

ALASKA STATE LEGISLATURE
HOUSE STATE AFFAIRS STANDING COMMITTEE

May 2, 2017

3:09 p.m.

MEMBERS PRESENT

Representative Jonathan Kreiss-Tomkins, Chair
Representative Gabrielle LeDoux, Vice Chair
Representative Chris Tuck
Representative Adam Wool
Representative Chris Birch
Representative Gary Knopp

MEMBERS ABSENT

Representative DeLena Johnson
Representative Andy Josephson (alternate)
Representative Chuck Kopp (alternate)

COMMITTEE CALENDAR

HOUSE BILL NO. 200

"An Act establishing a top two nonpartisan open primary election system for elective state executive and state and national legislative offices; repealing the special runoff election for the office of United States senator or United States representative; changing appointment procedures relating to precinct watchers and members of precinct election boards, election district absentee and questioned ballot counting boards, and the Alaska Public Offices Commission; requiring certain written notices to appear in election pamphlets and polling places; relating to declarations of candidacy and letters of intent; and amending the definition of 'political party.'"

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 200

SHORT TITLE: NONPARTISAN OPEN PRIMARY ELECTIONS

SPONSOR(S): REPRESENTATIVE(S) LEDOUX

03/29/17	(H)	READ THE FIRST TIME - REFERRALS
03/29/17	(H)	JUD, STA
04/10/17	(H)	JUD AT 1:00 PM GRUENBERG 120

04/10/17 (H) Heard & Held
04/10/17 (H) MINUTE(JUD)
04/12/17 (H) JUD AT 1:00 PM GRUENBERG 120
04/12/17 (H) <Bill Hearing Canceled>
04/14/17 (H) JUD AT 1:00 PM GRUENBERG 120
04/14/17 (H) Heard & Held
04/14/17 (H) MINUTE(JUD)
04/15/17 (H) JUD AT 10:00 AM GRUENBERG 120
04/15/17 (H) Moved CSHB 200(JUD) Out of Committee
04/15/17 (H) MINUTE(JUD)
04/19/17 (H) JUD RPT CS(JUD) NT 1DP 2DNP 2NR 1AM
04/19/17 (H) DP: LEDOUX
04/19/17 (H) DNP: EASTMAN, KOPP
04/19/17 (H) NR: KREISS-TOMKINS, CLAMAN
04/19/17 (H) AM: FANSLER
05/02/17 (H) STA AT 3:00 PM GRUENBERG 120

WITNESS REGISTER

JASON OLSON, Director of National Outreach
Open Primaries
New York, New York

POSITION STATEMENT: Testified in support of HB 200.

ANDREW SINCLAIR, PhD, Clinical Assistant Professor
New York University Wagner Graduate School of Public Service
New York, New York

POSITION STATEMENT: Provided information during the hearing on HB 200.

COURTNEY ENRIGHT, Staff
Representative Gabrielle LeDoux
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 200 on behalf of Representative LeDoux, prime sponsor.

ACTION NARRATIVE

[3:09:17 PM](#)

CHAIR JONATHAN KREISS-TOMKINS called the House State Affairs Standing Committee meeting to order at 3:09 p.m. Representatives LeDoux, Wool, Birch, Knopp, and Kreiss-Tomkins were present at the call to order. Representative Tuck arrived as the meeting was in progress.

HB 200-NONPARTISAN OPEN PRIMARY ELECTIONS

[3:10:05 PM](#)

CHAIR KREISS-TOMKINS announced that the only order of business would be HOUSE BILL NO. 200, "An Act establishing a top two nonpartisan open primary election system for elective state executive and state and national legislative offices; repealing the special runoff election for the office of United States senator or United States representative; changing appointment procedures relating to precinct watchers and members of precinct election boards, election district absentee and questioned ballot counting boards, and the Alaska Public Offices Commission; requiring certain written notices to appear in election pamphlets and polling places; relating to declarations of candidacy and letters of intent; and amending the definition of 'political party.'"

[3:10:20 PM](#)

REPRESENTATIVE LEDOUX, prime sponsor of HB 200, explained that the "top two" nonpartisan primary system proposed under HB 200 would take the State of Alaska out of the business of running primaries for private [political] parties. She maintained that it would eliminate the role of primaries in nominating candidates for parties and instead narrow the field of candidates to the top two vote getters. She relayed that HB 200 was introduced because of consistent complaints from her constituents regarding the semi-closed primary system in place in Alaska.

REPRESENTATIVE LEDOUX maintained that Alaska benefitted from an open primary system from 1946 to 2000. In 2000, the U.S. Supreme Court ruled in California Democratic Party v. Jones that private [political] parties could not be forced to open their primaries to members of other parties. She asserted that the top two primary is constitutional; according to a U.S. Supreme Court Ruling in Washington State Grange v. Washington State Republican Party [2008], this is not a primary that serves to nominate candidates from either party but simply serves as a winnowing process. She maintained that the proposed legislation would bring "the will of the people" back to a more open primary system.

[3:13:22 PM](#)

JASON OLSON, Director, National Outreach, Open Primaries, paraphrased from his written testimony, which read as follows [original punctuation provided]:

I am testifying in favor of HB 200 and the efforts to bring back an open primary to Alaska.

First let me thank Representative LeDoux for the invitation to testify, and thank the committee members for their time and attention to this important matter.

I am the Director of National Organizing for Open Primaries, a nonprofit, nonpartisan national organization with a singular mission, to ensure that no American citizen be required to join a political party in order to vote in a primary. Open Primaries is working in red state, blue states, purple states and we work with Republicans, Democrats, and independents on this issue.

My background is that I founded a group of independent voters in California that partnered with the coalition led by Republican former Governor Arnold Schwarzenegger to bring a top two open primary to California, as well as reform the redistricting process. Since then I have worked on the issue of open primaries in states around the country.

So why is restoring Alaska's open primary worth the support of the Alaska State Legislature? In short, the voters of Alaska, along with those in California and Washington State, had their open primary stolen by a terrible court decision in the year 2000. In that case, the California Democratic Party sued the state of California - which had copied Alaska's open primary in 1996 - in order to close the primary elections.

In one of the worst supreme court decisions in a generation, the court sided with the political establishment of both parties against our citizens basic freedom to vote for their elected representatives. This, despite the fact that primary elections are in fact are [sic] taxpayer funded, run by government employees, and conducted on public owned voting machines.

Alaska, California, and Washington state - all which had the same open primary system - were forced to return to a semi-closed primary that voters in each state had previously rejected. This put all of these states in a very difficult position. Voters in those other states fought back and passed new open primaries through ballot initiative. For this, they looked to Nebraska, which has used the top two open primary since 1934.

Under a top two open primary voters are free to vote for who they want. Legislators are free to do what they think is right for their constituents, rather than have to toe the party line. And most of them absolutely love it.

The impact in California has been tremendous. The legislature's approval rating is up from a low of 14% before the change to 45% today. Budgets are passed on time. Voter participation and registration has begun to rebound, with a 48% voter turnout in California's June 2016 primary which took place after the presidential primaries were virtually over.

In short, HB 200 is Alaska's chance to finally win back its open primary. We urge you to support it and are happy to advise and assist in its passage any way possible. Thank you.

[3:16:56 PM](#)

ANDREW SINCLAIR, PhD, Clinical Assistant Professor, New York University Wagner Graduate School of Public Service, paraphrased from his written testimony, which read as follows [original punctuation provided]:

I am a Clinical Assistant Professor at NYU's Wagner Graduate School of Public Service. My teaching responsibilities include courses in public policy and quantitative research methodology. Beyond teaching I conduct research on public policy, electoral institutions, political behavior, and democratic accountability in the United States and in Britain. In addition to academic articles, I am also the author of *Nonpartisan Primary Election Reform: Mitigating Mischief*, a book published with my coauthor R. Michael

Alvarez through Cambridge University Press in 2015. This book focuses on the nonpartisan "top-two" primary in California, a subject of my continuing scholarly activities as well. I hold a PhD and MS in Social Science from the California Institute of Technology and a BA in Mathematics and Government from Claremont McKenna College.

(1). *California has used the nonpartisan election rule in 2012, 2014, and 2016. That is enough to say something - but there is still considerable disagreement among political scientists about what to look at and what to made of the new rules.*

(2). *California's version of the top-two is very simple: the two candidates with the most votes advance to the general election. Voters can choose any candidate in the primary.*

(3). *Roughly 15% of the time two candidates of the same party face each other in the general election. Most of the time, the general elections look like what you would see under the old system.*

(4). *From my own research, it appears that the general elections between candidates of the same party are more competitive and happen in the very places we typically see uncompetitive elections.*

(5). *For some of the other considerations people think about - participation, moderation as examples - it is a little less clear how the top-two works or how the CA experience would translate to Alaska. I have not seen compelling evidence that the top-two disadvantages minorities or other underrepresented groups; we looked for this in our 2015 book but did not find anything.*

(6). *Most of what the top-two does seems to happen through pairing candidates in a different way rather than vastly changing the way voters behave in the primary. In my research, generally we found voters picked the candidate that they knew about that they also liked the most (rather than behave in some complicated strategic way).*

(7). Some voters like the new rules while others do not. Many echo the uncertainty of the political scientists about what to expect from the top-two.

(8). Any reform will come with some advantages (as in increased competition) and disadvantages (some voters might wish they had a candidate of their own party on the general election ballot). It is only my job to assess "how" the system works - not to make recommendations, so I take no position on HB200.

I would be delighted to be in touch with any of the legislators (for HB200 or against it) to provide further information. I would be able to answer questions not only about California's and Washington's experience with the nonpartisan top-two system but also about primary elections and election rules more generally in the United States.

Thank you for including me in this hearing and giving me an opportunity to tell you about my work.

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REPRESENTATIVE BIRCH requested Mr. Sinclair's testimony in writing. He opined that the proposed legislation is a solution in search of a problem. He asked for more explanation as to the motivation behind HB 200.

REPRESENTATIVE LEDOUX responded that constituents have expressed to her their frustration for not being allowed to vote for the candidates of their choice, as they used to be able to do. She said the public is particularly dismayed that the state is paying over \$1 million to conduct primary elections for private entities. The reason republicans and democrats may close their primaries is because the court ruled that these political parties are more like private clubs that do not have to accept the votes of people who do not belong to that club or who belong to another club. She asked, "So if you take that for face value, then why is the state paying for these primaries?" She maintained that was the concern of her constituents.

REPRESENTATIVE BIRCH responded, "Aside from the obvious rather self-serving nature of this legislation, and I would note the Republican Democrat thing was solved in Shungnak by just giving everybody one of each ballot, but I'm not sure that that passed muster exactly."

REPRESENTATIVE LEDOUX asked for clarification of "self-serving."

REPRESENTATIVE BIRCH explained that the party chooses the process for advancing a capable and competent candidate. He relayed that the current process for the Republican party [in Alaska] is that all individuals who are not affiliated with another party are free to vote the Republican ballot. He asserted that the public is best served when a candidate is advanced in a primary process. He conceded that the state does pay for it, and it can be debated as to whether there even should be a primary. He maintained that HB 200 would not be a good solution.

REPRESENTATIVE LEDOUX, referring to Representative Birch's comment that the proposed legislation is self-serving, clarified that HB 200, if passed, would be effective for the 2020 election; therefore, it has nothing to do with the 2018 election or her.

[3:27:01 PM](#)

REPRESENTATIVE KNOPP asked if the intent is to return to the open primary system. He relayed his understanding of the process under the proposed legislation: there would be one ballot, not two; all the candidates' names would be on the one ballot; and the top two vote getters would advance to the general election. He said that he doesn't envision Alaska removing itself from the primary system process. He asked if the candidates would still list their party affiliations. He asked also if there could be a governor of one party and a lieutenant governor of another party. He questioned whether that scenario would be good for the state.

REPRESENTATIVE LEDOUX confirmed that under the proposed legislation, there would be one ballot, and all candidates' names would be on that one ballot. She maintained that the difference between what is proposed and what occurred prior to 2000 is that prior to 2000, all candidates were on one ballot; the Republican with the most votes, the Democrat with the most votes, and the Libertarian with the most votes all advanced to the general election ballot. Under HB 200, the top two vote getters would advance to the general election, regardless of their party affiliation. She said that party affiliation may or may not be included on the ballot depending on the will of the candidate. She responded to the question about electing a split

ticket by saying that it could happen under the proposed legislation, but it can happen currently as well.

REPRESENTATIVE KNOPP suggested that the primary would still be operated by the state, so there would be no cost savings for the state.

REPRESENTATIVE LEDOUX agreed but inserted that that under the proposed legislation, the state would not be financing a private entity's nomination process.

REPRESENTATIVE KNOPP relayed one of the arguments of Republicans advocating for a closed primary at the time of the 2000 court case: Democrats will vote for a "weak" Republican candidate who could more readily be defeated in a general election. He asked if that is a concern.

REPRESENTATIVE LEDOUX offered that her experience with both political parties convinces her that neither are organized enough to "pull that off."

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CHAIR KREISS-TOMKINS asked what the motivation was for the California Democratic Party to sue to keep its primary closed.

MR. OLSON referred to the question on cross-over voting and pointed out that Mr. Sinclair mentioned that he has studied this in detail and it has not occurred. In answer to Representative Kreiss-Tomkins, Mr. Olson relayed that the California Democratic Party sued because of the belief that it is politically advantageous to the establishment of the party to rein in control of who could participate in its primary process. In 1996, California voters passed Proposition 198, which copied Alaska's "blanket" open primary system. Not long after that, the suit was filed by the California Democratic Party, which was supported by the other parties as well. The political parties did not want anyone but their members controlling who advances to the general election. They argued, successfully, that because they are private entities, the state could not regulate their primary processes; the decision was seven to two; it cast a shadow over every partisan open primary in the country. He asserted that state funding of primaries was not introduced by the defense in the case. He added that as a result, people looking for a new system have embraced the public system that copies Nebraska's "top-two" system.

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REPRESENTATIVE TUCK commented that using state funds to pay for private self-interest primaries makes no sense to him. He maintained that a Republican can fill out a Republican and Democratic ballot, because there is no limitation on the open primary ballots. He opined that one reason for allowing an open primary was to allow smaller parties to "gain traction." He asserted that any party who wants a closed primary should reimburse Alaska for the cost of doing so, or party organizations should conduct their own primaries as is done in the presidential election. In that case, party members would decide on the candidate from the local level on up to the national level. He stated that he believes that the passage of HB 200 would get Alaska back to the open primary process where people have a choice and are not limited. He maintained that often people are not voting for the party but for the individual; and the opportunity to vote for the individual is removed with the closed primary system that currently exists.

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REPRESENTATIVE WOOL stated that as an independent, his wife can vote a Republican ballot; however, if she does vote a Republican ballot, she is prevented from voting for anyone on the Democratic ballot. He relayed a situation brought to his attention by letters included in the committee packet: in a predominantly Republican district, four Republicans and two Democrats run for office in the primary; because there are so many Republican candidates, the Democrats are the top two vote getters; the people in that predominantly Republican district feel they are not represented by the candidates.

REPRESENTATIVE LEDOUX answered that theoretically there could be many different scenarios. She said that in the 2014 U.S. Senate election in Alaska, which is a predominantly Republican state, there were three major candidates running in the Republican primary and one Democrat running. She maintained that under the top two system proposed by HB 200, the race would have been former U.S. Senator Mark Begich versus Dan Sullivan. She pointed out that the results would not always be affected. She suggested that even though one could come up with all kinds of scenarios - like 12 Republicans and 2 Democrats running in a primary - most likely that is not what would occur.

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MR. OLSON addressed the scenario in which the two Democratic candidates are the top vote getters in a primarily Republican district. He said that in California and Washington, with over 1,200 elections under this system, there have been three to five times that this scenario has played out. He opined that when that does happen, the elected official works very hard to reach out to the opposing party, because he/she wants to retain his/her seat.

MR. SINCLAIR concurred and said that in California that has occurred in about 1 in 500 elections; and the one election, in which it occurred, was influenced by redistricting.

[3:43:36 PM](#)

REPRESENTATIVE TUCK suggested that HB 200 should have a negative fiscal note, because it would avoid the printing of two separate ballots; it would avoid having to estimate how many of each ballot to print; and it would avoid having to estimate how many ballots to send to each voting location.

[3:44:35 PM](#)

COURTNEY ENRIGHT, Staff, Representative Gabrielle LeDoux, Alaska State Legislature, on behalf of Representative LeDoux, prime sponsor of HB 200, relayed that there would be a cost savings related to the number of ballots printed; however, implementation costs for the new system would also be expected. Under the proposed system, if there is a special election, there would need to be a primary and a runoff election. She relayed that while there is an expected savings of close to \$100,000 per election under the system proposed, it is negated due to the other cost factors.

CHAIR KREISS-TOMKINS mentioned that Louisiana has had a general primary for quite some time and asked if that state is analogous to what is being proposed.

REPRESENTATIVE LEDOUX replied that Louisiana's "jungle" primary is slightly different in that if one candidate in the primary gets 51 percent of the vote or greater, then that person has won the election, and there would be no general election; it is not a top two "runoff" system.

MR. OLSON confirmed that Louisiana's system is different from a top two system in that technically there is no primary; everyone runs in the general election and like a municipal election, if

no one receives 50 percent of the vote, then there is a runoff election. He maintained that the challenge with Louisiana's system is that the runoff election often has low turnout, because it occurs in late November or early December. He stated that the Louisiana system is different from a top two system; a top two system is a proper primary system; and although there are similarities, there are marked differences as well.

MR. SINCLAIR concurred.

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REPRESENTATIVE WOOL referred to the situation in the [House] District 40 race last year; there were multiple ballots, and people wanted to choose from all candidates. He stated that the single ballot under HB 200 would eliminate that frustration.

REPRESENTATIVE LEDOUX claimed that the proposed legislation would certainly make the process more efficient.

MR. SINCLAIR pointed out another difference under a nonpartisan top two system with a single ballot: In Alaska's old blanket primary system, if a political party had only one candidate, that candidate would be guaranteed to advance; therefore, there would be no "cost" to voting for the weakest candidate in the other party's primary. That system has now been declared unconstitutional. In the nonpartisan top two system, if someone voted for a weak candidate of another party, he/she would put at risk his/her preferred candidate. He maintained there would be less strategic behavior under the top two system than under the old system.

REPRESENTATIVE WOOL asked if the jungle primary is ever used in conjunction with "ranked-choice" voting; if one chose to vote for a more obscure candidate, he/she could vote for a second more mainstream choice so as not to throw away his/her vote.

MR. OLSON answered that it is not currently done; it could be used in the first round of voting; and it has been proposed in some areas. He clarified that the jungle primary refers to the Louisiana system; the Nebraska style top two primary system was adopted by California and Washington after losing the blanket open primary system.

CHAIR KREISS-TOMKINS announced that HB 200 would be held over.

[3:50:33 PM](#)

ADJOURNMENT

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 3:51 p.m.