this online.

Center-left advocates also argue that because the state funds party primaries, the state can infringe parties' First Amendment right to nominate their own candidates. However, the Supreme Court's unconstitutional conditions doctrine directly contradicts that argument: A state may not force you to give up a constitutional right in order to receive a government benefit.

Why This Is Important

Democracy works best when voters are offered contrasting policy options. The traditional closed primary system gives the voters more choices and helps hold accountable those responsible for a dysfunctional status quo. Having this kind of choice is particularly important at general election time—when voters are paying most attention.

Closed primaries also protect the integrity of political parties. Parties offer opportunities for ordinary people of ordinary means to participate effectively in politics. As the Supreme Court pointed out in the National Republican Senatorial Committee case, when you weaken political parties, elections become dominated by the billionaires and "dark money" donors who step into the gap. This problem is aggravated by the fact that party dilution laws raise the cost of campaigning by expanding the primary electorate, sometimes in unpredictable ways.

So even if constitutionality were not a concern, state lawmakers should move toward ensuring that only party members choose party nominees.

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