

HB

327

7-LS1188b

Casey

3/3/92

CS FOR HOUSE BILL NO. 327 ()
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:

Referred:

Sponsor(s): HOUSE STATE AFFAIRS COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to preliminary general elections, run-off general elections, special general
2 elections, declarations of affiliation with a political party, and the definition of 'political
3 party'; and providing for an effective date."

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

5 * Section 1. AS 15.15.030(5) is amended to read:

6 (5) The state run-off general election ballot shall be printed on white paper with
7 the names of the candidates [AND THEIR PARTY DESIGNATIONS] placed in separate sections
8 under the office designation to which they were nominated. An official endorsement of a
9 candidate by a political party as provided in AS 15.25.057 shall be noted immediately after
10 the name of the candidate. The party affiliation, if any, shall be designated after the name of
11 the candidate. The lieutenant governor and the governor shall be included under the same
12 section. Blank spaces may not be provided on a run-off general election ballot for the
13 writing or pasting in of names [PROVISION SHALL BE MADE FOR VOTING FOR
14 WRITE-IN AND NO-PARTY CANDIDATES WITHIN EACH SECTION]. The squares

1 appearing on the ballots shall measure 1/4 inch on each side.

2 • Sec. 2. AS 15.15 is amended by adding a new section to read:

3 Sec. 15.15.245. WRITE-IN AND PASTE-IN VOTES PROHIBITED IN RUN-OFF
4 GENERAL ELECTION. A voter may not vote for a person whose name is not on the ballot in
5 a run-off general election. Votes cast for a person whose name is not on the ballot in a run-off
6 general election may not be counted, but writing in a candidate's name for an office does not
7 invalidate votes properly cast in the ballot for other offices.

8 • Sec. 3. AS 15.25.030(a) is amended to read:

9 (a) A person [MEMBER OF A POLITICAL PARTY] who seeks to become a candidate
10 [OF THE PARTY] in the preliminary general [PRIMARY] election shall execute and file a
11 declaration of candidacy. The declaration shall be executed under oath before an officer
12 authorized to take acknowledgments and shall state in substance:

13 (1) the full name of the candidate;

14 (2) the full mailing address of the candidate;

15 (3) if the candidacy is for the office of state senator or state representative, the
16 election or senate district of which the candidate is a resident;

17 (4) the office for which the candidate seeks nomination;

18 (5) whether the candidate is affiliated with a political party and if so the
19 identity of the party [THE NAME OF THE POLITICAL PARTY OF WHICH THE PERSON
20 IS A CANDIDATE FOR NOMINATION];

21 (6) the full residence address of the candidate, and the date on which residency
22 at that address began;

23 (7) the date of the preliminary general [PRIMARY] election at which the
24 candidate seeks nomination;

25 (8) the length of residency in the state and in the district of the candidate;

26 (9) that the candidate will meet the specific citizenship requirements of the office
27 for which the person is a candidate;

28 (10) that the candidate is a qualified voter as required by law;

29 (11) that the candidate will meet the specific age requirements of the office for
30 which the person is a candidate;

31 (12) that the candidate requests that the candidate's name be placed on the

1 preliminary general [PRIMARY] election ballot;

2 (13) that the required fee accompanies the declaration;

3 (14) that the person is not a candidate for any other office to be voted on at the
4 preliminary general election or run-off [PRIMARY OR] general election and that the person
5 is not a candidate for this office under any other declaration of candidacy or nominating petition;
6 and

7 (15) the manner in which the candidate wishes the candidate's name to appear
8 on the ballot [; AND

9 (16) THAT THE CANDIDATE IS REGISTERED TO VOTE AS A MEMBER
10 OF THE POLITICAL PARTY WHOSE NOMINATION IS BEING SOUGHT,

11 * Sec. 4. AS 15.25.040(a) is amended to read:

12 (a) The declaration is filed by either

13 (1) the actual physical delivery of the declaration in person or by mail at or before
14 5:00 p.m., prevailing time, June 1 of the year in which a run-off general election is held for the
15 office; or

16 (2) the actual physical delivery by telegram or facsimile of a copy in substance
17 of the statements made in paragraphs (1) - (5) of the declaration as required by AS 15.25.030(a)
18 at or before 5:00 p.m., prevailing time, June 1 of the year in which a run-off general election
19 is held for the office and also the actual physical delivery of the declaration containing
20 paragraphs (1) - (15) [(16)] as required by AS 15.25.030(a) by certified or registered mail that
21 [WHICH] is received not more than 15 days after that time.

22 * Sec. 5. AS 15.25 is amended by adding a new section to read:

23 Sec. 15.25.057. OFFICIAL ENDORSEMENT OF CANDIDATES BY POLITICAL
24 PARTIES. A political party may officially endorse candidates for each office in an election. A
25 political party may prescribe and follow its own rules and procedures in determining the party's
26 official endorsement of candidates. If the candidate consents, notice of an official endorsement
27 of a candidate by a political party shall be placed by the director immediately after the name of
28 the candidate on preliminary general election and run-off general election ballots.

29 * Sec. 6. AS 15.25.060 is amended to read:

30 Sec. 15.25.060. PREPARATION AND DISTRIBUTION OF BALLOTS. The
31 preliminary general [PRIMARY] election ballot shall be prepared and distributed by the director

1 in the manner prescribed for run-off general election ballots except as specifically provided
2 otherwise for the preliminary general [PRIMARY] election. The director shall place the names
3 of all candidates who have properly filed in groups according to offices filed for, without regard
4 to party affiliation. The names for each office shall be rotated as provided for the run-off
5 general election ballot. Blank [NO BLANK] spaces shall be provided on the ballot for the
6 purpose of permitting voters to vote for candidates not appearing on the ballot by writing
7 or pasting in [OF] names. The director shall note an official endorsement of a candidate by
8 a political party under AS 15.25.057 immediately after the candidate's name.

9 • Sec. 7. AS 15.25.070 is amended to read:

10 Sec. 15.25.070. WRITE-IN OR PASTE-IN VOTING [SPECIAL PROVISIONS ON
11 COUNTING BALLOTS]. A voter may [NOT] vote in a preliminary general election for a
12 person whose name is not on the ballot by writing or pasting in the name of the person
13 receiving the vote [VOTES CAST FOR A PERSON WHOSE NAME IS NOT ON THE
14 BALLOT MAY NOT BE COUNTED, BUT WRITING IN A CANDIDATE'S NAME DOES
15 NOT INVALIDATE THE ENTIRE BALLOT].

16 • Sec. 8. AS 15.25.100 is repealed and reenacted to read:

17 Sec. 15.25.100. ELECTION IN PRELIMINARY GENERAL ELECTION FOR OFFICE
18 OTHER THAN GOVERNOR OR LIEUTENANT GOVERNOR. (a) A candidate for a state
19 office other than governor or lieutenant governor who receives more than 50 percent of the votes
20 cast for that office in a preliminary general election shall be declared elected.

21 (b) For a state office other than governor and lieutenant governor, if no candidate
22 receives more than 50 percent of the votes cast for that office in a preliminary general election,
23 the director shall place on the run-off general election ballot the names of the two candidates who
24 received the most votes in the preliminary general election.

25 (c) If a candidate for state office other than governor or lieutenant governor nominated
26 at the preliminary general election dies, withdraws, resigns, or becomes disqualified from holding
27 the office for which the candidate is nominated, the vacancy shall be filled by the candidate, if
28 any, for the same office in the preliminary general election who received the most votes among
29 candidates not otherwise placed on the run-off general election ballot.

30 (d) Party affiliation is irrelevant in determining candidates who receive the most votes
31 for office in a preliminary general election.

1 • Sec. 9. AS 15.25.110 is repealed and reenacted to read:

2 Sec. 15.25.110. PLACEMENT ON RUN-OFF GENERAL ELECTION BALLOT OF
3 NOMINEES FOR GOVERNOR. (a) The director shall place on a run-off general election ballot
4 the names of the two candidates who received the most votes for governor in the preliminary
5 general election.

6 (b) If a candidate for governor nominated at the preliminary general election dies,
7 withdraws, resigns, or becomes disqualified from holding office for which the candidate is
8 nominated, the vacancy shall be filled by the candidate, if any, for governor in the preliminary
9 general election who received the most votes among candidates not otherwise placed on the run-
10 off general election ballot.

11 (c) Party affiliation is irrelevant in determining candidates who receive the most votes
12 for governor in a preliminary general election, run-off general election, or special general
13 election.

14 • Sec. 10. AS 15.25.120 is repealed and reenacted to read:

15 Sec. 15.25.120. PLACEMENT ON RUN-OFF GENERAL ELECTION BALLOT OF
16 NOMINEES FOR LIEUTENANT GOVERNOR. (a) On a run-off general election ballot, the
17 director shall join with the candidate for governor who received the most votes in the preliminary
18 general election the name of the candidate, if any, of the same political party who received the
19 most votes for lieutenant governor in the preliminary general election.

20 (b) If candidates for governor on a run-off general election ballot are not affiliated with
21 the same political party, the director shall join with the candidate for governor who received the
22 second most votes in the preliminary general election the name of the candidate, if any, of the
23 same political party who received the most votes for lieutenant governor in the preliminary
24 general election.

25 (c) If both candidates for governor on a run-off general election ballot are of the same
26 political party, the director shall join with the candidate for governor who received the second
27 most votes in the preliminary general election the name of the candidate of the same political
28 party, if any, who received the second most votes for lieutenant governor in the preliminary
29 general election.

30 (d) A candidate for governor in a run-off general election who is affiliated with a
31 political party and who is not joined with a candidate for lieutenant governor under (a) - (c) of

1 this section shall select a nominee for lieutenant governor of the same political party under (h)
2 of this section and run jointly with that nominee in the run-off general election. The director
3 shall join on a run-off general election ballot the names of candidates for governor and lieutenant
4 governor running jointly under this section.

5 (e) If a candidate for governor in a preliminary general election who is not affiliated with
6 a political party is nominated to run in the run-off general election, the director shall join that
7 candidate on the run-off general election ballot with the candidate for lieutenant governor who
8 received the most votes in the preliminary general election and who is not otherwise joined with
9 a candidate for governor under (a) - (d) of this section. If neither candidate for governor in a
10 run-off general election is affiliated with a political party, the director shall join the candidate for
11 governor receiving the second most votes in the preliminary general election on the run-off
12 general election ballot with the name of the candidate for lieutenant governor who received the
13 second most votes in the preliminary general election.

14 (f) A candidate for governor in a run-off general election who is not affiliated with a
15 political party and who is not otherwise joined with a candidate for lieutenant governor under (e)
16 of this section shall select a nominee for lieutenant governor under (h) of this section and run
17 jointly with that nominee in the run-off general election. The director shall join on the run-off
18 general election ballot the names of candidates for governor and lieutenant governor running
19 jointly under this section.

20 (g) A candidate for governor in a run-off general election who is joined with a candidate
21 for lieutenant governor who dies, withdraws, resigns, or becomes disqualified from serving as
22 lieutenant governor shall be joined with a replacement candidate for lieutenant governor
23 determined by (a) - (f) of this section.

24 (h) Nomination of a lieutenant governor for the purpose of (d) or (f) of this section is
25 accomplished by physical delivery to the director, no later than 48 days before the date of the
26 run-off general election, of a signed written notice of selection by the candidate for governor and
27 a signed written notice of acceptance of selection by the candidate for lieutenant governor.
28 Disclosure of a candidate's affiliation with a political party and all information and
29 representations listed in AS 15.25.030(a)(1) - (15) and 15.25.030(b) must be contained in a
30 candidate's notice of acceptance under this subsection.

31 • Sec. 11. AS 15.40.180 is repealed and reenacted to read:

1 Sec. 15.40.180. SELECTION OF NOMINEES IN MANNER PROVIDED FOR RUN-
2 OFF GENERAL ELECTION. If the vacancy in the office of the United States representative
3 occurs one calendar month or more before the filing date for the preliminary general election,
4 candidates for the special general election shall be nominated in the manner provided for the
5 nomination of candidates for run-off general elections.

6 • Sec. 12. AS 15.40.270 is repealed and reenacted to read:

7 Sec. 15.40.270. SELECTION OF NOMINEES IN MANNER PROVIDED FOR RUN-
8 OFF GENERAL ELECTION. If a vacancy in the office of the governor or the lieutenant
9 governor occurs one calendar month or more before the filing date for the preliminary general
10 election, candidates for the special general election shall be nominated in the manner provided
11 for the nomination of candidates for run-off general elections..

12 • Sec. 13. AS 15.58.030(b) is amended to read:

13 (b) No later than July 15 of a year in which a state run-off general election will be held,
14 an individual who becomes a candidate for the office of United States senator, United States
15 representative, governor, lieutenant governor, state senator, or state representative under
16 AS 15.25.030 may file with the lieutenant governor a photograph and a statement advocating the
17 candidacy. An individual who becomes a candidate for the office of United States senator,
18 United States representative, governor, lieutenant governor, state senator, or state representative
19 [UNDER AS 15.25.180 BY FILING A NOMINATING PETITION OR] by write-in [ANOTHER
20 MEANS] may file with the lieutenant governor a photograph and a statement advocating the
21 candidacy [BY JULY 15 OR] within 10 days of becoming a candidate in the run-off general
22 election [, WHICHEVER IS LATER].

23 • Sec. 14. AS 15.60.010(20) is repealed and reenacted to read:

24 (20) "political party" means an organized group of voters who represent a political
25 program and with whom at least one candidate, who received at least three percent of the total
26 votes cast for that office in the preceding preliminary general election, declared affiliation under
27 AS 15.25.030(a).

28 • Sec. 15. AS 39.50.020(b) is amended to read:

29 (b) The governor, lieutenant governor, members of the legislature, judicial officers, each
30 commissioner, head or deputy head of, or director of a division within, a department in the
31 executive branch, assistant to the governor or chairman or member of a commission or board

1 required to report under this chapter, shall file the statement with the Alaska Public Offices
2 Commission. Candidates for the office of governor, lieutenant governor, and the legislature shall
3 file the statement under AS 15.25.030 [OR 15.25.180]. Municipal officers, and candidates for
4 elective municipal office, shall file with the municipal clerk or other municipal official designated
5 to receive their filing for office. All statements required to be filed under this chapter are public
6 records.

7 * Sec. 16. AS 15.25.056, 15.25.130, 15.25.140, 15.25.150, 15.25.160, 15.25.170, 15.25.180,
8 15.25.190, 15.25.200; AS 15.40.090, 15.40.100, 15.40.110, 15.40.120, 15.40.190, 15.40.200, 15.40.210,
9 15.40.280, 15.40.290, 15.40.300, 15.40.430, 15.40.440, 15.40.450, and 15.40.460 are repealed.

10 * Sec. 17. IMPLEMENTING NAME CHANGES. To be consistent with the name changes made by
11 this Act, wherever in the Alaska Statutes, and in regulations adopted under those statutes, "primary" or
12 "primary election" is used, it shall be read as referring to a "preliminary general election." Wherever
13 in the Alaska Statutes, and in regulations adopted under those statutes, "general election" is used, it shall
14 be read as referring to a "run-off general election." Wherever in the Alaska Statutes, and in regulations
15 adopted under those statutes, "special election" is used, it shall be read as referring to a "special general
16 election." Under AS 01.05.031, the revisor of statutes shall implement this section in the statutes, and,
17 under AS 44.62.125(b)(6), the regulations attorney shall implement the section in the administrative
18 regulations.

19 * Sec. 18. This Act takes effect June 1, 1992.

7-LS1181VP

Dierdorff

2/27/92

CS FOF HOUSE BILL NO.327 ()
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:

Referred:

Sponsor(s): HOUSE STATE AFFAIRS COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to primary election ballots and nomination for general elections; and
2 providing for an effective date."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. INTENT. The legislature is passing this Act in response to Tashjian v. Republican Party
5 of Connecticut, 479 U.S. 208 (1986). If it is determined that the case does not apply in this state, it is
6 the intent of the legislature to repeal this Act and return to an open primary election.

7 [* Sec. 2. AS 15.25.060 is amended by adding a new subsection to read:

8 (b) If the election is not an open primary under AS 15.25.070(b), the director shall place
9 on the ballot the name of each political party that has delivered its rules and evidence of
10 preclearance to the director under AS 15.25.070(a). If a voter is eligible to vote for an affiliated
11 candidate under the rules of a party named on the ballot under this subsection, an election official
12 shall indicate on the ballot either

13 (1) the party affiliation of the voter; or

14 (2) that the voter is not affiliated with a political party if the rules of a party

* replaced with text
that follows

1 named on the ballot allow the vote of a nonaffiliated voter to be counted in the primary election.]

- 2 • Sec. 3. AS 15.25.070 is amended to read:

3 Sec. 15.25.070. SPECIAL PROVISIONS ON COUNTING BALLOTS. A voter may not
4 vote for a person whose name is not on the ballot. [Votes cast for a person whose name is not on
5 the ballot may not be counted, but writing in a candidate's name does not invalidate the entire
6 ballot. Votes cast for a candidate by all voters and votes cast for a candidate by voters
7 whose votes are permitted, by the rules of the political party with whom the candidate is
8 affiliated, to be counted for election to that office, shall be separately counted.] In this
9 section, a political party's rules permit the votes of all qualified voters to be counted, unless
10 the political party delivers to the director

11 (1) at least 150 days before the date of the election, a written copy of rules
12 providing otherwise; and

13 (2) at least 90 days before the date of election, evidence that the rules have
14 been precleared by the federal government.

- 15 • Sec. 4. AS 15.25.070 is amended by adding a new subsection to read:

16 (b) If no political party delivers to the director its rules and evidence of preclearance
17 under (a) of this section, the election shall be conducted as an open primary and the votes of all
18 qualified voters shall be counted in nominating candidates.

- 19 • Sec. 5. AS 15.25.100 is amended to read:

20 Sec. 15.25.100. PLACEMENT OF NOMINEES ON GENERAL ELECTION BALLOT.
21 The director shall place on the general election ballot the name of the candidate receiving the
22 highest number of votes for an office cast by voters whose votes are permitted, by the rules
23 of the [A] political party with whom the candidate is affiliated, to be counted for election to
24 that office. [In this section, a political party's rules permit the votes of all qualified voters
25 to be counted in nominating a candidate to a general election ballot, unless the political
26 party delivers to the director

27 (1) at least 150 days before the date of the primary election, a written copy
28 of rules providing otherwise; and

29 (2) at least 90 days before the election, evidence that the rules have been
30 precleared by the federal government [ON THE GENERAL ELECTION BALLOT].

- 31 • Sec. 6. This Act takes effect immediately under AS 01.10.070(c).]

Section 2. AS 15.25.060 is amended by adding a new subsection to read:

(b) If the election is not an open primary under AS 15.25.070 (b), the director shall promulgate regulations to implement an election which meets the requirements of individual political party rules following the delivery of its rules and evidence of preclearance to the director under AS 15.25.070(a).

7-LS1188E

Cook

2/22/92

CS FOR HOUSE BILL NO. 327 (STATE AFFAIRS)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered:

Referred:

Sponsor(s): HOUSE STATE AFFAIRS COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to primary election ballots and nomination for general elections; and
2 providing for an effective date."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. INTENT. The legislature is passing this Act in response to Tashjian v. Republican Party
5 of Connecticut, 479 U.S. 208 (1986). If it is determined that the case does not apply in this state, it is
6 the intent of the legislature to repeal this Act and return to an open primary election.

7 * Sec. 2. AS 15.25.070 is amended to read:

8 Sec. 15.25.070. SPECIAL PROVISIONS ON COUNTING BALLOTS. A voter may not
9 vote for a person whose name is not on the ballot. Votes cast for a person whose name is not on
10 the ballot may not be counted, but writing in a candidate's name does not invalidate the entire
11 ballot. Votes cast for a candidate by all voters and votes cast for a candidate by voters
12 whose votes are permitted, by the rules of the political party with whom the candidate is
13 affiliated, to be counted for election to that office, shall be separately counted. In this
14 section, a political party's rules permit the votes of all qualified voters to be counted, unless

1 the political party delivers to the director

2 (1) at least 150 days before the date of the election, a written copy of rules
3 providing otherwise; and

4 (2) at least 90 days before the date of election, evidence that the rules have
5 been precleared by the federal government.

6 * Sec. 3. AS 15.25.100 is amended to read:

7 Sec. 15.25.100. PLACEMENT OF NOMINEES ON GENERAL ELECTION BALLOT.

8 The director shall place on the general election ballot the name of the candidate receiving the
9 highest number of votes for an office cast by voters whose votes are permitted, by the rules
10 of the [A] political party with whom the candidate is affiliated, to be counted for election to
11 that office. In this section, a political party's rules permit the votes of all qualified voters
12 to be counted in nominating a candidate to a general election ballot, unless the political
13 party delivers to the director

14 (1) at least 150 days before the date of the primary election, a written copy
15 of rules providing otherwise; and

16 (2) at least 90 days before the election, evidence that the rules have been
17 precleared by the federal government [ON THE GENERAL ELECTION BALLOT].

18 * Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

7-LS1188Y ✓
Casey
2/18/92

CS FOR HOUSE BILL NO. 327 (STATE AFFAIRS)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE STATE AFFAIRS COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to primary election ballots, voter registration, and nomination for general
2 elections."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. AS 15.07.070(d) is amended to read:

5 (d) Qualified voters may register in person before a registration official at any time
6 throughout the year. A [EXCEPT THAT A] person registering within 30 days preceding an
7 election may not vote at that election. unless the registration consists only of changing political
8 party affiliation. Upon receipt and approval of the registration forms the director or the election
9 supervisor shall forward to the voter an acknowledgment in the form of a registration card and
10 the voter's name shall immediately be placed on the master register located in the office of the
11 director and on the district register located in the office of the election supervisor. Names of
12 persons registering 30 or more days before an election shall be placed on the official registration
13 list for that election.

14 * Sec. 2. AS 15.25.010 is amended to read:

1 Sec. 15.25.010. PROVISION FOR PRIMARY ELECTION. Candidates for the elective
2 state executive and state and national legislative offices who state an affiliation with a political
3 party in a declaration of candidacy under AS 15.25.030 shall be nominated in a primary
4 election by direct vote of the people in the manner prescribed by this chapter.

5 * Sec. 3. AS 15.25.060 is amended to read:

6 Sec. 15.25.060. PREPARATION AND DISTRIBUTION OF PRIMARY ELECTION
7 BALLOTS. There shall be only one ballot for a primary election. The primary election ballot
8 shall be prepared and distributed by the director in the manner prescribed for general election
9 ballots except as specifically provided otherwise for the primary election. The director shall
10 place the names of all candidates who have properly filed under AS 15.25.030 in groups
11 according to offices filed for, without regard to party affiliation. The names for each office shall
12 be rotated as provided for the general election ballot. No blank spaces shall be provided on the
13 ballot for the writing or pasting in of names.

14 * Sec. 4. AS 15.25.090 is amended by adding a new subsection to read:

15 (b) A person qualified to vote in a primary election may vote for a candidate whose
16 name appears on the primary election ballot without regard to political party affiliation.

17 * Sec. 5. AS 15.25.100 is repealed and reenacted to read:

18 Sec. 15.25.100. PLACEMENT OF NOMINEES ON GENERAL ELECTION BALLOT.

19 (a) A candidate receiving the highest number of votes in a primary election among all candidates
20 for an office who declared affiliation with the same political party under AS 15.25.030 is
21 nominated for the general election ballot.

22 (b) A candidate who does not declare affiliation with a political party under
23 AS 15.25.030(a) may be nominated for the general election ballot as provided in AS 15.25.140 -
24 15.25.190.

25 * Sec. 6. AS 15.25.150 is amended to read:

26 Sec. 15.25.150. DATE OF FILING PETITION. The petition is filed with the director
27 by actual physical delivery in person at or before 5:00 p.m., prevailing time, on the day of the
28 primary election [AUGUST 1 IN THE YEAR IN WHICH A GENERAL ELECTION IS HELD
29 FOR THE OFFICE], or by actual physical delivery to the director by registered or certified mail,
30 return receipt requested that [WHICH] is postmarked at or before 5:00 p.m., prevailing time, on
31 the day of the primary election [AUGUST 1 IN THE YEAR IN WHICH A GENERAL

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1 ELECTION IS HELD FOR THE OFFICE], and received not more than 15 days after that time.
2 If the postmark is illegible, a dated receipt from the post office where dispatched shall be
3 acceptable as evidence of mailing. [IF AUGUST 1 IS A SUNDAY OR HOLIDAY, THE
4 DEADLINES FOR POSTMARKING AND RECEIPT OF THE PETITION SHALL BE
5 EXTENDED 24 HOURS IN EACH INSTANCE.]

7-LS1188D
Gagline
10/31/91

CS FOR HOUSE BILL NO. 327 (STATE AFFAIRS)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE STATE AFFAIRS COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to primary elections and declarations of affiliation with a political party."

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

3 • Section 1. AS 15.07 is amended by adding a new section to read:

4 Sec. 15.07.062. DESIGNATION OF POLITICAL AFFILIATION. (a) The director shall
5 provide a person registering to vote under this chapter with the opportunity to declare affiliation
6 with a political party or to declare no affiliation with a party. The director shall explain that a
7 person registering is not required to furnish information relating to party affiliation, and that the
8 information furnished by the person, or the person's failure to furnish information, might affect
9 the person's eligibility to vote in a primary election that has been limited under AS 15.25.060(b).
10 The director may satisfy the requirement of this section by including the explanation on a voter
11 registration form that the director may distribute.

12 (b) A person who has previously registered to vote under this chapter may declare an
13 affiliation or nonaffiliation with a political party, or change a previously declared affiliation, at
14 any time. The director shall provide an opportunity at every polling place for a registered voter

1 to declare or change an affiliation.

2 • Sec. 2. AS 15.25.060 is amended to read:

3 Sec. 15.25.060. PREPARATION AND DISTRIBUTION OF BALLOTS. The primary
4 election ballot shall be prepared and distributed by the director in the manner prescribed for
5 general election ballots except as specifically provided otherwise for the primary election.
6 Except when (b) of this section otherwise requires, the (THE) director shall place the names
7 of all candidates who have properly filed in groups according to offices filed for, without regard
8 to party affiliation. The names for each office shall be rotated as provided for the general
9 election ballot. No blank spaces shall be provided on the ballot for the writing or pasting in of
10 names.

11 • Sec. 3. AS 15.25.060 is amended by adding new subsections to read:

12 (b) If (1) the central committee or other governing body of a political party adopts a rule
13 that, notwithstanding AS 15.25.010 - 15.25.130, nominees of the party may not be chosen by a
14 primary election open to all voters, but rather shall be chosen by a primary election limited to
15 voters whose political affiliation or nonaffiliation is designated by the party rules; and (2) the
16 central committee or other governing body of the party delivers a copy of the rule to the director,
17 no later than March 1 of the year in which a primary election is to take place, the director shall
18 prepare a separate ballot listing only the candidates of that party, and shall authorize the
19 distribution of that ballot only to the registered voters who are eligible to vote in that party's
20 primary under the party rule. Candidates who are listed on a separate ballot under this subsection
21 may not be listed on the ballot described in (a) of this section. The names of the candidates for
22 each office shall be rotated as provided for the general election ballot, and no blank spaces shall
23 be provided on the ballot for the writing or pasting in of names.

24 (c) If at a primary election under AS 15.25.010 there is more than one ballot available,
25 a registered voter may choose which ballot the voter wishes to use. A voter may not be given
26 more than one ballot, and may not be given a ballot of a political party if under the rules of that
27 party, as delivered to the director under (b) of this section, the voter would not be eligible to vote
28 in that party's primary election.

29 (d) If the director is required to prepare separate ballots for all political parties under (b)
30 of this section, the director is not required to prepare a ballot under (a) of this section.

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 327 (STATE AFFAIRS)

Page 1, line 1:

Delete "ballots and"

Insert "ballots,"

After "general elections"

Insert ", and the deadline for filing petitions to appear on general election ballots"

Page 2, after line 17:

Insert a new bill section to read:

"Sec. 4. AS 15.25.150 is amended to read:

Sec. 15.25.150. DATE OF FILING PETITION. The petition is filed with the director by actual physical delivery in person at or before 5:00 p.m., prevailing time, on the date set by AS 15.25.020 for the primary election [AUGUST 1] in the year in which a general election is held for the office [, OR BY ACTUAL PHYSICAL DELIVERY TO THE DIRECTOR BY REGISTERED OR CERTIFIED MAIL RETURN RECEIPT REQUESTED WHICH IS POSTMARKED AT OR BEFORE 5:00 P.M., PREVAILING TIME, AUGUST 1 IN THE YEAR IN WHICH A GENERAL ELECTION IS HELD FOR THE OFFICE, AND RECEIVED NOT MORE THAN 15 DAYS AFTER THAT TIME. IF THE POSTMARK IS ILLEGIBLE, A DATED RECEIPT FROM THE POST OFFICE WHERE DISPATCHED SHALL BE ACCEPTABLE AS EVIDENCE OF MAILING. IF AUGUST 1 IS A SUNDAY OR HOLIDAY, THE DEADLINES FOR POSTMARKING AND RECEIPT OF THE PETITION SHALL BE EXTENDED 24 HOURS IN EACH INSTANCE]."

Renumber the following bill section accordingly.

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 327 (STATE AFFAIRS)

Page 1, line 1:

Delete "ballots and"

Insert "ballots,"

After "general elections"

Insert ", and voter registration"

Page 1, after line 6:

Insert a new bill section to read:

"* Sec. 2. AS 15.07.070(d) is amended to read:

(d) Qualified voters may register in person before a registration official at any time throughout the year. A [EXCEPT THAT A] person registering within 30 days preceding an election may not vote at that election, unless the registration consists only of changing political party affiliation. Upon receipt and approval of the registration forms the director or the election supervisor shall forward to the voter an acknowledgment in the form of a registration card and the voter's name shall immediately be placed on the master register located in the office of the director and on the district register located in the office of the election supervisor. Names of persons registering 30 or more days before an election shall be placed on the official registration list for that election."

Renumber the following bill sections accordingly.

SYNOPSIS OF GRUENBERG AMENDMENT TO HB 327

Briefly, the substitute bill does the following:

1. Allows any political party to endorse candidates in any election under its rules and procedures. Notice of an endorsement must be placed on the ballot immediately after the candidate's name. (Secs. 5 and 1).
2. All voters will receive the same ballot, containing the names of all candidates (present law). All candidates, partisan and non-partisan, must declare by June 1 (present law). Write-ins are permitted only in the primary (preliminary general) election. The dates of that election and the general ("runoff") elections remain unchanged.
3. Candidates, other than Governor, receiving more than 50 percent of the votes cast for that office in the preliminary general election are elected. If no candidate receives more than 50 percent of the vote for an office other than Governor, the top two candidates, regardless of party, advance to the runoff general election (Sec. 8). Because the Alaska Constitution requires that the voters be allowed to vote for a governor-lieutenant governor ticket in November, the top two governor candidates, regardless of party, advance to the runoff general election (Sec. 9). The top governor candidate will be paired with the top lieutenant governor candidate of the same party for the runoff. (Sec. 9)

7-LS1188M

Casey

2/4/92

*potential amendment
to HB 327**By Gruenberg*

CS FOR HOUSE BILL NO. 327 ()

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:

Referred:

Sponsor(s): HOUSE STATE AFFAIRS COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to preliminary general elections, run-off general elections, and declarations
2 of affiliation with a political party."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 • Section 1. AS 15.15.030(5) is amended to read:

5 (5) The state run-off general election ballot shall be printed on white paper with
6 the names of the candidates [AND THEIR PARTY DESIGNATIONS] placed in separate sections
7 under the office designation to which they were nominated. An official endorsement of a
8 candidate by a political party as provided in AS 15.25.057 shall be noted immediately after
9 the name of the candidate. The party affiliation, if any, shall be designated after the name of
10 the candidate. The lieutenant governor and the governor shall be included under the same
11 section. Blank spaces may not be provided on a run-off general election ballot for the
12 writing or pasting in of names [PROVISION SHALL BE MADE FOR VOTING FOR
13 WRITE-IN AND NO-PARTY CANDIDATES WITHIN EACH SECTION]. The squares
14 appearing on the ballots shall measure 1/4 inch on each side.

1 • Sec. 2. AS 15.15 is amended by adding a new section to read:

2 Sec. 15.15.245. WRITE-IN AND PASTE-IN VOTES PROHIBITED IN RUN-OFF
3 GENERAL ELECTION. A voter may not vote for a person whose name is not on the ballot in
4 a run-off general election. Votes cast for a person whose name is not on the ballot in a run-off
5 general election may not be counted, but writing in a candidate's name for an office does not
6 invalidate votes properly cast in the ballot for other offices.

7 • Sec. 3. AS 15.25.030(a) is amended to read:

8 (a) A person [MEMBER OF A POLITICAL PARTY] who seeks to become a candidate
9 [OF THE PARTY] in the preliminary general [PRIMARY] election shall execute and file a
10 declaration of candidacy. The declaration shall be executed under oath before an officer
11 authorized to take acknowledgments and shall state in substance:

12 (1) the full name of the candidate;

13 (2) the full mailing address of the candidate;

14 (3) if the candidacy is for the office of state senator or state representative, the
15 election or senate district of which the candidate is a resident;

16 (4) the office for which the candidate seeks nomination;

17 (5) whether the candidate is affiliated with a political party and if so the
18 identity of the party [THE NAME OF THE POLITICAL PARTY OF WHICH THE PERSON
19 IS A CANDIDATE FOR NOMINATION];

20 (6) the full residence address of the candidate, and the date on which residency
21 at that address began;

22 (7) the date of the preliminary general [PRIMARY] election at which the
23 candidate seeks nomination;

24 (8) the length of residency in the state and in the district of the candidate;

25 (9) that the candidate will meet the specific citizenship requirements of the office
26 for which the person is a candidate;

27 (10) that the candidate is a qualified voter as required by law;

28 (11) that the candidate will meet the specific age requirements of the office for
29 which the person is a candidate;

30 (12) that the candidate requests that the candidate's name be placed on the
31 preliminary general [PRIMARY] election ballot;

(13) that the required fee accompanies the declaration;

(14) that the person is not a candidate for any other office to be voted on at the preliminary general election or run-off [PRIMARY OR] general election and that the person is not a candidate for this office under any other declaration of candidacy or nominating petition; and

(15) the manner in which the candidate wishes the candidate's name to appear on the ballot (; AND

(16) THAT THE CANDIDATE IS REGISTERED TO VOTE AS A MEMBER OF THE POLITICAL PARTY WHOSE NOMINATION IS BEING SOUGHT].

• Sec. 4. AS 15.25.040(a) is amended to read:

(a) The declaration is filed by either

(1) the actual physical delivery of the declaration in person or by mail at or before 5:00 p.m., prevailing time, June 1 of the year in which a run-off general election is held for the office; or

(2) the actual physical delivery by telegram ^{or facsimile} of a copy in substance of the statements made in paragraphs (1) - (5) of the declaration as required by AS 15.25.030(a) at or before 5:00 p.m., prevailing time, June 1 of the year in which a run-off general election is held for the office and also the actual physical delivery of the declaration containing paragraphs (1) - (15) [(16)] as required by AS 15.25.030(a) ^{certified or} by registered mail that [WHICH] is received not more than 15 days after that time.

• Sec. 5. AS 15.25 is amended by adding a new section to read:

Sec. 15.25.057. OFFICIAL ENDORSEMENT OF CANDIDATES BY POLITICAL PARTIES. A political party may officially endorse candidates for each office in an election. A political party may prescribe and follow its own rules and procedures in determining the party's official endorsement of candidates. ^{If the candidate consents,} Notice of an official endorsement of a candidate by a political party shall be placed by the director immediately after the name of the candidate on preliminary general election and run-off general election ballots.

• Sec. 6. AS 15.25.060 is amended to read:

Sec. 15.25.060. PREPARATION AND DISTRIBUTION OF BALLOTS. The preliminary general [PRIMARY] election ballot shall be prepared and distributed by the director in the manner prescribed for run-off general election ballots except as specifically provided

1 otherwise for the preliminary general [PRIMARY] election. The director shall place the names
2 of all candidates who have properly filed in groups according to offices filed for, without regard
3 to party affiliation. The names for each office shall be rotated as provided for the run-off
4 general election ballot. Blank [NO BLANK] spaces shall be provided on the ballot for the
5 purpose of permitting voters to vote for candidates not appearing on the ballot by writing
6 or pasting in [OF] names. The director shall note an official endorsement of a candidate by
7 a political party under AS 15.25.057 immediately after the candidate's name.

8 * Sec. 7. AS 15.25.070 is amended to read:

9 Sec. 15.25.070. WRITE-IN OR PASTE-IN VOTING [SPECIAL PROVISIONS ON
10 COUNTING BALLOTS]. A voter may [NOT] vote in a preliminary general election for a
11 person whose name is not on the ballot by writing or pasting in the name of the person
12 receiving the vote [VOTES CAST FOR A PERSON WHOSE NAME IS NOT ON THE
13 BALLOT MAY NOT BE COUNTED, BUT WRITING IN A CANDIDATE'S NAME DOES
14 NOT INVALIDATE THE ENTIRE BALLOT].

15 * Sec. 8. AS 15.25.100 is repealed and reenacted to read:

16 Sec. 15.25.100. ELECTION IN PRELIMINARY GENERAL ELECTION FOR OFFICE
17 OTHER THAN GOVERNOR OR LIEUTENANT GOVERNOR. (a) A candidate for a state
18 office other than governor or lieutenant governor who receives more than 50 percent of the votes
19 cast for that office in a preliminary general election shall be declared elected.

20 (b) For a state office other than governor and lieutenant governor, if no candidate
21 receives more than 50 percent of the votes cast for that office in a preliminary general election,
22 the director shall place on the run-off general election ballot the names of the two candidates who
23 received the most votes in the preliminary general election.

24 (c) If a candidate for state office other than governor or lieutenant governor nominated
25 at the preliminary general election dies, withdraws, resigns, or becomes disqualified from holding
26 the office for which the candidate is nominated, the vacancy shall be filled by the candidate, if
27 any, for the same office in the preliminary general election who received the most votes among
28 candidates not otherwise placed on the run-off general election ballot.

29 (d) Party affiliation is irrelevant in determining candidates who receive the most votes
30 for office in a preliminary general election.

31 * Sec. 9. AS 15.25.110 is repealed and reenacted to read:

1 Sec. 15.25.110. PLACEMENT ON RUN-OFF GENERAL ELECTION BALLOT OF
2 NOMINEES FOR GOVERNOR. (a) The director shall place on a run-off general election ballot
3 the names of the two candidates who received the most votes for governor in the preliminary
4 general election.

5 (b) If a candidate for governor nominated at the preliminary general election dies,
6 withdraws, resigns, or becomes disqualified from holding office for which the candidate is
7 nominated, the vacancy shall be filled by the candidate, if any, for governor in the preliminary
8 general election who received the most votes among candidates not otherwise placed on the run-
9 off general election ballot.

10 (c) Party affiliation is irrelevant in determining candidates who receive the most votes
11 for governor in a preliminary general election, run-off general election, or special general
12 election.

13 • Sec. 10. AS 15.25.120 is repealed and reenacted to read:

14 Sec. 15.25.120. PLACEMENT ON RUN-OFF GENERAL ELECTION BALLOT OF
15 NOMINEES FOR LIEUTENANT GOVERNOR. (a) On a run-off general election ballot, the
16 director shall join with the candidate for governor who received the most votes in the preliminary
17 general election the name of the candidate, if any, of the same political party who received the
18 most votes for lieutenant governor in the preliminary general election.

19 (b) If candidates for governor on a run-off general election ballot are not affiliated with
20 the same political party, the director shall join with the candidate for governor who received the
21 second most votes in the preliminary general election the name of the candidate, if any, of the
22 same political party who received the most votes for lieutenant governor in the preliminary
23 general election.

24 (c) If both candidates for governor on a run-off general election ballot are of the same
25 political party, the director shall join with the candidate for governor who received the second
26 most votes in the preliminary general election the name of the candidate of the same political
27 party, if any, who received the second most votes for lieutenant governor in the preliminary
28 general election.

29 (d) A candidate for governor in a run-off general election who is affiliated with a
30 political party and who is not joined with a candidate for lieutenant governor under (a) - (c) of
31 this section shall select a nominee for lieutenant governor of the same political party under (h)

1 of this section and run jointly with that nominee in the run-off general election. The director
2 shall join on a run-off general election ballot the names of candidates for governor and lieutenant
3 governor running jointly under this section.

4 (e) If a candidate for governor in a preliminary general election who is not affiliated with
5 a political party is nominated to run in the run-off general election, the director shall join that
6 candidate on the run-off general election ballot with the candidate for lieutenant governor who
7 received the most votes in the preliminary general election and who is not otherwise joined with
8 a candidate for governor under (a) - (d) of this section. If neither candidate for governor in a
9 run-off general election is affiliated with a political party, the director shall join the candidate for
10 governor receiving the second most votes in the preliminary general election on the run-off
11 general election ballot with the name of the candidate for lieutenant governor who received the
12 second most votes in the preliminary general election.

13 (f) A candidate for governor in a run-off general election who is not affiliated with a
14 political party and who is not otherwise joined with a candidate for lieutenant governor under (e)
15 of this section shall select a nominee for lieutenant governor under (h) of this section and run
16 jointly with that nominee in the run-off general election. The director shall join on the run-off
17 general election ballot the names of candidates for governor and lieutenant governor running
18 jointly under this section.

19 (g) A candidate for governor in a run-off general election who is joined with a candidate
20 for lieutenant governor who dies, withdraws, resigns, or becomes disqualified from serving as
21 lieutenant governor shall be joined with a replacement candidate for lieutenant governor
22 determined by (a) - (f) of this section.

23 (h) Nomination of a lieutenant governor for the purpose of (d) or (f) of this section is
24 accomplished by physical delivery to the director, no later than 48 days before the date of the
25 run-off general election, of a signed written notice of selection by the candidate for governor and
26 a signed written notice of acceptance of selection by the candidate for lieutenant governor.
27 Disclosure of a candidate's affiliation with a political party and all information and
28 representations listed in AS 15.25.030(a)(1) - (15) and 15.25.030(b) must be contained in a
29 candidate's notice of acceptance under this subsection.

30 ∫ • Sec. 11. AS 15.40.180 is repealed and reenacted to read:

31 Sec. 15.40.180. SELECTION OF NOMINEES IN MANNER PROVIDED FOR RUN-

1 OFF GENERAL ELECTION. If the vacancy in the office of the United States representative
 2 occurs one calendar month or more before the filing date for the preliminary general election,
 3 candidates for the special general election shall be nominated in the manner provided for the
 4 nomination of candidates for run-off general elections.

- 5 • Sec. 12. AS 15.40.270 is repealed and reenacted to read:

6 Sec. 15.40.270. SELECTION OF NOMINEES IN MANNER PROVIDED FOR RUN-
 7 OFF GENERAL ELECTION. If a vacancy in the office of the governor or the lieutenant
 8 governor occurs one calendar month or more before the filing date for the preliminary general
 9 election, candidates for the special general election shall be nominated in the manner provided
 10 for the nomination of candidates for run-off general elections.

- 11 • Sec. 13. AS 15.58.030(b) is amended to read:

12 (b) No later than July 15 of a year in which a state run-off general election will be held,
 13 an individual who becomes a candidate for the office of United States senator, United States
 14 representative, governor, lieutenant governor, state senator, or state representative under
 15 AS 15.25.030 may file with the lieutenant governor a photograph and a statement advocating the
 16 candidacy. An individual who becomes a candidate for the office of United States senator,
 17 United States representative, governor, lieutenant governor, state senator, or state representative
 18 [UNDER AS 15.25.180 BY FILING A NOMINATING PETITION OR] by another means may
 19 file with the lieutenant governor a photograph and a statement advocating the candidacy [by
 20 July 15 or] within 10 days of becoming a candidate [whichever is later.] in the run-off general
election.

- 21 • Sec. 14. AS 15.60.010(20) is amended to read:

22 (20) "political party" means an organized group of voters who represent [THAT
 23 REPRESENTS] a political program and who officially endorsed [THAT NOMINATED] a
 24 candidate for governor who received at least three percent of the total votes cast at the preceding
 25 preliminary general election for governor.

- 26 • Sec. 15. AS 39.50.020(b) is amended to read:

27 (b) The governor, lieutenant governor, members of the legislature, judicial officers, each
 28 commissioner, head or deputy head of, or director of a division within, a department in the
 29 executive branch, assistant to the governor or chairman or member of a commission or board
 30 required to report under this chapter, shall file the statement with the Alaska Public Offices
 31 Commission. Candidates for the office of governor, lieutenant governor, and the legislature shall

We may want to phase 2
 sections and amend AS 15.40.270

Superseded
 see page 9

1 file the statement under AS 15.25.030 [OR 15.25.180]. Municipal officers, and candidates for
2 elective municipal office, shall file with the municipal clerk or other municipal official designated
3 to receive their filing for office. All statements required to be filed under this chapter are public
4 records.

5 * Sec. 16. AS 15.25.056, 15.25.130, 15.25.140, 15.25.150, 15.25.160, 15.25.170, 15.25.180,
6 15.25.190, 15.25.200; AS 15.40.090, 15.40.100, 15.40.110, 15.40.120, 15.40.190, 15.40.280, 15.40.290,
7 15.40.300, 15.40.430, 15.40.440, 15.40.450, and 15.40.460 are repealed. ^{15.40.200, 15.40.210} [^]

8 * Sec. 17. IMPLEMENTING NAME CHANGES. To be consistent with the name changes made by
9 this Act, wherever in the Alaska Statutes, and in regulations adopted under those statutes, "primary" or
10 "primary election" is used, it shall be read as referring to a "preliminary general election." Wherever
11 in the Alaska Statutes, and in regulations adopted under those statutes, "general election" is used, it shall
12 be read as referring to a "run-off general election." Wherever in the Alaska Statutes, and in regulations
13 adopted under those statutes, "special election" is used, it shall be read as referring to a "special general
14 election." Under AS 01.05.031, the revisor of statutes shall implement this section in the statutes, and,
15 under AS 44.62.125(b)(6), the regulations attorney shall implement the section in the administrative
16 regulations.

* Sec. 14. AS 15.60.010(20) is repealed and reenacted to read:
 (20) "political party" means an organized group of voters who represent a political program and with whom one candidate, who in the preceding preliminary general election received at least three percent of the total votes cast for that office, declared affiliation under AS 15.25.030(a).

**DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

October 31, 1991

SUBJECT: CS for HB 327

TO: Representative Gene Kubina
Chair, House State Affairs Committee
Attn: Annie

FROM: John B. Gaguine *JBG*
Legislative Counsel

Enclosed is a committee substitute for HB 327. As you requested, the bill amends HB 327 to allow for a change of party affiliation by a registered voter at any time (it requires the director of elections to make the opportunity for such a change available at the polling place), and to require party rule changes to be delivered to the director by March 1 of election year in order to take effect in that year's primary. Note that nothing in the bill would change the current requirement, in AS 15.07.070(d), that a person register at least 30 days before an election to be eligible to vote in that election.

I see no problems with the first change (to section 1 of the bill) if no party objects. If, though, a party by rule requests that its primary be limited to persons registered as party members 30 days (or 60 days, or whatever) before the primary, I think that rule would override this statute. Otherwise the primary would essentially still be an open primary, where anyone can vote in any primary he or she chooses.✓

The change to March 1 I think would also be susceptible to a successful constitutional challenge by a party that adopted its rule change shortly after that date. The only justification for any cutoff date on party rule changes is administrative necessity - the Division of Elections cannot produce a separate party ballot if it first learns of a party rule change ten days before the primary. I thought that 90 days was probably pushing the limits; I feel quite sure that nearly six months is well beyond the

✓ In Rosario v. Rockefeller, 410 U.S. 752, 35 L.Ed.2d 1 (1973), the U.S. Supreme Court upheld against an equal protection challenge a New York statute that required a person to register in a party before the general election in order to vote in that party's primary during the following year. The Court noted the state's interest in preventing "raiding". The rationale of Rosario is why I think that a party rule requiring a voter to register in a party a reasonable length of time before the primary to be eligible to vote in the party's primary would override the contrary provision of this bill.

Representative Gene Kubina

October 31, 1991

Page 2

permissible limits.^{2/} I know that the parties have all supported this change - why I do not understand, since the change can only work to their detriment - but I do not think that their current support would estop any of them from later bringing a challenge to the law.

As I mentioned, I will be leaving this office soon, so any further work on this bill will be done by someone else.

JBG:gc
91-389.glc

Enclosure

^{2/} The superior court in Anchorage last year, in a challenge brought by Green Party gubernatorial candidate Jim Sykes, invalidated the provision in AS 15.25.150 requiring independent candidates to file their nominating petitions by June 1. The court found that the Division of Elections did not need five months to process a petition and list its candidate, so that the law unconstitutionally burdened ballot access. Since the March 1 date in this bill requires parties to act six months before the primary, I think that it would be no more likely to withstand a challenge than the law in Sykes.

STATE OF ALASKA

OFFICE OF THE GOVERNOR

DIVISION OF ELECTIONS
P.O. BOX AF
JUNEAU, ALASKA 99811-0105
PHONE (907) 465-4611

May 1, 1991

Mr. Mark Posner
Voting Section, Civil Rights Division
Department of Justice
P.O. Box 66128
320 First Avenue N.W., Room 720
Washington, D.C. 20534

Re: Case No. 91-0962

Dear Mr. Posner;

The purpose of this letter is to comment on the recent submission made by the Republican Party of Alaska (RPA) pursuant to Sec. 5 of the Voting Rights Act of 1965 (42 USC 1973c).

The Division of Elections (DOE) does not oppose any political party's right to limit its association with other political parties, but we cannot abide with rule changes that interfere and could jeopardize the integrity of the election process.

The DOE cannot support the RPA assertion that voters may change their party affiliation by amending voter registration records up to and including election day.

Under existing state law, all voter qualifications must be fixed and evidenced by a valid registration at least 30 days before the election. AS 15.07.070 (c) and (d). Since one's party affiliation would determine whether they could vote in the Republican primary, party status would become a voter qualification subject to the 30-day requirement. Declaration of party affiliation on election day as proposed by the RPA would cause many voters to be required to vote a questioned ballot, with the effect that many would be disenfranchised on the basis that they failed to register under their declared party affiliation 30 days prior to the election.

Furthermore, both urban and rural election workers will be implementing new voting procedures if the DOJ preclears the RPA request; the additional burden of allowing voters to change their party affiliation on election day would be confusing and could jeopardize the integrity of the voting process across the state.

The DOE also objects to Section 3, Article XIV, "A Rule to Maximize Voter Participation in Primary Elections." This change would allow Republicans and nonpartisans to vote in the primary election of any other party unless prohibited by another party's

rules, or state or federal law.

The division views this provision as particularly onerous for the following reasons:

The DOE believes in one-person, one vote. In a state of many diverse ethnic and minority groups, it would be impracticable to explain why one could vote more than once in a primary regardless of how the process was characterized. The credibility of the election process would be seriously jeopardized.

Furthermore, the division questions how the RPA can legally assert that its members or nonpartisans can vote in other party primaries. This is a state law matter.

If and when the DOJ preclears the RPA rule changes, the DOE will submit its plan for implementation of the open-classic primary. The division will also be working with the state legislature to make the necessary statute changes that may be required.

Sincerely,

A handwritten signature in cursive script, reading "Charlot Thickstun".

Charlot Thickstun
Director
Division of Elections



Democratic Party of Alaska

March 4, 1992

Rep. Betty Bruokman
Alaska State Legislature
State Capitol
Juneau, AK 99801

Dear Rep. Bruokman *Betty*

Thank you for your request to comment on CSSB 297 (STA) on changing the primary election in Alaska.

I'd like to start by reviewing what has taken place over the past several months and then comment on the proposed legislation. In September of 1991 the central committee of the Alaska Democratic Party amended the Democratic Party Rules to be, anyone can vote in the Democratic Party primary regardless of party registration unless they have voted in another primary or participated in a nominating convention. The reason for this change was that we had been advised by attorneys that we needed to protect ourselves against the Republican Rule which was, persons who vote in the Republican Party primary can vote in any other primary unless restricted from doing so by the other party's rules. The attorneys said that since the primary election is in fact a nominating procedure and not an actual election that this rule change by the Alaska Republican Party might be upheld by a court.

Since that time we have been told by the Div. of Elections and Lt. Gov. Coghill that it was their opinion that this went against "one person, one vote" and would not be allowed. However, we were not comfortable with this statement until Attorney General Cole addressed this issue in his statement on Monday, March 2, 1992. We now feel certain the Republican Party's Rule allowing them to vote twice will not be allowed by the State of Alaska.

From the beginning of this discussion, we have supported an open primary. In February, 1992, the State Central Committee decided not to change our rule further because we did not want to complicate the issue even more. We felt there was good debate going on within the legislature and the administration and that we would continue to be involved in that. We felt our language took care of our concerns about "one person, one vote." The intent of our rule was to prohibit an individual from voting twice for the same office. To interpret it differently would be to infer that we are not in favor of an "open primary". We would consider the election under CSSB 297 (STA) one primary with separate vote counts.

(907) 286-9600

P.O. Box 10-4199 • 1443 West Northern Lights, Suite J • Anchorage, Alaska 99510

• 0000 •

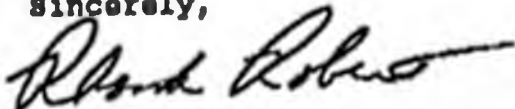
Rep. Betty Bruckman
March 4, 1992
Page 2

Therefore, the "Ballot Box Scenarios" that was presented at the House State Affairs Committee meeting on Wednesday, March 4, 1992, is incorrect under our party rules in example 1, 2, 4 and 5.

In closing, I want to state once again that the Democratic Party of Alaska supports an open primary, one which gives the voter the widest possible choices. However, we will not support any legislation that is unfair to the Democratic Party even though it meets the rule changes of the other parties.

Betty, I hope this clarifies our position. If you have any other questions, please give me a call.

Sincerely,



Rhonda Roberts
State Chair

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

September 17, 1991

SUBJECT: Sectional analysis of HB 327

TO: Representative Gene Kubina
Attn: Annie

FROM: John B. Gaguine **306**
Legislative Counsel

You have requested a sectional analysis of the above described bill.

As a preliminary matter, note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1 amends the voter registration laws to require the director of elections to allow a voter to declare political affiliation and to explain to a voter that his or her declaration of affiliation might affect his or her right to vote in the primary election. Currently, the voter registration form provides for declaring party affiliation. However, because of Alaska's current blanket primary laws, a person's affiliation (or lack thereof) cannot affect his or her right to vote in a primary. Because under this bill the declaration of affiliation becomes much more important, the section adds the requirement of notice by the director. However, the section provides that the required notice can be satisfied by including it on the registration form.

Section 2 amends AS 15.25.060 to provide that a blanket primary will continue to exist for those parties that do not elect a closed primary.

Section 3 is the central part of the bill, and is intended to bring Alaska law into compliance with the holding of Tashjian v. Republican Party of Connecticut, 479 U.S. 208 (1986) (political party's First Amendment right of association overrides state primary laws, and party can therefore specify what groups of voters it wants to participate in its primary, notwithstanding state law).

Proposed AS 15.25.060(b) codifies the Tashjian rule, but provides that a party must notify the director of a change in its rules at least 90 days before the primary election if the party wants its new rules to apply in that primary. The subsection provides, as does current law, that candidates on a party ballot be listed randomly, and that no space be provided for write-in votes.

Proposed AS 15.25.060(c) provides that if there is more than one ballot available at a primary election, a registered voter may choose which ballot he or she wishes to vote. However, a voter may not vote more than one ballot, and a voter may not vote the ballot of a party if the party rules do not allow it. (For example, if the Republican party rules limit participation in the Republican primary to Republicans and independents, a registered Democrat may not be given a Republican ballot.)

Proposed AS 15.25.060(d) provides that if all political parties eligible to nominate candidates in the primary adopt rules calling for separate ballots, the director of elections is not required to print a "blanket" ballot. This is logical, since if all parties have separate ballots there would be no candidates appearing on the "blanket" ballot.

It seems clear that whether or not this bill, or a similar bill, passes, a party can force a closed primary. However, it is certainly preferable that the statutes be consistent with federal constitutional requirements, and at present the primary election statutes are not consistent. Moreover, this bill addresses certain matters that should be addressed by statute, such as the amount of notice a party must give to the director of elections in order to have an upcoming primary closed.

If I may be of further assistance, please advise.

JBG:lmb

91-255.lmb



Alaska State Legislature

HOUSE OF REPRESENTATIVES

House State Affairs Committee

Official Business

P.O. Box V
State Capitol
Juneau, Alaska 99811

SPONSOR STATEMENT FOR HB 327

At the present time, the Alaska statutes regarding primary elections are not consistent with federal constitutional requirements. HB 327 has been introduced as a vehicle by which to correct these inconsistencies.

Under current state law, Alaska has a blanket primary in which a voter may vote for any candidate on the ballot, regardless of party affiliation. However, now that the Democratic, Republican and Green Parties have all voted to close their primaries, Alaska law must be amended to reflect a party's ability to restrict who votes in its primary. In a U.S. Supreme Court ruling, [Tashjian v. Republican Party of Connecticut, 479 U.S. 208 (1986)], it was decided that a political party's First Amendment right of association overrides state law. Alaska law must be changed to reflect that ruling.

Under the closed primary system, a voter must declare a party affiliation, or non-affiliation, in order to receive a ballot of that party. Currently, party affiliation is optional under Alaska State law and this must be addressed. Although a person may now designate party affiliation at the time of registration (thirty days in advance of an election), a change of party affiliation may need to be allowed at the time of the primary in order to not disenfranchise voters. This also will need to be addressed statutorily because of the current law. Section One of HB 327 addresses this issue.

Section Two of HB 327 provides for a blanket primary to continue for those parties that do not close their primaries. HB 327 would also require that a party notify the Division of Elections of any change in their primary at least ninety days in advance of the election in order to give the Division time to implement the changes.

HB 327 provides that the Director of Elections need not print a blanket ballot if all of the parties close their primaries.



JOHN B. COGHILL
LIEUTENANT GOVERNOR

STATE OF ALASKA
P O BOX 11
JUNEAU 99801-0111
(907) 485-3880

April 22, 1992

Ms. Cornie Zawacki, Chair
Republican Party of Alaska
P. O. Box 243732
Anchorage, Alaska 99524-3732

Dear Ms. Zawacki:

This letter is in response to your request to know what our current position is regarding the Primary Election. Secondly, you asked us to be specific about how the ballots would be printed.

The Alaska Statutes describe an open primary as being for the benefit of all the people of Alaska. If one party wishes to close their nomination process in the Primary Election, the logical position for us to take is to provide a separate ballot. If a second party wishes to close its nomination process, then we would provide them with their separate ballot. There would then be a third ballot for the parties who wish to remain with an open primary.

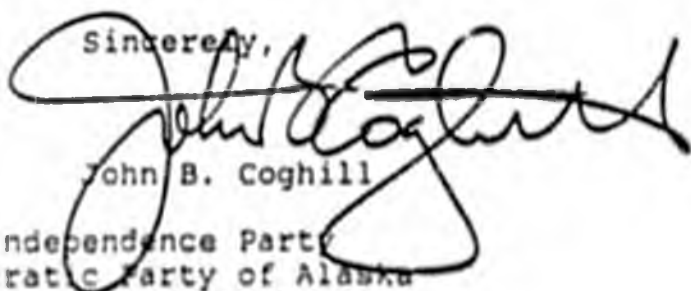
The ballots, then, would be as follows:

- A. One ballot with only Republican candidates listed
- B. One ballot with only Democratic candidates listed
- C. One ballot with Alaskan Independence candidates and Green candidates listed.

Our desire is to provide the people of Alaska with the clearest balloting process possible to prevent disenfranchising the electorate. The open primary has been in effect in Alaska for 25 years, and the clearest way to change that process through the "open classic" approach is to have separate ballots.

If you have any further questions, please let me know.

Sincerely,


John B. Coghill

cc: Joe Vogler, Alaskan Independence Party
Rhonda Roberts, Democratic Party of Alaska
Ronnie Roberts, Green Party of Alaska



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 5, 1991

The Honorable Jay Kerttula
The Honorable Pat Pourchot
Co-Chairmen, Senate Finance
Committee
Seventeenth Alaska State
Legislature

Dear Senators Kerttula and Pourchot:

The following is provided in response to your requests pertaining to the Division of Elections, General and Primary component.

During the first half of FY 92, the Division of Elections will be accomplishing the major portion of its purchasing of printed materials and supplies for the 1992 election cycle. The accommodation of the requirements of the Republican Party "classic open primary" in place of the former primary election system will require comprehensive revisions to all elections materials, forms and training materials, ballot specifications and ballot counting programs.

Contractual funding will be necessary for the following:

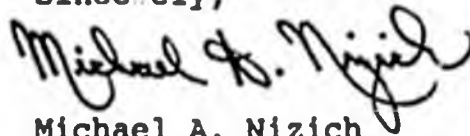
1. Preparation, typesetting and printing of unique forms and election materials to be used at all precincts and absentee voting sites specifically and only for the primary election. They will be required in sufficient supply to accommodate all statewide voters at 439 polling places and 165 absentee voting sites.
2. Preliminary design work and programming for Data-Vote counting of the two party types of "party primary ballots" statewide.
3. Preparation, typesetting and printing of procedural handbooks and materials for training election workers in the new primary election procedures.

April 5, 1991

4. Statewide advertising and public notice to voters regarding the new registration requirements and the significance of party affiliation as an eligibility requirement for voting in primary elections.
5. Preliminary specifications and orders of gang punched ballot stock which will be required to accommodate the separate party type ballots.

Enclosed is a memorandum from Elizabeth Ziegler, Division of Elections, detailing the 14 temporary positions for FY 92. Please call me if you have additional questions or need further information.

Sincerely,



Michael A. Nizich
Director
Division of Administrative
Services

Enclosure

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

September 17, 1991

SUBJECT: Sectional analysis of HB 327

TO: Representative Gene Kubina
Attn: Annie

FROM: John B. Gaguine **JBG**
Legislative Counsel

You have requested a sectional analysis of the above described bill.

As a preliminary matter, note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1 amends the voter registration laws to require the director of elections to allow a voter to declare political affiliation and to explain to a voter that his or her declaration of affiliation might affect his or her right to vote in the primary election. Currently, the voter registration form provides for declaring party affiliation. However, because of Alaska's current blanket primary laws, a person's affiliation (or lack thereof) cannot affect his or her right to vote in a primary. Because under this bill the declaration of affiliation becomes much more important, the section adds the requirement of notice by the director. However, the section provides that the required notice can be satisfied by including it on the registration form.

Section 2 amends AS 15.25.060 to provide that a blanket primary will continue to exist for those parties that do not elect a closed primary.

Section 3 is the central part of the bill, and is intended to bring Alaska law into compliance with the holding of Tashjian v. Republican Party of Connecticut, 479 U.S. 208 (1986) (political party's First Amendment right of association overrides state primary laws, and party can therefore specify what groups of voters it wants to participate in its primary, notwithstanding state law).

Representative Gene Kubina
September 17, 1991
Page 2

Proposed AS 15.25.060(b) codifies the Tashjian rule, but provides that a party must notify the director of a change in its rules at least 90 days before the primary election if the party wants its new rules to apply in that primary. The subsection provides, as does current law, that candidates on a party ballot be listed randomly, and that no space be provided for write-in votes.

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Proposed AS 15.25.060(d) provides that if all political parties eligible to nominate candidates in the primary adopt rules calling for separate ballots, the director of elections is not required to print a "blanket" ballot. This is logical, since if all parties have separate ballots there would be no candidates appearing on the "blanket" ballot.

It seems clear that whether or not this bill, or a similar bill, passes, a party can force a closed primary. However, it is certainly preferable that the statutes be consistent with federal constitutional requirements, and at present the primary election statutes are not consistent. Moreover, this bill addresses certain matters that should be addressed by statute, such as the amount of notice a party must give to the director of elections in order to have an upcoming primary closed.

If I may be of further assistance, please advise.

JBG:lmb
91-255.lmb

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. CSHB 327

Revision Date: _____ Department Affected: Office of Gov.-Div. of Election
Title: Primary Elections BRU: _____
Component: _____
Sponsor: House State Affairs Committee
Requestor: House State Affairs Committee COMPONENT SERIAL NO.

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0

REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
FUND SOURCE:						
TOTAL	0	0	0	0	0	0

POSITIONS: N/A

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary.)

There is no fiscal impact because the funding is included in the FY93 House budget.

Prepared By: House State Affairs Committee Phone: 465-4850
Division: _____ Date: 4/29/92
Approved by Commissioner: Representative Gene Kubina, Chairman
Agency: House State Affairs Committee Date: 5/29/92

FISCAL NOTE

STATE OF ALASKA

BILL NO. CSHB 327

1992 LEGISLATIVE SESSION

Revision Date: March 9, 1992Title: Relating to Primary ElectionsSponsor: House State AffairsRequestor: House State AffairsDepartment Affected: Office of the Governor-ElectionsBRU: Primary and GeneralComponent: Primary and General

COMPONENT SERIAL NO.

0	0	2	2

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	118.0	0	129.8	0	142.8	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	118.0	0	129.8	0	142.8	0

CAPITAL	0	0	0	0	0	0

REVENUE FUND SOURCE:	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	118.0	0	129.8	0	142.8	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE:	0	0	0	0	0	0
TOTAL	118.0	0	129.8	0	142.8	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: 0ANALYSIS: (Attach a separate page if necessary.)
Please see attached sheet for narrativePrepared by: Fred Fisher, Administrative Officer Phone: 465-4611
Division: Elections Date: 3/9/92

Approved by Commissioner: _____

Agency: Office of the Governor Date: 3/10/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

Rev 10/07/91
C/C/C, 6/91Page 1 of 2

**FACTS AND ASSUMPTIONS UPON WHICH THE REVISED FISCAL NOTE FOR
CS8B297 AND CS8B327 ARE BASED:**

- 1) One ballot for all candidates
- 2) Ballot to be "keyed" according to party affiliation
- 3) Voters would vote for the candidate of their choice regardless of their party affiliation
- 4) Party rules would determine how ballots are to be counted with respect to nomination of candidates
- 5) The Division of Elections would be required to tabulate and report on both "popular" and "nominating" vote counts.

Additional costs related to the change in how we conduct the Primary which have been included in the FY 93 Budget request account for additional travel in the field and administrative travel to train pollworkers, increased costs in communication, advertising, voter education, printing and binding of new training and information manuals and other costs totaling \$573.5 (thousand).

Additional costs generated by the Division of Elections are as a result of items 2, 4, and 5. In effect, the Division would have to count all ballots twice in order to provide the information required by this bill (a popular and nominating vote total). In order to do so, additional programming services would be incorporated into the scope of the Division's data processing support contract. The Division's previous contractor provided an estimate of approximately \$115,000 in additional costs, of which \$12,000 has already been included in the FY 93 request.

Therefore, the fiscal note should reflect an additional \$103,000 in the professional services (contractual) category.

In addition, approximately one half of precincts still hand count ballots. It is presumed that the double counting of the ballots would generate approximately \$15.0 (thousand) in additional payments to election workers, based on 2 additional hours for four workers in each hand count precinct or:

$$1/2 \times 500 \times 2 \times 4 \times \$7.50 = \$15,000.00$$

**TOTAL ADDITIONAL COSTS RELATED TO THE IMPLEMENTATION OF
CS8B 297 OR CS8B 327 \$118. (thousand)**

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSIONBILL NO. BB 297 / ACS HB 327

Revision Date: 01/14/92
 Title: Relating to Primary Elections
 Sponsor: Senate State Affairs
 Requestor: Senate State Affairs

Department Affected: Office of the Governor-Elections
 BRU: Primary and General
 Component: Primary and General

COMPONENT SERIAL NO.

0	0	2	2

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	41.7	41.7	0	41.7	0	41.7
CONTRACTUAL	581.8	60.0	531.8	60.0	531.8	60.0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	633.5	101.7	531.8	101.7	531.8	101.7

CAPITAL	0	0	0	0	0	0

REVENUE FUND SOURCE:	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	633.5	101.7	531.8	101.7	531.8	101.7
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE:	0	0	0	0	0	0
TOTAL	633.5	101.7	531.8	101.7	531.8	101.7

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary.)
 See attached.

Prepared by: Elizabeth Ziegler, Deputy Director
 Division: Elections

Phone: 465-4611
 Date: 01/14/92

Approved by Commissioner: Charles E. Hickman
 Agency: Office of the Governor

Date: 01/15/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

FISCAL NOTE

BILL NO. CS HB 327 / SB 297STATE OF ALASKA
1992 LEGISLATIVE SESSION

ANALYSIS: (continued)

Semi-Closed Primary Costs:

Travels:

72240	Field Travel	6.5
72270	Administrative Travel (To Train Review Boards and Poll Workers for New Precincts)	33.6
72250	Per Diem (To Cover Additional Travel To New Precincts)	1.6
	Total Travel	<u>41.7</u>

Contractual Services:

73100	Professional Services	60.0
	Voter Education Program	12.0
	DCA Contract	51.2
	Voting Rights Act Program	73.2
	Additional Poll Workers/ Review Boards	63.9
	Contracted Poll Worker Training	
73300	Communications	89.5
	Additional Postage	6.4
	Toll Charges	
73400	Transportation	13.3
	New Booth Set Up	
73420	Transportation/State Equipment fleet	1.3
	Locating New Polling Places	
73500	Advertising, Printing, and Binding	39.0
	Statewide Advertising of Primary and Precinct Changes	180.0
	Ballot Printing for Semi-Closed Primary Party Ballots	
73800	Rental for Land, Buildings, and Space	2.0
	Rental of Additional Polling Places	
	Total Contractual	<u>535.8</u>

Total Costs of Implemental Primary Changes

633.3

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSIONBILL NO. CS HB 327Revision Date: 01/10/92Title: Relating to Primary ElectionsSponsor: House State AffairsRequestor: House State AffairsDepartment Affected: Office of the Governor-ElectionsBRU: Primary and GeneralComponent: Primary and General

COMPONENT SERIAL NO.

0	0	2	2

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	41.7	41.7	0	41.7	0	41.7
CONTRACTUAL	581.8	60.0	531.8	60.0	531.8	60.0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	633.5	101.7	531.8	101.7	531.8	101.7

CAPITAL	0	0	0	0	0	0

REVENUE FUND SOURCE:	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	633.5	101.7	531.8	101.7	531.8	101.7
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE:	0	0	0	0	0	0
TOTAL	633.5	101.7	531.8	101.7	531.8	101.7

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary.)
See attached.Prepared by: Elizabeth Ziegler, Deputy DirectorDivision: ElectionsPhone: 465-4611Date: 01/10/92Approved by Commissioner: Charles E. ThielmanAgency: Office of the GovernorDate: 01/10/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/GSA, Gov. Legis. Ofc., & Impacted Agency(ies).

Rev 10/07/91
CSHB327.04Page 1 of 2

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. CS HB 327

ANALYSIS: (continued)

Semi-Closed Primary Costs:

Travel:

72240	Field Travel	6.5
72270	Administrative Travel	33.6
	(To Train Review Boards and Poll Workers for New Precincts)	
72250	Per Diem	1.6
	(To Cover Additional Travel to New Precincts)	
	Total Travel	<u>41.7</u>

Contractual Services:

73100	Professional Services	60.0
	Voter Education Program	12.0
	DCA Contract	51.2
	Voting Rights Act Program	73.2
	Additional Poll Workers\	
	Review Boards	
	Contracted Poll Worker Training	63.9
73300	Communications	
	Additional Postage	89.5
	Toll Charges	6.4
73400	Transportation	
	New Booth Set Up	13.3
73420	Transportation/State Equipment Fleet	
	Locating New Polling Places	1.3
73500	Advertising, Printing, and Binding	
	Statewide Advertising of Primary	39.0
	and Precinct Changes	
	Ballot Printing for Semi-Closed	180.0
	Primary Party Ballots	
73800	Rental for Land, Buildings, and Space	
	Rental of Additional Polling Places	2.0
	Total Contractual	<u>531.8</u>

Total Costs of Implemental Primary Changes

633.5

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 327

Revision Date: _____ Department Affected: Elections
Title: Relating to Primary Elections BRU: Primary & General
Component: Primary & General

Sponsor: House State Affairs

Requestor: House State Affairs

COMPONENT SERIAL NO.

0	0	2	2

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES		-0-	-0-	-0-		
TRAVEL						
CONTRACTUAL		437.7	-0-	59.9	-0-	59.9
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		437.7		59.9		59.9

CAPITAL		-0-	-0-	-0-	-0-	-0-

REVENUE		-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND		437.7	-0-	59.9	-0-	
FEDERAL FUNDS						
OTHER						
TOTAL		437.7	-0-	59.9	-0-	59.9

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

See attached. Also includes the costs of two additional party ballots @ \$60.0 per ballot.

Prepared By: Division of Elections Phone: 465-4611
Division: Elizabeth Ziegler, Dep. Dir. Date: 9/20/91

Approved by Commissioner: _____ Date: 9-20-91
Agency: Office of the Governor

Distribution (by preparer): Legl _____ Impacted Agency(ies).

**PREMISE: Two candidate cards: 1 with only Republican candidates
(R ballot)
1 with AI's, D's and G's
(O ballot)**

Party changes on election day will not permit the ballot to be counted. Party change must be 30 days in advance just as all other registration changes are required 30 days in advance.

```
R's can vote either ballot
N's can vote either ballot
U's can vote either ballot
D's can vote only Other ballot
A's can vote only Other ballot
C's can vote only Other ballot
O's can vote only Other ballot
```


VREMS PROGRAMMING CHANGES:

1. Initiate Election - Add new election type: R - Statewide Closed Primary Election. This election type could be read from other programs to make specific things mandatory or not.
2. Ballot Layout Program - Segregate Republican candidates into their own layout.
3. Ballot Order Program - Need additional line items for # of R's, N's and U's in addition to Total # Voters by precinct which will calculate number of ballots to order.
4. Absentee Add/Update Program - Show party affiliation that is on voter's registration.

Absentee Add/Update Program - Field to enter which ballot was given/sent to the voter. (Optional field except for the Primary Election)

5. Receive Absentee Ballot Program - Show party affiliation that is on voter's registration

Receive Absentee Ballot Program - Field to enter which ballot was given/sent to the voter.

COSTS TO IMPLEMENT CLOSED PRIMARY

6. Absentee Mailer Program - Adapt the mailer printing system to allow the mailers to print envelopes that will get R ballots separately from envelopes that get O ballots. Type of ballot should be printed on the ballot envelope mailer.

7. Absentee Roster/Register Program - Add party affiliation for each voter.

Absentee Roster/Register Program - Add field for which ballot was sent.

Absentee Roster/Register Program - (Not mandatory, but may help parties) - Add option to allow printing of the report with a " by party" sort.

8. Questioned Add Ballot Program - Show party affiliation that is on voter's registration.

Questioned Add Ballot Program - Field to enter which ballot was given/sent to the voter. (Optional field except for the Primary Election)

9. Questioned Roster/Register Program - Add party affiliation for each voter.

Questioned Roster/Register Program - Add field for which ballot was sent.

10. Challenge of Vote Program - Add a new reason: Ineligible to vote in that party's primary.

VREMS PROGRAMMING COST: \$4,000.00

TYPESETTING & PRINTING FORMS:

1. Absentee Ballot Application	5,000.00
2. Absentee In-Person O&A Envelope	2,360.00
3. Absentee In-Person Sign-in Register	69.00
4. Absentee by Personal Rep. Application	600.00
5. Absentee by Personal Rep. Envelope	360.00

COSTS TO IMPLEMENT CLOSED PRIMARY

6.	Questioned O&A Envelope	3,630.00
7.	Ballots (including sample ballots)	59,800.00
8.	Information Posters at Polls	600.00
9.	Voter ID Cards (to all current voters) including postage	88,500.00
11.	Voter ID Cards (to accommodate all party changes)	21,750.00
12.	Precinct Register Covers	195.00
13.	Questioned Registers w/add'l. column	573.75
14.	Tally Books w/add'l. pages	3,113.00
TYPESETTING & PRINTING FORMS TOTAL COST:		\$186,550.75

PRINTING INSTRUCTION BOOKS (Books are typed in our office)

1.	B-03: Instructions to Handcount Boards	\$ 773.28
2.	B-06: Registrar Handbook	2,280.00
3.	B-07: Instructions to Punch Board	995.00
4.	B-09: Instructions to AVOs	118.34
5.	B-10: Logging A & Q Ballots	75.64
PRINTING INSTRUCTION BOOKS TOTAL COST:		\$4,242.26

ADVERTISING

1.	Outreach to:	Registrars
		City Clerks
		DMV Offices
		LIOs
		LWVs
		Press

COSTS TO IMPLEMENT CLOSED PRIMARY

2. Publicize the Change to the public:
Newspaper ads
Radio
TV

TOTAL ADVERTISING COST: \$50,000.00

DATAVOTE PROGRAMMING

1. Increase in DGA programming costs 12,000.00

DATAVOTE PROGRAMMING COST: \$12,000.00

ADDITIONAL STAFF & ELECTION WORKERS

1. Election Workers:
- 2 additional per precinct @\$7.50/hr.:
2 x 238 x 14 hrs. x \$7.5 49,980.00
 - 2 additional Dist. Ques. Review Board
members per region @\$10/hr.:
2 x 4 x 22.5 hrs. x \$10 1,800.00
 - 2 extra days for each State Review Board
member @\$12.50/hr.:
8 x 15 hrs. x \$12.50 1,500.00
 - 2 additional DPRB members per counting
center @\$500
2 x 3 x \$500 3,000.00
 - 2 additional DPRB members per TECS
counting center @\$300:
2 x 6 x \$300 3,600.00

ADDITIONAL STAFF & ELECTION WORKERS TOTAL COST: \$59,880.00

GRAND TOTAL \$316,673.01

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

240 Main Street, Suite 500
Juneau, Alaska 99801-2101

MEMORANDUM

March 3, 1992

SUBJECT: Constitutionality of CSHB 327 () under
Tashjian v. Republican Party of Connecticut

TO: Representative Max Gruenberg

FROM: Robert Glennon Casey *RGC 3-3-92*
Legislative Counsel

You have asked for an opinion of whether the 2-7-92 draft committee substitute to House Bill No. 327 (7-LS1188M) would satisfy the constitutional requirements announced by the United States Supreme Court in Tashjian v. Republican Party of Connecticut, 479 U.S. 208 (1986). The answer is affirmative, based on my reading of the Tashjian decision, other legal research, and Attorney General Charles Cole's 2-28-92 memorandum to Lieutenant Governor Coghill.

I.

The bill draft would generally satisfy the Tashjian ruling by allowing a political party to devise and follow its own procedures in determining which candidates received official party endorsement and were so designated on election ballots.

II.

The provision for one "preliminary general election" ballot that allowed voting for anyone on the ballot regardless of party affiliation would not violate the right of association announced in Tashjian. This is so, because political parties would have already made their official endorsements according to their own rules before the preliminary general election.

RGC:gc
92-188.glc

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CS FOR HOUSE BILL NO. 327 ()

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:

Referred:

Sponsor(s): HOUSE STATE AFFAIRS COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to preliminary general elections, run-off general elections,
 2 elections, declarations of affiliation with a political party, and the definitio
 3 party"; and providing for an effective date."

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASH

5 * Section 1. AS 15.15.030(5) is amended to read:

6 (5) The state run-off general election ballot shall be printed on
 7 the names of the candidates [AND THEIR PARTY DESIGNATIONS] placed in
 8 under the office designation to which they were nominated. An official en
 9 candidate by a political party as provided in AS 15.25.057 shall be noted im
 10 the name of the candidate. The party affiliation, if any, shall be designated a
 11 the candidate. The lieutenant governor and the governor shall be included
 12 section. Blank spaces may not be provided on a run-off general election
 13 writing or pasting in of names [PROVISION SHALL BE MADE FOR
 14 WRITE-IN AND NO-PARTY CANDIDATES WITHIN EACH SECTION]

1 preliminary general [PRIMARY] election ballot;

2 (13) that the required fee accompanies the declaration;

3 (14) that the person is not a candidate for any other office to be voted on at the
4 preliminary general election or run-off [PRIMARY OR] general election and that the person
5 is not a candidate for this office under any other declaration of candidacy or nominating petition;
6 and

7 (15) the manner in which the candidate wishes the candidate's name to appear
8 on the ballot [; AND

9 (16) THAT THE CANDIDATE IS REGISTERED TO VOTE AS A MEMBER
10 OF THE POLITICAL PARTY WHOSE NOMINATION IS BEING SOUGHT].

11 * Sec. 4. AS 15.25.040(a) is amended to read:

12 (a) The declaration is filed by either

13 (1) the actual physical delivery of the declaration in person or by mail at or before
14 5:00 p.m., prevailing time, June 1 of the year in which a run-off general election is held for the
15 office; or

16 (2) the actual physical delivery by telegram or facsimile of a copy in substance
17 of the statements made in paragraphs (1) - (5) of the declaration as required by AS 15.25.030(a)
18 at or before 5:00 p.m., prevailing time, June 1 of the year in which a run-off general election
19 is held for the office and also the actual physical delivery of the declaration containing
20 paragraphs (1) - (15) [(16)] as required by AS 15.25.030(a) by certified or registered mail that
21 [WHICH] is received not more than 15 days after that time.

22 * Sec. 5. AS 15.25 is amended by adding a new section to read:

23 Sec. 15.25.057. OFFICIAL ENDORSEMENT OF CANDIDATES BY POLITICAL
24 PARTIES. A political party may officially endorse candidates for each office in an election. A
25 political party may prescribe and follow its own rules and procedures in determining the party's
26 official endorsement of candidates. If the candidate consents, notice of an official endorsement
27 of a candidate by a political party shall be placed by the director immediately after the name of
28 the candidate on preliminary general election and run-off general election ballots.

29 * Sec. 6. AS 15.25.060 is amended to read:

30 Sec. 15.25.060. PREPARATION AND DISTRIBUTION OF BALLOTS. The
31 preliminary general [PRIMARY] election ballot shall be prepared and distributed by the director

1 in the manner prescribed for run-off general election ballots except as specifically provided
2 otherwise for the preliminary general [PRIMARY] election. The director shall place the names
3 of all candidates who have properly filed in groups according to offices filed for, without regard
4 to party affiliation. The names for each office shall be rotated as provided for the run-off
5 general election ballot. Blank [NO BLANK] spaces shall be provided on the ballot for the
6 purpose of permitting voters to vote for candidates not appearing on the ballot by writing
7 or pasting in [OF] names. The director shall note an official endorsement of a candidate by
8 a political party under AS 15.25.057 immediately after the candidate's name.

9 * Sec. 7. AS 15.25.070 is amended to read:

10 Sec. 15.25.070. WRITE-IN OR PASTE-IN VOTING [SPECIAL PROVISIONS ON
11 COUNTING BALLOTS]. A voter may [NOT] vote in a preliminary general election for a
12 person whose name is not on the ballot by writing or pasting in the name of the person
13 receiving the vote [VOTES CAST FOR A PERSON WHOSE NAME IS NOT ON THE
14 BALLOT MAY NOT BE COUNTED, BUT WRITING IN A CANDIDATE'S NAME DOES
15 NOT INVALIDATE THE ENTIRE BALLOT].

16 * Sec. 8. AS 15.25.100 is repealed and reenacted to read:

17 Sec. 15.25.100. ELECTION IN PRELIMINARY GENERAL ELECTION FOR OFFICE
18 OTHER THAN GOVERNOR OR LIEUTENANT GOVERNOR. (a) A candidate for a state
19 office other than governor or lieutenant governor who receives more than 50 percent of the votes
20 cast for that office in a preliminary general election shall be declared elected.

21 (b) For a state office other than governor and lieutenant governor, if no candidate
22 receives more than 50 percent of the votes cast for that office in a preliminary general election,
23 the director shall place on the run-off general election ballot the names of the two candidates who
24 received the most votes in the preliminary general election.

25 (c) If a candidate for state office other than governor or lieutenant governor nominated
26 at the preliminary general election dies, withdraws, resigns, or becomes disqualified from holding
27 the office for which the candidate is nominated, the vacancy shall be filled by the candidate, if
28 any, for the same office in the preliminary general election who received the most votes among
29 candidates not otherwise placed on the run-off general election ballot.

30 (d) Party affiliation is irrelevant in determining candidates who receive the most votes
31 for office in a preliminary general election.

1 * Sec. 9. AS 15.25.110 is repealed and reenacted to read:

2 Sec. 15.25.110. PLACEMENT ON RUN-OFF GENERAL ELECTION BALLOT OF
3 NOMINEES FOR GOVERNOR. (a) The director shall place on a run-off general election ballot
4 the names of the two candidates who received the most votes for governor in the preliminary
5 general election.

6 (b) If a candidate for governor nominated at the preliminary general election dies,
7 withdraws, resigns, or becomes disqualified from holding office for which the candidate is
8 nominated, the vacancy shall be filled by the candidate, if any, for governor in the preliminary
9 general election who received the most votes among candidates not otherwise placed on the run-
10 off general election ballot.

11 (c) Party affiliation is irrelevant in determining candidates who receive the most votes
12 for governor in a preliminary general election, run-off general election, or special general
13 election.

14 * Sec. 10. AS 15.25.120 is repealed and reenacted to read:

15 Sec. 15.25.120. PLACEMENT ON RUN-OFF GENERAL ELECTION BALLOT OF
16 NOMINEES FOR LIEUTENANT GOVERNOR. (a) On a run-off general election ballot, the
17 director shall join with the candidate for governor who received the most votes in the preliminary
18 general election the name of the candidate, if any, of the same political party who received the
19 most votes for lieutenant governor in the preliminary general election.

20 (b) If candidates for governor on a run-off general election ballot are not affiliated with
21 the same political party, the director shall join with the candidate for governor who received the
22 second most votes in the preliminary general election the name of the candidate, if any, of the
23 same political party who received the most votes for lieutenant governor in the preliminary
24 general election.

25 (c) If both candidates for governor on a run-off general election ballot are of the same
26 political party, the director shall join with the candidate for governor who received the second
27 most votes in the preliminary general election the name of the candidate of the same political
28 party, if any, who received the second most votes for lieutenant governor in the preliminary
29 general election.

30 (d) A candidate for governor in a run-off general election who is affiliated with a
31 political party and who is not joined with a candidate for lieutenant governor under (a) - (c) of

1 this section shall select a nominee for lieutenant governor of the same political party under (h)
2 of this section and run jointly with that nominee in the run-off general election. The director
3 shall join on a run-off general election ballot the names of candidates for governor and lieutenant
4 governor running jointly under this section.

5 (e) If a candidate for governor in a preliminary general election who is not affiliated with
6 a political party is nominated to run in the run-off general election, the director shall join that
7 candidate on the run-off general election ballot with the candidate for lieutenant governor who
8 received the most votes in the preliminary general election and who is not otherwise joined with
9 a candidate for governor under (a) - (d) of this section. If neither candidate for governor in a
10 run-off general election is affiliated with a political party, the director shall join the candidate for
11 governor receiving the second most votes in the preliminary general election on the run-off
12 general election ballot with the name of the candidate for lieutenant governor who received the
13 second most votes in the preliminary general election.

14 (f) A candidate for governor in a run-off general election who is not affiliated with a
15 political party and who is not otherwise joined with a candidate for lieutenant governor under (e)
16 of this section shall select a nominee for lieutenant governor under (h) of this section and run
17 jointly with that nominee in the run-off general election. The director shall join on the run-off
18 general election ballot the names of candidates for governor and lieutenant governor running
19 jointly under this section.

20 (g) A candidate for governor in a run-off general election who is joined with a candidate
21 for lieutenant governor who dies, withdraws, resigns, or becomes disqualified from serving as
22 lieutenant governor shall be joined with a replacement candidate for lieutenant governor
23 determined by (a) - (f) of this section.

24 (h) Nomination of a lieutenant governor for the purpose of (d) or (f) of this section is
25 accomplished by physical delivery to the director, no later than 48 days before the date of the
26 run-off general election, of a signed written notice of selection by the candidate for governor and
27 a signed written notice of acceptance of selection by the candidate for lieutenant governor.
28 Disclosure of a candidate's affiliation with a political party and all information and
29 representations listed in AS 15.25.030(a)(1) - (15) and 15.25.030(b) must be contained in a
30 candidate's notice of acceptance under this subsection.

31 • Sec. 11. AS 15.40.180 is repealed and reenacted to read:

1 Sec. 15.40.180. SELECTION OF NOMINEES IN MANNER PROVIDED FOR RUN-
2 OFF GENERAL ELECTION. If the vacancy in the office of the United States representative
3 occurs one calendar month or more before the filing date for the preliminary general election,
4 candidates for the special general election shall be nominated in the manner provided for the
5 nomination of candidates for run-off general elections.

6 * Sec. 12. AS 15.40.270 is repealed and reenacted to read:

7 Sec. 15.40.270. SELECTION OF NOMINEES IN MANNER PROVIDED FOR RUN-
8 OFF GENERAL ELECTION. If a vacancy in the office of the governor or the lieutenant
9 governor occurs one calendar month or more before the filing date for the preliminary general
10 election, candidates for the special general election shall be nominated in the manner provided
11 for the nomination of candidates for run-off general elections.

12 * Sec. 13. AS 15.58.030(b) is amended to read:

13 (b) No later than July 15 of a year in which a state run-off general election will be held,
14 an individual who becomes a candidate for the office of United States senator, United States
15 representative, governor, lieutenant governor, state senator, or state representative under
16 AS 15.25.030 may file with the lieutenant governor a photograph and a statement advocating the
17 candidacy. An individual who becomes a candidate for the office of United States senator,
18 United States representative, governor, lieutenant governor, state senator, or state representative
19 [UNDER AS 15.25.180 BY FILING A NOMINATING PETITION OR] by write-in [ANOTHER
20 MEANS] may file with the lieutenant governor a photograph and a statement advocating the
21 candidacy [BY JULY 15 OR] within 10 days of becoming a candidate in the run-off general
22 election [, WHICHEVER IS LATER].

23 * Sec. 14. AS 15.60.010(20) is repealed and reenacted to read:

24 (20) "political party" means an organized group of voters who represent a political
25 program and with whom at least one candidate, who received at least three percent of the total
26 votes cast for that office in the preceding preliminary general election, declared affiliation under
27 AS 15.25.030(a).

28 * Sec. 15. AS 39.50.020(b) is amended to read:

29 (b) The governor, lieutenant governor, members of the legislature, judicial officers, each
30 commissioner, head or deputy head of, or director of a division within, a department in the
31 executive branch, assistant to the governor or chairman or member of a commission or board

1 required to report under this chapter, shall file the statement with the Alaska Public Offices
2 Commission. Candidates for the office of governor, lieutenant governor, and the legislature shall
3 file the statement under AS 15.25.030 [OR 15.25.180]. Municipal officers, and candidates for
4 elective municipal office, shall file with the municipal clerk or other municipal official designated
5 to receive their filing for office. All statements required to be filed under this chapter are public
6 records.

7 * Sec. 16. AS 15.25.056, 15.25.130, 15.25.140, 15.25.150, 15.25.160, 15.25.170, 15.25.180,
8 15.25.190, 15.25.200; AS 15.40.090, 15.40.100, 15.40.110, 15.40.120, 15.40.190, 15.40.200, 15.40.210,
9 15.40.280, 15.40.290, 15.40.300, 15.40.430, 15.40.440, 15.40.450, and 15.40.460 are repealed.

10 * Sec. 17. IMPLEMENTING NAME CHANGES. To be consistent with the name changes made by
11 this Act, wherever in the Alaska Statutes, and in regulations adopted under those statutes, "primary" or
12 "primary election" is used, it shall be read as referring to a "preliminary general election." Wherever
13 in the Alaska Statutes, and in regulations adopted under those statutes, "general election" is used, it shall
14 be read as referring to a "run-off general election." Wherever in the Alaska Statutes, and in regulations
15 adopted under those statutes, "special election" is used, it shall be read as referring to a "special general
16 election." Under AS 01.05.031, the revisor of statutes shall implement this section in the statutes, and,
17 under AS 44.62.125(b)(6), the regulations attorney shall implement the section in the administrative
18 regulations.

19 * Sec. 18. This Act takes effect June 1, 1992.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

March 11, 1991

SUBJECT: Closed Republican primary (Work Order No. 7LS0949)

TO: Representative Fran Ulmer

FROM: John B. Gaguine
Legislative Counsel

You have asked several questions regarding the effect of the Alaska Republican Party's vote recently to close its party to all but registered Republicans and independents. This memorandum will try to answer those questions.

1. You first ask whether the Republican Party's action will allow Republican and independent voters to vote twice, once in the Republican primary and once in the "open" primary where all other parties' candidates will appear (assuming that no other party changes its party rules). I think the answer is clearly no. AS 15.15.230, applicable to primary elections under AS 15.25.090, provides that when a voter has qualified to vote, the election judge shall give the voter an official ballot. AS 15.15.410, also applicable to primaries, provides that if the director of elections determines that a person has voted more than once in the same election, he or she shall notify the attorney general. I think that this clearly implies that a voter may vote only once. This is not stated in either AS 15 or in Article V of the constitution, but probably because it was considered so obvious. Of course, it certainly could not hurt to add a section to AS 15.25 stating that a person may vote in only one primary election.

Let me note, though, that unless other parties change their rules, or the legislature amends the primary election laws, a registered Republican would still have the right to forego the Republican primary and vote in the "open" one. Independents would also have this choice.

2. You next ask whether Alaska's primary election could be changed to a system such as Wisconsin's, where a person must select a ballot at the time of the primary, but where a person registered in one party may choose to vote in the primary of another. The answer is yes, if no party objected. However, such a system would be inconsistent with the recently adopted Republican rule, since it would allow registered

Democrats, Libertarians, etc. to vote in the Republican primary. And in the recent case of Tashjian v. Republican Party of Connecticut, 479 U.S. 208, 55 U.S.L.W. 4057 (1986), the U.S. Supreme Court ruled that the First Amendment associational rights of a party override state election laws, absent exceptional circumstances. I cannot imagine any arguments that the state could put forth to justify a Wisconsin-type system that was inconsistent with party rules.

Indeed, Tashjian involved a situation where the party's First Amendment claim was nowhere near as clear as it would be under a Wisconsin-type primary. In Tashjian state law restricted voting in the Republican primary to registered Republicans, and the party wanted to open its primary to independents as well. The majority of the Court rejected the argument that the party had no First Amendment rights to extend its primary to independents, since state law already ensured that Republican candidates would be chosen only by Republicans. (Three dissenters, in a dissent by Justice Scalia, found this argument persuasive.) Here, by contrast, a Wisconsin-type primary would allow those who are registered members of other parties to assist in the selection of Republican candidates. Even Justice Scalia's dissent found that such a scheme would impair the party's associational rights: "The ability of the members of the Republican Party to select their own candidate, on the other hand, unquestionably implicates an associational freedom." 55 U.S.L.W. at 4065. Thus, Tashjian would clearly be controlling here.

Ideally, state election law should be amended to reflect the rules of each party. However, if it is not so amended, the party rules would, as noted, override the election laws. In that case I assume that those rules would be implemented either by regulations issued by the lieutenant governor or by court order. (Tashjian is not instructive on this matter because the district court stayed its injunction pending appeal. According to the Alaska Attorney General (in a pleading in Doyle v. State, No. A90-248 Civil (U.S. Dist. Ct. D.Alaska), where the Republican party tried unsuccessfully last year to close the 1990 primary), Connecticut was allowed an additional year after the U.S. Supreme Court's decision to implement the party rule, and was only in 1990 beginning to implement that rule. However, since Tashjian has made the law on this question clear, a court today likely would not be as lenient toward Alaska.)

3. Your final question is whether the state election laws can be changed to require that an individual file for an office prior to the primary election, so that it would be impossible for late filers to wait until they knew the results of the primary before deciding whether to enter the race. The answer to this question is no, based on a recent Anchorage Superior Court decision which the state did not appeal.

The current filing date for independents, under AS 15.25.150, is August 1. This date was established by the legislature in 1989 instead of the former June 1, which the superior court had ruled unconstitutionally impeded ballot access. Last year, in Sykes

Representative Fran Ulmer
March 11, 1991
Page 3

v. State. Judge Dana Fabe ruled that even the new date was unconstitutional: since the Division of Elections had acknowledged that it would have no problem with processing a third party or independent petition filed after the date of the primary, the state had no compelling reason to justify a filing deadline as early as August 1 (over three months before the election). The state did not appeal, since, in light of the division's acknowledgement, it felt it had no grounds for a successful appeal.

Of course, what occurred in the last gubernatorial election was not an independent candidate filing a late petition, but rather the resignation of the candidates of a party chosen in a primary, and the replacement of those candidates by the party officers with Governor Hickel and Lieutenant Governor Coghill. AS 15.25.110 provides that if a candidate nominated in a primary election resigns no less than 48 days before the general election, the party may replace the resigned candidate. Since the Division of Elections can apparently handle a replacement within 48 days, it seems unlikely that that deadline could constitutionally be moved back. Indeed, it would seem that the deadline for independent filing should be the same as that for replacement of candidates - namely, the minimum amount of time necessary for the Division of Elections to place a new candidate's name on the ballot before the general election.

I hope that this has satisfactorily answered your questions. If I may be of further assistance, please let me know.

JBG:mi
91-049.mai

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 327

Revision Date: _____ Department Affected: Elections
Title: Relating to Primary Elections BRU: Primary & General
Component: Primary & General

Sponsor: House State Affairs

Requestor: House State Affairs

COMPONENT SERIAL NO.

0	0	2	2

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES		-0-	-0-	-0-		
TRAVEL						
CONTRACTUAL		437.7	-0-	59.9	-0-	59.9
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		437.7		59.9		59.9

CAPITAL		-0-	-0-	-0-	-0-	-0-

REVENUE		-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND		437.7	-0-	59.9	-0-	
FEDERAL FUNDS						
OTHER						
TOTAL		437.7	-0-	59.9	-0-	59.9

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

See attached. Also includes the costs of two additional party ballots @ \$60.0 per ballot.

Prepared By: Division of Elections

Phone: 465-4611

Division: Elizabeth Ziegler, Rep. Dir.

Date: 9/20/91

Approved by Commissioner: _____

Agency: Office of the Governor

Date: 9-20-91

Distribution (by preparer): Legi

Impacted Agency(ies).

COSTS TO IMPLEMENT CLOSED PRIMARY

PREMISE: Two candidate cards: 1 with only Republican candidates
(R ballot)
1 with AI's, D's and G's
(O ballot)

Party changes on election day will not permit the ballot to be counted. Party change must be 30 days in advance just as all other registration changes are required 30 days in advance.

R's can vote either ballot
N's can vote either ballot
U's can vote either ballot
D's can vote only Other ballot
A's can vote only Other ballot
G's can vote only Other ballot
O's can vote only Other ballot

VREMS PROGRAMMING CHANGES:

1. Initiate Election - Add new election type: R = Statewide Closed Primary Election. This election type could be read from other programs to make specific things mandatory or not.
2. Ballot Layout Program - Segregate Republican candidates into their own layout.
3. Ballot Order Program - Need additional line items for # of R's, N's and U's in addition to Total # Voters by precinct which will calculate number of ballots to order.
4. Absentee Add/Update Program - Show party affiliation that is on voter's registration.

Absentee Add/Update Program - Field to enter which ballot was given/sent to the voter. (Optional field except for the Primary Election)

5. Receive Absentee Ballot Program - Show party affiliation that is on voter's registration

Receive Absentee Ballot Program - Field to enter which ballot was given/sent to the voter.

COSTS TO IMPLEMENT CLOSED PRIMARY

6. Absentee Mailer Program - Adapt the mailer printing system to allow the mailers to print envelopes that will get R ballots separately from envelopes that get O ballots. Type of ballot should be printed on the ballot envelope mailer.

7. Absentee Roster/Register Program - Add party affiliation for each voter.

Absentee Roster/Register Program - Add field for which ballot was sent.

Absentee Roster/Register Program - (Not mandatory, but may help parties) - Add option to allow printing of the report with a " by party" sort.

8. Questioned Add Ballot Program - Show party affiliation that is on voter's registration.

Questioned Add Ballot Program - Field to enter which ballot was given/sent to the voter. (Optional field except for the Primary Election)

9. Questioned Roster/Register Program - Add party affiliation for each voter.

Questioned Roster/Register Program - Add field for which ballot was sent.

10. Challenge of Vote Program - Add a new reason: Ineligible to vote in that party's primary.

VREMS PROGRAMMING COST: \$4,000.00

TYPESETTING & PRINTING FORMS:

1. Absentee Ballot Application	5,000.00
2. Absentee In-Person O&A Envelope	2,360.00
3. Absentee In-Person Sign-in Register	69.00
4. Absentee by Personal Rep. Application	600.00
5. Absentee by Personal Rep. Envelope	360.00

COSTS TO IMPLEMENT CLOSED PRIMARY

6.	Questioned O&A Envelope	3,630.00
7.	Ballots (including sample ballots)	59,800.00
8.	Information Posters at Polls	600.00
9.	Voter ID Cards (to all current voters) including postage	88,500.00
11.	Voter ID Cards (to accommodate all party changes)	21,750.00
12.	Precinct Register Covers	195.00
13.	Questioned Registers w/add'l. column	513.75
14.	Tally Books w/add'l. pages	3,113.00
TYPESETTING & PRINTING FORMS TOTAL COST:		\$186,550.75

PRINTING INSTRUCTION BOOKS (Books are typed in our office)

1.	B-03: Instructions to Handcount Boards	\$ 773.28
2.	B-06: Registrar Handbook	2,280.00
3.	B-07: Instructions to Punch Board	995.00
4.	B-09: Instructions to AVOs	118.34
5.	B-10: Logging A & Q Ballots	75.64
PRINTING INSTRUCTION BOOKS TOTAL COST:		\$4,242.26

ADVERTISING

1.	Outreach to:	Registrars City Clerks DMV Offices LIOs LWVs Press

COSTS TO IMPLEMENT CLOSED PRIMARY

2. Publicize the Change to the public:

Newspaper ads
Radio
TV

TOTAL ADVERTISING COST: \$50,000.00

DATAVOTE PROGRAMMING

1. Increase in DGA programming costs 12,000.00

DATAVOTE PROGRAMMING COST: \$12,000.00

ADDITIONAL STAFF & ELECTION WORKERS

1. Election Workers:

2 additional per precinct @\$7.50/hr.:	
2 x 238 x 14 hrs. x \$7.5	\$49,980.00
2 additional Dist. Ques. Review Board members per region @\$10/hr.:	
2 x 4 x 22.5 hrs. x \$10	1,800.00
2 extra days for each State Review Board member @\$12.50/hr.:	
8 x 15 hrs. x \$12.50	1,500.00
2 additional DPRB members per counting center @\$500	
2 x 3 x \$500	3,000.00
2 additional DPRB members per TECS counting center @\$300:	
2 x 6 x \$300	3,600.00

ADDITIONAL STAFF & ELECTION WORKERS TOTAL COST: \$59,880.00

GRAND TOTAL \$316,673.01

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

240 Main Street, Suite 500
Juneau, Alaska 99801-2101

MEMORANDUM

January 30, 1992

SUBJECT: Constitutional Problem in CSHB 327 ()
(Work Order No. 7-LS1188J)

TO: Representative Max Gruenberg

FROM: Robert Glennon Casey
Legislative Counsel

RCC 1-30-92

This committee substitute may violate Art. III, § 8 of the Alaska Constitution. That section requires that candidates for lieutenant governor be nominated in the manner provided by law for nominating other candidates for elective offices.

The discrepancy is that AS 15.25.120(d) and (f) would provide a residual possibility that nominees for lieutenant governor would be simply selected by gubernatorial candidates. I call this a residual possibility, since in most cases a gubernatorial candidate would be matched with the highest available vote-getter among candidates for lieutenant governor. Where, however, the usual manner of nominating a lieutenant governor candidate did not work, due to death, withdrawal, resignation, disqualification, or simple lack of a candidate in the primary election, then these residual provisions for selection of a nominee by the gubernatorial candidate would take over.

One way to avoid this problem would be simply not to provide for nominating a lieutenant governor candidate in these rare circumstances. The result would be the same as if no candidate had run - a possibility that already exists in Alaska Statutes.

That would not make the manner of nominating a lieutenant governor absolutely identical to the way in which other candidates are nominated, because Art. III, § 8 itself introduces an element of uniqueness by requiring gubernatorial candidates to run "jointly" with lieutenant governor candidates. Art. III, § 8 probably does not require that the manner of nomination be absolutely identical. Allowing a candidate for lieutenant governor to reach the general election ballot without passing through a primary election, however, might be too great a divergence from the manner of nominating other candidates to survive constitutional scrutiny.

Representative Max Gruenberg

January 30, 1992

Page 2

Also, please note that sections toward the end of the committee substitute relating to AS 15.40 are provisions for special elections, in which nomination can occur by petition. At present, the committee substitute does not abolish nomination by petition in special elections. Rather, it only abolishes nomination by petition in ordinary elections. The sections of the committee substitute relating to special elections simply clean out cross references to the nomination by petition sections in AS 15.25 that are repealed.

RBC:pl

92-056.plm

Enclosure

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

April 3, 1991

SUBJECT: Party rules and primary election laws

TO: Senator Pat Pourchot
Attn: Jeanne Larson

FROM: John B. Gaguine *JBG*
Legislative Counsel

You have asked about the relationship between party rules and the state's primary election laws. The question is easily answered: if there is a clash between party rules and election laws (e.g., the party rules call for a closed primary, and the election laws provide for an open one), the party rules prevail.

This answer derives from a recent decision of the United States Supreme Court, Tashjian v. Republican Party of Connecticut, 479 U.S. 208, 55 U.S.L.W. 4057 (1986). In that case Connecticut law restricted voting in a party's primary to registered members of the party, and the Republican party wanted to open its primary to independents as well as registered Republicans. The Court ruled in favor of the Republicans, holding that the party's First Amendment's guarantee of freedom of association overrode the state law.

Ideally, state law should be amended to conform with party rules. (In Tashjian the Republicans in the legislature passed a bill to open primaries to independent, only to have the bill vetoed by the Democratic governor.) However, if that is not done the party rules nevertheless control. A court, I believe, would clearly have the power to order the Division of Elections to follow procedures consistent with party rules and inconsistent with the statutes. I also believe that even absent a lawsuit the lieutenant governor would be empowered to issue regulations reflecting the party rules, since the law is clear on this point.

However, I should note a significant difference between Alaska and Connecticut. Connecticut law required a closed primary, and the only effect of Tashjian would seem to be to require election officials to give Republican ballots to those independents who request them, as well as Republicans. In Alaska, however, implementation of the Republican party rules would require a total overhaul of the primary process.

Senator Pat Pourchot

April 3, 1991

Page 2

There would seemingly have to be two separate ballots prepared - one with Republican candidates, and one with candidates of other parties. (If other parties changed their rules to parallel the Republican rules, there would seemingly have to be even more ballots prepared.) Thus, a court might allow the lieutenant governor to phase in a new system gradually. However, if the lieutenant governor decided to implement party rules without a statutory change, I do not think that a court would enjoin this, even given the magnitude of the procedural change that would be necessary. ¹

If I may be of further assistance, please advise.

JBG:pl

91-225.plm

¹ My research has disclosed no post-Tashjian cases on this point, so my conclusions must be tentative.

STATE OF ALASKA

OFFICE OF THE GOVERNOR

DIVISION OF ELECTIONS
P.O. BOX AF
JUNEAU, ALASKA 99811-0105
PHONE (907) 465-4811

MEMORANDUM

To: Senator Pat Rodey, Chair
State Affairs Committee

From: Elizabeth Ziegler, Deputy Director
Division of Elections

Re: Republican Party Rule

DATE: May 8, 1991

BACKGROUND

Since 1967, statewide primaries in Alaska have been conducted as "blanket, open" primaries, with respect to nomination of candidates for elective statewide and federal political offices. Primary candidates are listed on a single ballot, grouped together by office sought rather than party affiliation. AS 15.25.060. Primary voters are not restricted to voting for candidates who corresponded with the individual's political party affiliation.

At its March 31, 1990 convention, the Republican Party of Alaska (RPA) adopted a party rule change which would only allow registered Republicans and nonpartisans to vote in the RPA's primary election which was scheduled to be held August 28, 1990.

The adopted rule is as follows:

"Only registered Republicans, registered Independents, and those who state no preference of party affiliation shall be allowed to vote in the Republican primary election for Governor, Lieutenant Governor, U.S. Senator, U.S. Representative, and members of the state Legislature."

Although the rule is silent on the subject, the RPA also intended that any voter might change his designated party affiliation -- the polls the date of the primary election. The state took the position that since party affiliation would determine whether one could vote in the Republican primary, that party status as a qualification for voting under AS 15.07.060, and that a voter must change his or her existing registration at least thirty days in advance of the primary.

BACKGROUND

E. Ziegler - Div. of Elections

The RPA desired that the rule be implemented in time for the 1990 primary. The Division of Elections (DOE) was notified of the rule changes by letter on April 27, 1990.

Discussions ensued between the RPA and the DOE regarding primary implementation. The division was concerned that given the short time remaining before the primary, that the state would not be able to prepare for the primary or educate the voters or election workers.

In one of its meetings the RPA learned that it needed to "preclear" its rule change with the Voting Section of the Department of Justice. The RPA then made a submission to the Voting Section, to which the state formally objected in a June 15, 1990 letter. The RPA filed a motion for a preliminary injunction on June 11, 1990 which asked the court to enjoin the state from conducting the RPA's primary in any manner other than provided by its rule changes.

The State opposed the RPA motion based on the its position that the State's duty to ensure the integrity and orderliness of elections outweighed the RPA's right to enforce its rule change. That duty could not be met if the RPA rule was enforced because 1) insufficient time remained before the August primary to implement the rule and preclear its own changes to the DOJ and 2) many voters, particularly rural voters, would be confused and possibly disenfranchised due to the late change in the primary election procedures. The U.S. District Court denied the RPA's motion for injunctive relief on July 13, 1990.

RECENT DEVELOPMENTS

On March 21, 1991 the RPA resubmitted its party rule change to the Department of Justice. In addition to its previous rule change, it added five more rules adopted at a special convention held earlier that month.

The RPA, through its attorney, Ken Jacobus, requested that the DOJ preclear the five additional rules.

Two aspects of the rules seriously concerned the DOE. One, entitled the "Rule to Maximize Voter Participation in the Primary Elections," would allow those voting in the Republican primary to vote in other primaries, unless prohibited by another party's rules or state or federal statute.

Secondly, the party also submitted its previous rules and specified that voters could change their party affiliation on the day of the election.

The DOE submitted its comments to the DOJ May 1, 1991. The division objected to the RPA's intent to allow voters to change

their registration less than 30 days before the election and particularly to allowing voters to vote in more than one primary.

The DOE is also concerned about rules pertaining to candidacy that would require the division to check with the party on whether the candidate is a party candidate. This requirement could interfere with last minute candidate filings if party approval is necessary. This issue will be taken up with the party.

The DOJ 60-day deadline for preclearance of the Republican submission is about May 20, 1990. If the DOJ preclears the rule changes, then the DOE will submit its implementation plan. The DOJ also has 60 days to review and preclear this material.

DIVISION OBJECTIVES

The division does not object to any party's right to limit its right of association to members of its own party or nonpartisan voters, but it will not allow its procedures for ensuring the integrity of elections to be jeopardized.

At this time the division is working on its plan for implementation. We are analyzing the effect of the primary rule change on 1) voter registration 2) absentee balloting 3) election worker training 4) ballot preparation 5) data processing and 6) vote counting procedures.

The division intends to implement this rule with the least amount of interference to existing procedures.

PROBABLE COSTS

Last year the division estimated that costs may be as much as \$500,000 to implement the RPA primary rule change. This figure was based on the need to react quickly to a possibly unfavorable court determination just months before the primary. The DOE had already conducted its election worker training in all 438 precincts around the state and this would have had to be duplicated. Additionally, the DataVote counting program would have needed a major expensive revision. A contract was let to Data Group Alaska, Inc. to design the needed programming changes. This contract totalled \$65,000.

The DOE does not anticipate the high level of expense that the division estimated last year. The DOE will modify its election training program to include the RPA rule changes and will redo its documents to reflect the rule change. Many of these documents will need revision anyway because the Green Party of Alaska must be included.

The division estimates that the rule change will require the following FY 92 & 93 operating budget expenses:

Ballots	\$60,000
Advertising	\$25,000

DataVote	\$15,000	
Printing	\$25,000	
Election Wor.	\$40,000	(if voters allowed to vote in other primaries)

Total	\$165,000	

These figures are subject to change once the division completes its analysis of necessary changes. The division anticipated these additional costs in its FY 92 operating budget.

STATUTORY CHANGES

The DOE prefers that the Legislature amend the election laws dealing with issues relevant to conducting primary elections as opposed to operating under emergency regulations. The division is now working with the Department of Law concerning these changes and anticipates that it will have draft language to the House and Senate State Affairs Committees as soon as the DOJ preclears the RPA's and DOE's submissions.

It is preferable that the division have statutory authority in place by early spring of 1992 in order to avoid implementation by emergency regulation or another lawsuit by the party.

Notice of Adoption of Emergency Regulations

As required by AS 44.62.250, notice is given that under the authority of AS 15.15.010, the Division of Elections adopted the following regulation as an emergency regulation:

6 AAC 27.165:

Establishing the authority of the director to require a voter to verify the physical location of his or her residency by means of attestation in order to qualify to vote in: 1) a municipal incorporation election or 2) a local option election conducted by the division.

This regulation took effect May 1, 1991, immediately upon the filing with the Lieutenant Governor, as provided by AS 44.62.180(3).

This action is not expected to require an increased appropriation.

Copies of the regulation may be obtained by writing to the Director of Elections, P.O. Box AF, Juneau, Alaska 99811-0105.

Notice is also given that the Division of Elections intends to make these regulations permanent under AS 44.62.260, and any person interested in presenting written statements or arguments relevant to the action proposed, may do so. Written statements may be sent to the Director of Elections at the address indicated above, so that they are received not later than June 1, 1991.

DATE: 5/2/91
Juneau, Alaska

Charlot Thickstun
Director

AO 89-1780

STATE OF ALASKA

OFFICE OF THE GOVERNOR

DIVISION OF ELECTIONS
P.O. BOX AF
JUNEAU, ALASKA 99811-0105
PHONE (907) 465-4611

DIVISION OF ELECTIONS

POSITION PAPER ON PRIMARY CHANGES

The United States Supreme Court has held that political parties have a Constitutional right to free association and can determine who can vote in their primaries.

The Division of Elections position is that this right must be tempered with the division's right to maintain the integrity and orderly conduct of state elections.

In light of the decisions of the Democratic, Green and Republican Parties, it appears that the voters of the state may be confused as to who can vote for what candidates. The Division's goal is to create a voting situation that makes it as easy as possible for people to vote in the primary and know that his/her vote will be counted.

The Division proposes that any legislation regarding the primary include the following language:

1. Parties must inform the Division of Elections of any party rule changes that impact the conduct of the primary by March 1 of any election year.
2. Voters may change their party affiliation at the polling place.
3. A voter may vote only one ballot in the primary election.

The Division has included a fiscal note which estimates that the primary changes will cost about \$450,000 to the state. This

is only an estimate. When the Division prepared its affidavits for the 1990 lawsuit with the Republican Party, the costs were estimated at about one million dollars due to the fact that the party wanted the state to implement its primary in time for the 1990 elections. With proper notice, the state can plan more effectively, but the attached fiscal note is far from absolute. There may be additional costs due to the increased ballot order, printing and data programming that will not be apparent until we actually start the process.

In conclusion, while the Division will implement any parties rule changes, we are concerned about the costs. The burden to the voting public and the costs to the state may outweigh the benefits to the political parties. Frankly, we believe that if the parties desire to select their own candidates they should do so privately by the convention system.

DRAFT INSTRUCTIONS TO VOTERS

BALLOT CHOICES AVAILABLE IN AUGUST 25, 1992 PRIMARY ELECTION

THE BALLOT EXAMPLES TO THE RIGHT DISPLAY THE BALLOTS AVAILABLE TO ALL ALASKA VOTERS, WHETHER REGISTERED TO SPECIFIC PARTIES, OR REGISTERED NON-PARTISAN, "OTHER," OR "UNDECLARED."

YOU MAY SELECT ONE BALLOT ONLY. YOU MAY VOTE FOR ONLY ONE CANDIDATE IN EACH CONTEST.

THE DEADLINE FOR VOTER REGISTRATION, INCLUDING AN ADDRESS CHANGE, IS 30 DAYS BEFORE ELECTION DAY, OR JULY 26, 1992, FOR THIS PRIMARY ELECTION.

AS 15.05.010

NOTICE:

ALASKA LAW PROHIBITS ELECTION BOARD WORKERS FROM DISCUSSING ANY POLITICAL PARTY, CANDIDATE OR ISSUE WHILE ON DUTY.

AS 15.15.160

FURTHER, DURING THE HOURS THE POLLS ARE OPEN, A PERSON WHO IS IN THE POLLING PLACE OR WITHIN 200 FEET OF ANY ENTRANCE TO THE POLLING PLACE MAY NOT ATTEMPT TO PERSUADE A PERSON TO VOTE FOR OR AGAINST A CANDIDATE, PROPOSITION OR QUESTION.

AS 15.15.170

ATTENTION VOTERS

PRIMARY ELECTION TUESDAY, AUGUST 25, 1992

IF YOUR PARTY AFFILIATION ON
YOUR VOTER REGISTRATION IS:

ALASKAN INDEPENDENCE
DEMOCRAT
GREEN
REPUBLICAN
UNDECLARED
NON-PARTISAN
OTHER

YOU CAN VOTE A BALLOT WITH
CANDIDATES FROM THE
FOLLOWING PARTIES:

IF YOUR PARTY AFFILIATION ON
YOUR VOTER REGISTRATION IS:

REPUBLICAN
UNDECLARED
NON-PARTISAN

YOU CAN VOTE A BALLOT WITH
CANDIDATES FROM THE
FOLLOWING PARTIES:

 TOP		C
OFFICIAL PRIMARY ELECTION BALLOT		
  THIS STUB TO BE REMOVED BY ELECTION BOARD		
AKFB1		
STATE OF ALASKA Primary Election 8/25/92		
ALASKAN INDEPENDENCE		
DEMOCRAT		
GREEN		

 TOP		C
OFFICIAL PRIMARY ELECTION BALLOT		
  THIS STUB TO BE REMOVED BY ELECTION BOARD		
AKFB1		
STATE OF ALASKA Primary Election 8/25/92		
REPUBLICAN		

PROCEDURES FOR PARTY PRIMARIES IN OTHER STATES

ALABAMA as of: 5/11/90

TOTAL 2,294,193

Party primaries:

No record of party is kept by the State of Alabama Elections Division. A voter need only declare either Democrat or Republican at the polls and he will be given the corresponding ballot.

ARKANSAS as of: 5/1/90

TOTAL 1,171,027

Party primaries:

In the state of Arkansas, voters are not required to indicate a party preference, however, the state has only two official parties: Democrat and Republican. There is no state-wide standard for holding party primaries-- each county is responsible for its own procedure. In counties where joint primaries are held, the voter must request to vote either Republican or Democrat.

CALIFORNIA

Democrat	49.94%
Republican	39.20%
American Independent	1.17%
Libertarian	.36%
Peace & Freedom	.34%

Party primaries:

At the primary the voter must request a ballot for the party with which he is affiliated. In the California primary there are five such parties which participate (see above). If a voter is not a member of one of these five parties, he may only vote for non-partisan candidates and for or against ballot propositions and other issues. Otherwise the non-partisan voter must wait until the general election. If a voter wishes to request a primary election ballot for a party of which he is not a member, he must change his affiliation at least 29 days prior to the state-wide election.

CONNECTICUT

as of: 2/90

Democrat	681,306 - 39%
Republican	468,517 - 27%
Minor Parties	972
Unaffiliated	577,071 - 33%

TOTAL	1,727,866

Party primaries:

Only Democrats may vote in Democratic primaries; in Republican primaries for some offices, both Republicans and voters who are unaffiliated with any party may vote. These offices are: Governor, Lt. Governor, Secretary of State, Treasurer, Comptroller, Attorney General, U.S. Senator, and U.S. Representative. In Republican primaries for such offices as state legislator, city mayor, or city council member, only Republicans may participate.

DELAWARE

as of: 11/88

Democrat	125,297 - 43%
Republican	110,301 - 38%
Other	58,095 - 20%

TOTAL	293,693

Party primaries:

Only Democrats may vote in Democratic primaries, only Republicans may vote in Republican primaries.

DISTRICT OF COLUMBIA

Democrat	214,283 - 79%
Republican	25,194 - 9%
Statehood	2,054
Independent	33,695 - 12%
Other Parties	174

TOTAL	275,400

Party primaries:

In the District of Columbia primary, the Democratic, Republican, and Statehood parties each have a separate ballot. A voter must be a member of the party for which he requests a ballot. If not, he must change his affiliation at least 30 days prior to the election.

FLORIDA

Democrat	3,037,978 - 53%
Republican	2,312,735 - 40%
Other	400,441 - 7%
TOTAL	5,751,154

Party primaries:

A voter must be a member of the party for which he requests a ballot. If not, he must change his affiliation at least 30 days prior to the election. If a run-off election should occur, the voter may not cross parties. Voters affiliated with political parties other than Democrat and Republican may only vote in the general election.

GEORGIA

as of: 11/88

TOTAL	2,941,339

Party primaries:

No record of party is kept by the Georgia Elections Division. A citizen need only be registered to participate in either primary.

KENTUCKY

Democrat	1,233,230 - 68%
Republican	538,859 - 30%
No Preference	41,151 - 2%
Other	13,259
TOTAL	1,826,499

Party primaries:

A voter in Kentucky must be a member of either the Republican or Democratic party in order to vote in the primary election. If he is not he may only vote in the general election. If he should wish to change his political affiliation after the general election, it will not become effective until after the following primary election; until then his status will be listed as non-partisan. However, if a voter chooses to change his affiliation between the dates of the primary and general elections, his party status will become effective by the date of the general election.

ILLINOIS

TOTAL 6,014,961

Party primaries:

No record of party is kept by the Illinois Board of Elections. However, voters must declare a party to vote in a primary election.

INDIANA

as of: 1/90

TOTAL 2,839,561

Party primaries:

No record of party is kept by the Indiana State Election Board. Voters participate in primaries by requesting a ballot for either primary at the polls.

IOWA

as of: 5/1/90

Democrat	549,176	- 37%
Republican	477,375	- 32%
No Party	475,861	- 32%

TOTAL 1,502,412

Party primaries:

A registered voter may vote in any primary. However, if he is not already a member of the party in whose primary he wishes to vote, he must declare at the polls.

MASSACHUSETTS

as of: 2/90

Democrat	1,390,785	44.22%
Republican	424,800	13.50%
Unenrolled	1,328,863	42.26%

TOTAL (as of 10/89) 3,268,017

Party primaries:

Voters may chose to vote in either primary regardless of their party affiliation.

MISSISSIPPI

as of: 5/88

TOTAL 1,595,826**Party primaries:**

No record of party is kept by the State of Mississippi Elections Division. In the first of the two Mississippi primaries a voter requests either a Republican or Democratic ballot. In the second primary the voter must vote the same way; he cannot cross parties.

NEVADA

Democrat	202,343 - 46%
Republican	192,155 - 43%
Non-Partisan	48,941 - 11%

TOTAL 443,439**Party primaries:**

Only Democrats may vote in the Democratic primary, only Republicans may vote in the republican primary. Non-Partisans may not vote unless they change their affiliation at least 30 days prior to the primary.

NEW HAMPSHIRE

as of: 5/24/90

Democrat	197,409 - 30%
Republican	252,720 - 39%
Undeclared	199,651 - 31%

TOTAL 649,780**Party primaries:**

On the day of the primary, a voter, regardless of party declaration, may request a ballot for either primary. The voter then automatically becomes a member of that party in whose primary he participated.

NEW JERSEY

Democrat	1,199,098 - 32½
Republican	787,822 - 21½
Unaffiliated	1,727,107 - 46½
Independent	4,571

TOTAL 3,718,598

Party primaries:

Unaffiliated and independents cannot vote in party primaries.

NEW YORK

Democrat	3,904,183 - 47½
Republican	2,640,179 - 32½
Right-to-Life	23,973 - 1½
Conservative	113,756 - 2½
Liberal	61,101 - 1½
Non-in-Roll	1,502,641 - 18½

TOTAL 8,255,833

Party primaries:

If a candidate is running for an office unopposed, no primary for that office is held. If a party nominates no candidates for a specific office voters registered under that party will not participate in the primary for that office. If a voter wishes to change his affiliation, he must have done so prior to the previous general election.

OHIO

Democrat	1,802,977 - 31½
Republican	1,165,141 - 20½
Independent	2,814,895 - 49½

TOTAL 5,783,079

Party Primaries:

A voter must declare a party (either Democrat or Republican) at the polls on election day. Independents who don't declare a party may not vote.

RHODE ISLAND

as of: 11/7/89

TOTAL:

536,406

Party primaries:

No official record of party is kept by the Rhode Island Division of Elections. However, while a voter may vote in either primary, whichever primary he participates in will act as a declaration of party. His party affiliation is then handwritten on the original voter registration form/card. If the voter wishes to vote in a party primary different from his affiliation, he must disaffiliate at least 90 days before that primary is held.

SOUTH CAROLINA

as of: 4/4/90

TOTAL

1,290,869

Party primaries:

No record of party is kept by the South Carolina State Election Commission. A citizen need only be registered to participate in either primary.

TENNESSEE

as of: 12/89

TOTAL

2,521,996

Party primaries:

No record of party is kept by the Tennessee Elections Division. A citizen need only be registered to participate in either primary.

TEXAS

as of: 3/15/90

TOTAL

8,285,308

Party primaries:

No record of party is kept by the Texas Elections Division. On the day of the primary election a registered voter votes at either a Democratic poll or a Republican poll. These polls are either located together or at separate sites. Each party controls its own primary. In the event of a run-off election, voters may not cross parties when they vote in the second election.

OFFICE OF THE GOVERNOR

DIVISION OF ELEC
P.O. BOX 46
JUNEAU, ALASKA
PHONE (907) 465-4

MEMORANDUM

To: Representative Eugene Kubina, Chair
House State Affairs Committee
Alaska State Legislature

From: Elisabeth A. Ziegler, Deputy Director
Division of Elections
Office of the Governor

Date: November 12, 1991

Subject: Effect of Primary Rule Changes on Elections

The Division of Elections has reviewed the changes made by the House State Affairs Committee to HB 327, Relating to primary elections. We are very pleased with the result and thank the committee for its response to the Division's prior testimony.

Since the committee last met in late September, the Division has asked the political parties to submit their party rule changes to the Department of Justice (DOJ) for preclearance. The DOJ preclearance process takes at least 60 days. Today the Division will be sending certified letters to the Democratic Party of Alaska and Green Party of Alaska requesting that they get their preclearance submission in by December 15, 1991. This will ensure that the state has the right to implement the rule changes. The Alaska Independence Party will also be sent a letter requesting that it indicate if their members will make any rule changes.

As the Division has continued to analyze the ramifications of changing elections operations to implement the party rule changes, we have found that some of our statutory requirements cannot be met without the ability to begin implementation of the rule changes as soon as possible. For example, under AS 15.20.081(b) and 6 AAC 25.650(b)(1) regarding absentee voting by mail and permanent absentee voters, the Division is required to send out its absentee ballot applications to absentee voters and allow the voter to request all ballots that are available during one calendar year. As you are aware, the Division conducts REAA and CRSA, municipal incorporation and local liquor option elections year round. The Division has met these requirements by sending out an absentee application in January for all elections. An absentee voter can direct the division to send him or her all ballots that the voter may vote on that year. With the primary changes, the Division would be required to inform the voter that a certain type of primary ballot is available to the voter because of his or her

Post-it brand fax transmitted memo 7/91	2
From: E. Ziegler	
To: ELECTIONS	
Re: ANNIE	
Re: RED KUBINA	
File # 456-3346	465-3203

party affiliation and ask the voter to make a ballot choice. We will not be able to give the voter this information on the application in January because two parties that have changed their rules and have not had them precleared in time for this deadline. Additionally, there is no legislation in place to allow the division to make needed regulatory changes in time.

As 15.20.207 requires the Division to train election workers in all precincts in even numbered years. The Division begins this training in early spring. The election workers have to know the rules of the election to effectively do their job and to alleviate chaos at the polls. When the Division was sued in 1990 by the Republican Party of Alaska over the implementation of its party rule changes, the Division staff testified that it was crucial that the election workers know the new primary rules during the election training session.

The four regional election supervisors are responsible for conducting the training. It is not prudent to have the supervisors out of their offices any later than June because of the need to manage the tasks necessary to conduct the primary in their regions. This management deadline cannot be changed especially in light of the additional duty to redraw precinct lines and educate voters as to their new districts and precincts due to reapportionment.

Because the Division must uphold the integrity of the election process and ensure that all types of voters be treated equally, the Division proposes that it promulgate regulations under its general authority granted by AS 15.15.010.

These regulations would adopt the procedures outlined HB 327, including one ballot per voter and the ability to change party affiliation at the polls, and would include the following addition:

Absentee voter applications would be sent to voters to coincide with parties precleared rule changes.

The Division has been advised by the Attorney General's Office that regulations can be implemented because the U.S. Supreme Court in Tashjian v. Republican Party of Connecticut, 479 U.S. 208 (1986) gives the parties the right to choose who can vote in their primaries. Once a political party decides to pass a rule which implements its associational rights, statutes to the contrary are void.

The Division requests that it work in tandem with both the House and Senate State Affairs Committees. Even though the Division will adopt procedural regulations necessary to effectively manage the primary election, statutory changes are still required to conform to the constitutional requirements imposed by the federal courts.

The Division will send these draft procedural regulations to both the House and Senate State Affairs Committees for review.

NEWS RELEASE

STATE OF ALASKA

OFFICE OF THE LIEUTENANT GOVERNOR
P.O. BOX 110013
JUNEAU, ALASKA 99811-0013

JORN B. "JACK" COGHILL
LIEUTENANT GOVERNOR



FOR INFORMATION CONTACT:

BRENDA WILCOX
MEDIA RELATIONS

(907) 465-3520
FAX (907) 465-5364

LTG: 92-014

COGHILL RELEASE STATEMENT REGARDING OPEN PRIMARIES

--JUNEAU

Lieutenant Governor Coghill made the following statement regarding the state's 1992 primary election today. "After receiving the requested Attorney General's opinion regarding the U.S. Supreme Court's decision on the Tashjian case, the Division of Elections will uphold the current blanket primary law except where party rules require separate treatment.

The Division of Elections, the Department of Law, and affected parties will be promulgating regulations to meet the participation requirement of the individual parties. Those parties not wishing to close their nominating process will be administered under the existing blanket primary law."

STATE OF ALASKA

OFFICE OF THE GOVERNOR

DIVISION OF ELECTIONS
P.O. BOX AF
JUNEAU, ALASKA 99811-0105
PHONE (907) 465-4611

MEMORANDUM

Date: 2/18/92

To: Representative Gene Kubina
Chairman, House State Affairs Committee

From: Charlot E. Thickstun *CT*
Director, Division of Elections

Enclosed is a revised fiscal note for \$95.0 thousand, that replaces the incorrect fiscal note for CS HB327 for \$633.5 thousand, Relating to Primary Elections in the House State Affairs Committee.

I apologize for any inconvenience the incorrect fiscal note has caused the members of the committee. Since our budget request was approved by the Office of the Governor in November of 1991, the fiscal note should have reflected only the additional costs incurred as a result of the changes made since November at a total of \$95.0. The enclosed fiscal note reflects the breakdown of the additional costs.

Should CS HB327 pass, the Division of Elections plans to add this amount to our budget request for the Fiscal Years 1994, and thereafter. This enclosed fiscal note's request is for the current fiscal year '92, as, contingent upon the bill's passage, the funding will be utilized before July 1, 1992.

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSIONBILL NO. CS HB 327
Amended Fiscal NoteRevision Date: 02/18/92
Title: Relating to Primary Elections
Sponsor: House State Affairs
Requestor: House State AffairsDepartment Affected: Office of the Governor-Elections
BRU: Primary and General
Component: Primary and General

COMPONENT SERIAL NO.

0	0	2	2

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	95.0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	95.0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0

REVENUE FUND SOURCE:	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	95.0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE:	0	0	0	0	0	0
TOTAL	95.0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: 95.0ANALYSIS: (Attach a separate page if necessary.)
See attached.Prepared by: Norma Jean Johnson, Administrative Officer
Division: ElectionsPhone: 465-4611
Date: 02/18/92Approved by Commissioner: [Signature]
Agency: Office of the GovernorDate: 02/18/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. CS HB 327

ANALYSIS: (continued)

Contractual Services:

73100	Professional Services DGA Contract	15.0
73500	Advertising, Printing, and Binding Statewide Advertising of Primary and Precinct Changes	20.0
	Ballot Printing for Semi-Closed Primary Party Ballots	60.0
	Total Contractual	<u>95.0</u>

Total Additional Costs of Implementing Primary Changes 95.0 Thousand

The difference between this revised fiscal note dated 02/18/92 for \$95.0 thousand, and the original fiscal note which was attached to HB 327 after the bill's submission 09/20/91 in the amount of \$437.7 thousand is as follows:

The \$437.7 thousand reflected the cost of 3 ballots in the primary. The Division included the known ballot cost scenario in its FY '93 Budget Increment request.

The \$95.0 are additional costs associated with all possible ballot scenarios that were yet unknown at the time that the Division prepared its FY '93 Budget.

MEMORANDUM

State of Alaska

Department of Law

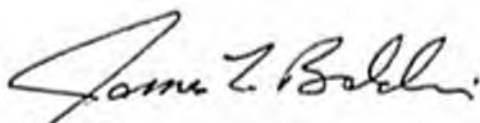
TO: Elizabeth A. Ziegler
Deputy Director
Division of Elections
Office of the Governor

DATE: December 3, 1991

FILE NO: 663-92-0209

TEL. NO: 465-3600

SUBJECT: Implementation of
closed primary
procedures



FROM: James L. Baldwin
Assistant Attorney General
Governmental Affairs-Juneau

DEC 11 1991

OFF OF ELECTIONS

You requested our advice concerning a number of issues that are related to proposals by the major political parties in the state to close their primaries to members of competing political parties. Because you need this memorandum to help prepare for a meeting of the House State Affairs Committee to be held on November 13, 1991, we limit our opinion to your question concerning the power of the director of the division of elections to implement a closed primary by administrative regulation. It is your intent to administer a primary election that is consistent with the right of free association accorded to political parties even if provisions of state law applicable to the administration of primary elections permit a voter to cast a ballot that sets out candidates without regard to party affiliation.

You propose to establish new primary election procedures at the earliest possible date. You would like to implement new primary procedures early in the 1992 general election year. However, your timetable may be too aggressive to assure that the new procedures are properly supported by statute and regulation. The legislature would be unable to convene, consider, and enact amendments to the election code if there is not sufficient authority to accomplish your goals.

Your concern is whether the director may proceed in the absence of amendments to the election code to change primary election procedures and prescribe the form of the ballot so that the political parties control who may nominate candidates. We believe that it is prudent for the division to expeditiously pursue a resolution of the closed primary question both legislatively and by administrative means. Unlike the previous administration, you wish to acquiesce in the desire of a political party to nominate candidates using a primary ballot that may be voted only by persons admitted by the party. While we believe that there remains some question as to the proper interpretation of the rules of the Republican Party of Alaska, you can clarify this interpretation through the adoption of administrative regulations. However, before this can be done, it must be determined whether the division

has sufficient authority to adopt regulations that establish a closed primary election.

Existing law requires the division to prepare the primary ballot in a certain manner. The election code provides:

The primary election ballot shall be prepared and distributed by the director in the manner prescribed for general election ballots except as specifically provided otherwise for the primary election. The director shall place the names of all candidates who have properly filed in groups according to offices filed for, without regard to party affiliation.

AS 15.25.060 (emphasis added). The foregoing provision appears to preclude the use of separate ballots that are limited solely to the candidates of a single political party. It must be remembered that this provision was added to the election code to end the practice of presenting a ballot that required voters to vote only for the candidates of one political party. Elsewhere, the election code grants the director of the division elections the power to

prepare all official ballots to facilitate fairness, simplicity, and clarity in the voting procedure, to reflect most accurately the intent of the voter, and to expedite the administration of elections.

AS 15.15.030. The code also grants the director the power to "determine the size of the ballot, the type of print, necessary additional instruction notes to voters, and other similar matters of form not provided by law." AS 15.15.030(1).

The provisions of the election code that are specific to the form of the primary election ballot are probably void when the members of a political party desire to restrict those who may associate with them for the purpose of nominating candidates for public office. The United States Supreme Court reaffirmed the First Amendment rights of political parties to be free from statutes that restrict their power to associate with whomever they wish when nominating candidates. Tashjian v. Republican Party of Connecticut, 479 U.S. 208 (1986).

There appears to be no overriding state interest that can be articulated to perpetuate an open primary system when recognized political parties adopt conflicting rules. However, it is unclear how the Tashjian decision will be applied to the type of open "blanket" primary required by existing state law. It is possible, though not probable, that a court would find that an open "blanket"

primary does not burden associational rights. Until there is a federal case on point, this eventuality cannot be ruled out. It is also possible that AS 15.25.060 can be construed to apply only when political parties have not exercised their constitutional rights to limit access to the nominating process. One thing remains certain; it would be advisable to amend AS 15.25.060 to allow for the implementation of associational rules of political parties that do not infringe upon legitimate state interests in the administration of elections.

Even though Tashian places heavy emphasis on the associational rights of political parties, we believe there may be an overriding state interest in having the parties act promptly and with clarity in the way they define who may associate with them. The U.S. Supreme Court has acknowledged that "it is clear that preservation of the integrity of the electoral process is a legitimate and valid state goal." Rosario v. Rockefeller, 410 U.S. 752, 761 (1973); see also, American Party of Texas v. White, 415 U.S. 767, 779 (1973). State law may interfere with a political party's internal affairs when necessary to ensure that elections are fair and honest. Storer v. Brown, 415 U.S. 724, 730 (1973).

We reviewed a draft committee substitute currently under consideration by the House State Affairs Committee. This bill would require political parties to adopt and deliver any party rules that would materially affect the nominating process by March 1 of the primary election year. The purpose of imposing a deadline for action is to permit preclearance of the change in voting requirements by the U.S. Justice Department, allow for voter education, and give adequate time to the division of elections to implement the changes. While these interests appear to be compelling, it is possible that a minor, recognized political party could contest the validity of the March 1 date. There is precedent for the proposition that early deadlines for the declaration of candidacy improperly restrict free speech and associational rights of nonparty candidates. Sigler v. State, 3AN-88-8695 (Alaska Super. Mem. of Decision, Sept. 12, 1988). The harm encountered in Sigler was that the early declaration date improperly distanced nonparty candidates from the time of spirited public debate and the resultant attention of voters. Perhaps a minor recognized party could argue that it should be allowed to adopt rules which permit it to nominate candidates by convention held at or near the filing deadline for candidates for reasons similar to those advanced by Sigler. We believe that the concept of a deadline is supportable as a reasonable burden calculated to promote the electoral process. However, the division must fully document reasons for the cut-off date. The documentation will be essential in upholding the state's burden of proving that there is basis for the restriction.

Based on the foregoing, we conclude that existing provisions of the election code specifying the content of the primary election ballot are not operative when a political party opts to close its primary. In the absence of a specific statute, sufficient authority exists for the director to administratively implement new procedures for a closed primary. The basic standard applicable to the power of an administrative agency to adopt regulations is set out in the Administrative Procedure Act (APA). The APA provides:

If, by express or implied terms of a statute, a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, a regulation adopted is not valid or effective unless consistent with the statute and reasonably necessary to carry out the purpose of the statute.

AS 44.62.030. The director is given broad legislative power to adopt administrative regulations. She may "adopt regulations under the Administrative Procedure Act (AS 44.62) necessary for the administration of elections." AS 15.15.010. Given our determination that Tashjian makes AS 15.25.060 inoperative under certain conditions, it appears that AS 15.15.010 grants sufficient authority to implement a closed primary by administrative regulation. See, e.g., Denardo v. State, 741 P.2d 1197 (Alaska 1987) (regulation requiring independent gubernatorial candidates to submit nominating petitions signed by one percent of qualified voters held to be valid when adopted after court found statutory requirement void).

We would be remiss in our duties if we did not point out that contrary legal arguments could be made. It could be argued that the existence of AS 15.25.060 makes it plain the legislature did not intend to commit the formulation of the primary ballot to agency discretion. Support for this argument can be found in AS 15.15.030(1), which allows the director to determine matters of ballot form "not provided by law." The intent to commit to agency discretion is a necessary element for determining whether a regulation is valid. Kelly v. Zamarello, 486 P.2d 906, 909 (Alaska 1971). We believe that a court would defer to the broad grant of legislative rule-making power conferred by AS 15.15.010, especially if the legislature fails to amend the election code after given a reasonable opportunity to do so. However, the fact that the regulations could be questioned justifies the effort to have the legislature take action to amend the election code.

Elizabeth A. Ziegler
Our File #: 663-92-0209

December 3, 1991
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We hope this memorandum will assist you in presenting
your comments to the House State Affairs Committee.

JLB:ck

MEMORANDUM

State of Alaska

Department of Law

TO: Hon. John B. "Jack" Coghill
Lieutenant Governor

DATE: February 28, 1992

FILE NO: 663-92-0407

TEL NO: 465-3600

SUBJECT: Whether the Tashjian case
requires implementation of
the Republican Party rules

FROM: Charles E. Cole
Attorney General

241 C.L.L.

You have asked whether the state must modify its primary election to implement rules adopted by the Alaska Republican Party. These rules conflict with state election law by limiting the voters who can participate in the selection of Republican nominees at the primary election. We believe that, in light of recent decisions of the United States Supreme Court, the First and Fourteenth Amendments to the United States Constitution require implementation of these rules.

I. State law and Republican Party rules

Alaska has a "blanket" primary, in which all voters select the nominees of all parties. 1/ Under AS 15.25.010 -- 15.25.130, all candidates of all political parties run on one ballot, and any registered voters, regardless of party affiliation, can vote for any candidate. The only restriction is that voters may cast only one vote for each office on the ballot. The party candidate receiving the most votes is placed on the general election ballot as the party's nominee for that office.

In 1990, the Republican Party of Alaska adopted a rule providing that

[o]nly registered Republicans, registered Independents [sic], and those who state no preference of party affiliation shall be allowed to vote in the Republican primary election for Governor, Lieutenant Governor, U.S. Senator, U.S.

1/ In a blanket primary, all voters receive the same ballot, and may vote for one candidate for each office, regardless of party. In an open primary, a voter may vote for candidates of only one party, but may choose which party regardless of affiliation. In a closed party, only voters affiliated with one party may participate in that party's primary. See Note, Primary Elections and the Collective Right of Freedom of Association, 94 Yale L.J. 116, 117 n.2 (1984).

Hon. John B. "Jack" Coghill
Lieutenant Governor
Our file #663-92-0407

February 28, 1992

Page 2

Representative, and members of the State
Legislature. 2/

After the 1990 general election, the party adopted several related rules, and submitted all of its rules to the United States Department of Justice for preclearance, as required by the federal Voting Rights Act, 42 U.S.C. § 1973c. The Department of Justice approved them, and the party submitted the rules to you in May 1991.

These rules are obviously incompatible with the state blanket primary law. That incompatibility has given rise to your opinion request.

II. Tashjian and Democratic Party v. Wisconsin

In Tashjian v. Republican Party of Connecticut, 479 U.S. 208 (1986), the Supreme Court recognized that the associational rights of political parties, as protected by the first amendment, can take priority over state election laws. In Tashjian, the Republican Party of Connecticut had adopted a party rule allowing nonaffiliated voters to vote in the party's primary. This rule conflicted with Connecticut statutes, which provided for a closed primary. Thus, those statutes limited the "group of voters whom the Party may invite to participate in the 'basic function' of selecting the Party's candidates." 479 U.S. at 215-16 (citation omitted). The Court did not find the limitation justified by any compelling state interests. Accordingly, the Court held that the limitation constituted an unconstitutional burden on the Party's associational rights protected by the First and Fourteenth Amendments to the U.S. Constitution.

The Court rejected Connecticut's proffered justification that implementation of the rule would possibly result in greater administrative costs for purchase of voting machines, training of officials, and potentially for printing of additional ballot materials. Id. at 218. It further found that "[t]he State's legitimate interests in preventing voter confusion and providing

2/ Because of the shortness of time between the party's adoption of the rule and the 1990 primary election, the state declined to implement the rule for that election. The state successfully defended a federal court lawsuit initiated by the party. Doyle v. State, No. A90-248 Civil. The district court denied the party's motion for a preliminary injunction, requiring the state to give effect to the party's rules. The case was subsequently dismissed by the party.

February 28, 1992

Page 3

for educated and responsible voter decisions in no respect 'make it necessary to burden the [Party's] rights.'" Id. at 221-22.

The Party rules in question here are different from those in Tashjian, in that the Alaska Republican Party seeks to narrow the field of voters who may participate in choosing Republican nominees. However, Democratic Party v. Wisconsin, 450 U.S. 107 (1981) (one of the major underpinnings of Tashjian), did address a situation involving a party rule that was more restrictive than the state statute. Wisconsin concerned that state's presidential primary election. While Wisconsin law let the parties choose the method of selecting delegates to the national conventions of the national parties, it required that those delegates vote according to the outcome of the state's open presidential primary. This law conflicted with the National Democratic Party's rule that, "restricted participation in the delegate selection process in primaries or caucuses to 'Democratic voters only who publicly declare their party preference and have that preference publicly recorded.'" 450 U.S. at 118. Because of this conflict, the national party announced its intent not to seat the Wisconsin delegates. The state therefore brought suit in state court, seeking a declaratory judgment that the state law was constitutional and that the national party had to seat those delegates. See Democratic Party v. Wisconsin, 287 N.W.2d 512 (Wis. 1980) (upholding the state law).

The United States Supreme Court invalidated the provision of the state law that infringed on the party's nominating procedure. It held that the "First Amendment freedom to gather in association for the purpose of advancing shared beliefs is protected by the Fourteenth Amendment from infringement by any State," and that freedom of political association "necessarily presupposes the freedom to identify the people who constitute the association, and to limit the association to those people only." 450 U.S. at 121-22 (citations omitted).

III. Discussion

We believe, in light of Tashjian and Wisconsin, a court would hold that the Republican Party's rule limiting participation in the selection of the party's candidates must be implemented, notwithstanding its conflict with Alaska's blanket primary statutes. 1/ Indeed, Alaska's law impacts the Alaska

1/ We have found no authority on point on this question. This lack of authority is not surprising, since only Alaska and Washington have blanket primaries. See generally Noe, North (continued...)

Hon. John B. "Jack" Coghill
Lieutenant Governor
Our file #663-92-0407

February 28, 1992

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Republican Party's associational interests to a far greater degree than did the Connecticut statutes at issue in Tashjian. 4/ Moreover, when Tashjian is read in conjunction with Wisconsin, where an open primary was at issue, the necessity to implement the Republican rule becomes even clearer. 5/

Moreover, in Tashjian the majority expressed concern that wide-open party rules might infringe on the rights of other parties: "Under such circumstances, the effect of one party's broadening of participation would threaten other parties with the disorganization effects which the statutes [upheld in other cases] were designed to prevent." 479 U.S. at 224 n.13. Alaska's blanket primary laws do precisely what the Court said that a party might not be able to do constitutionally.

As part of the debate surrounding this issue, it has been suggested that the modification of the blanket primary may infringe on a voter's constitutional right to vote. Voters not affiliated with a party, however, do not have constitutional rights to participate in that party's primary election if either state law or party rules provide for a closed primary. Nader v. Schaffer, 417

3/ (...continued)

Carolina General Assembly Amends Election Laws to Allow Unaffiliated Voters to Vote in Party Primaries, 66 N.C. L. Rev. 1208 (1988) ("there is a strong argument that both the open and blanket primary are unconstitutional").

4/ The dissent in Tashjian did not agree that Connecticut's law was unconstitutional. However, it observed that "[t]he ability of the members of the Republican Party to select their own candidate . . . unquestionably implicates an associational freedom." 479 U.S. at 235-36 (Scalia, J., dissenting). This indicates to us that even the dissenters would not uphold Alaska's blanket primary law against a Republican Party challenge.

5/ We believe that both blanket primaries and open primaries impact a party's freedom of association claim. In both, members of one party may take part in the selection of another party's candidates.

Hon. John B. "Jack" Coghill
Lieutenant Governor
Our file #663-92-0407

February 28, 1992

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F. Supp. 837 (D. Conn), aff'd mem., 429 U.S. 989 (1976); Ferency v. Secretary of State, 476 N.W.2d 417 (Mich. App. 1991). 6/

It has also been suggested that Tashjian would not apply in Alaska because our law, unlike Connecticut's, does not require registration by party. We do not believe that a court would find this argument convincing. First, nothing in Tashjian suggests that Connecticut's statutory registration requirement was essential to the Court's decision. Second, although Alaska law does not require, or even specifically authorize, voter registration by party, there has been a long-standing practice of allowing such registration; indeed, since at least 1968, the registration forms have provided a place to indicate party registration. Third, Alaska law does implicitly authorize party registration: AS 15.25.030(a)(16), enacted in 1980, requires that a "member of a political party" seeking to become a candidate of that party in the primary attest "that the candidate is registered to vote as a member of the political party whose nomination is being sought."

Nor is Tashjian inapplicable because Alaska law, unlike Connecticut's, does not regulate political parties. Although Alaska law does not regulate the parties, it recognizes them as viable entities and confers rights on them. See, e.g., AS 15.25.056 (authorizing party central committee or party district committee to replace unopposed incumbent candidate for renomination if candidate dies or is disqualified or incapacitated); AS 15.25.110 (authorizing same committees to certify party nominee on general election ballot as incapacitated); AS 15.25.130 (authorizing party, through same committees or as otherwise provided in party bylaws, to replace party nominees on general election ballot who have died, withdrawn, resigned, or become disqualified or incapacitated).

We wish to comment on one other aspect of the Republican Party rules. In our opinion the state does not have to enforce Article XIV, section 3, of those rules, "A Rule to Maximize Voter

6/ Both Nader and Ferency involved primaries that were closed by state law, rather than by party rule. Tashjian makes it clear that this difference is without constitutional significance. The Court specifically states that "the nonmember's desire to participate in the party's affairs is overborne by the countervailing and legitimate right of the party to determine its own membership qualifications." 479 U.S. at 215 n.6. Significantly, the Court was distinguishing Nader and Roario v. Rockefeller, 410 U.S. 752 (1973), where the restrictions on nonmembers were the product of state law, rather than party choices.

Hon. John B. "Jack" Coghill
Lieutenant Governor
Our file #663-92-0407

February 28, 1992

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Participation in Primary Elections" (allowing Republicans and independents to participate in the Republican primary even if they have also voted in the blanket primary and/or some other party's primary).

The party apparently believes that it can validly extend its association to voters who meet the requirements of the 1990 rule regardless of whether those voters also participated in the selection of other party candidates. However, several U.S. Supreme Court decisions hold that the Party's federal constitutional interest in associating with those voters is outweighed by the compelling interest of the state in "confining each voter to a single nominating act." Storer v. Brown, 415 U.S. 724, 743 (1974); see also American Party of Texas v. White, 415 U.S. 767, 785 (1974), ("Electors may vote in only one party primary"). Given the well-established nature of the "one nominating act only" principle, and the absence, to our knowledge, of any jurisdiction allowing a voter to participate in multiple primaries, we feel quite confident that the Alaska Supreme Court would reach the same conclusion as a matter of Alaska constitutional law.

If we may be of further assistance, please let us know.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 24, 1992

Senator Rick Halford
Chairman, Senate Judiciary Committee
State Capitol, Room 103
Juneau, Alaska 99811

Re: Composition of ballot under the
party rules

Dear Senator Halford:

You have asked how the primary election ballot should be prepared if a) the Democratic and Republican party primary participation rules currently in effect are both still in effect on May 1, or b) if the Republican rule is still in effect, but not the Democratic rule.¹ A clear answer to this question cannot be given because of the ambiguous wording of the party rules, the lack of implementing statutes or regulations, and the prospect for litigation. However, in our opinion, if both rules remain in effect, it would be reasonable to implement the primary with the following three ballots:

- a Republican ballot containing the candidates of all four parties; only Republicans and independents (whether registered as independents or providing no designation at all) may cast this ballot;
- a Democratic ballot containing the Democratic, Alaska Independence, and Green candidates; any registered voter may cast this ballot;
- a third ballot (the "statutory primary" ballot) containing Alaska Independence and Green candidates; any registered voter could cast this ballot.

If the Democrats withdraw their rule, there should be two ballots -- the Republican ballot described above, and the statutory primary ballot, which would now also contain Democratic candidates. Regardless of the number of ballots, no one may vote more than one ballot.

¹ Both parties' rules have been precleared by the U.S. Department of Justice, as required by Section 5 of the federal Voting Rights Act of 1965, as amended. 42 U.S.C. § 1973c.

WALTER J. HICKEL, GOVERNOR

PLEASE REPLY TO:

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Both the Republican and Democratic party rules are poorly drafted and ambiguous, and could be given a different interpretation.¹ However, our interpretation involves the least possible departure from the primary election statutes (AS 15.25.010 - 15.25.130).

Adherence to the Republican and Democratic party rules, even when inconsistent with the state blanket primary laws, is required by the decision of the United States Supreme Court in Tashjian v. Republican Party of Connecticut, 479 U.S. 208 (1986). See 1992 Inf. Op. Att'y Gen. (Feb 28.; 663-92-0407). However, Tashjian requires departure from state statutes only to the extent necessary to protect a party's associational rights under the First and Fourteenth Amendments to the United States constitution. Since all state officials are bound to uphold the laws of the state, it follows that ambiguities in party rules should be interpreted so as to be consistent with state statutes, rather than inconsistent.

The state's primary election laws, AS 15.25.010 -- 15.25.130, contemplate maximum participation by the electorate in a primary election: any qualified voter, regardless of party registration (or non-partisan status), can vote for any candidate of any party. Both parties' rules would require some modification of this principle. However, the modification should be minimized and harmonized with existing law. This means allowing voters the broadest choices possible consistent with party rules.

In the case of the Republican ballot, this reasoning requires that candidates of all parties appear on the Republican ballot. The Republican rule provides that voters registered as members of other parties may not vote for Republican candidates in the primary. The rule does not provide that persons wishing to vote in the Republican primary are restricted to voting only for Republican candidates. In Doyle v. State, A90-248 Civ. (D. Alaska), a lawsuit by the Republican Party of Alaska seeking to

¹ Lieutenant Governor Coghill, who by statute appoints and supervises the director of the Division of Elections, interprets the rules differently. In a recent letter to Republican Party chair Connie Zawacki, he stated that there would be three separate ballots, one with only Republican candidates, one with only Democratic candidates, and one (the statutory primary ballot) with Alaska Independence and Green candidates. As our letter to you indicates, we do not agree with the lieutenant governor's construction of the party rules. We believe his interpretation may depart from the election code to a greater degree than is necessary to satisfy the associational rights of the political parties without ceding to them control over state election procedures.

have its rule instituted for the 1990 primary election, we argued that the rule should be implemented in the manner just discussed. Because U.S. District Judge Russell Holland dismissed the suit on procedural grounds, he did not reach the issue of whether the state's proposed implementation was correct.

The Democratic rule is even more vague than the Republican rule; it states only that there will be a Democratic primary. Nothing in this rule can be remotely read as restricting the Democratic ballot to candidates seeking the nomination of the Democratic Party.

With respect to the Democratic rules, the party chair, Rhonda Roberts, stated that the rules were adopted only to protect the party against the Republican party's expressed desire, in its rules, that qualified voters be able to vote both the Republican ballot and the ballot of any other party allowing Republicans and independents to vote. According to Ms. Roberts, if the Division of Elections will not allow a voter to cast more than one ballot in the primary election,¹ a separate Democratic ballot would be unnecessary; i.e., the Democrats would simply want to appear on the statutory primary ballot. However, the Democratic rule does state unequivocally, "There is established a Democratic Party primary in Alaska." In our opinion there must therefore be a separate Democratic ballot, even if it contains all candidates (except Republicans) and is open to all voters. If the Democratic Party wishes to have its candidates appear solely on the statutory primary ballot, it must rescind its rule.

In the absence of judicial intervention, the Division of Elections is the agency responsible by law for preparing the primary ballot. As discussed above, in note 2, the lieutenant governor has given notice of a different interpretation of the party rules than we have set out here. We will discuss the

¹ Two Alaska statutes prohibit a voter from voting for more than one candidate when only one person can be elected. AS 15.15.360(a)(4) and 15.20.730(b)(5) (both made applicable to primary elections through AS 15.25.090). Two other statutes prohibit voters from voting more than once in an election. AS 15.15.210 (person whose right to vote is questioned must state in affidavit that person has not voted at same election); AS 15.15.410 (upon determining that person has voted more than once in same election, director of Division of Elections shall notify attorney general). Finally, the United States Supreme Court has stated that a state has a compelling interest in limiting a person to a single nominating act. Anderson v. Celebrezze, 460 U.S. 780, 802 n.29 (1983); American Party of Texas v. White, 415 U.S. 767, 785 (1973).

Senator Rick Halford
Chairman, Senate Judiciary Committee

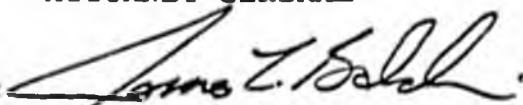
April 24, 1992
Page 4

contents of the opinion with him and work toward a uniform application of the party rules to the procedures for primary elections set out in the election code.

Please feel free to contact us if we can be of further assistance.

Very truly yours,

CHARLES E. COLE
ATTORNEY GENERAL

By: 
James L. Baldwin
Assistant Attorney General

cc: Lt. Gov. Coghill
Charlot Thickstun, Director, Division of Elections
Joe Vogler, Alaskan Independence Party
Rhonda Roberts, Democratic Party of Alaska
Ronnie Rosenberg, Green Party of Alaska
Connie Zawacki, Republican Party of Alaska

JLB:lmk

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Marylin Palma
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May 28, 1990

David Koivuniemi
Director of Division of Elections
State of Alaska
P.O. Box AF
Juneau, Alaska 99811-0105

Via FAX 465-3203

Re: Republican Party of Alaska Primary Election

Dear Dave:

This letter is a follow up to our conference of May 24, 1990, regarding the upcoming primary election. As you know, on March 31, 1990, at its State Convention in Juneau, the Republican Party of Alaska adopted the following rule:

Article XIV Primary Elections

Only registered Republicans, registered independents, and those who state no preference of party affiliation shall be allowed to vote in the Republican primary election for Governor, Lieutenant Governor, U.S. Senator, U.S. Representative, and members of the State Legislature.

This is a classic "open" primary rule. At the time that Tashjian v. Republican Party of Connecticut, 93 L.Ed.2d 514 (1986) was decided by the United States Supreme Court, 21 states held classic "closed" primaries in which the voter had to be registered as a member of the particular party for some specified period of time prior to that party's primary in order to be eligible to vote. The majority of the remaining states (16) required party registration, but allowed voters to change party affiliation at the time of the vote. Only 4 states, including Alaska, allowed all voters, regardless of party affiliation, to participate in the primary. The rule adopted by the Republican Party of Alaska follows the classic "open" primary adopted in the remaining 9 states.

The Republican Party of Alaska rule defines those persons who may vote in its primary. Those persons who may vote are those registered under the Alaska voter registration system as Republican, Non-Partisan or Undeclared. Those who may not vote are those registered as Democrat, Alaska Independence Party, or any other political party (Other).

Exhibit E

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You raised the question of whether the Republican Party of Alaska intended by its use of the word "independents" to mean the Alaska Independence Party members. It does not. It is clear from the convention floor discussion and from the use of the word "independents" that the convention delegates used the word in its generic sense of non-partisan.

The rule governs only the voters who may participate in the election. The Republican Party of Alaska will work with the Division of Elections in order to implement this change in the primary election immediately. To a great extent, the mechanics of the primary election are under the control of the Division of Elections, but we do have some suggestions which should make the process easier.

You asked whether a person could change his or her party declaration at the time of casting the ballot. The present Republican Party of Alaska rules do not restrict anyone from changing his or her party declaration at the time of the primary vote. It appears more practical, and will allow greater voter participation, if a voter is allowed to change his or her party registration at the time of casting the ballot in the primary election.

There are four kinds of voter situations which face the state, regular voters, absentee voters, overseas military voters and those voting a questioned ballot. While the practical implementation is up to the state, I have attempted to suggest possible approaches.

1. Regular Voters. Two ballots should be printed -- the "Republican" primary ballot and the "Other Parties" primary ballot which would contain all the other candidates. Because the Democratic and the Alaska Independence Parties have not changed their party rules to restrict their primaries, Republicans and those with no declared party affiliation (U or N) would qualify for either a Republican or Other Party ballot. All other partisan voters (D, AI, or O) would only be permitted to receive the Other Party ballot. A voter could participate in only one primary election, and a regular voter would receive one ballot.

Only one sign-in sheet is necessary. Each voter signs the sheet and the election worker checks party affiliation and indicates on the sign-in sheet which ballot was given to the voter, just as the election worker currently indicates the method of identification.

Accountability can be preserved by simply requiring the election officials to separately count the Republican Primary ballots and Other Party Primary ballots in the same manner

previously devised for single ballot primaries. The majority of states presently have systems in place for ballot accountability and the majority of states have "closed" primaries which clearly require two or more ballots.

If the state chooses to allow a voter to change party declaration at the time of casting the ballot, those voters desiring to change party declarations in order to receive the Republican Party primary ballot would vote a questioned ballot. The questioned ballot form, which goes on the outside of the sealed cast ballot, could be altered to include two items -- one line would allow the voter to change or indicate his or her party declaration, and another box on the outside of the questioned ballot would be filled in by the election worker indicating which primary ballot was given to the voter. This would protect the sanctity of the ballot and allow a quick review of the questioned ballot by the election judges to determine whether a voter was eligible to vote in the Republican primary.

If the state chooses to require a voter to change his or her declaration 30 days in advance, then obviously the person must appear on the voter list or have a valid yellow copy of the registration form as an R, U, or N, to vote in the Republican Party of Alaska primary. Anyone could receive the other ballot.

2. Questioned Voters. If the state chooses to allow a change of declaration at the time of the primary, the solution is easy. All questioned voters should be required to fill out the party declaration on the outside of the questioned ballot as described above. The questioned ballot form, which goes on the outside of the cast ballot, could be altered to include two items -- one line would allow the voter to change his or her declaration, and another box on the outside of the questioned ballot would be filled in by the election worker indicating which primary ballot was given to the voter. While the party affiliation is only important in the Republican primary, it would be less confusing to simply make party declaration a part of the questioned ballot form.

- If a voter refuses to declare his or her affiliation on the outside of the questioned ballot (and some independent Alaskans will), so long as the outside indicates which ballot the voter was given, the election judges can easily determine whether the voter was eligible to vote by reviewing the voter's old registration as it appears on the registration list.

If the state chooses to require the voter to change the

declaration 30 days in advance, the problem becomes more complicated. You should still use the same form. However, it has been our experience that many people do not remember their party affiliation and there is the greater possibility of disenfranchisement of voters who incorrectly recall their party declarations, or who want to change their declarations at the time of voting, but cannot.

3. Absentee Voter. One of the concerns raised at our conference was about the requests for absentee ballots which have already been received by the Division of Elections. There is really no necessity to change the form for requesting an absentee ballot.

As we discussed, the state could simply send both ballots to all absentee voters. The state could require that the absentee voter return both ballots. The instructions should clearly state that a failure to return both ballots would result in the vote not being counted.

The instructions would also state that any voter could vote in the "Other Party" primary, but that only Republicans, Non-party affiliates, and undeclared voters could vote in the Republican primary. They would also state that a voter qualified to vote in both primaries could in fact vote in only one.

Just as on the questioned ballot form, a line could be included which allowed an absentee voter to change his or her party declaration. This would allow an absentee voter the same opportunities as the regular voter.

The cast ballot could be treated in the same manner as in previous years, sealed in a plain white envelope and enclosed in the return envelope. The uncast ballot would be outside the white envelope but inside the return envelope. If the uncast ballot is not returned, the vote would not be counted, because there is no way, short of opening the white envelope, to ensure that the voter has not improperly voted in the wrong or both primaries.

The election judge always checks a number of things before counting the ballot. Now the election judge would check the outside for a change of party of declaration, would determine whether the person is ineligible to vote in the Republican primary (is a D, AI, or O), and then check to determine whether the uncast ballot in the outside envelope is the Republican ballot. If it is the Republican ballot, the vote would be counted. If it is not, the vote would not be counted. (Republicans, undeclared, and non-partisans can vote

David Koivunemi
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Page 5

in either primary.)

4. Overseas Military. Although there was some concern expressed regarding the overseas military ballots, according to 42 U.S.C. 1973ff-1, the only special requirements for overseas military exist during the general elections for federal office. During primary elections, the overseas military use the same absentee procedures applicable to all other voters.

Each State shall -

(1) permit absent uniformed services voters and overseas voters to use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for Federal Office;

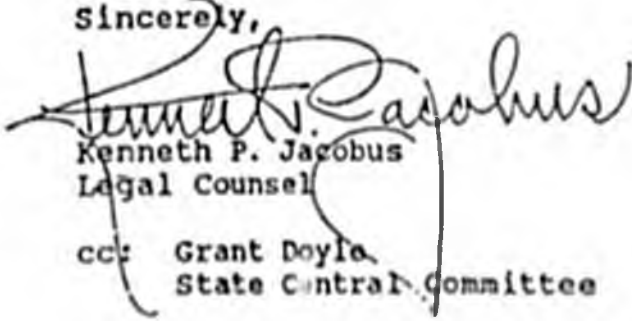
(3) permit overseas voters to use Federal write-in absentee ballots (in accordance with section 103) in general elections for Federal Office.

Therefore, it does not appear that there is anything special required for the overseas military person.

The instruction materials can easily be amended, either by reprinting the entire package (probably impractical) or by including a new instruction to specifically cover these changes. With respect to training, as you indicated, approximately two-thirds of the elections boards have not yet been trained. The other third could receive supplemental written instructions, or if the state was creative, instruction and voting information could be broadcast on RATNET, at little cost to the state.

I hope that this more fully explains the position of the Republican Party of Alaska. We will do everything we can to cooperate with the state in this primary election. Please let me know immediately if you have any questions.

Sincerely,


Kenneth P. Jacobus
Legal Counsel

cc: Grant Doyle
State Central Committee

Alaska State Legislature

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Legislative Research Agency



January 15, 1991

MEMORANDUM

TO: Representative Mike Navarre
FROM: Gordon S. Harrison, Director *gsh*
RE: Alaska's Blanket Primary and the *Tashjian* Decision
Research Request 91.080

You asked for a description of the various methods used throughout the country to conduct primary elections for state offices. You also asked for a review of the effect on state primaries of recent U.S. Supreme Court decisions that have given state parties substantial prerogatives to determine the rules for nominating their own candidates, notably the *Tashjian* decision [*Tashjian v. Republican Party of Connecticut*, 479 U.S. 208 (1986)]. Finally, you asked if there is a need to modify Alaska's primary election laws in the wake of the challenge last summer to those laws by the Republican Party of Alaska armed with the *Tashjian* decision (*Doyle v. State of Alaska*).

This memorandum will discuss these matters under the following five subject headings: 1) classification of state primaries, 2) legislative history of Alaska's blanket primary, 3) freedom of association and the *Tashjian* decision, 4) Alaska's primary and *Doyle v. State of Alaska*, and 5) revision of Alaska's primary election laws. The recommendation of the memorandum is that--presuming the legislature wants to retain the blanket primary--revision of Alaska's current statute should wait until after the courts have ruled on the constitutionality of the blanket primary. To modify Alaska's primary election laws prior to court action would prematurely, and perhaps unnecessarily, concede that the blanket primary has constitutional defects.

Classification of State Primaries

The direct primary is used to nominate party candidates for state office in virtually all of the states today.¹ It replaces nomination by party convention and caucus, methods prevalent throughout the country in the last century. Nomination of candidates by popular vote in a party primary was a key political reform of the progressive movement early in this century. It opened the

¹In a few states conventions are still used to nominate candidates for certain offices, or under special circumstances. See Council of State Governments, *Book of the States 1990-91*, Table 5.2. pp. 234-35.

nominating process to the voters and thereby undercut the influence of party bosses in determining who would stand for election.

Generally speaking, direct primaries are described as being either "closed", "open", or "blanket", although there is significant variation within these categories.

Closed Primary

In a closed primary system, voters must be registered party members to participate in the party primary election. A person registered as a Democrat, for example, may vote only in the Democratic primary. At the polling place, he or she will receive a ballot containing only candidates seeking the Democratic nomination. Voters who are registered as nonpartisans or who have not declared a party preference (unaffiliated voters), may not vote in the primary election.

Closed primaries are more or less closed, depending on the length of time that a voter must be registered prior to the primary. In the classic closed system, voters must be registered for 30 days or longer before the primary, and they may not change their party registration during that period. In semi-closed systems, voters may register or change their party registration as late as election day. According to a recent political science textbook, 27 states use a closed primary, including ten that allow voters to register or change party registration at the polling place.²

Open Primary

In an open primary system, voters do not have to be registered members of a party to vote in the primary of that party. A person registered as a Republican, for example, may choose to vote in the Democratic primary. Unaffiliated voters may vote in the primary of any party that qualifies for the ballot (normally only the two major parties do so).

Open primaries vary in their degree of openness: In the classic open primary, voters decide which party ballot to vote in the privacy of the voting booth (either they are given one ballot with party candidates in separate columns, and they vote on one column, or they are given separate ballots for each party and they return only one with voting marks). In semi-open primaries, the voters must publicly request a party ballot. Twenty states use an open

²John F. Bibby, et al., "Parties in State Politics," *Politics in the American States*, Virginia Gray, Herbert Jacobs, Robert H. Albritton, eds. 5th Edition, 1989, p. 98.

primary, including 11 of the semi-open type that require voters to request a party ballot.³

Blanket Primary

In both the open and closed primary, voters may cast votes for candidates of only one party. In the blanket primary, all voters receive a single ballot that groups candidates of both parties by office, and they may cross from one party to the next as they move through the list of offices. That is, a voter may cast a ballot for a Republican candidate for governor, a Democratic candidate for state senator, a Republican candidate for state representative, and so on, regardless of the voter's own party affiliation (or lack thereof). This system is the most open of the conventional party primaries, as it is least constraining from the standpoint of the individual voter. Two states have a classic blanket primary: Washington and Alaska.

Louisiana has had since 1976 a unique nonpartisan primary which bears some resemblance to a blanket primary. The critical difference between the Louisiana primary and the blanket primaries of Alaska and Washington is that it is not designed to produce nominees from each of the contending parties. The ballot is organized like a blanket primary ballot (with all candidates for an office, regardless of their party, listed by office), but the two candidates who receive the highest number of votes advance to the general election, even if they are of the same party. Furthermore, if one of the candidates receives a majority (more than 50 percent) of the vote in the primary, he is the victor and does not have to stand at the general election.

Impact of the Primary System on Parties

The purpose of the direct primary was to reduce the influence of parties in the political life of the nation, and it has undeniably had that effect, together with other factors that have also contributed to the decline of parties in our society. It is interesting to note that a respectable body of opinion in the United States today laments the moribund state of the major parties and believes that revitalized parties could invigorate and animate American democracy. While few observers or political practitioners advocate the return to party conventions and caucuses for nominating electoral candidates, many are critical of open, and especially blanket, primaries. The closed primary is preferred by many political scientists and party activists because it encourages party affiliation, gives meaning to party ties, and enhances the development and significance of party platforms. The popularity of open

³Ibid., p. 98.

⁴See, for example, Leon D. Epstein, *Political Parties in the American Mold*, University of Wisconsin Press, 1986, especially pp. 9-39.

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primaries with voters, however, is usually to check the impulse of party officials to seek the closing of an open primary, and accounts for the fact that only 17 states have a classic closed system.

Legislative History of Alaska's Blanket Primary

Alaska first adopted the blanket primary in 1947, during territorial days. Prior to that time Alaska had an open primary: at the polls, voters were given a single ballot listing the party candidates in two separate columns. Voters could vote in only one column.

In the special legislative session of 1946, when both houses of the legislature were overwhelmingly dominated by Democrats, a conservative Juneau Democrat, Curtis Shattuck, introduced House Bill 4 which would have changed the open primary to a blanket primary. While the bill did not have sufficient support in the House of Representatives to pass, there was enough interest to keep it alive. The compromise was an amendment to put the question before the voters in a referendum at the next general election (October 8, 1946).⁵ The amended bill passed the House of Representatives with no dissenting votes, and it passed the Senate with only three dissenting votes.

There was apparently little public discussion of the issue preceding the referendum, in part perhaps because it was overshadowed by a second referendum on the same ballot--a referendum on the hotly debated question of statehood. In any case, the question of a blanket primary seems not to have generated much controversy. The Anchorage Daily Times opined that the proposal "has received virtually no publicity and the vote on it will probably be unintelligent." The newspaper editorial said "nobody seems to know what it is all about." It continued:

...Inasmuch as the two parties in Alaska are different only in leadership and in their position as "in" or "out" of power, it can be argued that the blanket ballot would be appropriate here.

⁵Historian Bob DeArmond of Juneau wrote the following about the adoption of the blanket primary in his column "Days of Yore", published in *Info Juneau*, October 25, 1986. The blanket primary "was particularly pushed by Editor Sidney D. Charles of the *Alaska Fishing News* (now the *Ketchikan Daily News*) and a bill was introduced in the 1945 legislative session by Representative Curt Shattuck of Juneau. It was quickly batted down by the party stalwarts, but in 1946 there was a special session and Shattuck introduced it again. To get rid of it, the opponents turned it into a referendum for the 1946 general election."

Both parties are interested in developing Alaska. Either one would follow a program very similar to the other should it be placed in power. It has been said that the voters, during the primary election, separate into two parties for the purpose of eliminating some candidates for public office and nominating others. The general election is a continuation of this process, only with the voters all using the same ballot with the candidates of the parties on the same list. Therefore, it is argued, there would be nothing lost by having a blanket ballot in the primary.

We have heard no argument that is, by itself, convincing. We believe that Alaska will fare just as well no matter what form of ballot is used.

While newspaper editors may have been indifferent, the voters clearly were not: the opportunity to vote for candidates from either party in the primary strongly appealed to Alaskans, who voted yes on the referendum to adopt a blanket primary by an extraordinary margin.⁶ In the face of this unequivocal support by the electorate, members of the Eighteenth Legislature dutifully adopted a blanket primary in 1947. It passed without a dissenting vote in the House of Representatives, and with two Democrats and two Republicans casting no votes in the Senate.

Increasingly, however, the question of the blanket primary became a partisan issue. Democrats tended to oppose it, and Republicans to support it. Democrats feared that it would erode party loyalty and discipline,⁷ and they thought that Republicans used it to their advantage by crossing party lines in the primary to nominate the weakest Democratic candidates. Republicans

⁶ *Anchorage Daily Times*, October 7, 1946.

⁷ Unofficial returns from 46 of the 60 precincts reported in the *Anchorage Daily Times* on October 10, 1946, showed 4,225 in favor of the blanket primary and 878 opposed. DeArmond states "In the final tally . . . a whopping 78 percent [of the voters] wanted the [blanket] primary." DeArmond, "Days of Yore," *op. cit.*

⁸ In a letter to Secretary of State Lew Williams in 1948, Alaska's Delegate in Congress Bob Bartlett (a Democrat) commented on the new blanket primary: "I still fail to appreciate whatever good qualities, if any, it may have. The good old party ballot was good enough for me. I still think that party responsibility will, to a large degree, be a thing of the past with this form of ballot." University of Alaska Archives, Bartlett Collection, Box 14, Personal File 1948.

supported the blanket primary in hopes that Republican candidates would benefit by attracting conservative Democrats and nonaligned voters.⁹

In the first session of the first state legislature in 1959, when Democrats firmly controlled both houses and the governor's office, the blanket primary was replaced by the single ballot open primary.¹⁰ Adoption of the comprehensive election code in 1960 incorporated this change.¹¹

Republicans led the opposition to the single-ballot open primary, although some Democrats also sought a return to the blanket primary. Several bills were introduced to restore the blanket primary, but they languished in Democrat-controlled committees. In 1966, during the second session of the Fourth Legislature, a blanket primary bill passed the House and almost passed the Senate. Senate debate on the measure was reported in the *Anchorage Daily Times*.¹² Democrats Jim Nolan of Wrangell, Robert Blodgett of Teller, and Robert Ziegler of Ketchikan spoke in favor the bill. Senator Blodgett is reported to have said:

The Democratic party is a hollow shell. The Republican party is a hollow shell. How many people actually are active workers in the two parties? Darned few. I support the bill."

Senator Ziegler declared:

The measure is vitally important to the people of this state. In Ketchikan, probably nine of every ten voters want to vote for the man, not the party.

Despite this show of bipartisan support, the bill failed to pass the Senate.

The general election of 1966 broke the Democratic monopoly on legislative power which had existed since the 1950s: Republican majorities were elected to both houses and Republican Walter Hickel was elected governor. The blanket primary was thereupon restored during the first session of the Fifth

⁹Interview with Judge (Ret.) Thomas B. Stewart. See also Herman E. Slotnick, "Alaska: Empire of the North," in Frank H. Jonas, ed. *Politics in the American West* (Salt Lake City: University of Utah Press, 1970). Since the 1930s, the Republican party tended to be the minority party in Alaska, and it is the minority party that typically perceives partisan advantage in opening primaries.

¹⁰Chapter 41 SLA 1959 (HB 8).

¹¹Chapter 83 SLA 1960 (CSHB 252).

¹²March 28, 1966.

Legislature.¹³ The bill to restore the blanket primary was introduced at the request of Governor Hickel, but it attracted considerable bipartisan support. Among the 35 years in the House, nine were cast by Democrats; of the five nays, four were cast by Democrats. In the Senate the bill received 18 years, four of which were cast by Democrats. Both nays in the Senate were cast by Democrats.

The blanket primary seems to suit contemporary Alaska, where party ties and party organizations are weak.¹⁴ Elected officials from both parties acquiesce to (and many benefit from) voter enthusiasm for the blanket primary.

Open primaries of all kinds, however, are often unpopular with party loyalists and party candidates because they allow nonparty members to "cross over" and influence the selection of party candidates. If done with mischievous intent--so-called strategic voting--the result may be the nomination of the weakest candidate. Even if not done mischievously, cross-over voting may sufficiently dilute the vote of party members to produce a nominee with little attachment to the party platform. Do parties have any rights to determine who may vote in their primary? A recent opinion of the U.S. Supreme Court says that they do, although the opinion was rendered in a case involving the efforts of a party to open (partially) its closed primary. That is the *Tashjian* decision.

Freedom of Association and the *Tashjian* Decision

Although the freedom of association is not explicitly guaranteed by the U.S. Constitution or the Bill of Rights, the U.S. Supreme Court has, through a series of cases that began in the late 1950s, conferred constitutional status upon it, declaring that the right to freedom of association is implicit in such constitutionally protected rights as speech, petition, and assembly. Although initially applied in civil rights cases, the doctrine of freedom of association has recently been invoked by the courts in disputes over state

¹³Chapter 1 SLA 1967 (HB 1am).

¹⁴More than half of the voters in Alaska are unaffiliated with a party (at registration they decline to state a party preference or declare themselves nonpartisan). Information from the Division of Elections prior to the 1990 elections showed there were 285,219 people registered to vote in Alaska with the following party affiliation: Democrats, 56,074; Republicans, 59,107; Alaska Independence Party, 2,227; nonpartisan, 89,548; undeclared, 72,195; and other, 6,068. For a general discussion of parties in Alaska see Carl E. Shepro, "Alaska's Political Parties," Gerald A. McBeath and Thomas A. Morehouse, eds. *Alaska State Government and Politics* (Fairbanks: University of Alaska Press, 1987).

regulation of political parties. The U.S. Supreme Court has used it to uphold challenges by parties to state regulations that unduly interfere with internal party operations and the process by which the parties select their electoral candidates. The notable case involving state primaries is *Julia H. Tashjian, Secretary of State of Connecticut, Appellant v. Republican Party of Connecticut et al.* [479 U.S. 208 (1986)].

The *Tashjian* Decision

Connecticut has a history of strong party organizations, and since 1955 it has had a classic closed primary. The state Republican party has fewer registered voters than the Democratic party, and there are a substantial number of unaffiliated voters in the state. In January, 1984, the state convention of the Republican party adopted a rule that allowed unaffiliated voters to participate in the Republican primary for certain offices (excluding state legislative office). This rule conflicted with the state's election law. After failing to obtain the necessary statutory amendment from the legislature (which was dominated by Democrats), the party sued on constitutional grounds in federal court to enjoin the state from enforcing the closed primary statute. The party prevailed in the U.S. district court and the circuit court of appeals, and the state appealed to the U.S. Supreme Court.

The Supreme Court sided with the Republican party, upholding the lower court decisions. It ruled that the Connecticut statute was unconstitutional because its infringement on the associational rights of the party was not justified by compelling state interests. Prohibiting unaffiliated voters from participating in the primary of a party that invites such participation "limits the Party's associational opportunities at the crucial juncture at which the appeal to common principles may be translated into concerted action, and hence to political power in the community."

The Implications of *Tashjian*

At a minimum, the *Tashjian* decision means that states with closed primaries may not prohibit unaffiliated voters from voting in the primary of a party that takes formal action to open its primary to these voters. A number of closed primary states with election laws similar to Connecticut's have made the necessary statutory amendments to bring their codes into compliance with *Tashjian*. The relevant laws in states that have not done so will be unenforceable in the face of party action to open a primary to unaffiliated voters.

Because few political parties have followed the precedent of the Connecticut Republicans in seeking to open, even partially, their closed primary, and because only the participation of unaffiliated voters is at stake (a small proportion of registered voters in most states), the *Tashjian* decision has not had a tumultuous impact. The big question about *Tashjian*, however, is what

the underlying logic of the decision implies for other forms of state regulation of parties and primaries. That is, how much freedom of association will the Supreme Court ultimately extend to political parties? Leon Epstein, a noted political scientist, has observed: "Only if parties were able, as well as willing, to use *Tashjian* as a precedent for broader challenges to state primaries would there be far-reaching political consequences."¹⁵

Open and blanket primaries are clearly suspect under an extension of the freedom-of-association reasoning in *Tashjian*. If prohibiting a party from allowing unaffiliated voters to participate in its primary amounts to an unconstitutional interference in a party's affairs, what of election laws that force a party to accept the participation of voters registered in opposition parties? More than one analysis of the *Tashjian* decision has pointed to the possible consequences for open and blanket primaries. For example, "*Tashjian* clearly indicates that great deference should be accorded to a party's determination of its affiliates. The open and blanket primary systems, however, limit the ability of parties to choose their affiliates by preventing parties from restricting their primaries to party members. . . . Thus, there is a strong argument that both the open and blanket primary systems are unconstitutional."¹⁶

The limits of the *Tashjian* decision in this regard have not been tested because no party in an open or blanket primary state has sought to close its primary by party rule and to enforce this closure through court action against contrary state laws. That is, no party had done so until June, 1990, when *Allen Grant Doyle, Jr. and the Republican Party of Alaska v. State of Alaska et al.* was filed in the U.S. District Court in Anchorage.

Alaska's Primary and *Doyle v. State of Alaska*

At its statewide convention in March, 1990, the Republican party of Alaska amended its rules by adopting the following provision:

Only registered Republicans, registered Independents, and those who state no preference of party affiliation shall be allowed to vote in the Republican primary election for Governor, Lieutenant Governor, U.S. Senator, U.S. Representative, and members of the State Legislature.

¹⁵Leon D. Epstein, "Will American Political Parties Be Privatized?" *Journal of Law and Politics*, Vol. 239, p. 240.

¹⁶Susan Yarborough Noe, "North Carolina General Assembly Amends Election Laws to Allow Unaffiliated Voters to Vote in Party Primaries," *North Carolina Law Review*, Vol. 66, No. 6 (September 1988).

The Republicans expected the Democratic party at its statewide convention in May to adopt a similar provision closing its primary to registered Republicans, but the Democratic party did not do so. Notwithstanding this development, the Republican party thereupon requested state election officials to honor the new rule in the up-coming primary (August, 1990). State officials protested that the request for a change in the method of holding the August primary was too ambiguous and made too late to be implemented. Furthermore, state officials demanded that the party rule be "precleared" by the U.S. Department of Justice under the federal Voting Rights Act of 1965 before they could begin to modify state election procedures (a process that would also require preclearance by the federal justice department).

Confronted with these objections, the Republican party filed suit asking the court to enjoin the state from conducting the August primary in a manner contrary to its new rule.

In its response to the plaintiff's motion, the state did not dwell at length on the merits of the Republican party's assertion that the doctrine of associational rights enunciated in *Tashjian* conferred upon the party the prerogative to close its primary to Democrats. Rather, confronted with the immediate threat of an injunction against the August primary, the state built its defense around the argument that a change in the election procedures at such a late date would cause confusion and uncertainty that would disadvantage minority voters, in violation of the federal Voting Rights Act of 1965.

The Democratic party of Alaska and the Alaska Federation of Natives (AFN) filed a joint *amicus curiae* brief in support of the state's opposition to the party's motion. The *amici* also stressed the harm that would be suffered by rural Native voters if electoral procedures were altered for the August primary. However, both the state and the *amici* argued that it was not clear, as averred by the Republican plaintiffs, that the party's suit would ultimately prevail on its merits, and they both offered several reasons why the blanket primary could survive constitutional scrutiny, notwithstanding the *Tashjian* doctrine.

Also, both the state and the *amici* suggested that the federal voting rights act may be a fundamental impediment to closing Alaska's primary. The *amicus* brief stated:

Any election procedure which abridges the opportunity for Native voters to enhance their political influence through bi-partisan coalitions fundamentally impairs voting prerogatives protected under the "no retrogression" provisions of the Act. (Indeed, AFN suspects that the Party Rule is specifically intended to frustrate the formation of bi-partisan coalitions

and, in turn, to impair the influential role of legislators who represent Native voters).¹⁷

The brief warned that the Alaska Federation of Natives "intends to raise claims under Section 2 of the Act which allege that implementation of the Party Rule is violative of the substantive protection of the Act. (AFN notes that the State has indicated that it, too, may assert such claims as a counter-claim in the immediate litigation.)"¹⁸

On July 16, 1990, the district court denied the request for a preliminary injunction. However, the case is still active and will be decided on its merits unless the Republican party withdraws the action.

Revision of Alaska's Primary Election Law

Efforts of the Republican party in the summer of 1990 to partially close its primary were thwarted because its request to modify the ballot and voting procedures was deemed untimely, and because state officials and party leaders could not agree on an interpretation of the party rule.¹⁹ Had the request been made earlier, the state may have acquiesced to it and not contested the merits of the Republican party's claim that the blanket primary is unconstitutional under the *Tashjian* doctrine. In anticipation of future requests by one or both parties to close their primaries to voters of other parties, should the legislature now establish procedures in law that will smooth the process? For example, should state statutory provisions specify deadlines for filing requests, and authorize the state Division of Elections to determine by administrative procedure the form of the ballot?

The legislature should not revise the blanket primary to facilitate future efforts by the parties to close their primaries unless it first decides as a matter of policy that the blanket primary should be abandoned (or, at a minimum, that the desire of a party to close its primary to some extent should take precedence over the protection of the integrity of the blanket primary). If the legislature favors the blanket primary, its constitutionality should be defended in court before any revision to the election laws is contemplated.

¹⁷Memorandum of *Amicus Curiae* in Opposition to Motion for Preliminary Injunction, p. 18.

¹⁸*Ibid.*, p. 18.

¹⁹The state argued, for example, that it was not inconsistent with the party rule to include on the Republican ballot the names of Democratic candidates, in order that Republican and unaffiliated voters could continue to enjoy a blanket primary.

Despite the presumptive case against the blanket primary on the basis of rights of freedom of association of political parties, a plausible defense can be made on its behalf. In deciding cases such as these, the court weighs the severity of the infringement on the party against the interest of the state in imposing it. The U.S. Supreme Court recognizes the importance of regulations that strengthen the two-party system and preserve the integrity of the electoral process. Indeed, a footnote in the *Tashjian* decision cautioned that the reach of the decision may not be very far. It said that had the request of the Republican party of Connecticut been to open its primary to Democrats in addition to unaffiliated voters, the circumstances would have been much different because of the potential disruption to the party system.²⁰ Also, the defense of Alaska's blanket primary around the federal Voting Rights Act of 1965--and the compelling interest of the state in protecting the electoral participation of Alaska Natives--is also available.

Furthermore, the Republican party may decide not to pursue *Doyle* ^{State of} Alaska. The circumstances that prompted the suit may now make it moot.²¹ In general, political parties have demonstrated caution in using the *Tashjian* doctrine to upset the status quo. The *Doyle* suit was improbable. Writing about the likelihood of such a suit, political scientist Epstein noted:

It is hard to conceive of many electoral circumstances in which a party would find it expedient to exercise such a right [to close an open primary]. For one party in a competitive two-party state to require a previously unused party registration only for its primaries, thus excluding customary primary voters who remain unaffiliated, looks politically risky.²²

The politics of the issue in Alaska are certainly complicated, if not risky. For example, the bill restoring the blanket primary in 1966 was introduced at the request of Governor Hickel. How his new administration will deal with the *Doyle* case is not yet clear.

I hope this overview of the primary situation in Alaska is helpful to you.

²⁰*Tashjian v. Republican Party of Connecticut*, 479 U.S. 208 (1986) n. 13.

²¹Presumably, the conservative wing of the Republican party sought to close its primary to Democratic voters to forestall them from crossing over and casting ballots for Arliss Sturgulewski, a moderate Republican candidate for governor.

²²Epstein, "Will American Political Parties Be Privatized?" p. 271.

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October 25, 1991

MEMORANDUM

TO: Representative Eugene Kubina
FROM: Gordon S. Harrison, Director *gsh*
RE: Preferential Ballots
Research Request 92.064

You asked for information about the so-called preferential ballot that is used widely in Australia. This memorandum describes the system of preferential voting used in Australia as well as several other preferential systems that have been used from time to time in the United States and other western democracies.

Application of Preferential Voting

Preferential ballots allow voters to rank their preference for candidates standing for an office. It is applicable only to electoral systems that require the winning candidate to obtain a *majority* of the votes cast. Most elections in the United States are held under the *plurality* rule, according to which the candidate with the highest number of votes wins the seat, whether or not he has obtained a majority of the votes cast. When there are only two candidates standing for election, the plurality rule has the same effect as the majority rule. But when there are more than two candidates in a contest, the plurality system is likely to produce a winner who is not the first choice of a majority of the voters. Majority vote requirements are intended to produce a candidate who is an acceptable compromise candidate to a majority of the electorate.

Preferential voting techniques of the type described in this memorandum also apply only to elections with single-member districts (that is, in situations where residents of a district elect a single official to represent them, in contrast to situations where residents of a district elect several people to represent the district). There is a preferential voting technique applicable to multi-member district elections, but a description of it is beyond the scope of this memorandum.¹

¹The technique is the "single transferable vote" system, also known as the Hare system, Hare-Andrae system, and Hare-Clarke system. It is used in Ireland and in the elections for the upper chamber in the Australian federal and some Australian state governments. A good explanation of it is found in Enid Lakeman and James D. Lambert, *Voting in Democracies* (London: Faber and Faber, 1959), pp. 98 - 131.

Rationale of Preference Ballot: Avoiding a Run-off Election

A conventional majority vote system calls for a run-off election if no candidate in the first round of voting obtains a majority of the votes cast. There are drawbacks to run-off elections, however. The most serious problem is retaining the interest of the electorate: where voting is voluntary, the turn-out for run-off elections typically declines from the first round of voting. Another problem with run-off elections is the continued burden of campaigning it imposes on candidates and voters alike. Also, from the perspective of the leading candidate, the hiatus between the first and second round of voting can spell disaster. Public sentiment is never static, and the front-runner cannot be sure that his support will remain solid until the run-off. Thus, the necessity for a run-off election introduces an additional element of uncertainty and instability in the polling process.

By allowing the voters to indicate their second or third choice as well as their first choice on the same ballot, the preferential system fulfills the function of the run-off election without the necessity of a second polling.

Types of Preference Ballots

There are several voting rules that allow the voter to express more than his first preference among candidates. Discussed below are two versions of the *alternative preference ballot*, the *second-choice ballot* (Bucklin rule), and the *Borda count*. Also, brief mention is made of the *exhaustive ballot* voting method.

Alternative Preference Ballot

There are two versions of the so-called alternative preference ballot (also referred to as the preference ballot, the alternative ballot, and sometimes the contingent ballot). The least complicated of these comes closest to duplicating the function of the run-off election. If there are more than two candidates, voters mark their ballots with their first preference and their second preference. In the first count, only first preference votes are scored. If one of the candidates receives a majority of these votes, he or she is declared the winner. However, if no candidate receives a majority on the first count, all candidates except the two with the highest number of first preference votes are declared defeated and their second preference votes are distributed to the two finalists as if they were first choices.

The purpose of a run-off election is to give those voters whose candidate(s) were defeated in the first round a chance to express their preference between the two most popular candidates. This preference ballot has the same effect.

A slightly more complicated version of the alternative preference ballot is the one used in Australia.² In this case, when any candidate fails to obtain a majority in the first count, the candidate with the fewest first preference votes is declared defeated and the second preference votes on that candidate's ballot are distributed to the remaining candidates. If this distribution fails to produce a majority winner, the remaining candidate with the fewest number of votes is declared defeated and the second preference indicated on that candidate's first preference ballots are distributed, and so on until a candidate receives a majority of the vote.³

In cases where there are only three candidates for a seat, both versions of the alternative preference ballot will produce the same outcome. In situations with more than three candidates, however, the Australian version may produce a different result from the simplified version. The potential difference is the treatment of the third-ranking candidate after the first count: with the simplified version, the third-ranking candidate is dropped from the running, while the Australian version gives that candidate a chance to win through the distribution of the lowest ranking candidate's second preferences. In a close contest among the top three candidates, the fourth's second-choice votes could easily result in victory for the candidate in third place after the first count.

²The alternative preference ballot is used to elect the lower house of the federal government and the lower houses of most of the state legislatures in Australia.

³It is not clear from the information at hand about the alternative preference ballot whether, in the case of four or more candidates, voters are to indicate a third, fourth, etc. preference, and if so, whose are to be counted at what point. Presumably preferences beyond first and second are asked for on the ballot, as it is possible that the redistribution of second preference votes only, from defeated candidates will not produce a majority winner. Suppose, for example, four candidates are standing for election. In the first count (the count of first-choice votes), candidate A receives 10,000 votes, candidate B 9,000, candidate C 8,000, and candidate D 2,000. Candidate D is declared defeated. In the second count (the distribution of second preferences shown on first-choice ballots for D), candidate D's votes are evenly split between candidate B and C. This outcome fails to produce a majority winner. Therefore, candidate C is declared defeated. In the third count (the distribution of second preferences shown on C's first-place ballots), candidate C's votes are distributed evenly between A and B. Now, candidate A has 14,000 votes and candidate B has 14,000 votes, and 14,501 constitute a majority. At this point it would seem reasonable to conduct a fourth count that distributes the third choice indicated on ballots originally cast for C and D, and presumably that is the rule. However, we have not found a sufficiently detailed description of the system to be sure of this point.

Second-Choice Ballot

Another voting rule that allows second preferences to be scored when a clear majority does not result from the first count in a multi-candidate contest is the Bucklin rule, or "second-choice ballot." In this case, voters indicate their first and second preference on the same ballot, regardless of the number of candidates. In the absence of a majority winner of first choice ballots in the first count, all first and second choice votes are tallied in the second count for the two candidates receiving the most votes in the first count. The candidate receiving the highest number of first and second choice votes in the second count is the winner.

This system differs from the alternative preference ballot discussed above because the second choices on the ballots cast for the two top candidates also enter into the final scoring. In the alternative preference ballot (and the conventional run-off election), it is the second choice only of the voters for the defeated candidates that are decisive in the second and subsequent counts.

As a means of producing an acceptable compromise candidate, this system has much to recommend it. However, an objection to the scoring rule used above is that the most acceptable compromise candidate could easily be one excluded from the second count. It is possible, for example, that Senator Arliss Sturgulewski was the preferred compromise candidate in the 1990 Alaska general election for governor, but she would have been excluded if first and second preference votes were scored only for the two front runners. However, this objection could be met by scoring all of the candidates' first and second preferences in the second count. In this case, a candidate with strong second preference support who was not among the top two finishers could win.

Borda Count

An objection to all the foregoing preference voting arrangements is that second preferences have the same relative value as first preferences. This objection is dealt with by the voting scheme proposed in the eighteenth century by the French philosopher Borda. According to Borda's method, usually referred to as the Borda count, voters award points to the candidates according to their preference ranking. Thus, for example, in a contest with three candidates, the voters would assign three points to their favorite candidate, two to their second choice, and one to their third choice (or two, one, zero points, for example). The candidate with the highest total number of points is declared the winner.

It should be noted that the point system used can influence the outcome of the election. Lakeman and Lambert illustrate this characteristic of the Borda count with the example of three candidates whose first choice preferences among voters are as follows: candidate A, 14; candidate B, 2; and candidate C, 15. If candidate B were the second choice of voters for A and C (candidate Sturgulewski in our example above), and the Borda point scale were three, two,

one, candidate B wins. But if the Borda point scale were a geometrical progression such as four, two, one, candidate C wins.⁴

Exhaustive Ballot Method

To round out this discussion of majoritarian, single-member constituency voting methods, mention should be made of the so-called exhaustive ballot. In this case, with n candidates, voters cast ballots for $n-1$ candidates, $n-1$ times, and the surviving candidate is the winner. Thus, for example, if there are four candidates standing for election, in the first round voters cast one ballot for three of the four. The candidate with the fewest votes is declared defeated. In the second round, with three surviving candidates, voters cast ballots for two. The lowest ranking is eliminated, and finally the voters against cast a ballot for one of the two remaining candidates. The candidate with the most votes wins. This method is impractical for legislative elections where voters would have to return to the polls again and again. However, it is an effective technique used at conventions, for example, to elect presiding officers or leaders of an organization.

Use of Preferential Ballots in the United States

We found little information about the use of preferential voting in the United States. The following statement is from a reference work: "Preferential voting has been tried on and off in the United States. At least 50 cities and counties have adopted it at one time, but very few continue to use it."⁵

Apparently a type of second-choice voting was used for primary elections in North Dakota for a few years in the early 1900s, and it was used in Wisconsin around the same time.⁶

I hope this information is helpful to you. We would happy to provide more detailed description and analysis of any of these systems if you wish to pursue the matter.

⁴Lakeman and Lambert, *Voting in Democracies*, op. cit., pp. 283 - 289.

⁵Michael D. Young, *The American Dictionary of Campaigns and Elections*, (New York: Hamilton Press, 1987), p. 202.

⁶Personal communication, Dan Rylance, Editorial Page editor, Grand Forks Herald (North Dakota), October 23, 1991. Mr. Rylance has promoted the concept of second-choice ballots for North Dakota primaries in recent newspaper columns.

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Legislative Research Agency



September 11, 1991

MEMORANDUM

TO: Representative Gene Kubina

FROM: Gordon S. Harrison, Director 

RE: Connecticut's Primary after the *Tashjian* Decision
Research Request 92.039

You asked about the steps taken by the state of Connecticut to implement the 1986 U.S. Supreme Court decision in the *Tashjian* case. In that decision, the court ruled that the Republican Party could require the state to honor a change in its own rules that allowed unaffiliated voters--registered voters who did not declare a party preference--to vote in the Republican primary for certain offices.¹ At the time, Connecticut state law provided for a closed primary. The Democratic Party did not adopt a similar rule.

In fact, the new rule has not been used extensively in Connecticut because of its limited application, and on September 7, 1991 the state Republican Party rescinded the rule (i.e., they amended their party rules to close all of their primaries). The open primary rule applied only to statewide and congressional races (it excluded legislative races and local contests). It was used on two occasions: at a special congressional election in 1987 and the statewide elections in 1990.

Ms. Joanne Chrisoulis, director of the Division of Elections for the state of Connecticut, told us that the state did not take special steps to publicize the rule change. State law requires the election division to publish a legal notice in newspapers about each election. This notice informed the reader that unaffiliated electors could participate in the Republican Party primary for specific offices. Presumably some voters were alerted to the change by local media coverage of the primary election.

Connecticut's governor, Lowell P. Weicker, Jr. represents a third-party--A Connecticut Party. This party has a rule that allows unaffiliated voters to vote in its primary. As it happens, the party has very few members, and no candidates from the party are standing for office in the Connecticut primary being held today. Thus, technically at least, Connecticut has not fully returned to a closed primary system.

I hope this is the information you were looking for. If not, please call.

¹See Legislative Research Agency Memorandum 91.080 for a discussion of the *Tashjian* decision and definition of open and closed primaries.

STATE OF ALASKA

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MEMORANDUM

To: Representative Eugene Kubina, Chairperson
House State Affairs Committee
Alaska State Legislature

From: Charlot E. Thickstun, Director
Division of Elections
Office of the Governor

Subj: Status of Primary Rule Changes

Date: January 17, 1992

Since the House State Affairs Committee hearing on November 12, 1992, the Division of Elections has been working closely with the political parties regarding implementation of the semi-closed primary system.

The Alaska Democratic Party (ADP) Alaska Independence Party (AIP) and the Green Party of Alaska (GPA) were sent letters requesting that they indicate to the Division how they would proceed regarding any primary rule changes. The House State Affairs Committee was sent copies of these letters.

The ADP informed the Division in late December that it would send its September primary rule changes to the Department of Justice for preclearance. As you recall the Democrats adopted a rule change which would allow any voter, regardless of registration to vote for its candidates in the primary as long as the voter had not voted in another primary or at a convention.

The Green Party contacted the Division last week. Its Chair, Joni Whitmore requested information on preclearance by Justice and the Division sent out the information that day. We expect the Green Party to also submit its rule changes for preclearance in the very near future. The Green Party adopted a rule change that would allow only registered Greens and nonpartisan and undeclared voters to vote for its candidates in the primary.

The Division has not heard from the AIPs as yet, but has been informed that the party will meet in February to discuss primary rule changes.

The Division still maintains that political parties should

finalize any rule changes that affect the conduct of the primary by March of this year. If possible, we would like this date to include preclearance by the Department of Justice.

In addition to working with the parties, the Division has been reviewing all its operations to determine what changes will need to be made to implement the new party rules.

The following is an analysis of what operational changes must occur to implement the party rule changes for the 1992 primary. These procedures have been designed with the intent to minimize confusion and election worker discretion at the polls.

ABSENTEE BALLOT APPLICATIONS

The Division is required by statute to send absentee ballot applications to all those who request one so that the voter can receive a ballot for all elections occurring in a calendar year. The Division has normally sent this form in January to all voters in our database who have sent in requests for application.

The primary rule changes will require the Division to ask the applicant to indicate which ballot type he or she wants in the primary election. Since only one election is scheduled in January for which we have already sent out the absentee ballots, and no elections are scheduled for February, the Division will postpone sending out its applications until late spring of 1992.

ELECTION WORKER TRAINING

The Division typically trains all of its 3,500 poll workers every two years in all precincts in the spring of an election year. This year the Division will add about 50 new precincts to its current total of 438 due to reapportionment. New instruction material will need to be developed to explain the differing procedures for the primary and general. This material will be color-coded for each election process. Additionally, election workers will be instructed not to discuss with voters who is on what ballot because this would constitute a form of electioneering at the polls. The workers will tell the voter which ballot type they are eligible to receive based on their current registration and then also instruct the voter that they may change their affiliation in the Questioned Ballot line and receive a different ballot type.

BALLOTS

Since the Democrats, Greens and Republicans have changed their primary rules and have either had them sent to DOJ or intend to, the Division anticipates that there will be four candidate ballots for the primary election. The AIP will receive a separate party ballot by default.

The addition of three extra ballots will cost the Division \$180,000 over its usual expense of ballot printing.

PRECINCT REGISTERS

The precinct registers used by the election workers at the polls will be redesigned to allow for accounting of ballot type given to the voter. An additional column will be added with the symbols, "AI," "D," "G" or "R." The election worker will circle the ballot type given the voter. The number of each type will be accounted for when the polls close.

Additionally, the Voter Registration and Election Management Systems (VREMS) will be reprogrammed to print out what ballot type each individual voter is eligible to receive based on their current registration and the political party rules. This should help alleviate election worker error when giving a particular party ballot to a voter.

VOTE COUNTING EQUIPMENT

The Division will need to modify its vote counting computer program to count multiple candidate ballots. This will increase the usual cost of programming by about \$20,000.

VOTER EDUCATION

When the Division opposed the RPA's motion to implement its 1990 party rule change, the Division testified that rural voters would be disenfranchised because they would not know about the primary rule changes. This concern was also expressed to the Department of Justice. The Division will conduct a voter education program in order to inform voters about how the primary will be different. We anticipate that this will increase our usual advertising costs by about \$25,000.

REGISTRATION FORM

The current registration form is being updated to inform voters that their party affiliation may effect who they can vote for in the primary election. Currently, party affiliation choice on the form is optional. About 45% of the 287,071 registered voters have indicated a party choice. Fifty-five percent are either nonpartisan or undeclared.

The Division will instruct voters to contact the political party of their choice to determine whether they can vote in the party's primary election.

THE PRIMARY THREAT

APR 23 1981

- I. Thank Jean and Bill for their invitation to join the Bartlett Democratic Club today.
- II. As a 30-year Democrat, it's always a pleasure to address a Democratic Club--you know you are talking to the heart and soul of the party in the community. The heartbeat of the party, so to speak
- III. As a recent candidate for office under the Democratic banner--let me say that I was proud to be on the ticket! I would have been even prouder had we won!
- IV. I will not speak on the performance of the party and characters now in power--I think their performance speaks for itself! (What do you think??)
- V. Today I would like to talk about a subject that has not had the kind of notoriety as say, the Exxon Oil Spill Settlement or the ATU sale--yet this subject has the potential of rearranging our entire primary election system in Alaska.
- VI. The issue is the Republican Party's pending effort to return to a closed primary system for their party--which they abandoned in 1967 (Actually, they call it an "open" primary - open to the independents and no party voters).

- VII. The Republican Party tried in a vigorous but futile effort last summer to allow only Republicans, independents and no party voters to vote in their primary.
- VIII. This last minute effort was short-stopped only because they ran out of time for the state to implement their idea of what ought to happen in their primary.
- IX. Had it not been for the Democratic Party and the AFN fighting to maintain the status quo in the August primary, a new and virtually undebated system may now have been in place with results not thoroughly understood by the voting public.
- X. Their plan was considered to be a move that would have (1) confused the voters, (2) allowed the GOP to manipulate the other party's nominees, and (3) taken place at a time when many rural Alaskans were out commercial fishing or preparing for the coming winter in scattered camps across Alaska.
- XI. Naturally, in a political system, when politics is the next thing to armed combat to lead society, parties do what they can to gain an upper hand among the electorate. Therefore, one can't blame the Republicans for doing what's in their interest. They were attempting to follow the law as they understood it.

The courts and society permit organizations to freely associate and to select their leadership in their own fashion. At least to the extent that the process, in the case of the political parties, didn't further fragment the dual party system or permit a one-sided raiding of the other party--or in some other fashion inhibit unfairly the right of individuals to vote.

XII. Their party primary plan also had to survive the preclearance review of the U.S. Justice Department's Civil Rights Division to insure that minority groups were not unfairly effected.

XIII. My concern today is not so much the fact that the Republican Party is pursuing its own interests. It is their right. The problem I see is that the public is virtually unaware of the fact that the request of the GOP is not only still pending before the Justice Department--it is being amended to become effective in August of 1992.

XIV. In the event that their proposals are not challenged, they could well become the law of the land and it would be without the benefit of public debate either by a legislative body or other kind of public forum.

XV. As I understand it, once the Justice Department approves the plan it is then up to the Lt. Governor to implement the party primary plan. Is it possible that the plan

would become effective despite being contrary to the state law on primaries? The answer seems to be yes because the state attorney general could simply argue that our law is contrary to federal law.

XVI. In which case, unless the Democratic Party comes up with our own system, the Republicans will be in a position to not only vote in their own primary, they could conceivably participate in the Democratic primary! Their proposed rules would permit this.

XVII. Alaskans are not as enamored with political parties as some of us have been over the years. 56% of the voters are registered as independents or no-party (155,000) while only 21% (^{57,000} 5,700) are Republican, and 20% (55,000) are Democratic.

XVIII. Is it not apparent that the independent spirit of Alaskans doesn't want to be straight-jacketed into a two party system that limits their choices - or complicates the election process to the point that they don't go to the polls because of the hassle?

XIX. There is a realistic probability that the Lt. Governor will take the Republican plan and fashion our primary system along those lines. He is after all, philosophically, a fellow traveler of the far right that now controls the Republican Party.

XX. So, what are the Democratic Party's options?

The GOP request is moving through the Justice Department unfettered by opposing briefs.

The State Attorney General will advise the Lt. Governor to comply with Federal Supreme Court decisions.

And if no action is taken by the Democrats, the Republicans will have written the rules for the primary elections.

What will be the effect of such a change?

1. It will likely result in fewer voters as 56% of the registered electorate feel that their choices will have been limited by "Party Hacks".
2. The rural voters will be put in a position where they will have to choose whether to vote for federal office seekers (all Republican) vs. voting for Democratic State House and Senate candidates. Ticket splitting has become a way of life in Alaska - especially the rural areas.
3. A great strain will be placed on the election officials to learn a new system - as to the state - not to mention the confusion among the voters.

XXI. I would suggest the following course of action:

1. The party should scrutinize the Republican plan with a fine tooth comb immediately to determine if in fact they will be "raiding" your membership.
2. There should be a close review to determine whether village voters will be forced to abandon the Democratic Party in order to vote for federal candidates who happen to be Republican;

and

3. I believe it is incumbent on the Legislature to set up a special committee on elections to review the primary process being proposed so that hearings could be held across the state on this important subject. This committee could also review the criticism concerning the "Rent-A-Party" process we witnessed last year.

It is beyond me how such an important aspect of our political system could escape the kind of scrutiny and debate that is a hallmark of a Democratic society.

I would strongly urge this body to request legislative hearings on the subject!

Implementation plan for Primary Election for individual political parties.

Reference Senate Bill Number 297 and House Bill Number 327.

Submitted under the Employee Incentive Award Program,

by Steven Endorf, 465-4881.

Steven Endorf

Background:

In previous elections, the Candidate Ballot card, had each race, for an office, listed separately with the candidate's names rotated on top. The race with the most candidates determines the number of sequences. Each ballot card has an identifying sequence, a three-digit number, punched at the bottom of the card (See Figure 1.). This sequence is used by the ballot counting program to identify which punched hole goes with which candidate's name in which race.

The voter was allowed to select any candidate in a particular race. The Republican primary restriction rule and subsequent changes by the other political parties in Alaska has made a dramatic change in voting for candidates in a primary election. How these changes are implemented by the Legislature and the Division of Elections can be expensive burden or an efficient bargain.

Proposal:

I am proposing an alternative implementation to the one given by the Division of Elections, whose reported estimate of expenses is \$633,000. Of that \$633,000, Elections estimated about \$64,000 to train additional election workers, \$60,000 to educate voters and \$180,000 to print multiple sets of ballots, among other costs (Juneau Empire, 2/11/92). One of the unreported costs is modifying the vote counting software.

The alternative I am proposing is simple and its implementation and continuous costs should be minimal. It basically consists of putting a fixed area at the top of each Candidate ballot listing

each recognized political party, with a punch spot next to the political party's name (See Figure 2.).

This punch spot would be punched, corresponding to the voter's party registration, by the election worker who hands the ballot to the voter. If the voter has not previously declared a party then the voter would specify a party to the election worker, who would punch the ballot, prior to the voter entering the voting booth.

The vote counting software would only count votes for the candidates' of the political party selected on the ballot, depending on the political party's primary rules. If more than one political party was selected then no votes on that ballot would be counted.

There should not be a need to have additional election workers. Educating the voter should not cost anywhere near the \$60,000. All that would be needed would be a poster, in large type, that had wording very similar to the above italicized paragraph. In most cases, the number of different sequences would be reduced and there would be no need for multiple, separate ballots, so printing costs might actually be reduced. The only possible cost increase would be the modifications to the ballot counting software, which might run as much as ^{\$7,000*}~~\$15,000~~. All the other costs should be severely reduced or eliminated. The estimated cost savings is approximately ^{* \$80,000+}~~\$600,000~~. Some small changes would have to be made to Senate Bill #297 and House Bill #327 to allow for the above method instead of forcing separate ballots for each political party.

* based on new estimates by Div. of Elections, Juneau Empire, 2-18-92.

Figure 1.
 Example of the Current Ballot structure
 (Five different sequences)

Race 1 Candidate 1 [] Candidate 2 [] Candidate 3 [] Candidate 4 [] Race 2 Candidate 1 [] Candidate 2 [] Candidate 3 [] Candidate 4 [] Candidate 5 [] Race 3 Candidate 1 [] # 2 # 0 # 1	Race 1 Candidate 2 [] Candidate 3 [] Candidate 4 [] Candidate 1 [] Race 2 Candidate 2 [] Candidate 3 [] Candidate 4 [] Candidate 5 [] Candidate 1 [] Race 3 Candidate 1 [] # 2 # 0 # 2	Race 1 Candidate 2 [] Candidate 3 [] Candidate 4 [] Candidate 1 [] Race 2 Candidate 5 [] Candidate 1 [] Candidate 2 [] Candidate 3 [] Candidate 4 [] Race 3 Candidate 1 [] # 2 # 0 # 5

Figure 2.
Example of the Proposed Ballot structure
(Three different sequences)

Primary Election	
Political Pty 1	[]
Political Pty 2	[]
Political Pty 3	[]
Political Pty 4	[]
Race 1	

Political Party 1	
Candidate 1	[]

Political Party 2	
Candidate 1	[]
Candidate 2	[]
Candidate 3	[]
	[]
Race 2	

Political Party 1	
Candidate 1	[]
Candidate 2	[]
Candidate 3	[]

Political Party 3	
Candidate 1	[]
Candidate 2	[]
Race 3	
Candidate 1	[]

	2
	0
	1

Primary Election	
Political Pty 1	[]
Political Pty 2	[]
Political Pty 3	[]
Political Pty 4	[]
Race 1	

Political Party 1	
Candidate 1	[]

Political Party 2	
Candidate 2	[]
Candidate 3	[]
Candidate 1	[]
	[]
Race 2	

Political Party 1	
Candidate 2	[]
Candidate 3	[]
Candidate 1	[]

Political Party 3	
Candidate 2	[]
Candidate 1	[]
Race 3	
Candidate 1	[]

	2
	0
	2

Primary Election	
Political Pty 1	[]
Political Pty 2	[]
Political Pty 3	[]
Political Pty 4	[]
Race 1	

Political Party 1	
Candidate 1	[]

Political Party 2	
Candidate 3	[]
Candidate 1	[]
Candidate 2	[]
	[]
Race 2	

Political Party 1	
Candidate 3	[]
Candidate 1	[]
Candidate 2	[]

Political Party 3	
Candidate 1	[]
Candidate 2	[]
Race 3	
Candidate 1	[]

	2
	0
	3



Alaska State Legislature

Please enter into the record my testimony to the (JNT) STATE AFFAIRS
committee name
committee on HB 327 / SB 247, dated 02/05/92
bill/subject

Per request of the Committee Chair via GAA Spokesperson Jim
Sykes, I resubmit background materials about the
"Preferential Voting," "The Single Transferable Voting" and the
"Hare-Clonke" System, as applied by the parliament of
Tasmania, in specific, and other states/provinces/territories
throughout Australia, and the Australia federal government.

Signed: ANTHONY N. WHITWORTH
Testifier
TATIANA-YUKONGREENS, GREEN PARTY OF ALASKA
Representing (Optional)
2284 RAILROAD DR., FAIRBANKS, AK 99709
Address
479-8129 (voice + fax)
Phone No.

Topic 194 Preferential Voting Info Sought Response 2 of 2
peg:fionac
gpn.green-forum 10:31 pm Oct 30, 1991

Dear Anthony,

Since nobody else has responded yet, I'll give it a go. I am in the South Sydney Greens, but fairly new to politics. I did manage to find some information about the two systems (and variations) in the book named below. I hope it is helpful. I will see if I can dig up any more information over the next couple of weeks. Please let me know if you have any specific questions and I'll try and get them answered. Good luck with your field hearing, and with the whole situation in Alaska - sounds fairly dire.

In Peace

Fiona Campbell

from The Beginner's Book of Australian Politics
by Morris Graham (Social Science Press, Aust,86)

THE PREFERENTIAL SYSTEM

This system ensures that the winner is the most favoured by voters. It really asks voters, 'If your first choice does not win, who will be your second choice, and the one after that till there are no more candidates left?'

If there were three candidates ballot papers could be marked in six different ways:

	I	II	III	IV	V	VI
A	1	1	2	3	3	2
B	2	3	1	1	2	3
C	3	2	3	2	1	1

EXAMPLE - In a ballot of 30,000 formal votes

Primary, ie., '1' votes were

A 11,000 B 10,000 C 9,000

No candidate has an absolute majority, which is 15,001.

C is the least popular.

The second preferences of the 9,000 C voters are distributed between A and B.

If A receives 3,000 and B 6,000

new totals are: A $11,000 + 3,000 = 14,000$

B $10,000 + 6,000 = 16,000$.

B wins the election.

ADVANTAGES OF THE PREFERENTIAL SYSTEM

- The winning candidate is the one most preferred.

DISADVANTAGES OF THE PREFERENTIAL SYSTEM

- More complicated to mark - more informal votes.
- More complicated to count - more expensive.

THE OPTIONAL PREFERENTIAL SYSTEM

This is a modification of the Preferential system and is used in elections for the New South Wales Legislative Assembly (house of reps in USA). It aims at reducing the number of informal votes. Voters must vote for one candidate, but after that can vote for as many of the remaining candidates as they wish.

This system is easier for the voter but may reduce the number of counts in which a vote is considered.

EXAMPLE - If 1st, 2nd, 3rd and 4th preferences have to be counted before a candidate gets an absolute majority

BUT a voter records a '1' vote only,

AND the voter's choice has the lowest total of primary votes and is first to have preferences distributed,

the voter cannot be included in the second preference count.

LIKEWISE, if a voter records only a '1', '2' vote, that voter cannot take part in a distribution of '3' preferences to get an absolute majority [ie. the vote is 'exhausted' after the first two counts].

THE PREFERENTIAL LIST SYSTEM

For the 1986 Queensland state election [since used more widely] voters will be allowed to mark a full preferential vote as usual or simply indicate a party list of preferences with one mark.

Preferences will be allotted by the Electoral Office according to the list of preferences supplied by the political parties.

THE PROPORTIONAL REPRESENTATION SYSTEM

First-past-the-post and Preferential systems are winner-take-all systems. A total of one more than half the formal votes gets everything. A total of one less than half the votes gets nothing. Over a whole state or federal election it is theoretically possible for one political party to win all the seats with a little over fifty per cent of the votes and for the other party with a little under fifty percent to win no seats.

The PR system ensures representation in proportion to the amount of support candidates get.

It works only where there is more than one candidate to be elected. It cannot be used in single-member electorates.

Tasmania is the only state where the PR system is used to elect members to the lower house. Called the Hare-Clark system, after the Englishman who invented it and the Tasmanian who introduced it,

it was first used in Tasmanian elections in 1907. The five federal electorates are used for state elections but instead of one member being returned for each electorate, as happens in federal elections, seven members are returned for each, making a total of thirty-five state members.

PR was first used in elections for the Senate in 1949 when the Senate was increased from thirty-six to sixty members. In the Senate after the 1946 election there were thirty-three Labor senators and three non-Labor. PR is also used to elect the Legislative Councils [upper house] in South Australia and New South Wales [we also use the proportional preferential voting system for local council elections in NSW].

Voters mark their preferences for individuals or groups. In New South Wales and Tasmania voters mark preferences against individual

candidates, but in South Australia they record one vote for a political group. It is now possible in Senate elections to vote for a political group with one mark but the old system of filling in a full list of preferences is still allowed.

PR does not work on the principle of gaining an absolute majority

for election. Candidates must gain a 'quota'. This is fixed by dividing the number of formal votes by 1 more than the number of seats to be filled and adding 1 more vote.

In the federal election in 1984, there were 3,051,692 formal votes in New South Wales to elect seven senators. The quota for New South Wales was 381,462, the result of the calculation:

$$(3,051,692/(7+1))+1 = 381,462$$

Votes are distributed from both the candidates with most votes and those with the least, but not at the same time.

When candidate A gets a quota, the 'surplus', or the number of votes the candidate has above the quota, is transferred after adjustment by a formula to the next preferred candidate.

EXAMPLE - Sibraa (ALP) topped the poll with 1,258,998 votes. Childs was the next on the ALP list with 2,105 votes. Sibraa had a surplus that lifted Childs to 877,897. A similar process was calculated for the Liberal-National list where Publick (Lib) was top with 1,117,071. Candidates of the main parties got quotas in the following order:

ALP - 1st 3rd 5th LIB/NAT 2nd 4th 6th.

If after the surpluses are distributed no candidate has a quota, candidates are eliminated, beginning with the candidate with the least votes, until a candidate reaches the quota.

The seventh New South Wales Senate seat was won by Mason (Democrats) on the preference of the unsuccessful ALP candidate.

ADVANTAGES OF THE PR SYSTEM

- Representation is proportional to support.
- Small parties have a better chance of winning seats.

DISADVANTAGES OF THE PR SYSTEM

- Counting is slow and complicated. It took 3,010 counts and sub-counts to complete the 1984 NSW Senate count. This took about two weeks to complete.
- When numbers of seats held by the main parties are close, small parties can hold governments to ransom, trading support for concessions.

The Progressive Review

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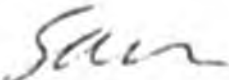
October 29, 1991

Dear Anthony Whitworth:

Concerning your inquiry on preferential voting on Peacenet, you will find it discussed in the enclosed article on approval voting. While these folks favor the latter, it is important to note that almost any of these systems is better than what we have now. Some of these are described in the enclosed.

article from
I've also enclosed a recent issue of the Review which contains an argument for use of proportional representation in electing members of the House. None of the cases involving civil rights discrimination in voting seem to have considered the possibility of using some form of proportional representation. This is probably due to our obsession with the so-called two party system.

Keep the faith,



Sam Smith
Editor

contest, Holtzman would have defeated D'Amato by 61,300 votes. (The importance of this particular election became clear when the newly-elected Senator D'Amato was selected to chair the Senate Subcommittee on the District of Columbia.)

James Buckley was elected a United States Senator from New York in 1970 with only 39% of the vote. Buckley, a conservative, was probably no more representative of New York State voters than John Lindsay, a liberal, was representative of New York City voters when he was reelected to a second term as Mayor of New York in 1969 with 41% of the vote. The 61% majority that voted for Buckley's two opponents, and the 58% majority that voted for Lindsay's two opponents, were effectively denied representation, at least in terms of their apparent ideological preferences, for six and four years, respectively.

In the 1977 New York City mayoral election, six candidates received between 10% and 30% of the vote in the Democratic primary. This contest was followed by a runoff between the two top vote-getters, Edward Koch (19.8%) and Mario Cuomo (18.6%), which Koch won. The runoff, however, offered no assurance that one of the other four candidates in the 10% to 18% range could not have beaten Koch. Koch may well have been the strongest candidate in the Democratic field, but the plurality election, even followed by a runoff, did not offer incontrovertible evidence that indeed he was.

In the Buckley and Lindsay elections, if either candidate had been in a head-to-head contest with just one of his opponents, he would have almost surely lost to him. Because there indeed was another candidate that a majority would have actually preferred, the election system in each case worked perversely.

The paradoxical result of a weaker candidate beating a stronger candidate in an election occurs when two or more moderate candidates split the central vote, allowing a more extremist candidate to run out a victory with the support of only a minority. The most common attempt to "repair" this defect in plurality voting is to add a runoff election between the top two vote-getters in a plurality vote. Plurality-with-a-runoff offers a slight improvement in some instances, but it also introduces a strange phenomenon. In the next example, 29 voters have the following preference orders:

EXAMPLE D

12	9	8	1
A	C	B	B
B	A	A	A
C	B	C	C

The runoff would be between A and B, each having received 10 votes in the plurality contest, and A would then beat B by 10 to 10 (C's supporters preferring A). Supposed, however, that the last two voters changed their minds in the usual election and decided that they liked A better than B (no circular preference change):

12	9	8	1
A	C	B	A
B	A	A	B
C	B	C	C

The resulting runoff would be between A (with 12 votes) and C (with 9 votes), and C would beat A by 17 to 12 (B's 8 voters would support C). Paradoxically, the two voters who changed their preference in favor of A caused A to lose! This seems both unfair and undemocratic. Thus, adding a runoff is not a satisfactory device for finding the majority candidate, and the cost of implementation makes it unattractive.

PREFERENTIAL RANKING SYSTEMS AND ELIMINATION SCHEMES

An election reform, called the Hare System, that had been used in a few places in the United States (for example, Cambridge, Massachusetts) shows many of the advantages of approval voting. If no candidate receives a majority of first-place votes, the candidate with the fewest first-place votes is dropped and the second-place votes of his

supporters are given to the remaining candidates. The elimination process continues, with lower-place votes of the voters whose preferred candidates are eliminated being transferred to the candidates that survive, until one candidate receives a majority of votes. (This system is also used in Australia and the Republic of Ireland, among other places, where it is known as the single-transferable vote system.)

Apart from the practical problems of implementing a ranking system, the Hare system has a major drawback: it may eliminate the candidate most acceptable to the voters. In hypothetical example C, Washington would have been eliminated at the outset. Yet, in that example, Washington would have beaten both Barry and Tucker in separate two-way contests, and was, therefore, the strongest candidate. Moreover, he would have won with approval voting. A first serious drawback of preferential voting is that the candidate with the most first-place votes originally may be displaced after the transfers have been made to determine the majority winner. This may greatly upset that candidate's supporters (particularly if they are a large minority) and lead to questions about the legitimacy of the system. This challenge cannot be mounted against approval voting since approval votes are indistinguishable—whether these votes are first-place, second-place, or whatever, is not recorded, so no portion of the winner's total can be judged "inferior."

Another ranking system is known as *Coombs Elimination*, which eliminates the candidate with the most last-place votes. Assume voter preferences are as follows:

EXAMPLE E

12	20	12	12
A	C	C	B
B	B	A	A
C	A	B	C

In this example, C would be eliminated at the outset, but would also receive the most first-place votes. This result would not seem to be any more palatable than the previous example in which Washington was eliminated at the outset.

A voting system that uses points as weighting factors is known as the *Borda System*. In its most common version, if there are three candidates, a first-place vote would receive 2 points, a second-place vote would receive 1 point, and a third-, or last-, place vote would receive 0 points. For example:

	20 voters	20 voters	Borda points
2 pts.	A	B	A: 60
1 pt.	B	C	B: 70
0 pts.	C	A	C: 20

In this instance, the Borda system fails spectacularly because it does not select the first choice of the majority of voters, A. Certainly A's supporters would call into question the legitimacy of this system, and because they are the majority they could cause more problems in governing successfully.

A final problem with ranking schemes is the problem of voter education. Where these systems have been used in the United States, as in New York City school board elections where the Hare system has been tried, the results take several days to tabulate, and voter participation has been exceedingly low (4% in the last school board elections). In the District, which has a short history of elections, the difficulty in explaining this system to an already cynical electorate would be immense. Approval voting, on the other hand, is based on an extremely simple idea and would be a system relatively easy to implement, with results that can be efficiently tabulated.

CONCLUSION

Advocacy of approval voting is not an indictment of either past or present elected officials in the District; it is merely a simple step that can be taken by the D.C. Democratic party to ensure a more certain majority winner. The assumption can easily be made that such a winner would begin

his or her term of office with not only the good will of the citizenry but also with the public's knowledge that no other candidate was more acceptable.

Approval voting, in itself, would not fundamentally change the formal relationship between Congress and the District; it would, however, serve notice to the Congress that District residents care enough about their local government to take steps to improve it. With a mayor and city council elected by the clear preference of the electorate, certain members of Congress conceivably would be less inclined to second-guess the desires of the community than they are today. On the other hand, with a more representative government, local residents may become less predisposed to bypass the District government and directly point out sympathetic congressmembers on issues that are essentially local matters.

Approval voting may well become the election reform of the 20th century, just as the Australian, or secret, ballot, prized by the government with the names of all authorized candidates, was the election reform of the 19th century. It is being seriously considered in several states, including New York, New Hampshire, and Vermont (where a bill has already been introduced in the state legislature). Could not the District benefit from pioneering the adoption of this fair and practical reform?

STEVEN J. BRAMS is professor of politics at New York University. He is the author of *Game Theory and Politics* (1977), *Paradoxes in Politics* (1976), *The Presidential Election Game* (1978), *Ethical Games* (1980), and a forthcoming book with Peter C. Fishburn, *Approval Voting*.

BARBARA J. HELL is on the staff of *Science* magazine and was formerly Treasurer of the D.C. Young Democrats, the Chair of the Women's Caucus of the Young Democrats of America, and the Corresponding Secretary of Ward One Democrats. She also served on the staff of the *Faustberg* and was a member of the D.C. Democratic Young Community.

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THE ADVANTAGES OF APPROVAL VOTING

1. *It respects the majoritarian principle in democratic elections.* By making it difficult for candidates who command the support of only a minority of the electorate to win when there is another candidate preferred to the minority candidate, approval voting enhances the idea of majority rule. Unhappily, there have been enough instances, in recent decades, of minority candidates winning elections and thereby flouting the will of the majority, to undermine the credibility of the electoral process. In any election in which the number of significant candidates is large, the election of a candidate without the support of a majority of voters is almost inevitable.

2. *It gives voters more flexible options.* They can do everything they can under the present system—vote for a single favorite—but if they have no strong preference for just one candidate, they can express this fact by voting for all candidates they find acceptable. For instance, if a voter most preferred a candidate who had little chance of winning, that voter could vote for both a first choice and a more viable candidate without worrying about "wasting" his or her vote on the less popular candidate.

3. *It elects the strongest candidate.* Today, the candidate supported by the largest minority wins, or at least makes a runoff. Under approval voting, by contrast, it would be the candidate with the greatest overall support—the one most approved of—who would win. An additional benefit is that approval voting would induce candidates to try to mirror the views of the majority of voters, not just cater to special interests whose votes could give them a slight edge in a crowded plurality contest, the kind of contest in which a candidate with only 20% to 30% of the vote can win. The fact that Jimmy Carter won the 1976 Democratic primary in New Hampshire with only 28% of the vote, and Henry Jackson won the Democratic primary in Massachusetts one week later with only 23% of the vote, says nothing about how acceptable either candidate was to the approximately three-quarters of the electorate in each primary who did not vote for them.

4. *It strengthens political parties.* Approval voting would make it much more difficult for candidates who did not command majority support within their respective parties to win the nomination. It would thus tend to result in the nomination of the strongest and most viable candidates, thereby restoring credibility to the candidate selection process traditionally performed by political parties. The credibility of that process has been seriously undermined by the perception that it can be artfully manipulated by candidates who command support of only a minority of the party.

5. *It gives minority candidates their proper due.* In a typical three-way contest including one candidate from each of the two major parties and an independent or third-party candidate, support for the non-major party candidate often fades as election day approaches because many of his or her

supporters think that their candidate has no serious chance of winning. Although positions taken on issues by the third-party candidate may enjoy widespread support in the electorate, the result of the election often substantially underrepresents the magnitude of this support. With approval voting, minority candidates and their positions would receive more appropriate recognition, because voters could support them—along with their preferred major-party candidate—without "wasting" their votes, even though one of the major-party candidates would generally win.

6. *It enhances citizen participation.* Voters would not be forced to make an arbitrary choice if they favored more than one candidate. Nor would they be compelled, as under the present system, to "waste" their votes if they preferred a non-major party candidate and also found one of the two major-party candidates acceptable. And since the political parties would be encouraged to nominate the strongest and most viable candidates, voters would be presented with more plausible choices. All these reasons are cited by non-voters as factors keeping them from the polls. It seems reasonable to assume that as perceived reasons for not voting are overcome—particularly the restriction of voting for exactly one candidate—more voters will participate in elections.

7. *It is eminently feasible.* It may be thought that, even given the virtues of approval voting, it would make little difference in a real election, since candidates would encourage voters to vote for just themselves (bullet voting) to keep down the vote totals of their opponents. Yet, such an appeal would probably be ineffective, particularly in a crowded race in which voters had difficulty distinguishing their single favorite. In an approval voting experiment involving several hundred Pennsylvania voters before their 1976 primaries, 72% of the voters voted for two or more of the eight candidates listed on their sample ballots. A similar percentage would have voted for additional candidates in New Jersey gubernatorial primaries in June 1981, as shown in an exit poll of 2,600 voters in that election.

Approval voting can be easily implemented with existing voting machines and would not greatly complicate tabulating paper ballots where they are still in use. In the District, approval voting in the Democratic primaries can be enacted by the endorsement of the D.C. Democratic State Committee.

COMPARISONS WITH OTHER VOTING SYSTEMS

The growing and vocal dissatisfaction with plurality voting in the District has encouraged the promulgation of various types of voting systems, or the addition of a runoff election to the present plurality system. An examination of some of these systems will be useful in highlighting the advantages of approval voting for the District.

PLURALITY VOTING AND PLURALITY-WITH-A-RUNOFF

It is a sad fact that, under the present system of plurality voting, elections are often rigged against majority candidates. One can think of numerous examples throughout the country in which three or more candidates in a plurality contest divided the total vote in such a way that no candidate received a majority. For example, in the 1980 U.S. Senate race in New York, Alphonse D'Amato (Republican and Conservative) defeated Elizabeth Holtzman (Democrat) 41% to 44%. Also in that contest was communist Jacob Javits (Liberal). An exit poll taken by ABC showed that 44% of Javits' supporters would have supported Mr. Holtzman had he not been in the race, whereas only 22% would have supported D'Amato. If Javits had not been in the

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APPROVAL VOTING: HOW TO IMPROVE DC'S CRAZY ELECTIONS

Barbara J. Heil & Steven J. Brams

The growing estrangement of the American public from its political system is reflected by the 20-year decline in voter participation. This decline has been attributed in part to disenchantment and cynicism with overpriced and chaotic in large, multi-candidate elections with minority, not majority, support. Such elections have produced some recent alarming failures of government due, in large measure, to candidates' winning with insufficient support to achieve a post-election consensus among the various parts of the municipality.

The great virtue of democracy is regular elections: when one is dissatisfied with an elected official, it is usually only a matter of time until the next election, sometimes the same one, if others are similarly dissatisfied. Unfortunately, citizens of the District of Columbia are not guaranteed another election. Self-government in the District exists under a different premise from that in other jurisdictions in the United States. In the District, home rule is a privilege, not a right; like any other privilege, it can be taken away—as it has in the past. Until that privilege becomes a right, it is the duty of every District citizen to protect the future of popularly elected local government.

Despite this unique aspect of home rule, the District suffers from the same problems that afflict American politics elsewhere: declining voter participation, increasing leverage of special-interest groups, the growing impact of the media and opinion polls, and the trivialization of issues in a protracted primary campaign. Nevertheless, the D.C. Democratic party remains a potent force that has not suffered the debilitation that has occurred in both parties in other parts of the country. Indeed, winning a D.C. Democratic primary is tantamount to winning the election, and this position is not likely to change in the foreseeable future. Consequently, the impetus for change in the political system will have to come from District Democrats.

Approval voting is a system that increases a voter's options in multi-candidate elections without more than two candidates. It allows each voter to vote for, or approve of, as many candidates as he or she considers acceptable in an election. Thus, a voter might choose to vote for a single candidate, as under plurality voting, or for more than one; a voter may vote, however, for more than one vote per candidate. This system changes the idea of "one person, one vote" to "one candidate, one vote." That is, it permits a voter to make a judgment about whether or not to support each and every candidate, without any restriction on how many candidates the voter can designate as acceptable.

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The example of the 1978 D.C. Democratic mayoral primary can be used to show how approval voting might have either affirmed or changed the actual outcome. The results of this primary were:

BARRY = 51% TUCKER = 31% WASHINGTON = 18%

What if, instead, we had the voter's complete preferences. Using 100 as the total number of voters, assume the preferences of each of the voters

candidate had the following preference orders (from best to worst):

EXAMPLE A

1st	2nd	3rd
BARRY	TUCKER	WASHINGTON
TUCKER	BARRY	BARRY
WASHINGTON	WASHINGTON	TUCKER

If each voter had approved of his two most-preferred choices, the results would have been a total of 200 votes divided thus: Barry—100; Tucker—64; and Washington—32. This would affirm Barry as the actual winner.

EXAMPLE B

By simply reversing the second and third preferences of the Washington voters, Tucker would have emerged as the most acceptable candidate:

1st	2nd	3rd
BARRY	TUCKER	WASHINGTON
TUCKER	BARRY	TUCKER
WASHINGTON	WASHINGTON	BARRY

Tucker—100; Barry—64; Washington—32.

EXAMPLE C

In this example, assume there is a runoff between the first- and second-place finishers when plurality voting, where voter preferences are as follows:

1st	2nd	3rd
BARRY	TUCKER	WASHINGTON
WASHINGTON	WASHINGTON	BARRY
TUCKER	BARRY	TUCKER

Now Barry and Tucker would have made the runoff, but the most acceptable candidate, Washington, if all voters had found the top two as their acceptable choice, would win. Thus the outcome of a runoff under plurality voting does not always reflect the most acceptable candidate. In some cases, the runoff is both costly and tends to lead to reduced voter participation, as voters believe the runoff election has demonstrated.

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Other ways to count votes

WHAT DOES DEMOCRACY MEAN? To many Americans (and to most of the media) it's all wrapped up with the two-party system and winner-take-all elections.

But although America considers herself the leading democracy, its electoral system is one of the least representative and the most primitive to be found in democracies around the world.

For example we elect our House of Representatives, state legislatures and many local offices from single-member districts. Not only does this increase the danger of intentional or unintentional gerrymandering, it also means there need be no direct correlation between the total popular vote and the composition of the legislative body. For example, Democrats could hold a slight edge in every congressional district and thus win total control of the House even though Republicans might have gotten 49% of the vote nationwide. This is an extreme case but studies have shown marked differences between popular support and the number of seats won where single-member districts are used.

Here's an example from the recent elections in Quebec, showing the difference between the percentage of the vote received by the leading parties and the percentage of seats won in the assembly:

1975		1976		Party
% of vote	% of seats	% of vote	% of seats	
30%	5%	41%	60%	Parti Quebecois
55%	87%	33%	25%	Liberals

A multi-member district using some form of proportional voting such as the single-transferable vote not only produces results much closer to the actual distribution of feeling in the constituency, it allows significant minorities representation to a degree seldom seen in America.

Even a single-member district election (or presidential election for that matter) would be more representative using a system other than our present first-past-the-post plurality system. Although runoff elections have been found to have serious weaknesses, there are other options including the alternative vote. Under the alternative vote system, the elector casts a ballot marked with candidates in order of preference e.g. 1, 2, 3 etc.

If no candidate wins a majority of first place votes, the second place votes of the candidate with the least number of votes are redistributed among the other candidates. If there is still no one with a majority the process is repeated with the second place votes of the next lowest candidate. Another way of counting second place votes is to count the second choices of the voters for all candidates with no mathematical chance of winning election after the first count.

Example:

Candidate A 800 votes
Candidate B 700 votes
Candidate C 700 votes
Candidate D 200 votes
Candidate E 100 votes
Candidate F 100 votes.

In this case candidates D through F would have no chance of winning so their second place choices would be redistributed, after which we find this:

Candidate A 900 votes
Candidate B 800 votes
Candidate C 900 votes

The count is gone through a third time with candidate B's second place votes redistributed.

Although this (and other systems like the single transferable vote in a multi-member district) seem complex, the record of spoiled ballots is as low or lower than in our system. Further, in return for a more time consuming counting of the ballots you gain the following advantages:

- a truer consensus of the constituency than in cases where you elect by simple plurality.
- Less chance of vote fraud because in close elections, votes must be counted at least twice and the figures must coincide.
- The opportunity for people to vote their beliefs rather, as is the present case, limiting their choice only to the candidates who they think stand a chance of winning. It seems likely, for example, that Eugene McCarthy would have received a much higher vote under an alternative vote system, because voters would have known that should he not get a sufficient number of first place votes their second choices would be counted.

There are many other systems of voting, many of them preferable to our tyranny of the majority approach. For example a number of stable European countries have thrived on a multi-party system where it is frequently necessary that a government be comprised of a coalition of parties. Here, third parties find it difficult to get on the ballot, let alone into office.

Activists concerned about the anti-democratic aspects of American politics have paid far too little attention to the mechanics of voting, but perhaps some of the openings created by Eugene McCarthy's impressive effort to democratize presidential politics can be widened by actions at the local level. Women, ethnic and ideological minorities and other groups might find it worthwhile to press for multi-member districts in local government with proportional representation. The introduction of the alternative vote at the local level could greatly increase the impact of third parties and change-oriented political forces. At the very least, permitting multiple party nomination of candidates as in New York State (where a governor, for example, can run on both the Liberal and the Democratic line) would increase the clout of third forces.

-SAM SMITH

than 50 percent longer than untreated rats afflicted with the same cancer.

But shortly after the FDA gave the McNaughton Foundation clearance to begin human clinical trials in the spring of 1977, it withdrew its clear, citing the

In 1973, the MCI contracted the Southern Research Institute in Birmingham, Ala., to test amygdalin. The report indicated that amygdalin was "statistically significant" in combatting a particularly stubborn type of tumor.

had negative results but I guess I should put it another way and say we haven't had consistently positive results." He points to other Sloan-Kettering tests that he says have not confirmed Dr. Sugrue's tests.

Dr. Sugrue says this: "I don't remember ever doing experiments that were later

Dr. GAZETTE
1975



This map shows how many seats blacks and latinos have lost in the House because of the district voting system used to elect members. Voting at large with proportional representation would probably add at least 37 new minority members to the House

The safe segregation of Capitol Hill

In the midst of the debate over affirmative action, few noted that the arguments were taking place in one of America's most segregated institutions, the US Congress.

As we have pointed out before, if Congress were a school system it would be under court-ordered bussing. Being a law unto itself, it can proceed happily passing civil rights rules for the rest of the country, from which it is effectively exempt.

Only through a quirk is a black or hispanic elected to the Senate. And thanks to elections by congressional districts, each larger than any state except Virginia at the time the Constitution was written, minority representation in the House is roughly one-third what it should be.

Even when the gross disparity in the makeup of Congress is noted, it has generally been assumed that there is not much that can be done about it short of changing the Constitution. Of course, making DC a state would help, as would Senator Simon's suggestion that Guam, the Virgin Islands and Puerto Rico all be given statehood. But it would take thirteen new states, each with black or latino senators, to bring the Senate into ethnic balance.

In the House, however, there is more opportunity to rectify the imbalance than most realize. While the Constitution prescribes that representatives be apportioned among the states it does not spell out the nature of their election.

Thus nothing would prevent the passage of legislation calling for a dramatically new way of electing representatives, such as by proportional representation or doubling the size of the House to permit smaller districts that better reflect the ethnic diversity of the country.

In fact, the current system of election might not even be constitutional because it effectively disenfranchises two-thirds of America's blacks and latinos as well as other minorities. (For example, California's Asians are under-represented as well as its latinos).

Weather...

districts so safe they won by more than 75%. Among the recipients were Tom Foley, Les Aspin, and Charles Rangel.

While we think federal legislation ought to specify how public computer access to information generated by the product of that legislation should be made available (much as book information is provided by library computers), CRC not only fills part of the enormous gap between what should be and what is, it goes further by providing software that allows the information to be usefully used by journalists or activists. For information: CRC, 1010 Vermont Ave NW #710, DC 20005 (202-347-5400)

Another organization that is making effective use of computers is the Transactional Records Access Clearinghouse. TRAC, for example, recently used federal data records to do an intensive analysis of how US Attorney and their staffs were distributed throughout the US. TRAC found large variations in staffing per capita, even accounting for workload. For example, Vermont had three times as many US Attorneys per million as neighboring New Hampshire. Wyoming got four times as many as North Carolina. There were similar inexplicable differences in the growth of US Attorneys' offices during the Reagan years. For example, Los Angeles -- despite its importance as a drug center -- barely kept up with population growth while West Virginia was blessed with a 300% increase in staffing. The Washington office of TRAC is at 666 Pennsylvania Ave SE #303, DC 20003 (202-544-8722).

The speaker of the Tennessee House of Representatives has banned liquor on the house floor, as well as popcorn and paperwad fights, pizza parties and naps.

Douglas Wilder is being touted by the Vichy Democrats and their media cronies, but Virginia voters have a lower opinion. A Mason-Dixon Opinion Research poll taken the beginning of May found that

This raises the interesting possibility of a voting rights suit against the Congress. Courts have shown a willingness to intervene in local elections to make voting systems more fair. They could do the same with the House. Montana, for example, is currently in federal court arguing that its loss of one seat leaves it with a single at-large district 40% larger than the average ideal district.

The map on the previous page shows just how bad the current situation is. It shows the states that currently discriminate against blacks and hispanics. It is based on 1990 census data and the composition of the 1990 House of Representatives. While it is true that the 1990 House was not required to reflect the 1990 census, a fair election system should follow changes in the population. Further, a comparison with 1980 census data finds that the disparities were almost as great (a net loss of 34 seats using 1980 figures as opposed to 37 using 1990).

The map assumes, for purposes of exploratory calculation, that voters in each state elected their representatives at-large using some system of proportional representation and that minority candidates were elected in proportion to their population. All percentages were rounded down, so if -- as in the case of Alabama -- blacks should theoretically get 1.83 seats, they would get only one.

If such a plan were followed, black/hispanic

representation in the House could more than double, although still fall about five percentage points short of the actual proportion of these minorities in the general population.

The map shows that the biggest current offenders are California, Texas and Florida, but that more than a dozen other states fall short as well. After the 1992 election, you can use this map to see how effective redistricting was in correcting ethnic inequities.

We also calculated the results assuming that the size of the House was doubled. Creating smaller districts would make for better ethnic representation, although it can not be calculated because of the political nature of redistricting. If, however, we switched to at-large elections with proportional representation, and we doubled the size of the House, there could be about a two percentage point improvement in the representation of blacks and hispanics. Further, a number of states -- Arizona, Arkansas, Indiana, Kansas, Kentucky, Oklahoma, Tennessee, Washington, and Wisconsin -- would theoretically add minorities to their currently homogeneous delegations. -- s.s.



20th Century Translations

Objective consideration of contemporary phenomena compels the conclusion that success or failure in competitive societal activities bears no necessary correlation to, and exhibits no tendency to be commensurate with, innate capacity, but that a considerable element of the unpredictable must invariably be taken into account. -- *Historian Forrest McDonald, as part of an argument for "short, homely words" in Chronicles magazine.*

I'm not quite old enough to remember it -- only kidding -- but I think it was around 87 some years ago (have to be kinda careful ever since I got the day of Pearl Harbor wrong) that our fathers threw out the first pitch for liberty, started a whole new democratic ball game on this continent, dedicated, as it was to the all-men-are-equal thing. Now we -- caught up in this brother against brother -- tremendous violence and bloodshed -- we're -- team-mate against team-mate, all this kind of thing -- we're putting the Liberty experiment, that new, experimental kind of nation -- unprecedented -- we're putting that through the wringer. -- *British journalist John Lichfield emulating the Bush literary style.*

I returned, and saw under the sun, that the race is not to the swift, nor the battle to the strong, neither yet bread to the wise, nor yet riches to men of understanding, nor yet favor to men of skill; but time and chance happeneth to them all -- *Ecclesiastes*

Four score and seven years ago our fathers brought forth on this continent a new nation, conceived in Liberty, and dedicated to the proposition that all men are created equal. Now we are engaged in a great civil war, testing whether that nation, or any nation so conceived and so dedicated, can long endure. -- *Abraham Lincoln*

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Report of the
Royal Commission
on the Electoral System

"Towards a Better Democracy"

December 1986

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single member constituencies. The additional seats allocated to each party were to be assigned to ranked candidates on provincial party lists announced before the election. The principal aim of the Canadian proposal was to provide representation for parties in regions where their candidates were largely failing to gain seats despite obtaining a reasonable share of the vote.

2.83 SM is a serious and considered attempt to improve our present system, and we examine it further in paras. 2.101 to 2.115.

Systems of proportional representation

2.84 There are 3 major types of proportional representation (PR) which it is necessary to consider. All are designed to provide that the seats a party receives in Parliament are in reasonable proportion to the number of votes that party receives in the electorate. First, there are proportional voting systems based on party lists; second, there is the system we call **Mixed Member Proportional (MMP)** which combines party lists with single member constituencies, and third there is the **Single Transferable Vote (STV)** system. Some do not accept that STV is a proportional system but we are content to treat it as such.

2.85 There are many different systems of proportional representation by party list; the following description is intended to cover the main features rather than the detail of the systems that are, or could be, used.

2.86 A full party list system essentially involves voters choosing between lists of candidates offered by political parties for an electoral district. That electoral district may cover the whole country, or it may be regional or local, or combine elements of all 3 levels. In general, the candidates on each party list are in an order determined by the party. The voters may be restricted to voting for a single party list without choice of candidates (known as a "closed" or "rigid" list) or they may be able to indicate preferences for one or more candidates from one or more parties (an "open" list). Some of the methods which enable the voter to change the party's order are more effective than others.

2.87 Seats are allocated to parties according to the proportion of the vote each has received, whether they are for the party as a whole or for individual candidates on the party's list. Many party list systems provide that a party which has not reached a threshold of, say, 5% of the total vote does not participate in the allocation of seats. A party's entitlement to seats may be calculated on a national basis, and the seats allocated regionally. Different systems use different mathematical formulae to allocate seats to parties. The most common are the d'Hondt method and the Sainte-Lagué method, the latter with several variations (see Addendum 2.1). Once it is known how many seats a party is entitled to have (whether national, regional or local), that number of candidates is taken from the top of the party's list after any changes in the original order resulting from voters' choices have been made, and those candidates are declared elected.

2.88 Party list systems originated in Europe in the 19th century. Scandinavia and Northern Europe remain the predominant areas where they are used, although a few other countries have adopted them in more recent times. The Netherlands and Israel operate the only examples of list systems where the electoral district covers the whole country. France introduced a closed list system for the 1986 elections to the National Assembly with proportionality applied within each département. Closed lists are rare. The "openness" of lists varies considerably, however, from the single choice permitted in Belgium to the opportunities the Swiss voter has to cast up to 2 votes for a single candidate, to delete names or to make up a new list entirely by writing in names. Denmark and Sweden use pools of supplementary seats to correct disproportionate results from list elections in multi-member districts.

2.89 Party list systems are the most common form of proportional representation and have a number of major attractions. They recognise the importance of political parties in modern democracies and allow voters to make a simple and direct choice of the party they wish to govern. Constituents are able to approach a range of members. Lists allow political parties to promote the election of women and ethnic minorities and to provide for regional or interest group representation. On the other hand, party list systems abandon single member constituencies and hence weaken the close links that are found in the plurality system between MPs and their electors. Having as MPs elected through closed lists also weakens this relationship and gives political parties considerable power over who are to be the elected representatives of the people. This weakening of the MP/constituent link is to some extent offset if separate lists are compiled for each region and/or the lists are open to voter choice. However, regional lists do not guarantee full proportionality, unless the parties' share of the seats is determined nationally, with the seats being allocated regionally, or supplementary seats are used to correct for disproportionate results from all the local districts. Open national lists mean large ballot papers which are likely to confuse many voters. Even at a local or regional level, open lists can introduce considerable complications for the voter and for counting votes. Open lists might also lead to destructive intra-party competition. On balance, we consider that the defects of plurality are better dealt with in other ways than by the introduction of a full party list system.

2.90 The **Mixed Member Proportional (MMP)** system produces national proportional results while including seats elected by plurality elections in single member constituencies. A party's proportional entitlement to seats can be based either on its total vote in the constituency contests or on a separate party vote. Once that entitlement has been determined, the number of constituency seats that party has won is subtracted from this number. The party is then given sufficient other seats to bring it up to its proportional entitlement. Those elected to these seats may be taken from a party's list, or from

among its unsuccessful constituency candidates. Entitlement to any list seats may be subject to a threshold (e.g., 5%) of the vote on which the allocation is based.

291 A simple example will illustrate the system. We assume that proportionality is based on the constituency votes. Suppose there are 120 seats in total, 60 elected in constituencies and 60 other seats. Party A gets 55% of the vote and wins 38 of the 60 constituency seats. Party B gets 30% of the vote and wins 21 constituency seats, and Party C gets 15% of the vote and wins 1 constituency seat. Since overall proportionality requires that Party A have 55% of all seats, constituency plus others, it must receive 28 further seats to add to its 38 constituency seats. Similarly, Party B must receive 15 other seats, and Party C must receive 17 further seats. The following table shows the result.

	Party A	Party B	Party C
% vote	55	30	15
Proportional entitlement of 120 seats	66	36	18
No. of constituency seats won	38	21	1
Therefore, entitlement to further seats	28	15	17

292 MMP has been used for federal and state (*Land*) elections in the Federal Republic of Germany since 1949. Different versions are used in different *Länder*, however, and the following description is of the system used to elect members to the federal Lower House (*Bundestag*). There are now 248 constituency seats and 248 list seats. Each voter has 2 votes. One is used to elect a member from a local constituency, by plurality. The other vote is the more important one, for it is used to determine each party's overall entitlement to seats. This second vote is for a closed party list. Only those parties who win at least 5% of the list vote, or who win at least 3 constituency seats, are eligible to participate in the allocation of list seats. Parties representing "national minorities", however, are deemed eligible to participate in the allocation whether or not they have met these conditions. The d'Hondt system has been used to calculate each party's proportionate share of all the 496 seats in the *Bundestag*, although for future elections a slightly modified system will be used. The number of seats each party has won in the constituency elections is subtracted from its overall entitlement, and extra seats calculated on a *Land* basis, are given to the party from the pool of 248 list seats. If a party wins more constituency seats than its overall proportional entitlement, it keeps the seats it has won, and the total number of seats in the *Bundestag* is increased until the next election, this has happened on a few occasions since 1949, resulting in a 1 or 2 seat increase. Constituency candidates may also be candidates on the lists. In such cases candidates who win in a constituency are deleted from the list.

293 Although West Germany is the only country to use MMP, proposals have from time to time been made to adopt it elsewhere. The

1976 Hansard Society Commission on Electoral Reform recommended a form of MMP for Britain which differed in some important respects from the West German model. They called it an "Additional Member System". Under the Hansard proposal three quarters of all MPs would be constituency members and one quarter additional members. Voters would vote only once, that vote counting both for a candidate contesting a single member constituency and for that candidate's party. Once the constituency winners were determined, parties would gain additional seats so as to achieve overall proportionality. However, rather than using a party list, the Hansard Society Commission proposed allocating additional seats to "best losers", ranked within each party according to the percentage of the vote gained in the various constituencies.

294 We consider that MMP has considerable attractions. It retains single member constituencies, yet overcomes the disproportionality between parties that is inherent in plurality voting. The use of lists allows the possibility of enhanced representation for minority and other special interests. We therefore reserve MMP for closer scrutiny.

295 Under the **Single Transferable Vote (STV)** system (also known as the "Hare" system), each elector votes in a multi-member constituency and numbers the candidates in order of preference (see sample ballot paper in Addendum 2.2). The number of preferences required for the vote to be valid varies in different countries.

296 A candidate must obtain a Droop quota of votes (see Addendum 2.1) in order to be elected. The quota can also be expressed as a percentage of the valid votes cast in the constituency—25% for a 3-seat constituency, 16.7% in a 5-seat constituency, and 12.5% in a 7-seat constituency. Candidates who have obtained a quota or more of first preference votes are declared elected. The remaining seats, if any, are then progressively filled by eliminating the lowest polling candidate and transferring his or her votes according to the next preferences shown on them, and by transferring the surplus votes of elected candidates according to the next preferences shown on those votes. A more detailed description of STV counting procedures is in Addendum 2.3 to this chapter.

297 STV has tended to be the form of proportional representation favoured in countries within the British political tradition. It has been used for elections to the Tasmanian House of Assembly since 1907, to the Māori Parliament since 1921 for all public elections in the Republic of Ireland since 1920, for some elections in Northern Ireland from 1919 to 1929, and for all public elections there since 1973 except those to the House of Commons at Westminster. It has also been used for elections to the Australian Senate since 1949, for the Upper Houses of some Australian states, and for some local government elections in Canada and the United States of America at various times this century.

298 New Zealand has had slight experience with STV for public elections. The Local Elections (Proportional Representation) Act 1914 permitted local authorities to adopt STV. Only Woolston Borough and

Christchurch City did so, the former for the elections of 1917 and 1919, the latter for those of 1917, 1929, 1931, and 1933. Various Local Elections and Polls Acts contained the option for STV elections until it was finally removed in 1966. Several unsuccessful attempts were made from 1916 to 1922 to introduce STV elections for the House of Representatives. The Legislative Council Act 1914 provided that the Council would be elected by STV, but this was never brought into effect.

2.99 STV deserves further examination. All MPs are chosen by the voters, who also have a choice among each party's candidates, and among the candidates of several parties. Thresholds need not be so low as to encourage proliferation of parties, yet need not be so high as to preclude small parties or independents with enough support from gaining a seat. The multi-member constituency means that constituents are likely to have a range of MPs to whom they can appeal for help.

Conclusion

2.100 This review of the alternatives to our present voting system against our criteria has allowed us to eliminate all but 1 method of modifying our present system (SM), and 2 that depart more fundamentally from it (MMP and STV). We now subject SM to closer scrutiny, and proceed to an evaluation of MMP and STV against plurality. In each case we first describe the system in greater detail.

SYSTEMS FOR NEW ZEALAND

SM for New Zealand

2.101 The SM system is described in general terms in paras. 2.81 and 2.82. SM might be implemented in New Zealand in the following way:

- (a) Each elector would have 2 votes: 1 for a constituency candidate in a plurality election in the constituency, the other for a party list. Each party would be entitled to put forward 1 closed national list with candidates listed in the party's order of preference. Constituency candidates could also be on the list. (We considered the possibility of using open rather than closed lists, and regional rather than national lists, but rejected both for the reasons we give in our discussion of MMP in paras. 2.198 to 2.202.)
- (b) There would be a total of 120 seats (either fixed or gradual, increasing as under the present system) with 90 members elected in constituencies and 30 elected from lists. (We suggest a 90/30 division as it provides a platform for small parties to compete for wider support without in most elections jeopardising the prospects of single party government. Such a division also allows an effective means of increasing the size of the House without greatly disturbing current electoral boundaries.)
- (c) There would be no separate Maori seats and no Maori roll.
- (d) The modified Sainte-Lagué method would be used to allocate the 30 list seats to the parties proportionate to their share of the total

list vote. No specific threshold of the vote would be required before a party could participate in the allocation of seats, although, as outlined in para. 2.81, an effective threshold of approximately 5% would apply (other methods of allocating list seats might mean a lower effective threshold, see Addendum 2.1).

- (e) Casual vacancies in constituency seats would be filled by by-election as under the present system. List seat vacancies would be filled by the next available person on the relevant party list.

2.102 Table 2.3 shows possible results of the last 6 elections in New Zealand under SM, assuming that the 30 list seats were added to all the existing constituency seats and allocated on the basis of the parties' share of the vote for those constituency seats. We stress that this table is for illustrative purposes only. It cannot represent the actual result of an election held under SM since there is no way of knowing how voters would use their list vote. Voting patterns for constituency seats could also change under SM. For example, a minor party's electoral strategy might be quite different under SM than under plurality. Thus it could suggest to voters that they use the list vote for the minor party while still supporting a major party candidate in the constituency.

An assessment of SM

2.103 **Fairness between political parties.** SM is not a proportional electoral system, and therefore does not attempt to overcome many of the problems inherent in plurality in single member constituencies. The fact that only the additional seats are allocated proportionally and without regard to the results of the constituency elections means that the total seats won by a party are likely to remain out of proportion to its share of the votes. That this is so for both major and minor parties is illustrated by Table 2.3, although we stress again that we have had to assume that list votes would go to parties in the same proportions as constituency votes. The figures for Labour and National for 1972, 1975 and 1978 illustrate the point in stark terms: there would still have been a considerable imbalance between share of the votes and share of the total seats in a close election where the party with the most votes gained fewer constituency seats than another party; it would be unlikely, that SM would significantly improve the result.

2.104 It is true, however, that minor parties would do better under SM than under our present system, and so in that respect SM might be said to be less unfair than plurality. That it is nevertheless still unfair to minor parties is shown by looking at the relationships between seats and votes for Social Credit over all 6 elections, and for the New Zealand Party in 1984. These parties would achieve better representation but still face a heavy penalty, because of their difficulties in winning constituency seats.

Table 2.3: How SM might have worked, 1969-1984

(Note: This table is for illustrative purposes only, see paragraph 2.102)

	1969	1972	1975	1978	1981	1984
Total no seats (constituency + list)	114	117	117	122	122	125
Labour						
% vote	44.2	48.4	39.8	40.4	39.0	43.0
No constituency seats	38	36	32	40	43	36
% constituency seats	46.4	63.2	36.8	43.5	46.7	58.9
No list seats	13	15	17	13	12	13
Total seats	52	70*	44	63	55	69*
% of seats	45.6	59.8	37.6	43.4	45.1	55.2
National						
% vote	45.2	41.5	47.6	38.8	38.8	35.9
No constituency seats	45	32	56	51	47	37
% constituency seats	53.6	36.8	63.2	55.4	51.1	38.9
No list seats	14	12	15	12	12	11
Total seats	59*	45	70*	63*	59	48
% of seats	51.8	38.5	59.8	51.6	48.4	38.4
Social Credit						
% vote	9.1	6.7	7.4	16.1	20.7	7.6
No constituency seats	0	0	0	1	2	2
% constituency seats	0	0	0	1.1	2.2	2.1
No list seats	3	2	2	5	6	2
Total seats	3	2	2	6	8	4
% of seats	2.6	1.7	1.7	4.9	6.6	3.2
Values						
% vote	-	2.0	5.2	7.4	0.2	0.2
No constituency seats	-	0	0	0	0	0
% constituency seats	-	0	0	0	0	0
No list seats	-	0	1	0	0	0
Total seats	-	0	1	0	0	0
% of seats	-	0	0.9	0	0	0
New Zealand Party						
% vote	-	-	-	-	-	12.3
No constituency seats	-	-	-	-	-	0
% constituency seats	-	-	-	-	-	0
No list seats	-	-	-	-	-	4
Total seats	-	-	-	-	-	4
% of seats	-	-	-	-	-	3.2
Other parties						
% vote	1.5	1.5	0.2	1.3	1.4	1.1
No constituency seats	0	0	0	0	0	0
% constituency seats	0	0	0	0	0	0
No list seats	0	0	0	0	0	0
Total seats	0	0	0	0	0	0
% of seats	0	0	0	0	0	0

* Denotes sufficient seats to form a Government

2.105 Effective representation of minority and special interest groups. The use of party lists in SM, and the knowledge that the top 10 or so of the major parties' candidates who were not elected in the constituencies would be elected from the lists, would allow those parties some flexibility in ensuring representation of different interests and groups within society and indeed provide incentives for them to do

so. It would also provide some protection for valuable candidates in marginal constituency seats. It is, moreover, unlikely that the major parties' entitlements to seats from the lists would change markedly from election to election. The minor parties would be much more vulnerable in both the constituencies and the lists, and could only expect to have a small number elected from the lists at each election. Minor parties would therefore be more likely to use the lists to protect their constituency members and candidates, and thus would have less opportunity to bring in representatives of special groups or interests.

2.106 Effective Maori representation. A discussion of Maori representation under SM is found in paras 3.89 to 3.91. We conclude there that while SM would not guarantee Maori candidates would be elected to Parliament it would be in the parties' interests to compete for the Maori vote and to put Maori candidates high on their party lists. We do not, however, regard SM as capable of providing Maori representation as satisfactorily as some other electoral systems do.

2.107 Political integration. We see no reason to expect that SM would prevent co-operation between groups with diverse interests within the community. Indeed SM may enhance political integration by assisting hitherto excluded groups without any risk of fragmenting the political system.

2.108 Effective representation of constituents. By retaining single member constituencies, SM maintains the direct constituent MP relationship which we regard as a virtue of the plurality system. Because SM would be combined with an increase in the size of the House the number of single member constituencies would only be a few less than at present. It is also likely that list members would do constituency work in much the same way as other MPs, particularly when they were defeated in a marginal seat or when they were on the list to represent a specific social, ethnic, or economic group.

2.109 Effective voter participation. SM would be likely to build on existing levels of participation. The ability to cast 2 votes for different parties is likely to enhance participation because many more voters would effectively contribute to the election result. We do not anticipate that voters would find the party list vote difficult to operate or understand. Popular control over Governments under SM would not differ much from that under plurality. The constituency vote would still have the strongest influence over which party had the most seats, and although minor parties would be more likely to win list seats than constituency seats, they would be unlikely to do so in such numbers as to hold the balance of power unless the constituency result was very close. Moreover, the liquidity of the 2 votes allows electors to support or reject existing or likely coalition arrangements.

2.110 Effective government. We do not consider that SM would significantly change the stability and decisiveness that pertain under plurality. Single party Governments would continue to be the norm because the constituency results would not be altered by the allocation of the list seats, and because minor parties would not win seats in

proportion to their share of the total vote. Where the major parties had similar shares of the seats and there was a significant third party, SM would be less likely than our present plurality system to produce 1 party with a majority in the House, and either coalition or minority Government would result. This might increase consultation and continuity in Government and lessen the chances of major swings in policy being brought about after only small swings in voter support. However, assuming voting patterns remained the same, the only election that would have produced coalition or minority Government in the SM elections illustrated in Table 2.3 was 1981, and that very nearly happened under the plurality system.

2.111 Effective Parliament. Giving small representation to minor parties through the lists would allow other policies and points of view to be presented in Parliament. This might be beneficial in promoting more scrutiny of the executive or at least a wider range of public debate. On the other hand, 1 or 2 MPs in a House of 120 would face a very heavy burden in trying to cover the major political issues. We also accept that with an unequal division between list and constituency seats, list MPs would risk being regarded as of different status than the directly elected constituency MPs. We discuss this point in greater detail in para. 2.172.

2.112 Effective parties. SM would clearly improve the effectiveness of minor parties by increasing their chances of getting candidates elected. It is unlikely that SM would significantly change the status, work, or structures of New Zealand's major political parties, except for those procedures related to the selection and ranking of national lists. SM would, however, enable parties to protect a limited number of their more vulnerable constituency seat members.

2.113 Legitimacy. SM would be an incremental change to our present system, and might therefore avoid exciting opposition that could greet more fundamental change. It must at the same time be acknowledged, however, that although SM would give some representation to significant minor parties it would probably not satisfy the proponents of a fully proportional system or of the present plurality system.

2.114 Conclusion. The Commission recognises that SM has considerable appeal. It improves on the plurality system in a number of ways. First, it would give representation to significant minor parties. Second, because almost all the list votes would count towards the election of candidates, electors in safe seats would have a more effective role than under the present system. Third, it would enable the parties, particularly major ones, to protect a limited number of particularly able members in marginal seats. Fourth, it would provide a way of increasing the number of MPs but avoid the disruption to constituency boundaries that would be caused by a significant extra number of single member constituencies. Fifth, it would, because of the list, be likely to enhance the representation of Maori voters as well as voters belonging to other special interest or minority groups. Sixth, it would lessen somewhat the disproportionality between major parties.

2.115 Nevertheless, the Commission is of the view that SM does not go far enough in meeting the fundamental objections to the plurality system in respect of the relationship between seats and votes. Those objections would still be powerful under SM, even though minor parties might be somewhat better off. We are reluctant to rule out SM altogether, however, until we have seen whether either MMP or STV can overcome the objections to both plurality and to SM without introducing too many disadvantages of their own.

MMP for New Zealand

2.116 A general description of MMP is outlined in paras. 2.90 to 2.94. The MMP proposed by us differs in some respects from that used in West Germany, and especially from that proposed by the Harvard Society Commission. There are many possible variants and we set out the reasons for adopting our model in paras. 2.187 to 2.206.

- (a) In Chapter 4 of this Report we recommend that the size of the House be increased to a minimum of 120 members. In outlining MMP for New Zealand we have assumed that this recommendation will be accepted. If this recommendation is not accepted, we do not consider MMP should be introduced in New Zealand as the number of constituency seats would be too low for the system to operate satisfactorily.
- (b) Sixty members would be elected through nationwide party lists and 60 members by the plurality method in single member constituencies. At least 15 of the 60 constituency seats would be required by law to be in the South Island. The boundaries between the 60 constituencies would be drawn according to the same criteria as at present, except that the Representation Commission would be required to take account of community of interest among the members of Maori tribes in determining constituency boundaries, and there would be a single electoral quota for the whole country. There would be an allowable tolerance of plus or minus 10%. Under MMP this would not affect the fairness of results. The work of the Representation Commission under MMP is discussed in paras. 5.53 to 5.57.
- (c) List members would be elected from ordered party lists nominated by each registered political party, prior to election day. Since the list vote is a choice between alternative party Governments, it would be impractical to allow independent candidates to appear on the list section of the ballot. Voters would not be able to alter the order of candidates on a party's list and the ballot paper would only need to show each party's name and the first few names on each party's list. Parties could include constituency candidates on their lists. Candidates elected in a constituency would be deleted from the party's list.
- (d) A full discussion of Maori representation under MMP appears in paras. 3.73 to 3.88. For reasons which we discuss there, we

propose no separate Maori seats, no Maori roll and no periodic Maori option

- (e) Each voter would have 2 votes at a general election. One would be for a party list. The other would be for a constituency representative (see sample ballot paper in Addendum 2.2). Once constituency winners were known, the 60 list seats would be allocated by the modified Sainte-Lagué method so as to achieve overall proportionality (see Addendum 2.1). In the unlikely event of a party winning more constituency seats than its overall entitlement, extra seats would be created in the House until the next general election.
- (f) In order to prevent a proliferation of minor parties in Parliament, a threshold would apply. For a party to be eligible to participate in the allocation of list seats, either its combined list vote would have to be greater than 4% of all list votes or it would need to have won at least 1 constituency seat. Based on 1984 figures, a party would need slightly over 77,000 valid votes to be eligible for list seats. The 4% threshold would be waived for parties primarily representing Maori interests (see para 3.75). This waiver could be extended to other minority ethnic groups if thought desirable or, if a waiver is not considered appropriate, the 4% threshold could apply equally to all parties.
- (g) Vacancies caused by the resignation or death of a sitting constituency member would be filled by a by-election as under the present system. List members would be replaced by the next available person on the relevant party list.

STV for New Zealand

2.117 The basic structure of the STV electoral system is set out in paras 2.95 to 2.99. The Commission considers that the most suitable form of STV for New Zealand would have the following characteristics:

- (a) Most constituencies would return 5 members. However, the Representation Commission would be able to create a small number of constituencies (not exceeding 20% of the total number) with other than 5, though not fewer than 3 or more than 7 members.
- (b) The Representation Commission would be required to take account of community of interest among the members of Maori tribes in determining constituency boundaries.
- (c) There would be no separate Maori seats, no Maori roll and no periodic Maori option.
- (d) The STV ballot paper for each constituency would show candidates in registered party groups (see Addendum 2.2). The candidates of each party would be shown on the ballot paper in an order determined by the party. The constituency Returning Officer would officially advertise each party's order of candidates.
- (e) A "party box" would appear above the list of candidates of each registered party. Each voter would have the option of either

marking 1 party box (thereby indicating acceptance of that party's ordering of its candidates) or of numbering the candidates of 1 or more parties and of the independents in order of preference.

- (f) A single unambiguous first preference for a candidate, or an unambiguous party box selection, would be enough to make a vote formal. Preferences would cease to be counted only when they were exhausted or when an error was reached.
- (g) The party of a member who died or resigned from Parliament would nominate a replacement. There would have to be a by-election only if the party failed to nominate or the seat was held by an independent.

AN ASSESSMENT OF MMP, STV AND PLURALITY

We now consider MMP and STV in more detail and compare them with each other and with the plurality system.

Fairness between political parties

2.118 The MMP and STV systems which we have described would be likely to achieve proportionality between parties in different ways and with different degrees of precision. MMP is specifically designed to allocate seats to parties in proportion to their shares of the total list vote and there is no doubt it would remedy the serious deficiencies of plurality in relation to proportionality. The votes/seats relationship in the constituencies does not need to be proportionate because this is largely irrelevant to overall proportionality. This has the added advantage of lessening problems associated with the boundary fixing process (see para 2.12). The only significant deviation from full proportionality in the MMP system proposed for New Zealand is in the imposition of the 4% threshold. Unless they were able to win a constituency seat, parties (other than those primarily promoting Maori interests) which gained less than 4% of the total list vote would be ineligible to receive seats in the House. The Commission considers that the threshold is a justifiable and desirable means of preventing the proliferation of minor parties in the House. Such a proliferation could threaten the stability and effectiveness of government.

2.119 It is possible that an extraordinary election under MMP could produce a disproportionate result. If several small parties just missed out on the 4% threshold this would inflate the number of seats won by larger parties. Alternatively, if a party with insignificant support nationwide was nevertheless strong enough in a few areas to win constituency seats there, that party could win more constituency seats than its theoretical entitlement based on the list vote. As already outlined, a party would in this event keep its "extra" constituency seats and the number of members in the House would increase accordingly. A similar effect could occur if a large number of voters split their constituency and list votes. There is also a remote possibility that deliberate manipulation of the system could occur whereby 2 parties used their combined vote to gain a disproportionate share of seats.

While these results are theoretically possible, the Commission considers that accidental deviations are most unlikely, and that any attempt to deliberately manipulate the system would be both difficult to implement and likely to attract an electoral backlash. As can be seen from Table 2.4, election results in West Germany have been highly proportional. If MMP in New Zealand was based on national, rather than regional, lists, and with a threshold of 4% rather than 5%, we would expect New Zealand results to be even more proportional.

Table 2.4: Summary of Bundestag election results, 1949—1983¹ (list vote)

Year	CDU/CSU			SPD			FDP			Others ²		
	% vote	No seats	% seats	% vote	No seats	% seats	% vote	No seats	% seats	% vote	No seats	% seats
1949	31.0	139	34.8	29.2	131	32.6	11.9	52	12.9	27.8	80	19.9
1953	45.2	243	43.9	28.8	151	31.0	9.5	48	9.9	16.5	45	9.2
1957	50.2	270	54.3	31.8	169	34.0	7.7	41	8.2	10.3	17	3.4
1961	45.3	242	48.5	36.2	190	38.1	12.8	67	13.4	5.7	—	—
1965	47.6	245	49.4	37.3	202	40.7	9.5	49	9.9	3.6	—	—
1969	46.1	242	48.9	42.7	224	45.2	5.8	30	6.0	5.5	—	—
1972	44.9	225	45.8	45.8	230	46.4	8.4	41	8.3	1.0	—	—
1976	48.6	243	49.0	42.6	214	43.1	7.9	39	7.9	0.9	—	—
1980	44.5	226	45.5	42.9	218	43.9	10.6	53	10.7	2.0	—	—
1983	48.8	244	49.0	38.2	193	38.8	7.0	34	6.8	6.0	27	5.4

Notes: ¹ Excludes Berlin deputies.

² In 1983 election Green Party received 5.6% of vote and won 27 seats.

2.120 The consideration of proportionality under STV is more complex. It is first necessary to determine what is to count as a party's "vote" when measuring proportionality. The conventional measure is each party's share of the first preference votes, but since STV uses a transferable vote, and later preferences can help elect a candidate from a different party, a party's share of seats which differs from its share of first preference votes cannot necessarily be taken as a departure from strict proportionality. It might be thought that a different measure should therefore be adopted, but no satisfactory and accepted alternative has been devised. The proportion of first preference votes, moreover, has the considerable advantage of being readily available and easily added across all constituencies. We will therefore use it as a measure of proportionality while being aware of its drawbacks.

2.121 STV is a constituency-based voting system, and is not designed to distribute seats to each party in proportion to its share of the vote across all constituencies. It does, however, operate in a reasonably proportional manner in relation to first preference votes under certain conditions. Table 2.5 shows the seats/votes relationships for Irish elections from 1938 to 1982. In general, Fianna Fáil and Fine Gael have gained a higher proportion of seats than their proportions of first preference votes, whereas Labour, minor parties and independents

Table 2.5: Seats in relation to first preference votes, Irish elections 1938-1982¹

Year	Fianna Fáil			Fine Gael			Labour			Farmers			Workers			Others		
	% 1st pref	% vote	% seats	% 1st pref	% vote	% seats	% 1st pref	% vote	% seats	% 1st pref	% vote	% seats	% 1st pref	% vote	% seats	% 1st pref	% vote	% seats
1938	51.9	55.5	33.3	32.9	32.9	32.9	10.0	6.6	—	—	—	—	—	—	—	4.7	5.1	5.1
1943	41.9	48.2	23.1	23.4	23.4	23.4	15.7	12.4	—	—	—	—	—	—	—	9.0	9.0	9.0
1944	48.0	52.7	20.5	21.9	21.9	21.9	11.5	8.8	—	—	—	—	—	—	—	8.4	8.4	8.4
1948	41.9	45.9	19.8	21.2	21.2	21.2	11.3	13.0	—	—	—	—	—	—	—	21.7	15.1	15.1
1951	46.3	46.6	25.7	27.4	27.4	27.4	11.4	11.0	—	—	—	—	—	—	—	13.7	11.0	11.0
1954	43.4	44.5	32.0	34.3	34.3	34.3	12.0	12.3	—	—	—	—	—	—	—	9.5	5.5	5.5
1957	48.0	53.4	26.6	27.4	27.4	27.4	9.1	7.5	—	—	—	—	—	—	—	13.6	9.6	9.6
1961	43.6	49.0	32.0	32.9	32.9	32.9	11.6	10.5	—	—	—	—	—	—	—	11.1	6.3	6.3
1962	47.6	50.4	33.9	32.9	32.9	32.9	15.4	14.7	—	—	—	—	—	—	—	2.8	2.1	2.1
1969	45.7	51.8	34.1	35.0	35.0	35.0	17.0	12.6	—	—	—	—	—	—	—	3.2	0.7	0.7
1973	46.2	47.6	35.1	37.8	37.8	37.8	13.7	13.3	—	—	—	—	—	—	—	0.0	3.9	1.4
1977	50.6	57.1	32.5	29.3	29.3	29.3	11.6	10.9	—	—	—	—	—	—	—	1.6	5.7	2.7
1981	45.3	46.7	36.5	39.4	39.4	39.4	9.9	9.1	—	—	—	—	—	—	—	1.7	6.6	3.6
Feb 1982	47.3	49.1	37.3	38.2	38.2	38.2	9.1	9.1	—	—	—	—	—	—	—	2.3	1.8	1.8
Nov 1982	45.2	45.5	39.2	42.4	42.4	42.4	9.4	9.7	—	—	—	—	—	—	—	3.3	1.2	1.2

Source: Adapted from Ted Nelson and Seamus Brennan, *Nelson's Guide to 24th Dail and Seanad 2nd Election 1982* (Dublin 1983).

Note: Excluding Green (Sinn Féin) and by law must be returned without contest.

generally have a lower proportion of seats than first preference votes. Tasmanian results show similar patterns. It is, however, true that an election under STV can have a distorted result. In the 1981 Maltese general election, for example, each of the 13 constituencies returned 5 members. The Nationalist Party of Malta obtained 50.9% of the first preference votes but won only 47.7% of the seats, whereas the Labour Party won 49.1% of the first preference votes but 52.3% of the seats. This result was largely due to Nationalist candidates being the runners-up for the last seat in a large number of the constituencies, so that a significant proportion of their total votes was wasted. Such results are rare.

2.122 The significant factors promoting proportionality between seats and first preference votes under STV are as follows:

- (a) The threshold should not be too high; the lower the average number of seats per constituency, the higher the percentage of votes needed to elect a candidate, and the less likely that smaller parties will be successful.
- (b) There should be no possibility of parties controlling constituency sizes or boundaries in their own political interests.
- (c) Parties should not consistently nominate more or fewer candidates than they can expect to get elected.
- (d) Party support should be unevenly distributed so that 1 party does not consistently just miss winning the last seat in a large number of constituencies.
- (e) Voters should, in general, give their higher preferences to the candidates of a single party; each party should be equally affected by the transfer of votes to other parties (known as "leakage") and by the non-transferability of votes.

2.123 Under the STV system we have outlined, at least 80% of all constituencies would have 5 members, and larger or smaller electorates would only be created where the Representation Commission found it difficult to create 5 member electorates which met the criteria for determining boundaries. An electorate which returned 5 members would provide a threshold requiring a candidate to obtain 16.7% of first and subsequent preferences in order to be elected. This would give significant parties a good chance of success but exclude parties with limited support. Because at least 80% of all constituencies would elect 5 members, and no constituency would return fewer than 3 or more than 7 members, the average number of seats per constituency would be close to 5. With an independent commission determining boundaries we see no reason to expect that there would be any opportunities for parties to manipulate constituency sizes or boundaries.

2.124 Party nomination strategies, the distribution of party support and the behaviour of voters under an STV system cannot be forecast with any confidence. We consider, however, that parties would soon appreciate the importance of correct nomination strategies and would try to acquire accurate information in order to nominate the optimum number of candidates in each constituency. Voters would soon

understand that the STV system contains a flexibility which is available to be used, and that leakage and non-transferability of votes are aspects of that flexibility. Each party too would find it in its interests to try to persuade voters to use its party box, or to confine their preferences to the candidates of that party only. It is impossible to forecast the extent to which voters would use the party box option rather than indicating their preferences; this would have important effects on the outcome of an election and might affect proportionality.

2.125 In summary, we expect that the results of STV in New Zealand would be similar to those in Ireland. Larger parties would get a small bonus of seats in relation to their overall party and first preference votes, and smaller parties would win fewer seats in proportion to their overall party and first preference votes. The smaller parties would generally find it more difficult to win seats in 3 or 4 member constituencies than in larger constituencies. It is likely that the major parties would win at least 1 seat in every constituency. Although we expect that STV would operate in a reasonably proportional manner, we cannot say that results under STV would always be as closely proportional as under MMP. STV would not be as favourable as MMP to a small party with widely spread support which exceeded the lower MMP threshold. On the other hand a party with support concentrated in one area minimum of the country would have a chance of success under STV but would succeed under MMP only if its list vote exceeded 4% of the total of votes over the whole country, or if its support was so concentrated as to enable it to win a constituency seat. It must also be conceded that an STV election result similar to that in Malta in 1981 cannot be dismissed as impossible, however unlikely it might be. As a constituency based system STV is also much more sensitive to boundary changes than MMP.

2.126 In para. 2.11 we suggested that the plurality system's tendency to treat small parties particularly severely might be justifiable as a means of preventing small parties wielding disproportionate power. A small party with the balance of power in the legislature might enjoy power vastly in excess of its electoral support. In our view this issue cannot be disregarded though it can be overrated. Overseas experience indicates that the extent to which a minor party can exact an excessive price for its support is limited. If voters consider a small party to be demanding unreasonable concessions for its support, or to have been irresponsible in changing the Government, that party can be heavily penalised at the next election. Furthermore, under MMP and STV any party with clear majority support in the electorate may govern without the need to attract support from minor groupings. Finally, even if MMP or STV gave undue power to a small party, this in our view must be weighed against the advantages of providing a basis of representation for political parties which is seen as fair and legitimate by all sections of the community. We further discuss the question of small party power in paras. 2.149, 2.151 and 2.154.

2 127 We conclude that either MMP or STV would overcome the serious defects of plurality with respect to the proportionality of seats to votes, and that MMP would be more likely than STV to do so consistently and with a more closely proportional result than STV. Any proportional system could give a minor party power which is out of proportion to its share of the vote. We think overseas experience indicates, however, that voter attitudes would prevent a minor party from exacting excessive concessions from a coalition partner or a minority Government.

Effective representation of minority and special interest groups

2 128 The selection practices of political parties are crucial in determining whether the significant characteristics of the population are reflected in the composition of the House. It is generally accepted, however, that parties have much more opportunity and incentive to ensure the election of representatives of interest groups, regions, women, and ethnic groups in electoral systems based on lists of candidates than in other systems. It is difficult to obtain reliable cross-national data on the representation of particular groups and minorities, and in any case comparative data must be used with some caution lest too much stress be put on the role of the electoral system and not enough on the general climate of opinion within each country. Nevertheless, the available evidence shows, for example, that women are, in general, more likely to be elected in list systems of PR than in other electoral systems. A national list allows a party to strive for an overall balance among its candidates. Candidates elected from a list may also be able to serve a nationwide constituency whose members are scattered throughout the country.

2 129 The MMP system would allow the parties to achieve representation of significant groups and interests within our society. Indeed, parties would increasingly appreciate the greater significance of the votes of members of minority and special interest groups, who, in turn, would be likely to support parties that acknowledged their importance by selecting representative candidates and by proposing appropriate policies.

2 130 The STV system, with its multi-member constituencies, also encourages parties to offer a range of candidates to the electors and thus to try to broaden their appeal by selecting candidates who reflect the concerns of significant groups within the community. Having a party box option with each party ranking its own candidates also allows a party to promote the election of a constituency candidate whose representative role goes beyond the population of that constituency. In any event, parties would have to be very careful about the balance of their list of candidates in each constituency. A sizeable group of voters within a constituency might use the preference option to elect a favoured candidate or to block the election of one they oppose. Their success in doing so would depend on their size, their cohesion, and the

extent to which other voters accept the party's ordering and use the party box.

2 131 The position of significant social groups must also be considered where the parties are considered to have rejected or overlooked their claims for representation. Under MMP, a group would be able to put up its own candidates in constituencies, or, by registering as a party, run its own list. The larger constituencies under MMP would mean, however, that such a group would, in absolute terms, need more votes to succeed in a constituency than under New Zealand's present plurality system. It would also need considerable support to win a list seat, for to surmount the 4% threshold would, on 1984 voting figures, require slightly over 77,000 valid votes.

2 132 The prospects for a group with concentrated support would be somewhat improved under STV. STV also offers better chances for the independent candidate. There is still a significant threshold to be crossed, however, depending on the number of members returned from the constituency. That can be seen as an advantage in that it excludes groups which do not have significant voter support.

2 133 We regard both MMP and STV as real improvements over plurality in providing for the representation of various groups within New Zealand society. Of the 2, we consider MMP to offer the better prospects.

Effective Maori representation

2 134 We regard the development of a fair and satisfactory way of representing Maori people without a separate roll as of crucial importance to the future of New Zealand and to the way in which both Maori and Pakeha regard each other. A full comparison between MMP and STV under this criterion is given in paras 373 to 388. Our conclusion is that each system has different strengths and weaknesses that arise out of their essential characteristics. Maori representatives are more likely to be elected through the national lists under MMP, though it is likely that some would also be elected in constituencies. List MPs would be best able to deal with specifically Maori interests and concerns, but this would be on a national basis and without a formal relationship of accountability with a defined body of Maori voters. Should a significant number of Maori voters consider themselves inadequately represented by the major parties, there would be a real possibility of a separate Maori party winning list seats, particularly if the 4% threshold is waived for parties primarily promoting Maori interests. With or without the waiver, the major parties would be under pressure to include Maori people in high positions on their lists. Maori would have an effective vote, since parties would need to compete for their votes on a nationwide basis, and would thus need to develop policies which appealed to Maori voters. There would also be an incentive to compete for the Maori voter in the constituencies. Maori concerns would be a live issue for all political parties. We consider this to be in the interests of all New Zealand people.

2 135 STV has certain strengths in respect of Maori representation which arise from its local constituency base and the flexibility it offers to voters to give their preferences within 1 party or across several. All candidates would need to take account of Maori concerns in areas where Maori were a sizable proportion of the population. Moreover, because of the likely size of STV constituencies, Maori voters might have a better opportunity to organise along tribal lines. Parties in those areas would be under pressure to select Maori candidates. Constituency work would be localised and MPs would be directly accountable to their voters. A Maori party would have a chance of winning a seat in some constituencies. The major weakness of STV in respect of Maori representation is that in many constituencies the number of Maori voters would be relatively small and thus not electorally significant.

2 136 For the reasons we give in Chapter 3, both MMP and STV would provide significantly greater opportunities for effective Maori representation than plurality, whether or not separate representation was retained under that system. We consider that MMP provides better prospects for effective Maori representation than STV, but the latter certainly does provide an acceptable form of Maori representation.

Political integration

2 137 We have already suggested that New Zealand society is becoming more diverse, and that it is important that the political system as a whole recognises and caters for this change. It is also, however, important that this recognition does not undermine the political integration essential to maintain our unity as a nation. We consider that either MMP or STV would provide for representation of various social, economic and ethnic groups within our society while not compromising political integration. This is achieved in 2 ways. First, major parties are provided with real incentives to appeal to and include significant groups within their party tickets and structures. In particular, by providing an effective vote for Maori and thereby removing the need for separate Maori representation, both systems would enhance cooperation at a political level between Maori and non-Maori. Second, while both MMP and STV provide increased chances for minor party or special interest group representation in their own right, the thresholds built into both systems make it unlikely that there will be a proliferation of small or extreme parties or any undesirable fragmentation of the political system.

2 138 As noted in para 2 24, the consequences of denying significant special interest groups, or parties with a reasonable degree of voter support, an opportunity for representation in the legislature may be disintegrative. For this reason we conclude that either MMP or STV would have an advantage over plurality in terms of political integration. However, we do not wish to suggest that adoption of either MMP or STV would, in itself, guarantee political integration. We do not consider either of the proportional systems to be more integrative than the other.

Effective representation of constituents

2 139 We have earlier ruled out some electoral systems because they abandon the MP-constituent relationship or modify it to an unacceptable degree. Both MMP and STV also modify it, although each preserves a real degree of constituency representation. We discuss each in turn.

2 140 MMP recognises the significance of local representation within our political tradition by retaining 60 single member constituencies. That does reduce the number of MPs who are elected by the people of a specified geographical area. Nevertheless, the change should be kept in perspective. Sixty constituency members is roughly equivalent to 1 member for every 55 000 people compared with 1 for every 34 000 with 97 MPs. Even ignoring the 60 list members, this figure compares favourably with other countries whose electoral systems are entirely or partially based on single member constituencies (see Chapter 4, Table 4 1). While constituencies under MMP will be larger in area, this increase will not be as great as might be anticipated because of the incorporation of neighbouring population centres into the existing large rural electorates (see figures 5 1 and 5 2 in Chapter 5). Moreover, because the vote in the constituencies does not directly affect proportionality between political parties, the boundary setting process no longer need be restricted by the necessity to achieve strict equality in the electoral population of each constituency. As a result, more attention can be paid to maintaining communities of interest when boundaries are set.

2 141 There are, we consider, further advantages of MMP in terms of the effective representation of constituents. The 2 vote process in MMP allows voters to vote for the individual they think will best represent their locality, as well as to vote for the party they wish to govern. We expect, moreover, that many list members will attach themselves to a constituency or a group of constituencies, particularly where they have been unsuccessful constituency candidates, and that the parties will require them to provide good constituency service as a prerequisite for continued high placement on the list. This means a much larger percentage of constituents will be able to approach MPs belonging to the party for which they voted. The tendency under plurality for large regions to be represented by members of only 1 political party will likewise be reversed.

2 142 The benefits of list members in respect of constituency representation should not be overstated. Some list members may not attach themselves to a constituency, or their attachment may not be as close as that of the constituency member. In large part this is because MPs elected from a party list stand in a different relationship to the electors. They owe their election to their position on the party list, and a closed national list means that voters cannot promote or demote particular list candidates. List members are thus not as directly dependent on the popular vote to ensure their individual accountability and their responsiveness to the views and opinions of the electors.

2 143 Under STV each candidate in a constituency needs to obtain enough first preference votes to survive the elimination of one or more party colleagues and hopes that transfers of votes from elected and eliminated candidates will be enough to gain a quota. This can lead to candidates of the same party competing against each other for first preference votes. Because the grounds on which they can do so may be limited by their need to support a common party policy, intra party competition is likely to be organised around the provision of constituency service. In Ireland, competition of this type between incumbent and aspiring parliamentarians has become so pronounced that many members of the Dail are reported to do little else but service their constituents. We discuss this problem and the reasons for it in paras 2 165 and 2 166. Tendencies toward intra party competition are also evident among members of the Tasmanian House of Assembly, although to a lesser extent.

2 144 The party box option would, we expect, limit the degree to which intra party competition over constituency service would take place if STV were to be introduced in New Zealand. To this extent it might also be seen as detracting from the effectiveness of constituency representation. We consider, however, that even with the party box, the ability of voters to choose within and across parties and thus to hold their representatives accountable for the service they provide, makes STV attractive under this criterion. Even if the majority of voters do use the party box, it is worth remembering that dissatisfied voters can still use the preference option to send messages to a party. The order in which candidates are elected, the patterns of transfers within and between parties, and the very willingness of voters to express their own preferences are all signals about the voters' opinions of the party and its candidates.

2 145 Multi member electorates under STV can be seen as having both advantages and disadvantages. While constituents would have a range of MPs from whom to seek a sympathetic hearing, the constituencies are large in comparison to plurality and individual MPs may be less clearly identified with and responsible for a particular area than are single member constituency MPs. Personal accountability may therefore be blurred and constituency work made more a party political affair as several MPs in a region might claim, or deny, responsibility for developments affecting the constituency.

2 146 It is difficult to weigh up the various factors when considering plurality, MMP and STV under this criterion. Constituency representation under plurality has the considerable advantage of generally being non-partisan, of each constituent having a single person from whom to seek assistance, and of constituencies generally covering a small area. On the other hand, constituents who feel that they are unlikely to obtain a sympathetic hearing from their MP can be deterred from seeking assistance. Furthermore, while the MP under plurality is clearly accountable to a defined body of electors, judgments about the MP's

performance as a constituency representative are blurred by overall judgments about a party's policies and performance.

2 147 We do not think that the MMP system we have proposed would change the essential character of the MP constituent relationship even though the single member constituencies would be larger. Indeed the 2-vote process might mean selections of constituency representatives would give greater weight to their local appeal. Many constituencies, moreover, would be served by both a directly elected constituency MP and one or more unsuccessful constituency candidates who were nevertheless elected on the list. To that extent, there would be more opportunities for constituents to approach an MP of the party they support. On the other hand, it must be conceded that list members are only indirectly accountable to those they represent. The multi member constituencies of STV may enhance the MP constituent relationship by providing a range of representatives from whom help may be sought, and by providing the opportunity to hold those representatives accountable both within and across parties. Against that must be balanced the larger size of constituencies, and the possibility that the provision of constituency service might become a party political matter. We conclude that each of the 3 electoral systems has its own advantages and defects, and that both MMP and STV would retain a good MP constituent relationship.

Effective voter participation

2 148 The Commission considers that both MMP and STV would enhance public participation in the political system. Voting would be more satisfying than under plurality because voters would be able to exercise their choices of Government and of local representatives with more flexibility, and far more votes would be effective in electing an MP to the House. Under MMP there would be no discrepancy between the effectiveness of votes in different areas with respect to choosing the Government. Voters in safe constituency seats would have a real incentive to participate because the choice of Government would be determined by the nationwide party vote. Because there is no nationwide calculation of votes under STV, there might be some variation between the effectiveness of votes in different constituencies but we do not consider this variation would be significant.

2 149 Voting under both STV and MMP is less straightforward than voting under plurality. However, this is to a large extent because under both systems, and particularly, under MMP, voting more accurately reflects the fact that voters are choosing both local representatives and party Governments. Moreover, voting under both STV and MMP is still relatively simple. Informal voting in Ireland and West Germany is usually less than 1% (higher rates under STV in Tasmania and in voting for the Australian Senate are attributable to compulsory voting and stricter formality requirements). We consider that the greater effectiveness of votes would be likely to result in a turnout higher than under plurality.

2 150 MMP and STV use methods of allocating seats the full details of which may not be universally understood. We do not, however, believe that it is necessary for every voter to understand all the intricacies of any voting system so long as voters can be confident that the system is fair, that counting is carried out by impartial officials under the scrutiny of candidates and parties, and that there are effective and impartial avenues to deal with any allegations of malpractice or unfairness.

2 151 Both MMP and STV can lead to more seats in the House being held by minor parties, and hence both increase the chance that no single party will be able to govern in its own right without the support of another party or parties. The result could be a formal coalition arrangement or a minority Government. It is sometimes claimed that, notwithstanding the power of individual voters in electing MPs, such results have the effect of removing the selection of Government from the electorate and placing it in the hands of the occupants of the infamous "smoke-filled rooms" during post-election negotiations.

2 152 In our view, these arguments underestimate the ability of the voters under MMP and STV to influence the election of a Government. First, any party receiving a clear majority of votes would be directly elected to Government and would be able to govern without the need of coalition partners. Second, the relatively high thresholds imposed under both systems would limit both political fragmentation and the number of alternative Governments possible. Third, we expect that potential coalition arrangements would be evident before an election. The 2 votes under MMP allow the voter to indicate support for or disapproval of any such arrangement, for example, by voting for the major coalition party in the constituency and the minor party in the list. Similarly, preferential voting under STV allows voters to cross party lines, and thus to use their preferences to signal their support or rejection of any coalition arrangements. Voters in West Germany and Ireland use these techniques to considerable effect. We would expect New Zealand voters to do so as well. There is a possibility that inter-election re-alignments among the parties might on occasion result in a change of Government and thus deny voters the chance to make their views known. While we expect a convention would develop such that the new Government would seek endorsement through an early election, it would also be possible to formally require the dissolution of Parliament and the holding of a new election. This is an issue to which we return in para 2 207.

2 153 We conclude that both MMP and STV offer more opportunities than plurality for effective voter participation. MMP offers voters the flexibility of having 2 votes, while STV provides opportunities for voters to choose candidates within and across parties. Under both systems, many more votes would be effective both in terms of electing an MP and hence in terms of determining the balance between parties in the House. The fact that all party votes are of equal weight under MMP

leads us to the conclusion that MMP would provide for slightly more effective voter participation than would STV

Effective government

2 154 In order to be effective, a Government must have sufficient stability and capacity for decisive action to be able to implement its policies. Either MMP or STV would be likely to increase the representation of minor parties in the House, and thus decrease the chance of 1 party obtaining an absolute majority of seats. It is often argued that this would produce government which was less effective than government under plurality as the search for sustainable coalitions or durable minority Governments might involve complex and lengthy negotiations and/or frequent elections. There might be, it is argued, lengthy periods where Government came to a standstill with no workable majority to be found. Indeed, even after the formation of a coalition Government, the parties in power may be unable to agree on difficult policy initiatives and thus be unable to take decisive action when that is appropriate.

2 155 Before addressing this issue v u note that there is no reason to suppose that MMP or STV must always lead to coalition or minority government. There have been single party majority governments in Ireland and Tasmania, although the former has also had single party minority government, minority coalition government and majority coalition government. Although West Germany has had coalition governments since 1949, MMP in New Zealand, with different political traditions and a recent history of single party government, might well not lead to coalition government. Nevertheless it is true that both MMP and STV do decrease the likelihood of single party majority government and, while there is no guarantee that voting patterns would remain the same under a different voting system, if past voting patterns were to continue New Zealand would have had coalition or minority Governments for the past 30 years. It is therefore important to discuss whether there is any tendency for coalition or minority Governments to be ineffective.

2 156 An important aspect of effectiveness in Government is the durability of individual administrations. Clearly, if multi party coalitions continually break down resulting in frequent elections, effective government is unlikely. However, Governments of short duration tend to be found in countries where there is a low threshold of representation in the legislature or where there are political parties corresponding to deep social or ideological divisions. West German governments have been extremely stable with early elections held on only 2 occasions since the war and changes in government occurring only in 1966, 1969 and 1982. This stability may, in part be due to the "constructive vote of no confidence" rule whereby the Bundestag can express its lack of confidence in the Federal Chancellor only by electing a successor with the majority of its members. (Basic Law Article 67(1)) The strong desire of the Germans themselves to ensure that governments are

stable and that the problems of the inter war years are avoided may also be significant. Irish governments have been less durable. There were 3 elections in 18 months in 1981-82, as successive governments were defeated after minor parties and independents withdrew their support. Even so, since 1922, Ireland has had 9 single party majority governments for a total of 34 years 4 months, 9 single party minority governments for a total of 14 years 9 months, and 5 coalition governments for a total to date of just under 15 years. We consider that because of the thresholds within both MMP and STV and our political traditions and expectations, neither MMP nor STV would be likely to create serious difficulties with respect to the durability and stability of Governments.

2.157 A related issue concerns not so much the durability of individual administrations but their ability to make decisions after they have been formed. All democratic Governments need majority support in the legislature before they can implement their policies. Because under all proportional systems including MMP and STV this may require the agreement of more than 1 party, there may need to be considerable consultation and negotiation before policies are implemented. It is the need for this process that gives rise to allegations that proportional systems lead to indecisive governments. In some circumstances governments may not be able to act as quickly as we are accustomed to in New Zealand. However, the charge that coalition governments are inherently indecisive, which is often made in New Zealand and other countries with the plurality system, is based on isolated and often outdated examples such as Italy, France of the 3rd and 4th Republics, and Weimar Germany. Governments in West Germany and Ireland, and indeed those in most other European proportional systems, have demonstrated their ability to act decisively when that has been necessary. We do not expect the situation would be different in New Zealand. Under our plurality system major policy initiatives already require the support of different factions within governing parties, and although the pressures for unity are greater within a single party, than in a coalition, they are not wholly dissimilar.

2.158 Moreover, to the extent that the need for dialogue and compromise do inhibit the ability of governments unilaterally to implement changes, this may, in some circumstances enhance rather than detract from effective government overall. In paras 2.43 to 2.45 we discussed the problem under plurality of certain policies being subject to repeated changes as governments succeed each other in and out of office. Under MMP and STV contentious issues would often be the subject of negotiation between 2 or more parties and the policy that emerged would be more likely to be one that is acceptable both to the majority of electors and to subsequent governments. Major policy shifts, when they occur, are more likely to be caused by significant shifts in voter opinion than is the case under plurality. What is lost in terms of the decisiveness of government is, we consider, more than made up for in continuity of policy between governments. Our clear impression from

the submissions made to us is that electors would welcome more consultative government and greater continuity of policy.

2.159 A further aspect of effective government concerns continuity of personnel between administrations. Under plurality, a change of government usually means a complete removal from power of all members of the defeated government. There are occasions when such a transformation is clearly desired by the electorate and in such cases it is important that the popular will be reflected in the composition of the new government. However, under plurality, such a complete turn around can, and generally does, occur without the new government receiving an absolute majority of the vote. Under MMP and STV any opposition party or coalition which receives a clear majority of the vote will be able to govern without involving members of the defeated government. However, if the electorate's verdict is not so clear cut it is highly possible, depending on the configuration of the parties after the election, that 1 or more parties from the defeated government will participate in the formation of its successor. On some occasions the ability of a newly elected administration to draw on the experience of some members with recent governmental experience may increase political stability and hence the effectiveness of government.

2.160 Our conclusions are that the introduction of MMP or STV into New Zealand would not significantly reduce the stability and decisiveness of individual Governments and may indeed enhance the effectiveness of government generally. Either system would make the prospects of coalition or minority government more likely. This may introduce periods of uncertainty, particularly as parties either already in government or contemplating forming a government negotiate amongst themselves. Nevertheless, negotiation is not necessarily a bad thing even if it does slow down the process of decision making on some occasions, and New Zealand could well benefit from increased consultation and discussion in Government. Finally, we stress the importance of a threshold such as we have proposed for MMP and STV. The evidence is that a reasonable threshold does prevent a proliferation of small parties in the House and any instability that may arise as a consequence. In short, we do not see plurality as having an advantage under the effective government criterion.

Effective Parliament

2.161 We expect that MMP in New Zealand would enhance the ability of MPs to carry out their collective parliamentary functions. Parties would be able to use their lists to assist the election and re-election of people who had a particular contribution to make to the functioning of Parliament as an institution, or who could bring a particular expertise to the policy and legislative processes. The lists would also allow a party to protect a good constituency MP from the vagaries of plurality elections.

2.162 Smaller parties are more likely to gain seats in the House under MMP than under plurality. To some extent the scrutiny and control of the major party would be enhanced if the views of 1 or more other parties

had to be taken into account in Government or in the House. Even where that was not the case, there would be value in having a greater variety of views represented in Parliament.

2 163 There is a danger that a proliferation of small parties in the House would detract from, rather than enhance, the effectiveness of Parliament by fragmenting the Opposition and thus decreasing its ability to counter and debate Government moves. However, MMP avoids this danger in that the 4% threshold would generally mean no parties with fewer than 5 MPs would be represented in the House.

2 164 In summary, under MMP we consider that the functions of Parliament in checking the executive through scrutinising its legislation, questioning Ministers in the House and public servants in select committees, and acting as a forum for the expression of alternative policies and as the focus for New Zealanders' aspirations and grievances, would all be better served.

2 165 The advantages of MMP with respect to the representation of small parties are shared by STV. We have some concern, however, that the fierce intra party competition over constituency service experienced under STV in some countries overseas would, if introduced to New Zealand, seriously undermine MPs' work in Parliament. In para 2 143 we referred to the situation in Ireland where intra party constituency competition has resulted in many members of the Dail doing little else but attend to the demands of their constituents. While this might result in a higher level of service for the constituents concerned, to the extent that it occurs, the policy and parliamentary functions of MPs must suffer.

2 166 It is clear, however, that competition over constituency service in Ireland cannot be attributed solely to the electoral system. There are strong localist, clientelist, and brokerage strains running through Irish culture, legacies of centuries of British rule in a predominantly rural society. Face-to-face contact with a person thought to have access to power is still seen as the way to obtain benefits, even those to which there is a legal entitlement. We were told that the demands of the constituents on elected representatives would persist whatever electoral system was used in Ireland. It seems, then, that the Irish electoral system exacerbates a tendency that is already present in Irish society, and allows it to be expressed in a particular way.

2 167 Although intimacy and localism are also characteristics of New Zealand's political system, we think that most people in New Zealand stand in a different relationship to the departments of State than do the Irish. Many New Zealand constituents see their MP as a matter of last resort rather than first. Our Government departments see it as their responsibility to invite and deal with problems and complaints without the intervention of the MP. There are also other agencies that can help with problems involving departments and other Government bodies. The political parties also insist that their MPs are involved in the work of the House. While MPs see their constituency work as extremely important and satisfying, they also see it as only a part of their role.

2 168 Nevertheless, given the pressures placed on MPs by their constituents at present, we cannot completely rule out the possibility that MPs elected under STV might concentrate on constituency work to the neglect of their parliamentary functions. Without in any way underestimating the value of constituency work, and in particular the avenues it provides for those in lower socio-economic groups, it is desirable that intra party competition over constituency service be curbed. We consider that the party box option would limit the degree of intra party competition over constituency service and to that extent the negative effects such competition might have on the effectiveness of Parliament.

2 169 We conclude that MMP is likely to have a clear advantage over plurality in providing an effective Parliament. STV may also strengthen the work of Parliament, although we accept that the benefits of small party representation under STV have to be balanced against any tendency for MPs to neglect some of their parliamentary functions in favour of unnecessary constituency work.

Effective parties

2 170 We have already emphasised the vital role of political parties in modern democracies. Any electoral system which weakened parties would, to that extent, be undesirable.

2 171 The policy functions of political parties are extremely important in any democracy. We consider that MMP would enhance that role compared with plurality, both because the list enables the recruitment of candidates with particular knowledge, skills or experience and because able members could be made less vulnerable electorally. With regard to STV we have already mentioned the possibility of intra party competition. While we consider that the party box will limit the extent of intra party competition we remain concerned that MPs elected under STV might concentrate on constituency service to the detriment of other aspects of their work. That should not be exaggerated in respect of policy development, however, for New Zealand parties typically try to involve the wider party membership in the development of policies.

2 172 We earlier commented that the plurality system provides for strong party unity and discipline. It is sometimes suggested that party unity under MMP may be impaired by the tendency of the system to create 2 types or classes of MP. List members elected in a nationwide constituency might be seen as more important or more logical ministerial material than their local constituency counterparts. On the other hand, constituency members might see themselves, or be seen, as the true representatives of the people in that they were elected directly, not "smuggled in" on the list. In practice, in West Germany the dual method of election does not appear to have weakened party unity or discipline or to have led to 2 distinct classes of MP. We do not expect there would be problems of party disunity were it introduced in New Zealand, provided the numbers of constituency and list members are kept equal in number. In this respect MMP differs significantly from SM where the comparatively small number of list MPs might be regarded as

an elite Party organisations would also attempt to prevent the development of 2 classes of MP

2 173 Both MMP and STV would improve the prospects for smaller parties and, under STV at least, for Independents. This may to some extent lessen party unity and strength as dissidents might be tempted to break away and compete in their own right. However, this also prevents the dominant factions within parties from ignoring the views of minority groups within their caucuses. At the same time, the thresholds under MMP and STV would, we consider, limit both the frequency of defections and their negative effects on parties and the party system.

2 174 There are significant differences in the extent to which plurality, STV and MMP allow the party to determine which candidates and MPs are to represent it. Plurality gives parties a powerful position in that at an election each party's committed voters must accept the choice of candidate or vote for another party. On the other hand, depending on such factors as the balance between central and local control over selection, the candidates chosen under plurality may or may not make the most effective team. In addition, the vulnerability of marginal seat MPs may mean the loss of a party's most valuable (or even most popular) representatives.

2 175 By providing for voter choice within as well as between parties, STV is sometimes said to weaken parties' control over their representatives. However, the party box option we propose will to a large extent counter this and will mean the parties' most valuable candidates are less vulnerable than under plurality.

2 176 MMP places the parties in a particularly strong position with respect to control of their candidates. As already discussed, the list assists parties to obtain a balance between diverse occupational, gender, ethnic and interest groups, and individuals may be chosen as members of a team for their particular skills, experience or areas of knowledge.

2 177 In summary, we consider that MMP is marginally more beneficial to the development of effective parties than are STV and plurality although we doubt that there is a great deal to choose between the 3 systems on this criterion. Under all systems greater effectiveness of parties, particularly with respect to their influence over candidate and MP selection, to some extent must restrict the individual voter's range of choice. What is therefore important under all systems is that there should be ample opportunity for ordinary party members to participate effectively in the selection of candidates. This ensures that there is not too great a concentration of power in the hands of the party organisation. We discuss this further in paras 9 24 to 9 29.

Legitimacy

2 178 For the reasons we expand upon in our conclusion we consider that both the MMP and the STV electoral systems we have described are, because of their proportionality, fair and legitimate in ways that our present single-member plurality system can never be, although we

accept as indicated in para 2 53 that our plurality system has long been accepted as legitimate. We find it difficult to choose between MMP and STV on this criterion, but we see MMP as preferable to STV on the grounds that it is likely to be more closely proportional, and that it retains single member constituencies.

Conclusion

2 179 In the preceding discussion of the respective strengths and weaknesses of MMP, STV and plurality we have endeavoured to present a fair appraisal. Of the 2 proportional systems, MMP and STV, it is our view that for New Zealand MMP is clearly superior. It is fairer to supporters of significant political parties and likely to provide more effective representation of Maori and other minority and special interest groups. It is likely to provide a more effective Parliament and also has advantages in terms of voter participation and legitimacy. With regard to SIA, we are conscious that a complete move away from plurality represents a major change and that there might be attractions in making lesser modifications to our system aimed at remedying some of its defects in a more gradual and incremental manner. However, we do not consider SIA sufficiently overcomes the key deficiencies of plurality. In terms of fair representation of the supporters of political parties and other groups and interests, it is a palliative rather than a true prescription for improvement.

2 180 As between MMP and plurality, we accept that we should recommend a complete change only if we are fully satisfied that a new system will remedy major defects in plurality without introducing greater deficiencies of its own. Applying that standard, the Commission unanimously recommends the introduction of MMP.

2 181 In those areas where plurality has major weaknesses, MMP results in substantial improvement. It ensures fairness between political parties because there is a distinct party vote and seats are distributed in proportion to the level of nationwide support for each party. There is no bias against minor parties so long as they cross the 5% threshold. There are no accidental advantages or disadvantages to parties depending upon how their support is spread through the country. In terms of voter participation, MMP represents a significant improvement over plurality in that the 2 votes allow voters to concentrate their attention on electing a Government as well as choosing the best constituency representative. Moreover, in terms of the overall result, most votes do count and are clearly seen to count. In the key area of Maori representation where plurality is clearly deficient, MMP offers to Maori both the ability to exercise real influence through a common roll with no separate Maori roll and the opportunity to elect through the lists candidates who reflect the Maori viewpoint. The national lists are also likely to provide more effective representation of and influence for other minority and special interest groups than does plurality. Finally, in terms of legitimacy, MMP is, and will be seen to be, much fairer than plurality in giving representation to parties and other groups or interests.

This, we believe, is significant in terms of preserving confidence in our electoral process in a more diverse society

2 182 In those areas where plurality is commonly regarded as having strengths we consider that MMP has comparable, though sometimes different, advantages. Thus in terms of *effective government* we see MMP introducing changes because coalition or minority Governments may become more likely, though by no means inevitable. The evidence from other democracies with proportional systems indicates that where there is a reasonable threshold which prevents the proliferation of minor parties, governments remain at least as effective, and possibly more so if proportionality results in the adoption of more consistent, consultative and broadly supported policies. Likewise, in terms of *effective representation of constituents*, MMP retains single member constituencies and we do not see either system as clearly preferable. Similar considerations apply to the ability of both systems to assist *political integration*, though we incline to the view that changes in New Zealand society render MMP preferable to plurality in that all significant sections of the community have an effective part in the political process, and parties with a reasonable degree of voter support have the opportunity to obtain representation. Simply because it fails to reflect the diversity in our society, plurality may in the long term be less integrative. In relation to *effective parties*, we believe the systems are comparable, though MMP has an advantage because of the assistance the list gives in obtaining a balance between interests requiring representation. Finally, we consider MMP probably has an advantage over plurality in terms of assisting an *effective Parliament* because it encourages election of members who may choose to concentrate on policy issues. Overall, then, we consider MMP to be the best voting system for New Zealand's present and future needs.

Recommendation:

- 1. The Mixed Member Proportional system as set out in para 2 116 should be adopted.

2 183 **Other Systems** Although we are satisfied that MMP is to be preferred to all other systems, there are differing views amongst Commissioners about where STV should be ranked in relation to plurality and S.M. With regard to S.M. members of the Commission are agreed that that system would be an improvement to plurality, and one which we would like to see introduced if there is not to be a change to MMP.

2 184 **Cost** We recognise that there would be some cost factors associated with a change to MMP. The greatest cost would arise in relation to the increase in the size of the House by some 20 or so MPs, this in our view being essential if MMP is to operate effectively. The cost of additional members arises, however, whether or not a change is made to MMP, since we consider the House should be increased to the same extent if we remain with the plurality system. Details of the cost of increasing the size of the House are given in Chapter 4, para 4 31. Apart

from the one-off costs involved in switching to a new system we think the administrative costs of operating an MMP system would not be greatly different from the cost of operating a plurality system with the same number of MPs. We therefore do not see the cost of introducing MMP as a factor of any great significance.

2 185 **Referendum** We consider that MMP should not be introduced unless there is public understanding of, and support for, the change. What is therefore essential in our view is a period of public consideration of this report during which the advantages and disadvantages of change may be discussed and debated. Thereafter MMP should be introduced only with the approval of a majority of voters at a referendum. Although a proper time should be allowed for public discussion the decision should not unnecessarily be delayed. We therefore recommend the referendum be held at or before the next general election after 1987. The referendum should be introduced on the basis of an Act of Parliament which makes it clear that the result is binding.

Recommendation:

- 2. A referendum on the adoption of the Mixed Member Proportional system should be held at or before the next general election after 1987.

2 186 The major issues concerning Maori representation are discussed in the next chapter of our Report. This present chapter has, however, made reference to some of those issues because they are vitally relevant to any decision about a suitable electoral system for New Zealand. Chapters 2 and 3 of our Report should therefore be read together. In other respects our recommendation for a change to MMP stands alone and should be considered independently of our remaining recommendations except that it also requires an increase in the size of the House (see Chapter 4).

AN ELABORATION OF MMP

2 187 The MMP system we have recommended is only 1 of a number of possible variants. Many of these components of the system could be modified to create a significantly different result, and our conclusions in a number of key areas were arrived at only after the weighing of a number of factors. We therefore now discuss our proposal in greater detail and indicate the reasons for the major choices we have made.

The ratio of list to constituency seats

2 188 Under our proposal there would be 60 list and 60 constituency seats. On provisional 1986 census figures the average population per constituency would be approximately 55 000. We consider 60 constituency members the minimum acceptable to retain the possibility of a direct and close relationship between constituent and MP. Based in

part on the West German experience, we would expect most list members to attach themselves to particular constituencies or regions, although we expect that some members elected from a list would be less directly in contact with the voters from a given area than others.

2189 It is possible to maintain proportionality while retaining a greater number of constituency seats. Combinations of 80 constituencies to 40 list seats or 70 to 50 are the most likely options. While these combinations provide smaller constituencies, they are rejected on 2 main grounds. First, if constituency elected MPs are not to be seen as of a different status than list elected MPs it may be important to have approximately equal numbers of each. Second, a major advantage of party lists is that they provide the most effective way for each party to balance its representation of significant groups and interests. If this balance is to be achieved, it is important for all major parties to have some list members at all times. Major, and particularly winning, parties will tend to gain more constituency seats than their share of list votes would suggest. They will, therefore, need to receive a smaller share of list seats in order for overall proportionality to be achieved. If there were, for example, 80 constituency and 40 list seats, major parties would be likely to win all, or nearly all, of their overall entitlement from constituency seats, and thus receive few, if any, list seats. This effect may be particularly disadvantageous if it results in a party losing a number of list members after an improved performance at the polls.

Threshold

2190 We have proposed adoption of a threshold of 4% of the valid list votes, or success in at least 1 constituency, before a party is eligible to receive any list seats. A party reaching the 4% threshold would receive at least 5 seats in the House. The choice of a 4% threshold is designed to provide small parties with a reasonable chance of gaining seats while discouraging the proliferation of minor and/or extremist groups in the House. In 1984, 4% of the valid vote amounted to slightly under 77 000 votes. In recognition of the special status of the New Zealand Maori population, and of the relatively small number of Maori voters, we have proposed that no threshold apply to parties primarily representing Maori interests. This waiver could be extended to parties representing other minority ethnic groups such as Pacific Islanders, if this was thought desirable.

2191 Before settling on a 4% threshold, the Commission considered alternative possibilities ranging from no threshold at all to a 5% threshold, as used in elections to the West German Bundestag. We are persuaded that if no threshold is set or if it is set too low, the operation of effective government would be very likely to be frustrated. On current voting numbers and assuming 120 seats allocated by the modified Sainte Laguë method, the absence of a vote threshold would give a list seat in the House to every party recording around 25 000 votes. We think this is too low and could give rise to a proliferation of small parties

with few seats in the House. The adoption of an appropriate threshold is a key element in our proposal, and we would view it as clearly undesirable to have no threshold. We only think it justifiable to waive the threshold in the very limited way which we indicated above.

2192 On the other hand, we view a 5% threshold as too severe. Under such a proposal a party would need almost 100 000 votes to gain one list seat. In our view this would in New Zealand be too great an obstacle to the development of new and emerging political forces.

Election of list members

2193 Earlier in this chapter we rejected systems of proportional representation based exclusively on party lists on the grounds that such systems give parties rather than voters effective choice over the selection of representatives. The MMP we suggest with 60 of the 120 representatives elected from closed party lists is to that extent vulnerable to the same charge. Because of this concern we investigated in some detail a number of alternative ways of electing non-constituency members.

2194 **Best losers.** One possibility is the Mansard Commission system whereby the "best losers" in the constituencies would gain election (see para 2193). This system does have a number of points in its favour. Because only 1 vote would be needed, the system would require the same act for voting as at present. All candidates would be exposed to an election campaign in a constituency, and only candidates gaining a high percentage of the vote in a constituency would be elected. Not only would the need for a party list be removed but also every member would have an identifiable local constituency to service.

2195 We consider, however, the 2 vote method to be preferable to the 1 vote system advocated by the Mansard Commission. We have earlier outlined our view that a major advantage of MMP is that it allows voters to better exercise the dual functions of choosing a local representative and choosing a party of government. The 1 vote system would deny voters this opportunity, and also remove the flexibility whereby voters have the opportunity to endorse or reject planned coalition arrangements.

2196 Nor are we convinced that the Mansard MMP would give voters an appreciably greater choice over selection of their representatives than would closed list systems. Best losers are those unsuccessful candidates with the highest percentages of the vote in their constituency. That percentage is affected by a party's traditional level of support in that constituency, and by the level of activity of third and fourth parties there. Under this scheme, therefore, a worthy but losing candidate in a seat that is safe for another party would have little chance of being a "best loser" compared with a losing candidate in a tight, marginal seat. Voter choice of "best losers" would be illusory.

2197 Nor do we consider that the advantages of requiring all candidates to compete in a constituency outweigh the disadvantages. Requiring all list members to be defeated constituency candidates may

exacerbate rather than diminish a perception that there are "2 classes of MP. Finally we consider there are benefits in having some MPs freed from the responsibility of servicing a geographic constituency.

2 198 Open or closed lists. The election of non-constituency members through party lists would be more acceptable to some if voters could alter the order of candidates on the lists. Voters might combine a vote in a constituency with a vote for 1 or more non-constituency candidate(s) grouped under, but not ranked within, each party. The votes for all list candidates would count also as votes for the candidates' parties. Once each party's overall entitlement was determined, those candidates within each party attracting the highest number of votes would be elected. Alternatively, non-constituency members might be elected by allowing parties to present ordered lists but allowing voters a limited power to alter those lists. Under such a scheme, voters might have the choice between acceptance of the party list and either partial or complete re-ordering of it.

2 199 While it may be attractive in principle, there are considerable difficulties in combining open national lists with constituency contests, particularly when constituency candidates may also stand on the party list. First, each party would need to have enough list candidates to cover not only the maximum number of list members they might expect to have elected, but also those dual candidates who might be successful in a constituency. The ballot paper would be excessively long, and would require an unrealistic degree of voter knowledge about candidates. Second, we consider that if parties were given little or no influence over the ordering of their lists, this might force candidates into public competition within, as well as between, parties. This may seriously weaken party unity and the collective responsibility of a party's representatives to the electorate. It may also deny parties the opportunity to provide representation to special groups and interests.

2 200 We do not suggest that competition and debate between members of the same party is in itself, bad. Rather we consider that it is preferable if most of that competition takes place inside party forums rather than before the wider electorate. However, if a party is to be allowed to present a closed list, it is essential that this list is constructed in a democratic way with genuine involvement by the party's membership. In West Germany, the Law on Political Parties requires parties nominating candidates for both constituency and list seats to select those candidates either directly by the party membership of a given area, or by an assembly of delegates elected by the membership for that purpose. All elections of candidates or assembly representatives are required to be by secret ballot. We discuss candidate selection procedures in paras 924 to 929 and make recommendations to a similar effect.

2 201 Regional or national lists. The list element of MMP could operate with parties presenting either a number of regional lists or one national list. The advantages of regional lists are that they may lessen central party control, ensure balanced representation between regions

and, because regional lists would contain fewer names than national lists, be more easily opened up to voter choice. Proportionality need not be compromised if each party's entitlement is determined nationally and its seats are then allocated regionally.

2 202 In opting for a single national list for each party we were influenced by the following factors. First, a national list enables parties to ensure balanced representation. Second, regional lists may lead MPs and electors to concentrate unduly on local or regional issues to the detriment of national issues. Third, since New Zealand does not have clearly defined regions and is not a federal state it may be unnecessary and at risk to artificially create such divisions. Fourth, with regional lists, but each party's entitlement determined nationally, there is no obvious correlation between list position and likelihood of election. Fifth, in order to make it clear that the list vote is a choice between parties and their leaders, all voters should have the same key names in front of them.

2 203 Dual candidacies. In arriving at our proposal to allow parties free rein over who should appear on the lists, we considered excluding constituency candidates from the list altogether or alternatively requiring that all list candidates also contest a constituency seat. We earlier rejected the second of these options in our discussion of the Hansard Society Commission proposals and we now consider the question of prohibiting dual candidacies.

2 204 Internal party pressures in West Germany have meant that most list candidates in high positions now also contest and are subsequently identified with local constituencies. This has contributed in West Germany to a general lack of distinction between the two types of representative. It also encourages a low turnover of deputies and a consequent stability and depth of experience within the Bundestag.

2 205 These characteristics are, however, not without their disadvantages. A lack of distinction between MPs elected in different ways may promote greater harmony within parties in the House, but it does not encourage list members to concentrate on the representation of interests transcending local constituencies. Moreover, while the back-up of a list position allows able representatives in marginal seats to be protected, it consequently, gives voters little power to remove an unpopular member from the House.

2 206 If list candidates were excluded from contesting constituencies, voters would retain the power to remove unsatisfactory, local representatives and list members could focus on the representation of the groups and interests or on national issues. On examination, however, we consider prohibition of dual candidacies to be undesirable in principle and workable in practice. First, the creation of 2 highly distinct types of candidate (and hence representative) would be likely to contribute to party disunity. Second, we see considerable advantage in allowing parties to both protect a limited number of their more valuable MPs in marginal seats and reward superior candidates in unwinnable seats. Banning dual candidacies would prevent such practices and be

of particular harm to small parties who are unlikely to be assured of any constituency seats but who may nonetheless wish to have their high profile members contest such seats. Third, a smaller party would win more list than constituency seats. This may be reversed if that party does particularly well in an election. Under MMP, therefore, a party may lose some of its list members while gaining seats overall. In our view this is an unacceptable prospect if dual constituency/list candidates are banned.

Dissolution

2.207 In paras 2.151 and 2.152 we noted a concern about the increased possibility under systems of proportional representation of inter-election changes of government, and the consequent loss of voter sovereignty this might entail. In light of this concern we considered whether a change to MMP might make desirable a requirement that parties in Parliament should not be able to form a new government without an election. This would involve legislation requiring a dissolution of Parliament and a new election in the event of a new government being unable to serve out its term. The requirement would apply whether or not a new administration was available to continue.

2.208 There are many examples, under both proportional and plurality voting systems, of new governments emerging between elections. These changes can occur in times of emergency—for instance, in the formation of a national Ministry during wartime—or as political fortunes alter in a divided House with no single party holding a majority. "New" governments may or may not involve members of the previous government and there is sometimes great difficulty, or even impossibility in some circumstances, in determining whether a new Ministry has really been formed. We are not aware of any constitution which as a matter of law requires new elections if a new government emerges in the course of a Parliament.

2.209 For 2 reasons we do not propose that an election be required by law if the Government changes in the course of a Parliament elected by MMP. The first is that the situations of change are various and a clear line cannot, we think, be drawn in a legal formula between those changes which justify a new mandate and those that do not. The second reason is that we expect that parties forming a new government which is widely judged in the country to require a fresh mandate will in fact seek one by advising a dissolution and new elections. If they do not, it will be to their political cost. The matter should, as at the present, be left to the good sense of the parties and to evolving practice and convention.

Addendum 2.1: Vote/seal relationships, thresholds and quotas

Turning votes into seats

Under proportional representation the number of seats a party gets should be as nearly as possible proportional to the number of people who have voted for that party. An example of the difficulty there can be in determining the number of seats parties should get is the following.

Suppose there are 3 parties which have received 437, 396 and 167 votes respectively. Suppose there are 100 seats to be allocated. The parties would "expect" 43.7, 39.6 and 16.7 seats although, of course, only whole numbers of seats can be allocated. If these expectations were rounded to the nearest whole number the allocations would be 44, 40 and 17 which add, not to 100, but to 101.

Many methods of allocating seats have been devised that ensure the numbers of seats always add to the correct number. These methods are distinguished from each other by the different ways in which they try to make the proportions of seats close to the proportions of votes. The methods used are discussed in some detail in the book *Fair Representation* by Michael L. Balinski and H. Peyton Young, New Haven, 1983. A method commonly recommended is the Sainte Laguë method. This starts from the assumption that a difference of a given amount between the number of seats a party expects to get and those it is allocated is more important for a minor party than for a major party. For instance, if on average a party expects to get 16.7 seats as in the example above, and the actual allocation is 17.0, the difference of 0.3 is more serious proportionately than is the corresponding difference between 43.7 and 44. The Sainte Laguë method favours the smaller parties by providing allocations of seats which, while attempting to make the proportions of seats close to the proportions of votes, give more weight to the differences between expected and actual allocations for small parties.

A principal competitor to the Sainte Laguë method is the d'Hondt method, used in a number of European countries. In this method the procedure is to give the next seat to be allocated to the party which would then have the highest ratio of votes to seats. In this way it ensures a close relationship between the different ratios of votes to seats, at the expense of slightly favouring the larger parties.

For the example given above the Sainte Laguë allocation of seats is 44, 39 and 17 while the d'Hondt allocation is 44, 40 and 16.

Modified Sainte Laguë

The 2 methods discussed so far may each be modified in such a way as to alter the chances of a small party gaining a few seats without there being a significant proportional change in the number of seats gained by the larger parties. Modifications of this kind to the Sainte Laguë method have been employed in Norway, Sweden and Denmark. We have proposed a similar modification to be used for S.M. (para 2.101).

The Canberra Times

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Tasmanian politicians Voting

praise Hare-Clarke

Malcolm Mackerras asked the island state's MPs for opinions on their electoral system and found there was wide-spread support for it.

THIS article has been prompted by two things. The first is a recent visit by me to Tasmania where, among other things, I gathered useful further information about the Hare-Clark system. The second is the letter by Hugh Dakin of Griffith (CT, October 5) in which he argues that Hare-Clark is not the best system for the ACT.

Take Mr Dakin's letter first. Among other things he writes, "The objection to single-Member electorates for the ACT seems to be that it would result in a large Labor majority. This would occur only if a large majority voted Labor, in which case it seems a curious objection to an electoral system that it gives the result preferred by the majority."

Take the opinion poll by Datacol published in *The Canberra Times* on August 28. On that poll, Labor would win under any system. Under single-Member electorates, however, such a polarised vote becomes a two-party preferred vote of 65 per cent Labor and 35 per cent Liberal.

Let us divide the ACT up into 17 single-Member electorates of 10,000 voters each and using a natural map. On my calculations the strongest Labor seat would divide 75 Labor and 25 Liberal while the weakest would divide 55 Labor and 45 Liberal.

Thus a clean sweep by Labor under single-Member electorates is not merely possible. It is probable (at least at the next election).

Mr Dakin's letter also contains this comment: "In Tasmania recently I met a member of its Lower House and asked his view. Although Hare-Clark has elected him, he would prefer the directness and simplicity of a single-Member system."

Clearly Mr Dakin and I visited Parliament House, Hobart, at about the same time. The difference is that I did not merely talk to one unnamed Member. Rather, I informed a wide range of Members that a referendum is likely in the ACT and I asked each for a written opinion.

From this I can say that every Green Member, every Labor Member and most Liberal Members favour Hare-Clark in Tasmania. And the few Liberal Members who favour single-Member electorates are aware of the likely result if an election were held in Tasmania within the next six months under single-Member electorates. The Liberal Party would win 34 of the 35 seats.

Not surprisingly, the Green Members are the most enthusiastic about Hare-Clark. The typical opinion is that of their leader, Rob Brown, who wrote: "Hare-Clark for ACT (the world's best system!)" Labor Members are nearly as supportive. The Premier, Michael Field, wrote: "The Hare-Clark system

serves Tasmania well". The last Labor Premier, Harry Holgate, wrote: "The Hare-Clark voting system is easily the most effective of all proportional representation systems".

However, Labor support for Hare-Clark does not stop at the Premier and former Premier. It is universal. For example, the Minister for Primary Industry, David Llewellyn, wrote, "The Hare-Clark system is the fairest in the world."

As indicated above, some Liberal Members would prefer single-Mem-

One-Member electorates: ALP clean sweep likely

ber electorates. None, however, indicated a willingness to campaign for single-Member electorates in the ACT. A typical response was from the Leader of the Opposition, Robin Gray, who wrote, "Some people call us Hare-brained but it's got to be better than what you've got now".

Most Liberal Members are more supportive of Hare-Clark than Mr Gray. For example, the Deputy Leader of the Opposition, Ray Groom, wrote, "Hare-Clark is very democratic". The most enthusiastic

11 OCT 1990

The Canberra Times

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Member of all, however, is Bass Liberal Neil Robson, who wrote, "You must have the Robson Rotation for the ACT".

The most interesting thing about the above responses is the tepid comment by Mr Gray. Such is not surprising. He would have won the May 1989 general election if it had been contested under single-Member electorates.

Clearly such a system would not have returned any Green Independent other than Bob Brown. The Liberals with their 47 per cent of the vote would easily have beaten Labor with its 35 per cent. The Liberals would have won about 22 of the 35 seats.

Political analysts in Tasmania estimate that if an election were held within the next six months then the Liberals would receive about 55 per cent of the vote, Labor about 30 per cent and the Greens about 15 per cent. Clearly the Liberals would win under any system.

What would the result be in seats if Tasmania were to switch to single-Member electorates? The best estimate is that the Liberal Party would win 34 of the 35 seats.

One electorate only would not return a Liberal. It would be a Hobart seat extending from the central bus-

ness district to the University of Tasmania. Bob Brown would win that seat.

That would mean that Labor with 30 per cent of the vote would win no seats at all. The Greens, however, with 15 per cent would win one seat.

In the light of such analysis one can understand Mr Field's comment that "The Hare-Clark system serves Tasmania well". It also serves Mr Field well. He could not win a seat in the House of Assembly under single-Member electorates but Hare-Clark makes him a Member. It also makes him Premier.

Thus the opinions of politicians are not disinterested. I claim to be disinterested, however, and I think Tasmania should retain its Hare-Clark system.

I found Mr Field to be a most pleasant and interesting man. I am unable to see the merit of a system under which he could not be re-elected to his existing seat. He is presently one of seven Members for Braddon in the north-west. Divide that up into seven single-Member electorates and the Liberals would win all seven by large majorities.

When the ACT referendum comes along I would be interested to see if the Labor Party asks Mr Field to campaign here for single-Member electorates. I can assure them that Mr Brown will be campaigning for Hare-Clark.

Proportional Representation

Tasmanian MP discusses the value of the Hare Clark system and Robson Rotation for the ACT. Morning show (2CN, ABC Radio), Friday 22 Mar. 1991: (3p).

Reporter: Matthew ABRAHAM
Speaker: Neil ROBSON - MHA, Tas
Transcript: 81-8392 (ONLINE)
Audiotape: 81-8368 (C91/M085-0-0) (MICAH)

This transcript is taken from a tape recording, and freedom from errors, omissions or misunderstandings cannot be guaranteed.

MATT ABRAHAM: Well, on the program we've made a point of exploring the likely shape of a new electoral system in the ACT, and something we need to grapple with if the Government delivers on its promise of a referendum at the next election. And we need to be informed if we are to make an informed, democratic choice. The two questions likely on the referendum are whether we should have single-member electorates or the Hare-Clark system which operates in Tasmania. Now, Hare-Clark in Tasmania operates with something called Robson Rotation tacked on. Robson Rotation ensures that the candidates appear in a random order on ballot papers in any one election. Earlier this week, we spoke to Senator Terry Aulich who introduced the system while a Minister in the Tasmanian Labor Government. He said he had introduced it to break down the power of the party machine, to benefit from setting the agenda on ballot papers and therefore, benefiting from what is unkindly called the donkey vote. Without Robson, he said parties could simply issue how to vote cards and people would be tempted to tick down the list.

Robson Rotation ensures that no candidate gets an unfair advantage from being at the top of the ballot paper consistently. Now, Robson Rotation is named after a Tasmanian Liberal MP, Mr Neil Robson, and I caught up with him yesterday. He was standing outside a Cabinet meeting waiting for our call and I began by asking him for his view of Senator Aulich's claim that Senator Aulich was responsible for the Robson Rotation method.

NEIL ROBSON: How could he, if it's called the Robson Rotation? It was a private Bill; it was a private Bill brought through by me which the Labor Party opposed for about four years, or three years, and they had a State Council on the west coast of Tasmania one day, at which all the hierarchy and the rank and file thought that some of their sitting Members of Parliament weren't doing too well, so they were going to bring in a ticket so that the people in the party machine would determine the way the people went on the ticket. And so, I've had this Bill before Parliament for about three years and suddenly the Labor Party saw the benefit in it, inasmuch as that then they wouldn't be dictated to by their own party and that the people of Tasmania would be able to pick their Members without any trouble whatsoever. And so when they came back on the Tuesday, they supported my Bill.

MATT ABRAHAM: So they didn't introduce the Bill? It was laying on the books and they picked it up.

NEIL ROBSON: It's been on the books for about three years.

MATT ABRAHAM: And did they initially oppose it?

NEIL ROBSON: Yes.

MATT ABRAHAM: How did you think up the concept of Robson Rotation?

NEIL ROBSON: Well, when I first came into Parliament I stood for the Senate in 1974. I was number five on the ticket, and through the way the donkeys are invited to vote, I got more votes than three sitting Senators and didn't get elected. So that hurt me rather and so I went away and I devised this system. And then, when I got into State Parliament I was amazed to see that 28 of the Members there, their names started with A, B or C, and that was brought about by the fact that they used to put the people down alphabetically on the ballot papers. And so, consequently, with the the power of the parties and the donkeys at work, they just voted straight down the ticket and we had 28, as I said, with A, B, or C. Well, now, since my Robson Rotational method has been in, it should be, probably, somewhere around about how the alphabet figures in the phone book.

MATT ABRAHAM: In your view, does Hare-Clark work effectively without Robson Rotation?

NEIL ROBSON: Yes, it works all right, but not, it's a refinement. The Robson Amendment or Rotation is a refinement which makes it, people now, can see that before Hare-Clark is the only way in the world, I believe, where people are going to get what they vote for. I mean, at the moment, under single-man elections in the Federal Parliament, I believe Mr Hawke's got about 38 per cent of the vote and 52 per cent of the seats, which is ridiculous. Under Hare-Clark, if you get 46 per cent of the vote, you get 46 per cent of the seats. Now, those seats can be skewed by the system of how they're put down on the ballot paper. You see, why the unions and why the Labor Party wanted to put it down as far as the union's concerned, because they knew that the people will follow down the ticket, and so consequently, my system stops all that and the people, if they vote, the results come in exactly as they want it.

MATT ABRAHAM: Now, if you have the names at random on a ballot paper, with random ballot papers, that means you cannot have a how to vote card.

NEIL ROBSON: That's right.

MATT ABRAHAM: Does that make it difficult for people, though?

NEIL ROBSON: No. No. I used to have all these things put up against it. The people in the electoral counting houses used to say it will take longer to run an election; this will be wrong; it'll skew this, it'll skew that; there'll be people with eye strain and people won't know their party Members, et cetera, et cetera, et cetera. Anyway, the first time we used it, it came out that they ran the election in 20 minutes less time and ever since, it's now starting to be, how can I put it, it's not the final refinement but it's a magnificent refinement to the Hare-Clark system and it makes the fairest system in the world even better.

MATT ABRAHAM: You didn't introduce it because you had an R, a name starting with an R.

NEIL ROBSON: I'll tell you a funny thing. As I told you, I fought for about three years for it and whilst I was fighting for it, they changed from alphabetical to a lot system, that you went by a ballot. And guess who won top of the ballot?

MATT ABRAHAM: Neil Robson.

NEIL ROBSON: Yes, and I topped the poll that year and then I topped the poll, the election afterwards when we first used the Robson Amendment.

MATT ABRAHAM: Has it, in your view, weakened the power of the party machines?

NEIL ROBSON: Yes, thank God. And I'm a Liberal and I believe that the party machines should not interfere in the democratic process of elections.

MATT ABRAHAM: You don't think there's a problem that people still, in a way, donkey vote but they just tick down the list that's in front of them without following any how to vote card?

NEIL ROBSON: Oh yes, well, I think, yes I suppose that is a small disadvantage. But the point is, the Hare-Clark system gets people to know their Members of Parliament and if they don't know their Members of Parliament, well, they're only playing with numbers, aren't they? You see, with Hare-Clark, we sometimes, I think it was one year we lost 17 Members out of 35, but the party still retained its dominance inasmuch as that the names went, but the people in the party stayed, the total numbers stayed. So, Hare-Clark gives the person on the street a better, an advantage as to getting rid of people they don't like, but they can still keep the party they want. And with the Hare-Clark, we don't have any safe seats. I mean, you can - either with a single-man electorate such as on the mainland - you can have people going into a blue-ribbon seat and you could put up a Labrador dog - not that I've got anything against Labrador dogs - but you could put up a Labrador dog and all those people will vote that way. Whereas with Hare-Clark, the rate of parliamentarians falling is much higher, the mortality rate is much higher. Members of Parliament sometimes will speak against the Hare-Clark system because it's a bit savage on them. But so it should be because it recognises the people; it recognises the democratic vote. If people vote for 46 per cent, they get it.

MATT ABRAHAM: So it's not like the old, it could be in politics in Tasmania like the old saying for commercial radio: optimism is bringing your lunch to work.

NEIL ROBSON: That's right. As I told you, 17 out of 35 is quite a mortality rate, isn't it?

MATT ABRAHAM: It certainly is, and Neil Robson I know you're talking to us outside the party room, a party room meeting is in progress, and you better get to it, but thanks for your time.

**AN ALTERNATIVE
ELECTORAL PROPOSAL:**

**THE BUCHANAN APPLICATION
OF HARE-CLARK**

**A DISCUSSION PAPER PREPARED BY THE
ACT BRANCH OF THE
PROPORTIONAL REPRESENTATION SOCIETY OF AUSTRALIA**

27 November 1990

SUMMARY

The electoral system currently in use in the ACT is widely regarded as thoroughly unsuitable. Its mooted replacement with a slightly de-modified version of d'Hondt is regarded as equally unwarranted. Introduction of a system of single-member electorates for the ACT would be even worse. It would spell the virtual end to any meaningful political competition in the ACT and leave large sections of the community without representation.

The Hare-Clark system as used in Tasmania, on the other hand, has a strong theoretical base and would lead to the different sections of the community being represented in a meaningful way. However, even the version of Hare-Clark that has been proposed for the ACT, with three electorates with 5, 5 and 7 Members, has short-comings. It would only allow representation of a limited number of sections of the community, and district boundaries would have to be drawn in arbitrary ways to get the appropriate number of voters in all electorates. Moreover, there is an impasse in Federal Parliament, with majorities in the two Houses favouring different options.

The ACT Branch of the Proportional Representation Society therefore developed an alternative electoral system. This new system is termed the Buchanan application of Hare-Clark. In the Buchanan application of Hare-Clark, the whole of the ACT is treated as a single electorate but 4 districts, based on the four townships, are recognised and candidates must nominate for one of those districts. The position of candidates' names on the ballot paper is then randomised (Robson rotation). This is, however, slightly modified in such a way that within each district the names of candidates from that district are placed on the top of the list of candidates.

Voters may vote for any candidates from any part of the ACT. They may disregard the information on districts and vote entirely for candidates of the party or parties of their choice. Or they may disregard parties and vote exclusively for candidates from their own district. Or they can combine the two in any way they choose. For example, they might decide to give highest preferences to selected candidates from their own district and to then give further preferences to other candidates from their preferred party.

With that simple modification the system achieves a whole range of desirable outcomes. These include the truest possible extent of proportional representation and meaningful district representation, while maintaining elegant simplicity.

A range of other detailed provisions has been devised by members of the society to further maximise fairness and provide a range of useful options for voters. All these options are directed at maximising fairness and improving the 'user-friendliness' of the overall system.

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INTRODUCTION

The ACT is currently using a modified version of d'Hondt as the electoral system. This system has been roundly condemned as being totally unsuitable. It has a variety of theoretical flaws and is thoroughly disliked by the community. Hence, there is general agreement that it should be replaced by an alternative electoral system.

So far no alternative system has found universal approval. The Government's latest proposal, a de-modified version of d'Hondt, overcomes some of the objections to the current system but introduces other, even more serious, deficiencies. Central to these deficiencies is the absence of any flow-on of preferences from excluded parties. The system also fails to address other criticisms, such as the bias towards larger parties or the absence of any mechanism for area representation.

To overcome the current impasse, members of the ACT Branch of the Proportional Representation Society have devised an alternative electoral system which incorporates the important elements which we believe the ACT community wishes to see in the ACT electoral system.

The system is a variant of Hare-Clark, as used in Tasmania, with important modifications devised by Ian Buchanan to make it particularly suitable for the ACT. Further detailed provisions have been devised by members of the ACT Branch of the Proportional Representation Society.

Choice of a suitable electoral system is of crucial importance for the effective functioning of democracy in any community, including the ACT. The most suitable system should be developed through on-going public debate and refinement. We believe that the Buchanan application of Hare-Clark in the form outlined here is the best current embodiment of electoral practice. However, we encourage members of the public to suggest changes to develop it still further. We see development of electoral systems as an on-going process of debate and refinement.

THE RATIONALE

In looking for a suitable electoral system, we start by looking at the principles we want it to be based on. After identifying the principles to be embodied in it, we can then devise a system which is consistent with these principles.

REPRESENTATION OF VALUES AND BELIEFS VERSUS STABILITY OF GOVERNMENT

Firstly, we can ask to what extent people's beliefs and values are represented in the Assembly. There are two important questions embodied within that:

- 1) Does a majority in the Assembly correspond to majority support of the people?
- 2) Do the diverse values and beliefs in the population find representation in the Assembly?

The first of these is of fundamental importance, and is essential for any democracy. Democracy is based on the premise that decisions are made if they have the support of the majority of the people, as expressed through their representatives in the Assembly. That

essential premise breaks down if a majority in the Assembly does not correspond to the support of the majority of voters.

It is also important that the whole breadth of community views can find expression in the Assembly. It is important that the diversity of opinion that characterises modern Australian society is also present in the Assembly. This is important for three reasons:

i) it is a questions of rights; every citizen has the right to have her or his views represented. That right is infringed if it is restricted by an electoral system that only allows two effective choices;

ii) voters must feel that they can be adequately represented. There is currently a great deal of disillusionment with politics in the population. This, no doubt, is increased by people's impression of not having a chance to be adequately represented. If politicians, through their selection of an electoral system, restrict the choices of voters then voters will naturally feel cut off from decision making, and disillusioned because of their powerlessness;

iii) it is likely that more intelligent decisions are made if issues are addressed from the whole range of differing perspectives that sections of the community have.

These three requirements are basically met by electoral systems that fall under the general description of systems of proportional representation.

An argument sometimes advanced against representation of the full breadth of views and opinions is that it may cause instability in government. To be sure, if there is only one party represented or if one party is always assured of a majority of seats, then formation of a government becomes a formality. If no group has an absolute majority because no absolute majority in the population want to be represented by one particular party, then the different parties must talk to each other and find compromises. Ideally, these compromises would represent compromises that would be supported by a majority of voters if they were asked to vote on them directly.

These compromises sometimes break down and new compromises must be found, and that causes some sort of discontinuity. But it needs to be asked how serious that really is and what positive side-effects it may have. Let us take a look at a recent example, the situation in eastern Europe.

Eastern Europe had a long period of 'stability' under one-party communist rule. Now they are open to more democracy, and often end up with parliaments with no single group holding a majority. Negotiations have become necessary, and compromises must be found in order to form some sort of coalition government: - a classic example of 'instability'!

Yet, who wants to go back to the former days of 'stability'? There is wide-spread acceptance that 'stability' really meant atrophication. Those in power had been in power for too long. There were no new ideas and no need to actually please the people. As there was no diversity of opinion in eastern Europe's former Parliaments, there was no-one to push for economic reform, and no opportunity for the people to support the trial of new economic directions.

The example of eastern Europe shows the disadvantages of 'stability' extremely well. While the disadvantages of public squabbling and shifting majorities under representative systems are readily seen, the advantages of diversity are less apparent but no less real. In general, better decisions on any issue will be derived after publicly discussing its pros and cons. This discussion will not happen if there are no Members in the Assembly to speak for the differing views held by the people in general.

REPRESENTATION OF AREA-BASED CONCERNS

The next question relates to representation of area-based concerns. There are issues like the development pattern in the ACT where the interests of people in one part of the ACT may conflict with those of people in another part. A democratic form of resolving such conflicts is through all parts having their own representatives.

Furthermore, anecdotal evidence suggests that people in the ACT very much want to have some form of local representation. In addition to representation of area-based concerns, it is seen as increasing the identification particular Members in the Assembly have with the area they represent.

To achieve meaningful identification of voters with Members, it is a fundamental advantage if the areas electing representatives are units which are meaningful and identifiable in a non-electoral context.

It is fortunate that the ACT was designed with a lay-out based on townships which provide an ideal way of dividing the ACT into recognisable and electorally manageable units. Using townships as the sub-divisions of the ACT provides the significant additional advantage of providing voters from each township not just with one local Member but with a panel of Members who represent different approaches and have different personalities.

The principle of dividing the ACT on the basis of townships was, to our best knowledge, first proposed in 1981 by Ken Fry, then the Member for Fraser in the Federal House of Representatives. This method of sub-division was also proposed by the Democrats in legislation introduced into the Senate in 1988.

In accepting the importance of local representation, one must be careful not to allow that to negate the importance of other requirements of electoral systems. Instead, the task is to find a system that combines area representation with other important requirements.

The system must also recognise that some issues are not restricted to a particular township. There are a number of ways in which the interests of particular voters can extend to more than one township. Many individuals live in one part of the ACT and work in another. Many community groups draw their membership from the whole of the ACT. Similarly, well-known politicians find their support distributed throughout the ACT. It is, therefore, an advantage if an electoral system allows voters to disregard their own district candidates, if they so choose, and to vote for candidates from other townships. It should not, however, require them to do so.

It should also be recognised that the ACT's political arrangements are unique in Australia in that the one Assembly is asked to perform municipal as well as state-type functions. For municipal functions, like garbage collection, local roads or the location of children's playgrounds, it is an advantage to be able to call on local Members. For state-type functions, like health and education, economic management, law and order issues or environmental protection, representation of the whole range of community views is desirable, whereas area-based representation is usually not important. Only an electoral system catering for both state and municipal functions does justice to the ACT's unique political arrangements.

SIMPLICITY AND CLARITY OF PROCESS

The next question relates to the process of the election itself. The electoral process should be simple and easily understandable by voters. The election should make sense! It should be clear to voters why elected Members got elected. There should be no mystery.

It must always be clear to voters how to mark their ballot papers in order to most benefit the candidates of their choice. Electoral systems should be designed so that voters normally achieve the ends they seek and support the candidates they want to support.

POWER TO THE PEOPLE

Decisions as to who gets elected should be made by voters rather than parties. The pre-selection process should not be the real election. Instead, it should be voters on election day who not only have the final but also have the most important say in who gets elected. It should be an election of candidates, not a ratification of candidates already anointed.

This is not so much a theoretical notion, because in theory, voters could in most systems decide who gets elected. Instead, it is a question of assessing the extent to which a system encourages decision making by voters or the extent to which it tries to effectively suppress voters' choice in practice in the interest of giving power to parties. This has two elements, one of enabling voters to control the electoral result in practice and not just in theory, and one of encouraging voters to utilise their voting rights to the fullest.

However, a significant number of voters may not have sufficient interest in politics to be able to make informed decisions between candidates of a particular party. The electoral system should therefore cater for these voters as well. An easy way for voters to indicate a preference for a particular party rather than particular candidates could in that sense be seen as a further way to increase the power of voters.

It would be a significant advantage, however, if voters who forego their right to choose what candidates are to represent their party, were to pass that right of pre-selection to other voters rather than to party officials. That means that voters making use of a registered ticket should be seen as expressing an equal preference for each of the candidates of their preferred party rather than to candidates in an order determined by party officials. This would mean in practice that registered-ticket votes would augment, not over-rule the preferences expressed by other voters who made detailed personal choices.

It must be recognised that there can be no system which optimally suits all kinds of diverse voters. An electoral system must be chosen very carefully to achieve the optimal compromise between encouraging discerning voters to the fullest exercise of their democratic right, while providing a 'user-friendly' fall-back position for less discerning voters.

ONE VOTE-ONE VALUE

Most people agree that no person's vote should carry a greater weight than anyone else's. Most people would also agree that no group in society should be given a greater right to choose the governing body than any other group.

There is an obvious side to these propositions and a more subtle one. It is obvious that people on the south side should have no greater say in electing people than people on the north side, or voters in older suburbs no greater say than people in newer suburbs. However, it is just as important that the votes for large parties should carry no greater weight than votes for Independents or small fringe groups. It can never be acceptable for a voter's right to vote to be diminished by the kind of legitimate choice made by the voter.

WHY A NEW ELECTORAL SYSTEM?

Of the electoral systems so far proposed as options for the ACT, none fulfils all the requirements spelt out above. The 'pure' d'Hondt system effectively disenfranchises voters as there is no mechanism for the flow-on of preferences from unsuccessful parties. It also infringes the one-vote one-value principle as votes for larger parties effectively count more than votes for smaller parties. It has no mechanism of district representation at all and leaves the pre-selection of candidates to the party machines. Finally, it leaves the election open to a large element of chance. Various modified versions of d'Hondt address some of these concerns, but not without introducing new problems. Also, none of the proposed modifications to d'Hondt really address some of the major faults, such as violation of the one-vote one-value principle.

The system of single member electorates is very poor at representing the diversity of voters' values and beliefs. As only one Member is elected per electorate, only one value system can be represented. This is further compounded in the case of the ACT by the fairly homogeneous population with similar voting patterns. It is therefore unlikely that under-representation of one group in the ACT will be compensated by its greater representation in another area. It would spell the virtual end to any meaningful political contest in the ACT. This system must therefore be rejected in the strongest possible terms, because an effective electoral process is fundamental to any successful democracy.

The Tasmanian version of the Hare-Clark system, as suggested for the ACT with three electorates electing 5, 5 and 7 Members, achieves most of the above requirements. However, it still has shortcomings. It fails to divide the ACT into units that are meaningful and recognisable in a non-electoral context. It compromises the ideal of proportional representation by only allowing representation of groups that are sufficiently large to achieve 12.5% to 16.7% of the vote. And it does not allow voters who so desire to vote for candidates from any part of the ACT.

Despite the limitations of this way of applying Hare-Clark, of the main systems currently being discussed the Hare-Clark system in any form certainly stands out as having a sound theoretical base and as enabling voters to cast effective and meaningful votes. It would be ludicrous to contemplate the introduction of any system that would constitute a major step backwards in the conduct of elections or exercise of parliamentary democracy in

Australia. Only a system that is based on Hare-Clark but incorporates useful additional features should be considered at all.

As none of the systems so far suggested completely fulfils the requirements set out above, the ACT Branch of the Proportional Representation Society decided to develop an alternative system which more adequately met these needs. The system that was developed is based on suggestions made by Ian Buchanan, and is referred to as the Buchanan application of Hare-Clark. It is a version of Hare-Clark that treats the ACT as a single electorate with a slight amendment to Robson rotation which requires the names of candidates nominating from a particular district to be put at the top of the list on ballot papers given to voters from that same district.

With that small modification, this system achieves all the objectives listed above. Its greatest strengths are that it is the simplest and most flexible system available for the ACT, that it achieves very true representation of voters' values and beliefs and excellent area representation.

BRIEF DESCRIPTION OF THE BUCHANAN APPLICATION OF HARE-CLARK

In the Buchanan application of Hare-Clark, the whole ACT is a single electorate. The placement of candidates names on the ballot paper includes a version of 'Robson rotation', according to which the names of candidates in each party listing are rotated and different orders appear on different ballot papers.

Robson rotation is, however, slightly amended in such a way that for each voter, the names of candidates from her or his own district are placed on the top of the list of candidates.

In practice, this is achieved by sub-dividing the ACT into districts corresponding with the four existing townships, Belconnen, Central Canberra, Woden/Weston Creek and Tuggeranong. Candidates are then required to nominate for one of these districts, and their names are placed in the group at the top of the list on ballot papers for voters from the same district.

To give an example: a party may nominate 12 candidates for the election, three from each of the four districts. A voter from Belconnen will then find the names of the three Belconnen candidates on the top of the list, followed by the names of the other nine candidates from the other districts. The names of the three candidates from Belconnen may appear in any order, as may the names of the other nine candidates.

The Buchanan application of Hare-Clark therefore allows voters the choice to

- 1) vote entirely within the column of the party of their first choice;
- 2) vote entirely for candidates from her or his township; and
- 3) vote in a way that combines these two options in accordance with the voter's wishes.

DETAILED PROVISIONS

An electoral system has several components. These include:

- who may vote;
- who may stand as a candidate;
- the lay-out of the ballot paper;
- how ballot papers are to be marked by voters;
- how these marks are to be interpreted and counted by electoral officials;
- how many candidates are to be elected per electorate;
- how electorate boundaries are to be drawn;
- what information for voters is printed on ballot papers;
- whether voting by registered tickets is provided for.

Some of these are well-established, such as the eligibility to stand, and are not dealt with in this discussion. Instead, the following notes deal only with those aspects which are not common to all systems proposed so far.

Lay-out of ballot paper

Candidates' names are grouped on the ballot paper by reference to two factors. Firstly, similar to a Senate ballot paper, the ballot paper has a number of columns, each one representing a different party, Independent or Independent Group.

Secondly, in contrast to Senate ballot papers, the ballot paper is also divided into two sections by a dotted horizontal line. The names of candidates from a particular district are placed above that line and the names of candidates from other district are placed below that line.

For each party and Independent Group the order of names placed above the dotted line is randomised by being rotated in accordance with the procedure of 'Robson rotation'. The order of names below the line is similarly randomised but independently of the names above the dotted line.

In the lay-out of the ballot paper, no distinction is made between parties, Independents or Independent Groups. The vertical placement of columns is also randomised for each ballot paper.

The group of names in each column is followed by an additional box labelled 'Registered ticket' if one is lodged. An additional space is inserted between the names of candidates and the following box for the registered ticket. In each case, the box for the registered ticket is placed below the dotted line.

Districts

For the rotation of candidates' names, the ACT is divided into 4 districts, Belconnen Central Canberra, Woden/Weston Creek and Tuggeranong. The borders between the districts follow the natural physically recognisable features that divide these areas of the ACT from one another.

Additional requirements for the placement of outlying regions, such as Tharwa Hall, into one of the defined regions follow the schedule proposed by Senator Jenkin: legislation introduced into Parliament in 1988 (see Attachment 1).

Candidates' Choice of Districts

When individuals nominate as candidates for the election, they are required to nominate one of the four districts as their home district. Their names are then placed in the upper group of the list of names on ballot papers prepared for voters from that district.

It is anticipated that most candidates will live in the district which they indicate they wish to represent. However, some individuals may have strong connections, through a business, for example, to a part of the ACT other than that in which they reside. It is therefore seen as appropriate to retain flexibility in candidates' choice of district.

Independent Candidates

Independent candidates are treated like political parties, with each candidate having her or his own column. The positions of these columns are randomised together with the position of party columns.

A number of Independents have the right to be placed together in a group. Such a group is labelled 'Independent Group'. If more than one set of Independents wishes to be combined in groups like that, they are labelled 'Independent Group A', 'Independent Group B', etc, with the allocation of names being decided by lot.

The names of Independents from the district in which the ballot paper is to be used are placed above the dotted line on ballot papers prepared for voters from that district, while the names of candidates from other districts are placed below the dotted line.

Like parties, Independents have the right to lodge a registered ticket. A box labelled 'Registered ticket' is placed below the name of the Independent, or Independent Group.

Optional Preferential Voting

The vote is fully optionally preferential. To cast an effective vote, a voter must indicate one first preference mark on the ballot paper for either an individual candidate or a registered ticket. The voter then has the right to indicate as many or as few subsequent preferences as she or he wishes. Subsequent preferences can be indicated for other individual candidates or for a registered ticket.

A note on the top of the ballot paper informs voters that a single preference mark is sufficient to lodge a valid vote but also encourages voters to indicate subsequent preferences to maximise their effective vote.

To deal with the problem of exhaustion of votes, a reducing quota is used for the count.

Registered Ticket

As is the case with several existing systems, each party, Independent or Independent Group has the right to lodge a registered ticket. This allows voters who have insufficient political interest to distinguish between different candidates of a party to still support the party of their choice. Lodging a ticket by a party, Independent or Independent Group is optional.

If a registered ticket is lodged, it must list in order of preference all other parties, Independents and Independent Groups contesting the election. Preferences are only given to columns, not to individual candidates within columns.

The votes received by a column are equally divided amongst all the candidates of that column who have not yet been either declared elected or been eliminated at an earlier stage of the count.

The registered ticket may be given a lower-order preference by a voter. It will then be invoked if all higher-order preferences have been eliminated. Further lower-order preferences after invoking the registered ticket are disregarded.

The Scrutiny

To be elected, a candidate must obtain a 'reducing' Droop quota of votes. For the first seat to be allocated, the quota in the case of the ACT Assembly is the total number of valid votes divided by 18 plus one vote. The quota is recalculated after each transfer of votes. It is calculated as the remaining number of valid votes divided by a number one greater than the number of remaining seats plus one vote. In this way, account is taken of exhausted votes.

Candidates securing a surplus of votes above the quota are declared elected. For each candidate, commencing with the one with the largest surplus, votes in excess of the quota are passed to the next available preference.

Three types of votes may be received by a candidate:

- 1) votes that indicate no subsequent preference,
- 2) votes received through a registered ticket, and
- 3) votes where voters have individually marked subsequent preference(s).

To calculate the flow-on of votes, preferential use is made of type 3 votes. If insufficient votes are received, type 2 votes are then used. To determine the votes to remain with the elected candidate, use is made of type 1 votes first, then type 2 votes and then type 3 votes.

The same procedure is followed whether a candidate receives the necessary quota through first preference votes or the flow-on of lower-order preferences. In each case, use is made of all the votes residing with the candidate at the time of attaining a quota.

Casual Vacancies

Should an elected Member of the Assembly die or resign during the term of her or his office, the resulting vacancy is filled by recount of that candidates' ballot papers.

1968.



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PARLIAMENT OF TASMANIA.

**DEMOCRATIC REPRESENTATION
UNDER THE
HARE-CLARK SYSTEM**

The Need for Seven-Member Electorates

Paper by
George Howatt, M.A.
(University of Pennsylvania)

Presented to the House of Assembly by His Excellency's Command.



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To the many kind Tasmanians who have contributed to my understanding on electoral matters and have helped to make this stay in Tasmania so enjoyable.

GEORGE HOWATT.
Hobart, May, 1958.

FOREWORD.

Tasmania, the first community in the world to use the Hare system of proportional representation under adult franchise, has had a far longer experience with this method than any other place. First adopted in 1896 for electing the Hobart and Launceston members of the House of Assembly, the general features of the system were re-introduced after a lapse of a few years, for the election of all members of this House by the Electoral Act of 1907.

The "Hare" of Hare-Clark refers to an English barrister, Thomas Hare, who in 1857 laid down the chief features of the single transferable vote system of proportional representation. Mr. Justice A. I. Clark of Tasmania, when a member of the House of Assembly and Attorney-General made some original contributions to Hare's general principles. Because of this and Justice Clark's efforts in securing the adoption of the system in 1896, the method later became known as the Hare-Clark system.

Tasmania's special experience with this system is relatively unknown in most places of the world, and certain aspects of the Hare-Clark method need elucidation even in Tasmania, for example the subject of this paper, which discusses why the election of seven members per electorate instead of six is needed for the proper functioning of the Hare-Clark system. This paper contains some of the material which its writer gave to the house of Assembly Select Committee on Electoral Reform last year.

Mr. Howatt was a lecturer in political science at Lehigh University, U.S.A., before coming to Australia on a Fulbright scholarship to study election systems here. He is a specialist in this field and has written an M.A. thesis on proportional representation in American city elections and many articles on electoral subjects.

I commend this study to all members of Parliament, not only in Tasmania but in Mainland States, and to students of Political Science everywhere.

W. A. TOWNSLEY,

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Part I(a).

A POTENTIALLY MODEL SYSTEM WITH ONE DEFECT.

In the past 100 years, during which the advance of universal suffrage has made its greatest strides, there has been, unfortunately, a steady decline in the promise once held for democratic government. Some thinkers now question even the premises of democracy; others are looking for specific ways of improving democratic forms and practices in the hope of preserving the philosophy of "government of the people, by the people, and for the people".

In particular there is widespread dissatisfaction with the election methods and practices existing in most places of the world. The limited number of persons who know of the Hare-Clark system and endorse its philosophy of representation would say that many of the shortcomings ascribed to democracy in general really arise from defects in electoral systems. Before we condemn democracy or despair of its value, they would say, we should give it a chance to demonstrate its capabilities by installing electoral systems which adequately reflect the wishes of the electors. Most election systems in the world today distort, suppress, or even reverse the wishes of the voters. With this misrepresentation, moreover, go many accompanying evils. Faulty electoral methods such as single-member electorate systems expose democracy to inherent weaknesses while preventing democracy from exhibiting its strengths.

The alleged failure of democracy, these supporters of basic electoral reform would say, is not that democracy has been tried and found wanting, but that it has not been tried—except in a very few places, like Tasmania. In this State, thanks to fifty years' experience with the Tasmanian-pioneered Hare-Clark system of proportional representation, election results have mirrored the wishes of the people, and Tasmanians have been spared many of the tribulations caused by faulty electoral systems in use elsewhere. Moreover, even although the Australian mainland State electoral systems are distinctly inferior to Tasmania's Hare-Clark system, the general standard of Australian State and Federal electoral methods is so high by world standards that the general public in Tasmania is unaware of the seriously deficient methods used elsewhere in the world.

To the other States and countries which are suffering from faulty electoral methods, and many are suffering critically, the Hare-Clark system could serve as a model; but one grave existing defect must first be corrected.

One requirement of a truly democratic election system is that a majority of the electors should be assured of the right to return a majority of elected representatives. Only an electoral system like Hare-Clark can give this guarantee, and even it can do so only if an odd, rather than an even, number of members is chosen from each electorate.

In some circumstances the need for an odd number of representatives becomes more apparent than in others. When the chief contestants for all seats are candidates of two political parties of nearly equal strength, the need is most apparent. This is the situation which prevails in Tasmania today. When the Hare-Clark system was adopted in 1907 the present two-party system did not exist in Tasmania. Perhaps this could be one reason why an error was made in determining the electorate arrangements. The decision to have a thirty-member House and at the same time to utilise the five Federal electorate boundaries, meant that each Federal-State electoral division had to return six members.

Experience soon showed that it was a mistake to choose an even number of members from an electorate. As early as 1912 the mistake was widely commented upon (b). In recent years the

(a) This paper is written primarily for well-informed Tasmanians, of whom some knowledge of the Hare-Clark system and Australian electoral methods is assumed.

(b) For example: On pages 4 and 5 of the *Report on General Elections*, Parliamentary Paper No. 11 of 1912.

defect has become even more apparent, resulting in the anomalous situation of equal party representation in the House of Assembly despite unequal voting strength in the country. For a party to receive a majority of four of the six seats in any electorate, a 58 per cent vote is required. This percentage is higher than either of the two parties can usually achieve in a large, multi-member electorate; consequently both parties have generally returned, and can be expected to return, three members each per electorate despite unequal support among the electors. While this anomaly has caused severe criticism, the fault really does not lie in the Hare-Clark system itself but in the manner in which it is applied. Hence damage to the reputation of the Hare-Clark system and instability in Parliament will continue unless provision is made for an odd number of seats in each electorate.

The purpose of this pamphlet is to point out why the proper functioning of the Hare-Clark electoral mechanism requires the election of an odd number of members and to show why seven members instead of six should be chosen from each of the existing electorates.

The Hare-Clark system cannot serve as the model which the world needs until a change to seven-member electorates is made (1).

This change has been recommended by a Select Committee of the House of Assembly which last year after a careful study of numerous alternatives re-endorsed the Hare-Clark system. The Committee's conclusions were supported in unequivocal and forceful words by "The Mercury," which over a half-century ago was a leading force in the original battle for the establishment of the Hare-Clark system. In an editorial of October 30, 1957, it said—

" . . . The Hare-Clark system is mathematically the most efficient, and politically the fairest method of election. It has been subjected to considerable criticism in recent years because it apparently threatened to put the Assembly in perpetual deadlock, with 15 members on each side. But the system itself was never at fault; the method of using it was wrong."

" It is most gratifying that the committee, after careful comparisons with other electoral methods, has thoroughly vindicated the Hare-Clark system. In its view it is the best method of parliamentary election in the world—and this is no exaggeration . . . "

PART II.

THE OVERALL MERIT OF HARE-CLARK IS UNQUESTIONED.

Before examining the nature of the defect of the six-member quota and the reasons why the election of seven is required, let us first consider the overall value of the Hare-Clark method of representation and election. Despite grave weaknesses inherent in six-member divisions, one should not lose sight of the extraordinary advantages of Hare-Clark voting in general. As Tasmanians have been so long accustomed to the benefits of a uniquely superior electoral system they are likely to take its advantages for granted and fail to realise the dangers and defects of other electoral methods.

Moreover, the key importance of the electoral method to democratic society must not be overlooked, for it is the features of the electoral system in vogue which determines to a large extent the type of person chosen to office. Those elected become at once our law makers, the official spokesmen for our society, and the men responsible for the administration of public policy.

(1) Experience with seven-member electorates may show that further refinements can be made to the Hare-Clark system, as the last thought on electoral matters has not of course been formed. In fact, very little study or writing has been devoted as far as the science of elections. One reason for this lack is, of course, that electoral methods in the countries with single-member systems or first-past-the-post voting are so slapdash and crude that there is not much which is worthy of, or lends itself to, scientific study.

Although the following summary calls attention to numerous reasons for the superiority of the Hare-Clark method, the listing is not at all complete⁽¹⁾. Moreover, this list compares Hare-Clark only with the single-member electorate system, which has been the only alternative seriously suggested for choosing the Tasmanian House of Assembly. It is hoped, however, that enough of the advantages of Hare-Clark are reviewed to show that this system is incomparably more satisfactory than single-seat electorates in serving the purposes of elections and in contributing to the improved functioning of democratic society. If one believes in democratic representation, it would appear that the advantages of Hare-Clark are a matter of demonstrated fact rather than merely of opinion.

Advantages of the Hare-Clark System Summarised.

A. THE HARE-CLARK SYSTEM PROVIDES FOR THE FAIR AND ACCURATE REPRESENTATION OF THE VOTERS. SINGLE-MEMBER ELECTORATES DO NOT.

1. HARE-CLARK ASSURES⁽²⁾ THAT THE WISHES OF THE ELECTORS ARE FAITHFULLY REFLECTED IN THE ELECTION OF MEMBERS OF THE HOUSE OF ASSEMBLY. On this major criterion of a democratic election system—whether it succeeds in reflecting, not distorting nor reversing the wishes of the electors—Hare-Clark succeeds pre-eminently and single-member electorates fail disastrously.

It is normal in elections conducted under single-member constituencies for nearly half of the "electors" to vote for defeated candidates. In these circumstances, in other words, nearly half of the voters are only "would be" electors, and are "represented" in Parliament by members whom they voted against and do not want. Under Hare-Clark close to three-fourths of the voters see their first choice elected to Parliament, and the votes of most of the remaining electors are effective in electing a candidate high in the elector's preference and within the party favoured by the elector.

The Hare-Clark system is purposely designed to give effect to the wishes of as many electors as is technically possible. In contrast, single electorates normally cause, in fact, the wastage of nearly half the votes and, in effect, therefore the disfranchisement of nearly half the voters.

This failure inherent in single-member electorates is not, moreover, just an abstract theoretical fault; it directly gives rise to practical consequences of gravest magnitude, as noted in the sections which follow.

2. HARE-CLARK CAN NORMALLY BE EXPECTED TO PREVENT A GOVERNMENT FROM BEING ELECTED BY A MINORITY OF THE VOTERS. Too often single-member electorates exemplify the phenomenon of the democratic process in reverse—conducting a poll and then giving victory to the side with the smaller total vote. Frequent examples from all over the globe show that single-member electorates do allow a party with a minority of the votes in the country to obtain a majority of the seats in the legislature, while its opponent with a larger overall vote receives only a minority of the seats.

A case in point is furnished by the Union of South Africa, where in the general elections for Parliament in 1948 and 1953 the present Nationalist Party Government obtained a huge majority of seats with a total vote much smaller than that given by the electors of the United Party Opposition. The party, therefore, which has been ruling South Africa since 1948 would not have

⁽¹⁾ A comprehensive and documented analysis of the advantages and disadvantages of the Hare-Clark system, with consideration of its less than his benefits and deeper political effects, is to be included in another study of the Hare-Clark system now under preparation by the writer. The dynamics of the operation of Hare-Clark and the less obvious reasons for its success are of course too lengthy for discussion in this paper.

⁽²⁾ Subject to some exceptions resulting from use of the present single-member electorates.

been in Government, but in Opposition, if an electoral system reflecting the wishes of the people had been in effect. The "winning" party in those elections was not the majority choice of the voters of that country. Instead it represented only a minority of the electors, to whom the single-member system often gives a majority of the seats.

Variation in size of electorates, gerrymandering, and the first-past-the-post system of voting sometimes make it possible for the minority to govern the majority. None of these contributing conditions, however, was the cause in South Africa. The majority of the electors did not obtain a majority of the seats simply because of an inherent weakness of the single-member system: namely, the necessary cutting-up of the country arbitrarily into a multitude of small divisions which return only one member each. The election of only one member per division frequently means that one party, by winning its seats with larger majorities than its opponents, obtains a greater total vote but loses to the less popular party. This happens because the latter, though obtaining smaller majorities, has more instances of them because its vote, although being thinner, is spread more widely.

If subdividing a country into single-seat electorates happens to result in a distribution which is a fair cross-section of political opinion, then the seats won by the respective parties may be in accordance with their popular strength. Sometimes this does occur under single-member systems, but only if the number of safe seats for one party is cancelled by an equal number of similarly safe seats for the other party, with the remaining seats being "swing seats."

When these particular circumstances arise and act to compensate for the crudeness and limitations of single-seat electorates, this "system" may sometimes give the appearance of affording representation to parties in accordance with public opinion. However, the situation illustrated by South Africa where the "winner loses and the loser wins" is always possible or probable under a system of single-member electorates. In contrast, the Hare-Clark system is scientifically and intentionally designed to prevent such thwarting of the democratic process and to assure that a majority of the voters return a majority of the elected representatives^(a).

3. HARE-CLARK AVOIDS THE VAGARIES, GAMBLES, AND DISTORTIONS WHICH GENERALLY RESULT FROM ELECTIONS CONDUCTED UNDER SINGLE-MEMBER CONSTITUENCIES. These capricious results are the rule rather than the exception and are found wherever single-seat electorates prevail. For instance, in the British House of Commons elections: Although the Labor Party's percentage of the total vote increased from 46 per cent in 1950 to 48.5 per cent in 1951, its representation decreased by 19 seats in the 1951 elections. Moreover, in 1945 with 48 per cent of the total vote Labor obtained 62 per cent of the seats (excessively disproportionate to its strength in the country); yet by 1951, although the percentage of the total vote received by Labor had increased to more than its 1945 vote (in fact exceeding the Conservative Party total), the number of seats won by Labor decreased drastically from 399 (62 per cent) in 1945 to 296 (47 per cent) in 1951.

Examination of the voting behaviour in Australia and other democratic countries shows that generally public support for the respective political parties changes only slightly or moderately from election to election, but such changes result in drastic fluctuations in the representation of the parties in the legislature. With single-member electorates, a switch of very few votes from one election to another may severely reduce or enormously magnify a party's membership in Parliament. Under Hare-Clark, since public opinion is faithfully mirrored in the composition of the House of Assembly, stability in representation—not erratic fluctuation—is achieved. If Tasmanian electors continue to prefer the two-party system along present lines, a numerically large Opposition can always be assured, and the Government can be expected to have a workable majority^(b).

^(a) The assurance that a majority of the voters within an electorate return a majority of the members requires that the number of seats be odd rather than even, as explained elsewhere in this paper.

^(b) Provided an odd number of members is chosen from the electorate.

EVER-PRESENT HAZARDS NECESSARILY CONNECTED WITH DETERMINING BOUNDARIES FOR SINGLE-MEMBER ELECTORATES.

Since election results under single-member systems are often influenced as much by the location of the electoral boundaries as by the strength of the voting, it is not surprising that instances and allegations of gerrymandering are widespread in many places using the single-member system. Because of geographical features and such factors as shifts in population, what is alleged as gerrymandering may often be an unavoidable consequence of the limitations of single-member electorates. However, whether what appears as gerrymandering in its effects is intentional or unavoidable, the accusations of undeserved victories leave bitter feelings and bring discredit to democratic principles in general.

Gerrymandering has been widely alleged in almost all Mainland States at some time or other, and charges by the Opposition parties of gerrymandering in both South Australia and Queensland over the last generation have been so severe as to weaken dangerously the citizen's respect for the democratic process. Unfortunately, "winning by cheating" and "dishonest victories" can too often be truthfully applied to gerrymandering with single-member electorates.

Happily, Tasmanians know that gerrymandering has not occurred under Hare-Clark elections and charges of rigging the electoral system have never been made in connection with Hare-Clark. The basic features of this system, including the large, multi-member electorates, serve as a precaution against gerrymandering. Furthermore, the electorate boundaries for House of Assembly elections are established by the authority of another body, namely, the Commonwealth Government.

C. HARE-CLARK PROVIDES THE ELECTOR WITH A WIDER SELECTION OF CANDIDATES THAN ALMOST ANY OTHER METHOD OF PARLIAMENTARY ELECTIONS IN THE WORLD.

At present the Tasmanian voter can choose his representative to the House of Assembly from among at least a dozen and usually more candidates. With seven-member electorates instead of six the scope of selection can be expected to increase somewhat. In contrast, the voter under the single-member systems normally has a choice of only two or three candidates or, in the event of uncontested elections, no selection at all.

One practical effect of this severe limitation of choice is that the elector must normally choose his representative solely on the basis of party affiliations and regardless of the personal qualification of candidates. When the elector is restricted to a choice between a party he considers unacceptable and an opposing candidate he considers inferior—and this is a common situation under single-member electorates—he generally chooses to accept the inferior candidate and to vote against the party policy which he dislikes.

The voter under Hare-Clark is spared from such invidious choices. With many candidates representing each party he can readily both endorse the political policy he favours and also vote for the candidate he considers most suitable. Assessment on the basis of the personal ability, character, and individuality of the candidates is taken for granted under Hare-Clark, but denied, for all practical purposes, to voters under single-member systems.

When the elector can pick and choose among a half-dozen or more candidates of his own party, as under Hare-Clark, he can exercise a significant discernment which results in more highly selected Parliamentarians. With the wide selection of candidates now available in House of Assembly elections, the appeal to electors here is to vote for someone, not against someone, as is the common practice under the single-member system. If the House of Assembly were chosen from single-member electorates, it could be expected that the present calibre of individual members would decline.

The numerous endorsements by each party under Hare-Clark elections enable both parties to nominate candidates attractive to a wide range of electors. When almost every Tasmanian elector can find a candidate to his liking from among the wide choice

offered by both parties, he is not inclined to look outside the two major parties for representation. The satisfying representation thus offered by the Hare-Clark system would seem to be an important reason why the two-party system is, and has been, stronger in Tasmania than any Mainland State and most places overseas.

D. HARE-CLARK ELIMINATES UNCONTESTED SEATS AND SHAM ELECTIONS.

The uncontested return of candidates, though common enough in most single-member systems, is quite undesirable from the standpoint of the public welfare. An immediate consequence, of course, is that even the small electoral privilege existing under single-member representation disappears altogether. The problem of citizen apathy, normally serious enough under the best of circumstances, is further aggravated.

Only a little less objectionable than unopposed elections is the so-called "safe" seat—so named because the party's majority in the electorate concerned is large enough to make the seat a certainty for that party. While this situation means easy comfort for the occupant of the safe seat, voters of the opposition party in this electorate are virtually disfranchised permanently. Retention of the seat comes to depend less on winning the support of the electors and more on pleasing the small number of party selectors who determine the endorsements.

Elections are a sham if the results are a foregone conclusion; yet this type of sham election is extremely common, normally accounting for more than two-thirds of the seats in a typical single-member State or country. Under Hare-Clark, of course, no seats are uncontested, and none is safe in the respect that a candidate can expect to be returned to office without working for it or without having earned support from the electors.

Genuine competition always exists, therefore, for seats in the House of Assembly. Since this means that Tasmania's M.H.A.'s must keep on their toes much more than their counterparts under single electorates, more effective representation is given to Tasmanian electors. The Parliamentarian who favours the single-member system primarily for the fact that it gives him a safe seat should remember that the fundamental purpose of a democratic election system is to provide satisfactory representation for the electors, not personal convenience for the elected. All candidates under Hare-Clark must work for their votes to win a seat in Parliament—because there are no "walkovers" into office via unopposed and safe seats; better service to the electors is one result^(a).

How the application of single-member electorates to the Division of Denison would create four safe seats is indicated in Table I. On the basis of the last State election returns, the use of this system would result in three "blue ribbon" Labor party seats, namely, Hobart Central and Hobart West, Hobart North, and Moonah, and one "blue ribbon" Liberal party seat. The remaining two seats would probably be "swing seats," with Hobart East and Hobart South favourable to Labor and New Town favourable to the Liberal Party (b).

(a) Because all Federal seats in Tasmania could be considered "swing seats" most Tasmanians probably have not experienced and may not know the evils of "safe" seats.

(b) The six proposed single-member electorates are formed from existing subdivisions. Moonah, New Town and Hobart North are large enough to make three electorates on their own. The remaining three electorates are obtained by combining adjoining subdivisions—one of the proposed electorates being made by joining Hobart Central and West, another by combining Hobart East and South, and the last by joining Nelson and Queensborough.

TABLE I(a)

Application of House of Assembly October 1956 Election Returns to Single-Member Electorate System Formed by Dividing the Existing Division of Denison into Six Electorates Based on Present Subdivisional Boundaries (b).

Probable Electorates	Labour Party	Liberal Party	A.C.L.P. (c)	Howe, Weld	Bound, Lloyd	Total Valid	Informal	Total Cast
Hobart Central	1,196	423	31	136	11	1,797	98	1,895
Hobart West	1,722	1,221	86	222	21	3,272	167	3,439
	Totals 2,918							
Hobart North	2,337	332	94	56	20	4,273	238	4,511
Hobart East	621	1,803	118	294	31	4,254	185	4,439
Hobart South	2,008	2,439	161	327	42	5,337	264	5,601
	Totals 5,318							
Meunah	3,318	1,744	137	327	12	5,608	280	5,888
New Town	2,006	2,557	167	379	19	5,237	169	5,406
	Totals 5,324							
Nelson	439	1,331	64	100	7	2,687	80	2,767
Queensborough	761	877	43	108	4	1,793	88	1,881
	Totals 1,350							
Total Ordinary Votes	14,647	12,317	779	2,046	126	30,004	1,334	31,338
Absent	1,506	1,304	61	206	11	3,079	132	3,211
Section 1164	14	18	1	3	—	36	1	37
Postal	450	763	24	62	3	1,492	19	1,511
	Totals 16,337							
Grand Total	16,337	14,317	900	2,356	160	34,560	1,456	36,016

It will be noted that the figures of this election would yield three blue ribbon Labor seats, one blue ribbon Liberal, and two swinging seats, with one of these going to the Labor Party and the other to the Liberal Party.

(a) All election figures in this paper are taken from official reports of the Tasmanian State Electoral Department. The returns shown in this table are first preference votes.

(b) For further explanation of proposed, illustrative electorates, see footnote (b), p. 10.

(c) A.C.L.P. signifies Anti Communist Labor Party.

E. HARE-CLARK REDUCES THE EXAGGERATED INFLUENCE AND BALANCE-OF-POWER POSITION OFTEN GIVEN TO SMALL POLITICAL FORCES AND PRES-SURE GROUPS DURING ELECTIONS WAGED IN SINGLE-MEMBER ELECTORATES.

Single-member electorates produce the "worst of two worlds"—on one hand, safe and uncontested seats, which in effect disfranchise large sections of the population; and on the other, "swinging" seats which magnify enormously the power of small groups.

Although the Hare-Clark system gives representation to all contesting groups in proportion to their size provided they can reach a quota, a group that cannot attract a quota of supporters may have little or, possibly, even no influence. In contrast, in any marginal electorate in a single-member system, the seat may swing from one party or the other because of the switch of only a few votes.

When tiny sections of the population can throw or assist in throwing, the election to one candidate or the other, and perhaps to one party or the other, they acquire a balance-of-power strength out of all proportion to their size and importance. The problem of exaggeration of pressure groups because of the single-member system of representation is particularly serious in a country like the United States where the parties are not responsible nor disciplined in the British sense. The Hare-Clark system, with its quota method of election and its large electorates, helps to keep the influence of small groups more in proportion to their size.

F. HARE-CLARK RELIEVES PARLIAMENTARIANS FROM MUCH NARROW PAROCHIAL PRESSURE AND CAUSES THEM TO BROADEN THEIR OUTLOOKS.

Large electorates necessitate a broad point of view and militate against the narrow parochialism characteristic of single-member electorates, where "parish-pump" pressures are notorious. When a member is responsible solely to a relatively tiny constituency it becomes difficult—if not at times politically hazardous—to take a broad view when local vested interests are involved. Even in the smallest and most homogeneous of the Hare-Clark electorates, namely, Denison, it is more in the general interest that members speak for all of Denison than represent possible individual single-member subdivisions thereof, such as Sandy Bay or Moonah or Hobart Central. The generalisation "the smaller electorate, the smaller the member" points out an advantage of the Hare-Clark provision for larger electorates.

G. HARE-CLARK ENCOURAGES THE PEOPLE TO CHOOSE MEMBERS OF HIGHER CALIBRE.

This results not only from use of large electorates which necessitate a broad point of view but also from the greater competitiveness for political survival under Hare-Clark, which, providing no safe seats, also confronts each member with many rival candidates. With competition keen at election time as well as between elections, far heavier demands are made on the members under Hare-Clark than under single-member systems. This heavier responsibility on Tasmanian M.H.A.'s benefits the public because it results in better service to the electors and also tends to discourage weaker candidates from standing for Parliament.

Moreover, the large multi-member electorates under Hare-Clark cause all Parliamentarians to confront a much wider set of problems than under one-member electorates. The effect on outlook and knowledge necessarily is broadening. For candidates unable or unwilling to face this challenge of a big Hare-Clark electorate, the appeal of the small single-seat district can, understandably, be strong. In the public interest, however, it is better to have a system like Hare-Clark which leads candidates to concern themselves with broader public policies and the more important needs of their large electorates than concentrating on narrowly local interests. The candidate of limited ability whose success in single-member electorates depends heavily on facility at "hand-shaking and baby-kissing" among a local following will find political life more difficult under Hare-Clark conditions.

H. HARE-CLARK AVOIDS THE TWIN EVILS, COMMONLY OBSERVED IN SINGLE-MEMBER SYSTEMS, OF COMPELLING THE DEFEAT OF ABLE CANDIDATES OR ENFORCING THE ELECTION OF INFERIOR ONES.

Since the single-member system permits the election of only one candidate per electorate, this means of course that when more than two outstanding candidates nominate from the same electoral district one must be defeated and when two unqualified candidates nominate for another seat one must be returned. This is not merely a theoretical objection, but a practical weakness of the single-member system observed in some degree at every general election.

This inevitable defeat of some excellent candidates and the equally inevitable election of some inferior ones is avoided by the multi-member feature of Hare-Clark, which has permitted, for example, the electors to choose both the Premier and the Leader of the Opposition from the same electorate, as illustrated in Denison.

1950-55. The simultaneous election of the strong candidates of both parties is taken for granted under Hare-Clark.

I. HARE-CLARK PROVIDES AN OPPORTUNITY FOR MINOR PARTY AND NON-PARTY REPRESENTATION.

As the underlying principle of the Hare-Clark philosophy of representation is securing the best possible reflection of public opinion, provision for minority representation is a necessary feature of its electoral machinery. The fair representation of the whole of society cannot be assured unless opportunity is provided for the representation of its parts. One requirement, therefore, is multi-member electorates, not single-member ones, for there of course is no way to apportion only one seat between two or more competitors. Multi-member seats permit a fair apportioning of representation, whether divided exclusively between two major parties or shared with minor party candidates. Although the remarkably wide choice of candidates under Hare-Clark provides exceptional satisfaction for the electors within the two-party system, should the electors feel a need for representation outside of the two major parties, the Hare-Clark system makes it available to them provided they can poll 14.3% of the total votes in a six-member electorate or 12.5% in a seven-member one.

While these percentages represent, when expressed in terms of actual votes, close to twice as many votes as would be required for election under the single-member system^(*), the large, multi-member electorates provide a wider area from which to attract the necessary quota. Hence, non-party candidates with substantial support in more than a local area can, and sometimes do, win election under Hare-Clark, as seen in Table VI. With single-member electorates, substantial minorities are excluded unless they happen to be concentrated geographically.

In respect to representation of minorities, Hare-Clark and the single-member system offer sharp contrast: Hare-Clark, which offers a systematic and assured way for non-major party representation, makes this potential representation less necessary because of the high satisfaction resulting from the extensive selection of candidates furnished by the two major parties. On the other hand, single-member electorates, which make no planned provision for minority or non-party representation, increase the need for it because of the restricted expression and poorer satisfaction which they give the electors. Single-member electorates therefore both create the need for better representation and frustrate the realization of it.

J. HARE-CLARK AVOIDS HIGH ADMINISTRATIVE COSTS AND TECHNICAL DIFFICULTIES OF THE SINGLE-MEMBER SYSTEM.

As these advantages of the Hare-Clark system apply with particular force to Tasmania, this topic is discussed with special reference to this State later on. Two general advantages of Hare-Clark from technical consideration can be mentioned now. First, the Hare-Clark method permits extensive economies in administration because of the larger unit of representation. One example is electoral rolls: They are more easily maintained, especially under a system of compulsory enrolment as in Australia, if subdivisional and divisional units are fewer and larger. Another example: The larger the electorate, the less frequent the need for redistributions.

Second, Hare-Clark features remove one inevitable and formidable technical drawback to single-member electorates, namely, the difficulty of establishing and maintaining satisfactory electoral boundaries. In order to lay out a plan of single-member districts of approximately equal size with attempted due regard to such guiding factors as community of interest, means of transportation, and physical features, many arbitrary demarcations are required. The much larger electoral units employed under Hare-Clark permit more logical electoral divisions.

(*) For example: With a total State-wide formal vote of 100,000 and 35 single-member electorates of equal size, the quota for election would be 2,857 votes. With the same vote and five seven-member Hare-Clark electorates the quota would be 4,000 votes.

When plans for redistribution are announced in most Mainland States the cry of gerrymandering is normally raised by the Opposition. If this charge refers to intentional gerrymandering, it is true in some but not all cases. Many times the cause for complaint often arises simply from the necessities of cutting up the map arbitrarily to compensate for population changes within electorates. When districts are small, a large measure of objectionable, but unavoidable, boundary making is required. With the increase in electorate size the effect of population movement is reduced and at the same time the possibility of establishing more logical boundaries is improved.

K. HARE-CLARK ELIMINATES THE UNDUE INSECURITY OF MEMBERSHIP FACING MANY PARLIAMENTARIANS ELECTED UNDER THE SINGLE-MEMBER SYSTEM.

Snug security for some and "sudden death" for others is the rule of the single-member system. Not all members of Parliaments chosen from single-member electorates have safe seats. On the contrary, the occupants of "swinging" seats are put under a jeopardy which no member under Hare-Clark needs to fear. A capable, deserving member under the Hare-Clark system has reasonable expectation of being returned. But even a slight swing in public opinion under the single-member system, perhaps caused by reverses in party popularity completely beyond the control of individual members, can sweep from office those party members not lucky enough to have safe seats.

The extremes of unwarranted security for some and unreasonable jeopardy to others do not help to attract worthy prospective candidates into politics under single-member conditions. Moreover, members cannot give their best service if they live always under the disquieting possibility or likelihood of being "tossed out" at the next election—perhaps through no fault of their own.

Illustrations of drastic fluctuations in Parliamentary membership under single electorates are not difficult to find, for instance, Ceylon. Although the percentage of the total vote received by the United National Party declined, from the Parliamentary elections of 1952 to those of 1956, by 16%, its representation fell from 54 seats in 1952 to eight seats in 1956, or from 57% to 8% respectively. While the vagaries of single-member electorates inflated the representation obtained by the U.N.P. in 1952, the electoral gamble severely under-represented it in 1956.

Another example of the single-member system causing "sudden death" for sitting members is furnished by the two general elections for the Canadian House of Commons in the past year. As a result of the June, 1957, election a Liberal Party membership in Parliament dropped from 171 to 104 and that of the Progressive Conservative Party increased from 50 to 110. The effects of the March, 1958, elections showed even greater fluctuation, as the Progressive Conservatives gained in seats from 110 to 209 and the Liberals fell from 104 to 47. Within a one-year period, therefore, Liberal Party Parliamentary membership dropped from 171 to 47 and that of its chief opponent rose from 50 to 209 (a).

L. HARE-CLARK AVOIDS THE "REGIMENTED" "DOWN-THE-TICKET" VOTING PRACTISED IN AUSTRALIAN SENATE ELECTIONS ON THE MAINLAND AND SOMETIMES IN TASMANIA.

Under the Hare-Clark system the elector makes his selections with fullest freedom, uninfluenced by the numbered type of how-to-vote cards generally used in Senate elections.

The heart of the success of the Hare-Clark system could be said to be this unhampered freedom of the electors to pick and choose as they please. If the listing of candidates on the ballot-paper were determined by "mutual consent," as in the Senate elections, and combined with the use of numbered how-to-vote cards, a great measure of the value of Hare-Clark would be destroyed. In contrast, the Hare-Clark system provides for an alphabetical listing of candidates, and no attempt is made by the political parties to suggest to their supporters any prescribed order for marking preferences. If voting "to order" "down the ticket," as in Senate election style, were followed, the choice of members

(a) Figures for 1958 are from latest Press reports available, which noted the results for 204 of the 285 seats in the Canadian House of Commons, one seat being in doubt.

of Parliament would pass, for all practical purposes, from the voters to political party management. As the Hare-Clark system now is, it provides the Tasmanian elector with a more effective vote among a wider range of candidates than any other method of Parliamentary election in the world.

The free selection under the Hare-Clark system assures competition among candidates and keeps the elector sovereign. This unequalled privilege of choice is therefore one of the most significant values of the voters' franchise in Tasmania and sets Hare-Clark in a class apart from the Senate election system, which otherwise follows the Hare-Clark system in most features. May it be hoped that the superior Hare-Clark example will serve as a model and incentive for improving the Australian Senate system.

Objections to Hare-Clark^(a).

Little on earth is perfect, and this generalisation applies to Hare-Clark as well, even although its overall drawbacks are relatively slight. Besides, almost all complaints are from the Parliamentary point of view, not the elector's. One objection is that the multi-member electorates involve the members in costly travel required for attending to their duties in serving large constituencies.

From the angle of expense, this claim is quite valid, particularly for members outside Denison. The answer, however, is not to cut up the State into 30 or 35 single electorates—and bring the evils of single-member representation into Tasmania—but to provide an adequate travel allowance for members so that these costs do not draw too heavily from their modest salaries^(b). In a small single-member electorate much recompense for travel would not be justified, but a large Hare-Clark electorate is another question and warrants increased subsidisation of travel expenses. There is no denying that the advantages of large electorates do necessitate greater cost in travel.

Another complaint is that the large Hare-Clark electorates cover such a wide scope of different industries, interests, and problems that it is difficult for members to keep abreast of the many diverse activities on which they are expected to be informed. Small, single-member divisions, it is claimed, would save members from the necessity of getting acquainted with this wide range of activity. The demands on members under Hare-Clark are greater than they would be under small electorates. From the elector's viewpoint, however, this complaint becomes an advantage.

The contact with varied and more complex problems under Hare-Clark is most educational and militates against the parochialism so characteristic of small electorates. Both consequences are as they should be—from the public's point of view. In their interest it is best for the electoral system to be geared to attract the more capable and energetic candidates; if weaker members find the large Hare-Clark electorates too difficult to represent, the adjustment should not be to tailor the electorates to suit these members, but to let the seats be filled by those to whom the large electorates are not too great a challenge.

A further objection to Hare-Clark made by some members is that the competition for No. 1 votes results in undesirable manifestations of rivalry between candidates of the same party. What solution do these members sometimes suggest?—use of single-member electorates. And why?—for the avowed purpose of eliminating as much competition between persons as possible, in order to make contests more strictly a struggle between parties.

This suggested "solution" to reduce rivalry for No. 1 votes, therefore, is to take from the electors their present breadth of choice in order to suit the private conveniences of a few members who wish to by-pass as much competition as they can. The elimination of the right of electors to pick and choose among candidates

(a) As footnoted on p. 5, the subject of advantages and disadvantages of Hare-Clark is being analysed in a documented study now under preparation. Necessarily, this section of the paper must be concerned with conclusions, not detailed evidence.

(b) Contributions to charities, societies, and clubs, plus travel expenses and other costs involved in serving their electorates, consume a far greater part of a member's recompense than the average person realises.

would strike at the heart of the Hare-Clark system. The opportunity for electors to select between candidates as well as between parties has always been considered an integral part of the Hare-Clark philosophy of representation; attempts to abrogate this opportunity of choice are simply an undisguised effort to abridge democracy and curtail the special electoral privilege which distinguishes Hare-Clark from lesser systems.

If candidates should fail to observe fair play with their party colleagues in campaigning for No. 1 votes among supporters of their own party, this condition is not really a fault of the Hare-Clark system, but the result of the absence of a candidate's code of rules for campaigning. With proper loyalty to one's party and regard for one's colleagues, the existence of competition for No. 1 votes need not be objectionable—except to members who want no competition at all. An electoral system cannot both provide the advantages of competition and at the same time eliminate it.

Fortunately, many members realise that the rivalry among members of the same party within the same electorate is healthy and desirable and results in better representation for the electors. Furthermore, candidates who object to this competition within parties should realise that single-member electorates frequently put pressures on candidates in several ways which multi-member electorates do not, namely: (a) If a seat is a safe one, competition for party endorsement is exceedingly severe; (b) If the seat is a "swinger," extreme uncertainty about tenure subjects the holder to undue pressures from small, but potentially balance-of-power constituent groups; (c) Pitting one candidate directly and specifically against a single opponent often gives rise to certain undesirable campaign conditions (like public mud slinging), which are comparatively rare under Hare-Clark.

In any case, a good deal of whatever intra-party rivalry now exists would be eliminated if seven-member districts were adopted, for the reasons noted in the report of the Select Committee last year⁽¹⁾.

An objection to Hare-Clark held by some is that the man in the street does not understand the counting procedure. In view of the lack of printed material on Hare-Clark at the present time, this is not surprising. With education on the subject, however, the problem could be solved. In any case, there is little more need for the man in the street to understand the methods of counting votes (which is the job for the returning officer) than there is for him to know the intricacies of his watch or wireless set.

Part III.

WHY SIX-MEMBER ELECTORATES ARE FAULTY.

The use of six-member electorates is gravely defective because it cannot provide the premise fundamental to a democratic electoral system, namely, that a majority of the voters within an electorate shall be assured of the right of returning a majority of members in that electorate. Only a system like Hare-Clark can give an assurance of majority rule, and Hare-Clark can do it only if an odd, rather than even, number of members is chosen from the electorates.

As the electoral quota under Hare-Clark is based upon the number of seats to be filled, the existing six-member quota is 14.3 per cent of the valid votes cast in each electorate. Consequently, one party can receive as few as 42.9 per cent of the votes (just three quotas) and obtain three seats, and the other party can receive almost 57.2 per cent and still obtain only three seats. If an odd number of members is chosen within an electorate, any party or any group obtaining a majority of the votes, no matter how slight, must win a majority of the seats in that electorate. Yet, when even numbers are chosen, if the majority party does not exceed the minority by at least one quota of votes, the minority party will receive representation equal to that of the majority.

⁽¹⁾ Report of the House of Assembly Select Committee on Electoral Reform. Parliamentary Paper No. 19 of 1957, p. 8.

Since the electoral quota for seven-member electorates would be 12.5 per cent, a party would win three seats if it obtains 37.5 per cent of the votes. If this party wins another quota of votes, thus obtaining a majority of the total votes of the electorate^(a), it must win the fourth seat.

In Tasmania, as in other countries with a two-party system, differences in voting strength between the major parties, taken on total votes over large areas, are usually fairly small. Hence a difference of 14.3 per cent of the votes (the size of a six-member quota) would be exceptional, and the possibility of a party obtaining a fourth seat remote. The likelihood, therefore, of two parties receiving an equal number of three seats each per electorate, despite unequal voting strength in the electorate concerned, is theoretically very probable—and has been demonstrated by experience as well.

As seen in Table II, the Hare-Clark system has been used for 17 general elections since its adoption, making a total of 85 separate elections for all five electorates. Although six different representation patterns have occurred in these 85 elections, in 44 cases the representation per electorate was three seats for Labor and three for non-Labor. Excluding the exceptional years of 1909, 1931, and 1941, there have been only 12 cases in the history of Hare-Clark where one party was able to obtain four of the six seats. Since World War II only once has a party been able to win the fourth seat within any electorate.

An unjust feature of these 44 cases of 3—3 "dead heat" results is that in most cases the support given to the majority party was markedly greater than that received by the minor party. As seen in Table III, there have been only eight instances where the two parties were separated by less than 2 per cent of the total votes cast. Any difference in votes between the parties greater than 5 per cent over a large area like a six-member electorate, can be considered to be marked; yet almost one-third of the cases of equal party representation have occurred when the difference in total votes has been between 5.0 and 9.9 per cent. In one-fourth of the cases the difference has exceeded 10.0 per cent.

Equal party representation on unequal voting strength is a denial of electoral justice to the voters. While this condition is not to be compared with the frequent injustice under single-member electorates, where the majority party commonly obtains only a minority of the seats, the fault is nevertheless grave and cannot be reconciled with precepts of democratic representation.

Thanks to the ingenious features of the existing Parliamentary "deadlocks" law, commonly known as the Lyons' Bill^(b), some cases of equal party representation are dealt with in such a way as to provide both electoral justice and a workable Parliament, namely, in those instances when the two parties are divided 15—15 in the House and happen also to be supported by the electors in nearly equal voting strength. In cases like the elections of 1955 and 1956, however, when the Government party obtained State-wide majorities of approximately 11,000 votes^(c), the concession of the equivalent of an extra vote in the House was not in reasonable proportion to its popular majority. Unless the voting strength of the parties in Parliament is reasonably proportional to the support they received in the country, electoral justice to the voters is not accorded.

In cases where the parties are not returned 15—15, the Parliamentary "deadlocks" law does not apply, and the defect of six-member electorates then looms even greater. It is quite possible

^(a) Because of the exhaustion of votes the last candidate is often elected without a quota. The party winning four seats sometimes might appear, therefore, to have less than a majority of votes at the conclusion of the count.

^(b) Formally called the Constitution Act (No. 2) of 1944, this law provides that if the two parties are returned in equal numbers of 15 each the majority party forms the Government, and the Opposition party has the privilege of supplying the Speaker. The party which obtains the most primary votes on a State-wide basis is declared the majority party. If the minority party declines to provide the Speaker and the majority party does so, it is permitted to replace the member chosen as Speaker by a recount of the ballot-papers which elected the Speaker to Parliament.

^(c) 11,003 votes in 1955 and 10,619 in 1956.

as a consequence of six-member districts, for a party to receive a majority of the votes in every electorate but one, and yet receive fewer seats than the party with a minority of the total vote. A situation like this in fact occurred in 1928 when the Labor party received either an absolute or relative majority over the Nationalist party in State-wide totals and in each of the five electorates, yet lost to the Nationalists. This occurred because the Labor majorities were not large enough to gain the fourth seat in any electorate and because in one electorate (Franklin) Mr. B. J. Pearsall, an Independent, was narrowly elected, causing Labor to lose the third seat in that division. Despite Labor's lead over the Nationalists in popular votes, as seen in Table V., Labor lost to the Nationalists by 14 seats to 15, plus Mr. Pearsall, who supported the Nationalists in Government.

In 1950 the Liberal party potentially could have been in the position of Labor in 1928, as the victory by Mr. W. G. Wedd, an Independent, prevented the Liberals from winning a third seat in Denison. The representation after that election was 15 Labor, 14 Liberal, and Mr. Wedd, who supported Labor in Government.

TABLE II (a).

Representation of Parties and Independents in Respect to Frequency of Patterns of Representation Within Electorates, House of Assembly Elections, 1909-1956.

Year	Patterns of Representation (b)						Total Electo- ates
	3—L. 3—N.L.	4—L. 2—N.L.	2—L. 4—N.L.	3—L. 2—N.L. 1—Ind.	2—L. 3—N.L. 1—Ind.	1—L. 4—N.L. 2—Ind.	
	Frequency of Occurrence of Pattern						
1912 ..	..	..	3	..	..	..	3
1912 ..	4	..	1	..	..	..	3
1913 ..	4	..	1	..	..	..	3
1916 ..	3	..	1	1	..	..	3
1919 ..	2	..	2	1	..	..	3
1922 ..	2	..	2	..	1	..	3
1923 ..	2	1	..	1	..	1	3
1926 ..	4	..	..	..	1	..	3
1931 ..	..	..	4	..	1	..	3
1934 ..	2	..	..	2	1	..	3
1937 ..	2	3	..	..	..	..	3
1941 ..	..	3	..	..	..	..	3
1946 ..	2	1	..	2	..	..	3
1948 ..	3	..	..	1	..	1	3
1950 ..	4	..	..	1	..	..	3
1953 ..	2	..	..	..	..	..	3
1956 ..	3	..	..	..	..	..	3
	44	10	10	9	4	2	-83

(a) Following the first Hare-Clark election of 1909, a two-party political system developed in Tasmanian State politics. The Labor party side of politics has continuously been known by this name or the fuller designation, the Australian Labor Party. The non-Labor party has been known by several names, first Liberal, then Nationalist, then United Australia, and now the Liberal Party. In Tables covering a period of years, the term "non-Labor" is used if the name of the non-Labor party changed during the period under reference.

(b) The patterns of representation refer to the number of seats won by the respective contestants within the five electorates. "L." denotes the seats won by the Labor party, "N.L." by the non-Labor party, and "ind." by independent candidates. Six seats are filled in each electorate. Since 1909 there have been only six different patterns of representation, or ways in which the seats have been divided, as noted in the table.

In view of the loss of the third seat in Denison, the Liberal party could have had nearly a fourth quota in four electorates, or a possible State-wide majority of over 15,000 votes, and still have remained in Opposition.

The six-member electorate, by preventing the majority of the voters from generally returning a majority of the members from any electorate, can allow the anomalies cited above to occur. Use of a seven-member electorate will enable the majority party in in each division to obtain its rightful due, and the certainty of the majority party obtaining a majority of the seats can normally be expected.

TABLE III.(a).

Size of Majority Recorded for Larger Party in Cases of 3-3 Division of Seats Between the Two Parties, House of Assembly Elections, 1903-1956.

Majorities for Labor.	Majorities for Non-Labor.
0	0
6	8
10	22
16	23
16	30
18	36
20	36
22	40
23	36
20	21
28	114
36	120
40	124
41	127
44	116
70	15 cases
72	
73	
79	
83	
84	
89	
92	
112	
114	
118	
125	
149	
154	
29 cases	

Size of Majorities	No. of Cases
Under 2 per cent	= 8
20 to 49	= 11
50 to 99	= 14
Above 100	= 11

(a) The percentages of difference are between the major parties within electorates and are based on first preference votes. All votes included in tables of this paper refer to first preferences. Because cross-voting between parties is extremely small, calculations on first preferences are quite satisfactory for many types of analyses.

Summary of Part III.

Equal party representation on unequal voting strength is a denial of electoral justice to the voters. Six-member electorates, even with the present Parliamentary "deadlocks" law, cannot guarantee majority rule. Commendable though the "deadlocks" law is in mitigating one type of misrepresentation, it does not, and cannot, provide the correction for the many anomalies which result from six-member electorates.

TABLE IV.

*Summary of Representation on Electorate Basis, House of Assembly
Elections, 1909-1950*

			Bass	Braddon	Denison	Franklin	Wilmot
1909	..	..	2-4	2-4	2-4	2-4	2-4
1912	..	..	(3.6%)	(5.8%)	(2.2%)	(14.6%)	2-4
1913	..	..	(.0%)	(2.2%)	(4.0%)	(12.4%)	2-4
1916	..	..	(7.0%)	3-2-1	(.8%)	(3.6%)	2-4
1919	..	..	2-4	3-2-1	(11.4%)	(7.1%)	2-4
1922	..	..	2-3-1	(3.0%)	(12.7%)	2-4	2-4
1923	..	..	(.2%)	(3.0%)	4-2	3-1-2	3-2-1
1928	..	..	(9.2%)	(1.0%)	(.5%)	2-3-1	(8.9%)
1931	..	..	2-4	2-4	2-4	2-3-1	2-4
1934	..	..	(1.0%)	(12.0%)	3-2-1	3-2-1	2-3-1
1937	..	..	4-2	(13.4%)	4-2	4-2	(13.3%)
1941	..	..	4-2	4-2	4-2	4-2	4-2
1946	..	..	4-2	(1.8%)	3-2-1	3-2-1	(14.8%)
1948	..	..	(11.8%)	(2.0%)	3-1-2	3-2-1	(8.0%)
1950	..	..	(8.4%)	(5.6%)	3-2-1	(2.3%)	(2.3%)
1955	..	..	(7.6%)	(6.0%)	(8.3%)	(3.6%)	(11.4%)
1956	..	..	(7.0%)	(1.0%)	(7.3%)	(6.1%)	(11.2%)

Key:

1. Designation of seats won:

By Labor—in light figures.
By Non-Labor—in heavy figures.
By Independents—in italic figures.

2. In case of 3-3 division of seats between the two parties, the size of the majority of larger party is indicated in percentage in appropriate type style to designate which party received the majority of votes.

Part IV.

WHY THE SOLUTION DEPENDS ON SEVEN-MEMBER ELECTORATES.

The return of an odd number of members within electorates is required, as noted in preceding sections, to assure the successful operation of the electoral mechanism of the Hare-Clark system. The next question is which odd number should be used, 3, 5, or 7? This section will endeavour to show that regard for both sound electoral principles and special conditions prevailing in Tasmania virtually limits the avenues of solution to one proposal, namely, the election of seven members from each of the existing five electorates.

Three-Member Electorates.

In respect to electoral principles, three-member districts are quite unsatisfactory. Firstly, the relatively small three-member electorates would almost certainly promote a parochialism now fortunately absent in House of Assembly electorates. Secondly, the resultant two to one division of party representation within electorates would introduce objectionable features. For example, on one hand, if the two parties in some electorates are almost evenly divided in voting strength, severe distortion of representation will result because one party, with only slightly more votes, must gain twice as many seats.

On the other hand, the smaller three-member districts would mean that some electorates would have unchallengeable majorities for one party or the other. Consequently, the certain foreknowledge of a 2—1 result in favour of the Liberal party in some electorates and the Labor party in others would greatly reduce competition between the parties in these electorates. Three-member electorates would introduce in a modified form some of the evils of "safe" seats under the single-member system.

Thirdly, three-member electorates would drastically curtail the desirably wide selection of candidates now available to the electors. Fourthly, use of a three-member electoral quota would necessitate an unduly large number of unutilised, remaindered votes. With seven-member electorates the unrepresented fraction is 12.5%, but with three-member electorates, it is 25%.

TABLE V.
General Election Results, House of Assembly, May 30, 1928.
(In Votes and Percentages within Electorates.)

	Bass	Darwin	Denison	Franklin	Wilmot	Total Votes for Parties
Labor	9,368 (3)	8,758 (3)	7,545 (3)	7,886 (2)	8,274 (3)	41,831 (14)
Nationalist	7,795 (3)	8,574 (3)	7,418 (3)	6,783 (3)	6,832 (3)	37,432 (15)
Independents	—	1,413	3,138	3,450 (1)	1,142	9,443 (1)
Totals per Electorate	17,163	18,745	18,431	18,119	16,248	88,706

NOTE.—Number of seats won is indicated in parentheses.

Five-member Electorates.

The shortcomings of three-member electorates from the standpoint of principle apply in a lesser degree to five-member electorates. For example, a 3-2 ratio in dividing seats between two parties

of nearly equal strength is too rough for proportioning the representation closely. A 4-3 distinction supplies a much truer and more reliable result. The unrepresented fraction of votes within each electorate is now 14.3%; this amount would decrease to 12.5% with seven-member electorates, but increase to 16.7% if five members were chosen. Five-member electorates would reduce, rather than improve, the selection of candidates available to the elector.

Unless the present electoral boundaries were dispensed with, five-member electorates would require a 25-member House, which would obviously be too small for effective Parliamentary government under present-day conditions. If seven new electorates returning five members each were established, smaller districts would result, giving rise to certain disadvantages because of existing concentrations of political party strength in various areas of Tasmania. As noted by the Select Committee (a), the use of seven five-member electorates would probably mean that four or five of the electorates would have "safe" majorities for either one party or the other. Since the resultant 3-2 victories by one party in two of the electorates would be offset by 3-2 victories for the other party in two or three electorates in which it had a strong majority in voting strength, the effective decision as to which party would win the election would rest in two or three electorates only. The result probably would be "a much more frequent occurrence of small majorities for the governing party than would be the case with five seven-member electorates" (b).

With five seven-member electorates instead of seven five-member ones, the variations in party voting strengths within electorates are smaller because larger electorates encompass a wider range of people, thus producing a more average result in terms of distribution of party voting strength. Fewer and larger electorates provide a better cross section of the State than smaller, more numerous ones. Consequently, the same fairly close balance between the two parties on a State-wide basis is found also within most of the present electorates, almost all of which could be considered "swinglers." "Swinging" electorates result in more competition between parties and in the greater probability of the winning party having an adequately ample majority in Parliament. The existing five electorates are large enough to permit almost all of them to be a fair average of the State. Three-member or five-member electorates in a 30 or 35-member House are too small to encompass a fair cross section.

Practical Considerations.

In addition to superiority with regard to the paramount consideration of principles of representation, the election of seven members from existing electorates is desirable because of extremely important practical factors. The seven-member plan permits complete utilisation of joint Commonwealth-State electoral boundaries and rolls. This joint arrangement is most advantageous financially and also saves Tasmanian electors from the inconvenience of contending with separate enrolment systems for Federal and for House of Assembly purposes.

Any electoral changes incorporating either three-member or five-member districts with a 30- or 35-member House would necessitate separate State electoral boundaries. This change would mean the establishment of new boundaries initially, and periodic redistribution thereafter. Moreover the use of electorates smaller than the present ones would make the need for redistributions more frequent. Boundary changes involve appreciable costs and must contribute to confusion and inconvenience for electors.

With seven five-member electorates joint Commonwealth-State rolls could be used, but some subdivisional changes would be necessary. With three-member districts most of the existing subdivisional boundaries would need to be altered and many new subdivisions created in order to make possible the use of joint rolls.

If single-member electorates were adopted for electing the House of Assembly, separate boundaries would of course be required, and the present joint Commonwealth-State rolls could not be used without almost complete modification involving manifold

(a) Paragraph 12 of the Select Committee Report on Electoral Reform, Parliamentary Paper No. 59 of 1937.

(b) *Ibid.*

administrative problems (a). The cost alone of printing the latest joint rolls was £4,197 (b), and the work of maintaining and compiling the rolls is naturally far more expensive than printing them. Because of the unavoidable smallness of single-member districts in Tasmania, redistributions would need to be inordinately frequent. Factors of practicability would condemn the single-member system in Tasmania, if it were not already condemned on the basis of electoral injustice.

Application of Seven-member Quota to Past Elections.

Because of the extensive data on the Hare-Clark election result sheets it is quite possible to ascertain what results the seven-member quota would have produced if used in past elections(c). By re-working the original result sheets on the basis of the smaller seven-member quota, a clear-cut answer can be found in almost every case as to what the election outcome would have been if seven members instead of six had been chosen from each electorate. In elections where the difference in votes obtained by the respective parties was not close and where the vote for Independent or non-major party candidates was not large, the election results with a seven-member quota can be ascertained without re-working a full sheet.

(a) Discussion by Mr. Edward Parkes, Chief Electoral Officer of Tasmania, on the incompatibility of using single-member electorates and joint Commonwealth-State electoral machinery is contained on pages 59-65 of the evidence attached to the *Report of the Board of Enquiry on Parliamentary Deadlocks*, Parliamentary Paper No. 6 of 1951.

(b) Information supplied by Commonwealth Electoral Office, Hobart.

(c) Examples of the method used in re-working the House of Assembly elections of 1956 can be seen by examining the scrutiny sheets submitted by the State Electoral Department. See pages 64-68 of the evidence attached to the *Select Committee Report on Electoral Reform*, P.P. No. 59 of 1957.

TABLE VI.

Summary of Comparative Results of Past Elections for House of Assembly Based on Return of Six and Seven Members from each Existing Electorate.

	Actual Results Six-Member Quota			Results Calculated with Seven-Member Quota		
	A.L.P.	Non-Labor	Others	A.L.P.	Non-Labor	Others
1950	15	15	—	20	15	—
1955	15	15	—	20	15	—
1950	15	14	1	17	17	1
1948	15	12	3	18	14	3
1946	16	12	2	20	13	2
1941	20	10	—	23	12	—
1937	18	12	—	21	13	—*
1934	14	13	3 ^(a)	17	16	2 ^(b)
1931	10	19	1	12	20	3
1928 ^(c)	14	15	1	17	13	3
1912	14	16	—	15	20	—
1909	12	18	—	14	21	—

* One seat not ascertained.

^(a) 1934: Carruthers, Independent, elected without a quota as the sixth candidate in the original count, is not elected under the seven-member count.

^(b) 1934: One Independent was Pearsall, regarded as Nationalist in sympathy; the other Independent was Becker, who was Independent Labor.

^(c) For comment on 1931 election results, see text p. 18.

^(d) The Liberal party won the elections of 1912, 1916, and 1919. In the elections of 1922 and 1925 the Country party contested and won seats as well as the Nationalists and the Labor party.

TABLE VII.

Comparative Results of Past Elections for House of Assembly Based on Return of Six and Seven Members from Each Existing Electorate.

	Actual Results, Six-Member Quota.			Results Calculated with Seven-Member Quota. Seat Allocation, Additional Members, Remarks.			
1956(a)							
	A.L.P.	Lib.	Others	A.L.P.	Lib.	Others	Name, Party
Bass	3	3	—	4	3	—	Madden, A.L.P.
Braddon	3	3	—	4	3	—	Taylor, A.L.P.
							Close contest(b)
Denison	3	3	—	4	3	—	Miller, A.L.P.
Franklin	3	3	—	4	3	—	Hand, A.L.P.
Wilmot	3	3	—	4	3	—	Spurr, A.L.P.
	15	15		20	15		

^(a) Results for 1956 supplied by State Electoral Department to Select Committee on Electoral Reform.

^(b) Note on Braddon: According to evidence available on official scrutiny sheet, Taylor would be elected. In view of closeness of margin between Taylor and Fidler (Lib.), however, it is possible that the latter, if aided by considerable exhaustion or cross-voting not detectable on the scrutiny sheet, could be elected instead of Taylor.

1955

	A.L.P.	Lib.	Others	A.L.P.	Lib.	Others	Name, Party
Bass	3	3	—	4	3	—	Atkins, A.L.P.
Braddon	3	3	—	4	3	—	Ward, A.L.P.
Denison	3	3	—	4	3	—	Bower, A.L.P.
Franklin	3	3	—	4	3	—	Crawford, A.L.P.
Wilmot	3	3	—	4	3	—	Fisher, A.L.P.
	15	15		20	15		

1950

	A.L.P.	Lib.	Others	A.L.P.	Lib.	Others	Name, Party
Bass	3	3	—	4	3	—	Oliver or Atkins, A.L.P.
Braddon	3	3	—	3	4	—	Breheny, Lib.
Denison	3	3	1	3	3	1	Duncan, Lib.
Franklin	3	3	—	3	4	—	Solomon, Lib.
Wilmot	3	3	—	4	3	—	Fisher, A.L.P.
	15	14	1	17	17	1	

1948

	A.L.P.	Lib.	Others	A.L.P.	Lib.	Others	Name, Party
Bass	3	3	—	4	3	—	Atkins, A.L.P.
Braddon	3	3	—	3	4	—	Acheson, Lib.
Denison	3	1	2	3	2	2	Duncan, Lib.
Franklin	3	2	1	4	2	1	Worsley, A.L.P.
							Close contest ^(a)
Wilmot	3	3	—	4	3	—	Burnell, A.L.P.
	15	12	3	18	14	3	

^(a) Whether Worsley, A.L.P., or Park, Lib., would win the seventh seat would depend on the distribution of Pearsall's preferences. As Mr. Pearsall, Ind., was runner-up in the original six-member count, the allocation of his preferences is not revealed on the result sheet. When asked how he thought his preferences would be distributed Mr. Pearsall stated that he believed Mr. Worsley would have received one-half of his (Pearsall's) preferences in Kingborough, and one-third of those from other subdivisions. Because of Worsley's lead over Park at the time of the exclusion of Pearsall, this would mean a narrow win by Worsley, although the margin would be close.

1946

	A.L.P.	Lib.	Others	A.L.P.	Lib.	Others	Name, Party
Bass	4	2	—	4	3	—	Hollingsworth, Lib. ^(a)
Braddon	3	3	—	4	3	—	Lane ^(b) , A.L.P.
Denison	3	2	1	4	2	1	Tyler, A.L.P.
Franklin	3	2	1	4	2	1	Hand, A.L.P.
Wilmot	3	3	—	4	3	—	Burnell, A.L.P.
	16	12	2	20	13	2	

^(a) Note that A.L.P. won 4—2 in actual contest but would win 4—3 with seven-member count.

^(b) Contest close between Acheson, Lib., and Lane, A.L.P., but result is not in doubt.

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1941

	A.L.P.	Nat.	Others	A.L.P.	Nat.	Others	Name, Party
Bass	4	2	—	5	2	—	Welsh or Quintal, A.L.P.
Braddon	4	2	—	4	3	—	Wright, Nat.
Denison	4	2	—	5	2	—	Heerey, A.L.P.
Franklin	4	2	—	5	2	—	Plummer, A.L.P.
Wilmot	4	2	—	4	3	—	Foster, Nat.
	20	10		23	12		

1937

	A.L.P.	Nat.	Others	A.L.P.	Nat.	Others	Name, Party
Bass	4	2	—	5(a)	2	—	McElwae, A.L.P.
Braddon	3	3	—	4	3	—	Aylett, A.L.P.
Denison	4	2	—	4	3	—	(b)
Franklin	4	2	—	4	3	—	Pearson, Nat.
Wilmot	3	3	—	4	3	—	Spurr, A.L.P.
	18	12		21	13	—	(b)

(a) Result for seventh seat was close, but on available figures Labor would have won five of the seven seats; with a little more cross-voting the result could have been 4—3.

(b) Winner of seventh seat in Denison not ascertained, but would have been either White, A.L.P., or Johnson, Nat.

1934.

	A.L.P.	Nat.	Others	A.L.P.	Nat.	Others	Name, Party
Bass	3	3	—	4	3	—	Lamp, A.L.P.
Braddon	3	3	—	3	4	—	Wright, Nat.
Denison	3	3	—	4	3	—	Mahoney, A.L.P.
Franklin	3	3	1	4	2	1	Frost, A.L.P.
Wilmot	3	3	1	4	4	1	Best, Nat.
	14	13	3	17	16	2	

(a) Carruthers, an Independent elected without a quota as the sixth candidate under a six-member count, is not elected under the seven-member count; Mahoney, A.L.P., is elected instead.

1931

	A.L.P.	Nat.	Others	A.L.P.	Nat.	Others	Name, Party
Bass	2	4	—	3	4	—	Becker, A.L.P.
Braddon	2	4	—	3	4	1	Medwin, Ind. (a)
Denison	2	4	—	3	4	—	Cosgrove, A.L.P.
Franklin	2	3	1	3	3	2	Pearson, Ind. (b)
Wilmot	2	4	—	2	5	—	Best, Nat.
	10	19	1	12	20	3	

(a) Medwin, Ind., was runner-up under six-member count.

(b) Pearson, Ind., was runner-up under six-member count.

1928(a)

	A.L.P.	Nat.	Others	A.L.P.	Nat.	Others	Name, Party
Bass	3	3	—	4	3	—	Davies, A.L.P.
Braddon	3	3	—	3	3	1	Whitall, Ind.
Denison	3	3	—	3	3	1	Mahoney, Ind.
Franklin	3	3	1	3	3	1	Labor.
Wilmot	3	3	—	4	3	—	Sheridan, A.L.P.
	14	15	1	17	15	3	Osborne, A.L.P.

(a) For comment on 1928 election results, see text p. 18.

The practical demonstration of the effect of the seven-member quota on past elections, as seen in Tables VI. and VII., shows that the result is what one could expect as a consequence of the principles involved, namely, that the Opposition Party remains strong but that the Government generally has a better working majority.

Independents and Minor Party Candidates.

The use of the seven-member quota for the last ten elections since 1928 indicates that since 1934 there would have been no change in respect to the election of Independent or minor party candidates. In 1934, Mr. D. A. Carruthers, an Independent elected as the last candidate without a full quota, as noted in Table VII., would not have been elected under a seven-member quota. One Independent Labor candidate and one Independent in 1928 and two Independents in 1931 would have been elected as a consequence of the smaller seven-member quota. Of the 50 additional seats which would have been filled since 1928 if seven-member electorates had been used, the net gain by non-major party candidates would, therefore, have been four.

Part V.

OTHER CONSIDERATIONS.

HARE-CLARK IS IMPARTIAL POLITICALLY.

The Hare-Clark system is singularly neutral in its operation. All parties and all candidates are treated with scrupulous impartiality. Whether candidates are from the Government or the Opposition, or from a major party or a minor one, or standing as Independents, all must reach the same quota of votes in order to win.

Moreover, the fortunes of Hare-Clark have in the past been identified with both parties. It owes its very adoption to the determined efforts by the non-Labor political parties in Tasmania in face of strong Labor party opposition in 1906. When the Labor party first came to power under Premier John Earle in 1914, extensive, but unsuccessful, efforts were made to have Hare-Clark replaced by a party list system of proportional representation.

Since then Hare-Clark has been continued by both parties. In 1951 a Board of Enquiry on Parliamentary Deadlocks, appointed from outside Parliament and headed by Professor T. Hytten, Vice-Chancellor of the University of Tasmania, recommended the continuation of Hare-Clark, with a change to seven-member electorates. In 1954 a Bill providing for seven-member electorates was introduced by Mr. L. V. McPartlan, Independent member for Denison. It passed the House of Assembly with the support of the Government, but was lost in the Legislative Council. Last year the House of Assembly Select Committee on Electoral Reform (as noted elsewhere in this paper) emphatically re-endorsed the Hare-Clark system and urged the adoption of seven-member electorates.

The friends and foes of Hare-Clark have come from both parties. Although the present Labor party government is supporting the Hare-Clark system and recommending its improvement, the chief antagonist to the system is a Labor member, Dr. J. F. Gaha, M.H.A., who acknowledges that he has been "an implacable enemy of the Hare-Clark system for many years and has not changed his views" (*).

One of the most ardent supporters of Hare-Clark, on the other hand, has been Mr. J. G. Breheny, M.H.A., a Liberal party member. When many others were attacking Hare-Clark in 1955, Mr. Breheny expressed his convictions without equivocation: "In no circumstances will I support the proposal to abandon the fairest and most democratic electoral system in the world to revert to the malpractice, injustice, and anomalies inseparable from the single electoral system with which electors have been so painfully familiar in the Labor states of New South Wales and Queensland for more than a quarter century" (*).

In the same way that the Hare-Clark system is in itself impartial, so is the change from six to seven members per electorate. The plain fact is that the seventh seat in any electorate will go to whichever party polls the majority vote in that electorate. The winning of the five additional seats will, therefore, be decided strictly and solely by the electors within the respective five Commonwealth-State divisions. The "swinging" nature of all these divisions is shown in Table VIII. The margins between the two parties are close enough in all electorates for either party to consider that it has a good chance of winning 20-15 or 19-16 at the next election.

(*) From poll declaration speech reported in "The Mercury," Feb. 26, 1956.

On the basis of past returns and the known reliability of the Hare-Clark system, the pattern of the next election result can be foreseen with reasonable certainty: with a seven-member quota both parties can expect to win a minimum of three seats each, the fourth seat going to the larger party. In contrast, if 35 single-member electorates were used the outcome of the election could well depend not so much on the support given by the electors but on the distribution of the population in respect to boundary lines.

Seven-member Electorates could reduce Cost of Government.

A permanent continuation of 15 - 15 "dead heat" divisions of party representation can be expected on the basis of present voting trends. This condition not only causes electoral injustice (as explained elsewhere) but also promotes costly instability in government. The last State election, which would have been averted by seven-member electorates, cost £11,482 for minimum official administrative expenses alone. The expense of possible unnecessary elections resulting from six-member electorates could be greater even than the cost of salaries and expenses of five additional members.

Moreover, the stabilising of Parliament through elimination of 15 - 15 divisions in party representation could decrease materially the direct and indirect costs of government by making Parliament more effective. For example, the present even balance between the parties means that any one member in either party holds a potential balance-of-power influence over his party in Parliament. This interferes with the citizen's right, under the British tradition of responsible political parties, to expect parties to exercise responsibility collectively without undue influence by individual persons within the parties.

The small increase in House membership required for correcting the electoral machinery is more than warranted because of the increased work-load on Parliamentarians since the fixing of the present House membership over 50 years ago. As noted in Figure 1, the population of Tasmania has increased by more than two-thirds since 1907; with this increase in population has also come an even greater increase in the demands on members' time.

TABLE VIII.

Amount of "Swing" Required to Return Four Liberal Party Candidates in Each Electorate.

On Basis of Figures of October, 1956, General Election⁽¹⁾.

1. Votes for Major Parties on Electorate Basis⁽²⁾:

	Ben	Braddon	Denison	Franklin	Wilmet	Total
Labour	16,554	15,302	16,537	14,444	16,835	80,096
Liberal	14,292	14,914	14,317	12,781	13,303	69,477
	30,846	30,116	31,154	27,217	30,138	149,173

2. Labour Majorities:

	2,264	448	2,520	1,815	3,532	10,619

3. Swing in Votes Required for Winning of Fourth Seat by Liberal⁽³⁾:

In Numbers	1,123	245	1,261	908	1,767	106,310
In Percentage	3.67	.81	4.05	3.32	5.87	3.65

⁽¹⁾ According to first preferences. Because of the extremely limited amount of cross-voting, the first preference figures are quite satisfactory for calculating the swing required.

⁽²⁾ The preferences of Independent and Anti-Communist Labor Party candidates, which were not large in any case, were shared between the two major parties in so nearly equal amounts that it was not considered necessary to make adjustments for them in ascertaining the amount of swing required. The sharing of non-major party preferences by the two major parties was in the Liberal's favor in Franklin by approximately 200 votes, and in Labor's favor in Denison by a similar amount. The Liberal gain in non-major party preferences in Braddon was approximately equal to Labor's gain from this source in Ben.

⁽³⁾ These calculations assume that no Independent nor minor party candidates will be elected. On the basis of the past two State elections this assumption is quite warranted.

⁽⁴⁾ This calculation on a State-wide basis shows the amount of swing required for the Liberals to win all of the five additional seats. For them to win all seats except Wilmet, where the Labor majority is largest, would require a smaller swing.

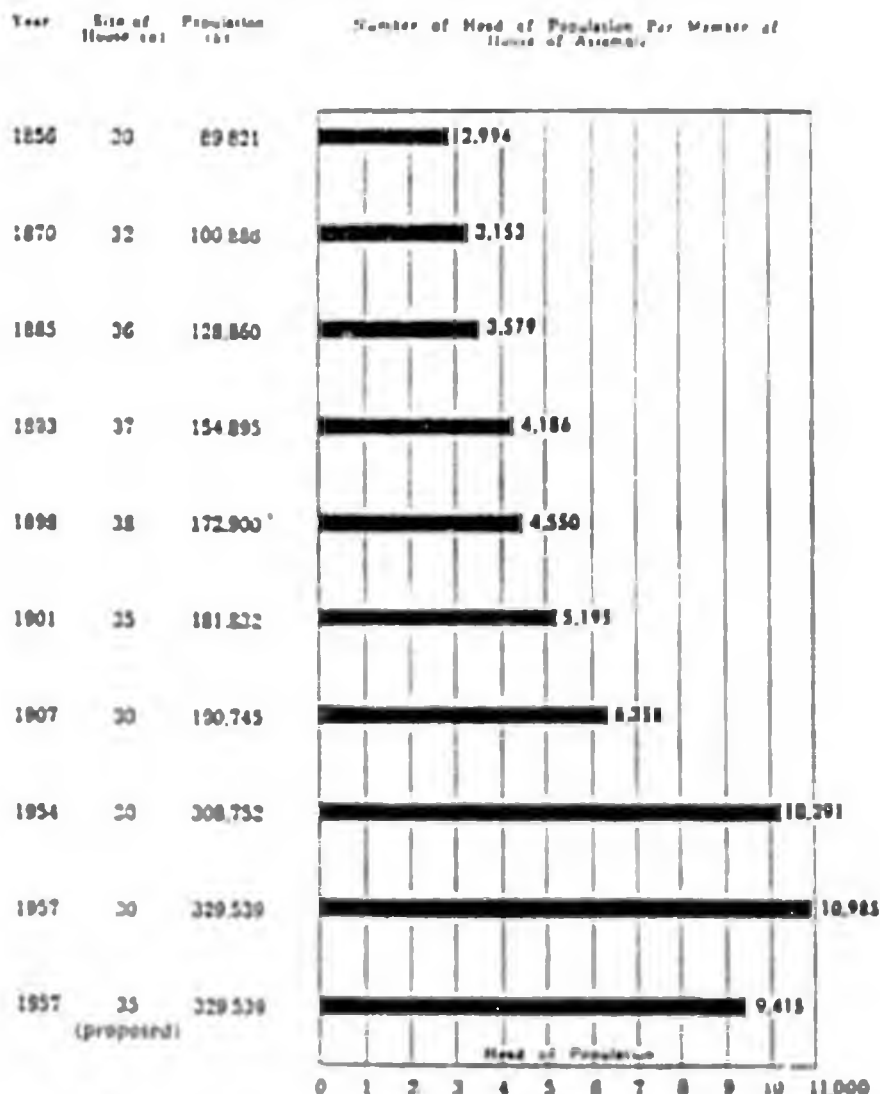
Governmental services and activities hardly thought of 50 years ago are taken for granted now. Indications of the increase in governmental activity can be seen in the rise in expenditure and in the size of the public service. In 1907 annual appropriations by the Tasmanian State Government were £912,000; for 1957-58 £21,900,000 (a). In 1913 there were 376 permanent officers employed under the Public Service Act; as of March 1958 the number of corresponding employees is 2,326 (a)—more than a six-fold increase. These figures on public service employees do not include the large number of persons not covered by the Public Service Act, such as employees of the Hydro-Electric Commission, Metropolitan Transport Trust, the Railways and others. Expansion of the work in these areas represents a similar increase in the number of employees.

There is no question that the enlargement of government activity has been enormous and has placed correspondingly larger responsibilities on members of Parliament. At present there are not enough of them available for the proper study of public questions, which become increasingly specialised as years go by. Moreover, there are not enough members to offer satisfactory competition for appointment to Cabinet; now it is almost a matter of putting every available person into a job.

(a) Figures supplied by the State Treasury Department, Hobart.

FIGURE 1.

Comparison of Sizes of House of Assembly, Tasmania, at Various Stages of Development in Respect of Population, 1856-1957.

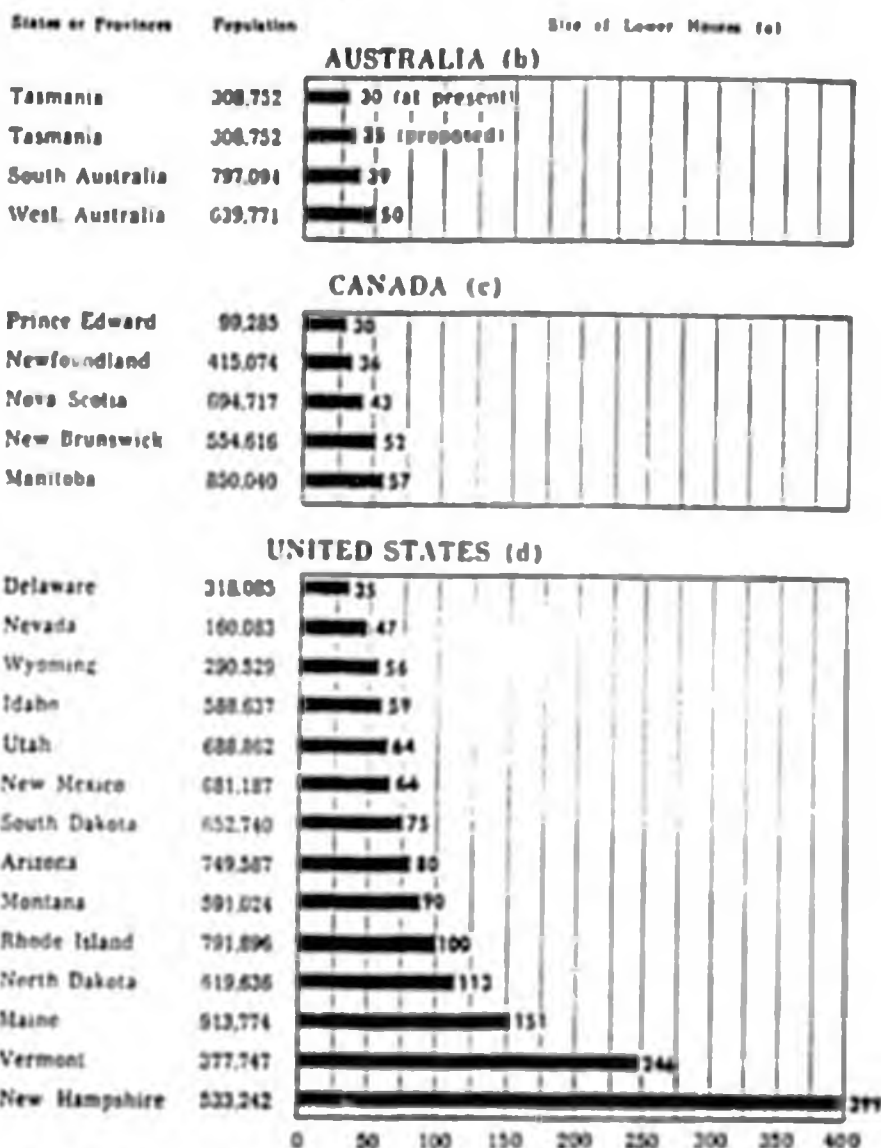


(a) Data on size of House for years 1856-1907 is taken from F. L. Finner, *Biography of Tasmanian Representatives to Parliament, Hobart, Government Printer, 1918*, p. 41.
 (b) Populations for years 1856-1907 are given for the years cited on basis of 5-year averages for the quinquenniums of which the designated year is a part. The population for 1951 is an estimate as of 30th September, 1951; this date is the most recent best date for calculation purposes. All population figures are from publications of the Commonwealth Bureau of Census and Statistics.

FIGURE 2.

Comparison of Sizes of Legislatures in the Leading English-Speaking Federations.

For States or Provinces with Populations under 1,000,000.



(a) Size of legislatures as per *Statesman's Year-Book*, 1907.

(b) Population of last census, 1904, as published by the Commonwealth Bureau of Census and Statistics.

(c) Population as of last census, 1906, as noted on p. 64, *Statesman's Year-Book*, 1907.

(d) Population as of last census, 1906, as noted in *The World Almanac*, 1908.

The fact that the proper working of Parliamentary government requires a certain minimum number of members was pointed out as long ago as 1914 by Mr. R. M. Johnston, I.S.O., Government Statistician, in giving evidence to a Select Committee considering electoral changes. To quote Mr. Johnston: "Five sevens would be better than 31. The number of representatives of any State, however small the population, should never fall below a practical working minimum number. Theoretically there ought to be not less than 35 representatives, even in a small State like this. The question of economy should not be a difficult matter" (e).

Even in 1906 when the question of adopting the Hare-Clark system was being debated in the House of Assembly, there was criticism of the proposed move for reducing the membership of the House, then 35, to the present 30. In opposing this move, "The Mercury" stated in an editorial of September 26, 1906:

"The saving in annual expenditure would be trifling, and there is no reason to believe that among the smaller number would be found a greater aggregate of wisdom. Moreover, with

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DEMOCRACY AND ELECTIONS

*Electoral systems and their
political consequences*

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Table 5 The tendency of plurality systems toward majority party government

Country	Number of parties winning ^a		Largest party's % share ^a		Largest party wins	
	1% plus vote	Any seats in Parliament	Vote	Seats	Half vote (% postwar elections)	Half seats
Australia	4	3	46 ^b	59 ^b	7	118 ^c
Britain	4	9	44	53	0	41
Canada	5	3	44	52	8	54
France (Fifth Republic)	7	6	38	56	0	28
Japan	6	6	48	56	20	53
New Zealand	3	3	39 ^c	51 ^c	23	110

^a At latest election.

^b Liberal-Country coalition here treated as a single party.

^c Figures for National Party, first in seats but second in votes.

Source: Calculated from Mackie and Rose, *International Almanac*.

for the French Socialists, which also won 56% of seats. In five of the six countries, one party usually wins a majority of seats, and in Australia and New Zealand, this has happened at every general election since the war. In no country is it normal for one party to win as much as half the vote. Moreover, the tendency of plurality systems to manufacture a single-party majority government is really strong only in the cricket playing parts of the Commonwealth. It does not apply regularly in Canada, in Japan or France. In the Fifth French Republic, with at least four parties likely to take a sixth or more of the vote, no overall majority has been usual, an outcome that could become familiar in Britain too, if the Liberal and Social Democratic Party Alliance establishes itself as a significant third force.¹⁴

V CONVERTING VOTES TO SEATS: PROPORTIONAL REPRESENTATION SYSTEMS

In proportional representation electoral systems, a general election is principally a means of representing popular preferences. An election is meant to produce as close as possible a match between a party's share of the vote and its share of representation in the national Parliament. The election is an end in itself, and not, as in plurality systems, a means to the end of forming a single-party government.

Because the electorate rarely gives any party half its vote under any system, an invariable consequence of proportional representation is the maintenance of a multi-party (that is more than two-party) system. In the seven PR systems

Table 6 The distribution of seats by party in proportional representation elections

	Parties winning seats	% Seats won by			
		Largest party	Two largest	Three largest	Four largest
Belgium	13	20	37	51	62
Denmark	9	34	49	61	72
Germany	3	45	89	100	—
Ireland	6	47	86	95	96
Italy	12	41	73	83	88
Luxembourg	6	41	66	90	93
Netherlands	10	32	61	79	90

Source: Mackie and Rose, *International Almanac*.

of the European Community, an average of eight parties win at least one seat in Parliament (Table 6). By contrast, in the six plurality systems, the norm is representation by five parties, with two much larger than the rest (Table 5).

Proportional representation is likely to create a multiplicity of winners and losers in a general election, for with half a dozen to a dozen parties competing for seats, several are likely to have their total vote rise and several have their vote fall. Nor can a single winner take control of government when no party wins a majority and, especially, when the largest single party wins less than a third of the vote, as happens, say, in Belgium or the Netherlands. The extent to which parties dominate representation is very variable between proportional representation systems (Table 6). The largest party can win anything from 20% to 47% of the seats; together the two largest parties can take anything from 37% to 89% of the seats. PR by itself does not determine the number of parties in a national Parliament. It simply encourages more parties than do plurality systems, and tends to be biased against (but does not necessarily preclude) the emergence of one or two large parties.

Proportional representation systems require the election of MPs from multi-member constituencies.¹⁵ Only if two or more representatives are returned can the minority as well as the majority be sure of a parliamentary voice. But the division of a country into constituencies varies greatly within the European Community (Table 7). At one extreme, the Netherlands treats the whole nation of 9.9 million electors as a single constituency electing all members of the 150-seat Tweede Kamer. But every other Western country using proportional representation except Israel divides the country into a multiplicity of constituencies. The resulting constituencies can be very large, containing more than a million voters.

The basic rule is: the more MPs returned from a constituency, the greater the

Table 7 Constituencies in proportional representation systems

	Total seats	N constituencies	Seats per constituency		Average elections per constituency
			Average	Range	
Belgium	212	30	7	5-11	229,000
Denmark	175	18	10	2-10	209,000
Germany					
a) Direct	218	218	1	0	174,000
b) PR	218	1	218	0	43,000,000
Ireland	166	41	4	3-5	55,000
Italy	630	31	20	1-35	1,360,000
Luxembourg	59	4	15	6-24	51,000
Netherlands	150	1	150	0	9,240,000

Sources: Mackie and Rose, *International Almanac*, Inter-Parliamentary Union, 1976, table 9

Degree of proportionality. If the quota for election is the total number of votes cast divided by the number of seats in a constituency plus one, then in a constituency with two members, a third of the vote is needed to win a seat; with three members a quarter of the vote; with four members, a fifth of the vote, and so on. In a constituency with ten members, a party can win a seat with less than a tenth of the vote. The number of members elected by a constituency sets the threshold of votes a party must obtain to be sure of a seat in a PR system. In European Community nations, the tendency is to have relatively large constituencies (Table 7). The median country is Luxembourg, where the average constituency elects fifteen MPs.

The size of a constituency is determined primarily by the distribution of population within a country. No country with proportional representation divides the country into constituencies of equal size. Sparsely populated areas receive fewer representatives. Historic boundaries of provinces, regions or cities are usually respected, and as population varies between these (e.g., in Germany by a factor of 1:24 between Bremen and North Rhine-Westphalia) the number of representatives for a given multi-member constituency will also vary. Two consequences follow. There is no best or right number of representatives in a multi-member PR district. Furthermore, there is no maximum size for the number of electors in a constituency. Differences in size between constituencies within a given nation are likely to be greater than differences in the average size of constituency between nations. In Denmark, the number of MPs per constituency ranges from two to forty, in Belgium from five to forty-eight, and in Italy from one to thirty-five.

In allocating seats within a constituency, the first requirement is to establish

a quota, that is, the minimum number of votes a party requires to be sure of winning a seat. The quota can be calculated by the Hare, Droop, Hagenbach-Bischoff or Imperiali method. After determining the electoral quota for a multi-member constituency, the next step is to allocate seats according to parties, by the largest remainder, the highest average d'Hondt or the Sainte-Lagué formula (see Glossary).

The system for allocating seats according to votes affects the minimum number of votes a party needs to secure representation, and the maximum number of 'wasted votes'.¹⁷ Proportional representation systems vary according to their formula for allocating seats to parties, and also according to the distribution of votes among parties in a given constituency.¹⁸ The possible differences can be explored mathematically, and examples produced of anomalies under extreme assumptions about the number of parties competing, the number of seats to be allocated in a constituency and the particular distribution of votes. Yet the nuances differentiating the largest remainder, d'Hondt, and Sainte-Lagué systems should not obscure their basic common feature: the tendency to approach proportionality in the distribution of seats.

Nearly every proportional electoral system sets a *threshold*, the minimum number of votes (and the constituency concentration of that vote) a party must have to be sure of gaining a seat. In a constituency with only a few seats, this threshold will be high. In a three-seat constituency, for example, a party must win at least a third of the vote to be sure of achieving a Hare quota, and more than a quarter of the vote to be sure of achieving a Droop quota. In a large constituency, say with twenty seats, the threshold is low: a party must win only 4% to be sure of a seat with a Hare quota, and with a Droop quota it can win a seat with slightly less than 4%. The problem of large remainders or 'wasted votes' in a constituency (that is, votes insufficient to win a seat) is common to every proportional representation system.

A great variety of methods can be found to deal with the risk of 'wasted' votes. At one extreme is the Irish system, which has small constituencies and no provision for wasted votes. A party failing to win a seat in a constituency cannot transfer its votes for use elsewhere in allocating seats. With a maximum of five seats per constituency and some three-seat constituencies, this tends to make the Irish system more disproportional: a party that polls about 10% of the vote could theoretically find itself with no representation, according to the dispersion of the vote among constituencies. At the other extreme, the Dutch system has only one very large national constituency and requires no provision for wasted votes. The minimum vote needed to win a seat in the 150-member Tweede Kamer is very low, 0.67%. In an electoral system such as the Dutch, the threshold could only be lowered further by increasing the size of the national assembly. In Luxembourg, seats are also allocated only within constituencies, but as an average of 15 seats are to be won in a constituency, the threshold a party must clear to be

sure of winning a seat by the Hagenbach-Hirsch quota is usually not high.

The majority of proportional representation systems in the European Community make some positive provision for topping up representation by creating a national-level constituency to pool 'wasted' votes, that is, votes that did not win a seat in a given constituency allocation. Arrangements vary from country to country. The norm is to have relatively large electoral districts, and to have a second-stage pool to top up representation for the smaller parties, thus reducing wasted votes and increasing the overall proportionality of the system.

In Italy there is a bias toward exact proportionality arising from the very large constituencies and the Imperiali quota. Parties having wasted votes there have their votes pooled nationally, provided that they have already won at least one seat and 300,000 votes nationwide. The seats not distributed by constituency quotas are then distributed from the national pool, thus reducing the proportion of wasted votes. In Denmark, 40 of the 175 seats in the Folketing are distributed by a similar national topping up system for all parties meeting low minimum standards of popular support. In Belgium, there is provision for transferring votes wasted at the constituency stage to a provincial pool, where seats can be allocated to individual parties or combinations (*apparentement*) formed by groups of parties to avoid wasting individual remainders.

Germany has a unique system of topping up representation, for half the Bundestag is elected by proportional representation and half by single-member districts. To qualify for the distribution of proportional representation seats, a party must win at least 5% of the total national vote or victory in at least three *Wahlkreis* (constituencies). The barrier was set at this height to prevent representation of extremist parties, and to prevent the proliferation of small parties, both considered problems fostered by the Weimar electoral system. The distribution of seats at the *Wahlkreis* level is usually disproportional, because it is done by simple plurality. For example, in 1972 the Social Democratic Party (SPD) won 46% of the vote and 61% of the constituency seats, whereas in 1976, when its vote dropped by 3%, its share of constituency seats dropped almost 15%.¹⁹ The award of half the seats by PR compensates effectively for the disproportionality of the plurality distribution. In 1972, for example, the SPD received only 31% of the seats in the PR distribution, because it had done disproportionately well in the constituency contests. In 1976 its share of seats in the PR distribution rose by 9%, because its success at the constituency level had fallen. The Free Democratic Party does disproportionately well in the PR distribution, taking 15.7% of seats. Since 1961 it has won from 5.8 to 12.8% of the vote but has not won a single constituency seat in six elections.

The final stage in a proportional representation system is the allocation of seats to particular candidates, who then become the Members of Parliament. Logically, there are two alternatives: an elector may be asked to vote for a

party, which lists the order in which its candidates should be elected, or an elector may vote for a candidate, with votes cast for all the candidates of a party tallied to establish its number of seats, and seats allocated to their candidates who secure the most votes as individuals. The use of pure alternatives is relatively rare. Germany is the only member of the European Community that uses the strict party list, but a voter can also express a preference for individual candidates at the *Wahlkreis* level. Israel and Spain also use the strict party list. At the other extreme, in Ireland (see below) an elector can only vote for individual candidates. In Italy, the parties give no indication of the rank order in which candidates should be elected; this is determined by those who vote for the party's list. The candidates elected reflect the preference votes that individual candidates of the party secure votes additional to the vote for the party list.

Most proportional representation systems make some allowance for an elector to express a preference between candidates of a given party, as well as allowing each party to indicate the order in which it wishes its candidates elected. The ranking of candidates has an important effect upon a party's representation (and upon the influence of those doing the ranking upon their representatives), for the top person on a list is normally certain of election, and the bottom person normally certain of defeat. The usual procedure is to ask a voter to indicate a party preference, and also to allow the voter to vary the party's rank ordering of candidates, if the voter so wishes.

The Irish electoral system is best discussed on its own (see chapter 9). Its most distinctive feature is that it makes voters express a choice for individual candidates rather than party lists. In practice, there is a strong tendency for voters to confine preferences within their first choice party, and to put the top candidate of their second party below the bottom candidate of their first party. But the relationship is not exact, and control of government has turned on the extent to which transfers have been regular, especially when Fine Gael and Labour have run in coalition. The practical political effect of STV PR is to weaken party discipline, because the winning candidates are not beholden to the party for a high position on the party list. To win a seat a successful candidate normally must defeat another member of his own party. For example, in a constituency in which a party hopes to win two seats it will nominate three candidates, who then compete against each other. The Irish ballot thus combines elements of an American-style primary election with a general election.

The empirical significance of different choices between electoral systems is easily exaggerated by looking only at their theoretical differences. Particular elements of a system tending to increase or reduce proportionality may be cancelled out by devices having the opposite effect. Moreover, plurality systems distort but do not negate the preferences of electors. There remains a correlation between a party's share of the vote and its share of the seats.

The difference in proportionality between the median election under proportional representation and plurality systems is very limited: 7% (Table 8). The median Western countries with proportional representation are Finland and Italy, where the distribution of seats is 95% proportional to votes. The median plurality system country is Australia, where the distribution of seats is 87% proportional to votes.

Notwithstanding the common intent of proportional representation systems, there is a considerable difference in the degree of proportionality actually achieved currently. The most proportional system is Austria, which matches seats and votes to within 1%. The least proportional is Spain, which deviates by 17% from pure proportionality, and Greece, which deviates by 12%. A major reason for this is that the two countries tend to return a small number of MPs per constituency, five on average in Greece and six in Spain, the smallest among the seventeen countries reviewed here except for Ireland. Moreover Spain has an unusually fragmented party system because of regionalist political pressures, and in Greece high thresholds for winning seats significantly reduce the actual proportionality at several stages. The range of proportionality is also substantial among plurality systems. Elections to the 1980 United States Congress have been within 6% of proportionality, whereas in France the election of the 1981 National Assembly deviated by 21% from pure proportionality.

While ideal-type systems can be delineated for purposes of exposition, it is not meaningful to select any one country as typical of a proportional representation or a plurality system. The specifics of a nation's history, social structure and political culture will also affect how an electoral system is used by parties and by the electorate, and thus what it produces.

The effective difference between representation in proportional representation and plurality systems is a matter of degree, not kind. On average, the seventeen PR systems examined are 8% more proportional than the seven plurality systems. The most proportional PR system, Austria, is 20% more proportional than the French plurality system but only 5% more proportional than the most proportional plurality system, the United States Congress. The departure of every electoral system from pure proportionality is not surprising. It is a condition of allowing free access to the ballot that many parties will lose an election, and some will fail to gain any representation at all. What is most noteworthy is the general tendency of all electoral systems to allocate representation in Parliament in keeping with the broad distribution of the popular vote.

VI. ASSESSING ELECTORAL SYSTEMS

Electoral rules cannot be assessed independently of political criteria and values. This is most obviously the case in deciding about an acceptable level of

Table 8. Comparing the proportionality of PR and plurality systems

	Index of proportionality
<i>PR systems</i>	
Austria	99
Germany	98
Sweden	98
Denmark	97
Iceland	96
Ireland	96
Netherlands	96
Switzerland	96
Finland	95
Italy	95
Israel	94
Portugal	93
Belgium	91
Norway	91
Luxembourg	90
Greece	88
Spain	83
<i>Plurality systems</i>	
United States (House, 1980)	94
Japan	91
Canada	88
Australia	87
Britain	85
New Zealand	80
France	79

Note: The index of proportionality is calculated as the sum of the differences between each party's share of seats and its share of votes, divided by two and subtracted from 100.

Source: Mackie and Rose, *International Almanac*, table A. 5.

proportionality in an electoral system. No one would defend a system that consistently gave the most seats in Parliament to parties with the least votes. On the other hand, even a Parliament elected by nationwide proportional representation leaves some parties without any representation. In the case of the Netherlands in 1981, three parties with 20% of the vote, notionally worth three seats, won nothing. Whether the proportionality of a PR or a plurality system is enough depends upon the degree of perfectionism demanded, or imperfection deemed acceptable.

Insofar as elections are viewed as a means to the end of constituting government, which is *prima facie* an object as important as representation, then judgements about electoral systems become subordinate to judgements about the most desirable way of constituting government. A simple plurality system is most likely to manufacture a majority for one party. But most European societies cannot have their political cleavages reduced to a single bipolar choice. Parties divide along a multiplicity of lines: religion, territorial identity and language – as well as (or instead of) class.²⁰ Fixing responsibility upon a single governing party only creates competitive politics if the pendulum swings, that is, if the governing party is ejected from office from time to time. But this is not normally the case. Britain is atypical because its two parties usually alternate in office. In Western nations since 1945, single-party hegemony is the norm.²¹

Insofar as a choice of proportional representation or plurality electoral systems influences the likelihood of single-party or coalition government, an assessment of electoral systems can turn upon the consequences of different types of government. A coalition government is more subject to internal constraint, because the concurrence of its member parties is needed to maintain a coalition majority. But a very large party, with nearly half a nation's vote, is likely to be a coalition too. The Democratic and Republican Parties in the United States are extreme examples of large 'catch-all' parties. The evidence of disagreements within the Conservative and Labour Parties is a reminder that each is a coalition of groups with a variety of outlooks. Moreover, a party in government must deal with a coalition of disparate interests. There is 'something stronger than parties' that makes a governing party recognise the need to bargain with pressure groups of many kinds including supporters of their electoral opponents.²²

The problem of looking after minorities in a democracy based on majority rule cannot be resolved by electoral systems. By definition, in any reasonably fair electoral systems minorities must always lose. Only in a chronically fragmented society, such as the United States, can a minority hope to exercise persisting leverage as a potential partner in governing coalitions. Permanent minorities anxious to protect their rights must look to non-electoral constitutional guarantees, such as a federal structure, to accommodate diverse territorial groups or nations; concurring or 'more than majority' constitutional provisions for national decision-making; and justiciable rights resolved in a court that is not governed by an elected majority.²³

For the majority of politicians and the majority of voters, the decisions taken about electoral laws are important. They are constituent judgements, because they concern the very rules by which government is constituted, prior to decisions about particular issues of public policy. Immediate party or policy concerns can influence the rules chosen. But however transitory the reason, once chosen, electoral rules tend to persist by their own inertia. These rules

apply in future circumstances that cannot be known at the moment of choice. Hence, the golden rule for politicians confronted with choices about electoral systems is to ask: *how would I like it if the rules were applied in circumstances unfavourable to me and my party as well as in favourable circumstances?* This principle of equity²⁴ is of fundamental importance, for in any system of free elections politicians who immediately benefit will still be asked to endorse the system, when the rules that once made them winners turn them into losers.

NOTES

An earlier draft of this chapter was presented at a Workshop on Electoral Law organised by the Centro de Estudios Constitucionales, Madrid, 25-26 February 1982. I am indebted to Thomas T. Mackie for many comments on the draft.

- 1 The tenth member of the European Community, Greece, is omitted, because it has not yet demonstrated continuity in elections.
- 2 The term 'Western nations' is used to refer to the twenty-one countries with well-established competitive electoral systems with full data reported in Thomas T. Mackie and Richard Rose, *The International Almanac of Electoral History*, 2nd edn (London, 1982): Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Iceland, Ireland, Israel, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Sweden, Switzerland, the United Kingdom and the United States. When reference is made to an illustrative election result for a nation, it is the latest result as of 1 January 1982, unless otherwise stated.
- 3 Richard Rose and D. W. Urwin, *Regional Differentiation and Political Unity in Western Nations*, Sage Professional Papers in Contemporary Political Sociology 10-407 (London and Beverly Hills, 1975).
- 4 D. E. Butler and Austin Ranney, eds., *Referendums*, American Enterprise Institute (Washington, DC, 1978).
- 5 Stein Rokkan, *Citizen, Elections, Parties* (Oslo, 1970).
- 6 Dieter Nohlen, *Wahlsysteme der Welt* (Munich and Zurich, 1978), pp. 104.
- 7 G. Bingham Powell, 'Voting Turnout in Thirty Democracies: Partisan, Legal and Socio-Economic Influences', in R. Rose, ed., *Electoral Participation* (London and Beverly Hills, 1980), pp. 24-6.
- 8 In proportional representation systems, a government usually need not fear losing a seat at a by-election. When a seat falls vacant during the life of a Parliament, it is awarded to the next candidate in line on the list of the party that has just lost a member. Exceptionally, Ireland holds by-elections, with a single member elected by the alternative vote.
- 9 Richard Rose and Thomas T. Mackie, *Incumbency in Government: Liability or Asset?*, University of Strathclyde Studies in Public Policy, No. 50 (Glasgow, 1980), p. 10.
- 10 Inter-Parliamentary Union, *Parliaments of the World*, compiled by Valentine Herman with Françoise Mendel (London, 1976), Tables 5 and 6.
- 11 Inter-Parliamentary Union, *Parliaments of the World*, Tables 13-14, 17-18.
- 12 Furthermore, parties contesting an election usually receive significant subsidies in kind from broadcasting authorities, see Anthony Smith, 'Mass Communications', in D. E. Butler, D. R. Pennington and Austin Ranney, eds., *Democracy at the Polls*,

Proportional representation

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Proportional Representation :
summary of issues



Proportional representation (PR) is a system of voting which has the effect of allocating seats in the legislature to groups or individuals in proportion to the number of votes cast for them in the electorate. It differs from 'first past the post' and majority preferential systems in that in any electorate the winner does not take all, but receives instead only a proportionate amount of the prize. Consequently, PR involves multi-member constituencies, whether the constituency is the entire country as in the Israeli and Dutch systems, one state as in Australian Senate elections, or an electoral division returning several members as in the Tasmanian state parliament. As it is plainly impossible for one member to be split into several parts, each representing a group of voters, proportionality can only be achieved for two-member constituencies when each member has 50% of the vote, and proportional representation begins to be achieved in a three-member seat. The proportionality achieved increases with the size of the constituency, but the marginal increase in proportionality decreases with larger constituencies, so that advocates of PR often suggest that constituencies of between five and nine members are adequate¹.

There are two major types of PR, although it is possible to identify many variants of both. They are the 'single transferable vote' (STV) system, often also known as the 'quota-preferential method', and the list system, also referred to as the 'list proportional method' or the 'party list'. The Proportional Representation Society of Australia advocates the introduction of STV system in Australia, and prefers the term 'quota-preferential method'. Both methods are based on multi-member electorates and thus allow for the representation of all groups of voters.

Single Transferable Vote (STV)

The STV system originated in Europe in the 1850s before the growth of the political party system as we now understand it in European countries. Two variants of it were developed separately by C.C.G. Andrae, a Danish liberal politician, and Thomas Hare, a progressive English barrister. In 1861 John Stuart Mill incorporated the system into his book Representative Government.

The original intention of STV was to strengthen the position of the individual candidate and discourage tendencies towards the domination of legislatures by parties.

Its principle was and is that each voter has one vote no matter how many seats are to be filled in a multi-member constituency but that, rather than voting for only one candidate, the voter may rank the candidates so that 'unused' votes (i.e. votes surplus to the quota needed to elect a candidate) are not 'wasted' but instead go to the candidate whom the voter has ranked as his or her next preference. In this respect the STV system can be likened to a situation where there are repeated ballots, any candidate obtaining the required quota is elected, and the ballot continues among the remaining candidates until each voter has used her or his one vote. There are many apparent similarities between the STV method and the majority preferential method, but the fundamental difference is that STV requires multi-member electorates.

In STV the term 'quota' has a specific meaning. It refers to the Droop quota, by which seats are allocated.

$$\text{Droop quota} = \frac{v}{s+1} + 1$$

where v = total vote in a constituency
 s = number of seats to be allocated.

If five seats are to be allocated on an electorate with 60,000 voters, the quota is calculated as follows:

$$\text{Droop quota} = \frac{60,000}{5+1} + 1$$

$$= \frac{60,000}{6} + 1$$

$$= 10,000 + 1$$

$$= 10,001$$

The stages of counting of votes under STV are as follows²:

1. Candidates who have obtained one Droop quota on their first preferences are declared elected.

2. The ballots of the candidates already elected are sorted and counted according to second preference. As the intention is now to give surplus votes to candidates still not elected, a decision must be made on which votes are declared to be surplus and which already used. Rather than doing this randomly, second preferences are 'discounted' by giving them to the receiving unelected, candidates in proportion to the elected candidate's surplus. The second preferences are multiplied by the formula:

$$\frac{\text{total vote for elected candidate} - \text{Droop quota}}{\text{total vote for elected candidate}}$$

which equals:

$$\frac{\text{elected candidate surplus}}{\text{total vote for elected candidate}}$$

The preferences awarded to another candidate are then computed by multiplying the above figure by the number of second preferences for the unelected candidates.

3. The discounted second preferences are added to first preferences for all non-elected candidates and any who now have a Droop quota are declared elected.
4. The candidate with the fewest number of votes at this stage is now declared defeated and his or her ballots are sorted and counted according to second preferences. The second preferences are not discounted, as there is no decision to be made on which are surplus, but are simply distributed among the remaining unelected candidates.
5. Candidates now holding a Droop quota are declared elected. Their ballots and those of candidates declared elected at the third stage are sorted and their preferences are distributed using the discounting formula described above.
6. This cycle continues taking in progressively lower preference levels until all the seats have been filled.

The Tasmanian House of Assembly has been elected by a variety of the STV system known as the Hare-Clark method since 1907. Tasmania is divided into five electorates, identical for both state and federal purposes, each of which returns seven members to the state parliament. Voters must vote for a minimum of three candidates to cast a valid vote. There have been various changes to the system since its introduction but the principle has remained unchanged.

List Systems

List systems were developed in Europe in the late nineteenth century and were adopted in many of the northern European democracies. They were especially appropriate in countries with ethnic, language or religious divisions where a system of majority voting could result in violent oscillations between parties. List systems work on the principle that the voter votes for a party rather than an individual. Every vote cast for any candidate is automatically added to the total for the list on which the candidate's name appears. List systems usually have larger electorates than STV systems. As with the STV system, quotas are used to determine the allocation of seats. The two formulas most often used are the d'Hondt formula and the formula of the largest remainder.

Under the d'Hondt formula (sometimes also referred to as FR by the highest average) seats are allocated one by one and each goes to the party (or list) which would have the highest number of votes per seat if it received the seat in question. The formula used for calculating the d'Hondt quota is :

$$\text{D'Hondt quota} = \frac{v}{s + 1}$$

where v = the party's total vote

s = number of seats already held by the party.

Each time a seat is to be allocated quotas or averages are calculated for each party using the above formula and the seat goes to the party with the highest average. Since initially no party has any seat the divisor of the d'Hondt formula ($s + 1$) is for each party and the 'averages' are the parties' original totals. When a seat has been awarded the divisor for the party which has won it becomes 2, while for the other parties it remains 1. If the total votes for each of four parties is:

A	8,700
B	6,800
C	5,200
D	3,300

then on the first allocation A has the highest average (8,700) and wins the seat. The divisor of the formula as applied to A then becomes 2, but remains 1 for the other parties, and B wins the seat, as illustrated below:

Party	Total Votes	Divisor	Average
A	8,700	2	4,350
B	6,800	1	6,800
C	5,200	1	5,200
D	3,300	1	3,300

This procedure is then repeated until all the seats have been allocated. In the end A and B will have two seats each, C will have one, and D none. Thus the divisor varies with the success of a party. In general the d'Hondt formula tends to benefit larger parties.

In using the formula of the largest remainder an electoral quota is calculated by dividing the total number of votes cast by the number of seats to be filled. Each party (or list) then receives as many seats as it has quotas and the remaining seats are distributed according to which party has the largest number of votes remaining. The party with the largest remainder gets the next seat, the party with the next largest remainder gets the seat after that and so on until all the seats are distributed.

Using the same figures as the previous example, where total votes are 24,000, and five seats are to be allocated the electoral quota is:

$$\begin{aligned} \frac{\text{total votes}}{\text{number of seats}} &= \frac{24,000}{5} \\ &= 4,800 \end{aligned}$$

The rest of the calculation is as follows:

List	Votes (V)	Seats (S) won by Quota (Q)	(S x Q)	Remainder V - (S x Q)
A	8,700	1	4,800	3,900
B	6,800	1	4,800	2,000
C	5,200	1	4,800	400
D	3,300	0	----	3,300

A has the largest remainder and wins a second seat, and D wins the last seat because it has the second largest remainder. In the end, A has two seats and the other parties one each. In general, the use of this formula tends to benefit smaller parties.

DISCUSSED

There are many variations in PR systems, and various systems can be used in combination with each other and with other voting systems such as preferential or first-past-the-post. The distinction between STV and list systems is, however, an extremely important one because the whole intention of STV is that the voters vote for the individual candidates and are able to give their first preferences to one party and their second preferences to another, or to independents, while the chances of candidates being elected on list systems are largely determined by their party affiliation. Essentially list systems pre-suppose party political organisations, while STV does not.

Both supporters and opponents of PR tend to see it in isolation from the society in which it operates and advance the same arguments to support and oppose it. It is quite possible to produce a list of arguments for and against PR as a voting system, and such a list appears in this section. The question of whether one sees those results and arguments as supporting or opposing PR, however, depends largely on what one sees as a desirable political system. For instance, it is commonly suggested that the application of PR results in a decrease in the power and importance of political parties, and an increase in the number of small single-issue parties. For many people, particularly those accustomed to the system of two party government common to English speaking countries and derived from the English system, this possibility is a black mark against PR. However an individual accustomed to a different system where a multiplicity of small parties is normal, as in many European countries, would not see this as a disadvantage.

In addition, voters in countries such as Australia and Great Britain are increasingly seeing small parties as a desirable vehicle for expressing their disillusion with the major parties - witness the rise of the Australian Democrats and the Nuclear Disarmament Party in Australia and the Social Democratic Party in Britain.

Although what follows is a list of arguments for and against PR, the same argument will often be found as both a reason for and a reason against. Perhaps a good way to look at the arguments is in terms of a set of criteria which condition the way anyone is likely to see any aspect of result of PR.

1. The individual perspective - the voter and the politician may well have different views on what makes a good electoral system, the politician perhaps placing more emphasis on stability.
2. The historical development and background of the country's political system, including adversary system, rather than consensual or coalition systems, has been seen as normal within parliament.

- 3 The extent of homogeneity or heterogeneity in the society and thus the extent to which a 'winner takes all' system inevitably implies defeat for an ethnic, religious or economic group and its subsequent exclusion from 1.

ARGUMENTS FOR PR

1. PR allows the views of all voters to be represented in the legislature in proportion to their numbers in the community. This ensures that minority groups are not alienated from the political process by a continual exclusion from representation. In an STV system it is even possible for dissident members of a political party to stand against other members of the same party, thus allowing various points of view within the party to be expressed.
2. Although women are not a minority group, they are under-represented in politics. The introduction of PR could improve this situation by removing some of the risks perceived by political parties in endorsing women. It can be argued that in a situation where several candidates are to be elected a woman is more likely to be endorsed because she will not be the only candidate for the party and the party will not therefore lose the votes of voters prejudiced against women. This argument could also apply to ethnic or religious groups.
3. One consequence of a 'winner take all' system where one of two major parties wins control of the legislature is that political business is conducted in the adversary style. All votes are won or lost on party lines, any piece of legislation introduced by the government will pass regardless of any possible reservations by government members, and the opposition has little constructive role. In a PR system there is opportunity for a more consensual, flexible and pragmatic style of government which moves away from the black and white simplifications of the adversary system.

4. In a PR system there is usually a greater continuity of policy from government to government because of the more consensual nature of government under PR described above. Changes of policy occur gradually and are thought out in advance rather than being the result of great swings in political opinion.
5. Under PR it is easy for new parties to be formed in response to issues and win some seats in the legislature. Then, if the issue fades away, the party may also fade away because it has not been institutionalised. This point is particularly valid in an STV system, where campaigns tend to be organised at the constituency level.
6. Governments would be based on the support of at least 50% of the voters, whether that 50% has been for one party or for several which have formed a coalition.
7. Party policies would be more moderate because extreme groups in any one party would not be able to exercise pressure over the rest of the party as they can do when governments are based on one majority party. In fact policies would tend to be more moderate because of the necessity for parties to form coalitions.
8. With PR, the need for greater co-operation between parties in the legislature would result in the legislature participating more in policy making.

ARGUMENTS AGAINST PR

1. One of the necessary conditions for PR is that constituencies are larger than in other systems, and this may result in a reduction in personal contact between members and their constituents. Not only will the constituency be larger, but the constituency could result in voters feeling distanced from their representatives.

2. Because PR systems are fairly complicated compared to first-past-the-post or preferential systems voters may have trouble in understanding how the system works, take less interest in governments and generally develop feelings of alienation. This may also result in a high informal vote where voting is compulsory or a low turn-out where it is not compulsory.
3. The PR system encourages the splitting of big parties into many small ones representing sectional interests. This has two negative effects. It becomes more difficult to form governments because small groups have their own representation, and it creates and sustains divisions between different groups and classes in society, thus resulting in political and social instability.
4. Under PR the distinction between government and opposition is blurred, so that there is not a government with unhampered power to carry out its program and an opposition to act as a constant critic of the government. This creates a weak and unstable government.
5. With STV, although not necessarily with the list system, the counting of votes is often long and exhaustive and there is considerable delay in getting an election result.
6. With STV, there may be problems if the death or resignation of a member results in the need for a by-election.
7. Conclusion

Arguments for or against the introduction of PR should not be seen in isolation from the political system into which such reforms would be introduced. Very often such arguments are inseparable from assumptions about the structure and goals of the political system.

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2. Adapted from
Brian Wilson. Proportional representation : a viable alternative? Public sector vol. 4., nos. 2/3, p. 14-16.
3. Adapted from
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APPENDIX

In August 1985 the Victorian Branch of the Proportional Representation Society of Australia presented a submission to the Victorian government arguing for the introduction of PR in elections for the Legislative Council. As part of its submission, the Society recalculated results for the 1985 Legislative Council election using STV, or the quota preferential method (its preferred term). Its calculations form this appendix.

PROPORTIONAL REPRESENTATION SOCIETY OF AUSTRALIA

OTA PREFERENTIAL ASSESSMENT OF LEGISLATIVE COUNCIL : FOUR 11-MEMBER REGIONS

PROVINCE	A.L.P.	LIB.	A.D.	N.P.	OTHER	TOTAL
Ballarat	49966	55702	8009			113677
Doutta Galla (3/4)	51615	29174				80789
Geelong	58009	45661	5604			109274
Melbourne West (3/4)	51172	23606	6616			81394
North Western	36168	32041		41144		109353
Western	30335	45393		34157		109885
REGION TOTALS	277265	231577	20229	75301		604372
QUOTAS (50365)	5.51	4.60	0.40	1.49		11.99
SEATS BY PR	[5]	[5]		[1]		
Central Highlands	46570	51045	5920		5763	109298
Chelsea (3/4)	41900	38379				80279
Eumemmerring (3/4)	46764	31385				78149
Gippsland	40785	31055	2649	27839	6620	108248
North Eastern	27239	23557		56159	3143	110098
South Eastern	45784	60266	7117			113167
REGION TOTALS	248342	235687	15686	83998	13526	599239
QUOTAS (49937)	4.98	4.72	0.31	1.68	0.31	11.99
SEATS BY PR	[5]	[4]		[2]		
Boronia	48531	51150	6831			106512
Chelsea (1/4)	13966	12792				26758
East Yarra	37766	63782	8490			110038
Eumemmerring (1/4)	15588	10461				26049
Higinbotham	45329	57733	7039			110101
Nunawading	50220	50554	8855			109659
Waverley	53713	45362	4200		6471	109746
REGION TOTALS	265113	291864	35415		6471	598863
QUOTAS (49906)	5.32	5.84	0.71		0.13	11.99
SEATS BY PR	[5]	[5]	[1]			
Doutta Galla (1/4)	17205	9724				26929
Jika Jika	73242	34690				107932
Melbourne	65653	31621	6560			103834
Melbourne North	71366	34135				105501
Melbourne West (1/4)	17057	7868	2205			27130
Monash	48071	51526	6033			105630
Templestowe	45433	53726	8917			108076
REGION TOTALS	338027	223290	23715			585032
QUOTAS (46753)	6.94	4.57	0.49			11.99
SEATS BY PR	[7]	[4]				
COUNCIL TOTALS	1128747*	982418*	95045*	159299*	21997*	2387506
PERCENTAGE VOTE	47.22	41.12	4.02	6.72	0.92	100
PROPORTIONAL SEATS	20.2	18.1	1.9	2.9	0.4	44
SEATS BY PR	[22]	[18]	[1]	[3]		44
SEATS ACTUALLY WON	[23]	[15]		[6]		44

Note largest quota is 1.32 above mean. smallest is 2% below mean quota.
 With multi-member Provinces 44 quotas of 50,000 elect a representative.
 Contrast with existing single member system where only half that number
 elected a representative.

ATTACHMENT 1 - A SAMPLE BUCHANAN APPLICATION BALLOT PAPER

Sample Ballot Paper District: Belconnen

<i>Residents Rally</i>	<i>Independent</i>	<i>Labor</i>	<i>Liberal</i>	<i>Democrats</i>	<i>Independent</i>	<i>The Greens</i>	<i>Family Team</i>
☐ Peter	☐ Jim	☐ Joe ☐ Wayne ☐ Ellnor	☐ Doris ☐ Robyn ☐ Tom	☐ Sue ☐ Steve		☐ Petra	☐ Bev
☐ Hector ☐ Albert ☐ Bernard ☐ Norm ☐ John ☐ Registered Ticket	☐ Registered Ticket	☐ Terry ☐ Pru ☐ Rosemary ☐ Gordon ☐ Karen ☐ Bob ☐ Bill ☐ Anna ☐ Registered Ticket	☐ Gary ☐ Bill ☐ Albert ☐ Trevor ☐ Tony ☐ Finna ☐ Sam ☐ Registered Ticket	☐ Jack ☐ Carl ☐ Registered Ticket	☐ Michael ☐ Registered Ticket	☐ John ☐ Amanda ☐ Registered Ticket	☐ Norm ☐ Frank ☐ Susan ☐ Registered Ticket

ATTACHMENT 2 - DEFINITION OF THE TOWNSHIP BOUND-
ARIES USED AS A BASIS FOR DISTRICTING



BALLOT ORDER CALCULATIONS BY PARTY

DEMOCRATIC PARTY OF ALASKA

of reg. voters allowed to vote in Democratic Primary

Democrats	54,070		
Nonparts.	84,728		
Undeclar.	69,320		
Green	482		
Republicans	58,900		
Other	5,572		
		Total	273,072

GREEN PARTY OF ALASKA

of reg. voters allowed to vote in Green Primary

Green	482		
Nonpart.	84,728		
Undeclar.	69,320		
		Total	154,530

REPUBLICAN PARTY OF ALASKA

of reg. voters allowed to vote in Republican Primary

Republican	58,900		
Nonpart.	84,728		
Undeclar.	69,320		
		Total	212,948

Total # of candidate ballots if ordered 100%	640,550



GREEN PARTY OF ALASKA

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September 9, 1991

Representative Eugene Kubina
P.O. Box 2463
Valdez, Alaska 99686

Dear Representative Kubina,

Thank you for your letters earlier this summer in regards to runoff requirements and primary elections. I am glad you have taken an interest in the election process since Title 15 is really a mess. The Green Party would like to participate in your hearings. We have to realize that Alaska is no longer a two-party state, and we need to make equitable laws that reflect that reality.

Briefly, I don't believe the Green Party is interested in supporting a 40% runoff requirement. We would more likely support a preferential voting system like the one in Australia. Voters prioritize their votes, and if the first choice doesn't get a majority, then the vote goes to the next choice, and so on. It makes the ballot counting more complicated, but it gives the voters maximum freedom to prioritize their votes, and it avoids the necessity of having another election. Additionally, a runoff situation favors larger more established parties who have most ready access to money. It would be a clear disadvantage to a smaller party like the Greens. I will bring your proposal before our convention September 21st, and see whether or not there is any support.

On the matter of the primary, I have heard that Oregon has a state-sponsored caucus and primary. I haven't looked at it, but several people have pointed me in that direction. The thing that irks me about the Republican closed primary, where Nonpartisans and Republicans are allowed a Republican ballot, is the possibility that all the other parties will follow suit. That could lead to the situation where a Nonpartisan voter could vote four separate ballots and those choosing to affiliate with a party could only vote one ballot. I like the idea of maximum freedom, but parties in the U.S. are already weak, and this would be a clear disincentive to join one. The only reason someone might want to join a party would be to influence the policies and programs of that particular party. The Greens will grapple with this issue at the convention, but there is a wide spectrum of thought from having a totally open primary for anyone who wishes to vote Green, to the Republican solution, to a completely closed primary for Greens only. My gut feeling is that the Republican solution will be most likely to be approved, but I really don't know.

The real fly in the ointment so far as Nonpartisan voters are concerned is that they ought to be able to cast one vote for anyone in any party. I personally don't think they should be able to vote four entire ballots, nor do I think they should be limited to only one party's ballot. Perhaps there should be a ballot for Nonpartisans which contains all the names from all the other parties, and they could choose one from among all. This really seems to be getting more complicated than it needs to be, but nothing is simple these days.

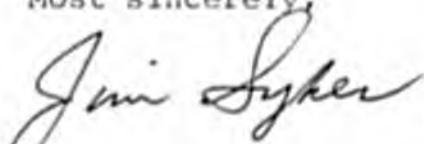
I hope you are interested in totally revamping Title 15 rather than just the two main items you addressed earlier. I personally believe that the O'Callaghan lawsuit is to the point--the election of Walter Hickel and Jack Coghill was illegal. The petition process which I won in court still hasn't been addressed by legislation. I am prepared to give input on that matter also, since it goes to the heart of what is a fair election process.

The whole question of representation is being begged by the gerrymandering created by the current administration. A constitutional convention may be in order to consider such things as a unicameral legislature with many more representatives or perhaps a Senate that is represented by regions like the U.S. Senate. There were rumors that such a plan would not pass muster with the Federal Government, but I think it has merit, and is definitely defensible.

I will try to come up with a list of specific items that need to be addressed in Title 15 if you are interested. It will be a long list, but some well-thought changes are needed. It was quite evident in my court case last year that no one in the legislature stood up to say, "We are Republicans and Democrats, but we must work to insure fairness to all Alaskans and political parties." There was plenty of evidence to the contrary and the judge saw it. I hope the next legislature can deal responsibly with some real substantive issues.

The Green party will give these matters serious thought. The Green Party, and myself personally, look forward to being of assistance in terms of background and/or testimony as these matters get attention.

Most sincerely,

A handwritten signature in cursive script that reads "Jim Sykes".

Jim Sykes, Spokesperson

COVER. TAB

TO: Annie
House State Affairs
RE: HB327 FAX 465-2277



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January 24, 1992

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Rep. Gene Kubina, and
House State Affairs Committee
Juneau, AK 99811-1182

Dear Chairman Kubina,

The Green Party of Alaska has been following two bills heard by your committee on Friday, HB327 and HJR45. After hearing the meeting I felt some comments and observations might be helpful.

First, regarding HB327, it seems the committee is struggling with a lot of mechanical details, including the structure of the gubernatorial election. It seems that the objectives of the primary election need to be clarified--why we are having it, who participates, and how they participate.

In preparation for Sykes v. State of Alaska in 1990, I learned that the constitutional right of all citizens to freely associate with the candidate of their choice is a highly held principle. It seemed like the committee was searching for a litigation-free quick fix. This particular issue is one that needs thorough thinking, understanding and consent of the citizens. If the legislature comes up with a sound concept for elections, I think the effect of the recent supreme court case, (Tashian?) may be overestimated.

Someone specifically mentioned a ballot for the nonpartisan voters. The Green Party rule at present specifically provides that Green candidates can appear on such a nonpartisan ballot if it becomes a reality.

Wednesday, I heard for the first time that the committee was taking a look at the "Louisiana system". It doesn't sound like it has much to offer over our present system. Louisiana is basically a two-party state, we are a four-party state and must make provisions to ensure equal opportunity for all existing and future parties.

It occurred to me that one way of holding an election without the primary would be to use the Australian ballot system. Voters would prioritize their vote, by number, and if no one achieved a majority, the lowest vote getter would be eliminated, and the second choice on those ballots would be recounted and added to the election results. This would happen until the 40 or 50% threshold were reached.

Such a system would do two things, it would give the voters maximum choice and freedom to associate with the candidate of their choice, and it would also allow the voters to have some say in who was elected even if it were their second or third choice.

It seems the two most moneyed parties (R & D) are still the most likely to end up in a runoff using the "Louisiana system". The legislature is charge with protecting all our rights, not just those of Republicans and Democrats. The Green Party would certainly like to be kept abreast of any future considerations, since our input might help resolve the problem.

Since there are many conceptual and structural problems with Title XV, you might also wish to consider a 120 day campaign limit so that people don't start their campaigns as soon as the previous election is over.

I know that the Division of Elections wants to keep everything simple, however a bandaid won't do when there is needed major surgery. The required change in computer format and voter education would certainly be cheaper than runoff elections. Over the long term it would be a great deal less expensive.

In reference to HB327 CS dated 1/23/92 I see a few problems.

1) On page 1 line 11, I think blocking write-ins is probably unconstitutional. The same with page 2 line 3.

2) Page 3 line 17, the notation of official endorsement by a political party may be giving unequal treatment to candidates who run by petition, since they theoretically have no party affiliation, but may have endorsements that may be better than that of a political party.

3) Page 4 line 5, appears to be in conflict with statements on page one and page 2 prohibiting write-ins.

5) Page 5 section (g). This section gives unequal treatment to other candidate provisions. This section would allow a candidate to choose a running mate without going through the primary or petition process, essentially avoiding the scrutiny of the voting public. It is vastly discriminatory to the petition candidate who must fill and file the petition with a Lieutenant Governor's name. This is still different than the candidates who win the primary, where two people are brought together after winning a party primary. This is also discriminatory against the petition candidates, since the petition candidates must be a team before they can even get petitions signed, before they campaign. While the court did not consider this aspect in Sykes v. State, it was raised in argument, and would be very ripe for litigation. The legal concept is that a petition is a selection process equal to that of the primary.

6) Page 5 line 26, seems to tell who the state will recognize. "any two members of the (central) committee" may or may not mean an adequate representation of party officials has been consulted. Remember the Republicans in 1990?

The above mentioned legal opinions are those of a lay person who has only been to court once, but has done some legal research. They may be more accurately only a lay person's observations.

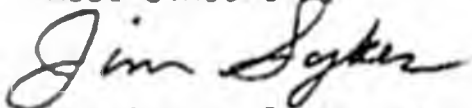
I understand the packet of rather detailed information regarding the Australian ballot which was sent isn't available to the committee. We will try to put together another one soon and get it to you for your perusal and consideration. The Australian ballot system may have more to offer than previously contemplated.

Regarding HJR 45, the idea is good to get the reapportionment process out of the hands of the governor. The bill's stated goal is to depoliticize the process, however it is readily apparent that it simply allows the legislature to politicize it instead of the governor.

I cite specifically the paragraph on page three outlining the makeup of the reapportionment board. If the goal is truly to depoliticize the process, why not have a representative from each party and five nonpartisans? Since the majority of voters are not registered to any party, why have not nine people who have records of not affiliating with any party?

You have some serious work ahead of you. The Green Party will be happy to answer any questions and work with the legislature, Division of Elections and other political parties to find a workable election system and reapportionment structure that assures everyone's rights. Please send a copy of this letter to all committee members. Thank you.

Most sincerely,



Jim Sykes, Spokesperson
Green Party of Alaska

cc: Elizabeth Ziegler, Division of Elections
Joni Whitmore, Green Party of Alaska Chair



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GREEN PARTY OF ALASKA VIEWS ON PRIMARY RULES and HB327

The U.S. Supreme Court has declared that states cannot infringe upon the right of a state political party to decide how they will select their own candidates. The current crazy quilt of rules being proposed by political parties in Alaska affects the rights of all voters, most notably the Nonpartisan majority. It also causes confusion. The Division of Elections must explain the implications of all the different rules to poll watchers and voters. That won't be easy.

We must protect the rights of the majority not affiliated with a party. Presently the Republicans, Democrats and Greens have invited Nonpartisans to participate in their primaries in one form or another. It is a fact that people often vote for a candidate in the general if they voted a winner in the primary. In the case of the Republican rules Nonpartisans could theoretically participate in several primaries and even vote for two different people running for the same office from different parties. This creates unequal voting power--contrary to the concept of one person one vote.

The Democrats have opened their primary to anyone, so long as they don't participate in any other primary or candidate selection convention. A Nonpartisan candidate who might choose the Democrat ballot would be limited to only the Democratic slate of candidates, denying the Nonpartisan voter the freedom to freely associate with the candidate of their choice. Additionally onerous, assuming a party were to hold a nominating convention instead of a primary, other parties could be asked to turn over their records of those attending the nominating convention so the Democrats could bar them from the Democratic primary. This is either unenforceable, an invasion of privacy, or both.

We must ask what is the purpose of the primary. If it is for a party to choose its candidates, then what is the proper role for the participation of Nonpartisans? If all parties want Nonpartisan participation, then a Nonpartisan ballot could be made which would list all the candidates from all the parties. The Nonpartisan voter could then choose only one candidate from each office. The parties could bar registered members of other parties if they wished. Registered Party voters would get only a slate of candidates from the party to which they were registered.

That begs the question of the role of political parties. They are already weak. Greater voting power would still be given to the Nonpartisan voters. There would be little incentive for anyone to associate with a political party unless they wanted to strongly influence that particular party. Let us not forget the candidate who seeks office through the petition process. Why shouldn't anyone be able to go on the ballot and continue to the general election if they garner 1% of the vote?

The Green Party of Alaska sees what is presently evolving as confusing and essentially unworkable. If there is too much voter confusion, people will simply choose not to participate.

The 150 day notice of primary rules proposed by HB327 is not unreasonable, but anything longer would be unreasonable. If parties and Nonpartisans could agree on a single structure that everyone understands, that would be desirable. It may not be achievable.

The Green Party of Alaska is looking into the possibility of taking one or both of the larger political parties to court, and possibly the state as well. There has to be a way to satisfy the freedom of Nonpartisan voters to freely associate with the candidate of their choice and give some flexibility to the parties to make their own rules. The existing party rules affect all voters, but especially the Nonpartisan majority. Greens don't believe that parties have the right to make rules that disenfranchise voters.

There is always the option to returning to the pre-1968 law which allowed only party-registered voters to vote in the primary election. It seems most reasonable to retain a fully open primary for Nonpartisans and let each party decide whether or not they would bar registered voters from another party.



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GREEN PARTY OF ALASKA PRIMARY RULES

Approved at the Green Party of Alaska Convention
Homer, Alaska September 22, 1991

The Green Party of Alaska believes in maximum voter freedom and equality for all voters. We adopt the following rules after debating the concepts of primaries and how people participate in them. We also recognize that the action of the Republican Party of Alaska has created a situation of unequal voting. We also recognize that the Democratic Party of Alaska has restricted voter freedom and written rules which are either unenforceable or may cause an invasion of privacy. The Green Party of Alaska is trying to restore, as much as possible, the freedom and equality that has been upset by the rules recently made by other political parties.

The Green Party of Alaska primary election shall be open to registered Green and Nonpartisan voters of Alaska. It is closed to registered Democrats, Republicans, and Alaska Independence Party members.

Green Party candidates will appear on the Green Party of Alaska ballot. Green Party candidates can also be listed on a Nonpartisan ballot, which would list all candidates from all parties, but voters could only choose one candidate for each office on the Nonpartisan ballot.

The Green Party of Alaska reserves the right to change its rules for the primary election at least 90 days preceding the primary election, which is the current state law.



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We must protect the rights of the majority not affiliated with a party. Presently the Republicans, Democrats and Greens have invited Nonpartisans to participate in their primaries in one form or another. It is a fact that people often vote for a candidate in the general if they voted a winner in the primary. In the case of the Republican rules Nonpartisans could theoretically participate in several primaries and even vote for two different people running for the same office from different parties. This creates unequal voting power--contrary to the concept of one person one vote.

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That begs the question of the role of political parties. They are already weak. Greater voting power would still be given to the Nonpartisan voters. There would be little incentive for anyone to associate with a political party unless they wanted to strongly influence that particular party. Let us not forget the candidate who seeks office through the petition process. Why shouldn't anyone be able to go on the ballot and continue to the general election if they garner 1% of the vote?

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There is always the option to returning to the pre-1968 law which allowed only party-registered voters to vote in the primary election. It seems most reasonable to retain a fully open primary for Nonpartisans and let each party decide whether or not they would bar registered voters from another party.

FR: JIM SYKES, SPOKESPERSON, GREEN PARTY OF AK
RE: REVIEW OF PRIMARY PROBLEM & POSSIBLE SOLUTION

THE PRIMARY DISASTER
by Jim Sykes

Most Alaskans could lose their primary election voting rights if the emerging crazy quilt of election rules is allowed to stand. In 1990, candidates from all parties appeared on the same primary ballot. All Alaska voters were free to choose any ONE candidate, from ANY party, for any ONE office. In 1992 voters could be forced to choose only one party's ballot, listing only that party's candidates.

A recent U.S. Supreme Court case (Tashjian) said that political parties have the right to choose how their own candidates are selected. Alaska Republicans decided to limit access to their ballot to Republicans and nonpartisans. They allowed themselves and nonpartisans to vote in other parties' primaries unless the other parties prevented it with their own rules. In theory, it became possible to vote in different parties' primaries for different candidates seeking the same office. The scheme allowed nonpartisan and Republican voters greater power than anyone registered to another party. The concept of equality and one person/one vote were trashed.

In response, Democrats and Greens passed rules to prevent the possibility of voting in multiple primaries. Alaska Independence Party has yet to decide. Democrats allow any voter from any party so long as the voter doesn't vote in another primary or participate in another party's nominating convention, (which is unenforcable). Greens decided nonpartisans and Greens could access their ballot, and took the additional step of allowing their candidates to appear on a nonpartisan ballot with candidates from other parties, (such a ballot does not yet exist but is being discussed by the legislature). As a result, voters can get just ONE party's ballot containing candidates from that party.

The morass of rules determining who can get which ballot is extremely confusing. Election workers, legislators and voters have difficulty figuring it out. Confusion will lead to less voter participation in primaries and allow those in power to more easily manipulate people. Parties will have more difficulty attracting new members.

Since 55% of all registered Alaskan voters are NOT registered to a party, parties have extended to nonpartisans the right to participate in the primary. One could easily argue in court that the freedom of nonpartisan voters has been infringed since they could not freely associate with the candidate of their choice. The single party ballot eliminates the opportunity to vote for a candidate in another party.

That brings us to the question, what is the purpose of the primary and who has the right to participate? Is the right of a political party more important than the right of the citizens to freely associate with the candidate of their choice? If parties choose candidates by convention or single-party primary do all voters have equal freedom?

We could skip the primary and go to a General election with the Australian ballot system. Voters number their preference for all candidates for each office. If no candidate gets the threshold of 40 or 50% of the vote, then the candidate with the least amount of votes is dropped and the votes are awarded to the second choice marked on those ballots. If the threshold is still not achieved, then the next lowest candidate is dropped and the votes are redistributed. Voters determine the order of their preference and have some say in the election even if the elected candidate is a second or third choice. In addition to giving voters the full range of candidates the need for an expensive runoff election is eliminated. Runoffs generally benefit the most well-moneyed parties. The House State Affairs Committee has expressed interest in the concept.

The Greens will most likely revisit their primary rule during their March convention, and possibly consider taking the matter to court. One of the Green Party's key values, Grassroots Democracy is now in Jeopardy in Alaska. The people of Alaska must now decide what to do about the primary whether they are registered to a party or not. Citizens must continue to have the right to choose who they want in their government.



Jim Sykes,

Spokesperson for the Green Party of Alaska
Candidate for Governor in 1990
Independent documentary radio producer

DEMOCRATIC PARTY OF ALASKA

RESOLUTION 91-02

PRIMARY ELECTION PROCEDURE

WHEREAS the Republican Party of Alaska has voted to close their electoral primary; and

WHEREAS the closed primary enacted by the Republican Party of Alaska severely limits voter choice and makes it possible for a voter to cast more than one ballot for the same office in the same election, violating the fair and reasonable election practice of one person, one vote; and

WHEREAS the Alaska Democratic Party believes that Alaskan voters strongly desire to have the maximum number of choices when they exercise their voting rights; and

WHEREAS the actions by the Republican Party of Alaska forces the Alaska Democratic Party to change our election rules; and

WHEREAS the Alaska Democratic Party advocates maximum voter participation; and

WHEREAS the Alaska Democratic Party strongly opposes any election process that allows voters to vote more than one time in any one election

NOW THEREFORE BE IT RESOLVED THAT the Alaska Democratic Party Plan of Organization, Article X, General Rules and Procedures be amended by adding Section 17 as follows:

17.1 There is established a Democratic Party primary in Alaska.

17.2 Any qualified voter in the State of Alaska may vote in the Democratic Party primary regardless of party registration.

.3 No voter who votes in any other primary or participates in selection of a candidate in another party's convention may cast a ballot in the Democratic Party primary.

.4 The various rules of the Alaska Democratic Party, including those relating to primary elections are severable. Any invalidity or un-enforceability of any rule or part thereof shall not affect the remainder of the rule or rules in any way.

BE IT FURTHER RESOLVED THAT the Alaska Democratic Party condemns the Republican Party of Alaska for limiting voter choice and creating confusion among the electorate and urges Alaskans to speak out on the Republican closed primary.

Unanimously adopted
in open meeting of the
STATE CENTRAL COMMITTEE
DEMOCRATIC PARTY OF ALASKA
held in Fairbanks, Alaska
September 7, 1991.

BREAK-DOWN OF TOTAL ALASKAN REGISTERED VOTERS

The following is the present break-down of registered voters in the State of Alaska.

<u>REGISTRATION</u>	<u>NUMBER OF VOTERS</u>	<u>PERCENTAGE OF VOTERS</u>
Republican Party	57,048	21%
Democratic Party	53,699	20%
Alaska Independence Party	2,066	1%
No Party Preference	85,627	31%
Undecided	68,804	25%
Other Party Affiliation	5,719	2%
<u>TOTAL</u>	<u>273,162</u>	<u>100%</u>

Those persons registered as Republican Party, No Party Preference and Undecided, are eligible to vote in the Republican primary. Those persons registered as Democratic Party, Alaska Independence Party, and Other Party Affiliation would not be eligible to vote in the Republican primary.

Any voter, however, may change his or her party registration at the polling place on election day and become eligible to vote in the Republican primary.

Exhibit C
Page 1

REGION 2 REGION 1

1574

UNDER OTHER PARTIES

DIRECT

MAY 24 1952

1	1,112	2,328	1,417	102	3,829	5,811	782
2	6,980	1,666	749	69	2,167	1,316	155
3	3,553	2,152	965	43	1,789	1,406	102
4	13,124	3,407	2,410	101	3,476	3,165	311
5	10,726	2,517	1,246	87	3,305	3,053	316
6	3,334	1,128	1,018	46	1,997	1,443	129
TOTAL REGION 1 1120 PRECINCTS	38,244	12,238	10,809	348	20,659	17,836	1,391

DISTRICT

7	2,381	2,382	2,380	35	2,357	2,409	122
8	19,536	2,462	6,242	91	3,060	3,421	136
9	14,561	2,505	3,248	110	3,818	3,326	133
10	16,409	2,591	3,670	113	4,193	3,790	248
11	1,526	1,751	1,542	126	2,432	2,503	102
12	10,256	2,597	1,981	96	3,111	2,514	179
13	11,961	2,272	2,659	100	2,719	3,423	260
14	12,609	2,303	1,381	66	3,376	3,148	203
15	10,162	2,892	4,784	106	4,703	5,191	288
16	10,644	3,106	4,376	160	6,716	5,266	318
TOTAL REGION 1E	132,837	23,225	32,835	1,329	40,562	32,895	2,336

REGION 3 REGION 111

DISTRICT

17	1,557	1,114	1,331	52	2,378	1,919	112
18	10,965	1,557	2,873	100	2,490	2,744	221
19	9,449	1,529	1,331	89	1,119	2,912	216
20	12,557	2,310	2,432	93	1,881	3,372	329
21	7,746	3,423	1,524	83	2,573	1,884	202
24	5,886	1,457	677	92	1,714	954	134
27	11,518	1,310	1,294	66	2,011	3,839	117
TOTAL REGION 115 (144 PRECINCTS)	59,182	11,800	17,824	550	18,034	14,128	1,429

REGION 4 REGION IV

DISTRICT

22	3,310	3,499	349	61	1,338	1,712	93
23	0,971	1,731	669	39	1,463	978	117
25	5,223	3,226	319	39	1,316	836	63
26	7,160	3,428	1,814	79	8,078	2,618	163
TOTAL REGION IV (19 PRECINCTS)	22,400	6,824	2,781	224	6,365	3,945	436
STATE TOTAL (137 PRECINCTS)	273,163	55,699	57,848	3,260	65,627	68,806	9,719

• ANCHORAGE TOTAL = Distance 7-15, less Nikiski #1 (11.068)

121.079

Less Nikiski 02 (670)

(1.718)

11750

119.379°

Exhibit C

Page 2

GREEN PARTY OF ALASKA 92-17

ELECTION OPTIONS RESOLUTION

WHEREAS Alaska's structure for elections is uncertain at this time, and

WHEREAS the Green Party needs to get preclearance from the Federal Government,

THEREFORE BE IT RESOLVED that the Green Party of Alaska will participate in the open blanket primary as it has been run for the last 20 years, allowing any voter to choose to vote for any candidate in the primary election, and

BE IT STILL FURTHER RESOLVED that if there is a non-partisan ballot that Green Party candidates shall be allowed to appear on such a ballot, and if there is a Republican-only ballot and a ballot of everyone but Republicans, the Green Party shall allow its candidates to be listed on the Non-Republican Ballot Only, and

BE IT STILL FURTHER RESOLVED that if parties are limited to listing their candidates on their own ballot that the Green Party of Alaska allow any Alaska voter access to the Green Party Ballot, so long as that voter does not vote the ballot of another political party, and

BE IT STILL FURTHER RESOLVED that the Green Party of Alaska Statewide council shall have the power to adjust proposals to meet the needs of the 1992 election according to the above-listed priorities.

Approved by Consensus
Green Party of Alaska Convention
Fairbanks, Alaska
~~April~~ 22, 1992
MARL

7.221

The duties of a State Party Standing Committee shall be fixed by the State Committee and all Standing Committee Chairs shall work at the direction of the State Chair.

7.22

A Chair may appoint pro tem. or the membership of any Alaskan Independence Party organization may elect a moderator to chair a meeting.

Article VIII. SEVERABILITY

The various rules of the Alaskan Independence Party, including those relating to the primary elections, are severable. Any invalidity or unenforceability of any rule or part thereof shall not effect the remainder of these Bylaws in any way.

8.01

Between conventions of the Alaskan Independence Party, the State Committee may adopt temporary rules or clarifications that are necessary to insure that the bylaws and actions of the Alaskan Independence Party are consistent with state and federal law.

Article IX. PRIMARY ELECTIONS

The Alaskan Independence Party (AIP), believing in the principle of voting for the individual, do establish an open primary election which lists all parties' candidates for office, consistent with applicable law.

9.01

Any registered voter who has not voted another primary ballot may vote in the Alaskan Independence Party primary.

9.02

The fact that a voter has voted in the Alaskan Independence Party Primary Election shall not disqualify that voter from voting in the primary election of any other political party or parties, where that voter's participation in the primary election of the Alaskan Independence Party is authorized or permitted by the rules of the other party, or by the statutes of the United States or the State of Alaska.

Article X. MISCELLANEOUS

7.26

Terms implying or denoting gender in these bylaws or in any other official correspondence of the Alaskan Independence Party, such as Chair, Vice Chair, his, him, himself, and he, are used solely for brevity and ease of reference and are not to be construed as referring to any particular gender, masculine or feminine.

DEMOCRATIC PARTY OF ALASKA

RESOLUTION 91-02

PRIMARY ELECTION PROCEDURE

WHEREAS the Republican Party of Alaska has voted to close their electoral primary; and

WHEREAS the closed primary enacted by the Republican Party of Alaska severely limits voter choice and makes it possible for a voter to cast more than one ballot for the same office in the same election, violating the fair and reasonable election practice of one person, one vote; and

WHEREAS the Alaska Democratic Party believes that Alaskan voters strongly desire to have the maximum number of choices when they exercise their voting rights; and

WHEREAS the actions by the Republican Party of Alaska forces the Alaska Democratic Party to change our election rules; and

WHEREAS the Alaska Democratic Party advocates maximum voter participation; and

WHEREAS the Alaska Democratic Party strongly opposes any election process that allows voters to vote more than one time in any one election

NOW THEREFORE BE IT RESOLVED THAT the Alaska Democratic Party Plan of Organization, Article X, General Rules and Procedures be amended by adding Section 17 as follows:

17.1 There is established a Democratic Party primary in Alaska.

.2 Any qualified voter in the State of Alaska may vote in the Democratic Party primary regardless of party registration.

.3 No voter who votes in any other primary or participates in selection of a candidate in another party's convention may cast a ballot in the Democratic Party primary.

.4 The various rules of the Alaska Democratic Party, including those relating to primary elections are severable. Any invalidity or un-enforceability of any rule or part thereof shall not affect the remainder of the rule or rules in any way.

BE IT FURTHER RESOLVED THAT the Alaska Democratic Party condemns the Republican Party of Alaska for limiting voter choice and creating confusion among the electorate and urges Alaskans to speak out on the Republican closed primary.

Unanimously adopted
in open meeting of the
STATE CENTRAL COMMITTEE
DEMOCRATIC PARTY OF ALASKA
held in Fairbanks, Alaska
September 7, 1991.

ARTICLE XIV - PRIMARY ELECTIONS

Section 1. Eligible Voters

Only registered Republicans, registered Independents, and those who state no preference of party affiliation shall be allowed to vote in the Republican primary election for Governor, Lieutenant Governor, U.S. Senator, U.S. Representative, and members of the State Legislature.

Section 2. Republican Designation

No person may use the word "Republican" on any ballot or in any campaign as part of a description of himself as a candidate unless that person is a candidate of the RPA, selected according to the Rules of the RPA.

Section 3. Maximize Voter Participation in Primary Elections

(a) Any voter qualified to vote in the Republican Party primary may vote in that election, regardless of whether or not that voter has voted in the primary election of any other party.

(b) The fact that a voter has voted in the Republican Party primary election shall not disqualify that voter from voting in the primary election of any other political party or parties, where that voter's participation in the primary election of other parties is authorized or permitted by the rules of the other party or parties, or the statutes of the United States or the State of Alaska.

Section 4. Implementation of Primary Election

The SCC, or the EC in the event that there is insufficient time to convene the SCC, may adopt any and all additional rules, regulations, interpretations, clarifications, and the like, which are necessary or desirable to implement the Republican primary election in accord with other rules adopted at this Special Convention (held March 2, 1991), and pursuant to Article XIV of the Rules of the RPA. Any action taken by the Central or Executive Committee under the provisions of this rule shall have the same force and effect as if adopted by this Convention.

Section 5. Prior Registration Requirement

In order to be a candidate in any Republican Party primary election, a person must have been a registered voter of the Republican Party of Alaska for a continuous period of six (6) months immediately prior to the filing deadline for the primary election.

Grassroots Democracy
Ecological Wisdom
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Global Responsibility
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GREEN PARTY OF ALASKA

P. O. Box 82653 Fairbanks, AK 99708 (907) 452 6476

April 13, 1992

Mr. J. Gerald Hebert, Acting Chief
Voting Section, Civil Rights Division
Department of Justice
320 First Avenue N.W., Room 720
Washington, D.C. 20534

Re: Submission under Section 5 of the Voting Rights Act
Green Party of Alaska
Modification of primary election procedures

Dear Mr. Hebert:

The Green Party of Alaska (hereinafter the GPA), by resolution adopted by consensus on March 22, 1992 at its statewide convention, has modified its previously adopted rules on primary elections. Those modifications became effective at the close of the convention, which was adjourned on March 22, 1992. The party has the right to change its primary election rules pursuant to its constitutional right of political association, as recognized by the Supreme Court of the United States in Tashjian v. Republican Party of Connecticut, 479 U.S. 208, 107 S.Ct. 544, 93 L.Ed.2d 514 (1986).

In the last primary election held in the State of Alaska, there was a "blanket open" primary. There was only one ballot, and all candidates were listed on that ballot regardless of party. Any registered voter could participate in the primary and could vote for any candidate of any party.

Our last submission to the Department of Justice respecting the GPA primary process was dated February 7, 1992. No primary elections have taken place under the procedures identified in that submission. Those procedures have been replaced with the procedures identified in this submission.

The resolution adopted at the GPA statewide convention on March 22, 1992 sets forth a prioritized list of rules for GPA primary elections, depending on the actions taken by other parties and by the State of Alaska. The GPA State Council (the GPA's governing body between conventions) is authorized by the resolution to implement the resolution according to the priorities set out.



The first preference is for the blanket open primary, as it has been run in Alaska for many years. If all other parties agree to participate in such a primary, and the State continues to hold such a primary, the GPA will continue to participate in it, and will not participate in any other primary ballot.

The second preference contains two alternatives. If there is a primary ballot which is created to allow non-partisan voters to participate in the primary election, then GPA candidates will be allowed to appear on that ballot. By "non-partisan voters" we mean voters who are not registered as Democrats, Republicans, Alaska Independents or Greens. The second alternative is that if there is a ballot for Republican candidates, and a ballot for all candidates other than Republicans, the GPA candidates shall be allowed to appear on the ballot for all candidates but Republicans.

The third preference is that there be a ballot for the GPA only. If this preference is resorted to, the GPA ballot shall be available to all registered voters, regardless of party affiliation, who do not vote the separate primary ballot of any other political party.

Pursuant to 28 C.F.R. § 51.27, the GPA submits the following information:

- (a) A copy of the resolution modifying the GPA primary election procedures, adopted at the Statewide Convention on March 22, 1992, is attached hereto as Exhibit A.
- (b) A copy of A.S. §§ 15.25.010 and .060, which provided for the previous blanket open primary, is attached hereto as Exhibit B.
- (c) The difference between the submitted procedures and the prior procedures is set out in the preceding paragraphs above.
- (d) This submission is being made by Ronnie Rosenberg, Chair of the Green Party of Alaska, P.O. Box 82653, Fairbanks Alaska 99708. Communications regarding this submission should be addressed to me.
- (e) The GPA is located in the Municipality of Fairbanks, State of Alaska, at the address set out in paragraph (d).
- (f) This primary rule was adopted by resolution by the GPA at their Statewide Convention held March 20-22, 1992 in Fairbanks, Alaska. The rule was adopted by consensus of the participating registered GPA voters. The GPA has the authority to adopt these procedures pursuant to Tashjian

v. Republican Party of Connecticut. 479 U.S. 208, 107 S.Ct. 544, 93 L.Ed.2d 514 (1986).

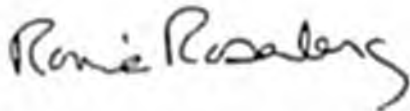
Decisions regarding party business between conventions are made by the GPA State Council, and it is authorized to implement the resolution.

- (g) The GPA has the authority to adopt this rule pursuant to its constitutional rights of political association, as recognized by the Supreme Court of the United States in Tashjian v. Republican Party of Connecticut.
- (h) The resolution adopting these new primary election procedures became effective at the close of the GPA Statewide Convention on March 22, 1992, and the procedures adopted will govern the GPA's participation in the primary election to be held in August, 1992.
- (i) This new rule has not yet been enforced or administered, except that the GPA is coordinating with the State of Alaska in order to ensure that any administrative detail may be worked out prior to the primary election in August of 1992.
- (j) The primary procedures adopted by the GPA will affect the entire State of Alaska. It applies only to state and national offices. Local elections in Alaska are non-partisan, and do not require primary elections.

Thank you for your consideration of this submission. The GPA cannot conceive that the Attorney General would object to the procedures adopted by the GPA, because they simply reflect the GPA's exercise of the constitutional right of political association.

A copy of this submission has been sent to the State of Alaska, Division of Elections, so that it is aware of the contents and of the need to conduct the GPA primary election under the new procedures.

Yours truly,



Ronnie Rosenberg, Chair
Green Party of Alaska

cc: State of Alaska, Division of Elections
GPA Officers and Bioregional Delegates

GREEN PARTY OF ALASKA 92-17

ELECTION OPTIONS RESOLUTION

WHEREAS Alaska's structure for elections is uncertain at this time, and

WHEREAS the Green Party needs to get preclearance from the Federal Government,

THEREFORE BE IT RESOLVED that the Green Party of Alaska will participate in the open blanket primary as it has been run for the last 20 years, allowing any voter to choose to vote for any candidate in the primary election, and

BE IT STILL FURTHER RESOLVED that if there is a non-partisan ballot that Green Party candidates shall be allowed to appear on such a ballot, and if there is a Republican-only ballot and a ballot of everyone but Republicans, the Green Party shall allow its candidates to be listed on the Non-Republican Ballot Only, and

BE IT STILL FURTHER RESOLVED that if parties are limited to listing their candidates on their own ballot that the Green Party of Alaska allow any Alaska voter access to the Green Party Ballot, so long as that voter does not vote the ballot of another political party, and

BE IT STILL FURTHER RESOLVED that the Green Party of Alaska Statewide council shall have the power to adjust proposals to meet the needs of the 1992 election according to the above-listed priorities.

Approved by Consensus
Green Party of Alaska Convention
Fairbanks, Alaska
~~April~~ 22, 1992
MAV,

Right to seek nomination or to become candidate for more than one office in the same election. 94 ALR2d 557.

Sec. 15.25.010. Provision for primary election. Candidates for the elective state executive and state and national legislative offices shall be nominated in a primary election by direct vote of the people in the manner prescribed by this chapter. (Sec. 5.01 ch 83 SLA 1960; am sec. 1 ch 1 SLA 1967; am sec. 1 ch 20 SLA 1980)

Effect of amendments. The 1980 amendment substituted 'AS 15.25.010 - 15.25.200' for 'this chapter' at the end of the section

Sec. 15.25.020. Date of primary. The primary election is held on the fourth Tuesday in August of every even-numbered year. (Sec. 5.02 ch 83 SLA 1960; am sec. 1 ch 26 SLA 1966; am sec. 2 ch 1 SLA 1967)

Sec. 15.25.030. Declaration of candidacy. (a) A member of a political party who seeks to become a candidate of the party in the primary election shall execute and file a declaration of candidacy. The declaration shall be executed under oath before an officer authorized to take acknowledgments and shall state in substance:

- (1) the full name of the candidate;
- (2) the full mailing address of the candidate;
- (3) if the candidacy is for the office of state senator or state representative, the election or senate district of which the candidate is a resident;
- (4) the office for which the candidate seeks nomination;
- (5) the name of the political party of which the person is a candidate for nomination;
- (6) the full residence address of the candidate, and the date on which residency at that address began;
- (7) the date of the primary election at which the candidate seeks nomination;
- (8) the length of residency in the state and in the district of the candidate;
- (9) that the candidate will meet the specific citizenship requirements of the office for which the person is a candidate;
- (10) that the candidate is a qualified voter as required by law;
- (11) that the candidate will meet the specific age requirements of the office for which the person is a candidate;
- (12) that the candidate requests that the candidate's name be placed on the primary election ballot;
- (13) that the required fee accompanies the declaration;
- (14) that the person is not a candidate for any other office to be voted on at the primary or general election and that the person is not a candidate for this office under any other declaration of candidacy or nominating petition;
- (15) the manner in which the candidate wishes the candidate's name to appear on the ballot; and
- (16) that the candidate is registered to vote as a member of the political party whose nomination is being sought.

(b) A person filing a declaration of candidacy under this section shall simultaneously file with the director a statement of income sources and business

be declared nominated. The vacancy may be filled by party petition as provided in AS 15.25.110 - 15.25.130. (Sec. 24 ch 136 SLA 1966; am secs. 26, 27 ch 69 SLA 1970; am secs. 130, 131 ch 100 SLA 1980; am secs. 18, 19 ch 67 SLA 1989)

Effect of amendments. The 1989 amendment, effective August 28, 1989, substituted 'more than 50 days' for '45 days' in the first sentence in subsection (a), and substituted '48 days' for '40 days' in the last sentence in subsection (a) and in the first sentence in subsection (c).

Legislative history reports. For report on ch 69, SLA 1970 (HB 564), see 1970 House Journal Supplement No. 2, p. 7.

Collateral references. Name or form of name to be used in designating candidate on primary or election ballot. 93 ALR 911.

Sec. 15.25.060. Preparation and distribution of ballots. The primary election ballot shall be prepared and distributed by the director in the manner prescribed for general election ballots except as specifically provided otherwise for the primary election. The director shall place the names of all candidates who have properly filed in groups according to offices filed for, without regard to party affiliation. The names for each office shall be rotated as provided for the general election ballot. No blank spaces shall be provided on the ballot for the writing or pasting in of names. (Sec. 5.06 ch 83 SLA 1960; am sec. 4 ch 1 SLA 1967; am sec. 132 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted 'director' for 'lieutenant governor' where it appears near the middle of the first sentence and at the beginning of the second sentence.

Sec. 15.25.070. Special provisions on counting ballots. A voter may not vote for a person whose name is not on the ballot. Votes cast for a person whose name is not on the ballot may not be counted, but writing in a candidate's name does not invalidate the entire ballot. (Sec. 5.07 ch 83 SLA 1960; am sec. 5 ch 1 SLA 1967)

Sec. 15.25.080. Declaration of party preference. [Repealed, sec. 231 ch 100 SLA 1980.]

Editor's notes. The repealed section derived from sec. 5.08, ch 83, SLA 1960; sec. 6, ch 1, SLA 1967.

Sec. 15.25.090. General procedure for conduct of primary election. Unless specifically provided otherwise, all provisions regarding the conduct of the general election shall govern the conduct of the primary election, including, but not limited to, provisions concerning voter qualification; provisions regarding the duties, powers, rights, and obligations of the director, of other election officials, and of cities and organized boroughs; provision for notification of the election; provisions regarding payment of election expenses; provisions regarding employees being allowed time from work to vote; provisions for the counting, review, and certification of returns; provisions for the determination of tie votes and of recount, contests and appeal; and provisions for absentee voting. (Sec. 5.09 ch 83 SLA 1960; am sec. 7 ch 1 SLA 1967; am sec. 133 ch 100 SLA 1980)

(479 US 208)

JULIA H. TASHJIAN, Secretary of State of Connecticut, Appellant

v

REPUBLICAN PARTY OF CONNECTICUT et al.

479 US 208, 93 L Ed 2d 514, 107 S Ct 544

[No. 85-766]

Argued October 8, 1986. Decided December 10, 1986.

Decision: Connecticut prohibition of political party's choice to permit independents to vote in certain party primary elections held to violate freedom of association under First and Fourteenth Amendments.

SUMMARY

A Connecticut statute allowed only party members to vote in a primary election for a nomination to public office by a major political party. In 1983, one of the state's two major political parties adopted a rule (1) attempting to permit independents—registered voters not affiliated with any political party—to vote in the party's primaries for federal and statewide public offices, while (2) remaining silent as to the party's primaries for nominations for the state legislature. Then, challenging the state statute, the party, its federal officeholders, and its state chairperson filed suit in the United States District Court for the District of Connecticut against the Secretary of the State of Connecticut, who was charged with the administration of the state's election statutes. The District Court granted summary judgment in favor of the party and its members, expressing the view that the statute (1) imposed a substantial burden on their right of association under the First and Fourteenth Amendments to the United States Constitution, and (2) was not supported by any compelling state interests (599 F Supp 1228). On appeal, the United States Court of Appeals for the Second Circuit affirmed, expressing the view that (1) the qualifications clauses of Art I, § 2, cl 1, and the Seventeenth Amendment to the United States Constitution, requiring that voters in elections for the United States House of Representatives and Senate have the same qualifications as voters in elections for the most numerous branch of the state legislature, did not apply to party primaries; and (2) the state statute prohibiting the party rule substantially interfered with the party's constitutional right of political association, by determining

Briefs of Counsel, p 1089, *infra*.

TASHJIAN v REPUBLICAN PARTY OF CONNECTICUT

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who was eligible to participate in the party's candidate selection process (770 F2d 265).

On appeal, the United States Supreme Court affirmed. In an opinion by MARSHALL, J., joined by BRENNAN, WHITE, BLACKMUN, and POWELL, JJ., it was held that (1) the state's statutory prohibition of the party's primary voting rule placed an unconstitutional burden on the fundamental freedom of political association guaranteed by the First and Fourteenth Amendments, while the interests asserted by the state in defense of the statute were insubstantial, and (2) the party rule did not violate the qualifications clauses of Art I, § 2, cl 1, and the Seventeenth Amendment, because the clauses did not require a perfect symmetry, even though the clauses did apply to congressional primary elections.

STEVENS, J., joined by SCALIA, J., dissented, expressing the view that, under the circumstances, allowing independents to vote in primary elections for the United States House of Representatives and Senate, while prohibiting such voters from participating in primary elections for the state house of representatives, violated the qualifications clauses of Art I, § 2, cl 1, and the Seventeenth Amendment.

SCALIA, J., joined by REHNQUIST, Ch. J., and O'CONNOR, J., dissented, expressing the view that the Connecticut restriction on a party's primary voting to party members was constitutional, and that the Supreme Court's opinion exaggerated the importance of the associational interest at issue, if indeed such an interest existed.

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HEADNOTES

Classified to US Supreme Court Digest, Lawyers' Edition

Constitutional Law § 940.5; Elections § 2 — party choice to allow independents to vote in primaries — freedom of association

1a-1g. A state statute which prohibits a political party from exercising its choice to permit independents—registered voters not affiliated with any party—to vote in the party's primary elections for federal and statewide offices places an unconstitutional burden on the fundamental freedom of political association guaranteed by the First and Fourteenth Amendments to the

United States Constitution, where (1) any interference with the freedom of a political party is simultaneously an interference with the freedom of its adherents; (2) under the circumstances, there is no conflict between the associational interests of members and nonmembers over voting in such elections; (3) a state law which permits registration as a party member until noon of the last business day preceding a primary is not a satisfactory response, for it requires action by the voters rather than the party, and insists upon a public act

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25 Am Jur 2d, Elections §§ 116-119, 129-131, 150-152, 159; 77 Am Jur 2d, United States § 23

USCS, Constitution, Article I § 2 cl 1, Article I § 4 cl 1, Amendments 1, 14, 17

US L Ed Digest, Constitutional Law § 940.5; Elections §§ 2, 4

Index to Annotations; Congress; Due Process; Elections and Voting; Freedom of Association; Legislature; States

VERALEX™: Cases and annotations referred to herein can be further researched through the VERALEX electronic retrieval system's two services, Auto-Cite® and SHOWME™. Use Auto-Cite to check citations for form, parallel references, prior and later history, and annotation references. Use SHOWME to display the full text of cases and annotations.

ANNOTATION REFERENCES

Supreme Court's views regarding the First Amendment right of association as applied to the advancement of political beliefs. 67 L Ed 2d 859.

Supreme Court's views as to concept of "liberty" under due process clauses of Fifth and Fourteenth Amendments. 47 L Ed 2d 975.

What provisions of the Federal Constitution's Bill of Rights are applicable to the states. 18 L Ed 2d 1388, 23 L Ed 2d 985.

Fourteenth Amendment as affecting nomination or election to state office. 11 L Ed 2d 1057, 23 L Ed 2d 782.

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479 US 208, 93 L Ed 2d 514, 107 S Ct 544

of affiliation with the party as a condition of association; (4) the power of the state under the Constitution (Art I, § 4, cl 1) to prescribe the time, place, and manner of holding elections for United States Senators and Representatives, which power is matched by state control over the election process for state offices, does not extinguish the state's responsibility to observe the limits established by the First Amendment rights of the state's citizens; and (5) the interests which the state asserts in defense of the statute are insubstantial. (Scalia, J., Rehnquist, Ch. J., and O'Connor, J., dissented from this holding.)

Elections §§ 2, 4 — primaries — different qualifications for federal congressional and state legislative voters

2a-2e. A political party's rule permitting independents—registered voters not affiliated with any party—to vote in the party's primary elections for the United States House of Representatives and Senate, while remaining silent as to voting by such independents in the party's primary elections for the state legislature, does not violate the Federal Constitution's clauses on qualifications of federal congressional electors (Art I, § 2, cl 1, and the Seventeenth Amendment), where (1) the two clauses apply to the state's primary elections in precisely the same fashion as they apply to general congressional elections, (2) the two clauses do not require perfect symmetry, and (3) the party rule does not disenfranchise any voter in a federal congressional election who is qualified to vote in a primary or general election for the more numerous house of the state's legislature. (Stevens and Scalia, JJ., dissented from this holding.)

Constitutional Law § 940.5: Elections § 1 — First Amendment — tests

3. Constitutional challenges to specific provisions of a state's election laws cannot be resolved by any "litmus-paper test" that will separate valid from invalid restrictions; instead, a court must (1) consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that a plaintiff seeks to vindicate, and (2) identify and evaluate the precise interests put forward by the state as justifications for the burden imposed by its rule; a court must not only determine the legitimacy and strength of each of these state interests, but also consider the extent to which these interests make it necessary to burden the plaintiff's rights.

Constitutional Law § 36.3 — freedom of speech and association — due process

4. Freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the "liberty" assured by the due process clause of the Federal Constitution's Fourteenth Amendment, which embraces freedom of speech.

Constitutional Law § 940.5 — freedom of political association — extent

5a-5c. The freedom of association protected by the First and Fourteenth Amendments of the United States Constitution includes partisan political organization; the right to associate with the political party of one's choice is an integral part of this basic constitutional freedom; freedom to join together in the furtherance of common political beliefs necessarily presupposes the freedom

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to identify the people who constitute the association; a political party's determination of the boundaries of its own association, and of the structure which best allows it to pursue its political goals, is protected by the Constitution.

Constitutional Law § 940.5 — political organization — privacy of members

6a, 6b. A political organization has a constitutional right to protect the privacy of its membership rolls, where acts of public affiliation may subject the members of the organization to public hostility or discrimination.

Elections § 3 — time, place, and manner — right to vote

7. The power of a state under the United States Constitution (Art. I, § 4, cl. 1) to regulate the time, place, and manner of holding elections for United States Senators and Representatives, which power is matched by state control over the election process for state offices, does not justify, without more, abridgment of the fundamental right to vote.

Constitutional Law § 940.5: Elections § 2 — party primary — freedom of association — administrative cost

8. Even assuming the factual accuracy of contentions as to the possibility of future increases in the cost of administering a state's primary election system due to a party rule permitting independents—registered voters not affiliated with any political party—to vote in the party's primary elections for federal and state-wide office, such contentions do not form a sufficient basis for infringing the First Amendment right of freedom of political association by prohibiting such a party rule.

Elections § 2 — primaries — raiding by other party

9. A possible state interest in seeking to curtail "raiding"—a practice whereby voters in sympathy with one political party designate themselves as voters of another party so as to influence or determine the results of the other party's primary—is not implicated by the state's prohibition of one party's choice to permit independents (registered voters not affiliated with any political party) to vote in certain party primaries, where, under state law, (1) the independents need only register as party members to vote in the primary, and (2) the state permits such registration as late as noon on the business day preceding the primary.

Constitutional Law § 940.5: Elections §§ 1, 2 — primary and general elections — relation — freedom of association

10a, 10b. A state has a legitimate interest in fostering informed and educated expressions of the popular will in a general election, but this interest is not sufficient to justify, under the First and Fourteenth Amendments to the United States Constitution, the state's prohibition of a party rule permitting independents—registered voters not affiliated with any political party—to vote in certain party primaries, on the grounds that voters would be misled by party labels in the ensuing general election, where (1) the United States Supreme Court's cases reflect faith in the ability of individual voters to inform themselves about campaign issues, (2) in the state in question, to be listed on a primary ballot requires that a candidate have obtained at least 20% of the vote at a party convention which

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only party members may attend, and (3) the argument in favor of such a prohibition disregards the substantial benefit the party rule provides the party and its members in seeking to choose successful candidates, given the numerical strength of independent voters in that state. (Scalia, J., Rehnquist, Ch. J., and O'Connor, J., dissented in part from this holding.)

Constitutional Law §940.5; Elections §2 — party primary — freedom of association — protecting integrity of party

11a, 11b. Even if a state is correct that its prohibition of a political party's rule permitting independents—registered voters not affiliated with any party—to vote in certain party primaries protects the integrity of the two-party system and the responsibility of party government, a state or court may not constitutionally substitute its own judgment for that of the party; under the freedom of association for the advancement of political beliefs, as is true of all First Amendment freedoms, the courts may not interfere on the ground that they view a particular expression as unwise or irrational. (Scalia, J., Rehnquist, Ch. J., and O'Connor, J., dissented from this holding.)

Elections §2 — single nominations

12a, 12b. A state may adopt a

policy of confining each voter to a single nominating act.

Constitutional Law §9 — construction — new subject matter

13. In determining whether a provision of the United States Constitution applies to a new subject matter, it is of little significance that it is one with which the framers were not familiar, for in setting up an enduring framework of government, they undertook to carry out for the indefinite future and in all the vicissitudes of changing human affairs, those fundamental purposes which the instrument itself discloses.

Elections §§2, 4 — constitutional voter qualifications — stages applicable

14. The goal—under Art I, §2, cl 1, and the Seventeenth Amendment to the United States Constitution—of assuring that the members of the United States Congress are chosen by the people can only be secured if that principle is applicable to every stage in the selection process; the constitutional voter qualifications of these clauses apply to primaries as well as to general elections (1) where the state law has made the primary an integral part of the procedure of choice, or (2) where in fact the primary effectively controls the choice.

SYLLABUS BY REPORTER OF DECISIONS

A Connecticut statute (§9-431), enacted in 1955, requires voters in any political party primary to be registered members of that party. In 1984, appellee Republican Party of Connecticut (Party) adopted a Party rule that permits independent voters—registered voters not affiliated with any party—to vote in Republi-

can primaries for federal and statewide offices. The Party and the Party's federal officeholders and state chairman (also appellees) brought an action in Federal District Court challenging the constitutionality of §9-431 on the ground that it deprives the Party of its right under the First

and Fourteenth Amendments to enter into political association with individuals of its own choosing, and seeking declaratory and injunctive relief. The District Court granted summary judgment in appellees' favor, and the Court of Appeals affirmed.

Held:

1. Section 9-431 impermissibly burdens the rights of the Party and its members protected by the First and Fourteenth Amendments.

(a) The freedom of association protected by those Amendments includes partisan political organization. Section 9-431 places limits upon the group of registered voters whom the Party may invite to participate in the "basic function" of selecting the Party's candidates. The State thus limits the Party's associational opportunities at the crucial juncture at which the appeal to common principles may be translated into concerted action, and hence to political power in the community. The fact that the State has the power to regulate the time, place, and manner of elections does not justify, without more, the abridgment of fundamental rights, such as the right to vote or, as here, the freedom of political association.

(b) The interests asserted by appellant Secretary of State of Connecticut as justification for the statute—that it ensures the administrability of the primary, prevents voter raiding, avoids voter confusion, and protects the integrity of the two-party system and the responsibility of party government—are insubstantial. The possibility of increases in the cost of administering the election system is not a sufficient basis for infringing appellees' First Amendment rights. The interest in curtailing raiding is not implicated, since § 9-431 does not impede a raid on the Republican Party by indepen-

dent voters: independent raiders need only register as Republicans and vote in the primary. The interest in preventing voter confusion does not make it necessary to burden the Party's associational rights. And even if the State were correct in arguing that § 9-431 in providing for a closed primary system is designed to save the Party from undertaking conduct destructive of its own interests, the State may not constitutionally substitute its judgment for that of the Party, whose determination of the boundaries of its own association and of the structure that best allows it to pursue its political goals is protected by the Constitution.

2. The implementation of the Party rule will not violate the Qualifications Clause of the Constitution—which provides that the House of Representatives "shall be composed of Members chosen . . . by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature"—and the parallel provision of the Seventeenth Amendment, because it does not disenfranchise any voter in a federal election who was qualified to vote in a primary or general election for the more numerous house of the state legislature. The Clause and the Amendment are not violated by the fact that the Party rule establishes qualifications for voting in congressional elections that differ from the qualifications in elections for the state legislature. Where state law, as here, has made the primary an integral part of the election procedure, the requirements of the Clause and the Amendment apply to primaries as well as to general elections. The achievement of the goal of the Clause to prevent the mischief that

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would arise if state voters found themselves disqualified from participating in federal elections does not require that qualifications for exercise of the federal franchise be precisely equivalent to the qualifications for exercising the franchise in a given State.

770 F2d 265, affirmed.

Marshall, J., delivered the opinion of the Court, in which Brennan, White, Blackmun, and Powell, JJ., joined. Stevens, J., filed a dissenting opinion, in which Scalia, J., joined. Scalia, J., filed a dissenting opinion, in which Rehnquist, C. J., and O'Connor, J., joined.

APPEARANCES OF COUNSEL

Elliot F. Gerson argued the cause for appellant.

David S. Golub argued the cause for appellees.

Briefs of Counsel, p 1089, *infra*.

OPINION OF THE COURT

[479 US 210]

Justice Marshall delivered the opinion of the Court.

[1a, 2a] Appellee Republican Party of the State of Connecticut (Party) in 1984 adopted a Party rule which permits independent voters—registered voters not affiliated with any political party—to vote in Republican primaries for federal and statewide offices. Appellant Julia Tashjian, the Secretary of the State of Connecticut, is charged with the administration of the State's election statutes, which include a provision requiring voters in any party primary to be registered members

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of that party. Conn Gen Stat §9-431 (1985).¹ Appellees, who in addition to the Party include the Party's federal officeholders and the Party's state chairman, challenged this eligibility provision on the ground that it deprives the Party of its First Amendment right to enter into political association with individuals of its

own choosing. The District Court granted summary judgment in favor of appellees. 599 F Supp 1228 (Conn 1984). The Court of Appeals affirmed. 770 F2d 265 (CA2 1985). We noted probable jurisdiction, 474 US 1049, 88 L Ed 2d 762, 106 S Ct 783 (1986), and now affirm.

I

In 1955, Connecticut adopted its present primary election system. For major parties,² the process of candidate selection for federal and statewide offices requires a statewide convention of party delegates; district conventions are held to select candidates for seats in the state legislature. The party convention may certify as the party-endorsed candidate any person receiving more than 20% of the votes cast in a roll-call vote at the convention. Any candidate not endorsed by the party who received 20% of the vote may challenge the party-endorsed candidate in a primary election, in which the candi-

1. The statute provides in pertinent part: "No person shall be permitted to vote at a primary of a party unless he is on the last-completed enrollment list of such party in the municipality or voting district . . ."

2. A "major party" is defined as "a political party or organization whose candidate for

governor at the last preceding election for governor received . . . at least twenty per cent of the whole number of votes cast for all candidates for governor." Conn Gen Stat §9-373(b)(1) (1985). The Democratic and Republican parties are the only major parties in the State under this definition.

date receiving the plurality of votes becomes the party's nominee. Conn Gen Stat §§ 9-382, 9-400, 9-444 (1985). Candidates selected by the major parties, whether through convention or primary, are automatically accorded a place on the ballot at the general election.

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§ 9-379. The costs of primary elections are paid out of public funds. See, e.g., § 9-441.

The statute challenged in these proceedings, § 9-431, has remained substantially unchanged since the adoption of the State's primary system. In 1976, the statute's constitutionality was upheld by a three-judge District Court against a challenge by an independent voter who sought a declaration of his right to vote in the Republican primary. *Nader v Schaffer*, 417 F Supp 837 (Conn), summarily aff'd, 429 US 989, 50 L Ed 2d 602, 97 S Ct 516 (1976). In that action, the Party opposed the plaintiff's efforts to participate in the Party primary.

Subsequent to the decision in *Nader*, however, the Party changed its views with respect to participation by independent voters in Party primaries. Motivated in part by the demographic importance of independent voters in Connecticut politics,³ in September 1983 the Party's Central Committee recommended calling a state convention to consider altering the Party's rules to allow independents to vote in Party primaries. In January 1984 the state convention adopted the Party rule now at issue, which provides:

"Any elector enrolled as a mem-

ber of the Republican Party and any elector not enrolled as a member of a party shall be eligible to vote in primaries for nomination of candidates for the offices of United States Senator, United States Representative, Governor, Lieutenant Governor, Secretary of the State, Attorney General, Comptroller and Treasurer." App 2ⁿ.

During the 1984 session, the Republican leadership in the state legislature, in response to the conflict between the newly enacted Party rule and § 9-431, proposed to amend the statute to allow independents to vote in primaries when permitted by Party rules. The proposed legislation was defeated.

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substantially along party lines, in both houses of the legislature, which at that time were controlled by the Democratic Party.⁴

The Party and the individual appellees then commenced this action in the District Court, seeking a declaration that § 9-431 infringes the appellees' right to freedom of association for the advancement of common political objectives guaranteed by the First and Fourteenth Amendments, and injunctive relief against its further enforcement. After discovery, the parties submitted extensive stipulations of fact to the District Court, which granted summary judgment for appellees. The District Court concluded that "[a]ny effort by the state to substitute its judgment for that of the party on . . . the question of who is and is not sufficiently allied in interest with the

3. The record shows that in October 1983 there were 639,268 registered Democrats, 423,693 registered Republicans, and 332,723 registered and unaffiliated voters in Connecticut. 2 App to Juris Statement 244.

4. In the November 1984 elections, the Republicans acquired a majority of seats in both houses of the state legislature, and an amendment to § 9-431 was passed, but was vetoed by the Democratic Governor.

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party to warrant inclusion in its candidate selection process . . . substantially impinges on First Amendment rights." 599 F Supp, at 1238. Rejecting the state interests proffered by appellant to justify the statute, the District Court held that "as applied to the Republican Party rule permitting unaffiliated voters to participate in certain Republican Party primaries, the statute abridges the right of association guaranteed by the First Amendment." *Id.*, at 1241.

The Court of Appeals affirmed, holding that § 9-431 "substantially interferes with the Republican Party's first amendment right to define its associational boundaries, determine the content of its message, and engage in effective political association." 770 F2d, at 283.

II

[3] We begin from the recognition that "[c]onstitutional challenges to specific provisions of a State's election laws . . . cannot be resolved by any 'litmus-paper test' that will separate valid from invalid restrictions." *Anderson v Celebrezze*, (479 US 214)

460 US 780, 789, 75 L Ed 2d 547, 103 S Ct 1564 (1983) (quoting *Storer v Brown*, 415 US 724, 730, 39 L Ed 2d 714, 94 S Ct 1274 (1974)). "Instead, a court . . . must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate. It then must identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule. In passing judgment, the Court must not only determine the legitimacy and strength of each of those interests, it also must consider the extent to which those interests make it

necessary to burden the plaintiff's rights." 460 US, at 789, 75 L Ed 2d 547, 103 S Ct 1564.

[4, 5a] The nature of the appellees' First Amendment interest is evident. "It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech." *NAACP v Alabama ex rel. Patterson*, 357 US 449, 460, 2 L Ed 2d 1488, 78 S Ct 1163 (1958); see *NAACP v Button*, 371 US 415, 430, 9 L Ed 2d 405, 83 S Ct 328 (1961); *Bates v Little Rock*, 361 US 516, 522-523, 4 L Ed 2d 480, 80 S Ct 412 (1960). The freedom of association protected by the First and Fourteenth Amendments includes partisan political organization. *Elrod v Burns*, 427 US 347, 357, 49 L Ed 2d 547, 96 S Ct 2673 (1976) (plurality opinion); *Buckley v Valeo*, 424 US 1, 15, 46 L Ed 2d 659, 96 S Ct 612 (1976). "The right to associate with the political party of one's choice is an integral part of this basic constitutional freedom." *Kusper v Pontikes*, 414 US 51, 57, 38 L Ed 2d 260, 94 S Ct 303 (1973).

[5b] The Party here contends that § 9-431 impermissibly burdens the right of its members to determine for themselves with whom they will associate, and whose support they will seek, in their quest for political success. The Party's attempt to broaden the base of public participation in and support for its activities is conduct undeniably central to the exercise of the right of association. As we have said, the freedom to join together in furtherance of common political beliefs "necessarily presupposes the freedom to identify the people who constitute the associa-

tion." Democratic Party of
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United States v Wisconsin ex rel. La
Follette, 450 US 107, 122, 67 L Ed
2d 82, 101 S Ct 1010 (1981).

[6a] A major state political party necessarily includes individuals playing a broad spectrum of roles in the organization's activities. Some of the Party's members devote substantial portions of their lives to furthering its political and organizational goals, others provide substantial financial support, while still others limit their participation to casting their votes for some or all of the Party's candidates. Considered from the standpoint of the Party itself, the act of formal enrollment or public affiliation with the Party is merely one element in the continuum of participation in Party affairs, and need not be in any sense the most important.⁶

[1b] Were the State to restrict by statute financial support of the Party's candidates to Party members, or to provide that only Party members might be selected as the Party's chosen nominees for public office, such a

prohibition of potential association with nonmembers would clearly infringe upon the rights of the Party's members under the First Amendment to organize with like-minded citizens in support of common political goals. As we have said, "[a]ny interference with the freedom of a party is simultaneously an interference with the freedom of its adherents." Democratic Party, *supra*, at 122, 67 L Ed 2d 82, 101 S Ct 1010 (quoting *Sweezy v New Hampshire*, 354 US 234, 250, 1 L Ed 2d 1311, 77 S Ct 1203 (1957)).⁷ The statute here places limits upon the group of

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registered voters whom the Party may invite to participate in the "basic function" of selecting the Party's candidates. *Kusper v Pontikes*, *supra*, at 58, 38 L Ed 2d 260, 94 S Ct 303. The State thus limits the Party's associational opportunities at the crucial juncture at which the appeal to common principles may be translated into concerted action, and hence to political power in the community.⁷

5. [6b] Indeed, acts of public affiliation may subject the members of political organizations to public hostility or discrimination; under those circumstances an association has a constitutional right to protect the privacy of its membership rolls. *Bates v Little Rock*, 361 US 516, 523-524, 4 L Ed 2d 480, 80 S Ct 412 (1960); *NAACP v Alabama ex rel. Patterson*, 357 US 449, 462, 2 L Ed 2d 1468, 78 S Ct 1163 (1958).

6. [1c] It is this element of potential interference with the rights of the Party's members which distinguishes the present case from others in which we have considered claims by nonmembers of a party seeking to vote in that party's primary despite the party's opposition. In this latter class of cases, the nonmember's desire to participate in the party's affairs is overborne by the countervailing and legitimate right of the party to determine its own membership qualifications. See *Romano v Rockafeller*, 410 US 752, 36 L Ed 2d 1, 93 S Ct 1245 (1973); *Nader v Schaffer*, 417 F Supp 837 (Conn., summarily aff'd, 429 US

989, 50 L Ed 2d 602, 97 S Ct 516 (1976)). Similarly, the Court has upheld the right of national political parties to refuse to seat at their conventions delegates chosen in state selection processes which did not conform to party rules. See *Democratic Party of United States v Wisconsin ex rel. La Follette*, 450 US 107, 67 L Ed 2d 82, 101 S Ct 1010 (1981); *Cousins v Wigoda*, 419 US 477, 42 L Ed 2d 595, 95 S Ct 541 (1975). These situations are analytically distinct from the present case, in which the Party and its members seek to provide enhanced opportunities for participation by willing nonmembers. Under these circumstances, there is no conflict between the associational interests of members and nonmembers. See generally Note, Primary Elections and the Collective Right of Freedom of Association, 94 Yale L.J. 117 (1984).

7. [1d] Appellant contends that any infringement of the associational right of the Party or its members is de minimis, because Connecticut law, as amended during the pen-

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[11, 7] It is, of course, fundamental to appellant's defense of the State's statute that this impingement upon the associational rights of the Party and its members occurs at the ballot box, for the Constitution grants to the States a broad power to prescribe the "Times, Places and Manner of holding Elections for Senators and Representatives," Art I, § 4, cl 1, which power is matched by state control over the election process for state offices. But this authority does not extinguish the State's responsibility to observe the limits established by the First Amendment rights of the State's citizens. The power to regulate the time, place, and manner of elections does not justify, without more, the abridgment of fundamental rights, such as the right to vote, see *Wesberry v Sanders*, 376 US 1, 6-7, 11 L Ed 2d 481, 84 S Ct 526 (1964), or, as here, the freedom of political association. We turn then to an examination of

the interests which appellant asserts to justify the burden cast by the statute upon the associational rights of the Party and its members.

III

Appellant contends that § 9-431 is a narrowly tailored regulation which advances the State's compelling interests by ensuring the administrability of the primary system, preventing raiding, avoiding voter confusion, and protecting the responsibility of party government.

A

Although it was not presented to the Court of Appeals as a basis for the defense of the statute, appellant argues here that the administrative burden imposed by the Party rule is a sufficient ground on which to uphold the constitutionality of

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§ 9-431.

dency of this litigation, provides that any previously unaffiliated voter may become eligible to vote in the Party's primary by enrolling as a Party member as late as noon on the last business day preceding the primary. Conn Gen Stat § 9-56 (1985). Thus, appellant contends, any independent voter wishing to participate in any Party primary may do so.

[16] This is not a satisfactory response to the Party's contentions for two reasons. First, as the Court of Appeals noted, the formal affiliation process is one which individual voters may employ in order to associate with the Party, but it provides no means by which the members of the Party may choose to broaden opportunities for joining the association by their own act, without any intervening action by potential voters. 770 F.2d, at 201, n 24. Second, and more importantly, the requirement of public affiliation with the Party in order to vote in the primary conditions the exercise of the associational right upon the making of a public statement of adherence to the Party which the State requires regardless of the actual beliefs of the individual voter. Cf. *Wooley v Maynard*, 430 US 705, 714-715, 51 L Ed 2d 752, 97 S Ct 1428 (1977). West

Virginia Board of Education v Barnette, 319 US 624, 633-634, 87 L Ed 1628, 63 S Ct 1178, 147 ALR 674 (1943). As counsel for appellees conceded at oral argument, a requirement that independent voters merely notify state authorities of their intention to vote in the Party primary would be acceptable as an administrative measure, but "[t]he problem is that the State is insisting on a public act of affiliation . . . joining the Republican Party as a condition of this association." Tr of Oral Arg 40.

2. The District Court entered no findings of fact as to the potential administrative changes necessary to implement the Party rule. As appellant conceded at oral argument, the only evidence in the record before the District Court relating to the administration of the rule was a statement by the State's election attorney in testimony before the legislature that the system would be "workable." *Id.*, at 20. Appellant relies here upon affidavits concerning potential administrative burden which were submitted to the Court of Appeals in support of appellant's request for a stay, entered after this Court noted probable jurisdiction.

Appellant contends that the Party's rule would require the purchase of additional voting machines, the training of additional poll workers, and potentially the printing of additional ballot materials specifically intended for independents voting in the Republican primary. In essence, appellant claims that the administration of the system contemplated by the Party rule would simply cost the State too much.

[8] Even assuming the factual accuracy of these contentions, which have not been subjected to any scrutiny by the District Court, the possibility of future increases in the cost of administering the election system is not a sufficient basis here for infringing appellees' First Amendment rights. Costs of administration would likewise increase if a third major party should come into existence in Connecticut, thus requiring the State to fund a third major-party primary. Additional voting machines, poll workers, and ballot materials would all be necessary under these circumstances as well. But the State could not forever protect the two existing major parties from competition solely on the ground that two major parties are all the public can afford. Cf. *Anderson v. Celebrezze*, 460 US 780, 75 L Ed 2d 547, 103 S Ct 1564 (1983); *Williams v. Rhodes*, 393 US 23, 21 L Ed 2d 24, 89 S Ct 5, 45 Ohio Ops 2^d 236 (1968). While the State is of course entitled

to take administrative and financial considerations into account in choosing whether or not to have a primary system at all, it can no more restrain the Republican Party's freedom of association for reasons of its own administrative convenience than it could on the same ground limit the ballot access of a new major party.

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B

[9] Appellant argues that § 9-431 is justified as a measure to prevent raiding, a practice "whereby voters in sympathy with one party designate themselves as voters of another party so as to influence or determine the results of the other party's primary." *Rosario v. Rockefeller*, 410 US 752, 760, 36 L Ed 2d 1, 93 S Ct 1245 (1973). While we have recognized that "a State may have a legitimate interest in seeking to curtail 'raiding,' since that practice may affect the integrity of the electoral process." *Kusper v. Pontikes*, 414 US, at 59-60, 38 L Ed 2d 260, 94 S Ct 303; *Rosario v. Rockefeller*, supra, at 761, 36 L Ed 2d 1, 93 S Ct 1245, that interest is not implicated here.⁹ The statute as applied to the Party's rule prevents independents, who otherwise cannot vote in any primary, from participating in the Republican primary. Yet a raid on the Republican Party primary by independent voters, a curious concept only distantly related to the type of raiding

9. As we have previously noted, a study commission established by the national Democratic Party concluded that "the existence of 'raiding' has never been conclusively proven by survey research." Democratic Party of United States v. Wisconsin ex rel. La Follette, 450 US, at 122-123, n 21, 67 L Ed 2d 82, 101 S Ct 1010 (quoting Openness, Participation and

Party Building: Reforms for a Stronger Democratic Party 68 (Feb. 17, 1976)). In view of our conclusion that § 9-431 is irrelevant to the question of raiding, we express no opinion as to whether the continuing difficulty of proving that raiding is possible attenuates the asserted state interest in preventing the practice.

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discussed in *Kusper and Rosario*, is not impeded by § 9-431; the independent raiders need only register as Republicans and vote in the primary. Indeed, under Conn Gen Stat § 9-56 (1985), which permits an independent to affiliate with the Party as late as noon on the business day preceding the primary, see n 7, *supra*, the State's election statutes actually assist a "raid" by independents, which could be organized and implemented at the 11th hour. The State's asserted interest in the prevention of raiding provides no justification for the statute challenged here.

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C

Appellant's next argument in support of § 9-431 is that the closed primary system avoids voter confusion. Appellant contends that "[t]he legislature could properly find that it would be difficult for the general public to understand what a candidate stood for who was nominated in part by an unknown amorphous body outside the party, while nevertheless using the party name." Brief for Appellant 59. Appellees respond that the State is attempting to act as the ideological guarantor of the Republican Party's candidates, ensuring that voters are not misled by a "Republican" candidate who professes something other than what the State regards as true Republican principles. Brief for Appellees 28.

[10a] As we have said, "[t]here can be no question about the legitimacy of the State's interest in fostering informed and educated expressions of the popular will in a general election." *Anderson v Celebrezze*, 460 US, at 796, 75 L Ed 2d 547, 103 S Ct

1564. To the extent that party labels provide a shorthand designation of the views of party candidates on matters of public concern, the identification of candidates with particular parties plays a role in the process by which voters inform themselves for the exercise of the franchise. Appellant's argument depends upon the belief that voters can be "misled" by party labels. But "[o]ur cases reflect a greater faith in the ability of individual voters to inform themselves about campaign issues." *Id.*, at 797, 75 L Ed 2d 547, 103 S Ct 1564. Moreover, appellant's concern that candidates selected under the Party rule will be the nominees of an "amorphous" group using the Party's name is inconsistent with the facts. The Party is not proposing that independents be allowed to choose the Party's nominee without Party participation; on the contrary, to be listed on the Party's primary ballot continues to require, under a statute not challenged here, that the primary candidate have obtained at least 20% of the vote at a Party convention, which only Party

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mem-

bers may attend. Conn Gen Stat § 9-400 (1985). If no such candidate seeks to challenge the convention's nominee in a primary, then no primary is held, and the convention nominee becomes the Party's nominee in the general election without any intervention by independent voters." Even assuming, however, that putative candidates defeated at the Party convention will have an increased incentive under the Party's rule to make primary challenges, hoping to attract more substantial support from independents than

10. The record does not disclose the proportion of Connecticut Republican Party nominations that are the result of primary contests.

from Party delegates, the requirement that such challengers garner substantial minority support at the convention greatly attenuates the State's concern that the ultimate nominee will be wedded to the Party in nothing more than a marriage of convenience.

[10b] In arguing that the Party rule interferes with educated decisions by voters, appellant also disregards the substantial benefit which the Party rule provides to the Party and its members in seeking to choose successful candidates. Given the numerical strength of independent voters in the State, one of the questions most likely to occur to Connecticut Republicans in selecting candidates for public office is how can the Party most effectively appeal to the independent voter? By inviting independents to assist in the choice at the polls between primary candidates selected at the Party convention, the Party rule is intended to produce the candidate and platform most likely to achieve that goal. The state statute is said to decrease voter confusion, yet it deprives the Party and its members of the opportunity to inform themselves as to the level of support for the Party's candidates among a critical group of electors. "A State's

claim that it is enhancing the ability of its citizenry to make wise decisions by restricting the flow of information to them must be viewed with some skepticism." *Anderson v Celebrezze*, supra, at 798, 75 L Ed 2d 547, 103 S Ct 1564. The State's legitimate interests in preventing voter confusion

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and providing for educated and responsible voter decisions in no respect "make it necessary to burden the [Party's] rights." 460 US, at 789, 75 L Ed 2d 547, 103 S Ct 1564.

D

[11a] Finally, appellant contends that § 9-431 furthers the State's compelling interest in protecting the integrity of the two-party system and the responsibility of party government. Appellant argues vigorously and at length that the closed primary system chosen by the state legislature promotes responsiveness by elected officials and strengthens the effectiveness of the political parties.

The relative merits of closed and open primaries have been the subject of substantial debate since the beginning of this century, and no consensus has as yet emerged." Ap-

11. At the present time, 21 States provide for "closed" primaries of the classic sort, in which the primary voter must be registered as a member of the party for some period of time prior to the holding of the primary election. See *Ariz. Rev. Stat. Ann.* § 16-467 (1984); *Cal. Elec. Code Ann.* § 501 (West Supp. 1986); *Colo. Rev. Stat.* § 1-2-203 (Supp. 1986); *Conn. Gen. Stat.* § 9-431 (1985); *Del. Code Ann.* Tit. 15 § 3161 (1981); *Fla. Stat.* § 101.021 (1985); *Kan. Stat. Ann.* § 25-3301 (1981); *Ky. Rev. Stat.* §§ 116.045, 116.055 (1982); *Me. Rev. Stat. Ann.* Tit. 21-A, § 141 et seq. (Supp. 1986-1987); *Md. Ann. Code*, Art. 33, § 3-8 et seq. (1985); *Neb. Rev. Stat.* § 32-530 (1984); *Nev. Rev. Stat.* § 293.267 (1985); *N.M. Stat. Ann.* § 1-4-16 (1985); *N.Y. Elec. Law* § 1-104.9 (McKinney 1978); *NC Gen. Stat.* § 162-74 (1982 and Supp. 1985); *Okl.*

Stat. Tit. 26, § 1-104 (1976); *Ore. Rev. Stat.* § 247.201 (1985); *Pa. Stat. Ann.* Tit. 25, § 2832 (Purdon 1983); *SD Codified Laws* § 12-4-15 (1982); *W. Va. Code* § 3-1-35 (1979); *Wyo. Stat.* § 22-5-212 (1977). Sixteen States allow a voter previously unaffiliated with any party to vote in a party primary if he affiliates with the party at the time of, or for the purpose of, voting in the primary. See *Ala. Code* § 17-16-14b1 (1985); *Ark. Stat. Ann.* § 3-126 (1976); *Ga. Code Ann.* § 21-2-235 (1982); *Ill. Rev. Stat.* ch. 46, § 7-43a1 (1986); *Ind. Code* § 3-10-1-6 (Supp. 1986); *Iowa Code* §§ 43.41, 43.42 (1985); *Mass. Gen. Laws* § 53.37 (1984); *Miss. Code Ann.* § 23-15-573 (1986 pamphlet); *Mo. Rev. Stat.* § 115.397 (1979); *NH. Rev. Stat. Ann.* § 654:341 (1986); *NJ. Stat. Ann.* § 19-23-45 (West Supp. 1986); *Ohio Rev. Code Ann.* § 3513.19 (Supp.

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invokes a long and distinguished line of political scientists and public officials who have been supporters of the closed primary. But our role is not to decide whether the state legislature was acting wisely in enacting the closed primary system in 1955, or whether the Republican Party makes a mistake in seeking to depart from the practice of the past 30 years."

We have previously recognized the danger that "splintered parties and unrestrained factionalism may do significant damage to the fabric of government." *Storer v Brown*, 415 US, at 736, 39 L Ed 2d 714, 94 S Ct 1274. We upheld a California statute which denied access to the ballot to any independent candidate who had voted in a party primary or been registered as a member of a political party within one year prior to the immediately preceding primary election. We said:

"[T]he one-year disaffiliation provision furthers the State's interest in the stability of its political system. We also consider that interest as not only permissible, but compelling and as outweighing the interest the candidate and his supporters may have in making a late

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rather than an early decision to seek independent ballot status." *Ibid*.

The statute in *Storer* was designed to protect the parties and the party system against the disorganizing effect of independent candidacies launched by unsuccessful putative party nominees. This protection, like that accorded to parties threatened by raiding in *Rosario v Rockefeller*, 410 US 752, 36 L Ed 2d 1, 93 S Ct 1245 (1973), is undertaken to prevent the disruption of the political parties from without, and not, as in this case, to prevent the parties from taking internal steps affecting their own process for the selection of candidates. The forms of regulation upheld in *Storer* and *Rosario* imposed certain burdens upon the protected First and Fourteenth Amendment interests of some individuals, both voters and potential candidates, in order to protect the interests of others. In the present case, the state statute is defended on the ground that it protects the integrity of the Party against the Party itself.

[5c, 11b, 12a] Under these circumstances, the views of the State, which to some extent represent the views of the one political party tran-

1963); RI Gen Laws § 17-4-26(c) (1961); SC Code §§ 7-3-120, 7-3-20 (1976 and Supp 1963); Tenn Code Ann § 2-7-115(b)(2) (1965); Tex Elec Code Ann § 162.003 (1966). Four States provide for nonpartisan primaries in which all registered voters may participate, Alaska Stat Ann § 15.05.010, 15.25.090 (1982); La Rev Stat Ann §§ 18.401B, 18.521B (West 1979 and Supp 1966); Va Code § 24.1-182 (1965); Wash Rev Code § 29.18.300 (1965), while nine States have adopted classical "open" primaries, in which all registered voters may choose in which party primary to vote. Haw Rev Stat § 12-31 (Supp 1964); Idaho Code §§ 34-402, 34-404, 34-904 (Supp 1966); Mich Comp Laws

§§ 166.575, 166.576 (1967 and Supp 1966); Minn Stat § 204D.06.41 (1965); Mont Code Ann § 13-10.301(2) (1965); ND Cent Code § 16.1-11-22 (Supp 1965); Utah Code Ann § 20-3-19(2) (Supp 1966); Vt Stat Ann, Tit 17, § 2363 (1982); Wis Stat §§ 5.37, 6.80 (1963-1964).

12. We note that appellant's direct predictions about destruction of the integrity of the election process and decay of responsible party government are not borne out by the experience of the 29 States which have chosen to permit more substantial openness in their primary systems than Connecticut has permitted heretofore.

siently enjoying majority power, as to the optimum methods for preserving party integrity lose much of their force. The State argues that its statute is well designed to save the Republican Party from undertaking a course of conduct destructive of its own interests. But on this point "even if the State were correct, a State, or a court, may not constitutionally substitute its own judgment for that of the Party." *Democratic Party of United States v Wisconsin ex rel. La Follette*, 450 US, at 123-124, 67 L Ed 2d 82, 101 S Ct 1010 (footnote omitted). The Party's determination of the boundaries of its own association, and of the structure which best allows it to pursue its political goals, is protected by the Constitution. "And as is true of all expressions of First Amendment freedoms, the courts may not interfere on the ground that they view a particular expression as unwise or irrational." *Id.*, at 124, 67 L Ed 2d 82, 101 S Ct 1010.¹³

[479 US 225]

We conclude that the State's enforcement, under these circumstances, of its closed primary system

burdens the First Amendment rights of the Party. The interests which the appellant adduces in support of the statute are insubstantial, and accordingly the statute, as applied to the Party in this case, is unconstitutional.

IV

[2b] Appellant argues here, as in the courts below, that implementation of the Party rule would violate the Qualifications Clause of the Constitution, Art I, § 2, cl 1, and the Seventeenth Amendment because it would establish qualifications for voting in congressional elections which differ from the voting qualifications in elections for the more numerous house of the state legislature." The Party rule as adopted permits independent voters to vote in Party primaries for the offices of United States Senator and Member of the House of Representatives, and for statewide offices, but is silent as regards

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primaries held to contest nominations for seats in the state legislature. See *supra*, at 212, 93 L

13. [12b] Our holding today does not establish that state regulation of primary voting qualifications may never withstand challenge by a political party or its membership. A party seeking, for example, to open its primary to all voters, including members of other parties, would raise a different combination of considerations. Under such circumstances, the effect of one party's broadening of participation would threaten other parties with the disorganization effects which the statutes in *Storer v Brown*, 415 US 724, 39 L Ed 2d 714, 94 S Ct 1274 (1974), and *Romario v Rockefeller*, 410 US 752, 36 L Ed 2d 1, 93 S Ct 1245 (1973), were designed to prevent. We have observed on several occasions that a State may adopt a "policy of confining each voter to a single nominating act," a policy decision which is not involved in the present case. See *Anderson v Celebrezze*, 460 US 780, 602, n 29, 75 L Ed 2d 547, 103 S Ct 1564 (1983); *Storer v Brown*, *supra*, at 743, 39 L Ed

2d 714, 94 S Ct 1274. The analysis of these situations derives much from the particular facts involved. "The results of this evaluation will not be automatic; as we have recognized, there is 'no substitute for the hard judgments that must be made.'" *Anderson v Celebrezze*, *supra*, at 789-790, 75 L Ed 2d 547, 103 S Ct 1564 (quoting *Storer v Brown*, *supra*, at 730, 39 L Ed 2d 714, 94 S Ct 1274).

14. Article I, § 2, cl 1, provides: "The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature." The Seventeenth Amendment, which provides for the direct election of United States Senators, states in pertinent part that "[t]he electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures."

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Ed 2d, at 522. Appellant contends that the Qualifications Clause and the Seventeenth Amendment require an absolute symmetry of qualifications to vote in elections for Congress and the lower house of the state legislature, and that the Party rule, if implemented according to its terms, would require lesser qualifications for voting in Party primaries for federal office than for state legislative office.

The Court of Appeals rejected appellant's argument, holding that the Qualifications Clause and the parallel provision of the Seventeenth Amendment do not apply to primary elections. 770 F2d, at 274. The concurring opinion took a different view, reaching the conclusion that these provisions require only that "anyone who is permitted to vote for the most numerous branch of the state legislature has to be permitted to vote" in federal legislative elections. *Id.*, at 286 (Oakes, J., concurring). We agree.

[13, 14] We recognize that the Federal Convention, in adopting the Qualifications Clause of Article I, § 2, was not contemplating the effects of that provision upon the modern system of party primaries. As we have said:

"We may assume that the framers of the Constitution in adopting that section, did not have specifically in mind the selection and elimination of candidates for Congress by the direct primary any more than they contemplated the application of the commerce clause to interstate telephone, telegraph and wireless communication, which are concededly within it. But in determining whether a provision of the Consti-

tution applies to a new subject matter, it is of little significance that it is one with which the framers were not familiar. For in setting up an enduring framework of government they undertook: to carry out for the indefinite future and in all the vicissitudes of the changing affairs of men, those fundamental purposes which the instrument itself discloses." *United States v Classic*, 313 US 299, 315-316, 85 L Ed 1368, 61 S Ct 1031 (1941).

[479 US 227]

The fundamental purpose underlying Article I, § 2, cl 1, that "[t]he House of Representatives shall be composed of Members chosen . . . by the People of the several States," like the parallel provision of the Seventeenth Amendment, applies to the entire process by which federal legislators are chosen. "Where the state law has made the primary an integral part of the procedure of choice, or where in fact the primary effectively controls the choice," the requirements of Article I, § 2, cl 1, and the Seventeenth Amendment apply to primaries as well as to general elections. *United States v Classic*, *supra*, at 318, 85 L Ed 1368, 61 S Ct 1031; see *Smith v Allwright*, 321 US 649, 659-660, 88 L Ed 987, 64 S Ct 757 (1944). The constitutional goal of assuring that the Members of Congress are chosen by the people can only be secured if that principle is applicable to every stage in the selection process. If primaries were not subject to the requirements of the Qualifications Clauses contained in Article I, § 2 and the Seventeenth Amendment, the fundamental principle of free electoral choice would be subject to the sort of erosion these prior decisions were intended to prevent.

[2c] Accordingly, we hold that the Qualifications Clauses of Article I, § 2, and the Seventeenth Amendment are applicable to primary elections in precisely the same fashion that they apply to general congressional elections. Our task is then to discover whether, as appellant contends, those provisions require that voter qualifications, such as party membership, in primaries for federal office must be absolutely symmetrical with those pertaining to primaries for state legislative office.

Our inquiry begins with an examination of the Framers' purpose in enacting the first Qualifications Clause. It is clear that the Clause was intended to avoid the consequences of declaring a single standard for exercise of the franchise in federal elections. The state governments represented at the Convention had established varying voter qualifications, and substantial concern was expressed by delegates as to the likely effects of a federal voting qualification which disenfranchised voters eligible to vote in the States. James

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Wilson argued that "[i]t would be very hard and disagreeable for the same persons, at the same time, to vote for representatives in the State Legislature, and to be excluded from a vote for those in the National Legislature." J. Madison, *Journal of the Federal Convention* 467 (E. Scott ed 1893) (hereinafter *Madison's Journal*). Oliver Ellsworth predicted that "[t]he people will not readily subscribe to a National Constitution, if it should subject them to be disfranchised." *Id.*, at 468. Benjamin Franklin argued, in the same vein, that "[t]he sons of a substantial farmer, not being themselves freeholders, would not be pleased at being disfranchised, and there are a

great many persons of that description." *Id.*, at 471. James Madison later defended the resulting provision on similar grounds:

"To have reduced the different qualifications in the different States, to one uniform rule, would probably have been as dissatisfactory to some of the States, as it would have been difficult to the Convention. The provision made by the Convention appears therefore, to be the best that lay within their option. It must be satisfactory to every State; because it is conformable to the standard already established, or which may be established by the State itself." *The Federalist* No. 52, p 354 (J. Cooke ed 1961).

[2d] In adopting the language of Article I, § 2, cl 1, the Convention rejected the suggestion that a property qualification was necessary to restrict the availability of the federal franchise. See *Madison's Journal* 468-473; 2 M. Farrand, *The Records of the Federal Convention of 1787*, pp 200-216 (1966). Far from being a device to limit the federal suffrage, the Qualifications Clause was intended by the Framers to prevent the mischief which would arise if state voters found themselves disqualified from participation in federal elections. The achievement of this goal does not require that qualifications for exercise of the federal franchise be at all

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times precisely equivalent to the prevailing qualifications for the exercise of the franchise in a given State. The fundamental purpose of the Qualifications Clauses contained in Article I, § 2, and the Seventeenth Amendment is satisfied if all those qualified to participate in the selection of members of the more numerous branch of the

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state legislature are also qualified to participate in the election of Senators and Members of the House of Representatives.

[2e] Our conclusion that these provisions do not require a perfect symmetry of voter qualifications in state and federal legislative elections takes additional support from the fact that we have not previously required such absolute symmetry when the federal franchise has been expanded. In *Oregon v Mitchell*, 400 US 112, 27 L Ed 2d 272, 91 S Ct 260 (1970), five Justices agreed that the Voting Rights Act Amendments of 1970 could constitutionally establish a minimum age of 18 for voters in federal elections, while a majority of the Court also concluded that Congress was without power to set such a minimum age in state and local elections. See *id.*, at 117-118, 27 L Ed 2d 272, 91 S Ct 260 (Black, J., announcing the judgments of the

Court). Appellant's reading of the Qualifications Clause, which would require identical voter qualifications in state and federal legislative elections, is plainly inconsistent with these holdings. We hold that the implementation of the Party rule does not violate the Qualifications Clause or the Seventeenth Amendment because it does not disenfranchise any voter in a federal election who is qualified to vote in a primary or general election for the more numerous house of the state legislature.

V

[1g] We conclude that § 9-431 impermissibly burdens the rights of the Party and its members protected by the First and Fourteenth Amendments. The interests asserted by appellant in defense of the statute are insubstantial. The judgment of the Court of Appeals is affirmed.

SEPARATE OPINIONS

[479 US 230]

Justice Stevens, with whom Justice Scalia joins, dissenting.

The threshold issue presented by this case is whether, consistently with the Constitution, a State may permit a voter to participate in elections to the Congress while preventing that same person from voting for candidates to the most numerous branch of the state legislature. If we respect the plain language of Article I, § 2, cl 1, of the Constitution and the Seventeenth Amendment, the intent of the Framers, and the reasoning of the opinions in *Oregon v*

Mitchell, 400 US 112, 27 L Ed 2d 272, 91 S Ct 260 (1970), we must answer that question in the negative.

Every person who votes in a federal election for a Member of the House of Representatives or for a United States Senator must be qualified to vote for candidates to the most numerous branch of the state legislature. The Constitution has imposed this condition of voter eligibility on congressional elections since 1789¹ and on senatorial elections since the Seventeenth Amendment was ratified in 1913.²

1. Article I, § 2, cl 1, provides: "The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite

for Electors of the most numerous Branch of the State Legislature."

2. "The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature."

As the Court recognizes, ante, at 227, 93 L Ed 2d, at 531, a primary election is part of the process by which Members of the House and Senate are "chosen . . . by the People." US Const, Art I, § 2, cl 1. Cf. *United States v Classic*, 313 US 299, 315, 85 L Ed 1368, 61 S Ct 1031 (1941). In Connecticut one of the qualifications for voters in Republican Party primary elections for the lower house of the state legislature is that the person be "on the last-completed enrolment list of such party in the municipality or voting district . . ." Conn Gen Stat § 9-431 (1985). Thus, only enrolled Republicans may vote in the Republican primary for the state legislature.

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The Court today holds, however, that pursuant to the Republican Party of Connecticut's rules, the State must permit independent, as well as enrolled Republican, electors to vote in the Republican primary for the House of Representatives and the Senate of the United States. This facial disparity between the qualifications for electors of House and Senate candidates and the more stringent qualifications for electors to the state legislature violates both Qualifications Clauses.

The Court does not dispute the fact that the plain language of the Constitution requires that voters in congressional and senatorial elections "shall have" the qualifications of voters in elections to the state legislature. The Court nevertheless separates the federal voter qualifications from their state counterparts, inexplicably treating the mandatory "shall have" language of the Clauses

as though it means only that the federal voters "may but need not have" the qualifications of state voters. In support of this freewheeling interpretation of the Constitution, the Court relies on what it describes as the Framers' purpose in enacting the first Qualification Clause and on the judgment in *Oregon v Mitchell*, supra, 27 L Ed 2d 272, 91 S Ct 260. Neither of these arguments withstands scrutiny.

The excerpts from the debate among the Framers quoted by the Court, ante, at 227-229, 93 L Ed 2d, at 531-533, related to a motion made by Gouverneur Morris to amend a draft of proposed Art I, § 1, that had been prepared by the Committee on Detail. To understand the full significance of that debate it is necessary first to consider the provision that Gouverneur Morris wanted to change and then to consider the nature of his proposed amendment.

Justice Stewart accurately summarized that background in his opinion in *Oregon v Mitchell*, supra:

"An early draft of the Constitution provided that the States should fix the qualifications of voters in congressional elections subject to the proviso that these qualifications might 'at any Time be altered and superseded by the Legislature of the United States.' The records of

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the Committee on Detail show that it was decided to strike the provision granting to Congress the authority to set voting qualifications and to add in its stead a clause making the qualifi-

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cations 'the same from Time to Time as those of the Electors, in the several States, of the most numerous Branch of their own Legislatures.' The proposed draft reported by the Committee on Detail to the Convention included the following:

"The qualifications of the electors shall be the same, from time to time, as those of the electors in the several States, of the most numerous branch of their own legislatures.' Art IV, § 1." Id., at 289, 27 L Ed 2d 272, 91 S Ct 260 (concurring in part and dissenting in part) (footnotes omitted; emphasis added).

Thus, the draft that the Federal Convention of 1787 was considering when Gouverneur Morris made his motion was abundantly clear—the qualifications of the federal electors "shall be the same" as the electors of the legislatures of the several States. J. Madison, Journal of the Federal Convention 449-450 (E. Scott ed 1893). This provision would ensure uniformity of electors' qualifications within each State, but would not impose a uniform nationwide standard.³

It was this clause that Gouverneur Morris proposed to strike in order to substitute a clause permitting Congress to prescribe the electoral quali-

fications or to adopt a provision "which would restrain the right of suffrage to freeholders." Id., at 467. Not surprisingly, his proposal was defeated by a vote of 7-1 because it would have disenfranchised a large number of voters in States that did not impose a property qualification on the right to vote. Id., at 467, 468, 471-472. Despite the Court's reliance on the concerns that led the

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Framers to reject the Morris proposal, they shed absolutely no light on the reasons why the Committee on Detail had previously decided that the voters' qualifications in state and federal elections "shall be the same."

The Court's reliance on the holding in *Oregon v Mitchell* is equally misguided. That case tested the constitutionality of certain parts of the Voting Rights Act Amendments of 1970, 84 Stat 314, including the section that lowered the minimum age of voters in both state and federal elections from 21 to 18. Four Members of the Court concluded that Congress had no such power;⁴ four other Members of the Court concluded that the entire statute was valid.⁵ Thus, the conclusions of all eight of those Justices were consistent with the proposition that the Constitution requires the same qualifications for state and federal elec-

3. James Wilson referred to this part of the Report of the Committee on Detail as "well considered," and "he did not think it could be changed for the better. It was difficult to form any uniform rule of qualifications, for all the States." J. Madison, Journal of the Federal Convention 467 (E. Scott ed 1893).

4. See opinion of Justice Harlan, 400 US, at 152, 212-213, 27 L Ed 2d 272, 91 S Ct 260

(concurring in part and dissenting in part), and opinion of Justice Stewart, id., at 281, 287-289, 27 L Ed 2d 272, 91 S Ct 260 (joined by Burger, C. J., and Blackmun, J.).

5. See opinion of Justice Douglas, id., at 133, 141-144, 27 L Ed 2d 272, 91 S Ct 260, and the joint opinion, id., at 229, 280-281, 27 L Ed 2d 272, 91 S Ct 260 (opinion of Brennan, White, and Marshall, JJ.).

tions.⁶ Only Justice Black concluded that the statute was invalid insofar as it applied to state elections but valid insofar as it applied to federal elections. 400 US, at 125-130, 27 L Ed 2d 272, 91 S Ct 260.

Even Justice Black's reasoning, however, supports a literal reading of the Qualifications Clause in the absence of a federal statute prescribing a different rule for federal elections. For he relied entirely on the provision in Art I, § 4, that empowers Congress to alter a State's regulations concerning the times, places, and manner of holding elections for Senators and Representatives. 400 US, at 119-124, 27 L Ed 2d 272, 91 S Ct 260. In Justice

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Black's opinion, the qualifications that the State prescribed for their own voters for state offices "were adopted for federal offices unless Congress directs otherwise under Art I, § 4." *Id.*, at 125, 27 L Ed 2d 272, 91 S Ct 260.

In this case there is no federal statute that purports to authorize the State of Connecticut to prescribe different qualifications for state and federal elections. Thus, there is no authority whatsoever for the Court's refusal to honor the plain language of the Qualifications Clauses. An interpretation of that language linking federal voters' qualifications in each State to the States' existing qualifications exactly matches James Madison's understanding:

"The provision made by the Convention appears therefore, to be the best that lay within their op-

tion. It must be satisfactory to every State; because it is conformable to the standard already established, or which may be established by the State itself." The *Federalist* No. 52, p 354 (J. Cooke ed 1961).

I respectfully dissent.

Justice Scalia, with whom The Chief Justice and Justice O'Connor join, dissenting.

Both the right of free political association and the State's authority to establish arrangements that assure fair and effective party participation in the election process are essential to democratic government. Our cases make it clear that the accommodation of these two vital interests does not lend itself to bright-line rules but requires careful inquiry into the extent to which the one or the other interest is inordinately impaired under the facts of the particular case. See *Anderson v Celebrezze*, 460 US 780, 788-790, 75 L Ed 2d 547, 103 S Ct 1564 (1983); *Storer v Brown*, 415 US 724, 730, 39 L Ed 2d 714, 94 S Ct 1274 (1974). Even so, the conclusion reached on the individuated facts of one case sheds some measure of light upon the conclusion that will be reached on the individuated facts of the next. Since this is an area, moreover, in which the predictability of decisions is important,

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I think it worth noting that for me today's decision already exceeds the permissible limit of First Amendment restrictions upon the States' ordering of elections.

6. This was certainly the view of Justice Harlan, see *id.*, at 210-211, 27 L Ed 2d 272, 91 S Ct 290, and of Justice Stewart and the two Justices who joined his opinion, see *id.*, at 287-290, 27 L Ed 2d 272, 91 S Ct 260. As Justice Stewart observed: "The Constitution

thus adopts as the federal standard the standard which each State has chosen for itself." *Id.*, at 288, 27 L Ed 2d 272, 91 S Ct 260. The opinions of Justice Douglas and Justice Brennan are silent on the issue.

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In my view, the Court's opinion exaggerates the importance of the associational interest at issue, if indeed it does not see one where none exists. There is no question here of restricting the Republican Party's ability to recruit and enroll Party members by offering them the ability to select Party candidates; Conn Gen Stat § 9-56 (1985) permits an independent voter to join the Party as late as the day before the primary. Cf. *Kusper v Pontikes*, 414 US 51, 38 L Ed 2d 260, 94 S Ct 303 (1973). Nor is there any question of restricting the ability of the Party's members to select whatever candidate they desire. Appellees' only complaint is that the Party cannot leave the selection of its candidate to persons who are *not* members of the Party, and are unwilling to become members. It seems to me fanciful to refer to this as an interest in freedom of association between the members of the Republican Party and the putative independent voters. The Connecticut voter who, while steadfastly refusing to register as a Republican, casts a vote in the Republican primary, forms no more meaningful an "association" with the Party than does the independent or the registered Democrat who responds to questions by a Republican Party pollster. If the concept of freedom of association is extended to such casual contacts, it ceases to be of any analytic use. See *Democratic Party of United States v Wisconsin ex rel. La Follette*, 450 US 107, 130-131, 67 L Ed 2d 82, 101 S Ct 1010 (1981) (Powell, J., dissenting) ("[Not] every conflict between state law and party rules concerning participation in the nomination process creates a burden on associational rights"; one must "look closely at the nature of the intrusion, in light of the nature of the association involved, to see

whether we are presented with a real limitation on First Amendment freedoms").

The ability of the members of the Republican Party to select their own candidate, on the other hand, unquestionably

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implicates an associational freedom—but it can hardly be thought that that freedom is unconstitutionally impaired here. The Party is entirely free to put forward, if it wishes, that candidate who has the highest degree of support among Party members and independents combined. The State is under no obligation, however, to let its party primary be used, instead of a party-funded opinion poll, as the means by which the party identifies the relative popularity of its potential candidates among independents. Nor is there any reason apparent to me why the State cannot insist that this decision to support what might be called the independents' choice be taken by the party membership in a democratic fashion, rather than through a process that permits the members' votes to be diluted—and perhaps even absolutely outnumbered—by the votes of outsiders.

The Court's opinion characterizes this, disparagingly, as an attempt to "protect[] the integrity of the Party against the Party itself." Ante, at 224, 93 L Ed 2d, at 529. There are two problems with this characterization. The first, and less important, is that it is not true. We have no way of knowing that a majority of the Party's members is in favor of allowing ultimate selection of its candidates for federal and statewide office to be determined by persons outside the Party. That decision was not made by democratic ballot, but by

the Party's state convention—which, for all we know, may have been dominated by officeholders and office seekers whose evaluation of the merits of assuring election of the Party's candidates, vis-à-vis the merits of proposing candidates faithful to the Party's political philosophy, diverged significantly from the views of the Party's rank and file. I had always thought it was a major purpose of state-imposed party primary requirements to protect the general party membership against this sort of minority control. See *Nader v Schaffer*, 417 F Supp 837, 843 (Conn), summarily aff'd, 429 US 989, 50 L Ed 2d 602, 97 S Ct 516 (1976). Second and more important, however, even if it were the fact that the majority of the Party's members wanted its candidates to be

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determined by outsiders, there is no reason why the State is bound to honor that desire—any more than it would be bound to honor a party's democratically expressed desire that its candidates henceforth be selected by convention rather than by primary, or by the party's executive committee in a smoke-filled room. In other words, the validity of the state-imposed pri-

mary requirement itself, which we have hitherto considered "too plain for argument," *American Party of Texas v White*, 415 US 767, 781, 39 L Ed 2d 744, 94 S Ct 1296 (1974), presupposes that the State has the right "to protect the Party against the Party itself." Connecticut may lawfully require that significant elements of the democratic election process be democratic—whether the Party wants that or not. It is beyond my understanding why the Republican Party's delegation of its democratic choice to a Republican Convention can be proscribed, but its delegation of that choice to nonmembers of the Party cannot.

In the case before us, Connecticut has said no more than this: Just as the Republican Party may, if it wishes, nominate the candidate recommended by the Party's executive committee, so long as its members select that candidate by name in a democratic vote; so also it may nominate the independents' choice, so long as its members select him by name in a democratic vote. That seems to me plainly and entirely constitutional.

I respectfully dissent.

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MARCH FONG EU, Secretary of State of California, et al., Appellants
v
SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE et al.

489 US —, 103 L Ed 2d 271, 109 S Ct —

[No. 87-1269]

Argued December 5, 1988. Decided February 22, 1989.

Decision: California law banning endorsement of primary candidates by parties' governing bodies held to violate parties' speech and association rights under Federal Constitution's First Amendment.

SUMMARY

Provisions of the California Elections Code (1) forbade the official governing bodies of political parties from endorsing candidates in party primaries, (2) restricted the organization and composition of such official governing bodies, (3) limited the term of office for a party's state central committee chair, and (4) required that the chair rotate between residents of northern and southern California. Various county central committees of the Democratic and Republican parties, and other groups and individuals active in partisan politics in California, brought an action in the United States District Court for the Northern District of California against state officials responsible for enforcing the Code. The plaintiffs contended that the provisions in question deprived political parties and their members of the rights of free speech and free association guaranteed by the Federal Constitution's First and Fourteenth Amendments. The District Court granted summary judgment for the plaintiffs as to the provisions in question, and the United States Court of Appeals affirmed (792 F2d 802). On appeal, the United States Supreme Court vacated and remanded (479 US 1024, 93 L Ed 2d 820, 107 S Ct 864) for further consideration in light of its decision in *Tashjian v Republican Party of Connecticut* (1986) 479 US 208, 93 L Ed 2d 514, 107 S Ct 544. After supplemental briefing, the Court of Appeals concluded that its previous decision was supported by the *Tashjian* decision, *supra*, and accordingly reinstated its judgment affirming the District Court's decision (826 F2d 814).

On appeal, the United States Supreme Court affirmed. In an opinion by

MARSHALL, J., joined by BRENNAN, WHITE, BLACKMUN, STEVENS, O'CONNOR, SCALIA, and KENNEDY, JJ., it was held that (1) the provision concerning endorsement of primary candidates (a) infringed upon the free speech rights of parties and their members, because it directly hampered the ability of a party to spread its message and hamstrung voters seeking to inform themselves about the candidates and the campaign issues, (b) infringed upon political parties' freedom of association, because the provision prevented parties from promoting candidates at the crucial juncture at which the appeal to common principles may be translated into concerted action and, hence, to political power in the community, and (c) could not be justified as advancing the state's compelling interests in maintaining a stable political system, protecting primary voters from confusion and undue influence, or preserving party stability; and (2) the provisions regulating the parties' internal affairs (a) burdened the freedom of association of political parties and their members, because such provisions limited a party's discretion in how to organize itself, conduct its affairs, and select its leaders, and (b) could not be justified as serving compelling state interests in preserving the integrity of the election process, insuring the democratic management of a party's internal affairs, or preventing regional friction.

STEVENS, J., concurring, joined the court's opinion, but expressed the view that such phrases as "compelling state interest" were too convenient and result-oriented to be helpful for constitutional analysis.

REHNQUIST, Ch. J., did not participate.

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103 L Ed 2d 271

HEADNOTES

Classified to U.S. Supreme Court Digest, Lawyers' Edition

Constitutional Law § 940.5 — freedom of speech and association — party endorsement of primary candidates

1a-1j. A state elections code provision that forbids the official governing bodies of political parties from endorsing candidates in party primaries violates the free speech rights, guaranteed by the Federal Constitution's First and Fourteenth Amendments, of political parties and their members, because the provision, which affects speech that is at the core of the electoral process and of the First Amendment freedoms, directly hampers the ability of a party to spread its message and hampers voters seeking to inform themselves about the candidates and

the campaign issues; such a provision infringes upon political parties' freedom of association protected by the First and Fourteenth Amendments, because the provision prevents parties from promoting candidates at the crucial juncture at which the appeal to common principles may be translated into concerted action and, hence, to political power in the community; such a provision may not be justified as advancing the state's compelling interests in maintaining a stable political system and protecting primary voters from confusion and undue influence, where the state does not adequately explain how the provision advances those interests; nor

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25 Am Jur 2d, Elections §§ 117-119, 123-125, 129-131, 150-152

USCS, Constitution, Amendments 1, 14

US L Ed Digest, Constitutional Law § 940.5; Elections § 2

Index to Annotations, Elections and Voting; Freedom of Association; Freedom of Speech and Press; Politics and Political Matters

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ANNOTATION REFERENCES

Supreme Court's views regarding First Amendment guarantees of freedom of speech or of the press as applied to electoral or referendum process. 71 L Ed 2d 1000.

Supreme Court's views regarding First Amendment right of association as applied to advancement of political beliefs. 67 L Ed 2d 639.

may the provision be justified as serving a compelling state interest in party stability, since preserving party unity during a primary is not a compelling state interest.

Constitutional Law § 940.5 — freedom of association — regulation of party's internal structure

2a-2f. State statutory provisions that (1) restrict the organization and composition of the official governing bodies of political parties, (2) limit the term of office for a party's state central committee chair, and (3) require that the chair rotate between residents of northern and southern parts of the state burden the freedom of association, guaranteed by the Federal Constitution's First and Fourteenth Amendments, of political parties and their members, because such provisions limit a party's discretion in how to organize itself, conduct its affairs, and select its leaders; such provisions cannot be justified as serving a compelling state interest in preserving the integrity of the election process, where the state does not show that the provisions are necessary to insure the order and fairness of elections; such provisions cannot be justified as serving a compelling state interest in the democratic management of a party's internal affairs, where state intervention is not necessary to prevent the derogation of the civil rights of party adherents, because the state has no interest in protecting the integrity of the party against the party itself; the provisions regulating the party chair cannot be justified as preventing regional friction, because a state cannot substitute its judgment for that of a party as to the desirability of a particular internal party structure.

Constitutional Law § 940.5 — First Amendment — validity of state regulations

3. A state's broad power to regulate the time, place, and manner of elections does not extinguish the state's responsibility to observe the limits established by the rights of the state's citizens under the Federal Constitution's First Amendment; to assess the constitutionality of a state election law, a court first examines whether the law burdens rights protected by the First and Fourteenth Amendments; if the challenged law burdens the rights of political parties and their members, the law can survive constitutional scrutiny only if the state shows that the law advances a compelling state interest and is narrowly tailored to serve that interest.

Constitutional Law § 940.5 — freedom of speech — election campaigns — primaries

4. The Federal Constitution's First Amendment has its fullest and most urgent application to speech uttered during a campaign for political office; for First Amendment purposes, free discussion about candidates for public office is no less critical before a primary than before a general election, since in both instances, the election campaign is a means of disseminating ideas as well as attaining political office.

Constitutional Law §§ 933, 940.5 — First Amendment — censorship — political speech

5. A state's highly paternalistic approach limiting what people may hear is generally suspect under the Federal Constitution's First Amendment, but it is particularly egregious where the state censors the political speech that a political party shares with its members.

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Constitutional Law § 940.5 — freedom of association — political parties

6. Partisan political organizations enjoy freedom of association protected by the Federal Constitution's First and Fourteenth Amendments; such freedom of association means not only that an individual voter has the right to associate with the political party of her choice, but also that a political party has a right to identify the people who constitute the association and to select a standard bearer who best represents the party's ideologies and preferences.

Constitutional Law § 940.5 — right of association

7. Imposing limitations on individuals wishing to band together to advance their views on a ballot measure, while placing none on individuals acting alone, is a restraint on the federal constitutional right of association.

Constitutional Law § 940.5 — free speech and association — political stability — informed electorate

8a, 8b. For purposes of the rule that a state's burden on the rights to free speech and free association can survive constitutional scrutiny only if a compelling governmental interest is served, maintaining a stable political system is a compelling state interest, and a state has a legitimate interest in fostering an informed electorate.

Elections § 2 — flow of political information

9. A state may properly regulate the flow of information between political associations and their members when necessary to prevent fraud and corruption.

Appeal § 1331.5 — what reviewable

10a, 10b. On appeal from a United States Court of Appeals decision that affirmed a United States District Court judgment holding that a state's election code provisions violated the free speech and associational rights of political parties, the United States Supreme Court will not disturb the District Court's ruling that the central committees of various political parties had authorization and capacity to bring and maintain the litigation, where the Court of Appeals did not disturb this ruling.

Constitutional Law § 940.5 — freedom of association — political parties

11. A political party's determination of the structure which best allows it to pursue its political goals is protected by the Federal Constitution; freedom of association also encompasses a political party's decisions about the identity of, and the process for electing, its leaders.

Constitutional Law § 940.5 — associational rights — integrity of election process — regulation of parties

12a, 12b. For purposes of the federal constitutional requirement that laws burdening the associational rights of political parties and their members serve a compelling state interest, a state has a compelling interest in preserving the integrity of its election process; toward that end, a state may properly enact laws that interfere with a political party's internal affairs when necessary to insure that elections are fair and honest; for example, a state may properly impose certain eligibility requirements for voters in the general election, even though they limit

the ability of political parties to garner support and members, where such requirements are necessary to insure that elections are fair and honest; however, a state cannot justify regulating a party's internal affairs without showing that such regulation is necessary to insure an election that is orderly and fair.

Appeal § 1331.5 — what reviewable

13a, 13b. On appeal from a United States Court of Appeals decision

holding that a state's election code provisions, purportedly designed to curb friction within political parties, violate the parties' free speech and associational rights, the United States Supreme Court need not address the contention that the challenged laws weaken rather than strengthen parties, where the Supreme Court finds that the state has no compelling interest in curbing intraparty friction as long as the electoral process remains fair and orderly.

SYLLABUS BY REPORTER OF DECISIONS

Section 11702 of the California Elections Code (Code) forbids the official governing bodies of political parties to endorse or oppose candidates in primary elections, while § 29430 makes it a misdemeanor for any candidate in a primary to claim official party endorsement. Other Code sections dictate the organization and composition of parties' governing bodies, limit the term of office for a party's state central committee chair, and require that the chair rotate between residents of northern and southern California. Various party governing bodies, members of such bodies, and other politically active groups and individuals brought suit in the District Court, claiming, *inter alia*, that these Code provisions deprived parties and their members of the rights of free speech and free association guaranteed by the First and Fourteenth Amendments. The District Court granted summary judgment for the plaintiffs as to the provisions in question, and the Court of Appeals affirmed.

Held: The challenged California election laws are invalid, since they burden the First Amendment rights of political parties and their mem-

bers without serving a compelling state interest.

(a) The ban on primary endorsements in §§ 11702 and 29430 violates the First and Fourteenth Amendments. By preventing a party's governing body from stating whether a candidate adheres to the party's tenets or whether party officials believe that the candidate is qualified for the position sought, the ban directly hampers the party's ability to spread its message and hamstring voters seeking to inform themselves about the candidates and issues, and thereby burdens the core right to free political speech of the party and its members. The ban also infringes a party's protected freedom of association rights to identify the people who constitute the association and to select a standard bearer who best represents the party's ideology and preferences, by preventing the party from promoting candidates at the crucial primary election juncture. Moreover, the ban does not serve a compelling governmental interest. The State has not adequately explained how the ban advances its claimed interest in a stable political system or what makes California so

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peculiar that it is virtually the only State to determine that such a ban is necessary. The explanation that the State's compelling interest in stable government embraces a similar interest in party stability is untenable, since a State may enact laws to prevent disruption of political parties from without but not from within. The claim that a party that issues primary endorsements risks intraparty friction which may endanger its general election prospects is insufficient, since the goal of protecting the party against itself would not justify a State's substituting its judgment for that of the party. The State's claim that the ban is necessary to protect primary voters from confusion and undue influence must be viewed with skepticism, since the ban restricts the flow of information to the citizenry without any evidence of the existence of fraud or corruption that would justify such a restriction.

(b) The restrictions on the organization and composition of the official governing bodies of political parties, the limits on the term of office for state central committee chairs, and the requirement that such chairs rotate between residents of northern and southern California cannot be upheld. These laws directly burden the associational rights of a party and its members by limiting the

party's discretion in how to organize itself, conduct its affairs, and select its leaders. Moreover, the laws do not serve a compelling state interest. A state cannot justify regulating a party's...internal affairs without showing that such regulation is necessary to ensure that elections are orderly, fair, and honest, and California has made no such showing. The State's claim that it has a compelling interest in the democratic management of internal party affairs is without merit, since this is not a case where intervention is necessary to prevent the derogation of party adherents' civil rights, and since the State has no interest in protecting the party's integrity against the party itself. Nor are the restrictions justified by the State's claim that limiting the term of the state central committee chair and requiring that the chair rotate between northern and southern California help to prevent regional friction from reaching a critical mass, since a State cannot substitute its judgment for that of the party as to the desirability of a particular party structure.

826 F2d 814, affirmed.

Marshall, J., delivered the opinion of the Court, in which all other Members joined, except Rehnquist, C.J., who took no part in the consideration or decision of the case. Stevens, J., filed a concurring opinion.

APPEARANCES OF COUNSEL

Geoffrey Lloyd Graybill argued the cause for appellants.

James J. Brosnahan argued the cause for appellees.

OPINION OF THE COURT

Justice Marshall delivered the opinion of the Court.

(1a, 2a) The California Elections Code forbids the official governing

bodies of political parties from endorsing candidates in party primaries. It also dictates the organization and composition of those bodies, lim-

its the term of office of party chair, and requires that the chair rotate between residents of northern and southern California. The Court of Appeals for the Ninth Circuit held that these provisions violate the free speech and associational rights of political parties and their members guaranteed by the First and Fourteenth Amendments. 826 F2d 814 (1987). We noted probable jurisdiction, 485 US —, 99 L Ed 2d 696, 108 S Ct 1466 (1988), and now affirm.

I

A

The State of California heavily regulates its political parties. Although the laws vary in extent and detail from party to party, certain requirements apply to all "ballot-qualified" parties.¹ The California Elections Code (Code) provides that the "official governing bodies" for such a party are its "state convention," "state central committee," and

"county central committees." Cal Elec Code Ann § 11702 (West 1977), and that these bodies are responsible for conducting the party's campaigns.² At the same time, the Code provides that the official governing bodies "shall not endorse, support, or oppose, any candidate for nomination by that party for partisan office in the direct primary election." *Ibid.* It is a misdemeanor for any primary candidate, or a person on her behalf, to claim that she is the officially endorsed candidate of the party. § 29430.

Although the official governing bodies of political parties are barred from issuing endorsements, other groups are not. Political clubs affiliated with a party, labor organizations, political action committees, other politically active associations, and newspapers frequently endorse primary candidates.³ With the official party organizations silenced by the ban, it has been possible for a candidate with views antithetical to

1. A "ballot-qualified" party is eligible to participate in any primary election because: (a) during the last gubernatorial election one of its candidates for state-wide office received two percent of the vote; (b) one percent of the State's voters are registered with the party; or (c) a petition establishing the party has been filed by ten percent of the State's voters. Cal Elec Code Ann § 6430 (West 1977).

In the interest of simplicity, we use the terms "ballot-qualified party" and "political party" interchangeably.

2. The Code requires the state central committee of each party to conduct campaigns for the party, employ campaign directors, and develop whatever campaign organizations serve the best interest of the party. Cal Elec Code Ann § 8777 (West Supp 1988) (Democratic Party); § 9276 (Republican Party); § 9466 (American Independent Party); § 9619 (Peace and Freedom Party). The county central committees, in turn, "have charge of the party campaign under general direction of the state central committee." § 8940 (Democratic

Party); § 9440 (Republican Party); § 9740 (American Independent Party); § 9850 (Peace and Freedom Party). In addition, they "perform such other duties and services for th[e] political party as seem to be for the benefit of the party." § 8942 (Democratic Party); § 9443 (Republican Party); § 9742 (American Independent Party); § 9852 (Peace and Freedom Party).

3. For example, while voters cannot learn what the Democratic state and county central committees think of candidates, they may be flooded with endorsements from disparate groups across the State such as the Berkeley Democratic Club, the Multicultural Democratic Club, and the District 8 Democratic Club. Addendum to Motion to Affirm or to Dismiss (Addendum) 20A ¶ 7 (declaration of Mary King, chair of the Alameda County Democratic Central Committee); Addendum 48 ¶ 7 (declaration of Linda Post, chair of San Francisco County Democratic Central Committee).

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those of her party nevertheless to win its primary.⁴

ses punishable by fine and imprisonment.

B

In addition to restricting the primary activities of the official governing bodies of political parties, California also regulates their internal affairs. Separate statutory provisions dictate the size and composition of the state central committees;⁵ set forth rules governing the selection and removal of committee members;⁶ fix the maximum term of office for the chair of the state central committee;⁷ require that the chair rotate between residents of northern and southern California;⁸ specify the time and place of committee meetings;⁹ and limit the dues parties may impose on members.¹⁰ Violations of these provisions are criminal offen-

Various county central committees of the Democratic and Republican parties, the state central committee of the Libertarian Party, members of various state and county central committees, and other groups and individuals active in partisan politics in California brought this action in federal court against state officials responsible for enforcing the Code. (State or California).¹¹ They contended that the ban on primary endorsements and the restrictions on internal party governance deprive political parties and their members of the rights of free speech and free association guaranteed by the First and Fourteenth Amendments of the

4. In 1980, for example, Tom Metzger won the Democratic Party's nomination for United States House of Representative from the San Diego area, although he was a Grand Dragon of the Ku Klux Klan and held views antithetical to those of the Democratic Party. Addendum 15a ¶ 12 (declaration of Edmond Costantini, member of the Executive Board of the Democratic state central committee).

5. For example, the Code dictates the precise mix of elected officials, party nominees, and party activists who are members of the state central committees of the Republican and Democratic parties as well as who may nominate the various committee members. Cal Elec Code Ann §§ 8660-8661, 8663 (West 1977 & Supp 1988) (Democratic Party); §§ 9160-9164 (Republican Party). Other parties are similarly regulated. See § 9640 (American Independent Party); §§ 9762, 9763 (Peace and Freedom Party) (West 1977).

6. §§ 8663-8667, 8669 (Democratic Party); §§ 9161-9164, 9168, 9170 (Republican Party); §§ 9641-9644, 9648-9650 (American Independent Party); §§ 9790-9794 (Peace and Freedom Party).

7. The Code limits the term of office of the chair of the state central committee to two years and prohibits successive terms. See § 8774 (Democratic Party); § 9274 (Republican

Party); § 9685 (American Independent Party); § 9816 (Peace and Freedom Party).

8. § 8774 (West Supp 1988) (Democratic state central committee); § 9274 (West 1977) (Republican state central committee); § 9816 (Peace and Freedom state central committee).

9. §§ 8710-7811 (West Supp 1988) (Democratic state central committee); §§ 8920-8921 (West 1977 & Supp 1988) (Democratic county central committee); § 9210 (West Supp 1988) (Republican state central committee); §§ 9420-9421 (West 1977 & Supp 1988) (Republican county central committee); §§ 9730-9732 (American Independent county central committee); § 9800 (West 1977) (Peace and Freedom state central committee); §§ 9830, 9840-9842 (Peace and Freedom county central committee).

10. §§ 8775, 8945 (West 1977 & Supp 1988) (Democratic Party); § 9278 (West 1977) (Republican Party); §§ 9687, 9745 (American Independent Party); §§ 9918, 9855 (Peace and Freedom Party).

11. The plaintiffs sued Marsh Fong Eu, Secretary of State of California; John K. Van de Kamp, Attorney General of California; Arlo Smith, District Attorney of San Francisco County; and Leo Himmelbach, District Attorney of Santa Clara County.

United States Constitution.¹¹ The first count of the complaint challenged the ban on endorsements in partisan primary elections; the second count challenged the ban on endorsements in nonpartisan school, county, and municipal elections; and the third count challenged the provisions that prescribe the composition of state central committees, the term of office and eligibility criteria for state central committee chairs, the time and place of state and county central committee meetings, and the dues county committee members must pay.

The plaintiffs moved for summary judgment, in support of which they filed 28 declarations from the chairs of each plaintiff central committee, prominent political scientists, and elected officials from California and other States. The State moved to dismiss and filed a cross-motion for summary judgment supported by one declaration from a former state senator.

The District Court granted summary judgment for the plaintiffs on the first count, ruling that the ban on primary endorsements in § 11702 and § 29430 violated the First Amendment as applied to the States

through the Fourteenth Amendment. The court stayed all proceedings on the second count under the abstention doctrine of *Railroad Comm'n of Texas v Pullman Co.*, 312 US 496, 85 L Ed 971, 61 S Ct 643 (1941).¹² On the third count, the court ruled that the laws prescribing the composition of state central committees, limiting the committee chairs' term of office, and designating that the chair rotate between residents of northern and southern California violate the First Amendment.¹³ The court denied summary judgment with respect to the statutory provisions establishing the time and place of committee meetings and the amount of dues. Civ No. C-83-5599 MHP (ND Cal, May 3, 1984).

The Court of Appeals for the Ninth Circuit affirmed. 792 F2d 802 (1986). This Court vacated that decision, 479 US 1024, 93 L Ed 2d 820, 107 S Ct 864 (1987), and remanded for further consideration in light of *Tashjian v Republican Party of Connecticut*, 479 US 208, 93 L Ed 2d 514, 107 S Ct 544 (1986).

After supplemental briefing, the Court of Appeals again affirmed. 826 F2d 814 (1987). The court first rejected the State's arguments based

12. The plaintiffs also asserted that the statutes violated the Equal Protection Clause of the Fourteenth Amendment. Because the District Court held that the statutes violate the First Amendment, it did not reach this claim.

13. An appeal was then pending in the California Supreme Court presenting a First Amendment challenge to a ban on endorsements by political parties of candidates in nonpartisan school, county, and municipal elections. The California Supreme Court ultimately decided that the Code did not prohibit such endorsements and so did not reach the First Amendment question. *Unger v Superior Court*, 37 Cal 3d 612, 692 P2d 238 (1984). A ban on party endorsements in nonpartisan

elections subsequently was enacted by ballot initiative. A Federal District Court has ruled that this ban violates the First and Fourteenth Amendments. *Geary v Renne*, Civ No. C-87-4724 AJZ (ND Cal, April 27), stayed, 856 F2d 1456 (CA9 1988).

14. The District Court invalidated the following Code sections: Cal Elec Code §§ 8660-8661, 8663-8667, 8663 (Democratic state central committee); §§ 9160, 9160.5, 9161, 9161.5, 9162-9164 (West 1977 and Supp 1988) (Republican state central committee); § 9274 (Republican state central committee chair); and § 9816 (Peace and Freedom state central committee chair). In addition, it held that § 29102 was unconstitutional as applied.

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on nonjusticiability, lack of standing. Eleventh Amendment immunity and Pullman abstention. 826 F2d, at 821-825. Turning to the merits, the court characterized the prohibition on primary endorsements as an "outright ban" on political speech. *Id.*, at 833. "Prohibiting the governing body of a political party from supporting some candidates and opposing others patently infringes both the right of the party to express itself freely and the right of party members to an unrestricted flow of political information." *Id.*, at 835. The court rejected the State's argument that the ban served a compelling state interest in preventing internal party dissension and factionalism: "The government simply has no legitimate interest in protecting political parties from disruptions of their own making." *Id.*, at 834. The court noted, moreover, that the State had not shown that banning primary endorsements protects parties from factionalism. *Ibid.* The court concluded that the ban was not necessary to protect voters from confusion, stating, "California's ban on preprimary endorsements is a form of paternalism that is inconsistent with the First Amendment." *Id.*, at 836.

The Court of Appeals also found that California's regulation of internal party affairs "burdens the parties' right to govern themselves as they think best." *Id.*, at 827. This interference with the parties' and their members' First Amendment rights was not justified by a compelling state interest for a State has a legitimate interest "in orderly elections, not orderly parties." *Id.*, at 831. In any event, the court noted, the State had failed to submit "a shred of evidence," *id.*, at 833 (quoting Civ No. C-83-5599 (ND Cal May

3, 1984)), that the regulations of party internal affairs helped minimize party factionalism. Accordingly, the court held that the challenged provisions were unconstitutional under the First and Fourteenth Amendments.

II

[3] A State's broad power to regulate the time, place, and manner of elections "does not extinguish the State's responsibility to observe the limits established by the First Amendment rights of the State's citizens." *Tashjian v Republican Party of Connecticut*, *supra*, at 217, 93 L Ed 2d 514, 107 S Ct 544. To assess the constitutionality of a state election law, we first examine whether it burdens rights protected by the First and Fourteenth Amendments. 479 US, at 214, 93 L Ed 2d 514, 107 S Ct 544; *Anderson v Celebrezze*, 460 US 780, 789, 75 L Ed 2d 547, 103 S Ct 1564 (1983). If the challenged law burdens the rights of political parties and their members, it can survive constitutional scrutiny only if the State shows that it advances a compelling state interest. *Tashjian*, *supra*, at 217, 222, 93 L Ed 2d 514, 107 S Ct 544; *Illinois State Bd. of Elections v Socialist Workers Party*, 440 US 173, 184, 59 L Ed 2d 230, 99 S Ct 983 (1979); *American Party of Texas v White*, 415 US 767, 780, and n 11, 39 L Ed 2d 744, 94 S Ct 1296 (1974); *Williams v Rhodes*, 393 US 23, 31, 21 L Ed 2d 24, 89 S Ct 5, 45 Ohio Ops 2d 236 (1968), and is narrowly tailored to serve that interest. *Illinois State Bd. of Elections*, *supra*, at 185, 59 L Ed 2d 230, 99 S Ct 983; *Kusper v Pontikes*, 414 US 51, 58-59, 38 L Ed 2d 260, 94 S Ct 303 (1973); *Dunn v Blumstein*, 405 US 330, 343, 31 L Ed 2d 274, 92 S Ct 995 (1972).

A

[1b, 4] We first consider California's prohibition on primary endorsements by the official governing bodies of political parties. California concedes that its ban implicates the First Amendment, Tr of Oral Arg 17, but contends that the burden is "miniscule." Id., at 7. We disagree. The ban directly affects speech which "is at the core of our electoral process and of the First Amendment freedoms." *Williams v Rhodes*, supra, at 32, 21 L Ed 2d 24, 89 S Ct 5, 45 Ohio Ops 2d 236. We have recognized repeatedly that "debate on the qualifications of candidates [is] integral to the operation of the system of government established by our Constitution." *Buckley v Valeo*, 424 US 1, 14, 46 L Ed 2d 659, 96 S Ct 612 (1976) (per curiam); see also *NAACP v Claiborne Hardware Co.*, 458 US 886, 919, 73 L Ed 2d 1216, 102 S Ct 3409 (1982); *Carey v Brown*, 447 US 455, 467, 65 L Ed 2d 263, 100 S Ct 2286 (1980); *Garrison v Louisiana*, 379 US 64, 74-75, 13 L Ed 2d 125, 85 S Ct 209 (1964). Indeed, the First Amendment "has its fullest and most urgent application" to speech uttered during a campaign for political office. *Monitor Patriot Co. v Roy*, 401 US 265, 272, 28 L Ed 2d 35, 91 S Ct 621 (1971); see also *Mills v Alabama*, 384 US 214, 218, 16 L Ed 2d 484, 86 S Ct 1434 (1966). Free discussion about candidates for public office is no less critical before a primary than before a general election. Cf. *Storer v Brown*, 415 US 724, 735, 39 L Ed 2d 714, 94 S Ct 1274 (1974); *Smith v Allwright*, 321 US 649, 666, 88 L Ed 987, 64 S Ct 757, 151 ALR 1110 (1944); *United States v Classic*, 313 US 299, 314, 85 L Ed 1368, 61 S Ct 1031 (1941). In both instances, the "election cam-

paign is a means of disseminating ideas as well as attaining political office." *Illinois State Bd. of Elections*, supra, at 186, 59 L Ed 2d 230, 99 Ct 983.

[1c, 5] California's ban on primary endorsements, however, prevents party governing bodies from stating whether a candidate adheres to the tenets of the party or whether party officials believe that the candidate qualified for the position sought. This prohibition directly hampers the ability of a party to spread its message and hamstrings voters seeking to inform themselves about the candidates and the campaign issue. See *Tashjian*, supra, at 220-222, 93 L Ed 2d 514, 107 S Ct 544; *Pacific Gas & Electric Co. v Public Utilities Comm'n of California*, 475 US 1, 889 L Ed 2d 1, 106 S Ct 903 (1986); *Brown v Hartlage*, 456 US 45, 60, 72 L Ed 2d 732, 102 S Ct 1523 (1982); *First National Bank of Boston v Bellotti*, 435 US 765, 791-792, 65 L Ed 2d 707, 98 S Ct 1407 (1978). A "highly paternalistic approach" limiting what people may hear is generally suspect, *Virginia State Bd. of Pharmacy v Virginia Citizens Consumer Council, Inc.*, 425 US 748, 770, 48 L Ed 2d 346, 96 S Ct 1817 (1976); see also *First National Bank of Boston*, supra, at 790-792, 55 L Ed 2d 707, 98 S Ct 1407, but it is particularly egregious where the State censors the political speech a political party shares with its members. See *Roberts v United States Jaycees*, 468 US 609, 634, 82 L Ed 2d 462, 104 S Ct 3244 (1984) (O'Connor, J., concurring).

[1d, 6] Barring political parties from endorsing and opposing candidates not only burdens their freedom of speech but also infringes upon their freedom of association. It is

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well settled that partisan political organizations enjoy freedom of association protected by the First and Fourteenth Amendments. Tashjian, *supra*, at 214, 93 L Ed 2d 514, 107 S Ct 544; see also *Elrod v Burns*, 427 US 347, 357, 49 L Ed 2d 547, 96 S Ct 2673 (1976) (plurality opinion). Freedom of association means not only that an individual voter has the right to associate with the political party of her choice, Tashjian, *supra*, at 214, 93 L Ed 2d 514, 107 S Ct 544 (quoting *Kusper*, *supra*, at 57, 38 L Ed 2d 260, 94 S Ct 303), but also that a political party has a right to "identify the people who constitute the association," Tashjian, *supra*, at 214, 93 L Ed 2d 514, 107 S Ct 544 (quoting *Democratic Party of the United States v Wisconsin ex rel. La Follette*, 450 US 107, 122, 67 L Ed 2d 82, 101 S Ct 1010 (1981)); cf. *NAACP v Alabama*, 357 US 449, 460-462, 2 L Ed 2d 1488, 78 S Ct 1163 (1958), and to select a "standard bearer who best represents the party's ideologies and preferences." *Ripon Society, Inc. v National Republican Party*, 173 US App DC 350, 384, 525 F2d 567, 601 (1975) (Tamm, J., concurring in result), cert denied,

424 US 933, 47 L Ed 2d 341, 96 S Ct 1147, 96 S Ct 1148 (1976).

[1e, 7] Depriving a political party of the power to endorse suffocates this right. The endorsement ban prevents parties from promoting candidates "at the crucial juncture at which the appeal to common principles may be translated into concerted action, and hence to political power in the community." Tashjian, *supra*, at 216, 93 L Ed 2d 514, 107 S Ct 544. Even though individual members of the state central committees and county central committees are free to issue endorsements, imposing limitations "on individuals wishing to band together to advance their views on a ballot measure, while placing none on individuals acting alone, is clearly a restraint on the right of association." *Citizens Against Rent Control/Coalition for Fair Housing v Berkeley*, 454 US 290, 296, 70 L Ed 2d 492, 102 S Ct 434 (1981).

[1f, 8a] Because the ban burdens the appellees' rights to free speech and free association, it can only survive constitutional scrutiny if it serves a compelling governmental interest.¹⁹ The State offers two: stable government and protecting vot-

18. California contends that it need not show that its endorsement ban serves a compelling state interest because the political parties have "consented" to it. In support of this claim, California observes that the legislators who could repeal the ban belong to political parties, that the bylaws of some parties prohibit primary endorsements, and that parties continue to participate in statewide primaries.

This argument is fatally flawed in several respects. We have never held that a political party's consent will cure a statute that otherwise violates the First Amendment. Even aside from this fundamental defect, California's consent argument is contradicted by the simple fact that the official governing bodies of various political parties have joined this

lawsuit. In addition, the Democratic and Libertarian Parties moved to issue endorsements following the Court of Appeals' invalidation of the endorsement ban.

There are other flaws in the State's argument. Simply because a legislator belongs to a political party does not make her at all times a representative of party interests. In supporting the endorsement ban, an individual legislator may be acting on her understanding of the public good or her interest in reelection. The independence of legislators from their parties is illustrated by the California Legislature's frequent refusal to amend the election laws in accordance with the wishes of political parties. See, e.g., Addendum 12a-13e [17-9] (declaration of Bert Coffey, chair of the Democratic state central committee). More-

ers from confusion and undue influence." Maintaining a stable political system is, unquestionably, a compelling state interest. See *Storer v Brown*, 415 US, at 736, 39 L Ed 2d 714, 94 S Ct 1274. California, however, never adequately explains how banning parties from endorsing or opposing primary candidates advances that interest. There is no showing, for example, that California's political system is any more stable now than it was in 1963, when the legislature enacted the ban. Nor does the State explain what makes the California system so peculiar that it is virtually the only

State that has determined that such a ban is necessary."

[19] The only explanation the State offers is that its compelling interest in stable government embraces a similar interest in party stability. Brief for Appellants 47. The State relies heavily on *Storer v Brown*, where we stated that because "splintered parties and unrestrained factionalism may do significant damage to the fabric of government," *supra*, at 736, 39 L Ed 2d 714, 94 S Ct 1274, States may regulate elections to ensure that "some sort of order, rather than chaos . . .

over, the State's argument ignores these parties with negligible, if any, representation in the legislature.

That the bylaws of some parties prohibit party primary endorsements also does not prove consent. These parties may have chosen to reflect state election law in their bylaws, rather than permit or require conduct prohibited by law. Nor does the fact that parties continue to participate in the state-run primary process indicate that they favor each regulation imposed upon that process. A decision to participate in state-run primaries more likely reflects a party's determination that ballot participation is more advantageous than the alternatives, that is, supporting independent candidates or conducting write-in campaigns. See *Storer v Brown*, 415 US 724, 743, 39 L Ed 2d 714, 94 S Ct 1274 (1974); *Anderson v Celebrezze*, 460 US 780, 799, n 26, 75 L Ed 2d 547, 103 S Ct 1564 (1983).

Finally, the State's focus on the parties' alleged consent ignores the independent First Amendment rights of the parties' members. It is wholly undemonstrated that the members authorized the parties to consent to infringements of members' rights.

16. The State also claims that the ban on primary endorsements serves a compelling state interest in "ensuring each voter to a single nominating act." *Tashjian v Republican Party of Connecticut*, 459 US 208, 223, n 13, 93 L Ed 2d 514, 107 S Ct 544 (1984) (quoting *Anderson*, *supra*, at 802, n 29, 75 L Ed 2d 547, 103 S Ct 1564). This argument is meritless. It fails to distinguish between a nominating act—the vote cast at the primary

election—and speech that may influence that act. The logic of the State's argument not only would support a ban on endorsements by every organization and individual, but also would justify a total ban on all discussion of a candidate's qualifications and political positions. Such a blanket prohibition cannot coexist with the constitutional protection of political speech.

The State's claim that the endorsement ban is necessary to serve any compelling state interest is called into question by its argument before the District Court and the Court of Appeals that this action is not justiciable because the State has never enforced the challenged election laws. 626 F2d 814, 821 (1987).

17. New Jersey also bans primary endorsements by political parties. NJ Stat Ann § 19-36-52 (West 1964); see Weisburd, *Candidate-Making and the Constitution: Constitutional Restraints on and Protections of Party Nominating Methods*, 57 S Cal L Rev 213, 271-272, n 343 (1944). Florida's statutory ban on primary endorsements by political parties was held to violate the First Amendment. See *Abrams v Reno*, 482 F Supp 1166, 1171-1172 (SD Fla 1978), *aff'd*, 649 F2d 342 (CA5 1981), cert denied, 455 US 1016, 72 L Ed 2d 133, 102 S Ct 1710 (1982). Several States provide formal procedures for party primary endorsements. See, e.g., Conn Gen Stat § 9-290 (West 1967 & Supp 1984); RI Gen Laws § 17-12-4 (1964); see also Advisory Commission on Intergovernmental Relations, *The Transformation in American Politics: Implications for Federalism* 146 (1986).

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accompan[ies] the democratic processes." 415 US, at 730, 39 L Ed 2d 714, 94 S Ct 1274. Our decision in *Storer*, however, does not stand for the proposition that a State may enact election laws to mitigate intraparty factionalism during a primary campaign. To the contrary, *Storer* recognized that "contending forces within the party employ the primary campaign and the primary election to finally settle their differences." *Id.*, at 735, 39 L Ed 2d 714, 94 S Ct 1274. A primary is not hostile to intraparty feuds; rather it is an ideal forum in which to resolve them. *Ibid.*; *American Party of Texas v White*, 415 US, at 781, 39 L Ed 2d 744, 94 S Ct 1296. *Tashjian* recognizes precisely this distinction. In that case, we noted that a State may enact laws to "prevent the disruption of the political parties from without" but not, as in this case, laws "to prevent the parties from taking internal steps affecting their own process for the selection of candidates." 479 US, at 224, 93 L Ed 2d 514, 107 S Ct 544.

It is no answer to argue, as does the State, that a party that issues primary endorsements risks intraparty friction which may endanger the party's general election prospects. Presumably a party will be motivated by self-interest and not engage in acts or speech that run counter to its political success. However, even if a ban on endorsements

saves a political party from pursuing self-destructive acts, that would not justify a State substituting its judgment for that of the party. See *ibid.*; *Democratic Party of United States*, 450 US, at 124, 67 L Ed 2d 92, 101 S Ct 1010. Because preserving party unity during a primary is not a compelling state interest, we must look elsewhere to justify the challenged law.

[11, 8b, 9, 10a] The State's second justification for the ban on party endorsements and statements of opposition is that it is necessary to protect primary voters from confusion and undue influence. Certainly the State has a legitimate interest in fostering an informed electorate. *Tashjian*, *supra*, at 220, 93 L Ed 2d 514, 107 S Ct 544; *Anderson v Celebrezze*, 460 US, at 796, 75 L Ed 2d 547, 103 S Ct 1564; *American Party of Texas v White*, *supra*, at 782, n 14, 39 L Ed 2d 744, 94 S Ct 1296; *Bullock v Carter*, 405 US 134, 145, 31 L Ed 2d 92, 92 S Ct 849 (1972); *Jenness v Fortson*, 403 US 431, 442, 29 L Ed 2d 554, 91 S Ct 1970 (1971). However, "[a] State's claim that it is enhancing the ability of its citizenry to make wise decisions by restricting the flow of information to them must be viewed with some skepticism." *Tashjian*, *supra*, at 221, 93 L Ed 2d 514, 107 S Ct 544 (quoting *Anderson v Celebrezze*, *supra*, at 798, 75 L Ed 2d 547, 103 S Ct 1564).¹⁰ While a State may regulate

10. It is doubtful that the silencing of official party committees, alone among the various groups interested in the outcome of a primary election, is the key to protecting voters from confusion. Indeed, the growing number of endorsements by political organizations using the labels "Democratic" or "Republican" has likely misled voters into believing that the official governing bodies were supporting the candidates.

The State makes no showing, moreover, that voters are unduly influenced by party endorsements. There is no evidence that an endorsement issued by an official party organization carries more weight than one issued by a newspaper or a labor union. In States where parties are permitted to issue primary endorsements, voters may consider the parties' views on the candidates but still exercise independent judgment when casting their

the flow of information between political associations and their members when necessary to prevent fraud and corruption, see *Buckley v Valeo*, 424 US, at 26-27, 46 L Ed 2d 659, 96 S Ct 612; *Jenness v Fortson*, supra, at 442, 29 L Ed 2d 554, 91 S Ct 1970, there is no evidence that California's ban on party primary endorsements serves that purpose."

[11] Because the ban on primary endorsements by political parties burdens political speech while serving no compelling governmental interest, we hold that § 11702 and § 29430 violate the First and Fourteenth Amendment.

B

[2b, 11] We turn next to California's restrictions on the organization and composition of official governing bodies, the limits on the term of office for state central committee chair, and the requirement that the chair rotate between residents of northern and southern California. These laws directly implicate the associational rights of political parties and their members. As we noted

in *Tashjian*, a political party's "determination . . . of the structure which best allows it to pursue its political goals, is protected by the Constitution." 479 US, at 224, 93 L Ed 2d 514, 107 S Ct 544. Freedom of association also encompasses a political party's decisions about the identity of, and the process for electing, its leaders. See *Democratic Party of the United States*, supra, (State cannot dictate process of selecting state delegates to Democratic National Convention); *Cousins v Wigoda*, 419 US 477, 42 L Ed 2d 595, 95 S Ct 541 (1975) (State cannot dictate who may sit as state delegates to Democratic National Convention); cf. *Tashjian*, supra, at 235-236, 93 L Ed 2d 514, 107 S Ct 544 (Scalia, J., dissenting) ("The ability of the members of [a political party] to select their own candidate . . . unquestionably implicates an associational freedom").

[2c] The laws at issue burden these rights. By requiring parties to establish official governing bodies at the county level, California prevents the political parties from governing themselves with the structure they think best.²⁰ And by specifying who

vote. For example, in the 1982 New York Democratic gubernatorial contest, Mario Cuomo won the primary over Edward Koch, who had been endorsed by the party. That year gubernatorial candidates endorsed by their parties also lost the primary election to nonendorsed candidates in Massachusetts and Minnesota. Even where the party-endorsed candidate wins the primary, one study has concluded that the party endorsement has little, if any effect, on the way voters cast their vote. App 97-98 §§ 10, 14-17 (declaration of Malcolm E. Jewell, Professor of Political Science, University of Kentucky).

19. [10b] The State suggested at oral argument that the endorsement ban prevents fraud by barring party officials from misrepresenting that they speak for the party. To the extent that the State suggests that only the primary election results can constitute a

party endorsement, Tr of Oral Arg 8-9, it confuses an endorsement from the official governing bodies that may influence election results with the results themselves. To the extent that the State is claiming that the appellees are not authorized to represent the official party governing bodies and their members, the State simply is reasserting its standing claim which the District Court rejected. Civ No. C-83-5399 (ND Cal, June 1, 1984) ("the plaintiff central committees . . . have authorization and capacity to bring and maintain this litigation"). The Court of Appeals did not disturb this ruling, 826 F2d, at 822, n 17; nor do we.

20. For example, the Libertarian Party was forced to abandon its region-based organization in favor of the statutorily mandated county-based system.

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shall be the members of the parties' official governing bodies, California interferes with the parties' choice of leaders. A party might decide, for example, that it will be more effective if a greater number of its official leaders are local activists rather than Washington-based elected officials. The Code prevents such a change. A party might also decide that the state central committee chair needs more than two years to successfully formulate and implement policy. The Code prevents such an extension of the chair's term of office. A party might find that a resident of northern California would be particularly effective in promoting the party's message and in unifying the party. The Code prevents her from chairing the state central committee unless the preceding chair was from the southern part of the State.

Each restriction thus limits a political party's discretion in how to organize itself, conduct its affairs, and select its leaders. Indeed, the associational rights at stake are much stronger than those we credited in *Tashjian*. There, we found that a party's right to free association embraces a right to allow registered voters who are not party members to vote in the party's primary. Here, party members do not seek to associate with nonparty members, but only with one another in freely choosing their party leaders."

[2d, 12a] Because the challenged laws burden the associational rights of political parties and their members, the question is whether they serve a compelling state interest. A

State indisputably has a compelling interest in preserving the integrity of its election process. — *Rosario v Rockefeller*, 410 US 762, 761, 36 L Ed 2d 1, 93 S Ct 1245 (1973). Toward that end, a State may enact laws that interfere with a party's internal affairs when necessary to ensure that elections are fair and honest. — *Storer v Brown*, 415 US, at 730, 39 L Ed 2d 714, 94 S Ct 1274. For example, a State may impose certain eligibility requirements for voters in the general election even though they limit parties' ability to garner support and members. See, e.g., *Dunn v Blumatein*, 405 US, at 343-344, 31 L Ed 2d 274, 92 S Ct 995 (residence requirement); *Oregon v Mitchell*, 400 US 112, 118, 27 L Ed 272, 91 S Ct 260 (1970) (age minimum); *Kramer v Union Free School Dist No. 15*, 395 US 621, 625, 23 L Ed 2d 583, 89 S Ct 1886 (1969) (citizenship requirement). We have also recognized that a State may impose restrictions that promote the integrity of primary elections. See, e.g., *American Party of Texas v White*, 415 US, at 779-780, 39 L Ed 2d 744, 94 S Ct 1296 (requirement that major political parties nominate candidates through a primary and that minor parties nominate candidates through conventions); *id.*, at 785-786, 39 L Ed 2d 744, 94 S Ct 1296 (limitation on voters' participation to one primary and bar on voters both voting in a party primary and signing a petition supporting an independent candidate); *Rosario v Rockefeller*, *supra* (waiting periods before voters may change party registration and participate in another party's primary); *Bullock v Carter*, 405 US, at

31. By regulating the identity of the parties' leaders, the challenged statutes may also color the parties' message and interfere with

the parties' decisions as to the best means to promote that message.

145, 31 L. Ed 2d 92, 92 S. Ct. 849 (reasonable filing fees as a condition of placement on the ballot). None of these restrictions, however, involved direct regulation of a party's leaders.²² Rather, the infringement on the associational rights of the parties and their members was the indirect consequence of laws necessary to the successful completion of a party's external responsibilities in ensuring the order and fairness of elections.

In the instant case, the State has not shown that its regulation of internal party governance is necessary to the integrity of the electoral process. Instead, it contends that the challenged laws serve a compelling "interest in the 'democratic management of the political party's internal affairs.'" Brief for Appellants 43 (quoting 415 U.S. at 781, n. 15, 39 L. Ed 2d 744, 94 S. Ct. 1296). This, however, is not a case where intervention is necessary to prevent the derogation of the civil rights of party adherents. Cf. *Smith v Allwright*, 321 U.S. 649, 88 L. Ed 987, 64 S. Ct. 757, 151 ALR 1110 (1944). Moreover, as we have observed, the State has no interest in "protect[ing] the integ-

rity of the Party against the Party itself." *Tashjian*, 479 U.S. at 224, 93 L. Ed 2d 514, 107 S. Ct. 544. The State further claims that limiting the term of the state central committee chair and requiring that the chair rotate between residents of northern and southern California helps "prevent regional friction from reaching a 'critical mass.'" Brief for Appellants 48. However, a State cannot substitute its judgment for that of the party as to the desirability of a particular internal party structure, any more than it can tell a party that its proposed communication to party members is unwise. *Tashjian*, supra, at 224, 93 L. Ed 2d 514, 107 S. Ct. 544.

[12b, 13a] In sum, a State cannot justify regulating a party's internal affairs without showing that such regulation is necessary to ensure an election that is orderly and fair. Because California has made no such showing here, the challenged laws cannot be upheld.²³

III

[1], [2] For the reasons stated above, we hold that the challenged California election laws burden the

22. *Marchione v Chaney*, 442 U.S. 191, 60 L. Ed 2d 816, 99 S. Ct. 2243 (1979) is not to the contrary. There we upheld a Washington statute mandating that political parties create a state central committee, to which the Democratic Party, not the State, had assigned significant responsibilities in administering the party, raising and distributing funds to candidates, conducting campaigns, and setting party policy. *Id.*, at 196-199, 60 L. Ed 2d 816, 99 S. Ct. 2243. The statute only required that the state central committee perform certain limited functions such as filing vacancies on the party ticket, nominating Presidential electors and delegates to national conventions, and calling statewide conventions. The party members did not claim that these statutory requirements imposed impermissible burdens

on the party or themselves so we had no occasion to consider whether the challenged law burdened the party's First Amendment rights, and if so, whether the law served a compelling state interest. *Id.*, at 197, n. 12, 60 L. Ed 2d 816, 99 S. Ct. 2243. Here, in contrast, it is state law, not a political party's charter, that places the state central committee at a party's helm and in particular assigns the statutorily-mandated committee responsibility for conducting the party's campaigns.

23. [12b] Because we find that rubbing intraparty friction is not a compelling state interest so long as the electoral process remains fair and orderly, we need not address the appellants' contention that the challenged laws weaken rather than strengthen parties.

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First Amendment rights of political parties and their members without serving a compelling state interest. Accordingly, the judgment of the Court of Appeals is affirmed.

Chief Justice Rehnquist took no part in the consideration or decision of this case.

SEPARATE OPINION

Justice Stevens, concurring.

Today the Court relies on its opinion in *Illinois State Board of Elections v Socialist Workers Party*, 440 US 173, 183-185, 59 L Ed 2d 230, 99 S Ct 983 (1979)—and, in particular, on a portion of that opinion that I did not join—for its formulation of the governing standards in election cases. In that case Justice Blackmun explained his acceptance of the Court's approach in words that precisely express my views about this case. He wrote:

"Although I join the Court's opinion . . . I add these comments to record purposefully, and perhaps somewhat belatedly, my unrelieved discomfort with what seems to be a continuing tendency in this Court to use as tests such easy phrases as 'compelling [state] interest' and 'least drastic [or restrictive] means.' See, ante, at 184, 185, and 186 (59 L Ed 2d 230, 99 S Ct 983). I have never been able fully to appreciate just what a 'compelling state interest' is. If it means 'convincingly controlling,' or 'incapable of being overcome' upon any balancing process, then, of course, the test merely an-

nounces an inevitable result, and the test is no test at all. And, for me, 'least drastic means' is a slippery slope and also the signal of the result the Court has chosen to reach. A judge would be unimaginative indeed if he could not come up with something a little less 'drastic' or a little less 'restrictive' in almost any situation, and thereby enable himself to vote to strike legislation down. This is reminiscent of the Court's indulgence, a few decades ago, in substantive due process in the economic area as a means of nullification.

"I feel, therefore, and have always felt, that these phrases are really not very helpful for constitutional analysis. They are too convenient and result oriented, and I must endeavor to disassociate myself from them. Apart from their use, however, the result the Court reaches here is the correct one. It is with these reservations that I join the Court's opinion." Id., at 188-189, 59 L Ed 2d 230, 99 S Ct 983.

With those same reservations I join the Court's opinion today.

KENNETH P. JACOBUS
Attorney-at-Law
3838 LOCARNO DRIVE
ANCHORAGE, ALASKA 99508-6023
TELEPHONE (907) 541-8764
TELEFAX (907) 543-7645

RECEIVED

ANCHORAGE, ALASKA

MAR 20 1991

March 17, 1991

Lieutenant Governor Jack Coghill
Office of the Lieutenant Governor
P.O. Box AA
Juneau, Alaska 99811

Re: Republican Party of Alaska, 1992 Primary Election

Dear Lieutenant Governor Coghill:

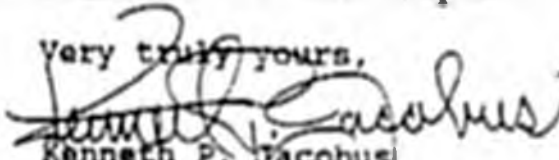
I have enclosed a copy of the Republican Party of Alaska's recent submission to the Justice Department for pre-clearance of certain rules adopted by the Party at the Special Convention held on March 2, 1991.

The Republican Party of Alaska demands that the State of Alaska conduct the 1992 Republican Party Primary Election in accord with the Party Rules. In order to do so, it will be necessary to begin work on the procedures immediately, since the State will also have to submit its procedures to the Department of Justice. We will assist and work with the State of Alaska as necessary to develop appropriate procedures.

Please let me know what your positions are regarding these changes in the Republican Primary, what the schedule will be to prepare and submit the State procedures for pre-clearance, and how we can assist and work with you. It will be best to resolve disputes, if any, between the Party and the State, at an early date so that there is no difficulty with pre-clearance by the Justice Department and further proceedings.

Thank you for your prompt consideration of this request.

Very truly yours,


Kenneth P. Jacobus

cc: James Baldwin
Constance Zawacki
James Bendell

Grant Davis
Chairman

Marilyn Paine
National Commissioner

Eileen Limer
National Commissioner

Cheri Jacobs
Vice Chairman

Cheryl Timmerman
Secretary

The Republican Party of Alaska

750 E. Fireweed Lane, Suite 102
Anchorage, Alaska 99503
(907) 276-4467
FAX 258-4930

Paul Robinson
Treasurer

Randy Olson
Asst. Secretary

Lyle Peterson

James O'Brien

Kathleen Jacobs
Legal Counsel

June 7, 1990

Mr. Barry Wienberg, Acting Chief
Voting Section, Civil Rights Division
Department of Justice
320 First Avenue N.W., Room 720
Washington, D.C. 20534

Re: Submission under Section 5 of the Voting Rights Act
Republican Party of Alaska
Modification of Republican Party of Alaska Primary Election
Request for Expedited Consideration (28 CFR 551.34)
Date of Expedited Consideration: June 25, 1990.

Dear Mr. Wienberg:

The Republican Party of Alaska, by party rule adopted at its last party convention, has modified its primary election process to take effect immediately. The party has the right to do so pursuant to its constitutional right of political association, as recognized by the United States Supreme Court in Tashjian v. Republican Party of Connecticut, 479 U.S. 208, 107 S.Ct. 544, 93 L.Ed 2d 514 (1986).

Prior to the change, the Republican primary was a "blanket open" primary. Any registered voter in the State of Alaska could vote in the Republican primary. The modification creates a "classic open" primary. Registered Republicans, and those voters not registered as a member of another political party, may vote in the Republican primary. Only those voters registered as members of another political party may not vote in the Republican primary. If a registered voter desires to vote in the Republican primary, he or she may do so by changing his or her party registration at the polling place on the day of the election.

Expedited consideration of this matter is requested pursuant to 28 CFR 551.34. While the primary election will not be held until August 28, 1990, the State of Alaska has indicated that expedited consideration is necessary in order to meet some of its pre-election deadlines. The last date for a candidate to remove his or her name from the primary ballot is July 11, 1990, and the ballots will be printed shortly thereafter. An expedited completion date of June 25, 1990, will allow the State of Alaska at least two weeks to prepare for the printing of the primary ballots. Also, an overseas blank ballot is mailed out on June 29, 1990, under state law. Therefore, the Republican Party of Alaska

EXHIBIT A

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requests that this matter be completed not later than June 25, 1990.

The Republican Party rule change was adopted at its State Convention on May 31, 1990. The State of Alaska, Division of Elections, was notified immediately by telephone, and by subsequent letter.

In order to determine what would be required for the election, it was necessary to wait for any action which might be taken by the Democratic Party of the State of Alaska, at its convention on May 18-19, 1990. At its previous convention, the Democratic Party had adopted a resolution requesting that the Legislature change the Democratic primary to a closed primary. It was necessary to wait to determine whether the Democratic Party would adopt a party rule at its convention changing the form of its primary. The Democratic Party of Alaska did not do so, however. Immediately thereafter, the Republican Party of Alaska began conferring with the State of Alaska regarding the details of implementing the Republican Party primary for the 1990 election. Several conferences have been held, and the Republican Party's most recent letter, attached as Exhibit E, sets forth what I believe to be the present position regarding the primary election. There may be additional details which need to be worked out, but those should not affect this submission. At this point, it is appropriate that this submission be made.

In accord with 28 CFR 551.27, the Republican Party of Alaska submits the following information:

(a) A copy of the Republican Party rule change, adopted at the party convention on May 31, 1990, is attached as Exhibit A.

(b) A copy of AS 15.25.010 and .060, which provided for the prior Alaskan Republican blanket open primary, is attached as Exhibit B.

(c) The difference between the submitted change and the prior procedure is simple. Previously, any Alaskan registered voter could vote in the Republican Party primary election. Under the new party rule, only those Alaskans who are registered Republicans, or who are registered as not being affiliated with another political party, may vote in the Republican primary. Those voters registered as affiliated with another political party cannot vote in the Republican primary.

As set forth in the attached Exhibit C, page 1, approximately 77% of the Alaskan registered voters are still able to vote in the Republican primary under their present registrations. If any other voters desire to vote in the Republican primary, they can change their registrations to Republican or as being not affiliated with

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another political party, at the polling place on the day of the election. The breakdown of registered voters by election district is attached as Exhibit C, page 2, and a map showing the election districts is page 3.

(d) This submission is being made by Kenneth P. Jacobus, Legal Counsel of the Republican Party of Alaska, 3939 Locarno Drive, Anchorage, Alaska 99508-5023, phone (907) 561-8754, fax (907) 563-7645. Communications regarding this submission should be addressed here.

(e) This submission is being made on behalf of the Republican Party of Alaska, 750 E Fireweed Lane, Suite 102, Anchorage, Alaska 99503, phone (907) 276-4467, fax (907) 258-4930.

(f) The Republican Party of Alaska is located in the Municipality of Anchorage, State of Alaska, at the address set forth in paragraph (e).

(g) This party rule change was made by the Republican Party of Alaska, meeting in convention at Juneau, Alaska, on May 31, 1990. The rule change was adopted by vote of the delegates, after debate, at the convention. The Republican Party of Alaska has the authority to do so pursuant to Tashjian v. Republican Party of Connecticut, 479 U.S. 208, 107 S.Ct. 544, 93 L.Ed 2d 514 (1986).

Decisions regarding party business between conventions are made by the Alaska Republican Party Central Committee and Executive Committee. The implementation of this rule is the responsibility of these committees, plus the party chairman, vice-chairman, and other officers including legal counsel.

(h) The Republican Party has the authority to make this change pursuant to its constitutional rights of political association, as guaranteed by the United States Supreme Court in Tashjian v. Republican Party of Connecticut 479 U.S. 208, 107 S.Ct. 544, 93 L.Ed 2d 514 (1986). The adoption of amendments to party rules is provided for by Article VII, Section 2 of the rules of the Republican Party of the State of Alaska. (Exhibit D) The provisions of this rule were complied with in adopting the party rule change set forth in Exhibit A.

(i) This party rule change was adopted at the Republican Party convention in Juneau, Alaska, on May 31, 1990.

(j) This rule change is to take effect for the Republican primary election on August 28, 1990.

(k) This party rule change has not yet been enforced or administered, except that discussions have been ongoing between the

Barry Wienberg
June 7, 1990
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Republican Party and the State of Alaska, Division of Elections, in order to ensure that any administrative details may be worked out prior to the election.

(l) This change will affect the entire State of Alaska. It applies only to state and national offices. Local elections in Alaska are non-partisan.

(m) This change has been made in order to avoid the common practice of cross-over voting in primary elections, whereby voters of one party vote for the weakest candidate in the other party's primary election in the hopes of setting up the weakest candidate of the other party to be beaten by the cross-over voters in the subsequent general election. Such a practice does not result in the best and most qualified people being elected to public office.

Additionally, a party identified primary, such as exists in most states, allows for the voter to better understand the philosophies of the candidates who are seeking public office. Under the present system in Alaska, some candidates choose a party label under which to run, based only on which label they believe gives them the best chance of winning, without any commitment to the party's political philosophy.

(n) This change is of general application. The Republican Party of Alaska does not believe that this change will have any legal or practical effect on members of racial or language minority groups.

(o) The Republican Party of Alaska is unaware of any past or pending litigation concerning this change or related voting practices. There has been past litigation in Alaska relating to reapportionment, filing deadlines, language of ballot propositions, and the like. None of this past litigation, however, concerns this change or related voting practices.

(p) The present form of primary election was not subject to the pre-clearance requirement. It was created by Chapter 1, Session Laws of Alaska (SLA) 1967, and took effect at that time. Section 5 of the Voting Rights Act was not applicable to Alaska until November 1, 1972. The procedure for the adoption of the change, being simply a matter of the amendment of the party's by-laws at a party convention, is also not subject to the pre-clearance requirement.

We have no demographic information regarding the State of Alaska by race and language group as it applies to registration for voting. The State of Alaska Division of Elections does not keep such information. The factors of race and language group are totally irrelevant, and were not a matter of consideration, in the

Barry Wienberg
June 7, 1990
Page 5

decision of the Republican Party of Alaska to change from a blanket open primary to a classic open primary form of primary election.

There is no way that a racial or language minority group is adversely affected by this change. The disqualification from voting in the Republican primary depends solely on being a registered voter of another political party. The disqualification has nothing to do with race or language and, in fact, Alaskans of all races and languages are welcome to become members of the Republican Party of Alaska. Additionally, any member of a racial or language minority group may retain his or her status as a non-party affiliated voter or declare no party preference, and still be eligible to vote in the Republican Party primary. The disqualifying factor - registration in a political party other than Republican - applies equally to registered voters of all racial and language groups.

The method of conducting the primary election will protect members of racial and language minority groups, which includes Native Alaskan people who live in rural areas. If any special explanation needs to be given to these rural areas, it can be done virtually cost-free by the Division of Elections through the rural Alaska television network (RATNET). RATNET is a State supported rural Alaska television service, which is available virtually throughout rural Alaska and is watched by the vast majority of rural residents.

Additionally, anyone desiring to vote in the Republican primary may change his or her voter registration to Republican or non-affiliated at the polling place on the date of the primary election. In a similar manner, the absentee voters will be given an opportunity to change their party affiliation as part of the absentee ballot, resulting in no disenfranchisement of absentee voters. There is no adverse effect on any voter, including members of racial and language minority groups. The only requirement which has been imposed is that a voter may not vote in the Republican primary if that voter is a registered member of any other political party.

Thank you very much for your consideration of this submission. The Republican Party of Alaska cannot conceive that the Attorney General would have any problem with this submission, because it deals solely with the constitutional rights of political association, and is completely free of any adverse effects on racial or language minorities. Anyone may become a member of the Republican Party, or remain an independent voter not affiliated with another political party, and still vote in the Alaska Republican Party primary. Any desired change may be made by the voter at the polling place on election day.

Barry Wienberg
June 7, 1990
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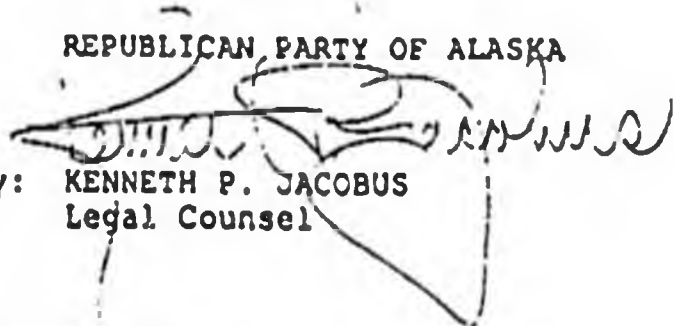
It is extremely necessary that this submission be approved as quickly as possible, so that the changes in the Republican Party primary take place, as intended, for the primary of August 28, 1990. If you need any further information, please let me know and it will be provided to you immediately. We will be available for telephone conferences or meetings, if you so desire, at your earliest convenience.

A copy of this submission has been sent to the State of Alaska, Division of Elections, so that it is aware of its contents and the necessity to conduct the Republican primary under the amended party rule on August 28, 1990.

Thank you again for your prompt action on this submission.

Very truly yours,

REPUBLICAN PARTY OF ALASKA



By: KENNETH P. JACOBUS
Legal Counsel

cc: State of Alaska
Division of Elections
(by Fax and First Class Mail
both on June 7, 1990)

KENNETH P. JACOBUS
Attorney-at-Law
3939 LOCARNO DRIVE
ANCHORAGE, ALASKA 99508-5023
TELEPHONE (907) 561-8734
TELEFAX (907) 563-7645

March 17, 1991

Barry H. Weinberg, Acting Chief
Voting Section, Civil Rights Division
Department of Justice
P.O. Box 66128
Washington D.C. 20035-6128

Re: Submission under Section Five of the Voting Rights Act
Republican Party of Alaska
Additional Primary Election Rules

Dear Mr. Weinberg:

On June 7, 1990, the Republican Party of Alaska submitted a rule change to the Department of Justice for pre-clearance, changing the form of the Republican Party primary election in the State of Alaska. A copy of the submission and exhibits is attached as Exhibit A.

On September 18, 1990, the Justice Department pre-cleared the Republican Party Rule. A copy of the letter from the Justice Department is attached as Exhibit B.

At a special convention held on March 2, 1991, the Republican Party of Alaska adopted additional rules. A copy of the five additional rules adopted is attached as Exhibit C.

The Republican Party requests that the Justice Department pre-clear the five rules set forth in Exhibit C to apply to the Republican Party primary election to be held in August, 1992.

This submission is simply a continuation of the Republican Party's prior submission. All of the information required in support of the submission is included in Exhibit A.

These additional changes implement the prior rule. They should have no legal or practical effect on the voting rights of members of racial or language minority groups. In fact, Article XIV, §3, confirms that voters have greater voting rights than they had prior to the passage of the Republican Party's 1990 rule change.

KENNETH P. JACOBUS
Attorney-at-Law
3839 LOCARNO DRIVE
ANCHORAGE, ALASKA 99508-5023
TELEPHONE (907) 541-8754
TELEFAX (907) 543-7645

RECEIVED

Department of Law

AM MAR 20 1991 PM
7 15:6

March 17, 1991

Lieutenant Governor Jack Coghill
Office of the Lieutenant Governor
P.O. Box AA
Juneau, Alaska 99811

Re: Republican Party of Alaska, 1992 Primary Election

Dear Lieutenant Governor Coghill:

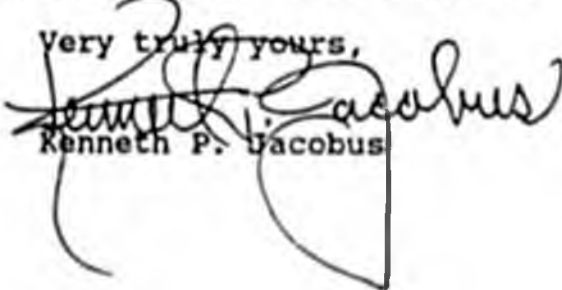
I have enclosed a copy of the Republican Party of Alaska's recent submission to the Justice Department for pre-clearance of certain rules adopted by the Party at the Special Convention held on March 2, 1991.

The Republican Party of Alaska demands that the State of Alaska conduct the 1992 Republican Party Primary Election in accord with the Party Rules. In order to do so, it will be necessary to begin work on the procedures immediately, since the State will also have to submit its procedures to the Department of Justice. We will assist and work with the State of Alaska as necessary to develop appropriate procedures.

Please let me know what your positions are regarding these changes in the Republican Primary, what the schedule will be to prepare and submit the State procedures for pre-clearance, and how we can assist and work with you. It will be best to resolve disputes, if any, between the Party and the State, at an early date so that there is no difficulty with pre-clearance by the Justice Department and further proceedings.

Thank you for your prompt consideration of this request.

Very truly yours,


Kenneth P. Jacobus

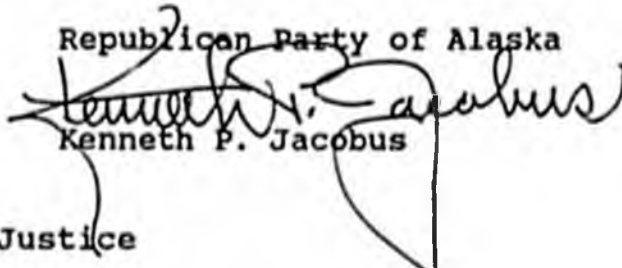
cc: James Baldwin
Constance Zawacki
James Bendell

Barry H. Weinberg
March 17, 1991
Page 2

If you have any further questions, or I can provide you with any additional information, please let me know and I will respond immediately.

Very truly yours,

Republican Party of Alaska


Kenneth P. Jacobus

cc: Mark Posner, Department of Justice
Lt. Governor Jack Coghill
Charlotte Thickstun, Alaska Division of Elections
James Baldwin, Alaska Attorney General's Office
Jon Rubini
Constance Zawacki
James Bendell

Grant Doyle
Chairman

Marilyn Paine
National Committeewoman

Eileen Ulmer
National Committeewoman

Cheri Jacobus
Vice Chairman

Charlene Thielson
Secretary

The Republican Party of Alaska

750 E. Firewood Lane, Suite 102
Anchorage, Alaska 99503
(907) 276-4467
FAX 258-4930

Paul Robinson
Treasurer

Molly Olson
Asst. Secretary

Karl Peterson

Frances Chamer

Kenneth Jacobus
Legal Counsel

June 7, 1990

Mr. Barry Wienberg, Acting Chief
Voting Section, Civil Rights Division
Department of Justice
320 First Avenue N.W., Room 720
Washington, D.C. 20534

Re: Submission under Section 5 of the Voting Rights Act
Republican Party of Alaska
Modification of Republican Party of Alaska Primary Election
Request for Expedited Consideration (28 CFR §51.34)
Date of Expedited Consideration: June 25, 1990.

Dear Mr. Wienberg:

The Republican Party of Alaska, by party rule adopted at its last party convention, has modified its primary election process to take effect immediately. The party has the right to do so pursuant to its constitutional right of political association, as recognized by the United States Supreme Court in Tashjian v. Republican Party of Connecticut, 479 U.S. 208, 107 S.Ct. 544, 93 L.Ed 2d 514 (1986).

Prior to the change, the Republican primary was a "blanket open" primary. Any registered voter in the State of Alaska could vote in the Republican primary. The modification creates a "classic open" primary. Registered Republicans, and those voters not registered as a member of another political party, may vote in the Republican primary. Only those voters registered as members of another political party may not vote in the Republican primary. If a registered voter desires to vote in the Republican primary, he or she may do so by changing his or her party registration at the polling place on the day of the election.

Expedited consideration of this matter is requested pursuant to 28 CFR §51.34. While the primary election will not be held until August 28, 1990, the State of Alaska has indicated that expedited consideration is necessary in order to meet some of its pre-election deadlines. The last date for a candidate to remove his or her name from the primary ballot is July 11, 1990, and the ballots will be printed shortly thereafter. An expedited completion date of June 25, 1990, will allow the State of Alaska at least two weeks to prepare for the printing of the primary ballots. Also, an overseas blank ballot is mailed out on June 29, 1990, under state law. Therefore, the Republican Party of Alaska

EXHIBIT A

Barry Wienberg
June 7, 1990
Page 2

requests that this matter be completed not later than June 25, 1990.

The Republican Party rule change was adopted at its State Convention on May 31, 1990. The State of Alaska, Division of Elections, was notified immediately by telephone, and by subsequent letter.

In order to determine what would be required for the election, it was necessary to wait for any action which might be taken by the Democratic Party of the State of Alaska, at its convention on May 18-19, 1990. At its previous convention, the Democratic Party had adopted a resolution requesting that the Legislature change the Democratic primary to a closed primary. It was necessary to wait to determine whether the Democratic Party would adopt a party rule at its convention changing the form of its primary. The Democratic Party of Alaska did not do so, however. Immediately thereafter, the Republican Party of Alaska began conferring with the State of Alaska regarding the details of implementing the Republican Party primary for the 1990 election. Several conferences have been held, and the Republican Party's most recent letter, attached as Exhibit E, sets forth what I believe to be the present position regarding the primary election. There may be additional details which need to be worked out, but those should not affect this submission. At this point, it is appropriate that this submission be made.

In accord with 28 CFR §51.27, the Republican Party of Alaska submits the following information:

(a) A copy of the Republican Party rule change, adopted at the party convention on May 31, 1990, is attached as Exhibit A.

(b) A copy of AS 15.25.010 and .060, which provided for the prior Alaskan Republican blanket open primary, is attached as Exhibit B.

(c) The difference between the submitted change and the prior procedure is simple. Previously, any Alaskan registered voter could vote in the Republican Party primary election. Under the new party rule, only those Alaskans who are registered Republicans, or who are registered as not being affiliated with another political party, may vote in the Republican primary. Those voters registered as affiliated with another political party cannot vote in the Republican primary.

As set forth in the attached Exhibit C, page 1, approximately 77% of the Alaskan registered voters are still able to vote in the Republican primary under their present registrations. If any other voters desire to vote in the Republican primary, they can change their registrations to Republican or as being not affiliated with

Barry Wienberg
June 7, 1990
Page 3

another political party, at the polling place on the day of the election. The breakdown of registered voters by election district is attached as Exhibit C, page 2, and a map showing the election districts is page 3.

(d) This submission is being made by Kenneth P. Jacobus, Legal Counsel of the Republican Party of Alaska, 3939 Locarno Drive, Anchorage, Alaska 99508-5023, phone (907) 561-8754, fax (907) 563-7645. Communications regarding this submission should be addressed here.

(e) This submission is being made on behalf of the Republican Party of Alaska, 750 E Fireweed Lane, Suite 102, Anchorage, Alaska 99503, phone (907) 276-4467, fax (907) 258-4930.

(f) The Republican Party of Alaska is located in the Municipality of Anchorage, State of Alaska, at the address set forth in paragraph (e).

(g) This party rule change was made by the Republican Party of Alaska, meeting in convention at Juneau, Alaska, on May 31, 1990. The rule change was adopted by vote of the delegates, after debate, at the convention. The Republican Party of Alaska has the authority to do so pursuant to Tashjian v. Republican Party of Connecticut, 479 U.S. 208, 107 S.Ct. 544, 93 L.Ed 2d 514 (1986).

Decisions regarding party business between conventions are made by the Alaska Republican Party Central Committee and Executive Committee. The implementation of this rule is the responsibility of these committees, plus the party chairman, vice-chairman, and other officers including legal counsel.

(h) The Republican Party has the authority to make this change pursuant to its constitutional rights of political association, as guaranteed by the United States Supreme Court in Tashjian v. Republican Party of Connecticut 479 U.S. 208, 107 S.Ct. 544, 93 L.Ed 2d 514 (1986). The adoption of amendments to party rules is provided for by Article VII, Section 2 of the rules of the Republican Party of the State of Alaska. (Exhibit D) The provisions of this rule were complied with in adopting the party rule change set forth in Exhibit A.

(i) This party rule change was adopted at the Republican Party convention in Juneau, Alaska, on May 31, 1990.

(j) This rule change is to take effect for the Republican primary election on August 28, 1990.

(k) This party rule change has not yet been enforced or administered, except that discussions have been ongoing between the

Barry Wienberg
June 7, 1990
Page 4

Republican Party and the State of Alaska, Division of Elections, in order to ensure that any administrative details may be worked out prior to the election.

(l) This change will affect the entire State of Alaska. It applies only to state and national offices. Local elections in Alaska are non-partisan.

(m) This change has been made in order to avoid the common practice of cross-over voting in primary elections, whereby voters of one party vote for the weakest candidate in the other party's primary election in the hopes of setting up the weakest candidate of the other party to be beaten by the cross-over voters in the subsequent general election. Such a practice does not result in the best and most qualified people being elected to public office.

Additionally, a party identified primary, such as exists in most states, allows for the voter to better understand the philosophies of the candidates who are seeking public office. Under the present system in Alaska, some candidates choose a party label under which to run, based only on which label they believe gives them the best chance of winning, without any commitment to the party's political philosophy.

(n) This change is of general application. The Republican Party of Alaska does not believe that this change will have any legal or practical effect on members of racial or language minority groups.

(o) The Republican Party of Alaska is unaware of any past or pending litigation concerning this change or related voting practices. There has been past litigation in Alaska relating to reapportionment, filing deadlines, language of ballot propositions, and the like. None of this past litigation, however, concerns this change or related voting practices.

(p) The present form of primary election was not subject to the pre-clearance requirement. It was created by Chapter 1, Session Laws of Alaska (SLA) 1967, and took effect at that time. Section 5 of the Voting Rights Act was not applicable to Alaska until November 1, 1972. The procedure for the adoption of the change, being simply a matter of the amendment of the party's by-laws at a party convention, is also not subject to the pre-clearance requirement.

We have no demographic information regarding the State of Alaska by race and language group as it applies to registration for voting. The State of Alaska Division of Elections does not keep such information. The factors of race and language group are totally irrelevant, and were not a matter of consideration, in the

Barry Wienberg
June 7, 1990
Page 5

decision of the Republican Party of Alaska to change from a blanket open primary to a classic open primary form of primary election.

There is no way that a racial or language minority group is adversely affected by this change. The disqualification from voting in the Republican primary depends solely on being a registered voter of another political party. The disqualification has nothing to do with race or language and, in fact, Alaskans of all races and languages are welcome to become members of the Republican Party of Alaska. Additionally, any member of a racial or language minority group may retain his or her status as a non-party affiliated voter or declare no party preference, and still be eligible to vote in the Republican Party primary. The disqualifying factor - registration in a political party other than Republican - applies equally to registered voters of all racial and language groups.

The method of conducting the primary election will protect members of racial and language minority groups, which includes Native Alaskan people who live in rural areas. If any special explanation needs to be given to these rural areas, it can be done virtually cost-free by the Division of Elections through the rural Alaska television network (RATNET). RATNET is a State supported rural Alaska television service, which is available virtually throughout rural Alaska and is watched by the vast majority of rural residents.

Additionally, anyone desiring to vote in the Republican primary may change his or her voter registration to Republican or non-affiliated at the polling place on the date of the primary election. In a similar manner, the absentee voters will be given an opportunity to change their party affiliation as part of the absentee ballot, resulting in no disenfranchisement of absentee voters. There is no adverse effect on any voter, including members of racial and language minority groups. The only requirement which has been imposed is that a voter may not vote in the Republican primary if that voter is a registered member of any other political party.

Thank you very much for your consideration of this submission. The Republican Party of Alaska cannot conceive that the Attorney General would have any problem with this submission, because it deals solely with the constitutional rights of political association, and is completely free of any adverse effects on racial or language minorities. Anyone may become a member of the Republican Party, or remain an independent voter not affiliated with another political party, and still vote in the Alaska Republican Party primary. Any desired change may be made by the voter at the polling place on election day.

Barry Wienberg
June 7, 1990
Page 6

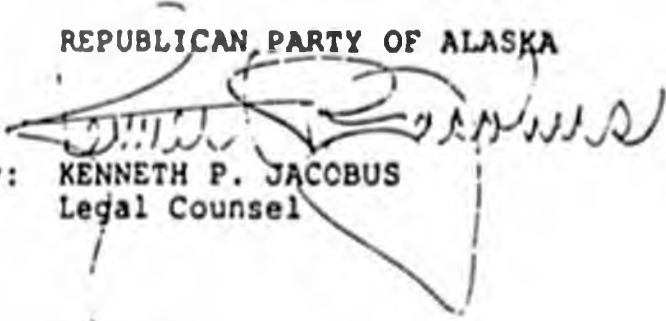
It is extremely necessary that this submission be approved as quickly as possible, so that the changes in the Republican Party primary take place, as intended, for the primary of August 28, 1990. If you need any further information, please let me know and it will be provided to you immediately. We will be available for telephone conferences or meetings, if you so desire, at your earliest convenience.

A copy of this submission has been sent to the State of Alaska, Division of Elections, so that it is aware of its contents and the necessity to conduct the Republican primary under the amended party rule on August 28, 1990.

Thank you again for your prompt action on this submission.

Very truly yours,

REPUBLICAN PARTY OF ALASKA


By: KENNETH P. JACOBUS
Legal Counsel

cc: State of Alaska
Division of Elections
(by Fax and First Class Mail
both on June 7, 1990)

**ARTICLE XIV
PRIMARY ELECTIONS**

Only registered Republicans, registered independents, and those who state no preference of party affiliation shall be allowed to vote in the Republican primary election for Governor, Lieutenant Governor, U.S. Senator, U.S. Representative, and members of the State Legislature.

ALASKA STATUTES

Sec. 15.25.010. Provision for primary election. Candidates for the elective state executive and state and national legislative offices shall be nominated in a primary election by direct vote of the people in the manner prescribed by this chapter. (§ 5.01 ch 83 SLA 1960; am § 1 ch 1 SLA 1967; am § 1 ch 20 SLA 1980)

Sec. 15.25.060. Preparation and distribution of ballots. The primary election ballot shall be prepared and distributed by the director in the manner prescribed for general election ballots except as specifically provided otherwise for the primary election. The director shall place the names of all candidates who have properly filed in groups according to offices filed for, without regard to party affiliation. The names for each office shall be rotated as provided for the general election ballot. No blank spaces shall be provided on the ballot for the writing or pasting in of names. (§ 6.06 ch 83 SLA 1960; am § 4 ch 1 SLA 1967; am § 132 ch 100 SLA 1980)

BREAK-DOWN OF TOTAL ALASKAN REGISTERED VOTERS

The following is the present break-down of registered voters in the State of Alaska.

<u>REGISTRATION</u>	<u>NUMBER OF VOTERS</u>	<u>PERCENTAGE OF VOTERS</u>
Republican Party	57,048	21%
Democratic Party	53,699	20%
Alaska Independence Party	2,066	1%
No Party Preference	85,627	31%
Undecided	68,804	25%
Other Party Affiliation	5,719	2%
<u>TOTAL</u>	<u>273,162</u>	<u>100%</u>

Those persons registered as Republican Party, No Party Preference and Undecided, are eligible to vote in the Republican primary. Those persons registered as Democratic Party, Alaska Independence Party, and Other Party Affiliation would not be eligible to vote in the Republican primary.

Any voter, however, may change his or her party registration at the polling place on election day and become eligible to vote in the Republican primary.

DISTRICT	1	2	3	4	5	6	TOTAL REGION 1 (1110 PRECINCTS)
	12,112	9,358	1,617	182	3,829	3,113	292
	9,988	1,448	743	69	2,187	1,730	199
	9,593	2,192	163	43	1,769	1,486	102
	13,124	3,407	2,416	181	3,476	3,199	339
	14,734	2,927	3,244	87	3,349	3,953	348
	9,794	1,988	1,818	46	1,997	1,443	120
TOTAL REGION 1 (1110 PRECINCTS)	58,248	12,238	10,289	348	20,639	19,891	3,301

DISTRICT	7	8	9	10	11	12	13	14	15	16	TOTAL REGION 2 (1114 PRECINCTS)
	7,181	1,327	2,154	59	2,757	1,419	339				
	13,938	2,462	4,242	91	3,864	3,421	234				
	14,543	2,915	3,248	210	4,818	3,324	255				
	14,003	2,381	3,478	113	4,193	3,718	248				
	8,324	1,731	1,342	376	2,432	2,383	182				
	10,850	2,597	1,961	94	3,111	2,314	179				
	11,161	2,272	2,459	188	2,719	1,813	218				
	12,683	2,303	3,291	48	3,776	3,188	213				
	18,112	2,892	4,784	194	4,783	3,391	218				
	18,444	3,186	4,374	188	6,714	3,744	314				
TOTAL REGION 2 (1114 PRECINCTS)	117,837	23,225	37,435	1,329	40,567	32,895	2,336				

ANCHORAGE 119,379*

DISTRICT	17	18	19	20	21	24	27	TOTAL REGION 3 (1330 PRECINCTS)
	1,467	1,114	1,351	52	2,328	1,439	162	
	18,743	1,557	2,871	180	2,490	3,744	221	
	9,815	1,529	1,951	89	3,119	2,912	264	
	12,357	2,318	2,452	93	3,881	3,372	329	
	7,744	3,423	1,324	83	2,572	1,884	292	
	3,188	1,457	477	92	1,714	934	134	
	1,512	1,318	1,214	44	2,011	1,812	133	
TOTAL REGION 3 (1330 PRECINCTS)	59,182	11,888	18,824	593	18,036	18,128	1,439	

REGION 4 REGION IV							
DISTRICT							
22	9,519	3,499	302	61	1,338	1,317	73
23	6,971	1,731	869	39	1,443	972	117
25	9,229	3,726	319	55	1,906	638	11
26	7,180	1,428	1,814	79	2,078	2,418	103
TOTAL REGION IV (109 PRECINCTS)	22,899	6,634	2,784	234	6,365	5,345	404
STATE TOTAL (1937 PRECINCTS)	273,180	53,699	57,049	2,266	83,627	68,894	9,719

* ANCHORAGE TOTAL = District 7-15, Less Nikiski #1 (1,048)
 121,079
 (1,718)
 119,379*

Less Nikiski #2 (670)

(1,718)

**ARTICLE VII, SECTION 2, RULES OF THE
REPUBLICAN PARTY OF ALASKA**

Section 2. How Rules May be Amended

- (a) These rules may be amended at any regular State Convention of the Republican Party of Alaska or at any Special State Convention of the Republican Party of Alaska by a majority of the delegates, including seated alternates, duly voting at said convention when proper notice has been given in advance of such convention.
- (b) These rules may be amended by a majority vote of the State Central Committee when necessary to comply with Federal or State law or Republican National Committee rules. Such amendment(s) shall be in effect until the next State Convention, at which time they shall be adopted or rejected.
- (c) District rules may be amended at any regular District Convention or at any special District Convention by a majority of the delegates, including seated alternates, duly voting at such convention, when proper notice has been given in advance of such convention.

Grant Doyle
Chairman
Marilyn Poling
National Commissioner
Eden Winer
National Commissioner
Cheri Jacobus
Vice Chairman
Doreen Nicholson
Secretary

The Republican Party of Alaska

750 E. Fireweed Lane, Suite 102
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(907) 278-4467
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Paul Robinson
Treasurer
Molly Olson
Asst. Secretary
Asst. Treasurer
Frances Cherman
Kenneth Jacobus
Legal Counsel

May 28, 1990

David Koivuniemi
Director of Division of Elections
State of Alaska
P.O. Box AF
Juneau, Alaska 99811-0105

Via FAX 465-3203

Re: Republican Party of Alaska Primary Election

Dear Dave:

This letter is a follow up to our conference of May 24, 1990, regarding the upcoming primary election. As you know, on March 31, 1990, at its State Convention in Juneau, the Republican Party of Alaska adopted the following rule:

Article XIV Primary Elections

Only registered Republicans, registered independents, and those who state no preference of party affiliation shall be allowed to vote in the Republican primary election for Governor, Lieutenant Governor, U.S. Senator, U.S. Representative, and members of the State Legislature.

This is a classic "open" primary rule. At the time that Tashjian v. Republican Party of Connecticut, 93 L.Ed.2d 514 (1986) was decided by the United States Supreme Court, 21 states held classic "closed" primaries in which the voter had to be registered as a member of the particular party for some specified period of time prior to that party's primary in order to be eligible to vote. The majority of the remaining states (16) required party registration, but allowed voters to change party affiliation at the time of the vote. Only 4 states, including Alaska, allowed all voters, regardless of party affiliation, to participate in the primary. The rule adopted by the Republican Party of Alaska follows the classic "open" primary adopted in the remaining 9 states.

The Republican Party of Alaska rule defines those persons who may vote in its primary. Those persons who may vote are those registered under the Alaska voter registration system as Republican, Non-Partisan or Undeclared. Those who may not vote are those registered as Democrat, Alaska Independence Party, or any other political party (Other).

Exhibit E

David Koivuniemi
May 28, 1990
Page 2

You raised the question of whether the Republican Party of Alaska intended by its use of the word "independents" to mean the Alaska Independence Party members. It does not. It is clear from the convention floor discussion and from the use of the word "independents" that the convention delegates used the word in its generic sense of non-partisan.

The rule governs only the voters who may participate in the election. The Republican Party of Alaska will work with the Division of Elections in order to implement this change in the primary election immediately. To a great extent, the mechanics of the primary election are under the control of the Division of Elections, but we do have some suggestions which should make the process easier.

You asked whether a person could change his or her party declaration at the time of casting the ballot. The present Republican Party of Alaska rules do not restrict anyone from changing his or her party declaration at the time of the primary vote. It appears more practical, and will allow greater voter participation, if a voter is allowed to change his or her party registration at the time of casting the ballot in the primary election.

There are four kinds of voter situations which face the state, regular voters, absentee voters, overseas military voters and those voting a questioned ballot. While the practical implementation is up to the state, I have attempted to suggest possible approaches.

1. Regular Voters. Two ballots should be printed -- the "Republican" primary ballot and the "Other Parties" primary ballot which would contain all the other candidates. Because the Democratic and the Alaska Independence Parties have not changed their party rules to restrict their primaries, Republicans and those with no declared party affiliation (U or N) would qualify for either a Republican or Other Party ballot. All other partisan voters (D, AI, or O) would only be permitted to receive the Other Party ballot. A voter could participate in only one primary election, and a regular voter would receive one ballot.

Only one sign-in sheet is necessary. Each voter signs the sheet and the election worker checks party affiliation and indicates on the sign-in sheet which ballot was given to the voter, just as the election worker currently indicates the method of identification.

Accountability can be preserved by simply requiring the election officials to separately count the Republican Primary ballots and Other Party Primary ballots in the same manner

previously devised for single ballot primaries. The majority of states presently have systems in place for ballot accountability and the majority of states have "closed" primaries which clearly require two or more ballots.

If the state chooses to allow a voter to change party declaration at the time of casting the ballot, those voters desiring to change party declarations in order to receive the Republican Party primary ballot would vote a questioned ballot. The questioned ballot form, which goes on the outside of the sealed cast ballot, could be altered to include two items -- one line would allow the voter to change or indicate his or her party declaration, and another box on the outside of the questioned ballot would be filled in by the election worker indicating which primary ballot was given to the voter. This would protect the sanctity of the ballot and allow a quick review of the questioned ballot by the election judges to determine whether a voter was eligible to vote in the Republican primary.

If the state chooses to require a voter to change his or her declaration 30 days in advance, then obviously the person must appear on the voter list or have a valid yellow copy of the registration form as an R, U, or N, to vote in the Republican Party of Alaska primary. Anyone could receive the other ballot.

2. Questioned Voters. If the state chooses to allow a change of declaration at the time of the primary, the solution is easy. All questioned voters should be required to fill out the party declaration on the outside of the questioned ballot as described above. The questioned ballot form, which goes on the outside of the cast ballot, could be altered to include two items -- one line would allow the voter to change his or her declaration, and another box on the outside of the questioned ballot would be filled in by the election worker indicating which primary ballot was given to the voter. While the party affiliation is only important in the Republican primary, it would be less confusing to simply make party declaration a part of the questioned ballot form.

If a voter refuses to declare his or her affiliation on the outside of the questioned ballot (and some independent Alaskans will), so long as the outside indicates which ballot the voter was given, the election judges can easily determine whether the voter was eligible to vote by reviewing the voter's old registration as it appears on the registration list.

If the state chooses to require the voter to change the

declaration 30 days in advance, the problem becomes more complicated. You should still use the same form. However, it has been our experience that many people do not remember their party affiliation and there is the greater possibility of disenfranchisement of voters who incorrectly recall their party declarations, or who want to change their declarations at the time of voting, but cannot.

3. Absentee Voter. One of the concerns raised at our conference was about the requests for absentee ballots which have already been received by the Division of Elections. There is really no necessity to change the form for requesting an absentee ballot.

As we discussed, the state could simply send both ballots to all absentee voters. The state could require that the absentee voter return both ballots. The instructions should clearly state that a failure to return both ballots would result in the vote not being counted.

The instructions would also state that any voter could vote in the "Other Party" primary, but that only Republicans, Non-party affiliates, and undeclared voters could vote in the Republican primary. They would also state that a voter qualified to vote in both primaries could in fact vote in only one.

Just as on the questioned ballot form, a line could be included which allowed an absentee voter to change his or her party declaration. This would allow an absentee voter the same opportunities as the regular voter.

The cast ballot could be treated in the same manner as in previous years, sealed in a plain white envelope and enclosed in the return envelope. The uncast ballot would be outside the white envelope but inside the return envelope. If the uncast ballot is not returned, the vote would not be counted, because there is no way, short of opening the white envelope, to ensure that the voter has not improperly voted in the wrong or both primaries.

The election judge always checks a number of things before counting the ballot. Now the election judge would check the outside for a change of party of declaration, would determine whether the person is ineligible to vote in the Republican primary (is a D, AI, or O), and then check to determine whether the uncast ballot in the outside envelope is the Republican ballot. If it is the Republican ballot, the vote would be counted. If it is not, the vote would not be counted. (Republicans, undeclared, and non-partisans can vote

David Koivunleml
May 28, 1990
Page 5

in either primary.)

4. Overseas Military. Although there was some concern expressed regarding the overseas military ballots, according to 42 U.S.C. 1073ff-1, the only special requirements for overseas military exist during the general elections for federal office. During primary elections, the overseas military use the same absentee procedures applicable to all other voters.

Each State shall -

(1) permit absent uniformed services voters and overseas voters to use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for Federal Office;

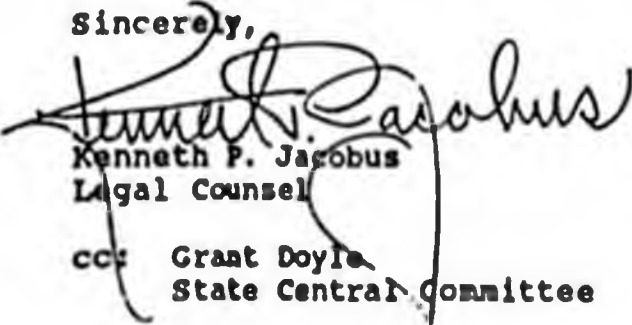
(3) permit overseas voters to use Federal write-in absentee ballots (in accordance with section 103) in general elections for Federal Office.

Therefore, it does not appear that there is anything special required for the overseas military person.

The instruction materials can easily be amended, either by reprinting the entire package (probably impractical) or by including a new instruction to specifically cover these changes. With respect to training, as you indicated, approximately two-thirds of the elections boards have not yet been trained. The other third could receive supplemental written instructions, or if the state was creative, instruction and voting information could be broadcast on RATNET, at little cost to the state.

I hope that this more fully explains the position of the Republican Party of Alaska. We will do everything we can to cooperate with the state in this primary election. Please let me know immediately if you have any questions.

Sincerely,


Kenneth P. Jacobus
Legal Counsel

cc: Grant Doyle
State Central Committee



JRD:MAP:AS:gmh
DJ 166-012-3
AH992
AJ976-981

Writing Section
P.O. Box 66128
Washington, D.C. 20035-6128

Kenneth P. Jacobus, Esq.
Legal Counsel
Republican Party of Alaska
750 E. Fireweed Lane
Suite 102
Anchorage, Alaska 99503

SEP 13 1990

Dear Mr. Jacobus:

This refers to the provision that only those persons registered to vote as Republicans, those persons registered as independents, and those registrants who decline to state a party affiliation may vote for Republican candidates seeking their party's nomination in primary elections for federal and state offices in the State of Alaska, beginning with the 1992 primary, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, by the state Republican Party of Alaska. We received your submission on July 25, 1990; supplemental information was received on August 2, 1990.

This also refers to the Republican Party's request, in the same submission, for "alternative preclearance" under Section 5 of the following matters regarding the administration of state primary elections for federal and state offices beginning with the 1992 primary election: two alternative and conflicting deadlines for changing party registration for purposes of voting in a primary election; two alternative and conflicting ballot formats for the listing of primary candidates; and two alternative and conflicting rules concerning which primary ballots may be made available to those voters who are eligible to vote for Republican candidates in the primary election.

The Attorney General does not interpose any objection to the change described in the first paragraph of this letter. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change. In addition, as authorized by Section 5, the Attorney General reserves the right to reexamine this submission if additional information that would otherwise require an objection comes to his attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

With respect to the other submitted matters (described in paragraph two), your submission indicates that the State of Alaska (which is responsible for conducting primary elections) and the state Republican Party are in conflict as to how primary elections should be conducted. Rather than resolving these disagreements at the state level, the Republican Party requests that the Attorney General grant Section 5 preclearance to both the state's and the Party's interpretations, and that the decision as to which rules actually will be implemented then would be made "as a matter of state law." However, under Section 5 the Attorney General may not consider "[a]ny proposal for a change affecting voting submitted prior to final enactment of administrative decision," with certain limited exceptions not applicable here. 28 C.F.R. 51.22. Accordingly, the Attorney General is unable to make a determination on these matters at this time. See also 28 C.F.R. 51.35.

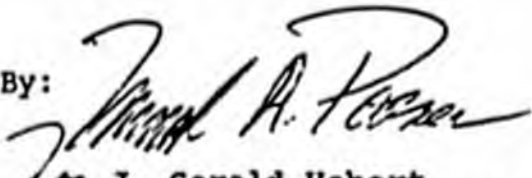
In addition, insofar as the Republican Party is requesting preclearance of voting changes adopted by the state, we note that the Republican Party is not an appropriate submitting authority for any such changes. Finally, we note that with respect to the alternative proposals put forward by the Party, it is unclear that the Party has the authority to decide or implement these matters of election administration. See Tashjian v. Republican Party of Connecticut, 479 U.S. 208 (1986).

If you have any questions with regard to this submission, please telephone Mark Posner, an attorney in the Voting Section, at (202) 307-1388.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

By:


J. Gerald Hebert
Acting Chief, Voting Section

cc: James L. Baldwin, Esq.
Assistant Attorney General

Jonathan B. Rubini, Esq.
Birch, Horton, Bittner and Cherot

Michael J. Walleri, Esq.
General Counsel
Tanana Chief Conference, Inc.

**REPUBLICAN PARTY OF ALASKA
RULE CHANGES ADOPTED AT THE 2 MARCH 1991 SPECIAL CONVENTION**

ARTICLE XIII - GENERAL POLICIES

Section 13. A Rule Providing for Severability

The various rules of the Republican Party, including those relating to the primary elections, are severable. Any invalidity or un-enforceability of any rule or part thereof, shall not affect the remainder of the rule or rules in any way.

ARTICLE XIV - PRIMARY ELECTIONS

Section 2. Republican Designation

No person may use the word 'Republican' on any ballot or in any campaign as part of a description of himself or herself as a candidate unless that person is a candidate of the Republican Party of Alaska, selected according to the Rules of the Republican Party.

Section 3. A Rule to Maximize Voter Participation In Primary Elections

(a) Any voter qualified to vote in the Republican Party primary election may vote in that election, regardless of whether or not that voter has voted in the primary election of any other party.

(b) The fact that a voter has voted in the Republican Party primary election shall not disqualify that voter from voting in the primary election of any other political party or parties, where that voter's participation in the primary election of other parties is authorized or permitted by the rules of the other party or parties, or the statutes of the United States or the State of Alaska.

Section 4. To Facilitate Implementation of Primary Election

The Central Committee, or the Executive Committee in the event that there is insufficient time to convene the Central Committee, may adopt any and all additional rules, regulations, interpretations, clarifications, and the like, which are necessary or desirable to implement the Republican primary election in accord with other rules adopted at this special convention (held March 2, 1991), and pursuant to Article XIV of the Rules of Republican Party of Alaska. Any action taken by the Central or Executive Committee under the provisions of this rule shall have the same force and effect as if adopted by this convention.

Section 5. Prior Registration Requirement

In order to be a candidate in any Republican Party primary election, a person must have been a registered voter of the Republican Party of Alaska for a continuous period of six months immediately prior to the filing deadline for the primary election.

STATE OF ALASKA

OFFICE OF THE GOVERNOR

DIVISION OF ELECTIONS
P.O. BOX AF
JUNEAU, ALASKA 99811-0105
PHONE (907) 465-4811

May 1, 1991

Mr. Mark Posner
Voting Section, Civil Rights Division
Department of Justice
P.O. Box 66128
320 First Avenue N.W., Room 720
Washington, D.C. 20534

Re: Case No. 91-0962

Dear Mr. Posner;

The purpose of this letter is to comment on the recent submission made by the Republican Party of Alaska (RPA) pursuant to Sec. 5 of the Voting Rights Act of 1965 (42 USC 1973c).

The Division of Elections (DOE) does not oppose any political party's right to limit its association with other political parties, but we cannot abide with rule changes that interfere and could jeopardize the integrity of the election process.

The DOE cannot support the RPA assertion that voters may change their party affiliation by amending voter registration records up to and including election day.

Under existing state law, all voter qualifications must be fixed and evidenced by a valid registration at least 30 days before the election. AS 15.07.070 (c) and (d). Since one's party affiliation would determine whether they could vote in the Republican primary, party status would become a voter qualification subject to the 30-day requirement. Declaration of party affiliation on election day as proposed by the RPA would cause many voters to be required to vote a questioned ballot, with the effect that many would be disenfranchised on the basis that they failed to register under their declared party affiliation 30 days prior to the election.

Furthermore, both urban and rural election workers will be implementing new voting procedures if the DOJ preclears the RPA request; the additional burden of allowing voters to change their party affiliation on election day would be confusing and could jeopardize the integrity of the voting process across the state.

The DOE also objects to Section 3, Article XIV, "A Rule to Maximize Voter Participation in Primary Elections." This change would allow Republicans and nonpartisans to vote in the primary election of any other party unless prohibited by another party's

rules, or state or federal law.

The division views this provision as particularly onerous for the following reasons:

The DOE believes in one-person, one vote. In a state of many diverse ethnic and minority groups, it would be impracticable to explain why one could vote more than once in a primary regardless of how the process was characterized. The credibility of the election process would be seriously jeopardized.

Furthermore, the division questions how the RPA can legally assert that its members or nonpartisans can vote in other party primaries. This is a state law matter.

If and when the DOJ preclears the RPA rule changes, the DOE will submit its plan for implementation of the open-classic primary. The division will also be working with the state legislature to make the necessary statute changes that may be required.

Sincerely,

A handwritten signature in cursive script, reading "Charlot Thickstun".

Charlot Thickstun
Director
Division of Elections

**REPUBLICAN PARTY OF ALASKA
RULE CHANGES ADOPTED AT THE 2 MARCH 1991 SPECIAL CONVENTION**

ARTICLE XIII - GENERAL POLICIES

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(b) The fact that a voter has voted in the Republican Party primary election shall not disqualify that voter from voting in the primary election of any other political party or parties, where that voter's participation in the primary election of other parties is authorized or permitted by the rules of the other party or parties, or the statutes of the United States or the State of Alaska.

Section 4. To Facilitate Implementation of Primary Election

The Central Committee, or the Executive Committee in the event that there is insufficient time to convene the Central Committee, may adopt any and all additional rules, regulations, interpretations, clarifications, and the like, which are necessary or desirable to implement the Republican primary election in accord with other rules adopted at this special convention (held March 2, 1991), and pursuant to Article XIV of the Rules of Republican Party of Alaska. Any action taken by the Central or Executive Committee under the provisions of this rule shall have the same force and effect as if adopted by this convention.

Section 5. Prior Registration Requirement

In order to be a candidate in any Republican Party primary election, a person must have been a registered voter of the Republican Party of Alaska for a continuous period of six months immediately prior to the filing deadline for the primary election.

P. 10

**ARTICLE XIV
PRIMARY ELECTIONS**

Only registered Republicans, registered independents, and those who state no preference of party affiliation shall be allowed to vote in the Republican primary election for Governor, Lieutenant Governor, U.S. Senator, U.S. Representative, and members of the State Legislature.

Grant Doyle
Chairman

Marilyn Paine
National Committeewoman

Eileen Umer
National Committeewoman

Cheri Jacobus
Vice Chairman

Charles Thielson
Secretary

The Republican Party of Alaska

750 E. Fireweed Lane, Suite 102
Anchorage, Alaska 99503
(907) 276-4467
FAX 258-4930



Paul Robinson
Treasurer

Holly O'Brien
Asst. Secretary

Ann Treasurer

Francis Chapman

Kenneth Jacobus
Legal Counsel

May 28, 1990

David Koivuniemi
Director of Division of Elections
State of Alaska
P.O. Box AF
Juneau, Alaska 99811-0105

Via FAX 465-3203

Re: Republican Party of Alaska Primary Election

Dear Dave:

This letter is a follow up to our conference of May 24, 1990, regarding the upcoming primary election. As you know, on March 31, 1990, at its State Convention in Juneau, the Republican Party of Alaska adopted the following rule:

Article XIV Primary Elections

Only registered Republicans, registered independents, and those who state no preference of party affiliation shall be allowed to vote in the Republican primary election for Governor, Lieutenant Governor, U.S. Senator, U.S. Representative, and members of the State Legislature.

This is a classic "open" primary rule. At the time that Tashjian v. Republican Party of Connecticut, 93 L.Ed.2d 514 (1986) was decided by the United States Supreme Court, 21 states held classic "closed" primaries in which the voter had to be registered as a member of the particular party for some specified period of time prior to that party's primary in order to be eligible to vote. The majority of the remaining states (16) required party registration, but allowed voters to change party affiliation at the time of the vote. Only 4 states, including Alaska, allowed all voters, regardless of party affiliation, to participate in the primary. The rule adopted by the Republican Party of Alaska follows the classic "open" primary adopted in the remaining 9 states.

The Republican Party of Alaska rule defines those persons who may vote in its primary. Those persons who may vote are those registered under the Alaska voter registration system as Republican, Non-Partisan or Undeclared. Those who may not vote are those registered as Democrat, Alaska Independence Party, or any other political party (Other).

Exhibit E

David Koivunemi
May 28, 1990
Page 2

You raised the question of whether the Republican Party of Alaska intended by its use of the word "Independents" to mean the Alaska Independence Party members. It does not. It is clear from the convention floor discussion and from the use of the word "Independents" that the convention delegates used the word in its generic sense of non-partisan.

The rule governs only the voters who may participate in the election. The Republican Party of Alaska will work with the Division of Elections in order to implement this change in the primary election immediately. To a great extent, the mechanics of the primary election are under the control of the Division of Elections, but we do have some suggestions which should make the process easier.

You asked whether a person could change his or her party declaration at the time of casting the ballot. The present Republican Party of Alaska rules do not restrict anyone from changing his or her party declaration at the time of the primary vote. It appears more practical, and will allow greater voter participation, if a voter is allowed to change his or her party registration at the time of casting the ballot in the primary election.

There are four kinds of voter situations which face the state, regular voters, absentee voters, overseas military voters and those voting a questioned ballot. While the practical implementation is up to the state, I have attempted to suggest possible approaches.

1. Regular Voters. Two ballots should be printed -- the "Republican" primary ballot and the "Other Parties" primary ballot which would contain all the other candidates. Because the Democratic and the Alaska Independence Parties have not changed their party rules to restrict their primaries, Republicans and those with no declared party affiliation (U or N) would qualify for either a Republican or Other Party ballot. All other partisan voters (D, AI, or O) would only be permitted to receive the Other Party ballot. A voter could participate in only one primary election, and a regular voter would receive one ballot.

Only one sign-in sheet is necessary. Each voter signs the sheet and the election worker checks party affiliation and indicates on the sign-in sheet which ballot was given to the voter, just as the election worker currently indicates the method of identification.

Accountability can be preserved by simply requiring the election officials to separately count the Republican Primary ballots and Other Party Primary ballots in the same manner

previously devised for single ballot primaries. The majority of states presently have systems in place for ballot accountability and the majority of states have "closed" primaries which clearly require two or more ballots.

If the state chooses to allow a voter to change party declaration at the time of casting the ballot, those voters desiring to change party declarations in order to receive the Republican Party primary ballot would vote a questioned ballot. The questioned ballot form, which goes on the outside of the sealed cast ballot, could be altered to include two items -- one line would allow the voter to change or indicate his or her party declaration, and another box on the outside of the questioned ballot would be filled in by the election worker indicating which primary ballot was given to the voter. This would protect the sanctity of the ballot and allow a quick review of the questioned ballot by the election judges to determine whether a voter was eligible to vote in the Republican primary.

If the state chooses to require a voter to change his or her declaration 30 days in advance, then obviously the person must appear on the voter list or have a valid yellow copy of the registration form as an R, U, or N, to vote in the Republican Party of Alaska primary. Anyone could receive the other ballot.

2. Questioned Voters. If the state chooses to allow a change of declaration at the time of the primary, the solution is easy. All questioned voters should be required to fill out the party declaration on the outside of the questioned ballot as described above. The questioned ballot form, which goes on the outside of the cast ballot, could be altered to include two items -- one line would allow the voter to change his or her declaration, and another box on the outside of the questioned ballot would be filled in by the election worker indicating which primary ballot was given to the voter. While the party affiliation is only important in the Republican primary, it would be less confusing to simply make party declaration a part of the questioned ballot form.

If a voter refuses to declare his or her affiliation on the outside of the questioned ballot (and some independent Alaskans will), so long as the outside indicates which ballot the voter was given, the election judges can easily determine whether the voter was eligible to vote by reviewing the voter's old registration as it appears on the registration list.

If the state chooses to require the voter to change the

declaration 30 days in advance, the problem becomes more complicated. You should still use the same form. However, it has been our experience that many people do not remember their party affiliation and there is the greater possibility of disenfranchisement of voters who incorrectly recall their party declarations, or who want to change their declarations at the time of voting, but cannot.

3. Absentee Voter. One of the concerns raised at our conference was about the requests for absentee ballots which have already been received by the Division of Elections. There is really no necessity to change the form for requesting an absentee ballot.

As we discussed, the state could simply send both ballots to all absentee voters. The state could require that the absentee voter return both ballots. The instructions should clearly state that a failure to return both ballots would result in the vote not being counted.

The instructions would also state that any voter could vote in the "Other Party" primary, but that only Republicans, Non-party affiliates, and undeclared voters could vote in the Republican primary. They would also state that a voter qualified to vote in both primaries could in fact vote in only one.

Just as on the questioned ballot form, a line could be included which allowed an absentee voter to change his or her party declaration. This would allow an absentee voter the same opportunities as the regular voter.

The cast ballot could be treated in the same manner as in previous years, sealed in a plain white envelope and enclosed in the return envelope. The uncast ballot would be outside the white envelope but inside the return envelope. If the uncast ballot is not returned, the vote would not be counted, because there is no way, short of opening the white envelope, to ensure that the voter has not improperly voted in the wrong or both primaries.

The election judge always checks a number of things before counting the ballot. Now the election judge would check the outside for a change of party of declaration, would determine whether the person is ineligible to vote in the Republican primary (is a D, AI, or O), and then check to determine whether the uncast ballot in the outside envelope is the Republican ballot. If it is the Republican ballot, the vote would be counted. If it is not, the vote would not be counted. (Republicans, undeclared, and non-partisans can vote

David Kolvuniemi
May 28, 1990
Page 5

in either primary.)

4. Overseas Military. Although there was some concern expressed regarding the overseas military ballots, according to 42 U.S.C. 1973ff-1, the only special requirements for overseas military exist during the general elections for federal office. During primary elections, the overseas military use the same absentee procedures applicable to all other voters.

Each State shall -

(1) permit absent uniformed services voters and overseas voters to use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for Federal Office;

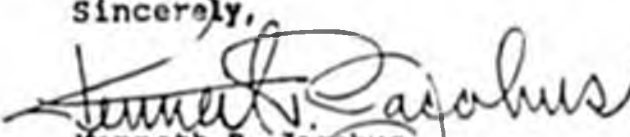
(3) permit overseas voters to use Federal write-in absentee ballots (in accordance with section 103) in general elections for Federal Office.

Therefore, it does not appear that there is anything special required for the overseas military person.

The instruction materials can easily be amended, either by reprinting the entire package (probably impractical) or by including a new instruction to specifically cover these changes. With respect to training, as you indicated, approximately two-thirds of the elections boards have not yet been trained. The other third could receive supplemental written instructions, or if the state was creative, instruction and voting information could be broadcast on RATNET, at little cost to the state.

I hope that this more fully explains the position of the Republican Party of Alaska. We will do everything we can to cooperate with the state in this primary election. Please let me know immediately if you have any questions.

Sincerely,


Kenneth P. Jacobus
Legal Counsel

cc: Grant Doyle
State Central Committee



JRD:MAP:AS:gmh
DJ 166-012-3
AH992
AJ976-981

Henry Simon
PO Box 66128
Washington, DC 20035-6128

Kenneth P. Jacobus, Esq.
Legal Counsel
Republican Party of Alaska
750 E. Fireweed Lane
Suite 102
Anchorage, Alaska 99503

SEP 15 1990

Dear Mr. Jacobus:

This refers to the provision that only those persons registered to vote as Republicans, those persons registered as independents, and those registrants who decline to state a party affiliation may vote for Republican candidates seeking their party's nomination in primary elections for federal and state offices in the State of Alaska, beginning with the 1992 primary, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, by the state Republican Party of Alaska. We received your submission on July 25, 1990; supplemental information was received on August 2, 1990.

This also refers to the Republican Party's request, in the same submission, for "alternative preclearance" under Section 5 of the following matters regarding the administration of state primary elections for federal and state offices beginning with the 1992 primary election: two alternative and conflicting deadlines for changing party registration for purposes of voting in a primary election; two alternative and conflicting ballot formats for the listing of primary candidates; and two alternative and conflicting rules concerning which primary ballots may be made available to those voters who are eligible to vote for Republican candidates in the primary election.

EXHIBIT B

Barry Wienberg
June 7, 1990
Page 2

requests that this matter be completed not later than June 25, 1990.

The Republican Party rule change was adopted at its State Convention on May 31, 1990. The State of Alaska, Division of Elections, was notified immediately by telephone, and by subsequent letter.

In order to determine what would be required for the election, it was necessary to wait for any action which might be taken by the Democratic Party of the State of Alaska, at its convention on May 18-19, 1990. At its previous convention, the Democratic Party had adopted a resolution requesting that the Legislature change the Democratic primary to a closed primary. It was necessary to wait to determine whether the Democratic Party would adopt a party rule at its convention changing the form of its primary. The Democratic Party of Alaska did not do so, however. Immediately thereafter, the Republican Party of Alaska began conferring with the State of Alaska regarding the details of implementing the Republican Party primary for the 1990 election. Several conferences have been held, and the Republican Party's most recent letter, attached as Exhibit E, sets forth what I believe to be the present position regarding the primary election. There may be additional details which need to be worked out, but those should not affect this submission. At this point, it is appropriate that this submission be made.

In accord with 28 CFR §51.27, the Republican Party of Alaska submits the following information:

(a) A copy of the Republican Party rule change, adopted at the party convention on May 31, 1990, is attached as Exhibit A.

(b) A copy of AS 15.25.010 and .060, which provided for the prior Alaskan Republican blanket open primary, is attached as Exhibit B.

(c) The difference between the submitted change and the prior procedure is simple. Previously, any Alaskan registered voter could vote in the Republican Party primary election. Under the new party rule, only those Alaskans who are registered Republicans, or who are registered as not being affiliated with another political party, may vote in the Republican primary. Those voters registered as affiliated with another political party cannot vote in the Republican primary.

As set forth in the attached Exhibit C, page 1, approximately 77% of the Alaskan registered voters are still able to vote in the Republican primary under their present registrations. If any other voters desire to vote in the Republican primary, they can change their registrations to Republican or as being not affiliated with

JRD:MAP:AS:gmh:rac
DJ 166-012-3
91-0962

RECEIVED
MAY 28 1991
DIRECTOR OF ELECTIONS
May 21, 1991

Kenneth P. Jacobus, Esq.
3939 Locarno Drive
Anchorage, Alaska 99508-5023

Dear Mr. Jacobus:

This refers to the party rule changes which specify which candidates may designate themselves as Republican, establish a prior registration requirement for Republican primary candidates, and further define the persons eligible to vote in Republican primary elections, adopted by the State Republican Party of Alaska, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on March 22, 1991.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Nothing in this determination should be interpreted to speak to the provision dealing with the eligibility to vote in primary elections of political parties other than the Alaska Republican

Post-It™ brand fax transmittal memo 7671		# of pages	2
To	ADD	From	Elizabeth
Call	HOUSE	Co	Elections
Dept	Kubina	Phone	4611
Fax	2287	Fax	3203

JUN 28 '91 16:45

DIRECTOR OF ELECTIONS, PUNEAU

P. 2/ 2

- 2 -

Party, since it is unclear whether the Republican Party has the authority to address the eligibility to vote in a primary other than its own. See Tashian v. Republican Party of Connecticut, 479 U.S. 208 (1986).

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

By:

J. Gerald Hobert
Acting Chief, Voting Section

✓ bcc: Ms. Charlotte Thickstun
Director
Division of Elections

WALTER J. HICKEL
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 9, 1992

MEMORANDUM:

TO: Honorable Walter J. Hickel
Governor of Alaska

FROM: Tuckerman Babcock *TAB*

RE: Primary Elections

A decision needs to be made as to how we are going to support our position for the "most open primary system possible." The best way to do this is to focus on the different ballot systems.

Following is a brief reason why this issue is before us now and what our options are:

Background:

Under the old system each voter could vote to nominate just one candidate for each office without regard to party registration of the voter or the candidate. A recent Supreme Court decision has declared that each political party has the right to control who may participate in the primary election nominating their party candidates. Therefore, there is virtually nothing a state can do to prevent a party from limiting the pool of voters eligible to vote in a party primary.

Following is a simple analysis of the options the State has to support this recent decision.

THE SINGLE BALLOT

Features:

- * A single ballot containing all candidates
- * The registration of each voter is noted by an election clerk on the ballot before the ballot is given to the voter.
- * The voter may vote for anyone on the ballot

Positives:

- * No statutory change is required

Negatives:

- * All votes will not necessarily be counted in each primary election.

Note: A variation of this is to have the party primary identified that the person wants to vote in. In other words, you can do the single ballot by voter registration or party participation.

THE TWO BALLOT APPROACH

Features:

- * One ballot would consist of only Republican candidates. The other ballot would consist of Democrats, Green, and AIP candidates.
- * Voters could select only one ballot.
- * Voters would be limited to voting strictly for Republican candidates on one ballot or picking and choosing among the three parties on the other ballot.

Positives:

- * none

Negatives:

- * This ballot structure would emphasis to all voters that the Republicans are responsible for the change and will almost certainly lead to a devastating primary for all Republican candidates.
- * Most of your supporters (Republicans) would be put in the position of voting for you at the expense of Republican candidates for other office or voting for Republican candidates at the expense of you.
- * This is the absolute worst approach for conservative or Republican candidates.

THE FOUR BALLOT APPROACH

Features:

- * Each party's election is viewed as a separate proposition to nominate candidates to represent that party in the general election.
- * Each voter would be allowed to vote on each proposition if the party allowed them in.
- * Four ballots, four propositions.

Positives:

- * Each party governs whether an individual can vote in their party's primary.
- * Voters could possibly participate in all elections.
- * No confusion in counting ballots. All votes always count.
- * This is the most open primary possible consistent with the U.S. Constitution.

Negatives:

*

(7)

HOUSE COMMITTEE REPORT

Date Referred: May 14, 1991

FURTHER REFERRALS:

Judiciary
Finance

Date of Committee Action: 4/29/92

The STATE AFFAIRS Committee considered:

HB 327

HOUSE BILL NO. 327

PRIMARY ELECTIONS

"An Act relating to primary elections."

RECOMMENDATIONS:

be replaced with CS HB 327 (STA) ☒ the same title

☐ a new title

☐ have attached amendments(s)

☐ do pass

☐ do not pass

☐ no recommendations

☒ individual recommendations

☐ additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

APPROVES PREVIOUS: (Dept/Date)

☐ fiscal impact _____

☐ fiscal note(s) _____

☒ zero fiscal note House State Affairs Code for Offices of Gov. - ☐ zero fiscal note(s) _____
Dep't of Elections

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<u>Eugene G. Kukuna</u> HUTCH	☒	<u>Wesley Krumpholtz</u>			☒
<u>Tommy</u>	☒	<u>Mike Miller</u>			☒
<u>Ed Brown</u> BRACKMAN	☒	<u>Sam W. J. J.</u> BARKER			☒
		<u>David K. K.</u> CROCKETT			☒

Eugene G. Kukuna
CHAIRMAN'S SIGNATURE

HOUSE COMMITTEE REPORT

Rules

(11)

Date Referred: May 2, 1992

FURTHER REFERRALS:

Date of Committee Action: 5/4/92

The FINANCE Committee considered:

HB 327

HOUSE BILL NO. 327

PRIMARY ELECTIONS

"An Act relating to primary elections."

RECOMMENDATIONS:

be replaced with CS HB 327 (JUD) ☒ the same title ☐ a new title

☐ have attached amendments(s)

☒ do pass

☐ do not pass

☐ no recommendations

☐ individual recommendations

☐ additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

APPROVES PREVIOUS: (Dept/Date)

☐ fiscal impact _____

☐ fiscal note(s) _____

☐ zero fiscal note _____

☒ zero fiscal note(s) 4/29/92
HSTA Comm. He

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
EP Maclean	✓	~~CS HB 327~~			
MARK BOWEN	X	~~AB~~	✓		
Jay Brown	✓	Barth Sharp	✓		
Bruce J. Jan	X	~~CS HB 327~~	✓		✓
Mike Yvonne	✓	James Barnes	X		✓
Julie	X				

Mike Yvonne EP Maclean
CHAIRMAN'S SIGNATURE



Official Business

Alaska State Legislature

From Gruenberg

Pouch V
State Capitol
Juneau, Alaska 99811

April 22, 1992

Hon. John B. "Jack" Coghill
Lt. Governor
State of Alaska
Juneau, Alaska 99811

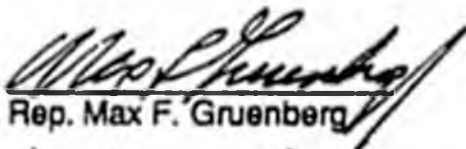
Dear. Lt. Governor Coghill:

Enclosed are two opinions from the Division of Legal Services discussing whether the lieutenant governor and the Division of Elections have the legal authority to adopt regulations implementing party rules closing the primary election. The opinions conclude that the lieutenant governor and the division lack the authority to do so under present law.

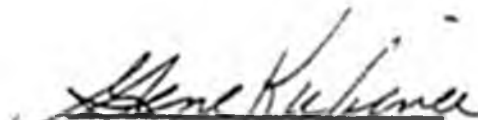
The legislature has before it two bills that would deal with the primary closure problem in very different ways. Both are constitutional under Tashjian. However we have not passed either of these proposals.

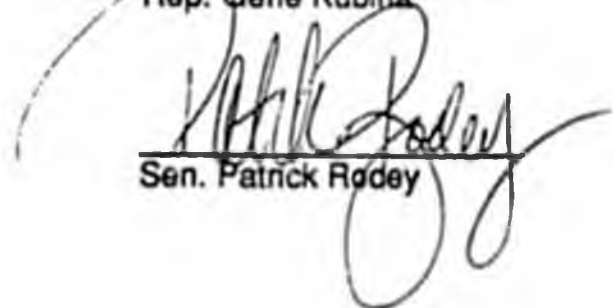
Unless and until the legislature passes legislation authorizing the implementation of restrictive party rules, we respectfully request you not to exceed your statutory authority.

Sincerely,


Rep. Max F. Gruenberg


Rep. Mike Miller


Rep. Gene Kubina


Sen. Patrick Rodey

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

240 Main Street, Suite 500
Juneau, Alaska 99801-2101

MEMORANDUM

March 13, 1992

SUBJECT: Present Ability of Lieutenant Governor to Promulgate Elections Rules That Complied With Tashjian Decision (Work Order No. 7-LS1188)

TO: Representative Max Gruenberg
Attention: Stan Robbins

FROM: Robert Glennon Casey *RGC* 3-13-92
Legislative Counsel

I. INTRODUCTION

You have asked for a discussion of the authority of the Lieutenant Governor of Alaska and the Division of Elections to adopt regulations to make Alaska's elections procedures comply with the U.S. Supreme Court's ruling in Tashjian v. Republican Party of Connecticut, 479 U.S. 208 (1986).

II. SUMMARY

The Lieutenant Governor and the Division of Elections probably lack authority to adopt regulations to make Alaska's primary election law comply with the Tashjian decision. No statute or constitutional provision appears to give the Lieutenant Governor or the Division of Elections the power to adopt regulations that make new election law.

The details behind this conclusion are provided in section IV of this memorandum.

III. FACTS

Alaska law currently provides for a "blanket" primary. In a blanket primary, all voters receive the same ballot and each voter may vote for any candidate regardless of party affiliation.

The Republican Party of Alaska, however, has adopted a conflicting rule that closes the voting for Republican candidates in primary elections to all voters except

Republicans and independents. Furthermore, the United States Supreme Court ruled in the Tashjian case that such a party rule is a constitutionally-protected exercise of the right of association. When such a party rule conflicts with a state election statute, it is the statute which must yield.

There had been some question as to whether the Tashjian case applied in Alaska, but a February 28, 1992 memorandum of Attorney General Charles E. Cole concluded that Tashjian was applicable and that "a court would hold that the Republican Party's rule limiting participation in the selection of the party's candidates must be implemented, notwithstanding its conflict with Alaska's blanket primary statutes "

IV. DISCUSSION

The difficult practical question is how to implement the Republican Party's rule. Neither the Lieutenant Governor nor the Division of Elections would appear to have the power to adopt regulations that would meet the participation requirements of the Republican Party rule.

1. The Requirement that Rule-Making Be Authorized. Under Alaska law, administrative rule-making requires a statutory or constitutional grant of authority. For example, Alaska's Administrative Procedure Act (APA) provides that "[t]o be effective, each regulation adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law," AS 44.62-020.

Court decisions have been consistent with that formulation. For example, in Rutter v. State, 668 P.2d 1343, 1349 (1983) the Alaska Supreme Court ruled that "[a]dministrative agencies are creatures of statute, deriving from the legislature the authority for the exercise of any power they claim." In a similar vein, the decision of State v. Alveska Pipeline Service Co., 723 P.2d 76, 78 (Alaska 1986) ruled that "[r]egulations promulgated by an executive department must be authorized by statute."

In sum, it would seem that the Lieutenant Governor or the Division of Elections could only adopt regulations accommodating the Republican Party rule if some provision of law gave the Lieutenant Governor or the Division of Elections the power to do so.

2. The Lieutenant Governor and the Division of Elections Lack Authorization. There does not appear, however, to be any provision in either the Alaska Constitution or the Alaska Statutes which would authorize the Lieutenant Governor or the Division of Elections to adopt regulations that essentially made new primary election law.

For example, art. III, § 7 of the Alaska Constitution only states that the lieutenant governor "shall perform such duties as may be prescribed by law and as may be

delegated to him by the governor." That provision does not authorize adoption of regulations that would change the essential nature of Alaska's primary election system.

Statutory provisions also would not authorize the lieutenant governor to adopt such regulations. AS 44.19.020 states that "[t]he lieutenant governor shall administer state election laws," and AS 15.10.10⁵(a) provides that "[t]he lieutenant governor shall control and supervise the division of elections," but these statutes only authorize administrative functions of a ministerial nature. They would not authorize adoption of regulations that were inconsistent with Alaska's primary election statutes.

In this connection, the Alaska Supreme Court ruled in State v. Anderson, 749 P.2d 1342, 1344 (1988) that the validity of a regulation partly depends on "whether it directly conflicts with any other statute." Regulations from the lieutenant governor implementing a closed Republican primary would conflict with existing statutes. As Attorney General Cole noted in his February 28, 1992 memorandum:

Alaska has a "blanket" primary, in which all voters select the nominees of all parties. Under AS 15.25.010 - 15.25.130, all candidates of all political parties run on one ballot, and any registered voters, regardless of party affiliation, can vote for any candidate. The only restriction is that voters may cast only one vote for each office on the ballot.

[footnote omitted]

A regulation that conflicted with AS 15.25's provision of an open primary would not be statutorily authorized.

The same principle would apply to regulations that the Division of Elections might adopt under AS 15.07.070, AS 15.10.020, 15.10.030, AS 15.15.010, 15.15.060, 15.15.350, 15.15.361, and 15.15.370. Regulations adopted pursuant to those enabling sections must be consistent with Alaska's existing statutory provision of a blanket primary. In any event, the subject matter of regulations authorized by those statutes does not include the qualification of a voter to vote for particular candidates in a primary election.

In sum, the lieutenant governor and Division of Elections lack constitutional or statutory authority to provide by regulation for a closed Republican primary election.

Representative Max Gruenberg
March 13, 1992
Page 4

V. CONCLUSION

The lieutenant governor and the Division of Elections probably lack the authority to conform Alaska's primary elections to the Tashjian decision's requirements by means of regulation.

RGC:pl
92-171.plm

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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FAX (907) 465-2029
Mail Stop 3101

240 Main Street, Suite 300
Juneau, Alaska 99801-2101

MEMORANDUM

March 30, 1992

SUBJECT: Supplemental Discussion of Regulations
Implementing Closed Primary Elections
(Work Order No. 7-LS1188)

TO: Representative Max Gruenberg
Attention: Stan Robbins

FROM: Robert Glennon Casey
Legislative Counsel

RGC 3-30-92

I. INTRODUCTION

This memorandum reconsiders the opinion expressed in an earlier memorandum from the Division of Legal Services, dated March 13, 1992. That earlier memorandum concluded that neither the Lieutenant Governor of Alaska nor the Division of Elections possessed the authority to adopt regulations that conflicted with the open (or "blanket") primary system provided in AS 15.25.010 - 15.25.130.

II. SUMMARY

The original opinion stands. Regulations would be unauthorized for reasons given in the previous memorandum and also for reasons given below.

III. DISCUSSION

The impetus for this discussion is a December 3, 1991 memorandum of the Department of Law. Pages 4 and 5 of that memorandum indicated that under Denardo v. State, 741 P.2d 1197 (Alaska 1987) the Division of Elections might possess authority to adopt regulations authorizing a closed primary. (Copies of the Denardo decision and the memorandum of the Department of Law accompany this memorandum.)

Denardo, however, seems to stand for the opposite conclusion. The Denardo ruling probably means that such regulations are unauthorized if they conflict with either a currently effective statute or a currently effective statement of legislative intent.

In Denardo, a regulation was upheld, but it is important to examine the reasons why the court reached its result in that case. The Denardo court upheld the regulation because: (1) the regulation did not conflict with any statute in effect at the time the regulation was promulgated, (2) there were clear statements of legislative support for the substance of the regulation (thereby enabling the court to conclude that the regulation was within an express or implied delegation of rule-making authority under AS 15.15.010), and (3) the regulation was neither arbitrary nor unreasonable. The first two of these criteria would not attend an immediate adoption of regulations that facilitated closed primary elections.

First, the statute requiring an open (or "blanket") primary election, AS 15.25.060, continues to be in effect. Unlike the statute in Denardo, this statute has not been judicially invalidated. It is beside the point that a court would probably rule AS 15.25.060's mandate of open ("blanket") primary election balloting unconstitutional in certain factual settings. Statutes that are "probably unconstitutional" continue to be in effect until a court rules them unconstitutional. AS 15.25.060 is a currently effective statute, and "agency rules cannot amend a statute," Denardo, 741 P.2d at 1198.

Second, the Alaska Legislature has not stated any support for closed primary balloting. Absent such a statement of support, it is difficult to find in AS 15.15.010 an express or implied delegation of authority to adopt regulations that would conflict with AS 15.25.060.

There was legislative support for the regulation in Denardo, but the facts of that case differed from the current situation: (1) the legislature had passed a law that accorded with the regulation subsequently adopted by the Division of Elections, (2) the regulation merely filled the period prior to the statute's effective date, and (3) the regulation did not conflict with any currently-effective statute.

In the present case, by contrast, the Alaska Legislature has not enacted a law supportive of closed primaries. Instead, the legislature's only statement appears to be AS 15.25.060 - a statute opposed to closed primary balloting and certainly not a delegation of power to adopt a contrary regulation. So, the facts that enabled the Denardo regulation to be upheld are reversed in the present case, and regulations from the Division of Elections would be unauthorized.

IV. CONCLUSION

In conclusion, a regulation facilitating closed primary election balloting would conflict with a currently effective statute and would also lack any expression of legislative support. Under both Denardo and the authorities cited in this office's previous memorandum, such a regulation is not authorized.

Daniel R. DENARDO, Appellant,
v.

STATE of Alaska, Appellee.
No. S-1679.

Supreme Court of Alaska.
Sept. 11, 1987.

Independent gubernatorial candidate brought action challenging Alaska Division of Elections' refusal to place his name on the ballot. The Superior Court, Third Judicial District, Anchorage, Brian C. Shortell, J., sustained Division's actions, and appeal was taken. The Supreme Court, Compton, J., held that: (1) Division's action, in promulgating rule regarding number of names needed on nominating petitions for independent candidates, did not constitute improper attempt to amend an unconstitutional statute, and (2) regulation as to number of names required on petitions was valid.

Affirmed.

1. Elections ¶21
Statutes ¶133

After state statute requiring independent gubernatorial candidates to submit nominating petitions signed by qualified voters equal in number to at least three percent of number of votes cast in preceding general election was declared unconstitutional, State Division of Elections' promulgation of a one percent rule did not constitute an impermissible attempt to amend an unconstitutional statute; three percent provision became null and void upon its being declared unconstitutional, and Division's action was taken when legislature did not act to amend statute until after nomination petition deadline for gubernatorial election had passed. AS 15.25.180.

2. Elections ¶21

After state statute requiring independent gubernatorial candidates to submit nominating petitions signed by qualified voters equal in number to at least one percent of those voting in previous general

Alaska Rep. 773-741 P.2d-11

election was declared unconstitutional, State Division of Elections' promulgation of a one percent rule was consistent with delegating statute and reasonably necessary for administration of state elections; legislature did not immediately act to amend statute after three percent provision was declared unconstitutional, but had previously expressed its desire to place some limitation on access to the gubernatorial ballot. AS 15.25.160.

3. Action ¶6

Superior court properly determined that issue of write-in gubernatorial candidate access to a voter information pamphlet was not ripe for decision; despite allegation that State Division of Elections had informally indicated that such candidates would not have access to the pamphlet, there was no indication that any attempt to wage a write-in campaign had actually been made.

Daniel R. DeNardo, Anchorage, pro se.
Susan D. Cox, Asst. Atty. Gen., Grace Berg Schaible, Atty. Gen., Juneau, for appellee.

Before RABINOWITZ, C.J., and
BURKE, MATTHEWS, COMPTON and
MOORE, JJ.

OPINION

COMPTON, Justice.

Daniel R. DeNardo claims that the Alaska Division of Elections (Division) improperly refused to place his name on the ballot for the 1986 gubernatorial election. The division based its action on DeNardo's failure to comply with then § AAC 25.180 (eff. 12/19/85), which required independent gubernatorial candidates to submit nominating petitions signed by qualified voters equal in number to at least one percent of those voting in the previous general election. DeNardo asserts that the regulation was invalid. The superior court sustained the actions of the division. We affirm.

L. VALIDITY OF 6 AAC 25.160.

Alaska Administrative Code Title 6, Section 25.160, was adopted pursuant to authority delegated to the director of elections by AS 15.15.010. That statute provides that the director "may issue regulations under the Administrative Procedure Act ... necessary for the administration of state elections." DeNardo does not claim that the director failed in any way to comply with the provisions of Alaska's Administrative Procedure Act (APA) in promulgating 6 AAC 25.160. Nor does DeNardo challenge the substance of the regulation or the legislature's power to enact such a rule.¹

Instead, DeNardo claims that the division had no power "to make election laws." DeNardo argues that 6 AAC 25.160 was a void attempt by the division to amend former AS 15.25.160, which this court held unconstitutional in *Vogler v. Miller*, 651 P.2d 1, 5-6 (Alaska 1982) (*Vogler I*). AS 15.25.160 provided that a gubernatorial candidate who did not represent a political party² had to be nominated by petition signed by qualified voters equal in number to at least three percent of the number of votes cast in the preceding general election. Ch. 83, § 5.53, SLA 1980; ch. 100, § 133, SLA 1980; see also *Vogler I*, 651 P.2d at 2.

In *Vogler I*, we recognized as legitimate the state's justifications for the statute, including the desire to eliminate voter confusion that would result from having a multitude of candidates on the ballot. 651 P.2d at 4. We nevertheless found that none of these explanations justified the increase from the equivalent of a one percent³ to a three percent signature requirement. Since the state failed to show that a one percent requirement would be any less effective in achieving the purported goals of the statute, we found that the state had not shown the compelling interest required

to save the three percent provision. *Id.* at 5-6.

The statute was not amended to comport with the one percent rule implicitly approved in *Vogler I* until June 6, 1986, five days after the filing deadline for nonparty candidates' nomination petitions for the 1986 gubernatorial election. Chapter 85, § 46, SLA 1986; AS 15.25.160. When it became clear that the legislature would not act in time, the division of elections promulgated 6 AAC 25.160 to govern the 1986 election.

[1] DeNardo relies on *State v. Marshall*, 633 P.2d 227, 233-34 n. 19 (Alaska 1981,) in support of his argument that the division's adoption of 6 AAC 25.160 was in effect an attempt to amend an unconstitutional statute. This reliance is misplaced. It is clear, as DeNardo argues, that agency rules cannot amend a statute. See *id.* But, contrary to DeNardo's apparent position, the fact that the legislature has at some point enacted legislation dealing with a particular topic does not forever foreclose the legislature from delegating authority to an agency to make rules affecting the same topic.

This court has soundly rejected such an argument. In *Kelly v. Zamarelli*, 486 P.2d 906 (Alaska 1971), we stated:

When administrative rule-making is based upon clear authority from the legislature to formulate policy in the adoption of regulations, the rule-making activity takes on a quasi-legislative aspect. We have held that, under proper standards, such delegations of legislative power to administrative agencies are constitutional. *Boehl v. Sabre Jet Room, Inc.*, 349 P.2d 535 (Alaska 1960).

Id. 489 P.2d at 909.

In *Boehl*, the following language appears:

dinal restriction on access to the ballot. *Vogler v. Miller*, 640 P.2d 1192, 1193-94 (Alaska 1983) (*Vogler II*). In 1984, the percentage was lowered to 3%. Ch. 85, § 34, SLA 1984.

2. The statute had previously required 1000 signatures, slightly less than 1% of the votes cast in 1978. *Vogler I*, 651 P.2d at 5 n. 10.

1. Indeed, the legislature has since enacted a statutory one percent signature requirement. AS 15.23.160.

2. "Political party" is defined as an organized group of voters that had polled a certain percentage of votes in the preceding gubernatorial election. Prior to 1983, the statutory percentage was 10%. This was found to be an unconstitutional

[P]rovision is made [in the Alaska Constitution] for creation by the legislature of regulatory agencies that are not under the supervision of the executive. Alaska Constitution, Art. 111, §§ 22, 24, 26. Such agencies would obviously have the function of exercising authority and control in places where the legislature has decided not to exercise all the authority and control itself. This would be a delegation of legislative power and the constitution provides for it.

Id. 349 P.2d at 588 (footnote integrated into text).

The three percent provision of former AS 15.25.160 became null and void upon this court's decision in *Vogler I*, 651 P.2d at 5-6. The division's subsequent regulatory enactments could not "amend" a void statute. Rather, the division stepped in to address a question regarding which the legislature implicitly decided not to exercise all of its authority and control.

Thus DeNardo's argument that the division generally has no power to make election laws is without merit. The legislature is constitutionally empowered to delegate legislative authority to regulatory agencies under certain circumstances.

[2] The question remains whether the specific regulation actually adopted by the division is valid. Resolution of this question involves a two-part inquiry: first, is the regulation consistent with and reasonably necessary to carry out the purposes of the statutory provisions conferring rule-making authority on the agency,⁴ and second, is the regulation reasonable and not arbitrary. *Kelly*, 486 P.2d at 911.

The relevant delegating statute provides: The director [of elections] shall provide general administrative supervision over the conduct of state elections, and may issue regulations under the Administrative Procedure Act ... necessary for the administration of state elections.

AS 15.15.010. The delegation of authority is further limited by the APA:

4. This aspect of review insures that the agency has not exceeded the power delegated by the

If, by express or implied terms of a statute, a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, no regulation adopted is valid or effective unless consistent with the statute and reasonably necessary to carry out the purpose of the statute.

AS 44.62.030. Thus, 6 AAC 25.160 was valid if it was consistent with relevant statutes and reasonably necessary for the administration of state elections. After *Vogler I*, there was no effective statute governing the number of signatures required for a nominating petition. Moreover, the legislature had previously expressed its desire to place some limitation on access to the gubernatorial ballot by enacting former AS 15.25.160. We recognized this as a legitimate concern in noting "[t]hat 'laundry list' ballots discourage voter participation and confuse and frustrate those who do participate." *Vogler I*, 651 P.2d at 5, quoting *Lubin v. Pawish*, 415 U.S. 709, 715, 94 S.Ct. 1815, 1819, 39 L.Ed.2d 702, 708 (1974). In addition, the legislature has confirmed its continued approval of the policy of limiting access to the ballot by enacting the new AS 15.25.160, which is virtually identical to 6 AAC 25.160. Thus, 6 AAC 25.160 did not conflict with any statute in effect and was consistent with the expressed legislative intent.

Moreover, by implicitly approving a one percent voter signature requirement in *Vogler I*, we have already found the rule to be neither unreasonable nor arbitrary. *Vogler I*, 651 P.2d at 5-6.

6 AAC 25.160 was validly enacted. DeNardo failed to comply therewith and the division properly rejected his nominating petition.

II. ISSUES RELATING TO ACCESS OF WRITE-IN CANDIDATES TO VOTERS.

The superior court concluded that issues relating to the propriety of the division's

legislation. *Kelly*, 486 P.2d at 911.

alleged refusal to include write-in candidates in voter information pamphlets were not ripe for decision. These issues were dismissed without prejudice. At the time of the hearing on DeNardo's "writ of mandamus," the pamphlet deadlines were still months away.

Apparently, the only pertinent information before the superior court was DeNardo's affidavit which stated: "Unofficially through the Division of Elections, Mr. DeNardo was informed that a write-in candidate would not have access to the election pamphlet." In its oral decision, the superior court deferred the issue of write-in candidate access to the voter information pamphlet, and invited each side to brief the question.

[3] DeNardo chose to appeal instead, arguing that the dismissal without prejudice was error because the access issue was "inextricably intertwined" with the nomination petition question. It cannot be determined from the record, however, whether DeNardo in fact attempted to wage a write-in campaign. It is thus impossible to discern the factual posture of this claim. The superior court wisely recognized this claim as unripe for judicial determination and declined to address it. We do likewise.

III. CONCLUSION.

The division of elections acted within the scope of the authority delegated to it by the legislature when it enacted 6 AAC 25.160. DeNardo failed to comply with its provisions and the division properly rejected his petition. The superior court correctly found that DeNardo's claims relating to his write-in candidacy were not ripe for review.¹

The superior court's decision is **AFFIRMED**.



1. The division also argues that DeNardo's claim is moot. In view of our disposition regarding

Carlos RODRIQUEZ, Appellant,

v.

STATE of Alaska, Appellee.

No. A-328.

Court of Appeals of Alaska.

Aug. 7, 1987.

Defendant was convicted in the Superior Court, Third Judicial District, Ralph E. Moody, J., of lewd and lascivious acts toward children and contributing to delinquency of a minor. Defendant appealed. The Court of Appeals, Costa, J., held that: (1) testimony of expert on sexually exploited children was admissible; (2) testimony of police officers called by defendant was not admissible; (3) sentence for attempted rape was excessive; and (4) defense counsel was not ineffective.

Affirmed in part, and reversed and remanded in part.

1. Criminal Law §-463

Testimony by expert witness which provides useful background information to aid jury in evaluating testimony of another witness is admissible.

2. Criminal Law §-463

Testimony of social worker, to the effect that testimony of alleged sexual abuse victims was consistent with patterns exhibited by sexually exploited children he had observed while working with children who had been exploited through child pornography or prostitution and child sex rings, was admissible as background information.

3. Evidence §-73

Testimony of police officers, who had been in defendant's home approximately five years before trial and who did not make thorough search of defendant's residence, to the effect that they had not seen drugs, pornography, or film-making equip-

the validity of the regulation, we do not address the mootness issue.

MEMORANDUM

State of Alaska

Department of Law

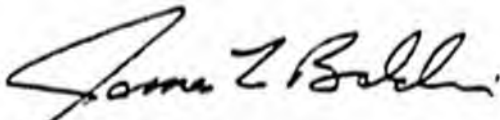
Elizabeth A. Ziegler
Deputy Director
Division of Elections
Office of the Governor

DATE December 3, 1991

FILE NO 663-92-0209

TEL NO 465-3600

SUBJECT Implementation of
closed primary
procedures



FROM James L. Baldwin
Assistant Attorney General
Governmental Affairs-Juneau

You requested our advice concerning a number of issues that are related to proposals by the major political parties in the state to close their primaries to members of competing political parties. Because you need this memorandum to help prepare for a meeting of the House State Affairs Committee to be held on November 13, 1991, we limit our opinion to your question concerning the power of the director of the division of elections to implement a closed primary by administrative regulation. It is your intent to administer a primary election that is consistent with the right of free association accorded to political parties even if provisions of state law applicable to the administration of primary elections permit a voter to cast a ballot that sets out candidates without regard to party affiliation.

You propose to establish new primary election procedures at the earliest possible date. You would like to implement new primary procedures early in the 1992 general election year. However, your timetable may be too aggressive to assure that the new procedures are properly supported by statute and regulation. The legislature would be unable to convene, consider, and enact amendments to the election code if there is not sufficient authority to accomplish your goals.

Your concern is whether the director may proceed in the absence of amendments to the election code to change primary election procedures and prescribe the form of the ballot so that the political parties control who may nominate candidates. We believe that it is prudent for the division to expeditiously pursue a resolution of the closed primary question both legislatively and by administrative means. Unlike the previous administration, you wish to acquiesce in the desire of a political party to nominate candidates using a primary ballot that may be voted only by persons admitted by the party. While we believe that there remains some question as to the proper interpretation of the rules of the Republican Party of Alaska, you can clarify this interpretation through the adoption of administrative regulations. However, before this can be done, it must be determined whether the division

has sufficient authority to adopt regulations that establish a closed primary election.

Existing law requires the division to prepare the primary ballot in a certain manner. The election code provides:

The primary election ballot shall be prepared and distributed by the director in the manner prescribed for general election ballots except as specifically provided otherwise for the primary election. The director shall place the names of all candidates who have properly filed in groups according to offices filed for, without regard to party affiliation.

AS 15.25.060 (emphasis added). The foregoing provision appears to preclude the use of separate ballots that are limited solely to the candidates of a single political party. It must be remembered that this provision was added to the election code to end the practice of presenting a ballot that required voters to vote only for the candidates of one political party. Elsewhere, the election code grants the director of the division elections the power to

prepare all official ballots to facilitate fairness, simplicity, and clarity in the voting procedure, to reflect most accurately the intent of the voter, and to expedite the administration of elections.

AS 15.15.030. The code also grants the director the power to "determine the size of the ballot, the type of print, necessary additional instruction notes to voters, and other similar matters of form not provided by law." AS 15.15.030(1).

The provisions of the election code that are specific to the form of the primary election ballot are probably void when the members of a political party desire to restrict those who may associate with them for the purpose of nominating candidates for public office. The United States Supreme Court reaffirmed the First Amendment rights of political parties to be free from statutes that restrict their power to associate with whomever they wish when nominating candidates. Tashjian v. Republican Party of Connecticut, 479 U.S. 208 (1986).

There appears to be no overriding state interest that can be articulated to perpetuate an open primary system when recognized political parties adopt conflicting rules. However, it is unclear how the Tashjian decision will be applied to the type of open "blanket" primary required by existing state law. It is possible, though not probable, that a court would find that an open "blanket"

primary does not burden associational rights. Until there is a federal case on point, this eventuality cannot be ruled out. It is also possible that AS 15.25.060 can be construed to apply only when political parties have not exercised their constitutional rights to limit access to the nominating process. One thing remains certain; it would be advisable to amend AS 15.25.060 to allow for the implementation of associational rules of political parties that do not infringe upon legitimate state interests in the administration of elections.

Even though Tashjian places heavy emphasis on the associational rights of political parties, we believe there may be an overriding state interest in having the parties act promptly and with clarity in the way they define who may associate with them. The U.S. Supreme Court has acknowledged that "it is clear that preservation of the integrity of the electoral process is a legitimate and valid state goal." Rosario v. Rockefeller, 410 U.S. 752, 761 (1973); see also, American Party of Texas v. White, 415 U.S. 767, 779 (1973). State law may interfere with a political party's internal affairs when necessary to ensure that elections are fair and honest. Storer v. Brown, 415 U.S. 724, 730 (1973).

We reviewed a draft committee substitute currently under consideration by the House State Affairs Committee. This bill would require political parties to adopt and deliver any party rules that would materially affect the nominating process by March 1 of the primary election year. The purpose of imposing a deadline for action is to permit preclearance of the change in voting requirements by the U.S. Justice Department, allow for voter education, and give adequate time to the division of elections to implement the changes. While these interests appear to be compelling, it is possible that a minor, recognized political party could contest the validity of the March 1 date. There is precedent for the proposition that early deadlines for the declaration of candidacy improperly restrict free speech and associational rights of nonparty candidates. Sigler v. State, JAN-88-8695 (Alaska Super. Mem. of Decision, Sept. 12, 1988). The harm encountered in Sigler was that the early declaration date improperly distanced nonparty candidates from the time of spirited public debate and the resultant attention of voters. Perhaps a minor recognized party could argue that it should be allowed to adopt rules which permit it to nominate candidates by convention held at or near the filing deadline for candidates for reasons similar to those advanced by Sigler. We believe that the concept of a deadline is supportable as a reasonable burden calculated to promote the electoral process. However, the division must fully document reasons for the cut-off date. The documentation will be essential in upholding the state's burden of proving that there is basis for the restriction.

Based on the foregoing, we conclude that existing provisions of the election code specifying the content of the primary election ballot are not operative when a political party opts to close its primary. In the absence of a specific statute, sufficient authority exists for the director to administratively implement new procedures for a closed primary. The basic standard applicable to the power of an administrative agency to adopt regulations is set out in the Administrative Procedure Act (APA). The APA provides:

If, by express or implied terms of a statute, a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, a regulation adopted is not valid or effective unless consistent with the statute and reasonably necessary to carry out the purpose of the statute.

AS 44.62.030. The director is given broad legislative power to adopt administrative regulations. She may "adopt regulations under the Administrative Procedure Act (AS 44.62) necessary for the administration of elections." AS 15.15.010. Given our determination that Tashjian makes AS 15.25.060 inoperative under certain conditions, it appears that AS 15.15.010 grants sufficient authority to implement a closed primary by administrative regulation. See, e.g., Denardo v. State, 741 P.2d 1197 (Alaska 1987) (regulation requiring independent gubernatorial candidates to submit nominating petitions signed by one percent of qualified voters held to be valid when adopted after court found statutory requirement void).

We would be remiss in our duties if we did not point out that contrary legal arguments could be made. It could be argued that the existence of AS 15.25.060 makes it plain the legislature did not intend to commit the formulation of the primary ballot to agency discretion. Support for this argument can be found in AS 15.15.030(1), which allows the director to determine matters of ballot form "not provided by law." The intent to commit to agency discretion is a necessary element for determining whether a regulation is valid. Kelly v. Zamarelli, 486 P.2d 906, 909 (Alaska 1971). We believe that a court would defer to the broad grant of legislative rule-making power conferred by AS 15.15.010, especially if the legislature fails to amend the election code after given a reasonable opportunity to do so. However, the fact that the regulations could be questioned justifies the effort to have the legislature take action to amend the election code.

Elizabeth A. Ziegler
Our File #: 663-92-0209

December 3, 1991
Page 5

We hope this memorandum will assist you in presenting your comments to the House State Affairs Committee.

JLB:ck



LEGISLATIVE TELECONFERENCE NETWORK SIGN-IN SHEET

P.M.

SPONSOR: _____
SUBJECT: _____
START/END TIME: _____ DATE: _____

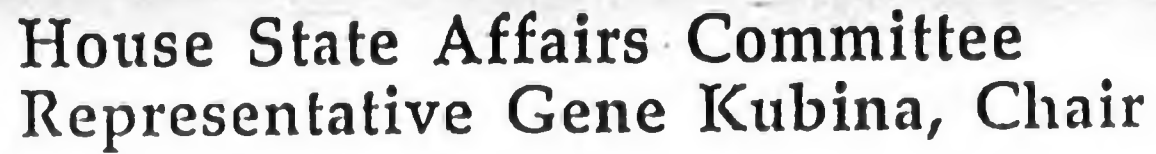
	SIGNATURE	PRINTED NAME - REP.	MAIL ADDRESS	ZIP	PHONE	BILL	Testify	Observe
1	<i>Brian S. Porter</i>	BRIAN S PORTER	2430 FORDHAM	99508	377-8187			✓
2	<i>Alma M. Wicksom</i>	Alma M Wicksom USB	3201 1st St Suite 202	99508	561-5144	HJR 45		
3	<i>Vic Fischer</i>	VIC FISCHER	PO Box 201348	99520	276-7626	HJR 45 HJR 13		
4	<i>Kilda Wickersham</i>	Kilda Wickersham	PO Box 110610 AA	99511	583-5297	NB 327		
5	<i>Jack Kennedy</i>	JACK KENNEDY - ^{Gov} _{Office}	Box AM Juneau	99801	465-3508	HJR 39	V	
6	<i>Jack W. Hill</i>	Jack W Hill	1023 1/2 E 11th Ave		276-5279	NB 307 HJR 13	L	
7								
8								
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LEGISLATIVE TELECONFERENCE NETWORK SIGN-IN SHEET

SPONSOR: (H) Stat. Affairs
SUBJECT: HB 327, HB 13, 45, 47, 58
START/END TIME: 10:00 - 11:00 DATE: 11/13/98

	SIGNATURE	PRINTED NAME - REP.	MAIL ADDRESS	ZIP	PHONE	BILL	Testify	Observe
1	<i>[Signature]</i>	David W. Harker	10123 1/2 E 11th Ave	798	214-522	HB 327 HB 13	X	
2	<i>[Signature]</i>	Mary L. Lammie	Box 511, Green	7664	214-5312	HB 13	X	
3	<i>[Signature]</i>	Tommy Sykes	Box 65, Tuckersville	7676	214-102	HB 13	X	
4	<i>[Signature]</i>		Box AF, Green	7676	214-102	HB 327	X	
5	<i>[Signature]</i>	Victor Bukowski	800 E. Diamond Blvd	7676	522-8085	HB 327		X
6	<i>[Signature]</i>	Chen Catharine Jacob	800 E. Diamond Blvd	7676	522-8083	HB 327		X
7	<i>[Signature]</i>		Box AF, Green	7676	214-102	HB 327		X
8	<i>[Signature]</i>	Rhonda Roberts	2520 Revolution Dr	79817	214-6297	HB 327	X	
9	<i>[Signature]</i>	James Lammie	5111 "C" St.	76765	522-7623	HB 13		X
10	<i>[Signature]</i>					HB 327	X	
11	<i>[Signature]</i>	James E. Lammie	2100 Acacia Dr	76777	214-117	HB 13		X
12								
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18								



PLACE: Capitol Room 102

HB 526 - Relating to Contractors and Local Public
Works

Page 1 of 1



House State Affairs Committee

Representative Gene Kubina, Chair

tape 92-10

DATE: February 5, 1992

PLACE: Capitol Room 102

SUBJECT OF MEETING:

HB 327 - Relating to Primary Elections

print & 16 State Affairs
Work Session

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING /ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
CONNIE ZAWACKI	WILSON RPA	10 Box 243732	99524			Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	

1.



House State Affairs Committee

Representative Gene Kubina, Chair

DATE: January 17, 1992

PLACE: Capitol, Room 102

SUBJECT OF MEETING:

HB 327 - Relating to Primary Election

HJR 13 - Relating to Run-Off-Election:
Gov. & Lt. Gov.

HJR 45 - Relating to Reapportionment Board
and Reapportionment

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
Elizabeth Ziegler	Elections	P.O. B. A F Juneau	99811		4611	☒ Y	☐ N	HB 327
CHARLES THICKSTON	✓	✓ ✓	99811		4611	☐ Y	☒ N	
Norma Jean Johnson	Elections	✓ ✓	✓		4611	☐ Y	☒ N	
TOM ANDERSON	REP. MARTIN					☐ Y	☒ N	ALL
						☐ Y	☐ N	
						☐ Y	☐ N	
						☐ Y	☐ N	
						☐ Y	☐ N	
						☐ Y	☐ N	
						☐ Y	☐ N	
						☐ Y	☐ N	
						☐ Y	☐ N	
						☐ Y	☐ N	



House State Affairs Committee

Representative Gene Kubina, Chair

SUBJECT OF MEETING:

DATE:

PLACE:

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?	
Chip Wagoner	Self	3294 Pioneer Ave Juneau AK	99804	586-1687	586-2202	☒	N	HB 327
Rhonda Roberts	Chairman Alaska Senate					☒	N	327
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	



House State Affairs Committee

Representative Gene Kubina, Chair

DATE: January 24, 1992

PLACE: Capitol Room 102

SUBJECT OF MEETING:

*HB 183 - Relating to Fair Campaign Practices Code
HB 288 - Relating to Giving of Cash by Public Officers
HB 327 - Relating to Primary Elections
Other bills previously heard

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
Norma Jean Johnson	Div. of Elections	PO Box 110017, Juneau 99811			465-4611	Y	(N)
Elizabeth Ziegler	Div. Elec.	"			"	(Y)	N NB 327
Chip Wagoner	Self,	3294 Pioneer Ave Juneau	99801	536-1683	536-1683	Y	N
JOHN GAGUINE	Dist. of LAW	PO Box 2, Juneau	99801	~~536-1683~~	465-3600	Y	N
						Y	N
						Y	N
						Y	N
						Y	N
						Y	N
						Y	N
						Y	N
						Y	N



House State Affairs Committee

Representative Gene Kubina, Chair

DATE: March 9, 1992

PLACE: Capitol, Room 102

SUBJECT OF MEETING:

HB 327 - Primary Elections
HB 404 - Filing Deadline for Certain Candidates
HB 195 - Campaign Finance Reform
SCR 30 - Support Open Primary Elections
SB 8 - Annuity Program Amendments

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
BOB STALNAKER	RETIREMENT BENEFITS				4470	Y N	IF NEEDED SB 8
Paula Terrel	Sen. Kubina				1200	Y N	IF needed
Laura A. Glaiser	Elections	P.O. Box 110017 Juneau.	99801		4611	Y N	If asked HB 327
Brodie Miles	APOC				4864	Y N	IF HB 195 Question
Bill Stoltz	Sen. Cotton					Y N	SCR 30
Rep David Finkelstein						Y N	
David Dierdorff	Legal Services					Y N	
Catherine Reardon	Rep. Finkelstein					Y N	
Charlotte Thuchstein	Dir of Dir. Elect.					Y N	
						Y N	
						Y N	



House State Affairs Committee

Representative Gene Kubina, Chair

DATE: February 19, 1992

PLACE: Capitol Room 102

SUBJECT OF MEETING:

HB 327 - Relating to Primary Elections
*HCR 50 - Relating to Support Open Primary Elections
HJR 13 - Relating to Run-Off Election: Gov. & Lt. Gov
HB 195 - Relating to Campaign Finance Reform
HB 332 - Relating to Reporting/Campaign
Financing - APOC

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
Chip Thomas	Self	#2 Marine Way Juneau				☒ Y	N HB 327 / HJR 13
Chip Wayner	"	3294 Pioneer Ave Juneau				☒ Y	N HB 327
JOHN GARDINE	DEPT. OF LAW	PO BOX K, JUNEAU	99801		465-3000	IF ASKED Y	N "
Laura A. Glozier	Elections	PO Box 110017 Juneau	99801		465-4611	IF ASKED Y	N "
						Y	N
						Y	N
						Y	N
						Y	N
						Y	N
						Y	N
						Y	N
						Y	N



House State Affairs Committee

Representative Gene Kubina, Chair

DATE: February 5, 1992

PLACE: Capitol Room 102

SUBJECT OF MEETING:

HCR 16 - Relating to Bone Marrow Donor Week
HB 327 - Relating to Primary Elections
HB 301 - Relating to Regular Legislative Sessions
HB 328 - Relating to Public Comment on Proposed Regulations

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
Elizabeth Ziegler	Elections					(Y) N	HB 404
Deborah Behr	Law	Dept of Law P.O. Box K, Juneau	99801	7	465-3600	(Y) N	HB 328
Larry Martin	Leg.					(Y) N	HB 301
Ann Boudreau	occ. LIC.	Commerce				Y (N)	
JOAN GARDINE	LAW	PO BOX Y JUNO	99801		465-3621	IF NEW (Y) N	~~HB 327~~ HB 327
Bob Casey	Leg. Affairs	P.O. Box Y Juneau	99801		2450	(Y) N	HB 327
						(Y) N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	



House State Affairs Committee

Representative Gene Kubina, Chair

DATE: March 4, 1992

PLACE: Capitol Room 102

SUBJECT OF MEETING:

*HB 534 - Relating to Civil and Human Rights
HB 327 - Relating to Primary Elections
HB 404 - Relating to Filing Deadline for Certain Candidates

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
Bob Casey	Leg. Affairs	P.O. Box 4	99511	0	2450	Y	N	HB 327
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	



House State Affairs Committee

Representative Gene Kubina, Chair

DATE: March 4, 1992

PLACE: Capitol Room 102

SUBJECT OF MEETING:

HB 195 - Relating to Campaign Finance Reform
HB 300 - Relating to Approp: Study Privatizing
State Services
HB 332 - Relating to Reporting/Campaign
Financing - APOC
HB 459 - Relating to Salaries of Executive Directors

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
✓ MIKE McMullen	Dept. of Admin	Box 110201 Juneau, AK	99801		465-4450	(Y) N	HB 459
✓ Lloyd James	Corrections					(Y) N	HB 459
✓ Sam Trivette	Public Works	Box 112000	99801		3374	(Y) N	HB 459
Diane Schenker	Corrections	MS 2000		3376	3376	Y (N)	HB 459
Laura Oberer	Elections	Box 110017 Juneau 99801			4611	(Y) N	IF ASKED HB 327
TEHA EAGLE	Ind	Po Box K Juneau 99801			3600	Y N	
✓ Ted Youngman	Reg					Y N	HB 459
						Y N	
						Y N	
						Y N	
						Y N	