SB

127

SENATOR KIM ELTON

Memo

To: Senator Therriault

From: Senator Elton

Date: March 9, 2001

Re: SB127: Optional Blanket Primary

I respectfully request that you schedule a committee hearing on SB127. Attached you will find a copy of the bill, along with the sponsor statement.

My staff will provide additional materials for the bill packet.

ALASKA SENATE
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SENATOR KIM ELTON

Sponsor Statement

Senate Bill 127

"A Act providing for a blanket primary system, and permitting political parties to select their nominees by alternative means; and providing for an effective date."

The blanket primary has been used in Alaska since 1947 with only a few exceptions. With 51 percent of Alaska voters not registered with a major political party, Alaska is full of independent voters who, through the initiative process, have adopted and maintained the blanket primary as our state's primary of choice.

Last year, however, Alaska was forced to reorganize our election system into a partially closed primary. This was because of a U.S. Supreme Court decision stating that the blanket primary infringed upon political parties' right to free association and because the Republican Party of Alaska wished to restrict who is able to vote for Republican candidates.

The result of last year's partially closed primary ballot was an extra cost of nearly a quarter of a million dollars, an all-time low voter turnout (17 percent), and an overwhelming number of calls to the Division of Elections from unhappy voters. This method put an additional financial burden on the state, and proved to be extremely unpopular among voters.

Because the Alaska Constitution does not mandate that the state hold a primary election, the state isn't in any way obligated to pay for the process of selecting a political party's candidate for the general election ballot.

SB127 meets the requirement of the U.S. Supreme Court because it doesn't force parties to participate in a blanket primary. However, if the state pays for and conducts a primary election, the election will allow full voter choice. Parties that opt not to participate in the freedom-of-choice ballot can use their own selection process, be it conventions, caucuses or other methods.

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History of Nominating Systems Used in Alaska

1947—Voters Replace Open Primary with Blanket Primary

In this state, primaries were open until 1947 when voters passed a referendum to adopt a blanket primary. The issue appears to have generated little debate and enjoyed strong support at the polls.[4] Over the next several years, however, the question of the blanket primary increasingly became a partisan issue. As described in a previous Legislative Research report, Democrats tended to oppose the blanket primary, believing that it eroded what little party loyalty and discipline existed in Alaska, and also believing that Republicans used it to their advantage by crossing party lines to nominate the weakest Democratic candidate. Republicans—in the minority at the time—supported the blanket primary in the hope that Republican candidates would benefit by attracting conservative Democrats and non-aligned voters.[5]

1960—Single Ballot Open Primary Adopted

In 1959, with Democrats controlling both houses and the governor's office, the First Alaska State Legislature replaced the blanket primary with the single-ballot open primary. The following year lawmakers adopted a comprehensive election code that incorporated the change.[6]

1967—Blanket Primary Restored

During the several years following adoption of the single ballot open primary, Republican lawmakers—with some bipartisan support—proposed a number of bills to change the scheme. It was 1967, however—at which point Republicans had gained the majority in both houses and the governor's office—before they were able to restore the blanket primary.[7] The blanket primary continued in use until 1992, although by 1990, the Republican Party was no longer in favor of the system.

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[4] News articles and election returns cited by Gordon Harrison, in "Alaska's Blanket Primary and the *Tashjian* Decision," Legislative Research Agency Report 91.080, p. 4-5; we have included a copy of this report as Attachment C.

[5] Interview with Judge Thomas B. Stewart, as recounted by Harrison, p.6.

[6] Chapter 41 SLA 1959 changed the blanket primary to a single ballot open primary scheme; Chapter 83 SLA 1960 incorporated the change into the election code.

[7] Harrison, pp. 6-7.

1990—FIRST CHALLENGE BASED ON CONFLICT BETWEEN STATUTE AND PARTY RULES (*DOYLE V. STATE*)

In the spring of 1990, the Republican Party of Alaska (RPA) attempted to change the blanket primary to a modified-closed primary based on a change they had made in their party rules.[8] Under the newly adopted rule, only registered Republicans, registered Independents, and individuals without a stated party affiliation would be allowed to vote in the Republican primary.[9] State election officials declined to make the change because the request was both ambiguous and made too late to be implemented. Such a change, they contended, would need pre-clearance by the U.S. Department of Justice as required under the federal Voting Rights Act of 1965. Dissatisfied with the State's response, the RPA filed suit in June of 1990, in U.S. District Court. In *Doyle v. State*, the RPA asked the court to enjoin the State from conducting the August primary in a manner contrary to the Party's new rule.[10]

The court considered the various arguments, including an *amicus curiae* brief filed jointly by the Democratic Party of Alaska and the Alaska Federation of Natives, in which they joined with the state in asserting—among other arguments—that such a change in election procedure could disadvantage minority voters, in violation of the Voting Rights Act. On July 16, 1990, the court denied the Republican Party's request for a preliminary injunction, and as a result, the blanket primary went forward in August 1990, as scheduled.[11]

1992—SECOND CHALLENGE BASED ON CONFLICT OF STATUTE AND PARTY RULES; PARTIALLY CLOSED PRIMARY HELD UNDER COURT-AUTHORIZED STIPULATION (*ZAWACKI V. STATE*)

In 1992, the blanket primary was changed to a partially closed primary system. This change came as a result of the RPA once again challenging the constitutionality of the blanket primary system in Federal Court.[12] In *Zawacki v. State*, the court made a preliminary ruling that under the *Tashjian* decision, Alaska's blanket primary infringed on the Party's associational rights. In light of the court's remarks, the parties stipulated to a change in the primary scheme from a blanket to

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[8] The RPA had adopted the new rule at their statewide convention. Their attempt to change the primary relied on the logic of the U.S. Supreme Court's decision in *Julia H. Tashjian, Secretary of State of Connecticut v. Republican Party of Connecticut et al.* (479 U.S. 208 [1986]). In the *Tashjian* case, the Court held that the State's closed primary scheme was unconstitutional in light of a change in the Republican Party rules to allow unaffiliated voters to participate in the primary for certain offices. The Court noted that prohibiting unaffiliated voters from participating in the primary of a party inviting such participation "limits the Party's associational opportunities at the crucial juncture at which the appeal to common principles may be translated into concerted action, and hence to political power in the community." *Tashjian*, 479 U.S. 208, 216.

[9] As described in *O'Callaghan v. Coghill*, 888 P.2d 1302 (Alaska 1995).

[10] *Allen Grant Doyle, Jr. and the Republican Party of Alaska v. State of Alaska et al.*; referenced by title and without case number by Harrison, p. 9.

[11] Harrison, pp. 9-12. We have been unable to locate a decision on this case; because of that, and because the primary made the plaintiff's immediate concerns moot, we assume that the RPA did not proceed with the action and the case was dismissed. According to Mr. Harrison, it was presumed that the conservative wing of the RPA sought to close its primary to Democratic voters to prevent them from "crossing-over" to vote for Arliss Sturgulewski, a moderate Republican candidate for governor.

[12] *Zawacki v. State*, A92-414 CIV (D. Alaska 1992).

a partially closed system with two ballots. One ballot, based on the RPA rules, listed the Republican candidates and was available only to Republican, nonpartisan and undeclared voters. The second ballot, based on the statute (AS 15.25.060), listed all other candidates and was available to all voters. Voters could chose only one ballot. The Division of Elections adopted emergency temporary regulations providing for separate ballots as described by the stipulation. By joint agreement of the parties, the case was dismissed.[13]

1994—Alaska Superior Court Upholds Legality of the Partially Closed Primary (*O'Callaghan v. Coghill*)

Before the 1994 primary, the Division of Elections adopted permanent regulations identical to those used in 1992.[14] A voter, Mike O'Callaghan, had filed a complaint in the Alaska Superior Court, contesting the legality of the 1992 primary system based on the grounds that the stipulated regulations were inconsistent with state law. Before the 1994 primary, Mr. O'Callaghan also moved for a temporary restraining order to prevent the State from implementing the permanent regulations providing for separate ballots. The court denied the motion for a temporary restraining order and granted summary judgment in favor of the State, which had argued that the blanket primary was "clearly unconstitutional" under *Tashjian*. As a result of the court's decision, the partially closed primary remained in effect in 1994.

1995—Alaska Supreme Court Reconsiders Constitutionality of Blanket Primary and Legality of Partially Closed Primaries (*O'Callaghan v. Coghill [Appeal]*)

On appeal, the Alaska Supreme Court found in *O'Callaghan v. Coghill* (*O'Callaghan I*) that a stipulation (such as that arising from *Zawacki*) declaring a law unconstitutional could not be valid unless the law was clearly unconstitutional. The Court also found that the State had not met the standard of "clear unconstitutionality."[15] Unable to rule on the legality of the 1992 and 1994 primary elections without determining the constitutionality of the blanket primary, the Court ordered additional briefing on that point and invited participation by other political parties and the Legislative Affairs Agency, as well as any others who so chose.[16]

Mr. O'Callaghan and the State submitted supplemental briefs, although by this point the State had changed its position from arguing against the constitutionality of the blanket primary to defending it. The RPA and the Alaskan Voters for an Open Primary were allowed to intervene in the case, known by this point as *O'Callaghan v. State* (*O'Callaghan II*); the Alaska Federation of Natives filed an *amicus curiae* brief, and the Alaskan Independence Party filed a submission in

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[13] Described in *O'Callaghan v. Coghill*, 888 P.2d 1302, 1303 (Alaska 1995).

[14] 6 AAC 28.100.150.

[15] The Court noted that because the State interests behind Alaska's blanket primary appeared to be very different from the State interests asserted in defense of the Connecticut statute, the *Tashjian* decision could not be relied upon to decide whether State interest in Alaska outweighed the burden the blanket primary imposed on associational rights. Thus, the Court found, Alaska's blanket primary statute was not "clearly unconstitutional" under *Tashjian*. *O'Callaghan v. Coghill*, at 1305.

[16] Described in *O'Callaghan v. State*, 914 P.2d 1250, 1251 (Alaska 1996); we have included a copy of this decision as Attachment D.

place of such a brief. By this point, only the RPA was arguing that the blanket primary was unconstitutional.[17]

1996—Alaska Supreme Court Restores Blanket Primary as Constitutional, Declares Partially Closed Primaries Held Illegally (*O'Callaghan v. State [Appeal]*)

In *O'Callaghan II*, the Court found Alaska's blanket primary system not unconstitutional merely because it conflicted with a political party's rules. The Court's order, issued April 12, 1996, therefore held the blanket primary to be constitutional; and the degree of interference in the RPA's associational rights to be minor and justified by the State's interests in "encouraging voter turnout, maximizing voters' choice among candidates, and ensuring that elected officials have relatively broad based constituencies."[18] In finding the blanket primary to be constitutional, the Court concluded that the regulations under which the 1992 and 1994 primaries had been conducted were invalid and ordered that the 1996 primary be conducted as defined in statute.[19] With the 1996 *O'Callaghan II* decision, Alaska turned for the third time to the blanket primary system.

2000—U.S. Supreme Court Holds California Blanket Primary Unconstitutional (*California Democratic Party v. Jones*)

With the issue of the blanket primary's constitutionality seemingly resolved, the Alaska Division of Elections prepared for the primary election scheduled for August of 2000 as it had for the primary of 1998. On June 26, 2000, however, the U.S. Supreme Court, in a split decision on *California Democratic Party v. Jones*, ruled California's blanket primary to be unconstitutional in light of the party rules calling for a closed Democratic primary.[20]

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[17] *O'Callaghan v. State, at 1253.*

[18] *O'Callaghan v. State, at 1263.* In regard to the last objective, the Court noted as follows: "The objective of ensuring that officers elected are representative of a broad cross-section of the electorate, rather than accountable to the narrower interests which may control a party organization, is in essence the reason for the shift, begun at the turn of the century and now generally prevalent, from nomination by party convention to nomination by direct primary. . . . In Alaska, where a majority of voters are not affiliated with any party, a closed or partially-closed primary system can plausibly be viewed as bestowing on a minority of the electorate a disproportionately powerful role in the selection of public officeholders. If political parties and politically affiliated voters are to have more power in the election process, that is power taken from unaffiliated voters." (At 1262.)

[19] AS 15.25.060, Preparation and Distribution of Ballots. Although the ruling in *O'Callaghan v. State* declared the 1992 and 1994 primaries to have been illegally conducted, it specified that new elections would not be ordered. The U.S. Supreme Court declined to review the decision in 1997.

[20] *California Democratic Party v. Jones.* (U.S. Supreme Court Bench Opinion No. 99-401). Until 1996, California's was a closed, partisan primary; in 1996, Proposition 198 changed the system to a blanket primary, despite party rules prohibiting persons not members of the party from voting in the party's primary. Lower courts affirmed the constitutionality of the change, but on appeal, the U.S. Supreme Court held the resulting burden on the party's associational right to be unjustified.

2000—ALASKA SUPREME COURT RULES BLANKET PRIMARY UNCONSTITUTIONAL UNDER *JONES*, RETURN TO PARTIALLY CLOSED PRIMARY VALID (*O'CALLAGHAN V. STATE, DIRECTOR OF ELECTIONS*)

Immediately following the *Jones* decision, the Republican Party of Alaska requested a closed primary. With under two months until that primary, the Alaska Division of Elections promulgated emergency regulations temporarily adopting, again, the partially closed primary system.[21] On July 5, 2000, voter Mike O'Callaghan filed a complaint contesting the legality of the regulations, based on the decision in *O'Callaghan II*; on July 12th, the Superior Court denied relief; Mr. O'Callaghan appealed.[22] In *O'Callaghan v. State, Director of Elections (O'Callaghan III)*, issued July 25, 2000, the Alaska Supreme Court found as follows:

> Having reviewed *Jones*, we find no constitutionally significant differences between Alaska's primary election law and the California law declared unconstitutional in *Jones.* Nor do we find any principled basis for concluding that Alaska's blanket primary election statute remains constitutional in light of *Jones.* Because the United States Constitution's Supremacy Clause requires states to adhere to the Supreme Court's constitutional interpretation in *Jones*, we hold that *O'Callaghan II's* ruling that AS 15.25.060 is constitutional is no longer tenable.[23]

In discussing the arguments, the Court noted the following in regard to permissible alternatives to the blanket primary and the Division of Election's actions:

> Although *Jones* does expressly point out that a non-partisan blanket primary would pass constitutional muster, *Jones* says nothing to suggest that this is the only constitutionally permissible form of primary ballot or that the non-partisan ballot form deserves preference over other constitutionally permissible forms. . . . In sum, given the time constraints facing the division, the untried and relatively elaborate demands it would face in implementing a non-partisan primary, and the basic incompatibility of that process with Alaska's statutory goal of requiring—to the maximum permissible extent—that political parties nominate their candidates through an open and public electoral process, we find no basis for concluding that the division overstepped its emergency powers by opting for the partially closed primary ballot.[24]

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[21] As you may know, Lt. Governor Fran Ulmer voiced strong disagreement with the Majority's opinion in *Jones.* In a press release issued by the Office of the Lt. Governor on June 29, 2000, she stated, "I believe this opinion will reduce voter participation and interest in the primary. Alaskans are independent and prefer a system which allows them to vote as they choose, regardless of party. I am disappointed with the Majority's emphasis on the rights and protection of political parties over the rights and protection of individual voters." The press release reported the Lt. Governor's announcement that the temporary change would cost an estimated $400,000, and reported her request that the RPA either suspend their rules or agree not to challenge the State if a blanket ballot went forward until the Legislature could resolve the issue. In regard to the request, the Lt. Governor noted, "So far, they [the Republicans] have indicated they are not inclined to do either one."

[22] *O'Callaghan v. State, Director of Elections*, 6 P.3d 728 (Alaska 2000); we have included a copy of this decision as Attachment E.

[23] *O'Callaghan v. State, Director of Elections*, at 730.

[24] *O'Callaghan v. State, Director of Elections*, at 732.

Thus, in light of the *Jones* decision and the RPA rules requiring a partially closed Republican primary in Alaska, we arrive at the present shore. For your convenience, we also present a condensed version of this history in the attached Table.

I hope you find this information useful. Please do not hesitate to contact us if you have questions or need additional information.

Table One: History of Primary Elections in Alaska

Year	Type of Primary	Notes
	open	An open ballot is used in Territorial Alaska until 1947.
1947	blanket	Blanket primary adopted after popular referendum is overwhelmingly approved.
1960	open	Legislature replaces the blanket primary with a single ballot open primary in 1959 (ch 41 SLA 1959); the system is incorporated into election law in 1960 (ch 83 SLA 1960).
1967	blanket	Legislature restores the blanket primary. Bill introduced at request of Governor Hickel (ch 1 SLA 1967).
		Prior to the 1990 primary, the RPA attempts to partially close its ballot based on a change in party rules. The State declines because of ambiguities in the request and because of insufficient time for pre-clearance by the U.S. Department of Justice as required under the federal Voting Rights Act. In an effort to force the issue, the RPA seeks to enjoin the State from conducting the 1990 primary in a manner contrary to the RPA rules (*Doyle v. State*). The U.S. District court denies the RPA motion, and the primary goes forward as scheduled.
1992	partially closed	Prior to the 1992 primary, the Republican Party of Alaska (RPA) challenges the constitutionality of the blanket primary (*Zawacki v. State*); parties stipulate to two ballots--one listing RPA candidates and available to Republican, nonpartisan, and undeclared voters; the other listing all other parties' candidates and available to all voters. Voters choose only one ballot.
1994	partially closed	Prior to the 1994 primary, Division of Elections adopts permanent regulations for partially closed primary. Voter Mike O'Callaghan contests the legality of the system and moves to enjoin the State from implementing the regulations. The State contends blanket primary is "clearly unconstitutional" under *Tashjian v. Republican Party of Connecticut*. Alaska Superior Court denies O'Callaghan's motion and grants summary judgment in favor of State (*O'Callaghan v. Coghill*).
1996	blanket	On appeal, Alaska Supreme Court reviews supplemental briefs. State reverses its position and now defends the constitutionality of the blanket primary. The RPA intervenes and argues that blanket primary is unconstitutional (*O'Callaghan v. State*). Court finds blanket primary to be constitutional and the degree of interference with RPA associational rights to be minor and justified by State's interests. Court also rules the 1992 and 1994 primaries to have been illegally conducted and orders the 1996 primary to be conducted as defined in statute (AS 15.25.060).
2000	partially closed	Two months prior to 2000 primary, the U.S. Supreme Court rules the California blanket primary to be unconstitutional in light of party rules calling for a closed Democratic primary (*California Democratic Party v. Jones*). The RPA requests a closed primary in Alaska, and the State promulgates emergency regulations for a partially closed election. Voter Mike O'Callaghan contests the legality of the regulations, and on appeal, the Alaska Supreme Court holds that--because of the similarity of situations in California and Alaska, and the requirements of the Supremacy Clause in the U.S. Constitution--the 1996 ruling (declaring the blanket primary to be constitutional) is no longer tenable (*O'Callaghan v. State, Division of Elections*).

Notes: Although considerable variation exists among state primary election systems, direct primaries are generally described as *blanket*, *open*, or *closed*.

Under a *blanket* primary system, candidates running for office, regardless of party affiliation, are listed on the same ballot, and voters may cross party lines to choose freely among the nominees for the various offices. In this type of system, the candidates with the most votes from each party win the nomination and face each other in the general election.

Under an *open* primary system, candidates are listed by party on separate ballots. Voters may choose the ballot of any party, but they must select nominees for all offices from that ballot.

Under a *closed* primary system, voters must be registered party members, and they must vote on a ballot listing only that party's nominees.

Sources:
Gordon Harrison, "Alaska's Blanket Primary and the *Tashjian* Decision," Legislative Research Agency Report 91.080; *O'Callaghan v. Coghill*, 888 P.2d 1302 (Alaska 1995); *O'Callaghan v. State*, 914 P.2d 1250, (Alaska 1996); *California Democratic Party v. Jones*, (U.S. Supreme Court Bench Opinion No. 99-401); and *O'Callaghan v. State, Director of Elections*, 6 P.3d 728 (Alaska 2000).

Table 5.3
METHODS OF NOMINATING CANDIDATES FOR STATE OFFICES

State or other jurisdiction	Method(s) of nominating candidates
Alabama	Primary election; however, the state executive committee or other governing body of any political party may choose instead to hold a state convention for the purpose of nominating candidates.
Alaska	Primary election.
Arizona	Primary election.
Arkansas	Primary election.
California	Primary election or independent nomination procedure.
Colorado	Assembly/primary; however, a political party may hold a pre-primary assembly (no later than 65 days before the primary) for the designation of candidates. Each candidate who receives at least 30 percent of the delegates' vote of those present and voting is certified as a candidate for the office by the assembly with the candidate receiving the most votes listed first. If no candidate receives at least 30 percent of the vote, a second ballot shall be taken on all candidates, and the two candidates with the highest number of votes will be certified for the office by the assembly. If any candidate receives less than 10 percent of the votes from the assembly, they are precluded from petitioning further. Minor parties may nominate one candidate per office directly to the general election ballot.
Connecticut	Convention/primary election. Major political parties hold state conventions (convening not earlier than the 68th day and closing not later than the 50th day before the date of the primary) for the purpose of endorsing candidates. If no one challenges the endorsed candidate, no primary election is held. However, if anyone (who received at least 15 percent of the delegate vote on any roll call at the convention) challenges the endorsed candidate, a primary election is held to determine the party nominee for the general election.
Delaware*	Primary election.
Florida	Primary election.
Georgia	Primary election.
Hawaii	Primary election.
Idaho	Primary election. New parties nominate candidates for general election after qualifying for ballot status.
Illinois	Primary election.
Indiana*	Primary election held for the nomination of candidates for governor and U.S. senator; state party conventions held for the nomination of candidates for other state offices.
Iowa	Primary election; however, if there are more than two candidates for any nomination and none receives at least 35 percent of the primary vote, the primary is deemed inconclusive and the nomination is made by the party convention. (Applicable only for recognized political parties.
Kansas	Primary election; however, candidates of any political party that receive less than 5 percent but more than 1 percent of the total votes cast for statewide offices in the general election must nominate candidates by either caucus or convention.
Kentucky*	Primary election. A slate of candidates for governor and lieutenant governor that receives the highest number of its party's votes but which number is less than 40 percent of the votes cast for all slates of candidates of that party, shall be required to participate in a runoff primary with the slate of candidates of the same party receiving the second highest number of votes.
Louisiana*	Primary election. Open primary system requires all candidates, regardless of party affiliation, to appear on a single ballot. Candidate who receives over 50 percent of the vote in the primary is elected to office; if no candidate receives a majority vote, a runoff election is held between the two candidates who received the most votes.
Maine	Primary election.
Maryland	Primary election.
Massachusetts*	Primary election.
Michigan	Primary election held for nomination of candidates for governor, U.S. congressional seats, state senators and representatives; court of appeals, circuit and district courts; state conventions held for nomination of candidates for lieutenant governor, secretary of state and attorney general. State convention also held to nominate candidates for Justice of Supreme Court, State Board of Education, Regents of University of Michigan, Trustees of Michigan State University, Governors of Wayne State University.
Minnesota	Primary election.
Mississippi	Primary election.
Missouri	Primary election.
Montana	Primary election.
Nebraska	Primary election.
Nevada*	Primary election.
New Hampshire	Primary election. Non-party candidates may petition for general election ballot.
New Jersey	Primary election. Independent candidates are nominated by petition for the general election.
New Mexico	Convention/primary election.
New York*	Committee meeting/primary election. The person who receives the majority vote at the state party committee meeting becomes the designated candidate for nomination; however, all other persons who received at least 25 percent of the convention vote may demand that their names appear on the primary ballot as candidates for nomination.
North Carolina*	Primary election, or ballot access by petition.
North Dakota	Convention/primary election. Political parties hold state conventions for the purpose of endorsing candidates. Endorsed candidates are automatically placed on the primary election ballot, but other candidates may also petition their name on the ballot.
Ohio	Primary election.

See footnotes at end of table.

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

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)

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[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

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(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" partisan 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 initiative 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 primary 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 affiliation." 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 omitted)); *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 associational freedom of members of the National Party."[7] 450

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[6] An open 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 "represen-

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.