

Alaska State Legislature

House of Representatives



Representative Max F. Gruenberg, Jr.

House District 20

Anchorage (Mountain View, Russian Jack, East Anchorage)

House Minority Floor Leader

Member

Standing Committees:

Judiciary
State Affairs
Transportation
Rules

Finance Subcommittees:

Corrections
Courts
Law

Interim:

716 W 4th Avenue, Rm 350
Anchorage, Alaska 99501-2133
Phone: (907) 269-0123
Fax: (907) 269-0124

Session:

Alaska State Capitol, Rm 110
Juneau, Alaska 99801-1182
Phone: (907) 465-4940
Toll Free: (866) 465-4940
Fax: (907) 465-3766

Email:

Rep.Max.Gruenberg@legis.state.ak.us

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HB 77 – NONPARTISAN BLANKET PRIMARY ELECTION

House Bill 77 would establish a nonpartisan blanket primary election in Alaska. Under this system, voters could cast their ballots for any candidate running for office in a primary election, and the top two vote-getters, regardless of party, would advance to the general election. HB 77 would give voters more freedom at the ballot box since their choices will not be restricted to their party affiliation. Voters could cast their ballots in support of the best, most qualified candidate, not just those that identify with a particular political party.

Since the United States Supreme Court struck down the California blanket primary law and then the Alaska Supreme Court struck down Alaska's blanket primary law (the "open primary"), Alaska has operated under a two primary system. Currently in Alaska, the Republican primary does not allow members of other political parties to participate. Winners for each political party advance to the general election in November.

However, the right Alaskans had previously enjoyed for approximately 40 years -- to vote for candidates of their choice for any elective office in the primary election -- is no longer available. Countless Alaskans have approached legislators pleading for a return to an open primary election system, where they could vote for the candidate of their choice in a primary election, regardless of party. Voters have demanded that they continue to be allowed to vote for a republican for one office, a democrat for another office, a green for another office, and so on. So have voters in other states. The "blanket primary" election system was previously in force in Washington and California, as well as Alaska. Several years ago in an initiative and in response to language in the US Supreme Court decision striking down the blanket primary,¹ an initiative passed in Washington state allowing voters to cast a ballot in the open primary. The only difference was that the top two vote-getters, regardless of party, would advance to the general election. Immediately after passage of the initiative, the political parties in Washington obtained injunctions from the federal district court in that state prohibiting the implementation of the new top-two primary law. The 9th Circuit affirmed. In early 2008 the United States Supreme Court

¹ California Democratic Party v. Jones, 530 U.S. 442 (2008).

reversed those decisions and upheld that state law.² The United States Supreme Court held that the political parties' constitutionally-protected right of association did not apply when the voters, rather than political parties, controlled the nomination process. The main challenge to that law was that candidates could identify themselves by membership and/or adherence to the ideals of a particular political party. The United States Supreme Court rejected that argument, as long as the implementation of the state law made it clear the political parties were not endorsing any particular candidate and that the designation of the party membership or adherence was simply a matter of political preference by the candidate.

Washington state election officials were therefore free to implement the new top-two primary law. A similar initiative was attempted in Oregon, but failed, leaving the previous primary election system intact. In June of 2010, California voters by 60 percent passed a similar initiative like Washington's—a top-two primary election.

HB 77 is legislation taken from the Washington state law and incorporates suggestions made by the United States Supreme Court in the Washington State Grange opinion. It briefly provides that candidates of all political parties and independents may run for office in a single primary election. They may self-designate their political parties if they wish. However, the state must make it clear, in the Official Election Pamphlet (OEP), on ballot materials, and at polling places, that any such designations are self-designations only and do not imply endorsement by any political party.

The bill also contains other provisions that conform other statutes to the top-two primary law.

The sectional analysis explains the provisions, and testimony in committee will further cover the details. We will be available to answer questions.

Thank you for favorable consideration of this legislation.

² Washington State Grange v. Washington State Republican Party, 552 U.S. 442 (2008).