

LEGISLATIVE RESEARCH SERVICES

30th Alaska Legislature
LRS Report 17.181
March 28, 2017



(907) 465-3991 phone
(907) 465-3908 fax
research@akleg.gov

Primaries in Other States

Tim Spengler, Legislative Analyst

You wished to know how many states have a “top two” primary process and how they were implemented. You also wished to know how many different primary systems exist in the country.

Top-Two Primaries

Only four states use a top-two primary system: California, Louisiana, Nebraska (for their nonpartisan legislative races only), and Washington. As you know, a top-two primary lists all candidates on the same ballot regardless of party. The top two vote-getters advance to the general election regardless of their party affiliation.¹ Top-two primary systems have been implemented as follows:

- California implemented its top-two primary via citizens’ initiative Proposition 14, in 2010. Information on this proposition can be accessed at [https://ballotpedia.org/California_Proposition_14,_Top_Two_Primaries_Act_\(June_2010\)](https://ballotpedia.org/California_Proposition_14,_Top_Two_Primaries_Act_(June_2010)).
- Louisiana implemented its top-two primary through statute in 1976. Information on the state’s primary and general elections can be viewed at www.sos.la.gov/ElectionsAndVoting/PublishedDocuments/ElectionCode.pdf (page 66). See LA Rev Stat § 18.511 (page 114) specifically for section on “election of candidate in a primary election.”
- Nebraska’s top-two primary system was implemented through a combination of a constitutional amendment approved by the voters in 1934, Article III sec. 7 of the Nebraska Constitution (<http://nebraskalegislature.gov/laws/articles.php?article=III-7&print=true>), and a statute passed shortly thereafter Neb. Rev. Stat. 32-508, 32-810, and 32-814.²
- Washington implemented its top-two primary through *Citizens’ Initiative 872*, in 2004. Information on this proposition can be accessed at [https://ballotpedia.org/Washington_Top_Two_Primaries,_Initiative_872_\(2004\)](https://ballotpedia.org/Washington_Top_Two_Primaries,_Initiative_872_(2004)).

State Primary Systems

Primary systems are typically categorized as either closed, partially closed (employed in Alaska), partially open, open to unaffiliated voters, open, or top-two. Below we highlight the main features of each of these systems, as well as the states that employ them. The majority of information in this section we found on the National Conference of State Legislatures’ (NCSL)

¹ In Louisiana, if a candidate gets over 50 percent of the vote in the first stage, he or she wins the election outright. If no candidate receives over 50 percent of the vote, the top two candidates go into a runoff election thirty days later. While considered a top-two system, it is also sometimes referred to as a *jungle* primary system.

² <http://nebraskalegislature.gov/laws/browse-chapters.php?chapter=32>. Nebraska Revised Statute 32-814 (2) is particularly relevant; “(2) The election commissioner or county clerk shall place on the official general election ballot in each office division no more than twice as many names as there are places to be filled at the general election unless more than one candidate has successfully petitioned on the ballot to fill a vacancy after the primary election. The names of the nonpartisan candidates who received the highest number of votes for the office for which they were candidates in the primary election shall be placed on the official ballot. If more than one person was a candidate for the same position in the primary election, the election commissioner or county clerk shall place on the official ballot the names of the two persons who received the highest number of votes in the primary election for the position for which they were candidates.”

election webpages; especially useful was a table on primary types at www.ncsl.org/documents/Elections/Primary_Types_Table_2017.pdf.

According to NCSL election experts, most states have enacted their primary systems through statute. Most recently, in 2016, Colorado approved changes making primaries more open to unaffiliated voters via citizens' initiative Proposition 108, which allowed unaffiliated electors to vote in the primary elections of major political parties without declaring an affiliation with the party.³ Prior to that, in 2011, Idaho changed its statutes to allow political parties to decide which voters could participate in the primary.

Closed Primaries

In general, a voter seeking to vote in a closed primary must first be a registered party member. Typically, the voter affiliates with a party on his or her voter registration application. This system deters "cross-over" voting by members of other parties. Independent or unaffiliated voters, by definition, are excluded from participating in the party nomination contests. This system generally contributes to a strong party organization.

The following nine states use a closed primary system: Delaware, Florida, Kentucky, Maryland, Nevada, New Mexico, New York, Oregon, and Pennsylvania.

Partially Closed

In this system, state law permits political parties to choose whether to allow unaffiliated voters or voters not registered with the party to participate in their nominating contests before each election cycle. In this type of system, parties may allow participation from unaffiliated voters, while still excluding members of opposing parties. This system gives parties more flexibility from year-to-year about which voters to include. At the same time, it can create uncertainty about whether or not certain voters can participate in party primaries in a given year.

The following seven states use a partially closed primary system: **Alaska**, Connecticut, Idaho, North Carolina, Oklahoma, South Dakota, and Utah.

Partially Open

This system permits voters to cross party lines, but they must either publicly declare their ballot choice or their ballot selection may be regarded as a form of registration with the corresponding party. Illinois and Ohio have this system. Iowa asks voters to choose a party on the state voter registration form, yet it allows a primary voter to publicly change party affiliation for purposes of voting on primary Election Day. Some state parties keep track of who votes in their primaries as a means to identify their backers.

The following six states use a partially open primary system: Illinois, Indiana, Iowa, Ohio, Tennessee, and Wyoming.

Open to Unaffiliated Voters

A number of states allow only unaffiliated voters to participate in any party primary they choose, but do not allow voters who are registered with one party to vote in another party's primary. This system differs from a true open primary because a Democrat cannot cross over and vote in a Republican Party primary, or vice versa. Some of these states, such as Colorado and New Hampshire, require that unaffiliated voters declare affiliation with a party at the polls in order to vote in that party's primary.

The following nine states use this primary system: Arizona, Colorado, Kansas, Maine, Massachusetts, New Hampshire, New Jersey, Rhode Island, and West Virginia.

³ Information on Proposition 108 can be viewed at [https://ballotpedia.org/Colorado_Unaffiliated_Elector,_Proposition_108_\(2016\)](https://ballotpedia.org/Colorado_Unaffiliated_Elector,_Proposition_108_(2016)).

Open Primaries

In general, but not always, states that do not ask voters to choose parties on the voter registration form are “open primary” states. In an open primary, voters may choose privately in which primary to vote. In other words, voters may choose which party’s ballot to vote, but this decision is private and does not register the voter with that party. This permits a voter to cast a vote across party lines for the primary election. Critics argue that the open primary dilutes the parties’ ability to nominate. Supporters say this system gives voters maximal flexibility—allowing them to cross party lines—and maintains their privacy.

The following 15 states use an open primary system: Alabama, Arkansas, Georgia, Hawaii, Michigan, Minnesota, Mississippi, Missouri, Montana, North Dakota, South Carolina, Texas, Vermont, Virginia, and Wisconsin.

Top-Two Primaries

As mentioned above, California, Louisiana, Nebraska (for state elections) and Washington currently use a top two primary system. The top two format uses a common ballot, listing all candidates on the same ballot. Advocates of the top-two primary system argue that it increases the likelihood of moderate candidates advancing to the general election ballot. Opponents maintain that it reduces voter choice by making it possible that two candidates of the same party face off in the general election. They also contend that it is tilted against minor parties who will face slim odds of earning one of only two spots on the general election ballot.

We hope this is helpful. If you have questions or need additional information, please let us know.