OVERVIEW

ELECT. LAWS

2/7/01

FRAN ULMER
LIEUTENANT GOVERNOR
STATE OF ALASKA

Joint Hearing
House Judiciary Committee
House State Affairs Committee
February 7, 2001
1 p.m. - Senate Finance Room

Overview of Alaska's Election Procedures by Lt. Governor Fran Ulmer

1. Overview of National Association of Secretaries of States (NASS) Resolutions
2. Alaska Election overview
3. Let's Vote Alaska
4. Primary Election Task Force

P.O. Box 110015 Juneau, Alaska 99811-0015 Phone (907) 465-3520 Fax (907) 465-5400

Division of Elections
Summary Review
2000 Election Cycle

THINGS THAT WORKED WELL
2000 ELECTION CYCLE

- Uniform election procedures throughout Alaska
- Uniform, easy to read ballot in all precincts
- Standardized, modern voting equipment
- Election worker training enhancements and outreach
- Timely and accurate reporting of election results
- Solid procedures for pre-election equipment testing, election day procedures and post-election results certification
- Expansion of Accu-Vote precinct vote counting machines into four new communities
- Record number of absentee ballots processed
- Record number of questioned ballots processed
- Voter outreach and education
    - Two-ballot primary election - new procedures
    - When, where and how to vote information on web site
    - *Official Election Pamphlet* for general election, with links, on division web site
    - Polling Place Locator - telephone automated
    - Updated look in newspaper advertising
    - Additional newspaper advertising
    - Voter registration and absentee ballot applications on web site
- Responses to voter and public information requests- our web site was a primary source of information
- Press relations, including production of press kits
- Outreach (especially to municipal clerks) through division quarterly newsletter
- Successful Election Central events in Anchorage, Fairbanks and Juneau
- Electoral College voting process opened up to full public participation

February 7, 2001

Division of Elections
Summary Review
2000 Election Cycle

RECOMMENDATIONS
TO MAKE THINGS WORK BETTER
2002 ELECTION CYCLE

- Adopt primary election rules this year to ensure on-time primary for 2002
- Increase pay for election workers - current pay of $7.50/hr set in 1982
- Adopt "seasonal" status for key temporary election workers to retain expertise
- Increase pool of election workers - major turnover in current pool
- Improve fax voting process
  - address growth by: changing to electronic format; adding staff
  - define parameters for fax voting - emergency only? or for all?
- Add appropriate resources to accomplish the division's responsibilities for drawing precincts after redistricting by Reapportionment Board
- Add additional resources to expand Accu-Vote into hand-count precincts and for new early voting process
- Add capacity to web site for Polling Place Locator
- Add capacity to verify voter registration status on web site
- Expand resources/options for election board training
- Continue improvements to statewide mainframe voter registration database and computerized Election Management System

February 7, 2001

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State of Alaska

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NEWS RELEASE

www.state.ak.us

FOR IMMEDIATE RELEASE: December 14, 2000 **0050**

Big Increase in Youth Voter Turnout; Lt. Governor Ulmer Appoints Civics Education Task Force to Continue Work of *Let's Vote! Alaska* Initiative

Lt. Governor Fran Ulmer today announced that voter turnout had significantly increased among 18 to 24 year olds in the 2000 General Election. Ulmer launched the nonpartisan Let's Vote! Alaska: New Voters for a New Millennium initiative in February to reverse the downward trend in voting among Alaska's 18 to 24 year olds.

Alaska's youth voted in strong numbers this year compared with the last presidential election in 1996: while 16,889 people in this age group voted in 1996, over 25,000 voted this year, for a net increase of 48 percent. Voter turnout among young people has been declining since the 1994 election.

"When we started Let's Vote! Alaska, we were facing a downward trend in youth voting. I'm pleased to announce that thanks to the effort of many people and organizations that worked with us on Let's Vote! Alaska, we have reversed that trend," Ulmer said.

The Let's Vote! Alaska initiative aims to educate and excite young people about voting through a variety of different projects. Let's Vote! Alaska was Alaska's response to the New Millennium Project, launched by the nonpartisan National Association of Secretaries of State. This year, Let's Vote! Alaska implemented several projects, including producing two youth celebrity television spots featuring NHL star Scott Gomez and Alaskan Native actress Irene Bedard; sending "how to vote" brochures to all '00 high school graduates; sending absentee by-mail applications to 8,000 student loan recipients; encouraging several of Alaska's largest companies to designate youth voter captains; organizing a series of seminars on youth voting; and putting on the first-ever on-line mock election for high school students, Youth *e* Vote.

The substantial increase in youth voter turnout was reflected in another index used to measure voter turnout: nearly 47 percent of Alaska's registered 18 to 24 year olds voted in the 2000 General Election, whereas 38 percent voted in the 1996 election. "No matter how you crunch the numbers," Ulmer said, "this represents a turnaround in the trend of youth voter apathy in Alaska."

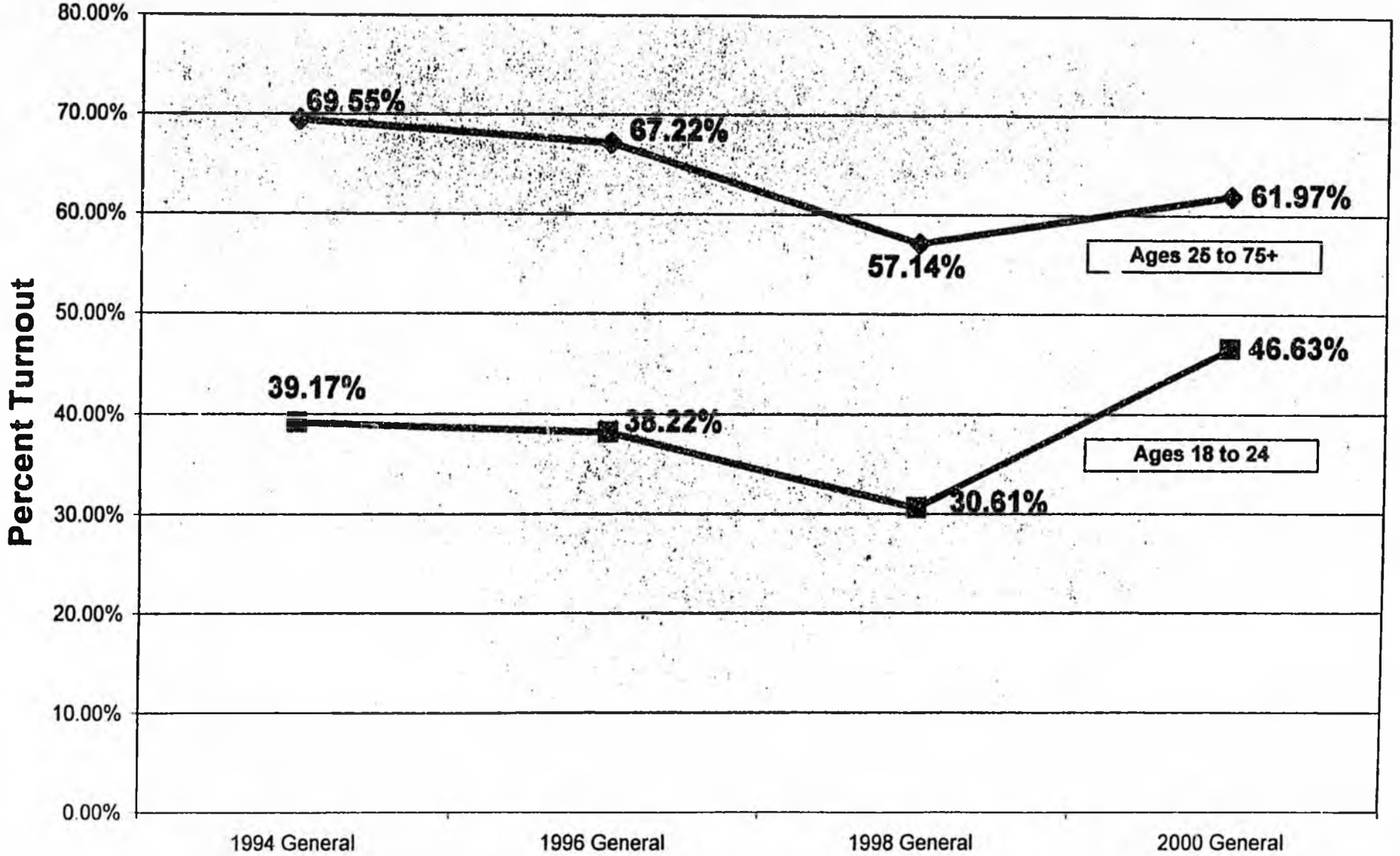
-more-

Ulmer also announced the creation of a civics education task force co-chaired by the Department of Education and Early Development and the Division of Elections that will build upon the success of Let's Vote! Alaska. "Once upon a time, civics was taught in most public schools. That's rare today," Ulmer commented. "In fact, 75 percent of high school seniors were found not 'proficient' in civics in testing released by the U.S. Department of Education." Ulmer will call on education and civics leaders statewide to serve on the civics education task force.

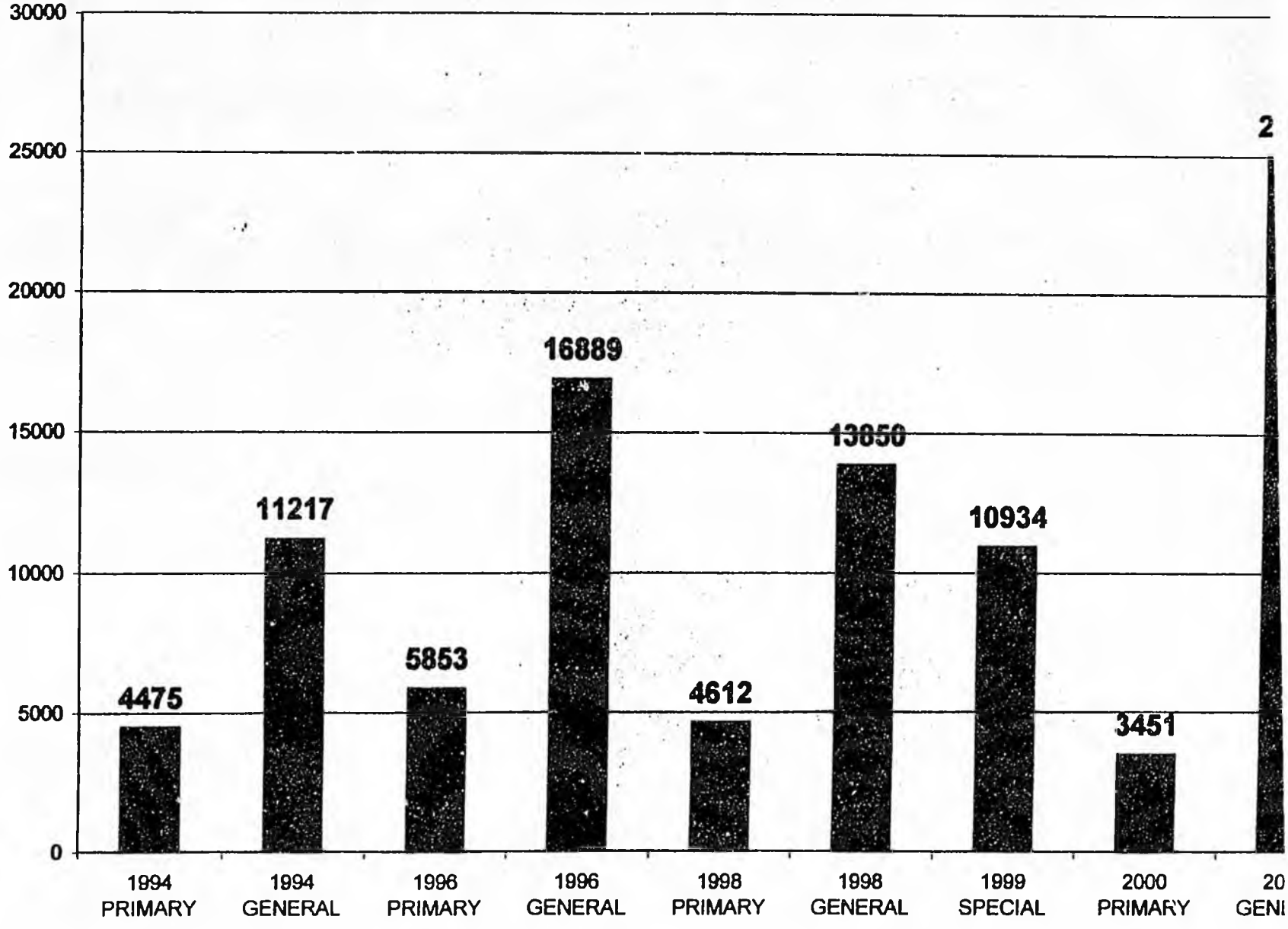
For more information, contact Moira Smith at (907) 321-2645 or Moira_Smith@gov.state.ak.us.

-30-

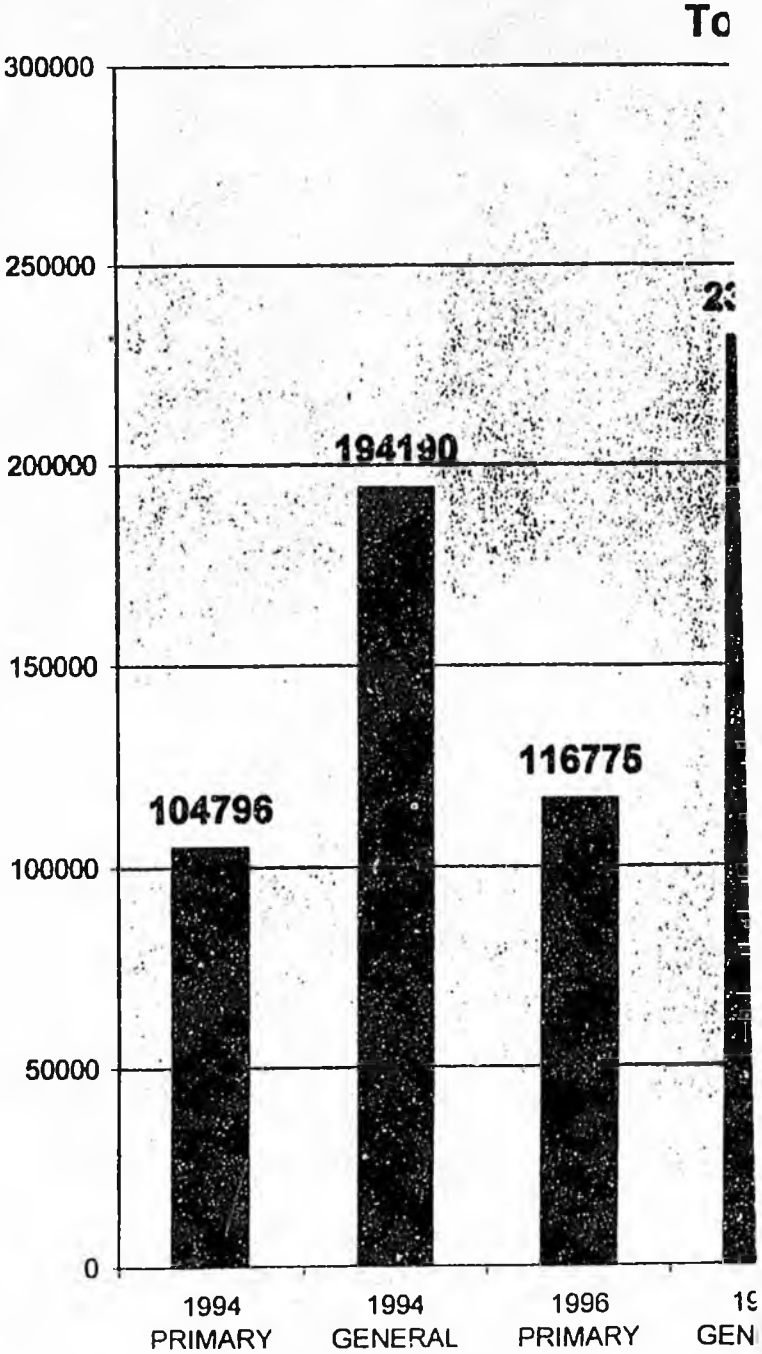
Voter Turnout Comparison
Percent turnout among registered
18-24 year olds v. registered 25-75+ year olds



Total Voted Ages 18-24



Division of Elections



Division of Elections

State of Alaska

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NEWS RELEASE

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FOR IMMEDIATE RELEASE: January 25, 2001 0103

Lt. Governor Ulmer names task force on primary elections

Lt. Governor Fran Ulmer has appointed four former lieutenant governors, a representative of the League of Women Voters and two former attorneys general to a task force that will discuss and recommend how Alaska should run its primary elections.

A decision last June by the U.S. Supreme Court ruled California's blanket primary was unconstitutional. The ruling also affected other states' blanket primary elections including Alaska's.

"As a result of that decision we held a modified closed primary election in August under emergency regulations," Ulmer said. "Voters had to choose between a Republican ballot or an Open ballot. That was a temporary solution."

Lieutenant Governors Lowell Thomas, Jr., H.A. Red Boucher, Stephen McAlpine and Jack Coghill join Ulmer, Joyce Anderson of the League of Women Voters, Doug Baily and Avrum Gross on the Alaska Primary Election Task Force. Baily was attorney general for the Cowper Administration. Gross, who will chair the task force, served seven years in the Hammond Administration.

The task force's first job will be to review Alaska's laws, court decisions and states' primary election systems. "We need to move fairly quickly," Ulmer said. "We plan to introduce a bill this legislative session with hopes that the legislature will pass it in a timely manner."

The group will hold its first meeting on February 9 via videoconference. In the meantime, Ulmer will testify January 26 via teleconference to a Washington State legislative hearing on primary elections. Washington's blanket primary was also nullified by the Supreme Court's ruling and the Washington State legislature is evaluating alternative systems for adoption this session.

Broadcast Advisory: Radio actualities will be available on the Governor's Information line (465-5213 or 800-478-5669) after 3 p.m. today.

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Alaska's Primary Election History

1947 Blanket primary enacted following a referendum.

It is reasonable to assume that encouragement for the referendum came from Washington State, which had a blanket primary system.

1960 Single ballot open primary enacted by First State Legislature replaced blanket primary.

After 1947 the question of the blanket primary became a partisan issue, with Republicans supporting it and Democrats opposing it. In the first session of the first state legislature the blanket primary was replaced by the single ballot open primary. Voters received one ballot listing candidates from both parties. In the privacy of the polling booth they checked a box indicating they were voting Democratic or Republican. If they voted for candidates from more than one party, their ballots were invalidated.

1967 Blanket primary restored during first session of Fifth State Legislature.

When Republican majorities were elected to both houses of the legislature in 1966, the blanket primary was restored at the request of Governor Walter J. Hickel but it attracted considerable bipartisan support.

1992 Partially-closed primary held under court stipulation. (Zawacki v. State)

In 1992 the Republican Party of Alaska sued the State of Alaska in Federal Court, challenging the constitutionality of the statutory blanket primary system. An agreement between the state and the RPA called for a party rule ballot that would contain the names of candidates who filed for the RPA nomination and would be available to Republican, nonpartisan and undeclared voters. A statutory ballot would contain the names of candidates of all other political parties and would be available to all voters. A voter could vote only one ballot.

1994 Partially-closed primary retained under court stipulation. (O'Callaghan v. State)

The 1992 agreement remained in place for the 1994 primary elecction.

1996 Blanket primary held constitutional under Alaska Supremc Court Decision.

In 1996, the State of Alaska changed its position and asked the court to uphold the constitutionality of the blanket primary. The Alaska Supreme Court ruled that the

blanket primary did not infringe on the Republican Party's First Amendment right of association. The U.S. Supreme Court refused to review O'Callaghan.

June 2000 U.S. Supreme Court rules California blanket primary unconstitutional.

The U.S. Supreme Court ruled on June 26 that California's blanket primary violates political party's First Amendment rights of association by letting voters unaffiliated with a party choose the party's primary nominees.

FRAN ULMER
LIEUTENANT GOVERNOR
STATE OF ALASKA

December 4, 2000

The Honorable Sharon Priest
Secretary of State
256 State Capitol Building
Little Rock, Arkansas 72201

Dear Secretary Priest,

I read with great interest the announcement from the NASS Executive Committee that it has appointed an Elections Integrity Task Force and that it will meet in Dallas on December 14. I'm writing this letter to offer a few suggestions and relay some information about our experience in administering a uniform, statewide election system in Alaska, which may be helpful to the task force as it reviews centralized procedures, standardized ballots, uniform polling place hours, and improved technology.

First, our own experience shows that centralization and standardization work well. When we Alaskans read about the problems that occurred in Florida, we felt a great sense of relief that we have a "statewide" system for conducting all statewide elections. We would encourage other states to follow our model and migrate toward centralized systems with one ballot type, standardized procedures and a standardized use of technology.

Our state Division of Elections, which is part of the Office of the Lieutenant Governor, conducts all statewide elections. The State of Alaska owns all the optical scanning voting equipment and polling booths, etc. The Division of Elections has four regional offices that are responsible for hiring and training of precinct workers, continual updating of the statewide voter registration system for voters in their respective regions, and assisting city and borough clerks with conducting local elections. Cities and boroughs in Alaska are responsible for conducting local elections only. Cities and boroughs are offered free use of our state equipment for their local elections. In return, we ask city and borough clerks to assist us when we conduct our state elections. This "partnership" has worked extremely well since statehood in 1959.

Technology is important but procedures and training are just as important. In 1996, the first year we conducted an election after I became lieutenant governor, some things did not go as well as I would have liked. We were unhappy with our existing punch card system and the centralized counting system. It was slow and cumbersome and we worried about reliability. It was clear that we had to make a change. We put out a request for proposals for optical scanning equipment and Global Elections Systems won the bid. We are quite satisfied with our Accu-Vote optical scanners and the GEMS central counting system. The speedy reporting of results on election night pleased candidates, the media and the public. Using reliable technology is

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obviously important. But it is also important that detailed and standard procedures be established and that all precinct workers be trained well on how to follow the procedures. It is inevitable that a few optical scanning machines will jam or their memory cards will rebel on election day. Those problems can be easily rectified as long as elections employees and precinct workers are well trained on what procedures to follow.

Voter training is also important when migrating to a new system. Before we made the switch from punch cards to optical scanning in the 1998 election, we conducted an extensive public awareness campaign to alert voters about the new system before they went to the polls. We didn't want anyone to be surprised. We brought Accu-Vote machines to newspapers and radio stations, Rotary Clubs, League of Women Voters meetings, etc. We had special training sessions for the press. We set machines up in malls on weekends so voters could try them out. The awareness campaign worked well and voters have reported that they like the ballots and the optical scanners. We get very few complaints about voter confusion.

Uniform polling place hours and election night media coverage. It was ironic to many Alaskans that there were complaints in Florida about the election being "called" before polls were closed in some parts of the state. In Alaska, Hawaii, and other states in the west, that situation has been unsettling for years. Our complaints have fallen on deaf ears in the east and inside the television networks. *I do not believe that uniform polling hours are the answer. Alaska is four hours away from the east coast and the time difference would be too problematic.* It appears that the only answer to this problem would be restrictions, or a ban, on exit polling, which would no doubt face legal challenges. I recommend that the Elections Integrity Task Force discuss ways to determine if there is a compelling public interest in such restrictions or a ban. Courts would no doubt require that such an interest be proven in order for it to withstand a challenge.

I hope this information will be helpful to the task force. I would be happy to discuss our experience with a statewide system with any task force members or any other members of NASS. Good luck on the job ahead. I'll look forward to hearing about the group's recommendations.

Sincerely,

Fran Ulmer
Lieutenant Governor of Alaska

February 5, 2001

Panel Suggests Election Changes That Let States Keep Control

By KATHARINE Q. SEELYE

WASHINGTON, Feb. 4 — Top election officials from across the country plan to endorse on Monday more than a dozen recommendations to improve how elections are conducted in America.

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The resolution of 15 recommendations essentially encourages the enforcement of laws and regulations already in place. Its subtext is that despite last fall's 36-day dispute over the presidential election in Florida, the federal government should not overreact and reduce the authority that state and local governments have over election procedures.

"There is nothing, at least to people in the elections business, new or earthshaking in there," said Sharon Priest, secretary of state of Arkansas, president of the National Association of Secretaries of State and chairwoman of the association's task force on election standards, which produced the resolution.

"Part of it is the simple task of following the laws that are already on the books in each of the states, and part of it is looking at what the best practices are," Ms. Priest said. "There is no need to reinvent the wheel."

The recommendations say that the federal government should help states and local governments pay for upgrades in voter equipment. The election officials strongly insist that states and local governments retain control over voting procedures. But, Ms. Priest said, the federal government could set some voluntary standards for how to determine voter intent on punch

cards, for example, or when to conduct a recount.

"We can make recommendations for uniform standards but not a uniform ballot" across the country, she said, although uniform ballots within states seemed practical. She said she had seen polls showing that voters liked the idea of a national uniform ballot. "But I don't think people have thought it through,' Ms. Priest said. "Local governments don't want to give up local control."

The recommendations call for:

- Aggressive voter education.
- Better training and pay for poll workers. One idea floated was that poll workers be selected from tax rolls just as jurors are, but there seems little support for this.
- Making sure voters know their rights, including that they can ask for a second ballot if they spoil their first.
- Examining the array of voting technologies available, including voting on the Internet and whether voters would feel comfortable with it.
- Ensuring equal access to balloting for minorities, the elderly and people with disabilities.
- Maintaining up-to-date lists of registered voters. "Florida hired a company to remove convicted felons from the rolls and the company removed names of some people who were not felons." Ms. Priest said.
- Ensuring the integrity of absentee ballots. Ms. Priest said there was a thin line between making it relatively easy for people to vote absentee so as not to disenfranchise them and guarding against fraud.
- Encouraging states to abide by federal standards for voting systems set by the Federal Elections Commission.
- Certifying elections officials.
- Collecting detailed data on the mechanics of each election.
- Providing money to local elections officials, ensuring that small counties have the same access to money that large counties have.

The officials — members of the National Association of Secretaries of State — are expected to approve the recommendations on Monday. send them to another panel to refine them in July, and then send them to Congress.

Bill Jones. California's secretary of state and a member of the task force, said the Florida dispute was spurring officials at all levels of government to action. But, Mr. Jones said. it was important that the federal government not impose unfinanced mandates on the states.

"What you find after the Florida problem is this headlong rush to legislate," he said. "What happens when the feds help us too much. you get mandates that we then have to spend a lot of time trying to untangle."

Mr. Jones said that the task force, which met last month to hammer out these recommendations. did not want the federal government to impose uniform standards. not only to maintain local control but also because not all of the problems that occurred in Florida could recur elsewhere. "There are some problems inherent in Florida." he said, noting that other states had procedures for recounts, for example.

Gary McIntosh, state elections director in Washington State and also a member of the task force. said that one of the group's themes was that fixing the problems extended beyond new technology.

"This is not a problem that's going to be solved by election officials going out and buying a bunch of new stuff." Mr. McIntosh said. "We need to purchase systems but make sure they're managed well and that the people who are operating them have the training and experience to manage an election. Hopefully what we're doing will capture the awareness of Congress and state and local leaders and voters will have a greater appreciation for the complexity of the process."

Ms. Priest said that the secretaries of state began holding conference calls with each other as the election recount unfolded in Florida in November. Asked if there was a sense of alarm, she said no.

"It was almost joy because we said, `Wow! We have an audience now of people who are interested in these issues and all those issues that we've been talking

about for years, we've got resolutions from meetings going back 20 years.' "

She said that the issues include barring the projection of winners on television before polls close across the country, efforts to have uniform poll-closing hours and extending voting over more than one day, but that states should make the final decisions.

"The East and West Coasts tend to be much more 24-hour based than the heartland," Ms. Priest said.

National Association of Secretaries of State

Election Reform Resolution

Adopted February 6, 2001

WHEREAS, the nation's Secretaries of State are committed to protecting an individual's right to vote by ensuring access, accuracy and integrity in elections;

WHEREAS, the administration of elections is a complex enterprise involving 200,000 polling places, 7,000 jurisdictions, 1.4 million poll workers, more than 700,000 voting machines, 100 million voters and 22,000 elections officials;

WHEREAS, the United States was founded upon the principle of self-government in which the right to vote is the most important and fundamental right of the people;

WHEREAS, the conduct of elections is primarily the responsibility of state and county elections officials;

WHEREAS, America's voting systems and election procedures must ensure that all votes are counted accurately and that voting is easily understood and as convenient and accessible as possible;

WHEREAS, our collective expertise with elections issues and our strong commitment to fair and accurate elections will enhance our democratic process;

WHEREAS, the recent election and subsequent civics lesson that emerged draws critical attention to the issues that NASS has steadfastly sought to address; and

WHEREAS, to ensure that all eligible voters are afforded their constitutional right to vote and unfettered access to the elections process,

The National Association of Secretaries of State recommend that State and Local governments and election officials continue to work to:

1. Ensure non-discriminatory equal access to the elections system for all voters, including elderly, disabled, minority, military, and overseas citizens.

2. Encourage the adoption and enforcement of election day rules and procedures to ensure equal treatment of all voters;

3. Modernize the voting process as necessary, including voting machines, equipment, voting technologies and systems and implement well-defined, consistent standards for what counts as a vote throughout the election process ensuring accurate vote counts and minimal voter error;

4. Encourage states to adopt uniform state standards and procedures for both recounts and contested elections, in order to ensure that each vote is counted and to provide public confidence in the election results;

5. Provide elections officials with increased funding to implement the recommendations of this resolution;

6. Conduct aggressive voter education and broad-based outreach programs;

7. Expand poll worker recruitment and training programs by adopting the innovative practices of other states and localities, with the ultimate goal of providing a satisfactory election day experience for all voters;

8. Maintain accurate voter registration rolls with a system of intergovernmental cooperation and communication;

9. Enhance the integrity and timeliness of absentee ballot procedures;

10. Adopt and adhere to the Voluntary Federal Voting Systems Standards for Voting Systems;

11. Provide for continuous training and certification for election officials; and

12. Collect data and election information on a regular and consistent basis to provide a nexus for public consumption and systemic improvements.

NASS further recommends that the Congress:

1. Fully fund the continuous update of the Federal Voting Systems Standards developed in consensus with state and local election officials;

2. Fund the development of voluntary management practices standards for each voting system;

3. Promote intergovernmental cooperation and communication among state and local elections officials to facilitate the maintenance of accurate voter registration rolls; and

4. Provide funding to the States to implement the state and local recommendations of this resolution.

Now, THEREFORE BE IT RESOLVED that the National Association of Secretaries of State welcomes the opportunity to work with the Administration, Congress, governors, state legislators and county election officials as well as organizations such as National Association of State Election Directors and the Election Center, all members of the election community, and concerned organizations, community groups, and the public to secure funding to ensure our citizens will have accurate, reliable, and efficient systems of elections;

THEREFORE BE IT FURTHER RESOLVED, that we, the National Association of Secretaries of State, reaffirm our determination and commitment to ensure that all eligible voters can register and vote, and that all votes will be counted accurately and fairly in each and every election.

National Association of Secretaries of State
Resolution to Support the FEC Budget Requests

Adopted February 6, 2001

WHEREAS, the National Association of Secretaries of State acknowledge the important role that the Office of Election Administration of the Federal Election Commission plays in elections in the United States;

WHEREAS, the Office of Election Administration assists state and local election officials as a national clearinghouse for election administration;

WHEREAS, there is a need for an update to the Voluntary Federal Voting System Standards;

WHEREAS, standards should be developed to address operational standards for acquisition, installation, testing, training, administration, and maintenance of existing and new systems;

WHEREAS, the Federal Election Commission has submitted a funding request to Congress to update the voluntary voting system performance standard;

Now, THEREFORE BE IT RESOLVED that the National Association of Secretaries of State supports the budget request of the Office of Election Administration of the Federal Election Commission to update the Voluntary Federal Voting System Standards and to develop additional standards for new and existing voting systems.

Small counties wasted more than 1,700 votes

Roger Roy and David Damron
of the Sentinel Staff

Thousands of potential presidential votes were lost in Florida's most error-prone counties because of confusing ballot designs, inconsistent counting methods or because elections officials simply never looked at ballots that were rejected by machines.

The first examination of ballots in the state's 15 counties with the highest rate of discarded votes found more than 1,700 ballots on which a voter's choice for president could be easily determined.

The 15,596 discarded ballots, examined in a joint project by the Orlando Sentinel, the South Florida Sun-Sentinel and the Chicago Tribune, were identified by elections officials as "overvotes" or "undervotes," meaning counting machines either detected multiple votes for president or no votes at all.

While all but one of the mostly Republican counties were won by George W. Bush, the study showed that most of the clear votes that were thrown out were for Al Gore. In fact, had canvassing boards tallied those ballots during Florida's long recount, Gore would have seen a net gain of 366 votes -- equivalent to two-thirds of Bush's 537-vote winning margin statewide.

Finding more lost votes for Gore in these counties adds a note of irony to the post-election strategizing by both presidential campaigns. The Bush campaign sought to halt recounts in counties including Miami-Dade, where conventional wisdom predicted big gains for Gore. And the Gore campaign never pushed for recounts in the counties examined in the newspaper study, because they were mostly Republican strongholds where Bush was expected to gain votes. Most of the 15 counties

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PHOTOS

Florida recount (Associated Press)

STORY GALLERY
FLORIDA'S FLAWED ELECTION

PHOTOS

Under scrutiny. (JOE BURBANK/ORLANDO SENTINEL) Jan 28, 2001

STORIES
Some had 1 from 'column A,' 1 from 'column B' Jan 28, 2001
Lake erred by tossing write-ins Jan 28, 2001
What's a vote? It varies by county Jan 28, 2001
How the ballot review was done Jan 28, 2001

PHOTO GALLERY
Florida's Flawed Election ballot gallery (JOE BURBANK & DAVID

are small and rural -- Lake County was the largest with about 92,000 ballots; 11 are in North Florida. Together, they represent just 4.6 percent of the 6.1 million ballots cast in Florida's Nov. 7 election. But because of flaws associated with the type of ballots and vote-counting equipment used in those counties, they accounted for 8.6 percent of all the state's rejected ballots, and had the highest rates of lost ballots in Florida.

The review of ballots -- the first time many of the discarded votes had been examined since the election -- found hundreds that were thrown out even though it was clear which candidates those voters wanted.The review also helped explain the common errors made by voters that caused so many ballots to be discarded in those counties -- and how an unusual ballot design contributed to the problems.

Many ballots were rejected because voters selected Bush or Gore, then also wrote in the candidate's name. Counting machines read those ballots as double votes, and canvassing boards in nine of the 15 counties either never looked at the ballots or decided not to count them. The review found 962 cases where such a vote for Bush or Gore was not counted. In the other six counties, those votes were counted.

Some voters used pens instead of pencils on their ballot or made marks that were outside the ovals they were supposed to fill in. Counting machines detected no votes on those ballots, and canvassing boards never examined them. The review found 275 of those ballots with easily discernible votes that were thrown out.

When voters tried to erase mistakes on their ballots, counting machines often detected those votes anyway. The review found 239 ballots rejected because machines detected the erased vote and read the ballot as a double vote.

Some voters made no mistakes on their ballots, but they were thrown out anyway because of apparent errors by counting machines. That happened with 14 absentee ballots in Charlotte County.

A ballot design that for the first time in Florida listed presidential candidates in two columns may have confused thousands of voters into believing there were two separate races. More than 4,000 ballots -- representing a third of all the rejected ballots in those counties -- were thrown out

WERSINGER/ORLANDO SENTINEL)

FLORIDA'S FLAWED ELECTION PHOTO GALLERY (JOE BURBANK/ORLANDO SENTINEL)

GRAPHICS

15 counties are GOP strongholds (DAVID W. WERSINGER/ORLANDO SENTINEL)
Jan 28, 2001

Lake County's solution -- and more problems (DAVID W. WERSINGER/ORLANDO SENTINEL)
Jan 28, 2001

What was on the 15 discarded ballots? (DAVID W. WERSINGER/ORLANDO SENTINEL)
Jan 28, 2001

The discarded ballots: A county-by-county breakdown (DAVID WERSINGER/ORLANDO SENTINEL)
Jan 28, 2001

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because voters selected a candidate in both of the two columns.

Hundreds of voters cast "anybody but" ballots, 781 casting votes for everyone in the first column but Bush and 197 for everyone but Gore -- a 3-1 margin that might have cost Gore up to 584 votes on Election Day. These votes weren't included in the 1,700 clear votes the study identified.

Mistakes such as these have happened before. But in a presidential election decided by a few hundred votes, every lost ballot became crucial. And never before have a state's election practices been so intensely scrutinized.

"These are not novel or brand-new problems," said Ron Labasky, attorney for the Florida State Association of Supervisors of Elections. "There's just been so much attention put on this state. Every wart got picked, and every rock got kicked over."

Further scrutiny ahead

It's impossible to know how important the lost votes identified in the review may have been without examining the much larger number of uncounted ballots around the state. A consortium of newspapers, including the Sentinel, is making preparations to inspect all 180,000 ballots that were rejected across Florida. Duval County alone has 22,000 punch-card ballots that were thrown out. All those ballots could have had a dramatic effect on the overall totals -- or almost none at all. For example, a count of the 10,600 rejected punch-card ballots in Miami-Dade County by The Palm Beach Post found fewer than 500 discernible votes, with Gore losing a net of six votes, rather than gaining a decisive 600 as his campaign had predicted.

With the election long overand President Bush in the White House, the question of potentially lost or gained votes is academic. The most pertinent aspect of the Sentinel's examination may be how it reveals the variety of mistakes made by voters -- and underscores the crazy-quilt pattern of election policies around the state.

The thousands of discarded ballots also demonstrate the daunting challenge facing state officials seeking to prevent so many spoiled ballots in future elections.

All 15 counties shared a similar type of voting equipment: paper ballots filled in with pencil and tabulated by an optical-scan counter at voting headquarters.

Twenty-six other counties, including Orange, use similar paper ballots that are fed into a counting machine at the precinct by the voter. If these are marked improperly, the machine spits them back so the voter can correct mistakes. That feature kept the reject rate in Orange at less than 1 percent.

But systems such as Orange's require a machine for each precinct, rather than a single counter at headquarters. Many smaller counties cannot afford the precinct counters, which cost about $6,000 each.

The distinction between precinct- and centrally tabulated voting systems, an obscure detail before Florida's election debacle, is likely now to become a central political issue. Gov. Jeb Bush has said he wants all Floridians to cast their votes on precinct-tabulated paper ballots by the 2002 election -- which could cost $35 million in equipment upgrades.

National attention focused on Florida's problem-plagued punch-card ballots, with their hanging and pregnant chads. But in fact, the centrally tabulated paper-ballot system used in the 15 counties actually had a higher rejection rate: 5.7 percent of ballots in those counties were thrown out, compared with 3.9 percent in the 24 counties that used punch cards.

The ballots examined by the Sentinel were discarded for many reasons. But in almost all cases, it was because of mistakes made by the voters.

Some voters simply failed to follow instructions. Others took the instructions too literally. And many seemed confused by unnecessarily complicated instructions or the ballot design.

Some choices obvious

Still, the Sentinel's examination of the paper ballots in many cases showed clearly which candidate the voter intended to choose. It also revealed the range of small mistakes and unforeseen confusion that led to so many ballots being discarded for errors.

It appeared that many voters were confused by the ballot instruction that said "Write-in Candidate." Taking the instruction literally, those voters filled in the write-in oval and wrote "Bush" or "Gore," even though they already had filled in the regular oval for the same candidate.

The counting machines in all the counties read those as double votes and rejected them.

How the different counties handled those ballots illustrates how Florida's vague election laws influenced the election.

State law directs county canvassing boards -- three-member panels usually made up of an elections supervisor, a judge and a county commissioner -- to count ballots that show a voter's "intent" but gives little direction about how to go about it.

Some canvassing boards, including Jackson, Gadsden and Liberty, sorted and counted those ballots right after the election. Others, including Franklin and Charlotte counties, never sorted or inspected those ballots. In Lake, the canvassing board inspected some of those ballots but voted 2-1 not to count them.

In nine of the 15 counties, election officials threw out 962 ballots in which voters filled in the oval for Gore or Bush, then also wrote the candidate's name in the write-in space.

Those decisions cost Bush 384 votes, Gore 578.

All the ballots instructed voters to use pencils only, which were provided by poll workers. Many even mailed the correct pencils out with absentee ballots.

Despite that, 109 clear votes for Gore or Bush went uncounted in the 15 counties because voters used pens or markers that could not be detected by vote-counting machines and were never examined by canvassing boards.

Bush lost 50 of those votes, and Gore lost 59.

A presidential vote is technically a vote for a candidate's electors, who cast their vote weeks after the election, in the Electoral College.Because of that, the heading over the presidential candidates on most counties' ballots read "Electors," and the ballot instructed "Vote for Group."

More than 7,000 voters in the 15 counties took that literally, filling in ovals for several candidates.

"You have to ask yourself, what in the world were they thinking?" said Franklin County Elections

Supervisor Doris Gibbs, examining a Precinct 1 ballot in which the oval for all 10 presidential candidates had been filled in.

Some voters filled in an oval, then tried to erase it.

Most ballot instructions said nothing about erasing mistakes, but some told voters to ask for new ballots if they made an error. The pencils provided to voters had no erasers.

On some ballots, it appeared voters had tried to wipe out votes using nothing but their moistened fingers. Some voters clearly used erasers. But no matter where voters got the erasers, or how well they tried to wipe out their mistakes -- and some rubbed the paper so hard they erased the printed oval -- counting machines often detected the erased vote.

In all, 239 voters in the 15 counties lost their votes because they tried to erase mistakes instead of asking for a new ballot. Of these, 95 were for Bush, and 144 for Gore.

Some voters made no mistakes at all -- but their votes still were thrown out.

In Charlotte County, 14 absentee ballots were discarded because a counting machine detected two votes for president. But the second vote didn't exist. What the counting machine had read as a vote was in fact a crease made when the ballots were folded to be placed in mailing envelopes.

Bush lost 12 of those votes, and Gore lost 2.

The canvassing board never looked at those ballots. In fact, the ballots were not sorted until a circuit judge, ruling in a lawsuit filed by newspapers including the Sentinel, ordered the elections supervisor to do so.

Elections Supervisor Judy Anderson said the county lacked

the computer software needed to allow counting machines to sort out the over- and undervote ballots until it was purchased weeks after the election, when the Florida Supreme Court ordered counties to review undervotes. Before Charlotte could use it, the recount was halted by the U.S. Supreme Court.

In fact, most of the counties lacked the software needed to sort all ballots until days or weeks after the election.

Lake was able to sort overvotes on election night, and later obtained sorting software for its undervotes but has not used it. A hand-sorting of the county's ballots for the newspaper's review could not identify all the undervotes rejected on election night.

Ballot design flawed

Thousands of voters in the counties with the most rejected ballots filled in the oval for Bush or Gore, then made a mistake that ruined more ballots than any other single error.

Because of a voter-approved constitutional amendment that made it easier for minor-party candidates to get on the ballot, there were 10 presidential candidates on Florida's 2000 ballot -- compared with four in 1996.

That left elections supervisors struggling to fit so many names onto the ballot. "They want to put everyone but their coon dog on the ballot," complained Lafayette County Elections Supervisor Lana Morgan.

Many elections supervisors followed the example of the sample ballot prepared by the state Division of Elections.

That sample ballot split the list of candidates into two columns, a "broken-ballot" solution that elections supervisors in 14 of the 15 counties adopted.

Throughout the counties examined in the study, nothing accounted for more lost votes than the broken-ballot mistake.

In the 14 counties using broken ballots, Bush lost 1,852 apparent votes to these double votes, and Gore lost 2,416.

The total of 4,268 lost votes represents more than one-third of all the discarded ballots in those 14 counties.

Even subtle differences in ballot designs or instructions appeared to affect the kinds of mistakes that voters made.

For example, on Gulf County's ballot, the space for the presidential write-in did not include a line for the name, as did the other ballots. The result: In Gulf, only four of more than 400 rejected ballots had a name written in the write-in spot.

Write-ins written off

Lake County's ballot had all presidential candidates listed in a single column, so there were no votes wasted on confusion about a second column. But with the write-in spot at the bottom of the first column, Lake had many more voters who

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Capitol Roundup

Friday, January 26, 2001

CAPITOL ROUNDUP

Democrats propose statewide end to punch-card balloting

SALEM -- The dreaded "dimpled chad" would be a thing of the past in Oregon with a bill introduced Thursday by Democratic legislative leaders. The bill would require optical scanners to tabulate votes in all counties.

House Minority Leader Dan Gardner, D-Portland, said it is important to eradicate punch cards in Oregon's vote-by-mail system because voters must use booklets to determine how to vote. The booklets, he said, can be difficult to decipher and the likelihood of dealing with dimpled and pregnant chads is increased because voters have to use whatever utensil they have available at home to punch holes.

He said dropping punch cards in favor of optical scanners was being considered even before last year's hair-thin presidential election in Florida made "chad" a household word.

It would cost about $300,000 to provide 10 new machines for the seven counties -- Clackamas, Lane, Linn, Polk, Washington, Union and Umatilla -- that use punch cards. Most of the other 29 counties use scanners, although some use paper ballots.

Senate Minority Leader Kate Brown, D-Portland, said federal money might be available to cover the costs of the upgrade.

-- The Associated Press

Falling stock prices keeping veteran state workers on job

SALEM -- The rate of retirement among

Pennsylvania legislators aim to avoid voting chaos

Thursday, January 25, 2001

By John M.R. Bull, Post-Gazette Harrisburg Correspondent

HARRISBURG -- Reacting to the presidential election fiasco in Florida, state lawmakers are moving quickly to overhaul Pennsylvania's election procedures.

"Florida was the bright neon warning sign that America's voting system is flawed," said House Majority Leader John Perzel, R-Philadelphia. "We intend to identify the flaws that may exist here in Pennsylvania and do everything we can to make the system work the way every voter expects it should."

Perzel and Senate Majority Leader David "Chip" Brightbill, R-Lebanon, yesterday announced that a 10-member task force will study state election laws and procedures.

They said they want to move fast to identify problems and enact laws to correct them. They don't want what happened in Florida during the November election to happen here, they said.

The leaders said the work will focus on the nuts and bolts of elections and not on the politically sticky issue of campaign finance reform.

Some of the issues to be examined are:

- Should all counties use one voting method, instead of the hodgepodge now in place? How much would it cost? Who would pay for it? Which method would be best?

- Should ballots be uniform in design throughout the state, instead of the various forms currently chosen by individual counties? Should ballots be designed to make it easier to vote for third-party candidates or write-in candidates?

■ How should ballots be counted if there is a dispute? Are legal procedures adequate to quickly settle challenges to election results or the legitimacy of individual ballots?

■ Should provisions be enacted for statewide recounts? Currently, losing candidates must challenge results on a precinct-by-precinct basis and post bond, which discourages recounts.

■ Should absentee ballot deadlines or counting procedures be changed?

■ Are voter registration lists accurate? Should the state maintain a master voter registration list for each county to check its records against? Are deceased voters purged quickly enough from registration lists? Does the current system allow voters who change addresses to vote twice in some cases because of inaccurate registration lists? Should voter identification cards be issued?

"Accuracy is of paramount importance, particularly when you consider that we had a number of extremely tight state and local races in Pennsylvania last year," Brightbill said.

"Because we have so many different ways to vote, we have just as many methods to count those votes. As a result, this is serious business."

The new panel will have Senate and House members from both parties, although Republicans, who control both chambers, will outnumber Democrats.

That provision, predictably, drew criticism from some Democrats yesterday.

"If the Republicans were truly serious about election reform, they would recognize the need to have the panel split evenly in number," said the top Senate Democrat, Robert Mellow of Lackawanna. "They send the wrong signal by trying to get a leg up on Democrats rather than demonstrating a true commitment to the issue of working to provide a level playing field for all."

The seating of a panel less than three months after the election disputes in Florida is fast by state Legislature standards, underscoring the importance of the issue and the fear lawmakers have that something similar could happen in Pennsylvania.

Brightbill said he hoped to have reforms in place by next

Ohio voting systems debated

Party wants to punch out card system; Blackwell readies push at state level

By **Howard Wilkinson**
The Cincinnati Enquirer

While Cincinnati's Charter Committee called for an end Thursday to punch-card balloting, Ohio Secretary of State J. Kenneth Blackwell was preparing a push to modernize Ohio's voting system.

The Charter Committee, Cincinnati's independent political party, released a report Thursday calling for the replacement of the punch-card voting system used in 70 of Ohio's 88 counties — including Hamilton, Butler and Warren — saying the "old technology" is inaccurate and threatens voters' ability to have their votes count.

The Charter report made no recommendation as to what kind of system should replace punch-card balloting, although it did conclude that the least problems are found with the direct recording electronic (DRE) machines used in most Kentucky counties, including Kenton, Boone and Campbell.

"Kentucky is leading the way and Ohio is backwards in terms of technology," said Charter President Jerry Newfarmer.

The punch-card voting system in Florida led to a protracted legal battle where the presidency of the United States hung in the balance, as the campaigns of Al Gore and George W. Bush argued over whether punch card ballots with "hanging chads" or barely perceptible indentations should be counted as votes.

Scrapping punch-card systems in Ohio for more advanced technology, Mr. Newfarmer said, would "prevent the Florida situation from happening here."

But the Charter report made no recommendations on how local governments in Ohio could pay for a conversion to electronic

WIRE

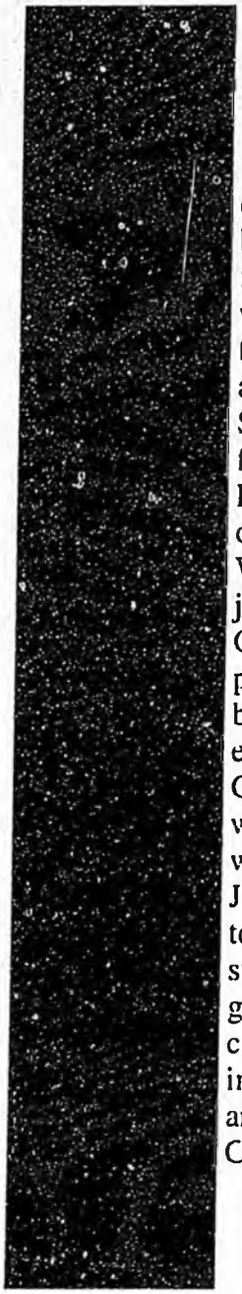
US states shocked into voting reform after Florida

RAW NEWS

CHICAGO (Reuters) - There may be a silver lining to the chaos in Florida that left Americans waiting more than a month for the outcome of the 2000 presidential election. Dozens of U.S. states are rushing to reform their voting systems to avert another Florida-style debacle. From voter registration, to the punch-card ballots made infamous by the Nov. 7 election, to computerized voting, to standards for counting and recounting ballots -- the problems in Florida and other states have shocked elections officials into action. But elections are run by local governments in the United States so the reforms, like the problems that spawned them, are likely to be a patchwork rather than a coordinated national fix. President Bush won the election battle against Democrat Al Gore only after a divided U.S. Supreme Court ended the recount battle in Florida, handing him that state"s 25 electoral votes. Bush"s win in the state by a scant 537 votes out of 6 million cast has continued to spark protests that he stole the election, including demonstrations at his inauguration on Saturday featuring "Hail to the Thief" banners. FLORIDA MULLS WHAT WENT WRONG Florida Gov. Jeb Bush wasted little time after the controversial

win by his brother in the state in appointing a bipartisan task force to conduct an elections review. He also asked lawmakers to provide $30 million to replace outdated voting machines. "I would think there will be a strong will to make some changes," said University of Miami President Tad Foote, who is co-chairing the governor"s panel. Doug Lewis, executive director of the Election Center, an administrative and educational organization for state and local election officials, said the recount of Florida"s disputed punch card ballots could have been done in two days if the state had a clear definition of what constitutes a vote. He said more than half of the states lack such a definition. Another simple reform for states to adopt is procedures for requiring a recount of votes. "Those two things alone would have eliminated all the chaos and confusion during this election," he said. In fact, Illinois" elections board is mulling asking the Legislature for a law governing how to determine voter intent, said Ron Michaelson, the board"s executive director, who added that 90 percent of the state uses punch cards, which caused many problems in Florida. Kansas Gov. Bill Graves is preparing legislation that would require an automatic recount when a candidate wins by one half of 1 percent of the vote or less, according to his spokesman Don Brown. Some states also want to fix problems spotlighted by their own close presidential election. In Wisconsin, where Gore beat Bush by 5,688 votes, the election was marred by alleged abuses such as multiple voting by non-resident college students, Illinois residents crossing the border to register and vote in Wisconsin on Election Day, and cigarettes being used to bribe votes from homeless people, according to State Rep. Steve Freese, R-Dodgeville, who chairs the Legislature"s campaigns and elections committee. "We"ve always been known as a clean election process state," Freese said, adding that the election raised questions over the integrity of the state"s voting system. He said changes such as a state-wide voter identification list, voter

identification cards and uniform voting hours will be considered. New Mexico, another close state in the November presidential election, experienced computer glitches, clerical errors and lost-and-found ballots that kept the state"s Electoral College votes up for grabs until Nov. 30, when Gore was finally certified a winner by 368 votes. TOUCH-SCREEN VOTING MACHINES CONSIDERED Election officials in that state said they are considering the use of touch-screen voting machines and completion of a new voter registration system to avoid a repeat of problems. With most of Iowa using optical scanners to count votes and punch card ballots outlawed since 1975, Secretary of State Chet Culver said his state"s election system stood up to intense scrutiny following the closest presidential election in its history when Gore beat Bush by a slim margin of 4,144 votes. Still, Culver has embarked on what he called a "healthy review" of voting in Iowa and said he wants to upgrade or replace his state"s 1970s-vintage mainframe database system for tracking voter registration. A new personal computer-based system tied in with the state"s 2,126 precincts could cost as much as $10 million. Culver said he also wants to improve voting technology for eight counties still using antiquated lever machines or hand-counted paper ballots. Punch card voting systems are also being targeted for extinction or reform. The Wisconsin State Elections Board in late November voted unanimously to end the use of punch card systems this year for 51 municipalities that still use them. Kevin Kennedy, the board"s executive director, said the system was the least voter friendly from an accuracy standpoint. He added that 80 percent of the state uses optical scanners for counting votes. A Texas proposal would ban punch card ballots in the 14 counties where they are used. Other possible changes in the Lone Star State include better defining what constitutes a punch card vote and outlawing so-called butterfly ballots that caused confusion for some Florida voters, according to a House



elections committee aide. Cook County. Illinois, which covers the city of Chicago and is a Democratic stronghold was drawn into the Florida ballot controversy due to its use of a butterfly ballot for judicial elections on Nov. 7, wants to simplify ballot language to reduce the need for facing pages. County Clerk David Orr also wants the Illinois Legislature to authorize the use of existing technology to check for accidental overvotes on punch card ballots. States where absentee voting is a major factor are also considering reforms. Proposals to tighten the time for the receipt of absentee ballots have surfaced in Washington, where ballots currently must just be postmarked by Election Day. In Oregon, where everyone votes by mail, proposals have been made to standardize ballots and supply voters with postage-paid envelopes. States such as New York and Georgia are also seeking voting studies or will hold hearings on possible reforms, while California Secretary of State Bill Jones wants to create a $230 million fund to update county voting systems. Most states will be looking to the federal government to help foot some of what could be a substantial bill for new or improved voting systems as long as there are no strings attached, according to Iowa"s Culver. ^

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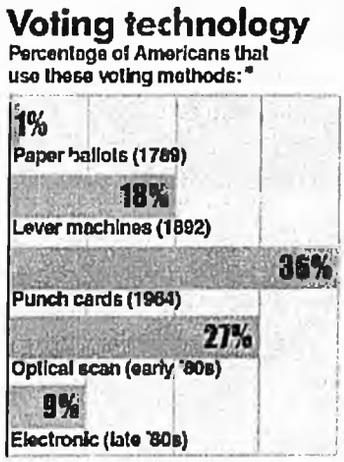
02/14/2001 - Updated 09:47 AM ET
Updating voting machines could take a decade

By Jim Drinkard, USA TODAY



If the nation decided to dump its antiquated voting machines tomorrow and get new ones, it wouldn't be able to do it. In fact, replacing the now-suspect punch-card machines that are common across the country probably can't be accomplished by the next presidential election in 2004, and a complete modernization could take a decade, according to election officials and executives in America's tiny voting equipment industry. Fewer than a dozen U.S. companies make voting equipment, and even the largest of those has limited manufacturing capacity. Even more crucial, they don't have enough trained personnel to carry out a crash national election upgrade. "I don't think the industry is ready for the demand that is potentially going to come," says Kimball Brace, a leading election consultant.

Read more

Stories
- Updating voting machines could take a decade
- Networks promise better election coverage

Graphic
- Map of voting methods used in the U.S.

Photo Galleries
- The voting experience in America
- A look back at Election Day 2000

"What happens when Miami-Dade, Dallas and Chicago say all of the sudden, 'We'd like to buy'? There is no manufacturer out there big enough

," Brace says.

A host of government and professional task forces are churning out recommendations for how to avoid another election debacle like the one that unfolded last year in Florida. Newer equipment is high on their lists.

Florida wants to switch to a uniform statewide system of optically scanned ballots, the same technology used in grading standardized tests such as the SAT.

Georgia wants to convert to all-electronic voting, in which voters make their choices using a touch screen like those on ATMs.

The nation's secretaries of State want modernized equipment, and Congress may pour up to $2.5 billion into upgrades.

There are an estimated 600,000 or more outmoded punch-card and mechanical lever machines across the country that would be up for replacement in any national upgrade — many times the industry's normal annual production. Without larger staffs and deep-pocket financing, it will be impossible for equipment makers to ramp up production immediately, analysts say. Some components are in short supply, and though there is talk that big players such as IBM may join the voting machine business, no major high-tech firm is in a position to start selling.

"One of the assumptions these task forces are making is that there is an industry ready to meet their demands," says Peter Cosgrove, CEO of Sequoia Voting Systems, a leading equipment maker based in Exeter, Calif. "It would be dangerous of those groups to make the assumption that the entire country can change tc new technology for the 2002 elections, or even for 2004."

The collision between a surge in demand and limited supply is "the next hurricane coming for election administrators," Brace says. "It has the potential cf not being a very pretty sight."

The industry that provides equipment, supplies and expertise for the nation's elections is a niche business. Because elections come in cycles, so do its sales and profits. Total annual revenue is estimated at about $200 million in election years and $15[illegible] million in non-election years. Only a handful of companies that make approved voting equipment attempt to do business nationally. Nearly all are private companies; public shareholders would be impatient with their uneven earnings, executives say.

Not much bigger than an outlet store

Election Systems & Software (ES&S), with about 430 employees, is by far the largest.

At its small manufacturing facility in Omaha, about 20 employees sit at workbenches assembling and testing half a dozen different voting machines. They range from a large gray unit designed to count optically scanned ballots at high speed for an entire county to touch-screen electronic voting machines that look like an oversized child's Etch A Sketch and are used at local polling places.

In an adjacent warehouse, molded plastic equipment cases are piled high. One section has shelves where a limited inventory of parts awaits assembly. The entire operation isn't much bigger than a warehouse outlet store.

Jim Schmidt, who oversees the company's manufacturing, recalls how the company scrambled in 1998 to produce 7,350 voting machines in 100 days for Venezuela. "We had to pull out a lot of stops to do that," he says. All together, the company turned out 20,000 voting or vote-counting machines in the past 18 months, a record level.

Company officials are salivating over the coming boom and the profits it would bring.

ES&S is lining up outside producers to increase its manufacturing capacity.

Its nearest competitor, Global Election Systems in McKinney, Texas, plans to add a second or even a third shift at its plant. "We are gearing up to run 24/7 if necessary to meet the demand," says Global Vice President Larry Ensminger. The company may also turn to outside firms for additional assembly capacity.

Not all equipment makers are so sure the demand can be met. Chip Rabinowitz, who designed an electronic voting machine for Diversified Dynamics of Richmond, Va., says some components — particularly touch screens and flash memory chips — are in short supply. "It's probably going to take a minimum of 10 years" to complete a nationwide upgrade, he says.

Paul Craft, who oversees election technology for Florida, says his state hopes that by upgrading many counties at once, it can save money by buying voting equipment in large quantities. "That may not prove true," he says. "You may find yourself waiting in line to buy them at full retail."

Sequoia's Cosgrove says production capacity isn't even the toughest problem. "What's not achievable is being able to send out support people who understand the technology and elections and the legislative requirements in each state," he says. "There is a concern that the industry, in pursuit of early profits, will try to bite off more than it can handle."

Aldo Tesi, president of ES&S, says he believes that his company can meet demand. However, he agrees that "if there's a challenge, it's on the

people side. We're going to have to be very smart about how we approach it."

Frightened by history

No major corporation has ventured into the U.S. voting equipment business since IBM, which popularized punch-card voting in the United States, got out of it in the early 1970s. IBM sold the rights to its Votomatic machine to four of its salesmen, who started a company called Computer Election Systems. At the time, their only competition was from old-fashioned paper ballots and from mechanical lever voting machines, which had been around since the late 1800s.

IBM unloaded the business because it knew bad publicity from a botched election could damage its far more profitable electric typewriter business, says Jack Gerbel, an IBM salesman who became vice president of the spinoff company. "Most of the free publicity they were getting was about elections, yet it was just a drop in the bucket, profit-wise," he recalls.

Gerbel is now president of his own company in Dublin, Calif. UniLect sells an electronic touch-screen voting machine.

Later, the punch-card business was sold to Business Records Corp., which also marketed optical scanning vote-counters. In 1997, that Texas company was in turn acquired by the Omaha firm that now is ES&S.

At the time, only three companies made optical scan vote-counting machines, so the Justice Department forced BRC to sell its scanning technology to Sequoia as well as the Omaha company to remedy antitrust concerns.

Now, the prospect of huge infusions of federal money is prompting some large players to rethink their aversion for the voting equipment business. Computer giant Unisys announced last month plans to market an election system that would automate everything from voter registration to vote counting. Other high-tech companies are working to perfect Internet voting systems, and IBM is rumored to be considering jumping back into the business. "We are examining that issue right now, but have not made any determination," says company spokesman Ed Barbini.

Harder than selling computers

But selling voting machines is more complex than selling computers, says Richard Smolka, publisher of a national newsletter on running elections. "When a vendor sells a county, they go in and instruct key personnel in procedures, changes, a host of little internal things," he says. "This is what new companies lack: support people and the experience."

Dave Keeler, vice president of a company in Dayton, Ohio, that prints ballots and sells electronic voting machines, says companies like his are

crucial parts of the election system. "When they put in a new county elections director, who do you think is holding that person's hand? The experts reside in the private industry, and that's what makes it go around."

Any company angling for a piece of the action faces a long, tortuous road. Elections are a complex undertaking, carried out under state laws that vary widely and procedures and requirements that are different in each of America's 7,000 voting jurisdictions. Voting equipment must be certified by testing laboratories, then blessed by each state's top election officials. Sales are made by slogging from one county election board to the next. In most states, each county makes its own purchasing decisions.

Even if new orders pour in, those barriers remain. Sometimes salesmen seek to ease their jobs by pitching their wares at the annual meetings where each state's county election officials gather to keep current on election laws and practices.

For example, when Ohio election officials gathered at a Columbus hotel in January, equipment vendors turned the hotel's fifth floor into one continuous cocktail party. Riding up in an elevator, one county official checked with an equipment salesman to make sure he was ready to pour her favorite, Captain Morgan rum.

In room 531, Triad GSI of Xenia, Ohio had set up a Votomatic machine with a butterfly ballot from Palm Beach County, Fla., side by side with its electronic touch-screen model.

In Room 501, elections printer Barrett Brothers had its hospitality suite. Dayton Legal Blank, a printer and sales representative for an equipment maker, entertained in 505. The best party was in Room 506, where ES&S served hot hors d'oeuvres along with drinks.

'Extremely competitive environment'

Ten days later, some of the same companies — and even a few of the same salesmen — were in Orlando, where Florida county election supervisors gathered. Global's suite was holding a drawing for a large box of Belgian chocolates. Hart Intercivic, marketing an electronic voting machine, gave away a 13-inch color TV/VCR. Election software maker Iris lured officials by offering a chance at a gold necklace. "It is an extremely competitive environment," says Craft, the Florida official. "You have a static market, a fixed number of jurisdictions that need equipment. You've got all these vendors fighting for the same market."

It's not unusual, he says, for a company to spend two or three years trying to persuade local officials to buy its equipment only to lose out when the officials it has targeted go out of office. It's common, as well, for a vendor to be about to close a sale and have its competitors seek to sabotage the deal by planting doubts about the equipment in the minds of local officials who control the purse strings. "It's a dog-eat-dog world,"

Craft says.

Sometimes, salesmen feel the pressure to perform what they consider improper favors for election officials. One, who asked not to be identified for fear of losing business, told of encountering an election supervisor in a small Georgia county who listened to a sales presentation, then asked, "What's in it for me?" The salesman ignored the question, and the official repeated it. No favors were done, and the company won the contract anyway.

"This is no different from other government procurement," says Caleb Kleppner, an elections analyst with the non-profit Center for Voting and Democracy, based in Takoma Park, Md. "Kickbacks happen, and favored contractors win despite not having the lowest bid. Politics affects it, too. Anytime there are hundreds of millions of dollars being spent, there is incentive for that to happen."

Alaska Division of Elections

HAND TALLY PRECINCTS

Updated 7/25/00

Of Alaska's 451 voting precincts, 170 (38 percent) will hand count ballots in November's election. Results (counted at the precinct) will be telephoned to the closest regional elections office, entered into tabulation centers there and forwarded immediately to the main accumulation center in Juneau.

Click here for a complete breakdown of Accu-Vote and hand-count precincts.

Region I

There are 24 hand-tally precincts in Region I, which includes Southeast Alaska, Kodiak Island and the Kenai Peninsula. These precincts are located primarily in District 5, plus some in the Kenai Peninsula and small towns in on Kodiak Island.

Region II

There are no hand-tally precincts in Region II, which includes the greater Anchorage area and the Matanuska-Susitna Valley.

Region III

There are 58 hand-tally precincts in Region III, which is the greater Fairbanks interior area plus Valdez and Cordova. Fifty of these precincts are located in District 36, an area that encompasses many small towns and villages, including Aniak, Bettles, Fort Yukon, McGrath, Rampart and Tanana.

Region IV

All but ten precincts in Region IV (Nome, the northwest coast and the Aleutians - Districts 37-40) will be hand counted, a total of 88 precincts. The largest communities in Region IV will be counted by Accu-Vote: Barrow, Bethel, Dillingham, Kotzebue, Nome and Unalaska.

Alaska Division of Elections Home Page

To comment on this page, contact Barbara Whiting at the Alaska Division of Elections.

Alaska Division of Elections

HOW YOUR PRECINCT'S BALLOTS WILL BE COUNTED

Updated 7/25/00

For a quick search to see the precincts in a particular district and how the ballots will be counted, click on the district:

Senate Dist. A = House Dist. 1 and House Dist. 2
Senate Dist. B = House Dist. 3 and House Dist. 4
Senate Dist. C = House Dist. 5 and House Dist. 6
Senate Dist. D = House Dist. 7 and House Dist. 8
Senate Dist. E = House Dist. 9 and House Dist. 10
Senate Dist. F = House Dist. 11 and House Dist. 12
Senate Dist. G = House Dist. 13 and House Dist. 14
Senate Dist. H = House Dist. 15 and House Dist. 16
Senate Dist. I = House Dist. 17 and House Dist. 18
Senate Dist. J = House Dist. 19 and House Dist. 20
Senate Dist. K = House Dist. 21 and House Dist. 22
Senate Dist. L = House Dist. 23 and House Dist. 24
Senate Dist. M = House Dist. 25 and House Dist. 26
Senate Dist. N = House Dist. 27 and House Dist. 28
Senate Dist. O = House Dist. 29 and House Dist. 30
Senate Dist. P = House Dist. 31 and House Dist. 32
Senate Dist. Q = House Dist. 33 and House Dist. 34
Senate Dist. R = House Dist. 35 and House Dist. 36
Senate Dist. S = House Dist. 37 and House Dist. 38
Senate Dist. T = House Dist. 39 and House Dist. 40

REGION I
Senate Districts A - E
House Districts 1 - 9
Southeast Alaska, Kodiak Island & the Kenai Peninsula

SENATE DISTRICT A:

HOUSE DISTRICT 1
14 Accu-Vote Precincts
Clover Pass
Ketchikan (7 precincts)
Mountain Point
Mud Bay

Pennock-Gravina
Saxman
Wacker
Ward Cove

HOUSE DISTRICT 2
10 Accu-Vote Precincts
Halibut Point No. 1 and No. 2
Jamestown Bay
Mt. Edgecumbe
Petersburg/Kupreanof
Sitka (4 precincts)
Wrangell

SENATE DISTRICT B:

HOUSE DISTRICT 3
11 Accu-Vote Precincts
Douglas
Juneau (5 precincts)
Juneau Airport
Lemon Creek
North Douglas
Salmon Creek
Switzer Creek

HOUSE DISTRICT 4
8 Accu-Vote Precincts
Auke Bay
Brotherhood Bridge
Fritz Cove
Lower Mendenhall No. 1 and No. 2
Lynn Canal
Upper Mendenhall No. 1 and No. 2

SENATE DISTRICT C:

HOUSE DISTRICT 5
9 Accu-Vote, 13 hand-count precincts
Accu-Vote:
Angoon
Peninsula / Chilkat
Craig
Haines Highway
Haines No. 1
Hoonah
Klawock
Metlakatla
Skagway

Hand Count:
Coffman Cove
Elfin Cove

Gustavus
Hydaburg
Kake
Kasaan
Klukwan
North Prince of Wales Island
Pelican
Port Alexander
Tenakee
Thorne Bay
Yakutat

HOUSE DISTRICT 6
5 Accu-Vote, 5 hand-count precincts
Accu-Vote:
Flats
Kodiak (3 precincts)
Mission Road

Hand Count:
Cape Chiniak
Kodiak Island South
Old Harbor
Ouzinkie
Port Lions

SENATE DISTRICT D:

HOUSE DISTRICT 7
10 Accu-Vote, 3 hand-count precincts
Accu-Vote:
Anchor Point
Diamond Ridge
Fritz Creek
Homer (3 precincts)
Kachemak Bay
Kasilof North
Kasilof South
Ninilchik

Hand Count:
English Bay
Port Graham
Seldovia

HOUSE DISTRICT 8
7 Accu-Vote, 3 hand-count precincts
Accu-Vote:
Bear Creek
Ridgeway
Seward
Soldotna No. 1 and No. 2

Sports Lake
Sterling

Hand Count:
Cooper Landing
Hope
Moose Pass

SENATE DISTRICT E:

HOUSE DISTRICT 9
7 Accu-Vote Precincts
K-Beach
Kenai (4 precincts)
Nikiski
Salamatof

REGION II
Senate Districts E - N
House Districts 10 - 28
Greater Anchorage & the Matanuska-Susitna Borough

HOUSE DISTRICT 10
9 Accu-Vote Precincts
Anchorage

SENATE DISTRICT F:

HOUSE DISTRICT 11
7 Accu-Vote Precincts
Anchorage

HOUSE DISTRICT 12
7 Accu-Vote Precincts
Anchorage

SENATE DISTRICT G:

HOUSE DISTRICT 13
10 Accu-Vote Precincts
Anchorage

HOUSE DISTRICT 14
4 Accu-Vote Precincts
Anchorage

SENATE DISTRICT H:

HOUSE DISTRICT 15
8 Accu-Vote Precincts
Anchorage

HOUSE DISTRICT 16
6 Accu-Vote Precincts

Anchorage

SENATE DISTRICT I:

HOUSE DISTRICT 17
7 Accu-Vote Precincts
Anchorage

HOUSE DISTRICT 18
10 Accu-Vote Precincts
Anchorage

SENATE DISTRICT J:

HOUSE DISTRICT 19
8 Accu-Vote Precincts
Anchorage

HOUSE DISTRICT 20
6 Accu-Vote Precincts
Anchorage

SENATE DISTRICT K:

HOUSE DISTRICT 21
8 Accu-Vote Precincts
Anchorage

HOUSE DISTRICT 22
7 Accu-Vote Precincts
Anchorage

SENATE DISTRICT L:

HOUSE DISTRICT 23
3 Accu-Vote Precincts
Anchorage

HOUSE DISTRICT 24
6 Accu-Vote Precincts
Anchorage

SENATE DISTRICT M:

HOUSE DISTRICT 25
6 Accu-Vote Precincts
Anchorage

HOUSE DISTRICT 26
7 Accu-Vote Precincts
Anchorage (2 precincts)
Fairview
Greater Wasilla
Pioneer Peak
Wasilla (2 precincts)

SENATE DISTRICT N:

HOUSE DISTRICT 27
9 Accu-Vote precincts
Accu-Vote:
Butte
Farm Loop
Fishhook
Greater Palmer
Lakes
Lazy Mountain
Palmer
Sheep Mountain
Sutton

HOUSE DISTRICT 28
11 Accu-Vote precincts
Accu-Vote:
Big Lake
Bogard
Houston
Knik/Goose Bay
Meadow Lakes
Schrock
Susitna
Talkeetna
Trapper Creek
Wasilla Fishhook
Willow

REGION III
Senate Districts O - R
House Districts 29 - 37
Greater Fairbanks, Interior Alaska, Valdez & Cordova

SENATE DISTRICT O

HOUSE DISTRICT 29
8 Accu-Vote Precincts
Chena
Ester
Farmer's Loop
Geist
Goldstream
University Campus
University Hills
University West

HOUSE DISTRICT 30
8 Accu-Vote Precincts
Airport
Aurora

Fairbanks (3 precincts)
Lemeta
Pike
Shanly

SENATE DISTRICT P:

HOUSE DISTRICT 31
7 Accu-Vote Precincts
Fairbanks

HOUSE DISTRICT 32
5 Accu-Vote Precincts
Badger No. 1 and No. 2
Fort Wainsright
Lakeview
Steese East

SENATE DISTRICT Q:

HOUSE DISTRICT 33
8 Accu-Vote Precincts
Chatanika
Chena Lakes
Fox
Newby
Plack
Steele Creek/Gilmore
Steese West
Two Rivers

District 34
6 Accu-Vote, 4 hand-count precincts
Accu-Vote:
Eielson
Healy
Moose Creek
North Pole
Richardson
Salcha
Hand Count:
Anderson
Cantwell
Clear
Denali Park

SENATE DISTRICT R:

HOUSE DISTRICT 35
7 Accu-Vote, 5 hand-count precincts
Accu-Vote:
Big Delta
Cordova
Delta Junction

Glennallen
Valdez (3 precincts)

Hand Count:
Gakona
Kenny Lake
Paxson
Tatitlek
Whittier

HOUSE DISTRICT 36
2 Accu-Vote, 49 hand-count precincts
Accu-Vote:
Copper Center
Tok

Hand Count:
Allakaket
Aniak
Anvik
Arctic Village
Beaver
Bettles
Central
Chalkyitsik
Chistochina
Chuathbaluk
Circle
Crooked Creek
Dot Lake
Eagle
Fort Yukon
Fortuna Ledge
Galena
Grayling
Holy Cross
Hughes
Huslia
Kalskag
Kaltag
Koyukuk
Livengood
Lower Kalskag
Manley Hot Springs
McGrath
Mentasta
Minto
Nenana
Nikolai
Northway
Nulato

Pilot Station
Rampart
Ruby
Russian Mission
Shageluk
Sleetmute
Stevens Village
Stony River
Takotna
Tanacross
Tanana
Tetlin
Tuluksak
Tyonek
Venetie

REGION IV
Senate Districts S - T
House Districts 37 - 40
Nome, Barrow, the North & West Coasts & the Aleutian Islands

SENATE DISTRICT S:

HOUSE DISTRICT 37
3 Accu-Vote, 20 hand-count precincts
Accu-Vote:
Barrow
Browerville
Kotzebue
Hand Count:
Ambler
Anaktuvuk Pass
Atqasuk
Buckland
Deering
Diomede
Kaktovik
Kiana
Kivalina
Kobuk
Noatak
Noorvik
Nuiqsut
Point Hope
Point Lay
Selawik
Shishmaref
Shungnak
Wainwright
Wales

HOUSE DISTRICT 38
2 Accu-Vote, 27 hand-count precincts
Accu-Vote:
Nome No. 1 and No. 2

Hand Count:
Alakanuk
Brevig Mission
Chevak
Elim
Emmonak
Gambell
Golovin
Hooper Bay
Kotlik
Koyuk
Mekoryuk
Mountain Village
Newtok
Nightmute
Pitka's Point
Savoonga
Scammon Bay
Shaktoolik
Sheldon Point
St. Mary's
St. Michael
Stebbins
Teller
Toksook Bay
Tununak
Unalakleet
White Mountain

SENATE DISTRICT T:

HOUSE DISTRICT 39
4 Accu-Vote, 23 hand-count precincts
Accu-Vote:
Bethel (3 precincts)
Dillingham

Hand Count:
Akiachak
Akiak
Aleknagik
Atmautluak
Chefornak
Clark's Point
Eek
Ekwok

Goodnews Bay
Kasigluk
Kipnuk
Koliganek
Kongiganak
Kwethluk
Kwigillingok
Manokotak
Napakiak
Napaskiak
New Stuyahok
Nunapitchuk
Quinhagak
Togiak
Tuntutuliak

HOUSE DISTRICT 40
1 Accu-Vote, 18 hand-count precincts
Accu-Vote
Aleutians No. 2 (Unalaska)

Hand-Count:
Akutan
Aleutians No. 1
Chigniks
Cold Bay
Egegik - Pilot Point
Iliamna - Newhalen
King Cove
King Salmon
Kokhanok - Igiugig
Levelock
Naknek
Nondalton
Pedro Bay
Port Heiden
Sand Point
South Naknek
St. George Island
St. Paul Island

Alaska 1998 Elections Results Index

Alaska Division of Elections Home Page

To comment on this page, contact Barbara Whiting at the Alaska Division of Elections.

Alaska Division of Elections

Accu-Vote ELECTIONS' NEW VOTING TECHNOLOGY

The State of Alaska introduced a new ballot tabulation system for the 1998 elections. Punch cards are gone, and in their place is optical scanning. This means that Alaska voters pick up only one ballot at their polling places, and fill in ovals next to the names of candidates and issues they support. They insert the ballot into a small computer that looks like a fax machine. The computer -- called an Accu-Vote -- scans the ballot, tabulates the results, and deposits the ballot into a ballot box below. When the polls close at 8 p.m., precinct workers transmit results, immediately, by modem to a central accumulation site, where they are released.

Click on the links that follow for details. You'll learn why the state introduced the new system. You'll learn more about the system itself. Please note that in some precincts, ballots are still counted by hand.

If you have questions, please give any Division of Elections Office a call or send an e-mail to Virginia Breeze. We'll be happy to answer your questions. Educating voters is one of our major goals. When you go to the polls to vote in the August 22, 2000 Primary Election and the November 7 General Election we want you to feel comfortable with the new voting system and as pleased as we are that the State of Alaska made this purchase.

✓ **Accu-Vote Fact Sheet**

✓ **How will your precinct's ballots be counted?**

Alaska Division of Elections Home Page

Anchorage Daily News 17 Feb 2001 p B-3

Alaska Digest

Edited by Larry Campbell, 257-4321, alaskadigest@adn.com

JUNEAU

Panel studies proposed changes to Alaska primary elections

A task force will look at ways to make Alaska's primary election comply with a recent U.S. Supreme Court ruling.

Lt. Gov. Fran Ulmer, who oversees the state Division of Elections, has named a panel of four former lieutenant governors, a representative of the League of Women Voters and two former attorneys general to come up with recommendations.

The task force will try to come up with a bill that can be introduced and acted upon during the current legislative session, Ulmer said.

The high court ruled last June that California's primary was unconstitutional. Alaska's primary was similar to California's, listing all candidates on a single ballot that was open to all voters.

As a result of that ruling, Alaska's August 2000 primary was held under emergency regulations, and voters had to choose a ballot with either the Repbulican candidates or with all other candidates.

Joining Ulmer on the panel are former Lt. Govs. Lowell Thomas Jr., H.A. Red Boucher, Stephen McAlpine and Jack Coghill, Joyce Anderson of the League of Women Voters, and former attorneys general Doug Baily and Avrum Gross.

— The Associated Press

CHUKOTKA PENINSULA

Russian helicopter crashes in Arctic region

A Russian Mi-8 helicopter crashed Wednesday in the Arctic, killing all 11 people aboard, an emergency official said.

The helicopter went down in a remote area of Russia's Chukotka Peninsula near Alaska, said Andrei Rulyov, a spokesman for the Ministry of Emergency Situations.

The craft, used by communities in Russia's Arctic region, was carrying eight passengers and three crew members when it crashed into the tundra, he said.

— The Associated Press

WASHINGTON, PA.

Soldotna man accuses judge of ethical violation

A Washington County judge is accused of acting unethically by filing and then withdrawing a criminal charge against his wife's ex-husband, who lives in Alaska.

Mark Pearson of Soldotna filed the ethics complaint in November against Judge Paul Pozonsky with the state Judicial Conduct Board, a copy of which was obtained by the Pittsburgh Post-Gazette.

Pearson claims the judge filed a criminal harassment complaint against him with a district justice who is a friend of Pozonzky. He said Pozonzky eventually withdrew the charge, but only after Pearson twice traveled from Alaska to Pennsylvania for court dates.

case against Pearson.

Pozonsky referred questions to his attorney, Samuel J. Davis of Uniontown, who said Judicial Conduct Board rules prevent the parties from discussing active complaints.

Pearson's complaint to the conduct board

wife, Sara

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A HOLY MESSAGI

The Most Rev. Roger Schwietz, coadjutor archbishop of the Cathc communion during midday Mass at Holy Family Cathedral on We earthquake-ravaged India on Saturday night as an envoy for Cath Catholic Conference of Bishops. Schwietz is a member of the ag Schwietz will assure people in India that they the have support o Archbishop Francis Hurley said. A Sunday special collection at lo earmarked for India earthquake relief. Anyone who wants to con Relief, Archdiocese of Anchorage, 225 Cordova St., Anchorage 9

SUPREME COURT OF THE UNITED STATES

No. 99–401

CALIFORNIA DEMOCRATIC PARTY, ET AL., PETITIONERS *v.* BILL JONES, SECRETARY OF STATE OF CALIFORNIA, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[June 26, 2000]

JUSTICE SCALIA delivered the opinion of the Court.

This case presents the question whether the State of California may, consistent with the First Amendment to the United States Constitution, use a so-called "blanket" primary to determine a political party's nominee for the general election.

I

Under California law, a candidate for public office has two routes to gain access to the general ballot for most state and federal elective offices. He may receive the nomination of a qualified political party by winning its primary,[1] see Cal. Elec. Code Ann. §§15451, 13105(a)

[1] A party is qualified if it meets one of three conditions: (1) in the last gubernatorial election, one of its statewide candidates polled at least two percent of the statewide vote; (2) the party's membership is at least one percent of the statewide vote at the last preceding gubernatorial election; or (3) voters numbering at least 10 percent of the statewide vote at the last gubernatorial election sign a petition stating that they intend to form a new party. See Cal. Elec. Code Ann. §5100 (West 1996

(West 1996); or he may file as an independent by obtaining (for a statewide race) the signatures of one percent of the State's electorate or (for other races) the signatures of three percent of the voting population of the area represented by the office in contest, see §8400.

Until 1996, to determine the nominees of qualified parties California held what is known as a "closed" part i-san primary, in which only persons who are members of the political party—*i.e.*, who have declared affiliation with that party when they register to vote, see Cal. Elec. Code Ann. §§2150, 2151 (West 1996 and Supp. 2000)— can vote on its nominee, see Cal. Elec. Code Ann. §2151 (West 1996). In 1996 the citizens of California adopted by initi a-tive Proposition 198. Promoted largely as a measure that would "weaken" party "hard-liners" and ease the way for "moderate problem-solvers," App. 89–90 (reproducing ballot pamphlet distributed to voters), Proposition 198 changed California's partisan primary from a closed pr i-mary to a blanket primary. Under the new system, "[a]ll persons entitled to vote, including those not affiliated with any political party, shall have the right to vote . . . for any candidate regardless of the candidate's political affili a-tion." Cal. Elec. Code Ann. §2001 (West Supp. 2000); see also §2151. Whereas under the closed primary each voter received a ballot limited to candidates of his own party, as a result of Proposition 198 each voter's primary ballot now lists every candidate regardless of party affiliation and allows the voter to choose freely among them. It remains the case, however, that the candidate of each party who wins the greatest number of votes "is the nominee of that party at the ensuing general election." Cal. Elec. Code Ann. §15451 (West 1996).[2]

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and Supp. 2000).

[2]California's new blanket primary system does not apply directly to

Petitioners in this case are four political parties— the California Democratic Party, the California Republican Party, the Libertarian Party of California, and the Peace and Freedom Party— each of which has a rule prohibiting persons not members of the party from voting in the party's primary. [3] Petitioners brought suit in the United States District Court for the Eastern District of California against respondent California Secretary of State, alleging, *inter alia*, that California's blanket primary violated their First Amendment rights of association, and seeking declaratory and injunctive relief. The group Californians for an Open Primary, also respondent, intervened as a party defendant. The District Court recognized that the new law would inject into each party's primary substantial numbers of voters unaffiliated with the party. 984 F. Supp. 1288, 1298–1299 (1997). It further recognized that this might result in selection of a nominee different from the one party members would select, or at the least cause the same nominee to commit himself to different positions. *Id.*, at 1299. Nevertheless, the District Court held that the burden on petitioners' rights of association was not a severe one, and was justified by state interests ultimately reducing to this: "enhanc[ing] the democratic

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the apportionment of presidential delegates. See Cal. Elec. Code Ann. §§15151, 15375, 15500 (West Supp. 2000). Instead, the State tabulates the presidential primary in two ways: according to the number of votes each candidate received from the entire voter pool and according to the amount each received from members of his own party. The national parties may then use the latter figure to apportion delegates. Nor does it apply to the election of political party central or district committee members; only party members may vote in these elections. See Cal. Elec. Code Ann. §2151 (West 1996 and Supp. 2000).

[3] Each of the four parties was qualified under California law when they filed this suit. Since that time, the Peace and Freedom Party has apparently lost its qualified status. See Brief for Petitioners 16 (citing Child of the 60s Slips, Los Angeles Times, Feb. 17, 1999, p. B–6).

nature of the election process and the representativeness of elected officials." *Id.*, at 1301. The Ninth Circuit, adopting the District Court's opinion as its own, affirmed. 169 F. 3d 646 (1999). We granted certiorari. 528 U. S. 1133 (2000).

II

Respondents rest their defense of the blanket primary upon the proposition that primaries play an integral role in citizens'selection of public officials. As a consequence, they contend, primaries are public rather than private proceedings, and the States may and must play a role in ensuring that they serve the public interest. Proposition 198, respondents conclude, is simply a rather pedestrian example of a State's regulating its system of elections.

We have recognized, of course, that States have a major role to play in structuring and monitoring the election process, including primaries. See *Burdick* v. *Takushi,* 504 U. S. 428, 433 (1992); *Tashjian* v. *Republican Party of Conn.,* 479 U. S. 208, 217 (1986). We have considered it 'too plain for argument," for example, that a State may require parties to use the primary format for selecting their nominees, in order to assure that intraparty competition is resolved in a democratic fashion. *American Party of Tex.* v. *White,* 415 U. S. 767, 781 (1974); see also *Tashjian, supra,* at 237 (SCALIA, J., dissenting). Similarly, in order to avoid burdening the general election ballot with frivolous candidacies, a State may require parties to demonstrate "a significant modicum of support" before allowing their candidates a place on that ballot. See *Jenness* v. *Fortson,* 403 U. S. 431, 442 (1971). Finally, in order to prevent "party raiding"— a process in which dedicated members of one party formally switch to another party to alter the outcome of that party's primary— a State may require party registration a reasonable period of time before a primary election. See *Rosario* v. *Rockefeller,* 410

U. S. 752 (1973). Cf. *Kusper* v. *Pontikes,* 414 U. S. 51 (1973) (23-month waiting period unreasonable).

What we have not held, however, is that the processes by which political parties select their nominees are, as respondents would have it, wholly public affairs that States may regulate freely.[4] To the contrary, we have continually stressed that when States regulate parties' internal processes they must act within limits imposed by the Constitution. See, *e.g., Eu* v. *San Francisco County Democratic Central Comm.,* 489 U. S. 214 (1989); *Democratic Party of United States* v. *Wisconsin ex rel. La Follette,* 450 U. S. 107 (1981). In this regard, respondents' reliance on *Smith* v. *Allwright,* 321 U. S. 649 (1944), and *Terry* v. *Adams,* 345 U. S. 461 (1953), is misplaced. In *Allwright,* we invalidated the Texas Democratic Party's rule limiting participation in its primary to whites; in *Terry,* we invalidated the same rule promulgated by the Jaybird Democratic Association, a "self-governing voluntary club," 345 U. S., at 463. These cases held only that, when a State prescribes an election process that gives a special role to political parties, it "endorses, adopts and enforces the discrimination against Negroes," that the parties (or, in the case of the Jaybird Democratic Association, organizations that are "part and parcel" of the parties, see *id.,* at 482 (Clark, J., concurring)) bring into the process— so that the parties' discriminatory action becomes state action under the Fifteenth Amendment. *Allwright, supra,* at

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[4]On this point, the dissent shares respondents' view, at least where the selection process is a state-run election. The right not to associate, it says, "is simply inapplicable to participation in a state election." "[A]n election, unlike a convention or caucus, is a public affair." *Post,* at 6 (opinion of STEVENS, J.). Of course it is, but when the election determines a party's nominee it is a party affair as well, and, as the cases to be discussed in text demonstrate, the constitutional rights of those composing the party cannot be disregarded.

664; see also *Terry,* 345 U. S., at 484 (Clark, J., concurring); *id.*, at 469 (opinion of Black, J.). They do not stand for the proposition that party affairs are public affairs, free of First Amendment protections— and our later holdings make that entirely clear.[5] See, *e.g., Tashjian, supra.*

Representative democracy in any populous unit of governance is unimaginable without the ability of citizens to band together in promoting among the electorate candidates who espouse their political views. The formation of national political parties was almost concurrent with the formation of the Republic itself. See Cunningham, The Jeffersonian Republican Party, in 1 History of U. S. Political Parties 239, 241 (A. Schlesinger ed., 1973). Consistent with this tradition, the Court has recognized that the First Amendment protects 'the freedom to join together in furtherance of common political beliefs," *Tashjian, supra,* at 214–215, which 'necessarily presupposes the freedom to

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[5]The dissent is therefore wrong to conclude that *Allwright* and *Terry* demonstrate that '[t]he protections that the First Amendment affords to the internal processes of a political party do not encompass a right to exclude nonmembers from voting in a state-required, state-financed primary election." *Post,* at 6 (internal quotation marks and citation omitted). Those cases simply prevent exclusion that violates some independent constitutional proscription. The closest the dissent comes to identifying such a proscription in this case is its reference to 'the First Amendment associational interests" of citizens to participate in the primary of a party to which they do not belong, and the 'fundamental right"of citizens 'to cast a meaningful vote for the candidate of their choice." *Post,* at 13. As to the latter: Selecting a candidate is quite different from voting for the candidate of one's choice. If the 'fundamental right" to cast a meaningful vote were really at issue in this context, Proposition 198 would be not only constitutionally permissible but constitutionally required, which no one believes. As for the associational 'interest"in selecting the candidate of a group to which one does not belong, that falls far short of a constitutional right, if indeed it can even fairly be characterized as an interest. It has been described in our cases as a 'desire"— and rejected as a basis for disregarding the First Amendment right to exclude. See *infra,* at 16.

identify the people who constitute the association, and to limit the association to those people only," *La Follette,* 450 U. S., at 122. That is to say, a corollary of the right to associate is the right not to associate. "Freedom of association would prove an empty guarantee if associations could not limit control over their decisions to those who share the interests and persuasions that underlie the association's being.' " *Id.*, at 122, n. 22 (quoting L. Tribe, American Constitutional Law 791 (1978)). See also *Roberts* v. *United States Jaycees,* 468 U. S. 609, 623 (1984).

In no area is the political association's right to exclude more important than in the process of selecting its nominee. That process often determines the party's positions on the most significant public policy issues of the day, and even when those positions are predetermined it is the nominee who becomes the party's ambassador to the general electorate in winning it over to the party's views. See *Timmons* v. *Twin Cities Area New Party,* 520 U. S. 351, 372 (1997) (STEVENS, J., dissenting) ('But a party's choice of a candidate is the most effective way in which that party can communicate to the voters what the party represents and, thereby, attract voter interest and support'). Some political parties— such as President Theodore Roosevelt's Bull Moose Party, the La Follette Progressives of 1924, the Henry Wallace Progressives of 1948, and the George Wallace American Independent Party of 1968— are virtually inseparable from their nominees (and tend not to outlast them). See generally E. Kruschke, Encyclopedia of Third Parties in the United States (1991).

Unsurprisingly, our cases vigorously affirm the special place the First Amendment reserves for, and the special protection it accords, the process by which a political party 'select[s] a standard bearer who best represents the party's ideologies and preferences." *Eu, supra,* at 224 (internal quotation marks omitted). The moment of choosing the party's nominee, we have said, is '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,* 479 U. S., at 216; see also *id.*, at 235–236 (SCALIA, J., dissenting) ("The ability of the members of the Republican Party to select their own candidate . . . unquestionably implicates an associational freedom"); *Timmons,* 520 U. S., at 359 ("[T]he New Party, and not someone else, has the right to select the New Party's standard bearer" (internal quotation marks omi t-ted)); *id.*, at 371 (STEVENS, J., dissenting) ("The members of a recognized political party unquestionably have a constitutional right to select their nominees for public office").

In *La Follette*, the State of Wisconsin conducted an open presidential preference primary.[6] Although the voters did not select the delegates to the Democratic Party's National Convention directly— they were chosen later at caucuses of party members— Wisconsin law required these delegates to vote in accord with the primary results. Thus allowing nonparty members to participate in the selection of the party's nominee conflicted with the Democratic Party's rules. We held that, whatever the strength of the state interests supporting the open primary itself, they could not justify this "substantial intrusion into the associ a-tional freedom of members of the National Party."[7] 450

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[6]An oper. primary differs from a blanket primary in that, although as in the blanket primary any person, regardless of party affiliation, may vote for a party's nominee, his choice is limited to that party's nominees *for all offices.* He may not, for example, support a Republican nominee for Governor and a Democratic nominee for attorney general.

[7]The dissent, in attempting to fashion its new rule— that the right not to associate does not exist with respect to primary elections, see *post*, at 6— rewrites *Democratic Party of United States* v. *Wisconsin ex rel. La Follette,* 450 U. S. 107 (1981), to stand merely for the proposition that a political party has a First Amendment right to "defin[e] the organization and composition of its governing units," *post*, at 3. In fact, however, the state-imposed burden at issue in *La Follette* was the "intrusion by those

U. S., at 126.

California's blanket primary violates the principles set forth in these cases. Proposition 198 forces political parties to associate with— to have their nominees, and hence their positions, determined by— those who, at best, have refused to affiliate with the party, and, at worst, have expressly affiliated with a rival. In this respect, it is qualitatively different from a closed primary. Under that system, even when it is made quite easy for a voter to

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with adverse political principles'" upon the selection of the party's nominee (in that case its presidential nominee). 450 U. S., at 122 (quoting *Ray* v. *Blair*, 343 U. S. 154, 221–222 (1952) *(per curiam)*). See also 450 U. S., at 125 (comparing asserted state interests with burden created by the 'imposition of voting requirements upon" delegates). Of course *La Follette* involved the burden a state regulation imposed on a national party, but that factor affected only the weight of the State's interest, and had no bearing upon the existence *vel non* of a party's First Amendment right to exclude. 450 U. S., at 121–122, 125–126. Although JUSTICE STEVENS now considers this interpretation of *La Follette* 'specious", see *post*, at 4, n. 3, he once subscribed to it himself. His dissent from the order dismissing the appeals in *Bellotti* v. *Connolly* described *La Follette* thusly: 'There this Court rejected Wisconsin's requirement that delegates to the party's Presidential nominating convention, selected in a primary open to nonparty voters, must cast their convention votes in accordance with the primary election results. In our view, the interests advanced by the State . . . did not justify its substantial intrusion into the associational freedom of members of the National Party. . . . Wisconsin *required* convention delegates to cast their votes for candidates who might have drawn their support from nonparty members. The results of the party's decisionmaking process might thereby have been distorted." 460 U. S. 1057, 1062–1063 (1983) (emphasis in original).

Not only does the dissent's principle of no right to exclude conflict with our precedents, but it also leads to nonsensical results. In *Tashjian* v. *Republican Party of Conn.*, 479 U. S. 208 (1986), we held that the First Amendment protects a party's right to invite independents to participate in the primary. Combining *Tashjian* with the dissent's rule affirms a party's constitutional right to allow outsiders to select its candidates, but denies a party's constitutional right to reserve candidate selection to its own members. The First Amendment would thus guarantee a party's right to lose its identity, but not to preserve it.

change his party affiliation the day of the primary, and thus, in some sense, to "cross over," at least he must formally *become a member of the party;* and once he does so, he is limited to voting for candidates of that party.[8]

The evidence in this case demonstrates that under California's blanket primary system, the prospect of having a party's nominee determined by adherents of an opposing party is far from remote— indeed, it is a clear and present danger. For example, in one 1997 survey of California voters 37 percent of Republicans said that they planned to vote in the 1998 Democratic gubernatorial primary, and 20 percent of Democrats said they planned to vote in the 1998 Republican United States Senate primary. Tr. 668–669. Those figures are comparable to the results of studies in other States with blanket primaries. One expert testified, for example, that in Washington the number of voters crossing over from one party to another can rise to as high as 25 percent, *id.,* at 511, and another that only 25 to 33 percent of all Washington voters limit themselves to candidates of one party throughout the ballot, App. 136. The impact of voting by nonparty members is much greater upon minor parties, such as the Libertarian Party and the Peace and Freedom Party. In the first primaries these parties conducted following California's implementation of Proposition 198, the total votes

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[8]In this sense, the blanket primary also may be constitutionally distinct from the open primary, see n. 6, *supra,* in which the voter is limited to one party's ballot. See *La Follette, supra,* at 130, n. 2 (Powell, J., dissenting) ("[T]he act of voting in the Democratic primary fairly can be described as an act of affiliation with the Democratic Party. . . . The situation might be different in those States with 'blanket' primaries— *i.e.*, those where voters are allowed to participate in the primaries of more than one party on a single occasion, selecting the primary they wish to vote in with respect to each individual elective office"). This case does not require us to determine the constitutionality of open primaries.

cast for party candidates in some races was more than *double* the total number of *registered party members*. California Secretary of State, Statement of Vote, Primary Election, June 2, 1998, http://primary98.ss.ca.gov/Final/Official_Results.htm; California Secretary of State, Report of Registration, May 1998, http://www.ss.ca.gov/elections/elections_u.htm.

The record also supports the obvious proposition that these substantial numbers of voters who help select the nominees of parties they have chosen not to join often have policy views that diverge from those of the party faithful. The 1997 survey of California voters revealed significantly different policy preferences between party members and primary voters who "crossed over" from another party. Pl. Exh. 8 (Addendum to Mervin Field Report). One expert went so far as to describe it as "inevitable [under Proposition 198] that parties will be forced in some circumstances to give their official designation to a candidate who's not preferred by a majority or even plurality of party members." Tr. 421 (expert testimony of Bruce Cain).

In concluding that the burden Proposition 198 imposes on petitioners' rights of association is not severe, the Ninth Circuit cited testimony that the prospect of malicious crossover voting, or raiding, is slight, and that even though the numbers of "benevolent" crossover voters were significant, they would be determinative in only a small number of races.[9] 169 F. 3d, at 656–657. But a single election in which the party nominee is selected by nonparty members could be enough to destroy the party. In the 1860 presidential election, if opponents of the fledgling

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[9]The Ninth Circuit defined a crossover voter as one "who votes for a candidate of a party in which the voter is not registered. Thus, the cross-over voter could be an independent voter or one who is registered to a competing political party." 169 F. 3d 646, 656 (1999).

Republican Party had been able to cause its nomination of a pro-slavery candidate in place of Abraham Lincoln, the coalition of intraparty factions forming behind him likely would have disintegrated, endangering the party's survival and thwarting its effort to fill the vacuum left by the dissolution of the Whigs. See generally, 1 Political Parties & Elections in the United States: An Encyclopedia 398–408, 587 (L. Maisel ed. 1991). Ordinarily, however, being saddled with an unwanted, and possibly antithetical, nominee would not destroy the party but severely transform it. '[R]egulating the identity of the parties' leaders," we have said, 'may . . . color the parties' message and interfere with the parties' decisions as to the best means to promote that message." *Eu*, 489 U. S., at 231, n. 21.

In any event, the deleterious effects of Proposition 198 are not limited to altering the identity of the nominee. Even when the person favored by a majority of the party members prevails, he will have prevailed by taking somewhat different positions— and, should he be elected, will continue to take somewhat different positions in order to be *re*nominated. As respondents' own expert concluded, '[t]he policy positions of Members of Congress elected from blanket primary states are . . . more moderate, both in an absolute sense and relative to the other party, and so are more reflective of the preferences of the mass of voters at the center of the ideological spectrum." App. 109 (expert report of Elisabeth R. Gerber). It is unnecessary to cumulate evidence of this phenomenon, since, after all, the whole *purpose* of Proposition 198 was to favor nominees with 'moderate" positions. *Id.*, at 89. It encourages candidates— and officeholders who hope to be renominated— to curry favor with persons whose views are more 'centrist" than those of the party base. In effect, Proposition 198 has simply moved the general election one step earlier in the process, at the expense of the parties' ability to perform the 'basic function" of choosing their own leaders. *Kusper*, 414 U. S., at 58.

Nor can we accept the Court of Appeals' contention that the burden imposed by Proposition 198 is minor because petitioners are free to endorse and financially support the candidate of their choice in the primary. 169 F. 3d, at 659. The ability of the party leadership to endorse a candidate is simply no substitute for the party members' ability to choose their own nominee. In *Eu*, we recognized that party-leadership endorsements are not always effective—for instance, in New York's 1982 gubernatorial primary, Edward Koch, the Democratic Party leadership's choice, lost out to Mario Cuomo. 489 U. S., at 228, n. 18. One study has concluded, moreover, that even when the leadership-endorsed candidate has won, the effect of the endorsement has been negligible. *Ibid.* (citing App. in *Eu* v. *San Francisco County Democratic Central Comm.*, O. T. 1988, No. 87–1269, pp. 97–98). New York's was a closed primary; one would expect leadership endorsement to be even less effective in a blanket primary, where many of the voters are unconnected not only to the party leadership but even to the party itself. In any event, the ability of the party leadership to endorse a candidate does not assist the party rank and file, who may not themselves agree with the party leadership, but do not want the party's choice decided by outsiders.

We are similarly unconvinced by respondents' claim that the burden is not severe because Proposition 198 does not limit the parties from engaging fully in *other* traditional party behavior, such as ensuring orderly internal party governance, maintaining party discipline in the legislature, and conducting campaigns. The accuracy of this assertion is highly questionable, at least as to the first two activities. That party nominees will be equally observant of internal party procedures and equally respectful of party discipline when their nomination depends on the general electorate rather than on the party faithful seems

to us improbable. Respondents themselves suggest as much when they assert that the blanket primary system "'will lead to the election of more representative problem solvers' *who are less beholden to party officials.*'" Brief for Respondents 41 (emphasis added) (quoting 169 F. 3d, at 661). In the end, however, the effect of Proposition 198 on these other activities is beside the point. We have consistently refused to overlook an unconstitutional restriction upon some First Amendment activity simply because it leaves other First Amendment activity unimpaired. See, *e.g., Spence* v. *Washington,* 418 U. S. 405, 411, n. 4 (1974) *(per curiam); Kusper,* 414 U. S., at 58. There is simply no substitute for a party's selecting its own candidates.

In sum, Proposition 198 forces petitioners to adulterate their candidate-selection process— the 'basic function of a political party," *ibid.*— by opening it up to persons wholly unaffiliated with the party. Such forced association has the likely outcome— indeed, in this case the *intended* outcome— of changing the parties'message. We can think of no heavier burden on a political party's associational freedom. Proposition 198 is therefore unconstitutional unless it is narrowly tailored to serve a compelling state interest. See *Timmons*, 520 U. S., at 358 ('Regulations imposing severe burdens on [parties'] rights must be narrowly tailored and advance a compelling state interest'). It is to that question which we now turn.

III

Respondents proffer seven state interests they claim are compelling. Two of them— producing elected officials who better represent the electorate and expanding candidate debate beyond the scope of partisan concerns— are simply circumlocution for producing nominees and nominee positions other than those the parties would choose if left to their own devices. Indeed, respondents admit as much. For instance, in substantiating their interest in 'represe n-

tativeness," respondents point to the fact that "officials elected under blanket primaries stand closer to the median policy positions of their districts" than do those selected only by party members. Brief for Respondents 40. And in explaining their desire to increase debate, respondents claim that a blanket primary forces parties to reconsider long standing positions since it "compels [their] candidates to appeal to a larger segment of the electorate." *Id.*, at 46. Both of these supposed interests, therefore, reduce to nothing more than a stark repudiation of freedom of political association: Parties should not be free to select their own nominees because those nominees, and the positions taken by those nominees, will not be congenial to the majority.

We have recognized the inadmissibility of this sort of "interest" before. In *Hurley* v. *Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc.*, 515 U. S. 557 (1995), the South Boston Allied War Veterans Council refused to allow an organization of openly gay, lesbian, and bisexual persons (GLIB) to participate in the council's annual St. Patrick's Day parade. GLIB sued the council under Massachusetts' public accommodation law, claiming that the council impermissibly denied them access on account of their sexual orientation. After noting that parades are expressive endeavors, we rejected GLIB's contention that Massachusetts' public accommodation law overrode the council's right to choose the content of its own message. Applying the law in such circumstances, we held, made apparent that its "object [was] simply to require speakers to modify the content of their expression to whatever extent beneficiaries of the law choose to alter it with messages of their own. . . . [I]n the absence of some further, legitimate end, this object is merely to allow exactly what the general rule of speaker's autonomy forbids." *Id.*, at 578.

Respondents' third asserted compelling interest is that

the blanket primary is the only way to ensure that disenfranchised persons enjoy the right to an effective vote. By "disenfranchised," respondents do not mean those who cannot vote; they mean simply independents and members of the minority party in "safe" districts. These persons are disenfranchised, according to respondents, because under a closed primary they are unable to participate in what amounts to the determinative election— the majority party's primary; the only way to ensure they have an "effective" vote is to force the party to open its primary to them. This also appears to be nothing more than reformulation of an asserted state interest we have already rejected— recharacterizing nonparty members' keen desire to participate in selection of the party's nominee as "disenfranchisement" if that desire is not fulfilled. We have said, however, that a "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." *Tashjian*, 479 U. S., at 215–216, n. 6 (citing *Rosario* v. *Rockefeller*, 410 U. S. 752 (1973), and *Nader* v. *Schaffer*, 417 F. Supp. 837 (Conn.), summarily aff'd, 429 U. S. 989 (1976)). The voter's desire to participate does not become more weighty simply because the State supports it. Moreover, even if it were accurate to describe the plight of the non-party-member in a safe district as "disenfranchisement," Proposition 198 is not needed to solve the problem. The voter who feels himself disenfranchised should simply join the party. That may put him to a hard choice, but it is not a state-imposed restriction upon *his* freedom of association, whereas compelling party members to accept his selection of their nominee *is* a state-imposed restriction upon theirs.

Respondents' remaining four asserted state interests— promoting fairness, affording voters greater choice, increasing voter participation, and protecting privacy— are not, like the others, automatically out of the running; but

neither are they, *in the circumstances of this case*, compelling. That determination is not to be made in the abstract, by asking whether fairness, privacy, etc., are highly significant values; but rather by asking whether the *aspect* of fairness, privacy, etc., addressed by the law at issue is highly significant. And for all four of these asserted interests, we find it not to be.

The aspect of fairness addressed by Proposition 198 is presumably the supposed inequity of not permitting nonparty members in "safe" districts to determine the party nominee. If that is unfair at all (rather than merely a consequence of the eminently democratic principle that—except where constitutional imperatives intervene— the majority rules), it seems to us less unfair than permitting nonparty members to hijack the party. As for affording voters greater choice, it is obvious that the net effect of this scheme— indeed, its avowed purpose— is to *reduce* the scope of choice, by assuring a range of candidates who are all more "centrist." This may well be described as broadening the range of choices *favored by the majority*— but that is hardly a compelling state interest, if indeed it is even a legitimate one. The interest in increasing voter participation is just a variation on the same theme (more choices favored by the majority will produce more voters), and suffers from the same defect. As for the protection of privacy: The specific privacy interest at issue is not the confidentiality of medical records or personal finances, but confidentiality of one's party affiliation. Even if (as seems unlikely) a scheme for administering a closed primary could not be devised in which the voter's declaration of party affiliation would not be public information, we do not think that the State's interest in assuring the privacy of this piece of information in all cases can conceivably be considered a "compelling" one. If such information were generally so sacrosanct, federal statutes would not require a declaration of party affiliation as a condition of appoint-

ment to certain offices. See, *e.g.*, 47 U. S. C. §154(b)(5) ("[M]aximum number of commissioners [of the Federal Communications Commission] who may be members of the same political party shall be a number equal to the least number of commissioners which constitutes a majority of the full membership of the Commission"); 47 U. S. C. §396(c)(1) (1994 ed., Supp. III) (no more than five members of Board of Directors of Corporation for Public Broadcasting may be of same party); 42 U. S. C. §2000e–4(a) (no more than three members of Equal Employment Opportunity Commission may be of same party).

Finally, we may observe that even if all these state interests were compelling ones, Proposition 198 is not a narrowly tailored means of furthering them. Respondents could protect them all by resorting to a *nonpartisan* blanket primary. Generally speaking, under such a system, the State determines what qualifications it requires for a candidate to have a place on the primary ballot— which may include nomination by established parties and voter-petition requirements for independent candidates. Each voter, regardless of party affiliation, may then vote for any candidate, and the top two vote getters (or however many the State prescribes) then move on to the general election. This system has all the characteristics of the partisan blanket primary, save the constitutionally crucial one: Primary voters are not choosing a party's nominee. Under a nonpartisan blanket primary, a State may ensure more choice, greater participation, increased "privacy," and a sense of "fairness"— all without severely burdening a political party's First Amendment right of association.

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Respondents' legitimate state interests and petitioners' First Amendment rights are not inherently incompatible. To the extent they are in this case, the State of California has made them so by forcing political parties to associate

with those who do not share their beliefs. And it has done this at the "crucial juncture" at which party members traditionally find their collective voice and select their spokesman. *Tashjian*, 479 U. S., at 216. The burden Proposition 198 places on petitioners' rights of political association is both severe and unnecessary. The judgment for the Court of Appeals for the Ninth Circuit is reversed.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 99–401

CALIFORNIA DEMOCRATIC PARTY, ET AL., PETITIONERS *v.* BILL JONES, SECRETARY OF STATE OF CALIFORNIA, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[June 26, 2000]

JUSTICE KENNEDY, concurring.

Proposition 198, the product of a statewide popular initiative, is a strong and recent expression of the will of California's electorate. It is designed, in part, to further the object of widening the base of voter participation in California elections. Until a few weeks or even days before an election, many voters pay little attention to campaigns and even less to the details of party politics. Fewer still participate in the direction and control of party affairs, for most voters consider the internal dynamics of party organization remote, partisan, and of slight interest. Under these conditions voters tend to become disinterested, and so they refrain from voting altogether. To correct this, California seeks to make primary voting more responsive to the views and preferences of the electorate as a whole. The results of California's blanket primary system may demonstrate the efficacy of its solution, for there appears to have been a substantial increase in voter interest and voter participation. See Brief for Respondents 45–46.

Encouraging citizens to vote is a legitimate, indeed essential, state objective; for the constitutional order must be preserved by a strong, participatory democratic process. In short, there is much to be said in favor of California's

law; and I might find this to be a close case if it were simply a way to make elections more fair and open or addressed matters purely of party structure.

The true purpose of this law, however, is to force a political party to accept a candidate it may not want and, by so doing, to change the party's doctrinal position on major issues. *Ante*, at 14. From the outset the State has been fair and candid to admit that doctrinal change is the intended operation and effect of its law. See, *e.g.*, Brief for Respondents 40, 46. It may be that organized parties, controlled— in fact or perception— by activists seeking to promote their self-interest rather than enhance the party's long term support, are shortsighted and insensitive to the views of even their own members. A political party might be better served by allowing blanket primaries as a means of nominating candidates with broader appeal. Under the First Amendment's guarantee of speech through free association, however, this is an issue for the party to resolve, not for the State. Political parties advance a shared political belief, but to do so they often must speak through their candidates. When the State seeks to direct changes in a political party's philosophy by forcing upon it unwanted candidates and wresting the choice between moderation and partisanship away from the party itself, the State's incursion on the party's associational freedom is subject to careful scrutiny under the First Amendment. For these reasons I agree with the Court's opinion.

I add this separate concurrence to say that Proposition 198 is doubtful for a further reason. In justification of its statute California tells us a political party has the means at hand to protect its associational freedoms. The party, California contends, can simply use its funds and resources to support the candidate of its choice, thus defending its doctrinal positions by advising the voters of its own preference. To begin with, this does not meet the parties' First Amendment objection, as the Court well

explains. *Ante*, at 13. The important additional point, however, is that, by reason of the Court's denial of First Amendment protections to a political party's spending of its own funds and resources in cooperation with its preferred candidate, see *Colorado Republican Federal Campaign Comm.* v. *Federal Election Comm'n*, 518 U. S. 604 (1996), the Federal Government or the State has the power to prevent the party from using the very remedy California now offers up to defend its law.

Federal campaign finance laws place strict limits on the manner and amount of speech parties may undertake in aid of candidates. Of particular relevance are limits on coordinated party expenditures, which the Federal Election Campaign Act of 1971 deems to be contributions subject to specific monetary restrictions. See 90 Stat. 488, 2 U. S. C. §441a(a)(7)(B)(i) ("[E]xpenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents, shall be considered to be a contribution to such candidate"). Though we invalidated limits on independent party expenditures in *Colorado Republican*, the principal opinion did not question federal limits placed on coordinated expenditures. See 518 U. S., at 624–625 (opinion of BREYER, J.). Two Justices in dissent said that "all money spent by a political party to secure the election of its candidate" would constitute coordinated expenditures and would have upheld the statute as applied in that case. See *id.*, at 648 (opinion of STEVENS, J.). Thus, five Justices of the Court subscribe to the position that Congress or a State may limit the amount a political party spends in direct collaboration with its preferred candidate for elected office.

In my view, as stated in both *Colorado Republican*, *supra*, at 626 (opinion concurring in judgment and dissenting in part), and in *Nixon* v. *Shrink Missouri Government PAC*, 528 U. S. ___, ___ (2000) (dissenting opinion),

these recent cases deprive political parties of their First Amendment rights. Our constitutional tradition is one in which political parties and their candidates make common cause in the exercise of political speech, which is subject to First Amendment protection. There is a practical identity of interests between parties and their candidates during an election. Our unfortunate decisions remit the political party to use of indirect or covert speech to support its preferred candidate, hardly a result consistent with free thought and expression. It is a perversion of the First Amendment to force a political party to warp honest, straightforward speech, exemplified by its vigorous and open support of its favored candidate, into the covert speech of soft money and issue advocacy so that it may escape burdensome spending restrictions. In a regime where campaign spending cannot otherwise be limited— the structure this Court created on its own in *Buckley* v. *Valeo,* 424 U. S. 1 (1976) *(per curiam)*—restricting the amounts a political party may spend in collaboration with its own candidate is a violation of the political party's First Amendment rights.

Were the views of those who would uphold both California's blanket primary system and limitations on coordinated party expenditures to become prevailing law, the State could control political parties at two vital points in the election process. First, it could mandate a blanket primary to weaken the party's ability to defend and maintain its doctrinal positions by allowing nonparty members to vote in the primary. Second, it could impose severe restrictions on the amount of funds and resources the party could spend in efforts to counteract the State's doctrinal intervention. In other words, the First Amendment injury done by the Court's ruling in *Colorado Republican* would be compounded were California to prevail in the instant case.

When the State seeks to regulate a political party's

nomination process as a means to shape and control political doctrine and the scope of political choice, the First Amendment gives substantial protection to the party from the manipulation. In a free society the State is directed by political doctrine, not the other way around. With these observations, I join the opinion of the Court.

SUPREME COURT OF THE UNITED STATES

No. 99–401

CALIFORNIA DEMOCRATIC PARTY, ET AL., PETITIONERS *v.* BILL JONES, SECRETARY OF STATE OF CALIFORNIA, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[June 26, 2000]

JUSTICE STEVENS, with whom JUSTICE GINSBURG joins as to Part I, dissenting.

Today the Court construes the First Amendment as a limitation on a State's power to broaden voter participation in elections conducted by the State. The Court's holding is novel and, in my judgment, plainly wrong. I am convinced that California's adoption of a blanket primary pursuant to Proposition 198 does not violate the First Amendment, and that its use in primary elections for state offices is therefore valid. The application of Proposition 198 to elections for United States Senators and Representatives, however, raises a more difficult question under the Elections Clause of the United States Constitution, Art. I, §4, cl. 1. I shall first explain my disagreement with the Court's resolution of the First Amendment issue and then comment on the Elections Clause issue.

I

A State's power to determine how its officials are to be elected is a quintessential attribute of sovereignty. This case is about the State of California's power to decide who may vote in an election conducted, and paid for, by the

State.[1] The United States Constitution imposes constraints on the States' power to limit access to the polls, but we have never before held or suggested that it imposes any constraints on States' power to authorize additional citizens to participate in any state election for a state office. In my view, principles of federalism require us to respect the policy choice made by the State's voters in approving Proposition 198.

The blanket primary system instituted by Proposition 198 does not abridge 'the ability of citizens to band together in promoting among the electorate candidates who espouse their political views." *Ante,* at 6.[2] The Court's contrary conclusion rests on the premise that a political

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[1]See *Tashjian* v. *Republican Party of Conn.,* 479 U. S. 208, 217 (1986) (observing that the United States Constitution grants States a broad power to prescribe the manner of elections for certain federal offices, which power is matched by state control over the election process for state offices). In California, the Secretary of State administers the provisions of the State Elections Code and has some supervisory authority over county election officers. Cal. Govt. Code Ann. §12172.5 (West 1992 and Supp. 2000). Primary and other elections are administered and paid for primarily by county governments. Cal. Elec. Code Ann. §§13000–13001 (West 1996 and Supp. 2000). Anecdotal evidence suggests that each statewide election in California (whether primary or general) costs governmental units between $45 million and $50 million.

[2]Prominent members of the founding generation would have disagreed with the Court's suggestion that representative democracy is 'unimaginable" without political parties, *ante,* at 6, though their anti-party thought ultimately proved to be inconsistent with their partisan actions. See, *e.g.,* R. Hofstadter, The Idea of a Party System 2–3 (1969) (noting that 'the creators of the first American party system on both sides, Federalists and Republicans, were men who looked upon parties as sores on the body politic'). At best, some members of that generation viewed parties as an unavoidable product of a free state that were an evil to be endured, though most viewed them as an evil to be abolished or suppressed. *Id.,* at 16–17, 24. Indeed, parties ranked high on the list of evils that the Constitution was designed to check. *Id.,* at 53; see The Federalist No. 10 (J. Madison).

party's freedom of expressive association includes a 'right not to associate," which in turn includes a right to exclude voters unaffiliated with the party from participating in the selection of that party's nominee in a primary election. *Ante*, at 6–7. In drawing this conclusion, however, the Court blurs two distinctions that are critical: (1) the distinction between a private organization's right to define itself and its messages, on the one hand, and the State's right to define the obligations of citizens and organizations performing public functions, on the other; and (2) the distinction between laws that abridge participation in the political process and those that encourage such participation.

When a political party defines the organization and composition of its governing units, when it decides what candidates to endorse, and when it decides whether and how to communicate those endorsements to the public, it is engaged in the kind of private expressive associational activity that the First Amendment protects. *Timmons* v. *Twin Cities Area New Party,* 520 U. S. 351, 354–355, n. 4, 359 (1997) (recognizing party's right to select its own standard-bearer in context of minor party that selected its candidate through means other than a primary); *id.,* at 371 (STEVENS, J., dissenting); *Eu* v. *San Francisco County Democratic Central Comm.,* 489 U. S. 214 (1989); *Democratic Party of United States* v. *Wisconsin ex rel. La Follette,* 450 U. S. 107, 124 (1981) ("A political party's choice among the various ways of determining the makeup of a State's delegation to the party's national convention is protected by the Constitution"); *Cousins* v. *Wigoda,* 419 U. S. 477, 491 (1975) ("*Illinois'* interest in protecting the integrity of its electoral process cannot be deemed compelling in the context of the selection of delegates to the *National* Party Con-

vention" (emphasis added)).[3] A political party could, if a majority of its members chose to do so, adopt a platform advocating white supremacy and opposing the election of any non-Caucasians. Indeed, it could decide to use its funds and oratorical skills to support only those candidates who were loyal to its racist views. Moreover, if a State permitted

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[3]The Court's disagreement with this interpretation of *La Follette* is specious. *Ante*, at 8–9, n. 7 (claiming that state-imposed burden actually at issue in *La Follette* was intrusion of those with adverse political principles into party's primary). A more accurate characterization of the nature of *La Follette*'s reasoning is provided by Justice Powell: 'In analyzing the burden imposed on associational freedoms in this case, the Court treats the Wisconsin law as the equivalent of one regulating delegate selection, and, relying on *Cousins* v. *Wigoda*, 419 U. S. 477 (1975), concludes that any interference with the National Party's accepted delegate-selection procedures impinges on constitutionally protected rights." *Democratic Party of United States* v. *Wisconsin ex rel. La Follette*, 450 U. S. 107, 128 (1981) (dissenting opinion). Indeed, the *La Follette* Court went out of its way to characterize the Wisconsin law in this manner in order to avoid casting doubt on the constitutionality of open primaries. *Id.*, at 121 (majority opinion) (noting that the issue was not whether an open primary was constitutional but 'whether the State may compel the National Party to seat a delegation chosen in a way that violates the rules of the Party'). The fact that the *La Follette* Court also characterizes the Wisconsin law at one point as a law 'impos[ing] . . . voting requirements' on delegates, *id.*, at 125, does not alter the conclusion that *La Follette* is a case about state regulation of internal party processes, not about regulation of primary elections. State-mandated intrusion upon either delegate selection or delegate voting would surely implicate the affected party's First Amendment right to define the organization and composition of its governing units, but it is clear that California intrudes upon neither in this case. *Ante*, at 2–3, n. 2.

La Follette and *Cousins* also stand for the proposition that a State's interest in regulating at the *national* level the types of party activities mentioned in the text is outweighed by the burden that state regulation would impose on the parties' associational rights. See *Bellotti* v. *Connolly*, 460 U. S. 1057, 1062–1063, and n. 3 (1983) (STEVENS, J., dissenting) (quoted in part *ante*, at 9, n. 7). In this case, however, California does not seek to regulate such activities at all, much less to do so at the national level.

its political parties to select their candidates through conventions or caucuses, a racist party would also be free to select only candidates who would adhere to the party line.

As District Judge Levi correctly observed in an opinion adopted by the Ninth Circuit, however, the associational rights of political parties are neither absolute nor as comprehensive as the rights enjoyed by wholly private associations. 169 F. 3d 646, 654–655 (1999); cf. *Timmons*, 520 U. S., at 360 (concluding that while regulation of endorsements implicates political parties' internal affairs and core associational activities, regulation of access to election ballot does not); *La Follette*, 450 U. S., at 120–121 (noting that it 'may well be correct" to conclude that party associational rights are not unconstitutionally infringed by state open primary); *id.*, at 131–132 (Powell, J., dissenting) (concluding that associational rights of major political parties are limited by parties'lack of defined ideological orientation and political mission). I think it clear— though the point has never been decided by this Court— 'that a State may require parties to use the primary format for selecting their nominees." *Ante*, at 4. The reason a State may impose this significant restriction on a party's ass o-ciational freedoms is that both the general election and the primary are quintessential forms of state action.[4] It is because the primary is state action that an organization— whether it calls itself a political party or just a 'Jaybird" association— may not deny non-Caucasians the right to participate in the selection of its nominees. *Terry* v. *Adams,* 345 U. S. 461 (1953); *Smith* v. *Allwright,* 321 U. S.

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[4]Indeed, the primary serves an essential public function given that, '[a]s a practical matter, the ultimate choice of the mass of voters is predetermined when the nominations [by the major political parties] have been made." *Morse* v. *Republican Party of Va.*, 517 U. S. 186, 205–206 (1996) (opinion of STEVENS, J.); see also *United States* v. *Classic,* 313 U. S. 299, 319 (1941).

649, 663–664 (1944). The Court is quite right in stating that those cases "do not stand for the proposition that party affairs are [*wholly*] public affairs, free of First Amendment protections." *Ante*, at 6. They do, however, stand for the proposition that primary elections, unlike most "party affairs," are state action. [5] The protections that the First Amendment affords to the "internal processes" of a political party, *ibid.*, do not encompass a right to exclude nonmembers from voting in a state-required, state-financed primary election.

The so-called "right not to associate" that the Court relies upon, then, is simply inapplicable to participation in a state election. A political party, like any other association, may refuse to allow non-members to participate in the party's decisions when it is conducting its own affairs; [6] California's blanket primary system does not infringe this principle. *Ante*, at 2–3, n. 2. But an election, unlike a convention or caucus, is a public affair. Although it is true that we have extended First Amendment protection to a party's right to invite independents to participate in its primaries, *Tashjian* v. *Republican Party of Conn.*, 479

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[5] Contrary to what the Court seems to think, I do not rely on *Terry* and *Allwright* as the basis for an argument that state accommodation of the parties' desire to exclude nonmembers from primaries would necessarily violate an independent constitutional proscription such as the Equal Protection Clause (though I do not rule that out). Cf. *ante*, at 6, n. 5. Rather, I cite them because our recognition that constitutional proscriptions apply to primaries illustrates that primaries— as integral parts of the election process by which the people select their government— are state affairs, not internal party affairs.

[6] "The State asserts a compelling interest in preserving the overall integrity of the electoral process, providing secrecy of the ballot, increasing voter participation in primaries, and preventing harassment of voters. But all of those interests go to the conduct of the Presidential preference primary— not to the imposition of voting requirements upon those who, in a separate process, are eventually selected as delegates." *La Follette*, 450 U. S., at 124–125.

U. S. 208 (1986), neither that case nor any other has held or suggested that the "right not to associate" imposes a limit on the State's power to open up its primary elections to all voters eligible to vote in a general election. In my view, while state rules abridging participation in its elections should be closely scrutinized,[7] the First Amendment does not inhibit the State from acting to broaden voter access to state-run, state-financed elections. When a State acts not to limit democratic participation but to expand the ability of individuals to participate in the democratic process, it is acting not as a foe of the First Amendment but as a friend and ally.

Although I would not endorse it, I could at least understand a constitutional rule that protected a party's associational rights by allowing it to refuse to select its candidates through state-regulated primary elections. See *Marchioro* v. *Chaney,* 442 U. S. 191, 199 (1979) ("There can be no complaint that [a] party's [First Amendment] right to govern itself has been substantially burdened by [state regulation] when the source of the complaint is the party's own decision to confer critical authority on the [party governing unit being regulated]"); cf. *Tashjian,* 479 U. S., at 237 (SCALIA, J., dissenting) ("It is beyond my understanding why the Republican Party's delegation of its democratic choice [of candidates] to a Republican Convention [rather than a primary] can be proscribed [by the State], but its delegation of that choice to nonmembers of the Party cannot"). A meaningful "right not to associate," if there is such a right in the context of limiting an electorate, ought to enable a party to insist on choosing its nominees at a convention or caucus where non-members could be excluded. In

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[7] See *Timmons* v. *Twin Cities Area New Party,* 520 U. S. 351, 370 (1997) (STEVENS, J., dissenting) (general election ballot access restriction); *Bullock* v. *Carter,* 405 U. S. 134 (1972) (primary election ballot access restriction).

the real world, however, anyone can 'join" a political party merely by asking for the appropriate ballot at the appropriate time or (at most) by registering within a state-defined reasonable period of time before an election; neither past voting history nor the voter's race, religion, or gender can provide a basis for the party's refusal to 'associate" with an unwelcome new member. See 169 F. 3d, at 655, and n. 20. There is an obvious mismatch between a supposed constitutional right 'hot to associate" and a rule that turns on nothing more than the state-defined timing of the new associate's application for membership. See *La Follette*, 450 U. S., at 133 (Powell, J., dissenting) ("As Party affiliation becomes . . . easy for a voter to change [shortly before a particular primary election] in order to participate in [that] election, the difference between open and closed primaries loses its practical significance").

The Court's reliance on a political party's 'right not to associate" as a basis for limiting a State's power to conduct primary elections will inevitably require it either to draw unprincipled distinctions among various primary configurations or to alter voting practices throughout the Nation in fundamental ways. Assuming that a registered Democrat or independent who wants to vote in the Republican gubernatorial primary can do so merely by asking for a Republican ballot, the Republican Party's constitutional right 'hot to associate" is pretty feeble if the only cost it imposes on that Democrat or independent is a loss of his right to vote for non-Republican candidates for other offices. Cf. *ante*, at 10, n. 8. Subtle distinctions of this minor import are grist for state legislatures, but they demean the process of constitutional adjudication. Or, as JUSTICE SCALIA put the matter in his dissenting opinion in *Tashjian:*

> 'The . . . voter who, while steadfastly refusing to register as a Republican, casts a vote in [a non-closed] 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." 479 U. S., at 235.

It is noteworthy that the bylaws of each of the political parties that are petitioners in this case unequivocally state that participation in partisan primary elections is to be limited to registered members of the party only. App. 7, 15, 16, 18. Under the Court's reasoning, it would seem to follow that conducting anything but a closed partisan primary in the face of such bylaws would necessarily burden the parties'" freedom to identify the people who constitute the association.'" *Ante*, at 6–7. Given that open primaries are supported by essentially the same state interests that the Court disparages today and are not as "harrow" as nonpartisan primaries, *ante*, at 14–18, there is surely a danger that open primaries will fare no better against a First Amendment challenge than blanket primaries have.

By the District Court's count, 3 States presently have blanket primaries, while an additional 21 States have open primaries and 8 States have semi-closed primaries in which independents may participate. 169 F. 3d, at 650. This Court's willingness to invalidate the primary schemes of 3 States and cast serious constitutional doubt on the schemes of 29 others at the parties' behest is, as the District Court rightly observed, "an extraordinary intrusion into the complex and changing election laws of the States [that] . . . remove[s] from the American political system a method for candidate selection that many States consider beneficial and which in the uncertain future could take on new appeal and importance." *Id.*, at 654.[8]

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[8]When coupled with our decision in *Tashjian* that a party may re-

In my view, the First Amendment does not mandate that a putatively private association be granted the power to dictate the organizational structure of state-run, state-financed primary elections. It is not this Court's constitutional function to choose between the competing visions of what makes democracy work— party autonomy and discipline versus progressive inclusion of the entire electorate in the process of selecting their public officials— that are held by the litigants in this case. *O'Callaghan* v. *State*, 914 P. 2d 1250, 1263 (Alaska 1996); see also *Tashjian*, 479 U. S., at 222–223; *Luther* v. *Borden*, 7 How. 1, 40–42 (1849). That choice belongs to the people. *U. S. Term Limits, Inc.* v. *Thornton*, 514 U. S. 779, 795 (1995).

Even if the "right not to associate" did authorize the Court to review the State's policy choice, its evaluation of the competing interests at stake is seriously flawed. For example, the Court's conclusion that a blanket primary severely burdens the parties' associational interests in selecting their standard bearers does not appear to be borne out by experience with blanket primaries in Alaska and Washington. See, *e.g.*, 169 F. 3d, at 656–659, and n. 23. Moreover, that conclusion rests substantially upon the

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quire a State to open up a closed primary, this intrusion has even broader implications. It is arguable that, under the Court's reasoning combined with *Tashjian*, the only nominating options open for the States to choose without party consent are: (1) not to have primary elections, or (2) to have what the Court calls a "nonpartisan primary"— a system presently used in Louisiana— in which candidates previously nominated by the various political parties and independent candidates compete. *Ante*, at 18. These two options are the same in practice because the latter is not actually a "primary" in the common, partisan sense of that term at all. Rather, it is a general election with a runoff that has few of the benefits of democratizing the party nominating process that led the Court to declare the State's ability to require nomination by primary "too plain for argument." *Ante*, at 4; see *Lightfoot* v. *Eu*, 964 F. 2d 865, 872–873 (CA9 1992) (explaining state interest in requiring direct partisan primary).

Court's claim that '[t]he evidence before the District Court" disclosed a 'clear and present danger" that a party's nominee may be determined by adherents of an opposing party. *Ante*, at 10. This hyperbole is based upon the Court's liberal view of its appellate role, not upon the record and the District Court's factual findings. Following a bench trial and the receipt of expert witness reports, the District Court found that 'there is little evidence that raiding [by members of an opposing party] will be a factor under the blanket primary. On this point there is almost unanimity among the political scientists who were called as experts by the plaintiffs and defendants." 169 F. 3d, at 656. While the Court is entitled to test this finding by making an independent examination of the record, the evidence it cites— including the results of the June 1998 primaries, *ante*, at 10–11, which should not be considered because they are not in the record— does not come close to demonstrating that the District Court's factual finding is clearly erroneous. *Bose Corp.* v. *Consumers Union of United States, Inc.*, 466 U. S. 485, 498–501 (1984).

As to the Court's concern that benevolent crossover voting impinges on party associational interests, *ante*, at 11, the District Court found that experience with a blanket primary in Washington and other evidence 'suggest[ed] that there will be particular elections in which there will be a substantial amount of cross-over voting . . . although the cross-over vote will rarely change the outcome of any election and in the typical contest will not be at significantly higher levels than in open primary states." 169 F. 3d, at 657. In my view, an empirically debatable assumption about the relative number and effect of likely crossover voters in a blanket primary, as opposed to an open primary or a nominally closed primary with only a brief pre-registration requirement, is too thin a reed to support a credible First Amendment distinction. See *Tashjian*, 479 U. S., at 219 (rejecting State's interest in

keeping primary closed to curtail benevolent crossover voting by independents given that independents could easily cross over even under closed primary by simply registering as party members).

On the other side of the balance, I would rank as "substantial, indeed compelling," just as the District Court did, California's interest in fostering democratic government by "[i]ncreasing the representativeness of elected officials, giving voters greater choice, and increasing voter turnout and participation in [electoral processes]." 169 F. 3d, at 662;[9] cf. *Timmons*, 520 U. S., at 364 ("[W]e [do not] require elaborate, empirical verification of the weightiness of the State's asserted justifications"). The Court's glib rejection of the State's interest in increasing voter participation, *ante*, at 17, is particularly regrettable. In an era of dramatically declining voter participation, States should be free to experiment with reforms designed to make the democratic process more robust by involving the entire electorate in the process of selecting those who will serve as government officials. Opening the nominating process to all and encouraging voters to participate in any election that draws their interest is one obvious means of achieving this goal. See Brief for Respondents 46 (noting that study presented to District Court showed higher voter turnout levels in blanket primary states than in open or closed primary states); *ante*, at 1 (KENNEDY, J., concur-

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[9]In his concurrence, JUSTICE KENNEDY argues that the State has no valid interest in changing party doctrine through an open primary, and suggests that the State's assertion of this interest somehow irrevocably taints its blanket primary system. *Ante*, at 2. The *Timmons* balancing test relied upon by the Court, *ante*, at 14, however, does not support that analysis. *Timmons* and our myriad other constitutional cases that weigh burdens against state interests merely ask whether *a* state interest justifies the burden that the State is imposing on a constitutional right; the fact that one of the asserted state interests may not be valid or compelling under the circumstances does not end the analysis.

ring). I would also give some weight to the First Amendment associational interests of nonmembers of a party seeking to participate in the primary process,[10] to the fundamental right of such nonmembers to cast a meaningful vote for the candidate of their choice, *Burdick* v. *Takushi,* 504 U. S. 428, 445 (1992) (KENNEDY, J., dissenting), and to the preference of almost 60% of California voters— including a majority of registered Democrats and Republicans— for a blanket primary. 169 F.3d, at 649; see *Tashjian*, 479 U. S., at 236 (SCALIA, J., dissenting) (preferring information on whether majority of rank-and-file party members support a particular proposition than whether state party convention does so). In my view, a State is unquestionably entitled to rely on this combination of interests in deciding who may vote in a primary election conducted by the State. It is indeed strange to find that the First Amendment forecloses this decision.

II

The Elections Clause of the United States Constitution, Art. I, §4, cl. 1, provides that '[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the *Legislature* thereof" (emphasis added). This broad constitutional grant of power to state legislatures is 'matched by state control over the election process for state offices." *Tashjian,* 479 U. S., at 217. For the reasons given in Part I, *supra*, I believe it would be a proper exercise of these powers and would not violate the First Amendment for the

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[10]See *La Follette,* 450 U. S., at 135–136 (Powell, J., dissenting); cf. *Tashjian,* 479 U. S., at 215–216, n. 6 (discussing cases such as *Rosario* v. *Rockefeller,* 410 U. S. 752 (1973), in which nonmembers' associational interests were overborne by state interests that coincided with party interests); *Bellotti* v. *Connolly*, 460 U. S., at 1062 (STEVENS, J., dissenting) (discussing associational rights of voters).

California Legislature to adopt a blanket primary system. This particular blanket primary system, however, was adopted by popular initiative. Although this distinction is not relevant with respect to elections for state offices, it is unclear whether a state election system not adopted by the legislature is constitutional insofar as it applies to the manner of electing United States Senators and Representatives.

The California Constitution empowers the voters of the State to propose statutes and to adopt or reject them. Art. 2, §8. If approved by a majority vote, such "initiative statutes" generally take effect immediately and may not be amended or repealed by the California Legislature unless the voters consent. Art. 2, §10. The amendments to the California Election Code that changed the state primary from a closed system to the blanket system presently at issue were the result of the voters' March 1996 adoption of Proposition 198, an initiative statute.

The text of the Elections Clause suggests that such an initiative system, in which popular choices regarding the manner of state elections are unreviewable by independent legislative action, may not be a valid method of exercising the power that the Clause vests in state "Legislature[s]." It could be argued that this reasoning does not apply in California, as the California Constitution further provides that "[t]he legislative power of this State is vested in the California Legislature . . ., but the people reserve to themselves the powers of initiative and referendum." Art. 4, §1. The vicissitudes of state nomenclature, however, do not necessarily control the meaning of the Federal Constitution. Moreover, the United States House of Representatives has determined in an analogous context that the Elections Clause's specific reference to "the Legislature" is not so broad as to encompass the general

'legislative power of the State." [11] Under that view, California's classification of voter-approved initiatives as an exercise of legislative power would not render such initiatives the act of the California Legislature within the meaning of the Elections Clause. Arguably, therefore, California's blanket primary system for electing United States Senators and Representatives is invalid. Because the point was neither raised by the parties nor discussed by the courts below, I reserve judgment on it. I believe, however, that the importance of the point merits further attention.

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For the reasons stated in Part I of this opinion, as well as those stated more fully in the District Court's excellent opinion, I respectfully dissent.

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[11] *Baldwin* v. *Trowbridge*, 2 Bartlett Contested Election Cases, H. R. Misc. Doc. No. 152, 41st Cong., 2d Sess., 46, 47 (1866) ("[Under the Elections Clause,] power is conferred upon the *legislature*. But what is meant by the legislature?' Does it mean the legislative power of the State, which would include a convention authorized to prescribe fundamental law; or does it mean the legislature *eo nomine*, as known in the political history of the country? The [C]ommittee [of Elections for the U. S. House of Representatives] have adopted the latter construction").

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

CALIFORNIA DEMOCRATIC PARTY ET AL. *v.* JONES, SECRETARY OF STATE OF CALIFORNIA, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 99–401. Argued April 24, 2000— Decided June 26, 2000

One way that candidates for public office in California gain access to the general ballot is by winning a qualified political party's primary. In 1996, Proposition 198 changed the State's partisan primary from a closed primary, in which only a political party's members can vote on its nominees, to a blanket primary, in which each voter's ballot lists every candidate regardless of party affiliation and allows the voter to choose freely among them. The candidate of each party who wins the most votes is that party's nominee for the general election. Each of petitioner political parties prohibits nonmembers from voting in the party's primary. They filed suit against respondent state official, alleging, *inter alia,* that the blanket primary violated their First Amendment rights of association. Respondent Californians for an Open Primary intervened. The District Court held that the primary's burden on petitioners' associational rights was not severe and was justified by substantial state interests. The Ninth Circuit affirmed.

Held: California's blanket primary violates a political party's First Amendment right of association. Pp. 4–19.

(a) States play a major role in structuring and monitoring the primary election process, but the processes by which political parties select their nominees are not wholly public affairs that States may regulate freely. To the contrary, States must act within limits imposed by the Constitution when regulating parties' internal processes. See, *e.g., Eu* v. *San Francisco County Democratic Central Comm.,* 489 U. S. 214. Respondents misplace their reliance on *Smith* v. *Allwright,* 321 U. S. 649, and *Terry* v. *Adams,* 345 U. S. 461, which held not that party affairs are public affairs, free of First Amendment protections, see, *e.g., Tashjian* v. *Republican Party of Conn.,* 479 U. S.

Syllabus

208, but only that, when a State prescribes an election process that gives a special role to political parties, the parties' discriminatory action becomes state action under the Fifteenth Amendment. This Nation has a tradition of political associations in which citizens band together to promote candidates who espouse their political views. The First Amendment protects the freedom to join together to further common political beliefs, *id.*, at 214–215, which presupposes the freedom to identify those who constitute the association, and to limit the association to those people, *Democratic Party of United States* v. *Wisconsin ex rel. La Follette,* 450 U. S. 107, 122. In no area is the political association's right to exclude more important than in its candidate-selection process. That process often determines the party's positions on significant public policy issues, and it is the nominee who is the party's ambassador charged with winning the general electorate over to its views. The First Amendment reserves a special place, and accords a special protection, for that process, *Eu, supra,* at 224, because the moment of choosing the party's nominee is the crucial juncture at which the appeal to common principles may be translated into concerted action, and hence to political power, *Tashjian, supra,* at 216. California's blanket primary violates these principles. Proposition 198 forces petitioners to adulterate their candidate-selection process— a political party's basic function— by opening it up to persons wholly unaffiliated with the party, who may have different views from the party. Such forced association has the likely outcome— indeed, it is Proposition 198's intended outcome— of changing the parties' message. Because there is no heavier burden on a political party's associational freedom, Proposition 198 is unconstitutional unless it is narrowly tailored to serve a compelling state interest. See *Timmons* v. *Twin Cities Area New Party,* 520 U. S. 351, 358. Pp. 4–14.

(b) None of respondents' seven proffered state interests— producing elected officials who better represent the electorate, expanding candidate debate beyond the scope of partisan concerns, ensuring that disenfranchised persons enjoy the right to an effective vote, promoting fairness, affording voters greater choice, increasing voter participation, and protecting privacy— is a compelling interest justifying California's intrusion into the parties' associational rights. Pp. 14–18.

169 F. 3d 646, reversed.

SCALIA, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O'CONNOR, KENNEDY, SOUTER, THOMAS, and BREYER, JJ., joined. KENNEDY, J., filed a concurring opinion. STEVENS, J., filed a dissenting opinion, in which GINSBURG, J., joined as to Part I.