

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
7260 HOUSE STATE AFFAIRS

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. CS HB 327

ANALYSIS: (continued)

Semi-Closed Primary Costs:

Travel:

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

Contractual Services:

73100	Professional Services Voter Education Program DGA Contract Voting Rights Act Program Additional Poll Workers/ Review Boards Contracted Poll Worker Training	60.0 12.0 51.2 73.2 63.9
73300	Communications Additional Postage Toll Charges	89.5 6.4
73400	Transportation New Booth Set Up	13.3
73420	Transportation/State Equipment Fleet Locating New Polling Places	1.3
73500	Advertising, Printing, and Binding Statewide Advertising of Primary and Precinct Changes Ballot Printing for Semi-Closed Primary Party Ballots	39.0 180.0
73800	Rental for Land, Buildings, and Space Rental of Additional Polling Places	2.0
	Total Contractual	<u>537.8</u>

Total Costs of Implemental Primary Changes 633.5

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 327

Revision Date: _____ Department Affected: Elections

Title: Relating to Primary Elections BRU: Primary & General

Component: Primary & General

Sponsor: House State Affairs

Requestor: House State Affairs

COMPONENT SERIAL NO.

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Expenditures/Revenues: (Thousands of Dollars)

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

CAPITAL		-0-	-0-	-0-	-0-	-0-
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REVENUE		-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

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

Prepared By: Division of Elections Phone: 465-4611

Division: Elizabeth Ziegler, Dep. Dir. Date: 9/20/91

Approved by Commissioner: _____

Agency: Office of the Governor Date: 9-20-91

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

COSTS TO IMPLEMENT CLOSED PRIMARY

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

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

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

VREMS PROGRAMMING CHANGES:

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

Absentee Add/Update Program - Field to enter which ballot was given/sent to the voter. (Optional field except for the Primary Election)
5. Receive Absentee Ballot Program - Show party affiliation that is on voter's registration

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

COSTS TO IMPLEMENT CLOSED PRIMARY

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

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

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

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

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

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

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

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

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

VREMS PROGRAMMING COST: \$4,000.00

TYPESETTING & PRINTING FORMS:

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

COSTS TO IMPLEMENT CLOSED PRIMARY

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

PRINTING INSTRUCTION BOOKS (Books are typed in our office)

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

ADVERTISING

1.	Outreach to:	Registrars City Clerks DMV Offices LIOs LWVs Press
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COSTS TO IMPLEMENT CLOSED PRIMARY

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

TOTAL ADVERTISING COST: \$50,000.00

DATAVOTE PROGRAMMING

1. Increase in DGA programming costs 12,000.00

DATAVOTE PROGRAMMING COST: \$12,000.00

ADDITIONAL STAFF & ELECTION WORKERS-

1. Election Workers:

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

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

GRAND TOTAL \$316,673.01

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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

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

MEMORANDUM

March 3, 1992

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

TO: Representative Max Gruenberg

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

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

I.

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

II.

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

RGC:gc
92-188.glc

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CS FOR HOUSE BILL NO. 327 ()

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:

Referred:

Sponsor(s): HOUSE STATE AFFAIRS COMMITTEE

A BILL

FOR AN ACT ENTITLED

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

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

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

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

1 preliminary general [PRIMARY] election ballot;

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

3 (14) that the person is not a candidate for any other office to be voted on at the

4 preliminary general election or run-off [PRIMARY OR] general election and that the person

5 is not a candidate for this office under any other declaration of candidacy or nominating petition;

6 and

7 (15) the manner in which the candidate wishes the candidate's name to appear

8 on the ballot [; AND

9 (16) THAT THE CANDIDATE IS REGISTERED TO VOTE AS A MEMBER

10 OF THE POLITICAL PARTY WHOSE NOMINATION IS BEING SOUGHT].

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

12 (a) The declaration is filed by either

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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

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

MEMORANDUM

March 11, 1991

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

TO: Representative Fran Ulmer

FROM: John B. Gaguine
Legislative Counsel

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

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

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

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

Representative Fran Ulmer

March 11, 1991

Page 2

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

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

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

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

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

Representative Fran Ulmer
March 11, 1991
Page 3

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

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

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

JBG:mi
91-049.mai

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 327

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

Sponsor: House State Affairs
 Requestor: House State Affairs

COMPONENT SERIAL NO.

0	0	2	2
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Expenditures/Revenues: (Thousands of Dollars)

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

CAPITAL		-0-	-0-	-0-	-0-	-0-
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REVENUE		-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary.)

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

Prepared By: Division of Elections Phone: 465-4611
 Division: Elizabeth Ziegler, Dep. Dir. Date: 9/20/91
 Approved by Commissioner: _____
 Agency: Office of the Governor Date: 9-20-91

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

COSTS TO IMPLEMENT CLOSED PRIMARY

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

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

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

VREMS PROGRAMMING CHANGES:

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

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

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

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

COSTS TO IMPLEMENT CLOSED PRIMARY

6. Absentee Mailer Program - Adapt the mailer printing system to allow the mailers to print envelopes that will get R ballots separately from envelopes that get O ballots. Type of ballot should be printed on the ballot envelope mailer.
7. Absentee Roster/Register Program - Add party affiliation for each voter.

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

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

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

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

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

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

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

VREMS PROGRAMMING COST: \$4,000.00

TYPESETTING & PRINTING FORMS:

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

COSTS TO IMPLEMENT CLOSED PRIMARY

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

PRINTING INSTRUCTION BOOKS (Books are typed in our office)

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

ADVERTISING

1.	Outreach to:	Registrars City Clerks DMV Offices LIOs LWVs Press
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COSTS TO IMPLEMENT CLOSED PRIMARY

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

TOTAL ADVERTISING COST: \$50,000.00

DATAVOTE PROGRAMMING

1. Increase in DGA programming costs 12,000.00

DATAVOTE PROGRAMMING COST: \$12,000.00

ADDITIONAL STAFF & ELECTION WORKERS-

1. Election Workers:
2 additional per precinct @\$7.50/hr.:
2 x 238 x 14 hrs. x \$7.5 549,980.00
2 additional Dist. Ques. Review Board
members per region @\$10/hr.:
2 x 4 x 22.5 hrs. x \$10 1,800.00
2 extra days for each State Review Board
member @\$12.50/hr.:
8 x 15 hrs. x \$12.50 1,500.00
2 additional DPRB members per counting
center @\$500 3,000.00
2 x 3 x \$500
2 additional DPRB members per TECS
counting center @\$300: 3,600.00
2 x 6 x \$300

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

GRAND TOTAL \$316,673.01

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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

240 Main Street, Suite 300
Juneau, Alaska 99801-2101

MEMORANDUM

January 30, 1992

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

TO: Representative Max Gruenberg

FROM: Robert Glennon Casey *RCC 1-30-92*
Legislative Counsel

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

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

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

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

Representative Max Gruenberg

January 30, 1992

Page 2

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

RBC:pl
92-056.plm

Enclosure

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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

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

MEMORANDUM

April 3, 1991

SUBJECT: Party rules and primary election laws

TO: Senator Pat Pourchot
Attn: Jeanne Larson

FROM: John B. Gaguine *JBG*
Legislative Counsel

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

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

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

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

Senator Pat Pourchot

April 3, 1991

Page 2

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

If I may be of further assistance, please advise.

JBG:pl

91-225.plm

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

STATE OF ALASKA

OFFICE OF THE GOVERNOR

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

MEMORANDUM

To: Senator Pat Rodey, Chair
State Affairs Committee

From: Elizabeth Ziegler, Deputy Director
Division of Elections

Re: Republican Party Rule

DATE: May 8, 1991

BACKGROUND

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

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

The adopted rule is as follows:

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

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

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

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

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

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

RECENT DEVELOPMENTS

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

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

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

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

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

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

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

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

DIVISION OBJECTIVES

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

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

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

PROBABLE COSTS

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

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

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

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

DataVote	\$15,000	
Printing	\$25,000	
Election Wor.	\$40,000	(if voters allowed to vote in other primaries)
Total	\$165,000	

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

STATUTORY CHANGES

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

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

Notice of Adoption of Emergency Regulations

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

6 AAC 27.165:

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

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

This action is not expected to require an increased appropriation.

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

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

DATE: 5/2/91
Juneau, Alaska

Charlot Thickstun
Director

AD 89 2780

STATE OF ALASKA

OFFICE OF THE GOVERNOR

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

DIVISION OF ELECTIONS

POSITION PAPER ON PRIMARY CHANGES

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

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

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

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

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

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

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

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

DRAFT INSTRUCTIONS TO VOTERS

**BALLOT CHOICES AVAILABLE
IN AUGUST 25, 1992 PRIMARY ELECTION**

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

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

THE DEADLINE FOR VOTER REGISTRATION, INCLUDING AN ADDRESS CHANGE, IS 30 DAYS BEFORE ELECTION DAY, OR JULY 26, 1992, FOR THIS PRIMARY ELECTION.
AS 15.05.010

NOTICE:

ALASKA LAW PROHIBITS ELECTION BOARD WORKERS FROM DISCUSSING ANY POLITICAL PARTY, CANDIDATE OR ISSUE WHILE ON DUTY.
AS 15.15.160

FURTHER, DURING THE HOURS THE POLLS ARE OPEN, A PERSON WHO IS IN THE POLLING PLACE OR WITHIN 200 FEET OF ANY ENTRANCE TO THE POLLING PLACE MAY NOT ATTEMPT TO PERSUADE A PERSON TO VOTE FOR OR AGAINST A CANDIDATE, PROPOSITION OR QUESTION.
AS 15.15.170

ATTENTION VOTERS

**PRIMARY ELECTION
TUESDAY, AUGUST 25, 1992**

IF YOUR PARTY AFFILIATION ON YOUR VOTER REGISTRATION IS:

ALASKAN INDEPENDENCE
DEMOCRAT
GREEN
REPUBLICAN
UNDECLARED
NON-PARTISAN
OTHER

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



IF YOUR PARTY AFFILIATION ON YOUR VOTER REGISTRATION IS:

REPUBLICAN
UNDECLARED
NON-PARTISAN

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

↑
TOP C

**OFFICIAL PRIMARY
ELECTION BALLOT**



 
THE STUB TO BE REMOVED BY ELECTION BOARD

AR 81

STATE OF ALASKA Primary Election 8/25/92	
ALASKAN INDEPENDENCE	
DEMOCRAT	
GREEN	

↑
TOP C

**OFFICIAL PRIMARY
ELECTION BALLOT**

 
THE STUB TO BE REMOVED BY ELECTION BOARD

AR 81

STATE OF ALASKA Primary Election 8/25/92	
REPUBLICAN	

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PROCEDURES FOR PARTY PRIMARIES IN OTHER STATES

ALABAMA as of: 5/11/90
TOTAL 2,294,193

Party primaries:

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

ARKANSAS as of: 5/1/90
TOTAL 1,171,027

Party primaries:

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

CALIFORNIA

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

Party primaries:

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

CONNECTICUT

as of: 2/90

Democrat	681,306 - 39%
Republican	468,517 - 27%
Minor Parties	972
Unaffiliated	577,071 - 33%
TOTAL	1,727,866

Party primaries:

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

DELAWARE

as of: 11/88

Democrat	125,297 - 43%
Republican	110,301 - 38%
Other	58,095 - 20%
TOTAL	293,693

Party primaries:

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

DISTRICT OF COLUMBIA

Democrat	214,283 - 79%
Republican	25,194 - 9%
Statehood	2,054
Independent	33,695 - 12%
Other Parties	174
TOTAL	275,400

Party primaries:

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

FLORIDA

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

Party primaries:

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

GEORGIA as of: 11/88

TOTAL 2,941,339

Party primaries:

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

KENTUCKY

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

Party primaries:

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

ILLINOIS

TOTAL 6,014,961

Party primaries:

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

INDIANA as of: 1/90

TOTAL 2,839,561

Party primaries:

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

IOWA as of: 5/1/90

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

TOTAL 1,502,412

Party primaries:

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

MASSACHUSETTS as of: 2/90

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

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

Party primaries:

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

MISSISSIPPI

as of: 5/88

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

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

NEVADA

Democrat	202,343 - 46%
Republican	192,155 - 43%
Non-Partisan	48,941 - 11%
TOTAL	443,439

Party primaries:

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

NEW HAMPSHIRE

as of: 5/24/90

Democrat	197,409 - 30%
Republican	252,720 - 39%
Undeclared	199,651 - 31%
TOTAL	649,780

Party primaries:

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

NEW JERSEY

Democrat	1,199,098 - 32%
Republican	787,822 - 21%
Unaffiliated	1,727,107 - 46%
Independent	4,571
TOTAL	3,718,598

Party primaries:

Unaffiliated and independents cannot vote in party primaries.

NEW YORK

Democrat	3,904,183 - 47%
Republican	2,640,179 - 32%
Right-to-Life	23,973 - 1%
Conservative	113,756 - 2%
Liberal	61,101 - 1%
Non-in-Roll	1,502,641 - 18%
TOTAL	8,255,833

Party primaries:

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

OHIO

Democrat	1,802,977 - 31%
Republican	1,165,141 - 20%
Independent	2,814,895 - 49%
TOTAL	5,783,079

Party Primaries:

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

RHODE ISLAND

as of: 11/7/89

TOTAL:

536,406

Party primaries:

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

SOUTH CAROLINA

as of: 4/4/90

TOTAL

1,290,869

Party primaries:

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

TENNESSEE

as of: 12/89

TOTAL

2,521,996

Party primaries:

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

TEXAS

as of: 3/15/90

TOTAL

8,285,308

Party primaries:

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

OFFICE OF THE GOVERNOR

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

MEMORANDUM

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

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

Date: November 12, 1991

Subject: Effect of Primary Rule Changes on Elections

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

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

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

Post-It brand fax transmittal memo 7671	From: E. Ziegler	File # 465-3203
TO: ANNIE F	TO: ELECTIONS	
CC: REP KUBINA		
FILE # 450-3346		

DIRECTOR OF ELECTIONS, ALASKA

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

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

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

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

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

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

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

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

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

NEWS RELEASE

STATE OF ALASKA

OFFICE OF THE LIEUTENANT GOVERNOR
P.O. BOX 110015
JUNEAU, ALASKA 99811-0015

JORN B. "JACK" COGHILL
LIEUTENANT GOVERNOR



FOR INFORMATION CONTACT:

BRENDA WILCOX
MEDIA RELATIONS

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

LTG: 92-014

COGHILL RELEASE STATEMENT REGARDING OPEN PRIMARIES

--JUNEAU

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

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

STATE OF ALASKA

OFFICE OF THE GOVERNOR

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

MEMORANDUM

Date: 2/18/92

To: Representative Gene Kubina
Chairman, House State Affairs Committee

From: Charlot E. Thickstun
Director, Division of Elections

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

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

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

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. CS HB 327
Amended Fiscal Note

Revision Date: 02/18/92
Title: Relating to Primary Elections
Sponsor: House State Affairs
Requestor: House State Affairs

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

COMPONENT SERIAL NO.

0	0	2	2
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Expenditures/Revenues: (Thousands of Dollars)

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

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: 95.0

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

Prepared by: Norma Jean Johnson, Administrative Officer Phone: 465-4611
Division: Elections Date: 02/18/92

Approved by Commissioner: [Signature]
Agency: Office of the Governor Date: 02/18/92

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

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. CS HB 327

ANALYSIS: (continued)

Contractual Services:

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

Total Additional Costs of Implementing Primary Changes 95.0 Thousand

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

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

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

MEMORANDUM

State of Alaska

Department of Law

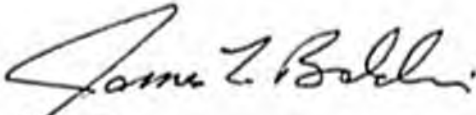
TO: Elizabeth A. Ziegler
Deputy Director
Division of Elections
Office of the Governor

DATE: December 3, 1991

FILE NO: 663-92-0209

TEL. NO: 465-3600

SUBJECT: Implementation of
closed primary
procedures



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

DEC 3 1991

OFFICE OF ELECTIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

JLB:ck

MEMORANDUM

State of Alaska

Department of Law

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

DATE: February 28, 1992

FILE NO: 663-92-0407

TEL NO: 465-3600

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

441 C L L
FROM: Charles E. Cole
Attorney General

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

I. State law and Republican Party rules

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

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

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

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

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

February 28, 1992

Page 2

Representative, and members of the State
Legislature. 2/

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

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

II. Tashjian and Democratic Party v. Wisconsin

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

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

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

February 28, 1992

Page 3

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

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

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

III. Discussion

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

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

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

February 28, 1992

Page 4

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

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

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

3/ (...continued)

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

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

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

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

February 28, 1992

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

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

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

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

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

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

February 28, 1992

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

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

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

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 24, 1992

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

Re: Composition of ballot under the
party rules

Dear Senator Halford:

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

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

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

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

WALTER J. HICKEL, GOVERNOR

PLEASE REPLY TO:

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

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

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

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

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

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

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

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

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

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

Senator Rick Halford
Chairman, Senate Judiciary Committee

April 24, 1992
Page 4

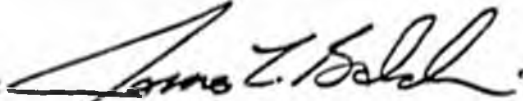
contents of the opinion with him and work toward a uniform application of the party rules to the procedures for primary elections set out in the election code.

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

Very truly yours,

CHARLES E. COLE
ATTORNEY GENERAL

By:


James L. Baldwin
Assistant Attorney General

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

JLB:lmk

Grant Doyle
Chairman

Marilyn Palma
National Committeewoman

Eden Ulmer
National Committeeman

Cheri Jacobus
Vice Chairman

Charlet Thickett
Secretary

The Republican Party of Alaska

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Paul Robinson
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Asst. Secretary

Asst. Treasurer

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Kenneth Jacobus
Legal Counsel

May 28, 1990

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

Via FAX 465-3203

Re: Republican Party of Alaska Primary Election

Dear Dave:

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

Article XIV Primary Elections

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

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

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

Exhibit E

David Kolvuniemi
May 28, 1990
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You raised the question of whether the Republican Party of Alaska intended by its use of the word "independents" to mean the Alaska Independence Party members. It does not. It is clear from the convention floor discussion and from the use of the word "independents" that the convention delegates used the word in its generic sense of non-partisan.

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

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

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

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

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

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

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

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

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

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

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

If the state chooses to require the voter to change the

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

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

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

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

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

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

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

David Koivuniemi
May 28, 1990
Page 5

in either primary.)

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

Each State shall -

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

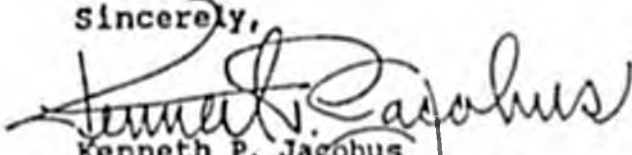
(3) permit overseas voters to use Federal write-in absentee ballots (in accordance with section 103) in general elections for Federal Office.

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

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

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

Sincerely,


Kenneth P. Jacobus
Legal Counsel

cc: Grant Doyle
State Central Committee

Alaska State Legislature

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Legislative Research Agency



January 15, 1991

MEMORANDUM

TO: Representative Mike Navarre

FROM: Gordon S. Harrison, Director *gsh*

RE: Alaska's Blanket Primary and the *Tashjian* Decision
Research Request 91.080

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

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

Classification of State Primaries

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

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

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

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

Closed Primary

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

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

Open Primary

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

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

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

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

Blanket Primary

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

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

Impact of the Primary System on Parties

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

³*Ibid.*, p. 98.

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

Representative Navarre
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Page 4

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

Legislative History of Alaska's Blanket Primary

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

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

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

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

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

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

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

While newspaper editors may have been indifferent, the voters clearly were not: the opportunity to vote for candidates from either party in the primary strongly appealed to Alaskans, who voted yes on the referendum to adopt a blanket primary by an extraordinary margin.⁷ In the face of this unequivocal support by the electorate, members of the Eighteenth Legislature dutifully adopted a blanket primary in 1947. It passed without a dissenting vote in the House of Representatives, and with two Democrats and two Republicans casting no votes in the Senate.

Increasingly, however, the question of the blanket primary became a partisan issue. Democrats tended to oppose it, and Republicans to support it. Democrats feared that it would erode party loyalty and discipline,⁸ and they thought that Republicans used it to their advantage by crossing party lines in the primary to nominate the weakest Democratic candidates. Republicans

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

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

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

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

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

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

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

Senator Ziegler declared:

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

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

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

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

¹⁰Chapter 41 SLA 1959 (HB 8).

¹¹Chapter 83 SLA 1960 (CSHB 252).

¹²March 28, 1966.

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

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

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

Freedom of Association and the *Tashjian* Decision

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

¹³Chapter 1 SLA 1967 (HB 1am).

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

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

The *Tashjian* Decision

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

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

The Implications of *Tashjian*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Revision of Alaska's Primary Election Law

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

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

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

¹⁸*Ibid.*, p. 18.

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

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

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

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

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

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

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

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

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

Alaska State Legislature

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October 25, 1991

MEMORANDUM

TO: Representative Eugene Kubina

FROM: Gordon S. Harrison, Director 

RE: Preferential Ballots
Research Request 92.064

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

Application of Preferential Voting

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

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

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

Rationale of Preference Ballot: Avoiding a Run-off Election

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

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

Types of Preference Ballots

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

Alternative Preference Ballot

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

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

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

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

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

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

Second-Choice Ballot

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

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

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

Borda Count

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

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

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

Exhaustive Ballot Method

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

Use of Preferential Ballots in the United States

We found little information about the use of preferential voting in the United States. The following statement is from a reference work: "Preferential voting has been tried on and off in the United States. At least 50 cities and counties have adopted it at one time, but very few continue to use it."⁵

Apparently a type of second-choice voting was used for primary elections in North Dakota for a few years in the early 1900s, and it was used in Wisconsin around the same time.⁶

I hope this information is helpful to you. We would happy to provide more detailed description and analysis of any of these systems if you wish to pursue the matter.

⁴Lakeman and Lambert, *Voting in Democracies*, op. cit., pp. 283 - 289.

⁵Michael D. Young, *The American Dictionary of Campaigns and Elections*, (New York: Hamilton Press, 1987), p. 202.

⁶Personal communication, Dan Rylance, Editorial Page editor, Grand Forks Herald (North Dakota), October 23, 1991. Mr. Rylance has promoted the concept of second-choice ballots for North Dakota primaries in recent newspaper columns.

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Legislative Research Agency



September 11, 1991

MEMORANDUM

TO: Representative Gene Kubina

FROM: Gordon S. Harrison, Director 

RE: Connecticut's Primary after the *Tashjian* Decision
Research Request 92.039

You asked about the steps taken by the state of Connecticut to implement the 1986 U.S. Supreme Court decision in the *Tashjian* case. In that decision, the court ruled that the Republican Party could require the state to honor a change in its own rules that allowed unaffiliated voters--registered voters who did not declare a party preference--to vote in the Republican primary for certain offices.¹ At the time, Connecticut state law provided for a closed primary. The Democratic Party did not adopt a similar rule.

In fact, the new rule has not been used extensively in Connecticut because of its limited application, and on September 7, 1991 the state Republican Party rescinded the rule (i.e., they amended their party rules to close all of their primaries). The open primary rule applied only to statewide and congressional races (it excluded legislative races and local contests). It was used on two occasions: at a special congressional election in 1987 and the statewide elections in 1990.

Ms. Joanne Chrisoulis, director of the Division of Elections for the state of Connecticut, told us that the state did not take special steps to publicize the rule change. State law requires the election division to publish a legal notice in newspapers about each election. This notice informed the reader that unaffiliated electors could participate in the Republican Party primary for specific offices. Presumably some voters were alerted to the change by local media coverage of the primary election.

Connecticut's governor, Lowell P. Weicker, Jr. represents a third-party--A Connecticut Party. This party has a rule that allows unaffiliated voters to vote in its primary. As it happens, the party has very few members, and no candidates from the party are standing for office in the Connecticut primary being held today. Thus, technically at least, Connecticut has not fully returned to a closed primary system.

I hope this is the information you were looking for. If not, please call.

¹See Legislative Research Agency Memorandum 91.080 for a discussion of the *Tashjian* decision and definition of open and closed primaries.