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date receiving the plurality of votes becomes the party's nominee. Conn Gen Stat §§ 9-382, 9-400, 9-444 (1985). Candidates selected by the major parties, whether through convention or primary, are automatically accorded a place on the ballot at the general election.

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§ 9-379. The costs of primary elections are paid out of public funds. See, e.g., § 9-441.

The statute challenged in these proceedings, § 9-431, has remained substantially unchanged since the adoption of the State's primary system. In 1976, the statute's constitutionality was upheld by a three-judge District Court against a challenge by an independent voter who sought a declaration of his right to vote in the Republican primary. Nader v Schaffer, 417 F Supp 837 (Conn), summarily aff'd, 429 US 989, 50 L Ed 2d 602, 97 S Ct 516 (1976). In that action, the Party opposed the plaintiff's efforts to participate in the Party primary.

Subsequent to the decision in Nader, however, the Party changed its views with respect to participation by independent voters in Party primaries. Motivated in part by the demographic importance of independent voters in Connecticut politics,[3] in September 1983 the Party's Central Committee recommended calling a state convention to consider altering the Party's rules to allow independents to vote in Party primaries. In January 1984 the state convention adopted the Party rule now at issue, which provides:

"Any elector enrolled as a member of the Republican Party and any elector not enrolled as a member of a party shall be eligible to vote in primaries for nomination of candidates for the offices of United States Senator, United States Representative, Governor, Lieutenant Governor, Secretary of the State, Attorney General, Comptroller and Treasurer." App 20.

During the 1984 session, the Republican leadership in the state legislature, in response to the conflict between the newly enacted Party rule and § 9-431, proposed to amend the statute to allow independents to vote in primaries when permitted by Party rules. The proposed legislation was defeated,

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substantially along party lines, in both houses of the legislature, which at that time were controlled by the Democratic Party.[4]

The Party and the individual appellees then commenced this action in the District Court, seeking a declaration that § 9-431 infringes the appellees' right to freedom of association for the advancement of common political objectives guaranteed by the First and Fourteenth Amendments, and injunctive relief against its further enforcement. After discovery, the parties submitted extensive stipulations of fact to the District Court, which granted summary judgment for appellees. The District Court concluded that "[a]ny effort by the state to substitute its judgment for that of the party on . . . the question of who is and is not sufficiently allied in interest with the

3. The record shows that in October 1983 there were 639,268 registered Democrats, 425,695 registered Republicans, and 532,723 registered and unaffiliated voters in Connecticut. 2 App to Juris Statement 244.

4. In the November 1984 elections, the Republicans acquired a majority of seats in both houses of the state legislature, and an amendment to § 9-431 was passed, but was vetoed by the Democratic Governor.

party to warrant inclusion in its candidate selection process . . . substantially impinges on First Amendment rights." 599 F Supp, at 1238. Rejecting the state interests proffered by appellant to justify the statute, the District Court held that "as applied to the Republican Party rule permitting unaffiliated voters to participate in certain Republican Party primaries, the statute abridges the right of association guaranteed by the First Amendment." Id., at 1241.

The Court of Appeals affirmed, holding that § 9-431 "substantially interferes with the Republican Party's first amendment right to define its associational boundaries, determine the content of its message, and engage in effective political association." 770 F2d, at 283.

II

[3] We begin from the recognition that "[c]onstitutional challenges to specific provisions of a State's election laws . . . cannot be resolved by any 'litmus-paper test' that will separate valid from invalid restrictions." Anderson v Celebrezze,
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460 US 780, 789, 75 L Ed 2d 547, 103 S Ct 1564 (1983) (quoting Storer v Brown, 415 US 724, 730, 39 L Ed 2d 714, 94 S Ct 1274 (1974)). "Instead, a court . . . must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate. It then must identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule. In passing judgment, the Court must not only determine the legitimacy and strength of each of those interests, it also must consider the extent to which those interests make it necessary to burden the plaintiff's rights." 460 US, at 789, 75 L Ed 2d 547, 103 S Ct 1564.

[4, 5a] The nature of the appellees' First Amendment interest is evident. "It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech." NAACP v Alabama ex rel. Patterson, 357 US 449, 460, 2 L Ed 2d 1488, 78 S Ct 1163 (1958); see NAACP v Button, 371 US 415, 430, 9 L Ed 2d 405, 83 S Ct 328 (1963); Bates v Little Rock, 361 US 516, 522-523, 4 L Ed 2d 480, 80 S Ct 412 (1960). The freedom of association protected by the First and Fourteenth Amendments includes partisan political organization. Elrod v Burns, 427 US 347, 357, 49 L Ed 2d 547, 96 S Ct 2673 (1976) (plurality opinion); Buckley v Valeo, 424 US 1, 15, 46 L Ed 2d 659, 96 S Ct 612 (1976). "The right to associate with the political party of one's choice is an integral part of this basic constitutional freedom." Kusper v Pontikes, 414 US 51, 57, 38 L Ed 2d 260, 94 S Ct 303 (1973).

[5b] The Party here contends that § 9-431 impermissibly burdens the right of its members to determine for themselves with whom they will associate, and whose support they will seek, in their quest for political success. The Party's attempt to broaden the base of public participation in and support for its activities is conduct undeniably central to the exercise of the right of association. As we have said, the freedom to join together in furtherance of common political beliefs "necessarily presupposes the freedom to identify the people who constitute the associa-

tion." Democratic Party of
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United States v Wisconsin ex rel. La Follette, 450 US 107, 122, 67 L Ed 2d 82, 101 S Ct 1010 (1981).

[6a] A major state political party necessarily includes individuals playing a broad spectrum of roles in the organization's activities. Some of the Party's members devote substantial portions of their lives to furthering its political and organizational goals, others provide substantial financial support, while still others limit their participation to casting their votes for some or all of the Party's candidates. Considered from the standpoint of the Party itself, the act of formal enrollment or public affiliation with the Party is merely one element in the continuum of participation in Party affairs, and need not be in any sense the most important.[5]

[1b] Were the State to restrict by statute financial support of the Party's candidates to Party members, or to provide that only Party members might be selected as the Party's chosen nominees for public office, such a prohibition of potential association with nonmembers would clearly infringe upon the rights of the Party's members under the First Amendment to organize with like-minded citizens in support of common political goals. As we have said, "'[a]ny interference with the freedom of a party is simultaneously an interference with the freedom of its adherents.'" Democratic Party, supra, at 122, 67 L Ed 2d 82, 101 S Ct 1010 (quoting Sweezy v New Hampshire, 354 US 234, 250, 1 L Ed 2d 1311, 77 S Ct 1203 (1957)).[6] The statute here places limits upon the group of
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registered voters whom the Party may invite to participate in the "basic function" of selecting the Party's candidates. Kusper v Pontikes, supra, at 58, 38 L Ed 2d 260, 94 S Ct 303. The State thus limits the Party's associational opportunities at the crucial juncture at which the appeal to common principles may be translated into concerted action, and hence to political power in the community.[7]

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5. [6b] Indeed, acts of public affiliation may subject the members of political organizations to public hostility or discrimination; under those circumstances an association has a constitutional right to protect the privacy of its membership rolls. Bates v Little Rock, 361 US 516, 523-524, 4 L Ed 2d 480, 80 S Ct 412 (1960); NAACP v Alabama ex rel. Patterson, 357 US 449, 462, 2 L Ed 2d 1488, 78 S Ct 1163 (1958).

6. [1c] It is this element of potential interference with the rights of the Party's members which distinguishes the present case from others in which we have considered claims by nonmembers of a party seeking to vote in that party's primary despite the party's opposition. In this latter class of cases, the nonmember's desire to participate in the party's affairs is overborne by the countervailing and legitimate right of the party to determine its own membership qualifications. See Rosario v Rockefeller, 410 US 752, 35 L Ed 2d 1, 93 S Ct 1245 (1973); Nader v Schaffer, 417 F Supp 837 (Conn), summarily aff'd, 429 US 989, 50 L Ed 2d 602, 97 S Ct 516 (1976). Similarly, the Court has upheld the right of national political parties to refuse to seat at their conventions delegates chosen in state selection processes which did not conform to party rules. See Democratic Party of United States v Wisconsin ex rel. La Follette, 450 US 107, 67 L Ed 2d 82, 101 S Ct 1010 (1981); Cousins v Wigoda, 419 US 477, 42 L Ed 2d 595, 95 S Ct 541 (1975). These situations are analytically distinct from the present case, in which the Party and its members seek to provide enhanced opportunities for participation by willing nonmembers. Under these circumstances, there is no conflict between the associational interests of members and nonmembers. See generally Note, Primary Elections and the Collective Right of Freedom of Association, 84 Yale LJ 117 (1944).

7. [1d] Appellant contends that any infringement of the associational right of the Party or its members is de minimis, because Connecticut law, as amended during the pen-

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[11, 7] It is, of course, fundamental to appellant's defense of the State's statute that this impingement upon the associational rights of the Party and its members occurs at the ballot box, for the Constitution grants to the States a broad power to prescribe the "Times, Places and Manner of holding Elections for Senators and Representatives," Art I, § 4, cl 1, which power is matched by state control over the election process for state offices. But this authority does not extinguish the State's responsibility to observe the limits established by the First Amendment rights of the State's citizens. The power to regulate the time, place, and manner of elections does not justify, without more, the abridgment of fundamental rights, such as the right to vote, see Wesberry v Sanders, 376 US 1, 6-7, 11 L Ed 2d 481, 84 S Ct 526 (1964), or, as here, the freedom of political association. We turn then to an examination of the interests which appellant asserts to justify the burden cast by the statute upon the associational rights of the Party and its members.

III

Appellant contends that § 9-431 is a narrowly tailored regulation which advances the State's compelling interests by ensuring the administrability of the primary system, preventing raiding, avoiding voter confusion, and protecting the responsibility of party government.

A

Although it was not presented to the Court of Appeals as a basis for the defense of the statute, appellant argues here that the administrative burden imposed by the Party rule is a sufficient ground on which to uphold the constitutionality of

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§ 9-431.[8]

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dency of this litigation, provides that any previously unaffiliated voter may become eligible to vote in the Party's primary by enrolling as a Party member as late as noon on the last business day preceding the primary Conn Gen Stat § 9-56 (1985). Thus, appellant contends, any independent voter wishing to participate in any Party primary may do so.

[1e] This is not a satisfactory response to the Party's contentions for two reasons. First, as the Court of Appeals noted, the formal affiliation process is one which individual voters may employ in order to associate with the Party, but it provides no means by which the members of the Party may choose to broaden opportunities for joining the association by their own act, without any intervening action by potential voters. 770 F2d, at 291, n 24. Second, and more importantly, the requirement of public affiliation with the Party in order to vote in the primary conditions the exercise of the associational right upon the making of a public statement of adherence to the Party which the State requires regardless of the actual beliefs of the individual voter. Cf Wooley v Maynard, 430 US 705, 714-715, 51 L Ed 2d 752, 97 S Ct 1428 (1977); West Virginia Board of Education v Barnette, 319 US 624, 633-634, 87 L Ed 1628, 63 S Ct 1178, 147 ALR 674 (1943). As counsel for appellees conceded at oral argument, a requirement that independent voters merely notify state authorities of their intention to vote in the Party primary would be acceptable as an administrative measure, but "[t]he problem is that the State is insisting on a public act of affiliation . . . joining the Republican Party as a condition of this association." Tr of Oral Arg 40.

8. The District Court entered no findings of fact as to the potential administrative changes necessary to implement the Party rule. As appellant conceded at oral argument, the only evidence in the record before the District Court relating to the administration of the rule was a statement by the State's election attorney in testimony before the legislature that the system would be "workable." Id., at 20. Appellant relies here upon affidavits concerning potential administrative burden which were submitted to the Court of Appeals in support of appellant's request for a stay, entered after this Court noted probable jurisdiction.

Appellant contends that the Party's rule would require the purchase of additional voting machines, the training of additional poll workers, and potentially the printing of additional ballot materials specifically intended for independents voting in the Republican primary. In essence, appellant claims that the administration of the system contemplated by the Party rule would simply cost the State too much.

[8] Even assuming the factual accuracy of these contentions, which have not been subjected to any scrutiny by the District Court, the possibility of future increases in the cost of administering the election system is not a sufficient basis here for infringing appellees' First Amendment rights. Costs of administration would likewise increase if a third major party should come into existence in Connecticut, thus requiring the State to fund a third major-party primary. Additional voting machines, poll workers, and ballot materials would all be necessary under these circumstances as well. But the State could not forever protect the two existing major parties from competition solely on the ground that two major parties are all the public can afford. Cf. Anderson v Celebrezze, 460 US 780, 75 L Ed 2d 547, 103 S Ct 1564 (1983); Williams v Rhodes, 393 US 23, 21 L Ed 2d 24, 89 S Ct 5, 45 Ohio Ops 2d 236 (1968). While the State is of course entitled to take administrative and financial considerations into account in choosing whether or not to have a primary system at all, it can no more restrain the Republican Party's freedom of association for reasons of its own administrative convenience than it could on the same ground limit the ballot access of a new major party.

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B

[9] Appellant argues that § 9-431 is justified as a measure to prevent raiding, a practice "whereby voters in sympathy with one party designate themselves as voters of another party so as to influence or determine the results of the other party's primary." Rosario v Rockefeller, 410 US 752, 760, 36 L Ed 2d 1, 93 S Ct 1245 (1973). While we have recognized that "a State may have a legitimate interest in seeking to curtail 'raiding,' since that practice may affect the integrity of the electoral process," Kusper v Pontikes, 414 US, at 59-60, 38 L Ed 2d 260, 94 S Ct 303; Rosario v Rockefeller, supra, at 761, 36 L Ed 2d 1, 93 S Ct 1245, that interest is not implicated here.[9] The statute as applied to the Party's rule prevents independents, who otherwise cannot vote in any primary, from participating in the Republican primary. Yet a raid on the Republican Party primary by independent voters, a curious concept only distantly related to the type of raiding

9. As we have previously noted, a study commission established by the national Democratic Party concluded that "'the existence of "raiding" has never been conclusively proven by survey research.'" Democratic Party of United States v Wisconsin ex rel. La Follette, 450 US, at 122-123, n 23, 67 L Ed 2d 82, 101 S Ct 1010 (quoting Openness, Participation and Party Building: Reforms for a Stronger Democratic Party 68 (Feb. 17, 1978)). In view of our conclusion that § 9-431 is irrelevant to the question of raiding, we express no opinion as to whether the continuing difficulty of proving that raiding is possible attenuates the asserted state interest in preventing the practice.

discussed in Kusper and Rosario, is not impeded by § 9-431; the independent raiders need only register as Republicans and vote in the primary. Indeed, under Conn Gen Stat § 9-56 (1985), which permits an independent to affiliate with the Party as late as noon on the business day preceding the primary, see n 7, supra, the State's election statutes actually *assist* a "raid" by independents, which could be organized and implemented at the 11th hour. The State's asserted interest in the prevention of raiding provides no justification for the statute challenged here.

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C

Appellant's next argument in support of § 9-431 is that the closed primary system avoids voter confusion. Appellant contends that "[t]he legislature could properly find that it would be difficult for the general public to understand what a candidate stood for who was nominated in part by an unknown amorphous body outside the party, while nevertheless using the party name." Brief for Appellant 59. Appellees respond that the State is attempting to act as the ideological guarantor of the Republican Party's candidates, ensuring that voters are not misled by a "Republican" candidate who professes something other than what the State regards as true Republican principles. Brief for Appellees 28.

[10a] As we have said, "[t]here can be no question about the legitimacy of the State's interest in fostering informed and educated expressions of the popular will in a general election." Anderson v Celebrezze, 460 US, at 796, 75 L Ed 2d 547, 103 S Ct 1564. To the extent that party labels provide a shorthand designation of the views of party candidates on matters of public concern, the identification of candidates with particular parties plays a role in the process by which voters inform themselves for the exercise of the franchise. Appellant's argument depends upon the belief that voters can be "misled" by party labels. But "[o]ur cases reflect a greater faith in the ability of individual voters to inform themselves about campaign issues." Id., at 797, 75 L Ed 2d 547, 103 S Ct 1564. Moreover, appellant's concern that candidates selected under the Party rule will be the nominees of an "amorphous" group using the Party's name is inconsistent with the facts. The Party is not proposing that independents be allowed to choose the Party's nominee without Party participation; on the contrary, to be listed on the Party's primary ballot continues to require, under a statute not challenged here, that the primary candidate have obtained at least 20% of the vote at a Party convention, which only Party

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members may attend. Conn Gen Stat § 9-400 (1985). If no such candidate seeks to challenge the convention's nominee in a primary, then no primary is held, and the convention nominee becomes the Party's nominee in the general election without any intervention by independent voters.[10] Even assuming, however, that putative candidates defeated at the Party convention will have an increased incentive under the Party's rule to make primary challenges, hoping to attract more substantial support from independents than

10. The record does not disclose the proportion of Connecticut Republican Party nominations that are the result of primary contests.

from Party delegates, the requirement that such challengers garner substantial minority support at the convention greatly attenuates the State's concern that the ultimate nominee will be wedded to the Party in nothing more than a marriage of convenience.

[10b] In arguing that the Party rule interferes with educated decisions by voters, appellant also disregards the substantial benefit which the Party rule provides to the Party and its members in seeking to choose successful candidates. Given the numerical strength of independent voters in the State, one of the questions most likely to occur to Connecticut Republicans in selecting candidates for public office is how can the Party most effectively appeal to the independent voter? By inviting independents to assist in the choice at the polls between primary candidates selected at the Party convention, the Party rule is intended to produce the candidate and platform most likely to achieve that goal. The state statute is said to decrease voter confusion, yet it deprives the Party and its members of the opportunity to inform themselves as to the level of support for the Party's candidates among a critical group of electors. "A State's claim that it is enhancing the ability of its citizenry to make wise decisions by restricting the flow of information to them must be viewed with some skepticism." Anderson v Celebrezze, supra, at 798, 75 L Ed 2d 547, 103 S Ct 1564. The State's legitimate interests in preventing voter confusion

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and providing for educated and responsible voter decisions in no respect "make it necessary to burden the [Party's] rights." 460 US, at 789, 75 L Ed 2d 547, 103 S Ct 1564.

D

[11a] Finally, appellant contends that § 9-431 furthers the State's compelling interest in protecting the integrity of the two-party system and the responsibility of party government. Appellant argues vigorously and at length that the closed primary system chosen by the state legislature promotes responsiveness by elected officials and strengthens the effectiveness of the political parties.

The relative merits of closed and open primaries have been the subject of substantial debate since the beginning of this century, and no consensus has as yet emerged." Ap-

11. At the present time, 21 States provide for "closed" primaries of the classic sort, in which the primary voter must be registered as a member of the party for some period of time prior to the holding of the primary election. See Ariz Rev Stat Ann § 16-467 (1964); Cal Elec Code Ann § 501 (West Supp 1986); Colo Rev Stat § 1-2-203 (Supp 1986); Conn Gen Stat § 9-431 (1985); Del Code Ann, Tit. 15 § 3161 (1981); Fla Stat § 101.021 (1985); Kan Stat Ann § 25-3301 (1981); Ky Rev Stat §§ 116.045, 116.055 (1982); Me Rev Stat Ann, Tit 21-A, § 141 et seq. (Supp 1986-1987); Md Ann Code, Art 33, § 3-8 et seq. (1985); Neb Rev Stat § 32-530 (1984); Nev Rev Stat § 293.287 (1985); NM Stat Ann § 1-4-16 (1985); NY Elec Law § 1-104.9 (McKinney 1978); NC Gen Stat § 163-74 (1982 and Supp 1985); Okla Stat, Tit 26, § 1-104 (1976); Ore Rev Stat § 247.201 (1985); Pa Stat Ann Tit 25, § 2832 (Purdon 1963); SD Codified Laws § 12-4-15 (1982); W Va Code § 3-1-35 (1979); Wyo Stat § 22-5-212 (1977). Sixteen States allow a voter previously unaffiliated with any party to vote in a party primary if he affiliates with the party at the time of, or for the purpose of, voting in the primary. See Ala Code § 17-16-14(b) (1985); Ark Stat Ann § 3-126 (1976); Ga Code Ann § 21-2-235 (1982); Ill Rev Stat, ch 46, ¶ 7-43(a) (1986); Ind Code § 3-10-1-6 (Supp 1986); Iowa Code §§ 43.41, 43.42 (1985); Mass Gen Laws § 53.37 (1984); Miss Code Ann § 23-15-575 (1986 pamphlet); Mo Rev Stat § 115.297 (1978); NH Rev Stat Ann § 654:34-II (1986); NJ Stat Ann § 19:23-45 (West Supp 1986); Ohio Rev Code Ann § 3513.19 (Supp

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invokes a long and distinguished line of political scientists and public officials who have been supporters of the closed primary. But our role is not to decide whether the state legislature was acting wisely in enacting the closed primary system in 1955, or whether the Republican Party makes a mistake in seeking to depart from the practice of the past 30 years."

We have previously recognized the danger that "splintered parties and unrestrained factionalism may do significant damage to the fabric of government." Storer v Brown, 415 US, at 736, 39 L Ed 2d 714, 94 S Ct 1274. We upheld a California statute which denied access to the ballot to any independent candidate who had voted in a party primary or been registered as a member of a political party within one year prior to the immediately preceding primary election. We said:

"[T]he one-year disaffiliation provision furthers the State's interest in the stability of its political system. We also consider that interest as not only permissible, but compelling and as outweighing the interest the candidate and his supporters may have in making a late

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rather than an early decision to seek independent ballot status." Ibid.

The statute in Storer was designed to protect the parties and the party system against the disorganizing effect of independent candidacies launched by unsuccessful putative party nominees. This protection, like that accorded to parties threatened by raiding in Rosario v Rockefeller, 410 US 752, 36 L Ed 2d 1, 93 S Ct 1245 (1973), is undertaken to prevent the disruption of the political parties from without, and not, as in this case, to prevent the parties from taking internal steps affecting their own process for the selection of candidates. The forms of regulation upheld in Storer and Rosario imposed certain burdens upon the protected First and Fourteenth Amendment interests of some individuals, both voters and potential candidates, in order to protect the interests of others. In the present case, the state statute is defended on the ground that it protects the integrity of the Party against the Party itself.

[5c, 11b, 12a] Under these circumstances, the views of the State, which to some extent represent the views of the one political party tran-

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1985); RI Gen Laws § 17-9.2(c) (1981); SC Code §§ 7-5-120, 7-9-20 (1976 and Supp 1985); Tenn Code Ann § 2-7-115(b)(2) (1985); Tex Elec Code Ann § 162.003 (1986). Four States provide for nonpartisan primaries in which all registered voters may participate. Alaska Stat Ann §§ 15.05.010, 15.25.090 (1982); La Rev Stat Ann §§ 18:401(B), 18:521(B) (West 1979 and Supp 1986); Va Code § 24.1-182 (1985); Wash Rev Code § 29.18.200 (1965), while nine States have adopted classical "open" primaries, in which all registered voters may choose in which party primary to vote. Haw Rev Stat § 12-31 (Supp 1984); Idaho Code §§ 34-402, 34-404, 34-904 (Supp 1986); Mich Comp Laws §§ 168.575, 168.576 (1967 and Supp 1986); Minn Stat § 204D.08(4) (1985); Mont Code Ann § 13-10-301(2) (1985); ND Cent Code § 16.1-11-22 (Supp 1985); Utah Code Ann § 20-3-19(2) (Supp 1986); Vt Stat Ann, Tit 17, § 2363 (1982); Wis Stat §§ 5.37, 6.80 (1983-1984).

12. We note that appellant's direct predictions about destruction of the integrity of the election process and delay of responsible party government are not borne out by the experience of the 29 States which have chosen to permit more substantial openness in their primary systems than Connecticut has permitted heretofore.

siently enjoying majority power, as to the optimum methods for preserving party integrity lose much of their force. The State argues that its statute is well designed to save the Republican Party from undertaking a course of conduct destructive of its own interests. But on this point "even if the State were correct, a State, or a court, may not constitutionally substitute its own judgment for that of the Party." Democratic Party of United States v Wisconsin ex rel. La Follette, 450 US, at 123-124, 67 L Ed 2d 82, 101 S Ct 1010 (footnote omitted). The Party's determination of the boundaries of its own association, and of the structure which best allows it to pursue its political goals, is protected by the Constitution. "And as is true of all expressions of First Amendment freedoms, the courts may not interfere on the ground that they view a particular expression as unwise or irrational." Id., at 124, 67 L Ed 2d 82, 101 S Ct 1010.[13]

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We conclude that the State's enforcement, under these circumstances, of its closed primary system burdens the First Amendment rights of the Party. The interests which the appellant adduces in support of the statute are insubstantial, and accordingly the statute, as applied to the Party in this case, is unconstitutional.

IV

[2b] Appellant argues here, as in the courts below, that implementation of the Party rule would violate the Qualifications Clause of the Constitution, Art I, § 2, cl 1, and the Seventeenth Amendment because it would establish qualifications for voting in congressional elections which differ from the voting qualifications in elections for the more numerous house of the state legislature.[14] The Party rule as adopted permits independent voters to vote in Party primaries for the offices of United States Senator and Member of the House of Representatives, and for statewide offices, but is silent as regards

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primaries held to contest nominations for seats in the state legislature. See supra, at 212, 93 L

13. [12b] Our holding today does not establish that state regulation of primary voting qualifications may never withstand challenge by a political party or its membership. A party seeking, for example, to open its primary to all voters, including members of other parties, would raise a different combination of considerations. Under such circumstances, the effect of one party's broadening of participation would threaten other parties with the disorganization effects which the statutes in Storer v Brown, 415 US 724, 39 L Ed 2d 714, 94 S Ct 1274 (1974), and Rosario v Rockefeller, 410 US 752, 36 L Ed 2d 1, 93 S Ct 1245 (1973), were designed to prevent. We have observed on several occasions that a State may adopt a "policy of confining each voter to a single nominating act," a policy decision which is not involved in the present case. See Anderson v Celebrezze, 460 US 780, 802, n 29, 75 L Ed 2d 547, 103 S Ct 1564 (1983); Storer v Brown, supra, at 743, 39 L Ed 2d 714, 94 S Ct 1274. The analysis of these situations derives much from the particular facts involved. "The results of this evaluation will not be automatic; as we have recognized, there is 'no substitute for the hard judgments that must be made.'" Anderson v Celebrezze, supra, at 789-790, 75 L Ed 2d 547, 103 S Ct 1564 (quoting Storer v Brown, supra, at 730, 39 L Ed 2d 714, 94 S Ct 1274).

14. Article I, § 2, cl 1, provides: "The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature." The Seventeenth Amendment, which provides for the direct election of United States Senators, states in pertinent part that "[t]he electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures."

Ed 2d, at 522. Appellant contends that the Qualifications Clause and the Seventeenth Amendment require an absolute symmetry of qualifications to vote in elections for Congress and the lower house of the state legislature, and that the Party rule, if implemented according to its terms, would require lesser qualifications for voting in Party primaries for federal office than for state legislative office.

The Court of Appeals rejected appellant's argument, holding that the Qualifications Clause and the parallel provision of the Seventeenth Amendment do not apply to primary elections. 770 F2d, at 274. The concurring opinion took a different view, reaching the conclusion that these provisions require only that "anyone who is permitted to vote for the most numerous branch of the state legislature has to be permitted to vote" in federal legislative elections. Id., at 286 (Oakes, J., concurring). We agree.

[13, 14] We recognize that the Federal Convention, in adopting the Qualifications Clause of Article I, § 2, was not contemplating the effects of that provision upon the modern system of party primaries. As we have said:

> "We may assume that the framers of the Constitution in adopting that section, did not have specifically in mind the selection and elimination of candidates for Congress by the direct primary any more than they contemplated the application of the commerce clause to interstate telephone, telegraph and wireless communication, which are concededly within it. But in determining whether a provision of the Constitution applies to a new subject matter, it is of little significance that it is one with which the framers were not familiar. For in setting up an enduring framework of government they undertook to carry out for the indefinite future and in all the vicissitudes of the changing affairs of men, those fundamental purposes which the instrument itself discloses." United States v Classic, 313 US 299, 315-316, 85 L Ed 1368, 61 S Ct 1031 (1941).

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The fundamental purpose underlying Article I, § 2, cl 1, that "[t]he House of Representatives shall be composed of Members chosen . . . by the People of the several States," like the parallel provision of the Seventeenth Amendment, applies to the entire process by which federal legislators are chosen. "Where the state law has made the primary an integral part of the procedure of choice, or where in fact the primary effectively controls the choice," the requirements of Article I, § 2, cl 1, and the Seventeenth Amendment apply to primaries as well as to general elections. United States v Classic, supra, at 318, 85 L Ed 1368, 61 S Ct 1031; see Smith v Allwright, 321 US 649, 659-660, 88 L Ed 987, 64 S Ct 757 (1944). The constitutional goal of assuring that the Members of Congress are chosen by the people can only be secured if that principle is applicable to every stage in the selection process. If primaries were not subject to the requirements of the Qualifications Clauses contained in Article I, § 2 and the Seventeenth Amendment, the fundamental principle of free electoral choice would be subject to the sort of erosion these prior decisions were intended to prevent.

[2c] Accordingly, we hold that the Qualifications Clauses of Article I, § 2, and the Seventeenth Amendment are applicable to primary elections in precisely the same fashion that they apply to general congressional elections. Our task is then to discover whether, as appellant contends, those provisions require that voter qualifications, such as party membership, in primaries for federal office must be absolutely symmetrical with those pertaining to primaries for state legislative office.

Our inquiry begins with an examination of the Framers' purpose in enacting the first Qualifications Clause. It is clear that the Clause was intended to avoid the consequences of declaring a single standard for exercise of the franchise in federal elections. The state governments represented at the Convention had established varying voter qualifications, and substantial concern was expressed by delegates as to the likely effects of a federal voting qualification which disenfranchised voters eligible to vote in the States. James

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Wilson argued that "[i]t would be very hard and disagreeable for the same persons, at the same time, to vote for representatives in the State Legislature, and to be excluded from a vote for those in the National Legislature." J. Madison, Journal of the Federal Convention 467 (E. Scott ed 1893) (hereinafter Madison's Journal). Oliver Ellsworth predicted that "[t]he people will not readily subscribe to a National Constitution, if it should subject them to be disfranchised." Id., at 468. Benjamin Franklin argued, in the same vein, that "[t]he sons of a substantial farmer, not being themselves freeholders, would not be pleased at being disfranchised, and there are a great many persons of that description." Id., at 471. James Madison later defended the resulting provision on similar grounds:

> "To have reduced the different qualifications in the different States, to one uniform rule, would probably have been as dissatisfactory to some of the States, as it would have been difficult to the Convention. The provision made by the Convention appears therefore, to be the best that lay within their option. It must be satisfactory to every State; because it is conformable to the standard already established, or which may be established by the State itself." The Federalist No. 52, p 354 (J. Cooke ed 1961).

[2d] In adopting the language of Article I, § 2, cl 1, the Convention rejected the suggestion that a property qualification was necessary to restrict the availability of the federal franchise. See Madison's Journal 468-473; 2 M. Farrand, The Records of the Federal Convention of 1787, pp 200-216 (1966). Far from being a device to limit the federal suffrage, the Qualifications Clause was intended by the Framers to prevent the mischief which would arise if state voters found themselves disqualified from participation in federal elections. The achievement of this goal does not require that qualifications for exercise of the federal franchise be at all

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times precisely equivalent to the prevailing qualifications for the exercise of the franchise in a given State. The fundamental purpose of the Qualifications Clauses contained in Article I, § 2, and the Seventeenth Amendment is satisfied if all those qualified to participate in the selection of members of the more numerous branch of the

state legislature are also qualified to participate in the election of Senators and Members of the House of Representatives.

[2e] Our conclusion that these provisions do not require a perfect symmetry of voter qualifications in state and federal legislative elections takes additional support from the fact that we have not previously required such absolute symmetry when the federal franchise has been expanded. In Oregon v Mitchell, 400 US 112, 27 L Ed 2d 272, 91 S Ct 260 (1970), five Justices agreed that the Voting Rights Act Amendments of 1970 could constitutionally establish a minimum age of 18 for voters in federal elections, while a majority of the Court also concluded that Congress was without power to set such a minimum age in state and local elections. See id., at 117-118, 27 L Ed 2d 272, 91 S Ct 260 (Black, J., announcing the judgments of the Court). Appellant's reading of the Qualifications Clause, which would require identical voter qualifications in state and federal legislative elections, is plainly inconsistent with these holdings. We hold that the implementation of the Party rule does not violate the Qualifications Clause or the Seventeenth Amendment because it does not disenfranchise any voter in a federal election who is qualified to vote in a primary or general election for the more numerous house of the state legislature.

V

[1g] We conclude that § 9-431 impermissibly burdens the rights of the Party and its members protected by the First and Fourteenth Amendments. The interests asserted by appellant in defense of the statute are insubstantial. The judgment of the Court of Appeals is affirmed.

SEPARATE OPINIONS

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Justice Stevens, with whom Justice Scalia joins, dissenting.

The threshold issue presented by this case is whether, consistently with the Constitution, a State may permit a voter to participate in elections to the Congress while preventing that same person from voting for candidates to the most numerous branch of the state legislature. If we respect the plain language of Article I, § 2, cl 1, of the Constitution and the Seventeenth Amendment, the intent of the Framers, and the reasoning of the opinions in Oregon v Mitchell, 400 US 112, 27 L Ed 2d 272, 91 S Ct 260 (1970), we must answer that question in the negative.

Every person who votes in a federal election for a Member of the House of Representatives or for a United States Senator must be qualified to vote for candidates to the most numerous branch of the state legislature. The Constitution has imposed this condition of voter eligibility on congressional elections since 1789[1] and on senatorial elections since the Seventeenth Amendment was ratified in 1913.[2]

1. Article I, § 2, cl 1, provides: "The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature."

2. "The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures."

As the Court recognizes, ante, at 227, 93 L Ed 2d, at 531, a primary election is part of the process by which Members of the House and Senate are "chosen . . . by the People." US Const, Art I, § 2, cl 1. Cf. United States v Classic, 313 US 299, 315, 85 L Ed 1368, 61 S Ct 1031 (1941). In Connecticut one of the qualifications for voters in Republican Party primary elections for the lower house of the state legislature is that the person be "on the last-completed enrolment list of such party in the municipality or voting district . . . ." Conn Gen Stat § 9-431 (1985). Thus, only enrolled Republicans may vote in the Republican primary for the state legislature.

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The Court today holds, however, that pursuant to the Republican Party of Connecticut's rules, the State must permit independent, as well as enrolled Republican, electors to vote in the Republican primary for the House of Representatives and the Senate of the United States. This facial disparity between the qualifications for electors of House and Senate candidates and the more stringent qualifications for electors to the state legislature violates both Qualifications Clauses.

The Court does not dispute the fact that the plain language of the Constitution requires that voters in congressional and senatorial elections "shall have" the qualifications of voters in elections to the state legislature. The Court nevertheless separates the federal voter qualifications from their state counterparts, inexplicably treating the mandatory "shall have" language of the Clauses as though it means only that the federal voters "may but need not have" the qualifications of state voters. In support of this freewheeling interpretation of the Constitution, the Court relies on what it describes as the Framers' purpose in enacting the first Qualification Clause and on the judgment in Oregon v Mitchell, supra, 27 L Ed 2d 272, 91 S Ct 260. Neither of these arguments withstands scrutiny.

The excerpts from the debate among the Framers quoted by the Court, ante, at 227-229, 93 L Ed 2d, at 531-533, related to a motion made by Gouverneur Morris to amend a draft of proposed Art I, § 1, that had been prepared by the Committee on Detail. To understand the full significance of that debate it is necessary first to consider the provision that Gouverneur Morris wanted to change and then to consider the nature of his proposed amendment.

Justice Stewart accurately summarized that background in his opinion in Oregon v Mitchell, supra:

"An early draft of the Constitution provided that the States should fix the qualifications of voters in congressional elections subject to the proviso that these qualifications might 'at any Time be altered and superseded by the Legislature of the United States.' The records of

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the Committee on Detail show that it was decided to strike the provision granting to Congress the authority to set voting qualifications and to add in its stead a clause making the qualifi-

cations 'the same from Time to Time as those of the Electors, in the several States, of the most numerous Branch of their own Legislatures.' The proposed draft reported by the Committee on Detail to the Convention included the following:

" 'The qualifications of the electors *shall be the same*, from time to time, as those of the electors in the several States, of the most numerous branch of their own legislatures.' Art IV, § 1." Id., at 289, 27 L Ed 2d 272, 91 S Ct 260 (concurring in part and dissenting in part) (footnotes omitted; emphasis added).

Thus, the draft that the Federal Convention of 1787 was considering when Gouverneur Morris made his motion was abundantly clear—the qualifications of the federal electors "shall be the same" as the electors of the legislatures of the several States. J. Madison, Journal of the Federal Convention 449-450 (E. Scott ed 1893). This provision would ensure uniformity of electors' qualifications within each State, but would not impose a uniform nationwide standard.[3]

It was this clause that Gouverneur Morris proposed to strike in order to substitute a clause permitting Congress to prescribe the electoral qualifications or to adopt a provision "which would restrain the right of suffrage to freeholders." Id., at 467. Not surprisingly, his proposal was defeated by a vote of 7-1 because it would have disenfranchised a large number of voters in States that did not impose a property qualification on the right to vote. Id., at 467, 468, 471-472. Despite the Court's reliance on the concerns that led the

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Framers to reject the Morris proposal, they shed absolutely no light on the reasons why the Committee on Detail had previously decided that the voters' qualifications in state and federal elections "shall be the same."

The Court's reliance on the holding in Oregon v Mitchell is equally misguided. That case tested the constitutionality of certain parts of the Voting Rights Act Amendments of 1970, 84 Stat 314, including the section that lowered the minimum age of voters in both state and federal elections from 21 to 18. Four Members of the Court concluded that Congress had no such power;[4] four other Members of the Court concluded that the entire statute was valid.[5] Thus, the conclusions of all eight of those Justices were consistent with the proposition that the Constitution requires the same qualifications for state and federal elec-

3. James Wilson referred to this part of the Report of the Committee on Detail as "well considered," and "he did not think it could be changed for the better. It was difficult to form any uniform rule of qualifications, for all the States." J. Madison, Journal of the Federal Convention 467 (E. Scott ed 1893).

4. See opinion of Justice Harlan, 400 US, at 152, 212-213, 27 L Ed 2d 272, 91 S Ct 260 (concurring in part and dissenting in part), and opinion of Justice Stewart, id., at 281, 287-289, 27 L Ed 2d 272, 91 S Ct 260 (joined by Burger, C. J., and Blackmun, J.).

5. See opinion of Justice Douglas, id., at 135, 141-144, 27 L Ed 2d 272, 91 S Ct 260, and the joint opinion, id., at 229, 280-281, 27 L Ed 2d 272, 91 S Ct 260 (opinion of Brennan, White, and Marshall, JJ.).

tions.[6] Only Justice Black concluded that the statute was invalid insofar as it applied to state elections but valid insofar as it applied to federal elections. 400 US, at 125-130, 27 L Ed 2d 272, 91 S Ct 260.

Even Justice Black's reasoning, however, supports a literal reading of the Qualifications Clause in the absence of a federal statute prescribing a different rule for federal elections. For he relied entirely on the provision in Art I, § 4, that empowers Congress to alter a State's regulations concerning the times, places, and manner of holding elections for Senators and Representatives. 400 US, at 119-124, 27 L Ed 2d 272, 91 S Ct 260. In Justice

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Black's opinion, the qualifications that the State prescribed for their own voters for state offices "were adopted for federal offices unless Congress directs otherwise under Art I, § 4." Id., at 125, 27 L Ed 2d 272, 91 S Ct 260.

In this case there is no federal statute that purports to authorize the State of Connecticut to prescribe different qualifications for state and federal elections. Thus, there is no authority whatsoever for the Court's refusal to honor the plain language of the Qualifications Clauses. An interpretation of that language linking federal voters' qualifications in each State to the States' existing qualifications exactly matches James Madison's understanding:

"The provision made by the Convention appears therefore, to be the best that lay within their option. It must be satisfactory to every State; because it is conformable to the standard already established, or which may be established by the State itself." The Federalist No. 52, p 354 (J. Cooke ed 1961).

I respectfully dissent.

Justice Scalia, with whom The Chief Justice and Justice O'Connor join, dissenting.

Both the right of free political association and the State's authority to establish arrangements that assure fair and effective party participation in the election process are essential to democratic government. Our cases make it clear that the accommodation of these two vital interests does not lend itself to bright-line rules but requires careful inquiry into the extent to which the one or the other interest is inordinately impaired under the facts of the particular case. See Anderson v Celebrezze, 460 US 780, 788-790, 75 L Ed 2d 547, 103 S Ct 1564 (1983); Storer v Brown, 415 US 724, 730, 39 L Ed 2d 714, 94 S Ct 1274 (1974). Even so, the conclusion reached on the individuated facts of one case sheds some measure of light upon the conclusion that will be reached on the individuated facts of the next. Since this is an area, moreover, in which the predictability of decisions is important,

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I think it worth noting that for me today's decision already exceeds the permissible limit of First Amendment restrictions upon the States' ordering of elections.

6. This was certainly the view of Justice Harlan, see id., at 210-211, 27 L Ed 2d 272, 91 S Ct 260, and of Justice Stewart and the two Justices who joined his opinion, see id., at 287-290, 27 L Ed 2d 272, 91 S Ct 260. As Justice Stewart observed: "The Constitution thus adopts as the federal standard the standard which each State has chosen for itself." Id., at 288, 27 L Ed 2d 272, 91 S Ct 260. The opinions of Justice Douglas and Justice Brennan are silent on the issue.

In my view, the Court's opinion exaggerates the importance of the associational interest at issue, if indeed it does not see one where none exists. There is no question here of restricting the Republican Party's ability to recruit and enroll Party members by offering them the ability to select Party candidates; Conn Gen Stat § 9-56 (1985) permits an independent voter to join the Party as late as the day before the primary. Cf. Kusper v Pontikes, 414 US 51, 38 L Ed 2d 260, 94 S Ct 303 (1973). Nor is there any question of restricting the ability of the Party's members to select whatever candidate they desire. Appellees' only complaint is that the Party cannot leave the selection of its candidate to persons who are *not* members of the Party, and are unwilling to become members. It seems to me fanciful to refer to this as an interest in freedom of association between the members of the Republican Party and the putative independent voters. The Connecticut voter who, while steadfastly refusing to register as a Republican, casts a vote in the Republican primary, forms no more meaningful an "association" with the Party than does the independent or the registered Democrat who responds to questions by a Republican Party pollster. If the concept of freedom of association is extended to such casual contacts, it ceases to be of any analytic use. See Democratic Party of United States v Wisconsin ex rel. La Follette, 450 US 107, 130-131, 67 L Ed 2d 82, 101 S Ct 1010 (1981) (Powell, J., dissenting) ("[Not] every conflict between state law and party rules concerning participation in the nomination process creates a burden on associational rights"; one must "look closely at the nature of the intrusion, in light of the nature of the association involved, to see whether we are presented with a real limitation on First Amendment freedoms").

The ability of the members of the Republican Party to select their own candidate, on the other hand, unquestionably

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implicates an associational freedom—but it can hardly be thought that that freedom is unconstitutionally impaired here. The Party is entirely free to put forward, if it wishes, that candidate who has the highest degree of support among Party members and independents combined. The State is under no obligation, however, to let its party primary be used, instead of a party-funded opinion poll, as the means by which the party identifies the relative popularity of its potential candidates among independents. Nor is there any reason apparent to me why the State cannot insist that this decision to support what might be called the independents' choice be taken *by the party membership in a democratic fashion*, rather than through a process that permits the members' votes to be diluted—and perhaps even absolutely outnumbered—by the votes of outsiders.

The Court's opinion characterizes this, disparagingly, as an attempt to "protect[] the integrity of the Party against the Party itself." Ante, at 224, 93 L Ed 2d, at 529. There are two problems with this characterization. The first, and less important, is that it is not true. We have no way of knowing that a majority of the Party's members is in favor of allowing ultimate selection of its candidates for federal and statewide office to be determined by persons outside the Party. That decision was not made by democratic ballot, but by

the Party's state convention—which, for all we know, may have been dominated by officeholders and office seekers whose evaluation of the merits of assuring election of the Party's candidates, vis-à-vis the merits of proposing candidates faithful to the Party's political philosophy, diverged significantly from the views of the Party's rank and file. I had always thought it was a major purpose of state-imposed party primary requirements to protect the general party membership against this sort of minority control. See Nader v Schaffer, 417 F Supp 837, 843 (Conn), summarily aff'd, 429 US 989, 50 L Ed 2d 602, 97 S Ct 516 (1976). Second and more important, however, *even if* it were the fact that the majority of the Party's members wanted its candidates to be

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determined by outsiders, there is no reason why the State is bound to honor that desire—any more than it would be bound to honor a party's democratically expressed desire that its candidates henceforth be selected by convention rather than by primary, or by the party's executive committee in a smoke-filled room. In other words, the validity of the state-imposed primary requirement itself, which we have hitherto considered "too plain for argument," American Party of Texas v White, 415 US 767, 781, 39 L Ed 2d 744, 94 S Ct 1296 (1974), presupposes that the State *has* the right "to protect the Party against the Party itself." Connecticut may lawfully require that significant elements of the democratic election process be democratic—whether the Party wants that or not. It is beyond my understanding why the Republican Party's delegation of its democratic choice to a Republican Convention can be proscribed, but its delegation of that choice to nonmembers of the Party cannot.

In the case before us, Connecticut has said no more than this: Just as the Republican Party may, if it wishes, nominate the candidate recommended by the Party's executive committee, so long as its members select that candidate by name in a democratic vote; so also it may nominate the independents' choice, so long as its members select him by name in a democratic vote. That seems to me plainly and entirely constitutional.

I respectfully dissent.

See pg. 287

MARCH FONG EU, Secretary of State of California, et al., Appellants

v

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE et al.

489 US —, 103 L Ed 2d 271, 109 S Ct —

[No. 87-1269]

Argued December 5, 1988. Decided February 22, 1989.

Decision: California law banning endorsement of primary candidates by parties' governing bodies held to violate parties' speech and association rights under Federal Constitution's First Amendment.

SUMMARY

Provisions of the California Elections Code (1) forbade the official governing bodies of political parties from endorsing candidates in party primaries, (2) restricted the organization and composition of such official governing bodies, (3) limited the term of office for a party's state central committee chair, and (4) required that the chair rotate between residents of northern and southern California. Various county central committees of the Democratic and Republican parties, and other groups and individuals active in partisan politics in California, brought an action in the United States District Court for the Northern District of California against state officials responsible for enforcing the Code. The plaintiffs contended that the provisions in question deprived political parties and their members of the rights of free speech and free association guaranteed by the Federal Constitution's First and Fourteenth Amendments. The District Court granted summary judgment for the plaintiffs as to the provisions in question, and the United States Court of Appeals affirmed (792 F2d 802). On appeal, the United States Supreme Court vacated and remanded (479 US 1024, 93 L Ed 2d 820, 107 S Ct 864) for further consideration in light of its decision in Tashjian v Republican Party of Connecticut (1986) 479 US 208, 93 L Ed 2d 514, 107 S Ct 544. After supplemental briefing, the Court of Appeals concluded that its previous decision was supported by the Tashjian decision, supra, and accordingly reinstated its judgment affirming the District Court's decision (826 F2d 814).

On appeal, the United States Supreme Court affirmed. In an opinion by

MARSHALL, J., joined by BRENNAN, WHITE, BLACKMUN, STEVENS, O'CONNOR, SCALIA, and KENNEDY, JJ., it was held that (1) the provision concerning endorsement of primary candidates (a) infringed upon the free speech rights of parties and their members, because it directly hampered the ability of a party to spread its message and hamstrung voters seeking to inform themselves about the candidates and the campaign issues, (b) infringed upon political parties' freedom of association, because the provision prevented parties from promoting candidates at the crucial juncture at which the appeal to common principles may be translated into concerted action and, hence, to political power in the community, and (c) could not be justified as advancing the state's compelling interests in maintaining a stable political system, protecting primary voters from confusion and undue influence, or preserving party stability; and (2) the provisions regulating the parties' internal affairs (a) burdened the freedom of association of political parties and their members, because such provisions limited a party's discretion in how to organize itself, conduct its affairs, and select its leaders, and (b) could not be justified as serving compelling state interests in preserving the integrity of the election process, insuring the democratic management of a party's internal affairs, or preventing regional friction.

STEVENS, J., concurring, joined the court's opinion, but expressed the view that such phrases as "compelling state interest" were too convenient and result-oriented to be helpful for constitutional analysis.

REHNQUIST, Ch. J., did not participate.

HEADNOTES

Classified to U.S. Supreme Court Digest, Lawyers' Edition

Constitutional Law § 940.5 — freedom of speech and association — party endorsement of primary candidates

1a-1j. A state elections code provision that forbids the official governing bodies of political parties from endorsing candidates in party primaries violates the free speech rights, guaranteed by the Federal Constitution's First and Fourteenth Amendments, of political parties and their members, because the provision, which affects speech that is at the core of the electoral process and of the First Amendment freedoms, directly hampers the ability of a party to spread its message and hamstrings voters seeking to inform themselves about the candidates and the campaign issues; such a provision infringes upon political parties' freedom of association protected by the First and Fourteenth Amendments, because the provision prevents parties from promoting candidates at the crucial juncture at which the appeal to common principles may be translated into concerted action and, hence, to political power in the community; such a provision may not be justified as advancing the state's compelling interests in maintaining a stable political system and protecting primary voters from confusion and undue influence, where the state does not adequately explain how the provision advances those interests; nor

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25 Am Jur 2d, Elections §§ 117-119, 123-125, 129-131, 150-152

USCS, Constitution, Amendments 1, 14

US L Ed Digest, Constitutional Law § 940.5; Elections § 2

Index to Annotations, Elections and Voting; Freedom of Association; Freedom of Speech and Press; Politics and Political Matters

VERALEX®: Cases and annotations referred to herein can be further researched through the VERALEX electronic retrieval system's two services, Auto-Cite® and SHOWME®. Use Auto-Cite to check citations for form, parallel references, prior and later history, and annotation references. Use SHOWME to display the full text of cases and annotations.

ANNOTATION REFERENCES

Supreme Court's views regarding First Amendment guaranties of freedom of speech or of the press as applied to electoral or referendum process. 71 L Ed 2d 1000.

Supreme Court's views regarding First Amendment right of association as applied to advancement of political beliefs. 67 L Ed 2d 659.

may the provision be justified as serving a compelling state interest in party stability, since preserving party unity during a primary is not a compelling state interest.

Constitutional Law § 940.5 — freedom of association — regulation of party's internal structure

2a-2f. State statutory provisions that (1) restrict the organization and composition of the official governing bodies of political parties, (2) limit the term of office for a party's state central committee chair, and (3) require that the chair rotate between residents of northern and southern parts of the state burden the freedom of association, guaranteed by the Federal Constitution's First and Fourteenth Amendments, of political parties and their members, because such provisions limit a party's discretion in how to organize itself, conduct its affairs, and select its leaders; such provisions cannot be justified as serving a compelling state interest in preserving the integrity of the election process, where the state does not show that the provisions are necessary to insure the order and fairness of elections; such provisions cannot be justified as serving a compelling state interest in the democratic management of a party's internal affairs, where state intervention is not necessary to prevent the derogation of the civil rights of party adherents, because the state has no interest in protecting the integrity of the party against the party itself; the provisions regulating the party chair cannot be justified as preventing regional friction, because a state cannot substitute its judgment for that of a party as to the desirability of a particular internal party structure.

Constitutional Law § 940.5 — First Amendment — validity of state regulations

3. A state's broad power to regulate the time, place, and manner of elections does not extinguish the state's responsibility to observe the limits established by the rights of the state's citizens under the Federal Constitution's First Amendment; to assess the constitutionality of a state election law, a court first examines whether the law burdens rights protected by the First and Fourteenth Amendments; if the challenged law burdens the rights of political parties and their members, the law can survive constitutional scrutiny only if the state shows that the law advances a compelling state interest and is narrowly tailored to serve that interest.

Constitutional Law § 940.5 — freedom of speech — election campaigns — primaries

4. The Federal Constitution's First Amendment has its fullest and most urgent application to speech uttered during a campaign for political office; for First Amendment purposes, free discussion about candidates for public office is no less critical before a primary than before a general election, since in both instances, the election campaign is a means of disseminating ideas as well as attaining political office.

Constitutional Law §§ 933, 940.5 — First Amendment — censorship — political speech

5. A state's highly paternalistic approach limiting what people may hear is generally suspect under the Federal Constitution's First Amendment, but it is particularly egregious where the state censors the political speech that a political party shares with its members.

Constitutional Law § 940.5 — freedom of association — political parties

6. Partisan political organizations enjoy freedom of association protected by the Federal Constitution's First and Fourteenth Amendments; such freedom of association means not only that an individual voter has the right to associate with the political party of her choice, but also that a political party has a right to identify the people who constitute the association and to select a standard bearer who best represents the party's ideologies and preferences.

Constitutional Law § 940.5 — right of association

7. Imposing limitations on individuals wishing to band together to advance their views on a ballot measure, while placing none on individuals acting alone, is a restraint on the federal constitutional right of association.

Constitutional Law § 940.5 — free speech and association — political stability — informed electorate

8a, 8b. For purposes of the rule that a state's burden on the rights to free speech and free association can survive constitutional scrutiny only if a compelling governmental interest is served, maintaining a stable political system is a compelling state interest, and a state has a legitimate interest in fostering an informed electorate.

Elections § 2 — flow of political information

9. A state may properly regulate the flow of information between political associations and their members when necessary to prevent fraud and corruption.

Appeal § 1331.5 — what reviewable

10a, 10b. On appeal from a United States Court of Appeals decision that affirmed a United States District Court judgment holding that a state's election code provisions violated the free speech and associational rights of political parties, the United States Supreme Court will not disturb the District Court's ruling that the central committees of various political parties had authorization and capacity to bring and maintain the litigation, where the Court of Appeals did not disturb this ruling.

Constitutional Law § 940.5 — freedom of association — political parties

11. A political party's determination of the structure which best allows it to pursue its political goals is protected by the Federal Constitution; freedom of association also encompasses a political party's decisions about the identity of, and the process for electing, its leaders.

Constitutional Law § 940.5 — associational rights — integrity of election process — regulation of parties

12a, 12b. For purposes of the federal constitutional requirement that laws burdening the associational rights of political parties and their members serve a compelling state interest, a state has a compelling interest in preserving the integrity of its election process; toward that end, a state may properly enact laws that interfere with a political party's internal affairs when necessary to insure that elections are fair and honest; for example, a state may properly impose certain eligibility requirements for voters in the general election, even though they limit

the ability of political parties to garner support and members, where such requirements are necessary to insure that elections are fair and honest; however, a state cannot justify regulating a party's internal affairs without showing that such regulation is necessary to insure an election that is orderly and fair.

Appeal § 1331.5 — what reviewable

13a, 13b. On appeal from a United States Court of Appeals decision holding that a state's election code provisions, purportedly designed to curb friction within political parties, violate the parties' free speech and associational rights, the United States Supreme Court need not address the contention that the challenged laws weaken rather than strengthen parties, where the Supreme Court finds that the state has no compelling interest in curbing intraparty friction as long as the electoral process remains fair and orderly.

SYLLABUS BY REPORTER OF DECISIONS

Section 11702 of the California Elections Code (Code) forbids the official governing bodies of political parties to endorse or oppose candidates in primary elections, while § 29430 makes it a misdemeanor for any candidate in a primary to claim official party endorsement. Other Code sections dictate the organization and composition of parties' governing bodies, limit the term of office for a party's state central committee chair, and require that the chair rotate between residents of northern and southern California. Various party governing bodies, members of such bodies, and other politically active groups and individuals brought suit in the District Court, claiming, inter alia, that these Code provisions deprived parties and their members of the rights of free speech and free association guaranteed by the First and Fourteenth Amendments. The District Court granted summary judgment for the plaintiffs as to the provisions in question, and the Court of Appeals affirmed.

Held: The challenged California election laws are invalid, since they burden the First Amendment rights of political parties and their members without serving a compelling state interest.

(a) The ban on primary endorsements in §§ 11702 and 29430 violates the First and Fourteenth Amendments. By preventing a party's governing body from stating whether a candidate adheres to the party's tenets or whether party officials believe that the candidate is qualified for the position sought, the ban directly hampers the party's ability to spread its message and hamstrings voters seeking to inform themselves about the candidates and issues, and thereby burdens the core right to free political speech of the party and its members. The ban also infringes a party's protected freedom of association rights to identify the people who constitute the association and to select a standard bearer who best represents the party's ideology and preferences, by preventing the party from promoting candidates at the crucial primary election juncture. Moreover, the ban does not serve a compelling governmental interest. The State has not adequately explained how the ban advances its claimed interest in a stable political system or what makes California so

peculiar that it is virtually the only State to determine that such a ban is necessary. The explanation that the State's compelling interest in stable government embraces a similar interest in party stability is untenable, since a State may enact laws to prevent disruption of political parties from without but not from within. The claim that a party that issues primary endorsements risks intraparty friction which may endanger its general election prospects is insufficient, since the goal of protecting the party against itself would not justify a State's substituting its judgment for that of the party. The State's claim that the ban is necessary to protect primary voters from confusion and undue influence must be viewed with skepticism, since the ban restricts the flow of information to the citizenry without any evidence of the existence of fraud or corruption that would justify such a restriction.

(b) The restrictions on the organization and composition of the official governing bodies of political parties, the limits on the term of office for state central committee chairs, and the requirement that such chairs rotate between residents of northern and southern California cannot be upheld. These laws directly burden the associational rights of a party and its members by limiting the party's discretion in how to organize itself, conduct its affairs, and select its leaders. Moreover, the laws do not serve a compelling state interest. A state cannot justify regulating a party's ...internal affairs without showing that such regulation is necessary to ensure that elections are orderly, fair, and honest, and California has made no such showing. The State's claim that it has a compelling interest in the democratic management of internal party affairs is without merit, since this is not a case where intervention is necessary to prevent the derogation of party adherents' civil rights, and since the State has no interest in protecting the party's integrity against the party itself. Nor are the restrictions justified by the State's claim that limiting the term of the state central committee chair and requiring that the chair rotate between northern and southern California help to prevent regional friction from reaching a critical mass, since a State cannot substitute its judgment for that of the party as to the desirability of a particular party structure.

826 F2d 814, affirmed.

Marshall, J., delivered the opinion of the Court, in which all other Members joined, except Rehnquist, C.J., who took no part in the consideration or decision of the case. Stevens, J., filed a concurring opinion.

APPEARANCES OF COUNSEL

Geoffrey Lloyd Graybill argued the cause for appellants.
James J. Brosnahan argued the cause for appellees.

OPINION OF THE COURT

Justice **Marshall** delivered the opinion of the Court.

[1a, 2a] The California Elections Code forbids the official governing bodies of political parties from endorsing candidates in party primaries. It also dictates the organization and composition of those bodies, lim-

its the term of office of party chair, and requires that the chair rotate between residents of northern and southern California. The Court of Appeals for the Ninth Circuit held that these provisions violate the free speech and associational rights of political parties and their members guaranteed by the First and Fourteenth Amendments. 826 F2d 814 (1987). We noted probable jurisdiction, 485 US ——, 99 L Ed 2d 696, 108 S Ct 1466 (1988), and now affirm.

I

A

The State of California heavily regulates its political parties. Although the laws vary in extent and detail from party to party, certain requirements apply to all "ballot-qualified" parties.[1] The California Elections Code (Code) provides that the "official governing bodies" for such a party are its "state convention," "state central committee," and "county central committees." Cal Elec Code Ann § 11702 (West 1977), and that these bodies are responsible for conducting the party's campaigns.[2] At the same time, the Code provides that the official governing bodies "shall not endorse, support, or oppose, any candidate for nomination by that party for partisan office in the direct primary election." Ibid. It is a misdemeanor for any primary candidate, or a person on her behalf, to claim that she is the officially endorsed candidate of the party. § 29430.

Although the official governing bodies of political parties are barred from issuing endorsements, other groups are not. Political clubs affiliated with a party, labor organizations, political action committees, other politically active associations, and newspapers frequently endorse primary candidates.[3] With the official party organizations silenced by the ban, it has been possible for a candidate with views antithetical to

1. A "ballot-qualified" party is eligible to participate in any primary election because: (a) during the last gubernatorial election one of its candidates for state-wide office received two percent of the vote; (b) one percent of the State's voters are registered with the party; or (c) a petition establishing the party has been filed by ten percent of the State's voters. Cal Elec Code Ann § 6430 (West 1977).

In the interest of simplicity, we use the terms "ballot-qualified party" and "political party" interchangeably.

2. The Code requires the state central committee of each party to conduct campaigns for the party, employ campaign directors, and develop whatever campaign organizations serve the best interest of the party. Cal Elec Code Ann § 8777 (West Supp 1988) (Democratic Party); § 9276 (Republican Party); § 9660 (American Independent Party); § 9819 (Peace and Freedom Party). The county central committees, in turn, "have charge of the party campaign under general direction of the state central committee." § 8940 (Democratic Party); § 9440 (Republican Party); § 9740 (American Independent Party); § 9850 (Peace and Freedom Party). In addition, they "perform such other duties and services for th[e] political party as seem to be for the benefit of the party." § 8942 (Democratic Party); § 9443 (Republican Party); § 9742 (American Independent Party); § 9852 (Peace and Freedom Party).

3. For example, while voters cannot learn what the Democratic state and county central committees think of candidates, they may be flooded with endorsements from disparate groups across the State such as the Berkeley Democratic Club, the Mulekinners Democratic Club, and the District 8 Democratic Club. Addendum to Motion to Affirm or to Dismiss (Addendum) 20A ¶ 7 (declaration of Mary King, chair of the Alameda County Democratic Central Committee); Addendum 48 ¶ 7 (declaration of Linda Post, chair of San Francisco County Democratic Central Committee).

those of her party nevertheless to win its primary.[4]

In addition to restricting the primary activities of the official governing bodies of political parties, California also regulates their internal affairs. Separate statutory provisions dictate the size and composition of the state central committees;[5] set forth rules governing the selection and removal of committee members;[6] fix the maximum term of office for the chair of the state central committee;[7] require that the chair rotate between residents of northern and southern California;[8] specify the time and place of committee meetings;[9] and limit the dues parties may impose on members.[10] Violations of these provisions are criminal offenses punishable by fine and imprisonment.

B

Various county central committees of the Democratic and Republican parties, the state central committee of the Libertarian Party, members of various state and county central committees, and other groups and individuals active in partisan politics in California brought this action in federal court against state officials responsible for enforcing the Code. (State or California).[11] They contended that the ban on primary endorsements and the restrictions on internal party governance deprive political parties and their members of the rights of free speech and free association guaranteed by the First and Fourteenth Amendments of the

4. In 1980, for example, Tom Metzger won the Democratic Party's nomination for United States House of Representative from the San Diego area, although he was a Grand Dragon of the Ku Klux Klan and held views antithetical to those of the Democratic Party. Addendum 15a ¶ 2 (declaration of Edmond Costantini, member of the Executive Board of the Democratic state central committee).

5. For example, the Code dictates the precise mix of elected officials, party nominees, and party activists who are members of the state central committees of the Republican and Democratic parties as well as who may nominate the various committee members. Cal Elec Code Ann §§ 8660-8661, 8663 (West 1977 & Supp 1988) (Democratic Party); §§ 9160-9164 (Republican Party). Other parties are similarly regulated. See § 9640 (American Independent Party); §§ 9762, 9765 (Peace and Freedom Party) (West 1977).

6. §§ 8663-8667, 8669 (Democratic Party); §§ 9161-9164, 9168, 9170 (Republican Party); §§ 9641-9644, 9648-9650 (American Independent Party); §§ 9790-9794 (Peace and Freedom Party).

7. The Code limits the term of office of the chair of the state central committee to two years and prohibits successive terms. See § 8774 (Democratic Party); § 9274 (Republican Party); § 9685 (American Independent Party); § 9816 (Peace and Freedom Party).

8. § 8774 (West Supp 1988) (Democratic state central committee); § 9274 (West 1977) (Republican state central committee); § 9816 (Peace and Freedom state central committee).

9. §§ 8710-7811 (West Supp 1988) (Democratic state central committee); §§ 8920-8921 (West 1977 & Supp 1988) (Democratic county central committee); § 9210 (West Supp 1988) (Republican state central committee); §§ 9420-9421 (West 1977 & Supp 1988) (Republican county central committee); §§ 9730-9732 (American Independent county central committee); § 9800 (West 1977) (Peace and Freedom state central committee); §§ 9830, 9840-9842 (Peace and Freedom county central committee).

10. §§ 8775, 8945 (West 1977 & Supp 1988) (Democratic Party); § 9275 (West 1977) (Republican Party); §§ 9687, 9745 (American Independent Party); §§ 9818, 9855 (Peace and Freedom Party).

11. The plaintiffs sued March Fong Eu, Secretary of State of California; John K. Van de Kamp, Attorney General of California; Arlo Smith, District Attorney of San Francisco County; and Leo Himmelsbach, District Attorney of Santa Clara County.

United States Constitution.[12] The first count of the complaint challenged the ban on endorsements in partisan primary elections; the second count challenged the ban on endorsements in nonpartisan school, county, and municipal elections; and the third count challenged the provisions that prescribe the composition of state central committees, the term of office and eligibility criteria for state central committee chairs, the time and place of state and county central committee meetings, and the dues county committee members must pay.

The plaintiffs moved for summary judgment, in support of which they filed 28 declarations from the chairs of each plaintiff central committee, prominent political scientists, and elected officials from California and other States. The State moved to dismiss and filed a cross-motion for summary judgment supported by one declaration from a former state senator.

The District Court granted summary judgment for the plaintiffs on the first count, ruling that the ban on primary endorsements in § 11702 and § 29430 violated the First Amendment as applied to the States through the Fourteenth Amendment. The court stayed all proceedings on the second count under the abstention doctrine of Railroad Comm'n of Texas v Pullman Co., 312 US 496, 85 L Ed 971, 61 S Ct 643 (1941).[13] On the third count, the court ruled that the laws prescribing the composition of state central committees, limiting the committee chairs' term of office, and designating that the chair rotate between residents of northern and southern California violate the First Amendment.[14] The court denied summary judgment with respect to the statutory provisions establishing the time and place of committee meetings and the amount of dues. Civ No. C-83-5599 MHP (ND Cal, May 3, 1984).

The Court of Appeals for the Ninth Circuit affirmed. 792 F2d 802 (1986). This Court vacated that decision, 479 US 1024, 93 L Ed 2d 820, 107 S Ct 864 (1987), and remanded for further consideration in light of Tashjian v Republican Party of Connecticut, 479 US 208, 93 L Ed 2d 514, 107 S Ct 544 (1986).

After supplemental briefing, the Court of Appeals again affirmed. 826 F2d 814 (1987). The court first rejected the State's arguments based

12. The plaintiffs also asserted that the statutes violated the Equal Protection Clause of the Fourteenth Amendment. Because the District Court held that the statutes violate the First Amendment, it did not reach this claim.

13. An appeal was then pending in the California Supreme Court presenting a First Amendment challenge to a ban on endorsements by political parties of candidates in nonpartisan school, county, and municipal elections. The California Supreme Court ultimately decided that the Code did not prohibit such endorsements and so did not reach the First Amendment question. Unger v Superior Court, 37 Cal 3d 612, 692 P2d 238 (1984). A ban on party endorsements in nonpartisan elections subsequently was enacted by ballot initiative. A Federal District Court has ruled that this ban violates the First and Fourteenth Amendments. Geary v Renne, Civ No. C-87-4724 AJZ (ND Cal, April 27), stayed, 856 F2d 1456 (CA9 1988).

14. The District Court invalidated the following Code sections: Cal Elec Code §§ 8660-8661, 8663-8667, 8669 (Democratic state central committee); §§ 9160, 9160.5, 9161, 9161.5, 9162-9164 (West 1977 and Supp 1988) (Republican state central committee); § 9274 (Republican state central committee chair); and § 9616 (Peace and Freedom state central committee chair). In addition, it held that § 29102 was unconstitutional as applied.

on nonjusticiability, lack of standing, Eleventh Amendment immunity and Pullman abstention. 826 F2d, at 821-825. Turning to the merits, the court characterized the prohibition on primary endorsements as an "outright ban" on political speech. Id., at 833. "Prohibiting the governing body of a political party from supporting some candidates and opposing others patently infringes both the right of the party to express itself freely and the right of party members to an unrestricted flow of political information." Id., at 835. The court rejected the State's argument that the ban served a compelling state interest in preventing internal party dissension and factionalism: "The government simply has no legitimate interest in protecting political parties from disruptions of their own making." Id., at 834. The court noted, moreover, that the State had not shown that banning primary endorsements protects parties from factionalism. Ibid. The court concluded that the ban was not necessary to protect voters from confusion, stating, "California's ban on preprimary endorsements is a form of paternalism that is inconsistent with the First Amendment." Id., at 836.

The Court of Appeals also found that California's regulation of internal party affairs "burdens the parties' right to govern themselves as they think best." Id., at 827. This interference with the parties' and their members' First Amendment rights was not justified by a compelling state interest for a State has a legitimate interest "in orderly elections, not orderly parties." Id., at 831. In any event, the court noted, the State had failed to submit "'a shred of evidence,'" id., at 833 (quoting Civ No. C-83-5599 (ND Cal May 3, 1984)), that the regulations of party internal affairs helped minimize party factionalism. Accordingly, the court held that the challenged provisions were unconstitutional under the First and Fourteenth Amendments.

II

[3] A State's broad power to regulate the time, place, and manner of elections "does not extinguish the State's responsibility to observe the limits established by the First Amendment rights of the State's citizens." Tashjian v Republican Party of Connecticut, supra, at 217, 93 L Ed 2d 514, 107 S Ct 544. To assess the constitutionality of a state election law, we first examine whether it burdens rights protected by the First and Fourteenth Amendments. 479 US, at 214, 93 L Ed 2d 514, 107 S Ct 544; Anderson v Celebrezze, 460 US 780, 789, 75 L Ed 2d 547, 103 S Ct 1564 (1983). If the challenged law burdens the rights of political parties and their members, it can survive constitutional scrutiny only if the State shows that it advances a compelling state interest, Tashjian, supra, at 217, 222, 93 L Ed 2d 514, 107 S Ct 544; Illinois State Bd. of Elections v Socialist Workers Party, 440 US 173, 184, 59 L Ed 2d 230, 99 S Ct 983 (1979); American Party of Texas v White, 415 US 767, 780, and n 11, 39 L Ed 2d 744, 94 S Ct 1296 (1974); Williams v Rhodes, 393 US 23, 31, 21 L Ed 2d 24, 89 S Ct 5, 45 Ohio Ops 2d 236 (1968), and is narrowly tailored to serve that interest. Illinois State Bd. of Elections, supra, at 185, 59 L Ed 2d 230, 99 S Ct 983; Kusper v Pontikes, 414 US 51, 58-59, 38 L Ed 2d 260, 94 S Ct 303 (1973); Dunn v Blumstein, 405 US 330, 343, 31 L Ed 2d 274, 92 S Ct 995 (1972).

A

[1b, 4] We first consider California's prohibition on primary endorsements by the official governing bodies of political parties. California concedes that its ban implicates the First Amendment, Tr of Oral Arg 17, but contends that the burden is "miniscule." Id., at 7. We disagree. The ban directly affects speech which "is at the core of our electoral process and of the First Amendment freedoms." Williams v Rhodes, supra, at 32, 21 L Ed 2d 24, 89 S Ct 5, 45 Ohio Ops 2d 236. We have recognized repeatedly that "debate on the qualifications of candidates [is] integral to the operation of the system of government established by our Constitution." Buckley v Valeo, 424 US 1, 14, 46 L Ed 2d 659, 96 S Ct 612 (1976) (per curiam); see also NAACP v Claiborne Hardware Co., 458 US 886, 913, 73 L Ed 2d 1215, 102 S Ct 3409 (1982); Carey v Brown, 447 US 455, 467, 65 L Ed 2d 263, 100 S Ct 2286 (1980); Garrison v Louisiana, 379 US 64, 74-75, 13 L Ed 2d 125, 85 S Ct 209 (1964). Indeed, the First Amendment "has its fullest and most urgent application" to speech uttered during a campaign for political office. Monitor Patriot Co. v Roy, 401 US 265, 272, 28 L Ed 2d 35, 91 S Ct 621 (1971); see also Mills v Alabama, 384 US 214, 218, 16 L Ed 2d 484, 86 S Ct 1434 (1966). Free discussion about candidates for public office is no less critical before a primary than before a general election. Cf. Storer v Brown, 415 US 724, 735, 39 L Ed 2d 714, 94 S Ct 1274 (1974); Smith v Allwright, 321 US 649, 666, 88 L Ed 987, 64 S Ct 757, 151 ALR 1110 (1944); United States v Classic, 313 US 299, 314, 85 L Ed 1368, 61 S Ct 1031 (1941). In both instances, the "election campaign is a means of disseminati ideas as well as attaining politi office." Illinois State Bd. of Electio supra, at 186, 59 L Ed 2d 230, 99 Ct 983.

[1c, 5] California's ban on prima endorsements, however, prever party governing bodies from stati whether a candidate adheres to tl tenets of the party or whether par officials believe that the candidate qualified for the position sough This prohibition directly hampe the ability of a party to spread i message and hamstrings voters see ing to inform themselves about th candidates and the campaign issue See Tashjian, supra, at 220-222, 93 Ed 2d 514, 107 S Ct 544; Pacific Ga & Electric Co. v Public Utilitie Comm'n of California, 475 US 1, 8 89 L Ed 2d 1, 106 S Ct 903 (1986 Brown v Hartlage, 456 US 45, 60, 7 L Ed 2d 732, 102 S Ct 1523 (1982) First National Bank of Boston v Bel lotti, 435 US 765, 791-792, 55 L Ed 2d 707, 98 S Ct 1407 (1978). A "highly paternalistic approach" limiting what people may hear is generally suspect, Virginia State Bd. of Pharmacy v Virginia Citizens Consumer Council, Inc., 425 US 748, 770, 48 L Ed 2d 346, 96 S Ct 1817 (1976); see also First National Bank of Boston, supra, at 790-792, 55 L Ed 2d 707, 98 S Ct 1407, but it is particularly egregious where the State censors the political speech a political party shares with its members. See Roberts v United States Jaycees, 468 US 609, 634, 82 L Ed 2d 462, 104 S Ct 3244 (1984) (O'Connor, J., concurring).

[1d, 6] Barring political parties from endorsing and opposing candidates not only burdens their freedom of speech but also infringes upon their freedom of association. It is

well settled that partisan political organizations enjoy freedom of association protected by the First and Fourteenth Amendments. Tashjian, supra, at 214, 93 L Ed 2d 514, 107 S Ct 544; see also Elrod v Burns, 427 US 347, 357, 49 L Ed 2d 547, 96 S Ct 2673 (1976) (plurality opinion). Freedom of association means not only that an individual voter has the right to associate with the political party of her choice, Tashjian, supra, at 214, 93 L Ed 2d 514, 107 S Ct 544 (quoting Kusper, supra, at 57, 38 L Ed 2d 260, 94 S Ct 303), but also that a political party has a right to "'identify the people who constitute the association,'" Tashjian, supra, at 214, 93 L Ed 2d 514, 107 S Ct 544 (quoting Democratic Party of the United States v Wisconsin ex rel. La Follette, 450 US 107, 122, 67 L Ed 2d 82, 101 S Ct 1010 (1981)); cf. NAACP v Alabama, 357 US 449, 460-462, 2 L Ed 2d 1488, 78 S Ct 1163 (1958), and to select a "standard bearer who best represents the party's ideologies and preferences." Ripon Society, Inc. v National Republican Party, 173 US App DC 350, 384, 525 F2d 567, 601 (1975) (Tamm, J., concurring in result), cert denied, 424 US 933, 47 L Ed 2d 341, 96 S Ct 1147, 96 S Ct 1148 (1976).

[1e, 7] Depriving a political party of the power to endorse suffocates this right. The endorsement ban prevents parties from promoting candidates "at the crucial juncture at which the appeal to common principles may be translated into concerted action, and hence to political power in the community." Tashjian, supra, at 216, 93 L Ed 2d 514, 107 S Ct 544. Even though individual members of the state central committees and county central committees are free to issue endorsements, imposing limitations "on individuals wishing to band together to advance their views on a ballot measure, while placing none on individuals acting alone, is clearly a restraint on the right of association." Citizens Against Rent Control/Coalition for Fair Housing v Berkeley, 454 US 290, 296, 70 L Ed 2d 492, 102 S Ct 434 (1981).

[1f, 8a] Because the ban burdens the appellees' rights to free speech and free association, it can only survive constitutional scrutiny if it serves a compelling governmental interest.[11] The State offers two: stable government and protecting vot-

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11. California contends that it need not show that its endorsement ban serves a compelling state interest because the political parties have "consented" to it. In support of this claim, California observes that the legislators who could repeal the ban belong to political parties, that the bylaws of some parties prohibit primary endorsements, and that parties continue to participate in state-run primaries.

This argument is fatally flawed in several respects. We have never held that a political party's consent will cure a statute that otherwise violates the First Amendment. Even aside from this fundamental defect, California's consent argument is contradicted by the simple fact that the official governing bodies of various political parties have joined this lawsuit. In addition, the Democratic and Libertarian Parties moved to issue endorsements following the Court of Appeals' invalidation of the endorsement ban.

There are other flaws in the State's argument. Simply because a legislator belongs to a political party does not make her at all times a representative of party interests. In supporting the endorsement ban, an individual legislator may be acting on her understanding of the public good or her interest in reelection. The independence of legislators from their parties is illustrated by the California Legislature's frequent refusal to amend the election laws in accordance with the wishes of political parties. See, e. g., Addendum 12a-13a ¶¶ 7-9 (declaration of Bert Coffey, chair of the Democratic state central committee). More-

ers from confusion and undue influence.[16] Maintaining a stable political system is, unquestionably, a compelling state interest. See Storer v Brown, 415 US, at 736, 39 L Ed 2d 714, 94 S Ct 1274. California, however, never adequately explains how banning parties from endorsing or opposing primary candidates advances that interest. There is no showing, for example, that California's political system is any more stable now than it was in 1963, when the legislature enacted the ban. Nor does the State explain what makes the California system so peculiar that it is virtually the only State that has determined that such a ban is necessary.[17]

[19] The only explanation the State offers is that its compelling interest in stable government embraces a similar interest in party stability. Brief for Appellants 47. The State relies heavily on Storer v Brown, where we stated that because "splintered parties and unrestrained factionalism may do significant damage to the fabric of government," supra, at 736, 39 L Ed 2d 714, 94 S Ct 1274, States may regulate elections to ensure that "some sort of order, rather than chaos . . .

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over, the State's argument ignores these parties with negligible, if any, representation in the legislature.

That the bylaws of some parties prohibit party primary endorsements also does not prove consent. These parties may have chosen to reflect state election law in their bylaws, rather than permit or require conduct prohibited by law. Nor does the fact that parties continue to participate in the state-run primary process indicate that they favor each regulation imposed upon that process. A decision to participate in state-run primaries more likely reflects a party's determination that ballot participation is more advantageous than the alternatives, that is, supporting independent candidates or conducting write-in campaigns. See Storer v Brown, 415 US 724, 748, 39 L Ed 2d 714, 94 S Ct 1274 (1974); Anderson v Celebrezze, 460 US 780, 799, n 28, 75 L Ed 2d 547, 103 S Ct 1564 (1983).

Finally, the State's focus on the parties' alleged consent ignores the independent First Amendment rights of the parties' members. It is wholly undemonstrated that the members authorized the parties to consent to infringements of members' rights.

16. The State also claims that the ban on primary endorsements serves a compelling state interest in "'confining each voter to a single nominating act.'" Tashjian v Republican Party of Connecticut, 479 US 208, 223, n 13, 93 L Ed 2d 514, 107 S Ct 544 (1986) (quoting Anderson, supra, at 802, n 29, 75 L Ed 2d 547, 103 S Ct 1564). This argument is meritless. It fails to distinguish between a nominating act—the vote cast at the primary election—and speech that may influence that act. The logic of the State's argument not only would support a ban on endorsements by every organization and individual, but also would justify a total ban on all discussion of a candidate's qualifications and political positions. Such a blanket prohibition cannot coexist with the constitutional protection of political speech.

The State's claim that the endorsement ban is necessary to serve any compelling state interest is called into question by its argument before the District Court and the Court of Appeals that this action is not justiciable because the State has never enforced the challenged election laws. 826 F2d 814, 821 (1987).

17. New Jersey also bans primary endorsements by political parties. NJ Stat Ann § 19:34-82 (West 1964); see Weisburd, Candidate-Making and the Constitution: Constitutional Restraints on and Protections of Party Nominating Methods, 57 S Cal L Rev 213, 271-272, n 343 (1984). Florida's statutory ban on primary endorsements by political parties was held to violate the First Amendment. See Abrams v Reno, 482 F Supp 1166, 1171-1172 (SD Fla 1979), aff'd, 649 F2d 342 (CA5 1981), cert denied, 455 US 1016, 72 L Ed 2d 133, 102 S Ct 1710 (1982). Several States provide formal procedures for party primary endorsements. See, e. g., Conn Gen Stat § 9-390 (West 1987 & Supp 1988); RI Gen Laws § 17-12-4 (1988); see also Advisory Commission on Intergovernmental Relations, The Transformation in American Politics: Implications for Federalism 148 (1986).

accompan[ies] the democratic processes." 415 US, at 730, 39 L Ed 2d 714, 94 S Ct 1274. Our decision in Storer, however, does not stand for the proposition that a State may enact election laws to mitigate intraparty factionalism during a primary campaign. To the contrary, Storer recognized that "contending forces within the party employ the primary campaign and the primary election to finally settle their differences." Id., at 735, 39 L Ed 2d 714, 94 S Ct 1274. A primary is not hostile to intraparty feuds; rather it is an ideal forum in which to resolve them. Ibid.; American Party of Texas v White, 415 US, at 781, 39 L Ed 2d 744, 94 S Ct 1296. Tashjian recognizes precisely this distinction. In that case, we noted that a State may enact laws to "prevent the disruption of the political parties from without" but not, as in this case, laws "to prevent the parties from taking internal steps affecting their own process for the selection of candidates." 479 US, at 224, 93 L Ed 2d 514, 107 S Ct 544.

It is no answer to argue, as does the State, that a party that issues primary endorsements risks intraparty friction which may endanger the party's general election prospects. Presumably a party will be motivated by self-interest and not engage in acts or speech that run counter to its political success. However, even if a ban on endorsements saves a political party from pursuing self-destructive acts, that would not justify a State substituting its judgment for that of the party. See ibid.; Democratic Party of United States, 450 US, at 124, 67 L Ed 2d 82, 101 S Ct 1010. Because preserving party unity during a primary is not a compelling state interest, we must look elsewhere to justify the challenged law.

[1h, 8b, 9, 10a] The State's second justification for the ban on party endorsements and statements of opposition is that it is necessary to protect primary voters from confusion and undue influence. Certainly the State has a legitimate interest in fostering an informed electorate. Tashjian, supra, at 220, 93 L Ed 2d 514, 107 S Ct 544; Anderson v Celebrezze, 460 US, at 796, 75 L Ed 2d 547, 103 S Ct 1564; American Party of Texas v White, supra, at 782, n 14, 39 L Ed 2d 744, 94 S Ct 1296; Bullock v Carter, 405 US 134, 145, 31 L Ed 2d 92, 92 S Ct 849 (1972); Jenness v Fortson, 403 US 431, 442, 29 L Ed 2d 554, 91 S Ct 1970 (1971). However, " '[a] State's claim that it is enhancing the ability of its citizenry to make wise decisions by restricting the flow of information to them must be viewed with some skepticism.' " Tashjian, supra, at 221, 93 L Ed 2d 514, 107 S Ct 544 (quoting Anderson v Celebrezze, supra, at 798, 75 L Ed 2d 547, 103 S Ct 1564).[18] While a State may regulate

18. It is doubtful that the silencing of official party committees, alone among the various groups interested in the outcome of a primary election, is the key to protecting voters from confusion. Indeed, the growing number of endorsements by political organizations using the labels "Democratic" or "Republican" has likely misled voters into believing that the official governing bodies were supporting the candidates.

The State makes no showing, moreover, that voters are unduly influenced by party endorsements. There is no evidence that an endorsement issued by an official party organization carries more weight than one issued by a newspaper or a labor union. In States where parties are permitted to issue primary endorsements, voters may consider the parties' views on the candidates but still exercise independent judgment when casting their

the flow of information between political associations and their members when necessary to prevent fraud and corruption, see Buckley v Valeo, 424 US, at 26-27, 46 L Ed 2d 659, 96 S Ct 612; Jenness v Fortson, supra, at 442, 29 L Ed 2d 554, 91 S. Ct 1970, there is no evidence that California's ban on party primary endorsements serves that purpose.[19]

[11] Because the ban on primary endorsements by political parties burdens political speech while serving no compelling governmental interest, we hold that § 11702 and § 29430 violate the First and Fourteenth Amendment.

B

[2b, 11] We turn next to California's restrictions on the organization and composition of official governing bodies, the limits on the term of office for state central committee chair, and the requirement that the chair rotate between residents of northern and southern California. These laws directly implicate the associational rights of political parties and their members. As we noted in Tashjian, a political party's "determination . . . of the structure which best allows it to pursue its political goals, is protected by the Constitution." 479 US, at 224, 93 L Ed 2d 514, 107 S Ct 544. Freedom of association also encompasses a political party's decisions about the identity of, and the process for electing, its leaders. See Democratic Party of the United States, supra, (State cannot dictate process of selecting state delegates to Democratic National Convention); Cousins v Wigoda, 419 US 477, 42 L Ed 2d 595, 95 S Ct 541 (1975) (State cannot dictate who may sit as state delegates to Democratic National Convention); cf. Tashjian, supra, at 235-236, 93 L Ed 2d 514, 107 S Ct 544 (Scalia, J., dissenting) ("The ability of the members of [a political p]arty to select their own candidate . . . unquestionably implicates an associational freedom").

[2c] The laws at issue burden these rights. By requiring parties to establish official governing bodies at the county level, California prevents the political parties from governing themselves with the structure they think best.[20] And by specifying who

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vote. For example, in the 1982 New York Democratic gubernatorial contest, Mario Cuomo won the primary over Edward Koch, who had been endorsed by the party. That year gubernatorial candidates endorsed by their parties also lost the primary election to nonendorsed candidates in Massachusetts and Minnesota. Even where the party-endorsed candidate wins the primary, one study has concluded that the party endorsement has little, if any effect, on the way voters cast their vote. App 97-98 ¶¶ 10, 14-17 (declaration of Malcolm E. Jewell, Professor of Political Science, University of Kentucky).

19. [10b] The State suggested at oral argument that the endorsement ban prevents fraud by barring party officials from misrepresenting that they speak for the party. To the extent that the State suggests that only the primary election results can constitute a party endorsement, Tr of Oral Arg 8-9, it confuses an endorsement from the official governing bodies that may influence election results with the results themselves. To the extent that the State is claiming that the appellees are not authorized to represent the official party governing bodies and their members, the State simply is reasserting its standing claim which the District Court rejected. Civ No. C-83-5529 (ND Cal. June 1, 1984) ("the plaintiff central committees . . . have authorization and capacity to bring and maintain this litigation"). The Court of Appeals did not disturb this ruling, 826 F2d, at 822, n 17, nor do we.

20. For example, the Libertarian Party was forced to abandon its region-based organization in favor of the statutorily mandated county-based system.

shall be the members of the parties' official governing bodies, California interferes with the parties' choice of leaders. A party might decide, for example, that it will be more effective if a greater number of its official leaders are local activists rather than Washington-based elected officials. The Code prevents such a change. A party might also decide that the state central committee chair needs more than two years to successfully formulate and implement policy. The Code prevents such an extension of the chair's term of office. A party might find that a resident of northern California would be particularly effective in promoting the party's message and in unifying the party. The Code prevents her from chairing the state central committee unless the preceding chair was from the southern part of the State.

Each restriction thus limits a political party's discretion in how to organize itself, conduct its affairs, and select its leaders. Indeed, the associational rights at stake are much stronger than those we credited in Tashjian. There, we found that a party's right to free association embraces a right to allow registered voters who are not party members to vote in the party's primary. Here, party members do not seek to associate with nonparty members, but only with one another in freely choosing their party leaders.[11]

[2d, 12a] Because the challenged laws burden the associational rights of political parties and their members, the question is whether they serve a compelling state interest. A State indisputably has a compelling interest in preserving the integrity of its election process. Rosario v Rockefeller, 410 US 752, 761, 36 L Ed 2d 1, 93 S Ct 1245 (1973). Toward that end, a State may enact laws that interfere with a party's internal affairs when necessary to ensure that elections are fair and honest. Storer v Brown, 415 US, at 730, 39 L Ed 2d 714, 94 S Ct 1274. For example, a State may impose certain eligibility requirements for voters in the general election even though they limit parties' ability to garner support and members. See, e.g., Dunn v Blumstein, 405 US, at 343-344, 31 L Ed 2d 274, 92 S Ct 995 (residence requirement); Oregon v Mitchell, 400 US 112, 118, 27 L Ed 272, 91 S Ct 260 (1970) (age minimum); Kramer v Union Free School Dist No. 15, 395 US 621, 625, 23 L Ed 2d 583, 89 S Ct 1886 (1969) (citizenship requirement). We have also recognized that a State may impose restrictions that promote the integrity of primary elections. See, e.g., American Party of Texas v White, 415 US, at 779-780, 39 L Ed 2d 744, 94 S Ct 1296 (requirement that major political parties nominate candidates through a primary and that minor parties nominate candidates through conventions); id., at 785-786, 39 L Ed 2d 744, 94 S Ct 1296 (limitation on voters' participation to one primary and bar on voters both voting in a party primary and signing a petition supporting an independent candidate); Rosario v Rockefeller, supra (waiting periods before voters may change party registration and participate in another party's primary); Bullock v Carter, 405 US, at

11. By regulating the identity of the parties' leaders, the challenged statutes may also color the parties' message and interfere with the parties' decisions as to the best means to promote that message.

145, 31 L Ed 2d 92, 92 S Ct 849 (reasonable filing fees as a condition of placement on the ballot). None of these restrictions, however, involved direct regulation of a party's leaders.[22] Rather, the infringement on the associational rights of the parties and their members was the indirect consequence of laws necessary to the successful completion of a party's external responsibilities in ensuring the order and fairness of elections.

In the instant case, the State has not shown that its regulation of internal party governance is necessary to the integrity of the electoral process. Instead, it contends that the challenged laws serve a compelling "interest in the 'democratic management of the political party's internal affairs.'" Brief for Appellants 43 (quoting 415 US, at 781, n 15, 39 L Ed 2d 744, 94 S Ct 1296). This, however, is not a case where intervention is necessary to prevent the derogation of the civil rights of party adherents. Cf. Smith v Allwright, 321 US 649, 88 L Ed 987, 64 S Ct 757, 151 ALR 1110 (1944). Moreover, as we have observed, the State has no interest in "protect[ing] the integrity of the Party against the Party itself." Tashjian, 479 US, at 224, 93 L Ed 2d 514, 107 S Ct 544. The State further claims that limiting the term of the state central committee chair and requiring that the chair rotate between residents of northern and southern California helps "prevent regional friction from reaching a 'critical mass.'" Brief for Appellants 48. However, a State cannot substitute its judgment for that of the party as to the desirability of a particular internal party structure, any more than it can tell a party that its proposed communication to party members is unwise. Tashjian, supra, at 224, 93 L Ed 2d 514, 107 S Ct 544.

[12b, 13a] In sum, a State cannot justify regulating a party's internal affairs without showing that such regulation is necessary to ensure an election that is orderly and fair. Because California has made no such showing here, the challenged laws cannot be upheld.[23]

III

[1], 2] For the reasons stated above, we hold that the challenged California election laws burden the

22. Marchioro v Chaney, 442 US 191, 60 L Ed 2d 816, 99 S Ct 2243 (1979) is not to the contrary. There we upheld a Washington statute mandating that political parties create a state central committee, to which the Democratic Party, not the State, had assigned significant responsibilities in administering the party, raising and distributing funds to candidates, conducting campaigns, and setting party policy. Id., at 198-199, 60 L Ed 2d 816, 99 S Ct 2243. The statute only required that the state central committee perform certain limited functions such as filling vacancies on the party ticket, nominating Presidential electors and delegates to national conventions, and calling state-wide conventions. The party members did not claim that these statutory requirements imposed impermissible burdens on the party or themselves so we had no occasion to consider whether the challenged law burdened the party's First Amendment rights, and if so, whether the law served a compelling state interest. Id., at 197, n 12, 60 L Ed 2d 816, 99 S Ct 2243. Here, in contrast, it is state law, not a political party's charter, that places the state central committees at a party's helm and in particular assigns the statutorily mandated committee responsibility for conducting the party's campaigns.

23. [12b] Because we find that curbing intraparty friction is not a compelling state interest so long as the electoral process remains fair and orderly, we need not address the appellees' contention that the challenged laws weaken rather than strengthen parties.

First Amendment rights of political parties and their members without serving a compelling state interest. Accordingly, the judgment of the Court of Appeals is affirmed.

Chief Justice Rehnquist took no part in the consideration or decision of this case.

SEPARATE OPINION

Justice Stevens, concurring.

Today the Court relies on its opinion in Illinois State Board of Elections v Socialist Workers Party, 440 US 173, 183-185, 59 L Ed 2d 230, 99 S Ct 983 (1979)—and, in particular, on a portion of that opinion that I did not join—for its formulation of the governing standards in election cases. In that case Justice Blackmun explained his acceptance of the Court's approach in words that precisely express my views about this case. He wrote:

"Although I join the Court's opinion . . ., I add these comments to record purposefully, and perhaps somewhat belatedly, my unrelieved discomfort with what seems to be a continuing tendency in this Court to use as tests such easy phrases as 'compelling [state] interest' and 'least drastic [or restrictive] means.' See, ante, at 184, 185, and 186 [59 L Ed 2d 230, 99 S Ct 983]. I have never been able fully to appreciate just what a 'compelling state interest' is. If it means 'convincingly controlling,' or 'incapable of being overcome' upon any balancing process, then, of course, the test merely announces an inevitable result, and the test is no test at all. And, for me, 'least drastic means' is a slippery slope and also the signal of the result the Court has chosen to reach. A judge would be unimaginative indeed if he could not come up with something a little less 'drastic' or a little less 'restrictive' in almost any situation, and thereby enable himself to vote to strike legislation down. This is reminiscent of the Court's indulgence, a few decades ago, in substantive due process in the economic area as a means of nullification.

"I feel, therefore, and have always felt, that these phrases are really not very helpful for constitutional analysis. They are too convenient and result oriented, and I must endeavor to disassociate myself from them. Apart from their use, however, the result the Court reaches here is the correct one. It is with these reservations that I join the Court's opinion." Id., at 188-189, 59 L Ed 2d 230, 99 S Ct 983.

With those same reservations I join the Court's opinion today.

KENNETH P. JACOBUS
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TELEFAX (907) 563-7648

March 17, 1991

Lieutenant Governor Jack Coghill
Office of the Lieutenant Governor
P.O. Box AA
Juneau, Alaska 99811

Re: Republican Party of Alaska, 1992 Primary Election

Dear Lieutenant Governor Coghill:

I have enclosed a copy of the Republican Party of Alaska's recent submission to the Justice Department for pre-clearance of certain rules adopted by the Party at the Special Convention held on March 2, 1991.

The Republican Party of Alaska demands that the State of Alaska conduct the 1992 Republican Party Primary Election in accord with the Party Rules. In order to do so, it will be necessary to begin work on the procedures immediately, since the State will also have to submit its procedures to the Department of Justice. We will assist and work with the State of Alaska as necessary to develop appropriate procedures.

Please let me know what your positions are regarding these changes in the Republican Primary, what the schedule will be to prepare and submit the State procedures for pre-clearance, and how we can assist and work with you. It will be best to resolve disputes, if any, between the Party and the State, at an early date so that there is no difficulty with pre-clearance by the Justice Department and further proceedings.

Thank you for your prompt consideration of this request.

Very truly yours,

Kenneth P. Jacobus

cc: James Baldwin
Constance Zawacki
James Bendell

The Republican Party of Alaska

750 E. Fireweed Lane, Suite 102
Anchorage, Alaska 99503
(907) 276-4467
FAX 258-4930

June 7, 1990

Mr. Barry Wienberg, Acting Chief
Voting Section, Civil Rights Division
Department of Justice
320 First Avenue N.W., Room 720
Washington, D.C. 20534

Re: Submission under Section 5 of the Voting Rights Act
Republican Party of Alaska
Modification of Republican Party of Alaska Primary Election
Request for Expedited Consideration (28 CFR §51.34)
Date of Expedited Consideration: June 25, 1990.

Dear Mr. Wienberg:

The Republican Party of Alaska, by party rule adopted at its last party convention, has modified its primary election process to take effect immediately. The party has the right to do so pursuant to its constitutional right of political association, as recognized by the United States Supreme Court in Tashjian v. Republican Party of Connecticut, 479 U.S. 208, 107 S.Ct. 544, 93 L.Ed 2d 514 (1986)

Prior to the change, the Republican primary was a "blanket open" primary. Any registered voter in the State of Alaska could vote in the Republican primary. The modification creates a "classic open" primary. Registered Republicans, and those voters not registered as a member of another political party, may vote in the Republican primary. Only those voters registered as members of another political party may not vote in the Republican primary. If a registered voter desires to vote in the Republican primary, he or she may do so by changing his or her party registration at the polling place on the day of the election.

Expedited consideration of this matter is requested pursuant to 28 CFR §51.34. While the primary election will not be held until August 28, 1990, the State of Alaska has indicated that expedited consideration is necessary in order to meet some of its pre-election deadlines. The last date for a candidate to remove his or her name from the primary ballot is July 11, 1990, and the ballots will be printed shortly thereafter. An expedited completion date of June 25, 1990, will allow the State of Alaska at least two weeks to prepare for the printing of the primary ballots. Also, an overseas blank ballot is mailed out on June 29, 1990, under state law. Therefore, the Republican Party of Alaska

EXHIBIT A

requests that this matter be completed not later than June 25, 1990.

The Republican Party rule change was adopted at its State Convention on May 31, 1990. The State of Alaska, Division of Elections, was notified immediately by telephone, and by subsequent letter.

In order to determine what would be required for the election, it was necessary to wait for any action which might be taken by the Democratic Party of the State of Alaska, at its convention on May 18-19, 1990. At its previous convention, the Democratic Party had adopted a resolution requesting that the Legislature change the Democratic primary to a closed primary. It was necessary to wait to determine whether the Democratic Party would adopt a party rule at its convention changing the form of its primary. The Democratic Party of Alaska did not do so, however. Immediately thereafter, the Republican Party of Alaska began conferring with the State of Alaska regarding the details of implementing the Republican Party primary for the 1990 election. Several conferences have been held, and the Republican Party's most recent letter, attached as Exhibit E, sets forth what I believe to be the present position regarding the primary election. There may be additional details which need to be worked out, but those should not affect this submission. At this point, it is appropriate that this submission be made.

In accord with 28 CFR §51.27, the Republican Party of Alaska submits the following information:

(a) A copy of the Republican Party rule change, adopted at the party convention on May 31, 1990, is attached as Exhibit A.

(b) A copy of AS 15.25.010 and .060, which provided for the prior Alaskan Republican blanket open primary, is attached as Exhibit B.

(c) The difference between the submitted change and the prior procedure is simple. Previously, any Alaskan registered voter could vote in the Republican Party primary election. Under the new party rule, only those Alaskans who are registered Republicans, or who are registered as not being affiliated with another political party, may vote in the Republican primary. Those voters registered as affiliated with another political party cannot vote in the Republican primary.

As set forth in the attached Exhibit C, page 1, approximately 77% of the Alaskan registered voters are still able to vote in the Republican primary under their present registrations. If any other voters desire to vote in the Republican primary, they can change their registrations to Republican or as being not affiliated with

another political party, at the polling place on the day of the election. The breakdown of registered voters by election district is attached as Exhibit C, page 2, and a map showing the election districts is page 3.

(d) This submission is being made by Kenneth P. Jacobus, Legal Counsel of the Republican Party of Alaska, 3939 Locarno Drive, Anchorage, Alaska 99508-5023, phone (907) 561-8754, fax (907) 563-7645. Communications regarding this submission should be addressed here.

(e) This submission is being made on behalf of the Republican Party of Alaska, 750 E Fireweed Lane, Suite 102, Anchorage, Alaska 99503, phone (907) 276-4467, fax (907) 258-4930.

(f) The Republican Party of Alaska is located in the Municipality of Anchorage, State of Alaska, at the address set forth in paragraph (e).

(g) This party rule change was made by the Republican Party of Alaska, meeting in convention at Juneau, Alaska, on May 31, 1990. The rule change was adopted by vote of the delegates, after debate, at the convention. The Republican Party of Alaska has the authority to do so pursuant to Tashjian v. Republican Party of Connecticut, 479 U.S. 208, 107 S.Ct. 544, 93 L.Ed 2d 514 (1986).

Decisions regarding party business between conventions are made by the Alaska Republican Party Central Committee and Executive Committee. The implementation of this rule is the responsibility of these committees, plus the party chairman, vice-chairman, and other officers including legal counsel.

(h) The Republican Party has the authority to make this change pursuant to its constitutional rights of political association, as guaranteed by the United States Supreme Court in Tashjian v. Republican Party of Connecticut 479 U.S. 208, 107 S.Ct. 544, 93 Led 2.d 514 (1986). The adoption of amendments to party rules is provided for by Article VII, Section 2 of the rules of the Republican Party of the State of Alaska. (Exhibit D) The provisions of this rule were complied with in adopting the party rule change set forth in Exhibit A.

(i) This party rule change was adopted at the Republican Party convention in Juneau, Alaska, on May 31, 1990.

(j) This rule change is to take effect for the Republican primary election on August 28, 1990.

(k) This party rule change has not yet been enforced or administered, except that discussions have been ongoing between the

Republican Party and the State of Alaska, Division of Elections, in order to ensure that any administrative details may be worked out prior to the election.

(l) This change will affect the entire State of Alaska. It applies only to state and national offices. Local elections in Alaska are non-partisan.

(m) This change has been made in order to avoid the common practice of cross-over voting in primary elections, whereby voters of one party vote for the weakest candidate in the other party's primary election in the hopes of setting up the weakest candidate of the other party to be beaten by the cross-over voters in the subsequent general election. Such a practice does not result in the best and most qualified people being elected to public office.

Additionally, a party identified primary, such as exists in most states, allows for the voter to better understand the philosophies of the candidates who are seeking public office. Under the present system in Alaska, some candidates choose a party label under which to run, based only on which label they believe gives them the best chance of winning, without any commitment to the party's political philosophy.

(n) This change is of general application. The Republican Party of Alaska does not believe that this change will have any legal or practical effect on members of racial or language minority groups.

(o) The Republican Party of Alaska is unaware of any past or pending litigation concerning this change or related voting practices. There has been past litigation in Alaska relating to reapportionment, filing deadlines, language of ballot propositions, and the like. None of this past litigation, however, concerns this change or related voting practices.

(p) The present form of primary election was not subject to the pre-clearance requirement. It was created by Chapter 1, Session Laws of Alaska (SLA) 1967, and took effect at that time. Section 5 of the Voting Rights Act was not applicable to Alaska until November 1, 1972. The procedure for the adoption of the change, being simply a matter of the amendment of the party's by-laws at a party convention, is also not subject to the pre-clearance requirement.

We have no demographic information regarding the State of Alaska by race and language group as it applies to registration for voting. The State of Alaska Division of Elections does not keep such information. The factors of race and language group are totally irrelevant, and were not a matter of consideration, in the

decision of the Republican Party of Alaska to change from a blanket open primary to a classic open primary form of primary election.

There is no way that a racial or language minority group is adversely affected by this change. The disqualification from voting in the Republican primary depends solely on being a registered voter of another political party. The disqualification has nothing to do with race or language and, in fact, Alaskans of all races and languages are welcome to become members of the Republican Party of Alaska. Additionally, any member of a racial or language minority group may retain his or her status as a non-party affiliated voter or declare no party preference, and still be eligible to vote in the Republican Party primary. The disqualifying factor - registration in a political party other than Republican - applies equally to registered voters of all racial and language groups.

The method of conducting the primary election will protect members of racial and language minority groups, which includes Native Alaskan people who live in rural areas. If any special explanation needs to be given to these rural areas, it can be done virtually cost-free by the Division of Elections through the rural Alaska television network (RATNET). RATNET is a State supported rural Alaska television service, which is available virtually throughout rural Alaska and is watched by the vast majority of rural residents.

Additionally, anyone desiring to vote in the Republican primary may change his or her voter registration to Republican or non-affiliated at the polling place on the date of the primary election. In a similar manner, the absentee voters will be given an opportunity to change their party affiliation as part of the absentee ballot, resulting in no disenfranchisement of absentee voters. There is no adverse effect on any voter, including members of racial and language minority groups. The only requirement which has been imposed is that a voter may not vote in the Republican primary if that voter is a registered member of any other political party.

Thank you very much for your consideration of this submission. The Republican Party of Alaska cannot conceive that the Attorney General would have any problem with this submission, because it deals solely with the constitutional rights of political association, and is completely free of any adverse effects on racial or language minorities. Anyone may become a member of the Republican Party, or remain an independent voter not affiliated with another political party, and still vote in the Alaska Republican Party primary. Any desired change may be made by the voter at the polling place on election day.

It is extremely necessary that this submission be approved as quickly as possible, so that the changes in the Republican Party primary take place, as intended, for the primary of August 28, 1990. If you need any further information, please let me know and it will be provided to you immediately. We will be available for telephone conferences or meetings, if you so desire, at your earliest convenience.

A copy of this submission has been sent to the State of Alaska, Division of Elections, so that it is aware of its contents and the necessity to conduct the Republican primary under the amended party rule on August 28, 1990.

Thank you again for your prompt action on this submission.

Very truly yours,

REPUBLICAN PARTY OF ALASKA

By: KENNETH P. JACOBUS
Legal Counsel

cc: State of Alaska
Division of Elections
(by Fax and First Class Mail
both on June 7, 1990)

KENNETH P. JACOBUS
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3939 LOCARNO DRIVE
ANCHORAGE, ALASKA 99508-5023
TELEPHONE (907) 561-8734
TELEFAX (907) 563-7846

March 17, 1991

Barry H. Weinberg, Acting Chief
Voting Section, Civil Rights Division
Department of Justice
P.O. Box 66128
Washington D.C. 20035-6128

Re: Submission under Section Five of the Voting Rights Act
Republican Party of Alaska
Additional Primary Election Rules

Dear Mr. Weinberg:

On June 7, 1990, the Republican Party of Alaska submitted a rule change to the Department of Justice for pre-clearance, changing the form of the Republican Party primary election in the State of Alaska. A copy of the submission and exhibits is attached as Exhibit A.

On September 18, 1990, the Justice Department pre-cleared the Republican Party Rule. A copy of the letter from the Justice Department is attached as Exhibit B.

At a special convention held on March 2, 1991, the Republican Party of Alaska adopted additional rules. A copy of the five additional rules adopted is attached as Exhibit C.

The Republican Party requests that the Justice Department pre-clear the five rules set forth in Exhibit C to apply to the Republican Party primary election to be held in August, 1992.

This submission is simply a continuation of the Republican Party's prior submission. All of the information required in support of the submission is included in Exhibit A.

These additional changes implement the prior rule. They should have no legal or practical effect on the voting rights of members of racial or language minority groups. In fact, Article XIV, §3, confirms that voters have greater voting rights than they had prior to the passage of the Republican Party's 1990 rule change.

KENNETH P. JACOBUS
Attorney-at-Law
3939 LOCARNO DRIVE
ANCHORAGE, ALASKA 99508-5023
TELEPHONE (907) 561-8754
TELEFAX (907) 563-7645

March 17, 1991

Lieutenant Governor Jack Coghill
Office of the Lieutenant Governor
P.O. Box AA
Juneau, Alaska 99811

Re: Republican Party of Alaska, 1992 Primary Election

Dear Lieutenant Governor Coghill:

I have enclosed a copy of the Republican Party of Alaska's recent submission to the Justice Department for pre-clearance of certain rules adopted by the Party at the Special Convention held on March 2, 1991.

The Republican Party of Alaska demands that the State of Alaska conduct the 1992 Republican Party Primary Election in accord with the Party Rules. In order to do so, it will be necessary to begin work on the procedures immediately, since the State will also have to submit its procedures to the Department of Justice. We will assist and work with the State of Alaska as necessary to develop appropriate procedures.

Please let me know what your positions are regarding these changes in the Republican Primary, what the schedule will be to prepare and submit the State procedures for pre-clearance, and how we can assist and work with you. It will be best to resolve disputes, if any, between the Party and the State, at an early date so that there is no difficulty with pre-clearance by the Justice Department and further proceedings.

Thank you for your prompt consideration of this request.

Very truly yours,

Kenneth P. Jacobus

cc: James Baldwin
Constance Zawacki
James Bendell

If you have any further questions, or I can provide you with any additional information, please let me know and I will respond immediately.

Very truly yours,

Republican Party of Alaska

Kenneth P. Jacobus

cc: Mark Posner, Department of Justice
Lt. Governor Jack Coghill
Charlotte Thickstun, Alaska Division of Elections
James Baldwin, Alaska Attorney General's Office
Jon Rubini
Constance Zawacki
James Bendell

The Republican Party of Alaska

750 E. Fireweed Lane, Suite 102
Anchorage, Alaska 99503
(907) 276-4467
FAX 258-4930

June 7, 1990

Mr. Barry Wienberg, Acting Chief
Voting Section, Civil Rights Division
Department of Justice
320 First Avenue N.W., Room 720
Washington, D.C. 20534

Re: Submission under Section 5 of the Voting Rights Act
Republican Party of Alaska
Modification of Republican Party of Alaska Primary Election
Request for Expedited Consideration (28 CFR §51.34)
Date of Expedited Consideration: June 25, 1990.

Dear Mr. Wienberg:

The Republican Party of Alaska, by party rule adopted at its last party convention, has modified its primary election process to take effect immediately. The party has the right to do so pursuant to its constitutional right of political association, as recognized by the United States Supreme Court in Tashjian v. Republican Party of Connecticut, 479 U.S. 208, 107 S.Ct. 544, 93 L.Ed 2d 514 (1986)

Prior to the change, the Republican primary was a "blanket open" primary. Any registered voter in the State of Alaska could vote in the Republican primary. The modification creates a "classic open" primary. Registered Republicans, and those voters not registered as a member of another political party, may vote in the Republican primary. Only those voters registered as members of another political party may not vote in the Republican primary. If a registered voter desires to vote in the Republican primary, he or she may do so by changing his or her party registration at the polling place on the day of the election.

Expedited consideration of this matter is requested pursuant to 28 CFR §51.34. While the primary election will not be held until August 28, 1990, the State of Alaska has indicated that expedited consideration is necessary in order to meet some of its pre-election deadlines. The last date for a candidate to remove his or her name from the primary ballot is July 11, 1990, and the ballots will be printed shortly thereafter. An expedited completion date of June 25, 1990, will allow the State of Alaska at least two weeks to prepare for the printing of the primary ballots. Also, an overseas blank ballot is mailed out on June 29, 1990, under state law. Therefore, the Republican Party of Alaska

EXHIBIT A

requests that this matter be completed not later than June 25, 1990.

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In order to determine what would be required for the election, it was necessary to wait for any action which might be taken by the Democratic Party of the State of Alaska, at its convention on May 18-19, 1990. At its previous convention, the Democratic Party had adopted a resolution requesting that the Legislature change the Democratic primary to a closed primary. It was necessary to wait to determine whether the Democratic Party would adopt a party rule at its convention changing the form of its primary. The Democratic Party of Alaska did not do so, however. Immediately thereafter, the Republican Party of Alaska began conferring with the State of Alaska regarding the details of implementing the Republican Party primary for the 1990 election. Several conferences have been held, and the Republican Party's most recent letter, attached as Exhibit E, sets forth what I believe to be the present position regarding the primary election. There may be additional details which need to be worked out, but these should not affect this submission. At this point, it is appropriate that this submission be made.

In accord with 28 CFR §51.27, the Republican Party of Alaska submits the following information:

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(c) The difference between the submitted change and the prior procedure is simple. Previously, any Alaskan registered voter could vote in the Republican Party primary election. Under the new party rule, only those Alaskans who are registered Republicans, or who are registered as not being affiliated with another political party, may vote in the Republican primary. Those voters registered as affiliated with another political party cannot vote in the Republican primary.

As set forth in the attached Exhibit C, page 1, approximately 77% of the Alaskan registered voters are still able to vote in the Republican primary under their present registrations. If any other voters desire to vote in the Republican primary, they can change their registrations to Republican or as being not affiliated with

another political party, at the polling place on the day of the election. The breakdown of registered voters by election district is attached as Exhibit C, page 2, and a map showing the election districts is page 3.

(d) This submission is being made by Kenneth P. Jacobus, Legal Counsel of the Republican Party of Alaska, 3939 Locarno Drive, Anchorage, Alaska 99508-5023, phone (907) 561-8754, fax (907) 563-7645. Communications regarding this submission should be addressed here.

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(f) The Republican Party of Alaska is located in the Municipality of Anchorage, State of Alaska, at the address set forth in paragraph (e).

(g) This party rule change was made by the Republican Party of Alaska, meeting in convention at Juneau, Alaska, on May 31, 1990. The rule change was adopted by vote of the delegates, after debate, at the convention. The Republican Party of Alaska has the authority to do so pursuant to Tashjian v. Republican Party of Connecticut, 479 U.S. 208, 107 S.Ct. 544, 93 L.Ed 2d 514 (1986).

Decisions regarding party business between conventions are made by the Alaska Republican Party Central Committee and Executive Committee. The implementation of this rule is the responsibility of these committees, plus the party chairman, vice-chairman, and other officers including legal counsel.

(h) The Republican Party has the authority to make this change pursuant to its constitutional rights of political association, as guaranteed by the United States Supreme Court in Tashjian v. Republican Party of Connecticut 479 U.S. 208, 107 S.Ct. 544, 93 Led 2.d 514 (1986). The adoption of amendments to party rules is provided for by Article VII, Section 2 of the rules of the Republican Party of the State of Alaska. (Exhibit D) The provisions of this rule were complied with in adopting the party rule change set forth in Exhibit A.

(i) This party rule change was adopted at the Republican Party convention in Juneau, Alaska, on May 31, 1990.

(j) This rule change is to take effect for the Republican primary election on August 28, 1990.

(k) This party rule change has not yet been enforced or administered, except that discussions have been ongoing between the

Republican Party and the State of Alaska, Division of Elections, in order to ensure that any administrative details may be worked out prior to the election.

(l) This change will affect the entire State of Alaska. It applies only to state and national offices. Local elections in Alaska are non-partisan.

(m) This change has been made in order to avoid the common practice of cross-over voting in primary elections, whereby voters of one party vote for the weakest candidate in the other party's primary election in the hopes of setting up the weakest candidate of the other party to be beaten by the cross-over voters in the subsequent general election. Such a practice does not result in the best and most qualified people being elected to public office.

Additionally, a party identified primary, such as exists in most states, allows for the voter to better understand the philosophies of the candidates who are seeking public office. Under the present system in Alaska, some candidates choose a party label under which to run, based only on which label they believe gives them the best chance of winning, without any commitment to the party's political philosophy.

(n) This change is of general application. The Republican Party of Alaska does not believe that this change will have any legal or practical effect on members of racial or language minority groups.

(o) The Republican Party of Alaska is unaware of any past or pending litigation concerning this change or related voting practices. There has been past litigation in Alaska relating to reapportionment, filing deadlines, language of ballot propositions, and the like. None of this past litigation, however, concerns this change or related voting practices.

(p) The present form of primary election was not subject to the pre-clearance requirement. It was created by Chapter 1, Session Laws of Alaska (SLA) 1967, and took effect at that time. Section 5 of the Voting Rights Act was not applicable to Alaska until November 1, 1972. The procedure for the adoption of the change, being simply a matter of the amendment of the party's by-laws at a party convention, is also not subject to the pre-clearance requirement.

We have no demographic information regarding the State of Alaska by race and language group as it applies to registration for voting. The State of Alaska Division of Elections does not keep such information. The factors of race and language group are totally irrelevant, and were not a matter of consideration, in the

decision of the Republican Party of Alaska to change from a blanket open primary to a classic open primary form of primary election.

There is no way that a racial or language minority group is adversely affected by this change. The disqualification from voting in the Republican primary depends solely on being a registered voter of another political party. The disqualification has nothing to do with race or language and, in fact, Alaskans of all races and languages are welcome to become members of the Republican Party of Alaska. Additionally, any member of a racial or language minority group may retain his or her status as a non-party affiliated voter or declare no party preference, and still be eligible to vote in the Republican Party primary. The disqualifying factor - registration in a political party other than Republican - applies equally to registered voters of all racial and language groups.

The method of conducting the primary election will protect members of racial and language minority groups, which includes Native Alaskan people who live in rural areas. If any special explanation needs to be given to these rural areas, it can be done virtually cost-free by the Division of Elections through the rural Alaska television network (RATNET). RATNET is a State supported rural Alaska television service, which is available virtually throughout rural Alaska and is watched by the vast majority of rural residents.

Additionally, anyone desiring to vote in the Republican primary may change his or her voter registration to Republican or non-affiliated at the polling place on the date of the primary election. In a similar manner, the absentee voters will be given an opportunity to change their party affiliation as part of the absentee ballot, resulting in no disenfranchisement of absentee voters. There is no adverse effect on any voter, including members of racial and language minority groups. The only requirement which has been imposed is that a voter may not vote in the Republican primary if that voter is a registered member of any other political party.

Thank you very much for your consideration of this submission. The Republican Party of Alaska cannot conceive that the Attorney General would have any problem with this submission, because it deals solely with the constitutional rights of political association, and is completely free of any adverse effects on racial or language minorities. Anyone may become a member of the Republican Party, or remain an independent voter not affiliated with another political party, and still vote in the Alaska Republican Party primary. Any desired change may be made by the voter at the polling place on election day.

It is extremely necessary that this submission be approved as quickly as possible, so that the changes in the Republican Party primary take place, as intended, for the primary of August 28, 1990. If you need any further information, please let me know and it will be provided to you immediately. We will be available for telephone conferences or meetings, if you so desire, at your earliest convenience.

A copy of this submission has been sent to the State of Alaska, Division of Elections, so that it is aware of its contents and the necessity to conduct the Republican primary under the amended party rule on August 28, 1990.

Thank you again for your prompt action on this submission.

Very truly yours,

REPUBLICAN PARTY OF ALASKA

By: KENNETH P. JACOBUS
Legal Counsel

cc: State of Alaska
Division of Elections
(by Fax and First Class Mail
both on June 7, 1990)

ARTICLE XIV
PRIMARY ELECTIONS

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

ALASKA STATUTES

Sec. 15.25.010. Provision for primary election. Candidates for the elective state executive and state and national legislative offices shall be nominated in a primary election by direct vote of the people in the manner prescribed by this chapter. (§ 5.01 ch 83 SLA 1960; am § 1 ch 1 SLA 1967; am § 1 ch 20 SLA 1980)

Sec. 15.25.060. Preparation and distribution of ballots. The primary election ballot shall be prepared and distributed by the director in the manner prescribed for general election ballots except as specifically provided otherwise for the primary election. The director shall place the names of all candidates who have properly filed in groups according to offices filed for, without regard to party affiliation. The names for each office shall be rotated as provided for the general election ballot. No blank spaces shall be provided on the ballot for the writing or pasting in of names. (§ 5.06 ch 83 SLA 1960; am § 4 ch 1 SLA 1967; am § 132 ch 100 SLA 1980)

BREAK-DOWN OF TOTAL ALASKAN REGISTERED VOTERS

The following is the present break-down of registered voters in the State of Alaska.

REGISTRATION	NUMBER OF VOTERS	PERCENTAGE OF VOTERS
Republican Party	57,048	21%
Democratic Party	53,699	20%
Alaska Independence Party	2,066	1%
No Party Preference	85,627	31%
Undecided	68,804	25%
Other Party Affiliation	5,719	2%
TOTAL	273,162	100%

Those persons registered as Republican Party, No Party Preference and Undecided, are eligible to vote in the Republican primary. Those persons registered as Democratic Party, Alaska Independence Party, and Other Party Affiliation would not be eligible to vote in the Republican primary.

Any voter, however, may change his or her party registration at the polling place on election day and become eligible to vote in the Republican primary.

MAY 24 [illegible]

REGION 1 REGION I

DISTRICT	TOTAL	DEM.	REP.	AK IND	[illegible]	UNDECL	OTHER PARTIES
1	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
2	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
3	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
4	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
5	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
6	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
TOTAL REGION I ([illegible] PRECINCTS)	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

DISTRICT	TOTAL	DEM.	REP.	AK IND	[illegible]	UNDECL	OTHER PARTIES
7	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
8	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
9	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
10	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
11	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
12	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
13	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
14	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
15	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
16	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
TOTAL REGION II ([illegible] PRECINCTS)	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

ANCHORAGE 119,379*

REGION 3 REGION III

DISTRICT	TOTAL	DEM.	REP.	AK IND	[illegible]	UNDECL	OTHER PARTIES
17	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
18	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
19	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
20	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
21	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
24	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
27	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
TOTAL REGION III ([illegible] PRECINCTS)	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

REGION 4 REGION IV

DISTRICT	TOTAL	DEM.	REP.	AK IND	[illegible]	UNDECL	OTHER PARTIES
22	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
23	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
25	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
26	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
TOTAL REGION IV ([illegible] PRECINCTS)	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
STATE TOTAL ([illegible] PRECINCTS)	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

* ANCHORAGE TOTAL - District 7-15, Less Nikiski #1 (1,048)

121,079 Less Nikiski #2 (670)

(1,718) (1,718)

119,379*

Exhibit C
Page 2

ARTICLE VII, SECTION 2, RULES OF THE REPUBLICAN PARTY OF ALASKA

Section 2. How Rules May he Amended

(a) These rules may be amended at any regular State Convention of the Republican Party of Alaska or at any Special State Convention of the Republican Party of Alaska by a majority of the delegates, including seated alternates, duly voting at said convention when proper notice has been given in advance of such convention.

(b) These rules may be amended by a majority vote of the State Central Committee when necessary to comply with Federal or State law or Republican National Committee rules. Such amendment(s) shall be in effect until the next State Convention, at which time they shall be adopted or rejected.

(c) District rules may be amended at any regular District Convention or at any special District Convention by a majority of the delegates, including seated alternates, duly voting at such convention, when proper notice has been given in advance of such convention.

The Republican Party of Alaska

750 E. Fireweed Lane, Suite 102
Anchorage, Alaska 99503
(907) 276-4467
FAX 258-4930

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

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

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

U.S. Department of Justice

Civil Rights Division

Voting Section
P.O. Box 66128
Washington, D.C. 20035-6128

JRD:MAP:AS:gmh
DJ 166-012-3
AH992
AJ976-981

SEP 1[illegible]

Kenneth P. Jacobus, Esq.
Legal Counsel
Republican Party of Alaska
750 E. Fireweed Lane
Suite 102
Anchorage, Alaska 99503

Dear Mr. Jacobus:

This refers to the provision that only those persons registered to vote as Republicans, those persons registered as independents, and those registrants who decline to state a party affiliation may vote for Republican candidates seeking their party's nomination in primary elections for federal and state offices in the State of Alaska, beginning with the 1992 primary, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, by the state Republican Party of Alaska. We received your submission on July 25, 1990; supplemental information was received on August 2, 1990.

This also refers to the Republican Party's request, in the same submission, for "alternative preclearance" under Section 5 of the following matters regarding the administration of state primary elections for federal and state offices beginning with the 1992 primary election: two alternative and conflicting deadlines for changing party registration for purposes of voting in a primary election; two alternative and conflicting ballot formats for the listing of primary candidates; and two alternative and conflicting rules concerning which primary ballots may be made available to those voters who are eligible to vote for Republican candidates in the primary election.

EXHIBIT B

The Attorney General does not interpose any objection to the change described in the first paragraph of this letter. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change. In addition, as authorized by Section 5, the Attorney General reserves the right to reexamine this submission if additional information that would otherwise require an objection comes to his attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

With respect to the other submitted matters (described in paragraph two), your submission indicates that the State of Alaska (which is responsible for conducting primary elections) and the state Republican Party are in conflict as to how primary elections should be conducted. Rather than resolving these disagreements at the state level, the Republican Party requests that the Attorney General grant Section 5 preclearance to both the state's and the Party's interpretations, and that the decision as to which rules actually will be implemented then would be made "as a matter of state law." However, under Section 5 the Attorney General may not consider "[a]ny proposal for a change affecting voting submitted prior to final enactment of administrative decision," with certain limited exceptions not applicable here. 28 C.F.R. 51.22. Accordingly, the Attorney General is unable to make a determination on these matters at this time. See also 28 C.F.R. 51.35.

In addition, insofar as the Republican Party is requesting preclearance of voting changes adopted by the state, we note that the Republican Party is not an appropriate submitting authority for any such changes. Finally, we note that with respect to the alternative proposals put forward by the Party, it is unclear that the Party has the authority to decide or implement these matters of election administration. See Tashjian v. Republican Party of Connecticut, 479 U.S. 208 (1986).

If you have any questions with regard to this submission, please telephone Mark Posner, an attorney in the Voting Section, at (202) 307-1388.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

By: Mark A. Posner
for J. Gerald Hebert
Acting Chief, Voting Section

cc: James L. Baldwin, Esq.
Assistant Attorney General

Jonathan B. Rubini, Esq.
Birch, Horton, Bittner and Cherot

Michael J. Walleri, Esq.
General Counsel
Tanana Chief Conference, Inc.

REPUBLICAN PARTY OF ALASKA
RULE CHANGES ADOPTED AT THE 2 MARCH 1991 SPECIAL CONVENTION

ARTICLE XIII - GENERAL POLICIES

Section 13. A Rule Providing for Severability

The various rules of the Republican Party, including those relating to the primary elections, are severable. Any invalidity or un-enforceability of any rule or part thereof, shall not affect the remainder of the rule or rules in any way.

ARTICLE XIV - PRIMARY ELECTIONS

Section 2. Republican Designation

No person may use the word "Republican" on any ballot or in any campaign as part of a description of himself or herself as a candidate unless that person is a candidate of the Republican Party of Alaska, selected according to the Rules of the Republican Party.

Section 3. A Rule to Maximize Voter Participation in Primary Elections

(a) Any voter qualified to vote in the Republican Party primary election may vote in that election, regardless of whether or not that voter has voted in the primary election of any other party.

(b) The fact that a voter has voted in the Republican Party primary election shall not disqualify that voter from voting in the primary election of any other political party or parties, where that voter's participation in the primary election of other parties is authorized or permitted by the rules of the other party or parties, or the statutes of the United States or the State of Alaska.

Section 4. To Facilitate Implementation of Primary Election

The Central Committee, or the Executive Committee in the event that there is insufficient time to convene the Central Committee, may adopt any and all additional rules, regulations, interpretations, clarifications, and the like, which are necessary or desirable to implement the Republican primary election in accord with other rules adopted at this special convention (held March 2, 1991), and pursuant to Article XIV of the Rules of Republican Party of Alaska. Any action taken by the Central or Executive Committee under the provisions of this rule shall have the same force and effect as if adopted by this convention.

Section 5. Prior Registration Requirement

In order to be a candidate in any Republican Party primary election, a person must have been a registered voter of the Republican Party of Alaska for a continuous period of six months immediately prior to the filing deadline for the primary election.

EXHIBIT C

STATE OF ALASKA

OFFICE OF THE GOVERNOR

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

May 1, 1991

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

Re: Case No. 91-0962

Dear Mr. Posner;

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

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

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

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

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

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

rules, or state or federal law.

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

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

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

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

Sincerely,

Charlot Thickstun

Charlot Thickstun
Director
Division of Elections

REPUBLICAN PARTY OF ALASKA
RULE CHANGES ADOPTED AT THE 2 MARCH 1991 SPECIAL CONVENTION

ARTICLE XIII - GENERAL POLICIES

Section 13. A Rule Providing for Severability

The various rules of the Republican Party, including those relating to the primary elections, are severable. Any invalidity or un-enforceability of any rule or part thereof, shall not affect the remainder of the rule or rules in any way.

ARTICLE XIV - PRIMARY ELECTIONS

Section 2. Republican Designation

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Section 3. A Rule to Maximize Voter Participation in Primary Elections

(a) Any voter qualified to vote in the Republican Party primary election may vote in that election, regardless of whether or not that voter has voted in the primary election of any other party.

(b) The fact that a voter has voted in the Republican Party primary election shall not disqualify that voter from voting in the primary election of any other political party or parties, where that voter's participation in the primary election of other parties is authorized or permitted by the rules of the other party or parties, or the statutes of the United States or the State of Alaska.

Section 4. To Facilitate Implementation of Primary Election

The Central Committee, or the Executive Committee in the event that there is insufficient time to convene the Central Committee, may adopt any and all additional rules, regulations, interpretations, clarifications, and the like, which are necessary or desirable to implement the Republican primary election in accord with other rules adopted at this special convention (held March 2, 1991), and pursuant to Article XIV of the Rules of Republican Party of Alaska. Any action taken by the Central or Executive Committee under the provisions of this rule shall have the same force and effect as if adopted by this convention.

Section 5. Prior Registration Requirement

In order to be a candidate in any Republican Party primary election, a person must have been a registered voter of the Republican Party of Alaska for a continuous period of six months immediately prior to the filing deadline for the primary election.

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.

The Republican Party of Alaska

750 E. Fireweed Lane, Suite 102
Anchorage, Alaska 99503
(907) 276-4467
FAX 258-4930

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

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

in either primary.)

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

> Each State shall -
>
> (1) permit absent uniformed services voters and overseas voters to use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for Federal Office;
>
> . . . .
>
> (3) permit overseas voters to use Federal write-in absentee ballots (in accordance with section 103) in general elections for Federal Office.

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

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

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

Sincerely,

Kenneth P. Jacobus
Legal Counsel

cc: Grant Doyle
State Central Committee

JRD:MAP:AS:gmh
DJ 166-012-3
AH992
AJ976-981

Voting Section
P.O. Box 66128
Washington, D.C. 20035-6128

Kenneth P. Jacobus, Esq.
Legal Counsel
Republican Party of Alaska
750 E. Fireweed Lane
Suite 102
Anchorage, Alaska 99503

SEP 1[illegible]

Dear Mr. Jacobus:

This refers to the provision that only those persons registered to vote as Republicans, those persons registered as independents, and those registrants who decline to state a party affiliation may vote for Republican candidates seeking their party's nomination in primary elections for federal and state offices in the State of Alaska, beginning with the 1992 primary, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, by the state Republican Party of Alaska. We received your submission on July 25, 1990; supplemental information was received on August 2, 1990.

This also refers to the Republican Party's request, in the same submission, for "alternative preclearance" under Section 5 of the following matters regarding the administration of state primary elections for federal and state offices beginning with the 1992 primary election: two alternative and conflicting deadlines for changing party registration for purposes of voting in a primary election; two alternative and conflicting ballot formats for the listing of primary candidates; and two alternative and conflicting rules concerning which primary ballots may be made available to those voters who are eligible to vote for Republican candidates in the primary election.

EXHIBIT B

requests that this matter be completed not later than June 25, 1990.

The Republican Party rule change was adopted at its State Convention on May 31, 1990. The State of Alaska, Division of Elections, was notified immediately by telephone, and by subsequent letter.

In order to determine what would be required for the election, it was necessary to wait for any action which might be taken by the Democratic Party of the State of Alaska, at its convention on May 18-19, 1990. At its previous convention, the Democratic Party had adopted a resolution requesting that the Legislature change the Democratic primary to a closed primary. It was necessary to wait to determine whether the Democratic Party would adopt a party rule at its convention changing the form of its primary. The Democratic Party of Alaska did not do so, however. Immediately thereafter, the Republican Party of Alaska began conferring with the State of Alaska regarding the details of implementing the Republican Party primary for the 1990 election. Several conferences have been held, and the Republican Party's most recent letter, attached as Exhibit E, sets forth what I believe to be the present position regarding the primary election. There may be additional details which need to be worked out, but those should not affect this submission. At this point, it is appropriate that this submission be made.

In accord with 28 CFR §51.27, the Republican Party of Alaska submits the following information:

(a) A copy of the Republican Party rule change, adopted at the party convention on May 31, 1990, is attached as Exhibit A.

(b) A copy of AS 15.25.010 and .060, which provided for the prior Alaskan Republican blanket open primary, is attached as Exhibit B.

(c) The difference between the submitted change and the prior procedure is simple. Previously, any Alaskan registered voter could vote in the Republican Party primary election. Under the new party rule, only those Alaskans who are registered Republicans, or who are registered as not being affiliated with another political party, may vote in the Republican primary. Those voters registered as affiliated with another political party cannot vote in the Republican primary.

As set forth in the attached Exhibit C, page 1, approximately 77% of the Alaskan registered voters are still able to vote in the Republican primary under their present registrations. If any other voters desire to vote in the Republican primary, they can change their registrations to Republican or as being not affiliated with

RECEIVED
MAY 28 1991
DIRECTOR OF ELECTIONS

JRD:MAP:AS:gmh:rac
DJ 166-012-3
91-0962

May 21, 1991

Kenneth P. Jacobus, Esq.
3939 Locarno Drive
Anchorage, Alaska 99508-5023

Dear Mr. Jacobus:

This refers to the party rule changes which specify which candidates may designate themselves as Republican, establish a prior registration requirement for Republican primary candidates, and further define the persons eligible to vote in Republican primary elections, adopted by the State Republican Party of Alaska, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on March 22, 1991.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Nothing in this determination should be interpreted to speak to the provision dealing with the eligibility to vote in primary elections of political parties other than the Alaska Republican

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To Ann	From Elizabeth
Co. Louise	Co. Elections
Dept. Kubina	Phone # 4611
Fax # 2287	Fax # 3203

Party, since it is unclear whether the Republican Party has the authority to address the eligibility to vote in a primary other than its own. See Tashiian v. Republican Party of Connecticut, 479 U.S. 208 (1986).

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

By:

J. Gerald Hobert
Acting Chief, Voting Section

bcc: Ms. Charlotte Thickstun
Director
Division of Elections

WALTER J. HICKEL
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 9, 1992

[redacted]

MEMORANDUM:

TO: Honorable Walter J. Hickel
Governor of Alaska

FROM: Tuckerman Babcock

RE: Primary Elections

A decision needs to be made as to how we are going to support our position for the "most open primary system possible." The best way to do this is to focus on the different ballot systems.

Following is a brief reason why this issue is before us now and what our options are:

Background:

Under the old system each voter could vote to nominate just one candidate for each office without regard to party registration of the voter or the candidate. A recent Supreme Court decision has declared that each political party has the right to control who may participate in the primary election nominating their party candidates. Therefore, there is virtually nothing a state can do to prevent a party from limiting the pool of voters eligible to vote in a party primary.

Following is a simple analysis of the options the State has to support this recent decision.

THE SINGLE BALLOT

Features:

* A single ballot containing all candidates

* The registration of each voter is noted by an election clerk on the ballot before the ballot is given to the voter.

* The voter may vote for anyone on the ballot

Positives:

* No statutory change is required

Negatives:

* All votes will not necessarily be counted in each primary election.

Note: A variation of this is to have the party primary identified that the person wants to vote in. In other words, you can do the single ballot by voter registration or party participation.

THE TWO BALLOT APPROACH

Features:

* One ballot would consist of only Republican candidates. The other ballot would consist of Democrats, Green, and AIP candidates.

* Voters could select only one ballot.

* Voters would be limited to voting strictly for Republican candidates on one ballot or picking and choosing among the three parties on the other ballot.

Positives:

* none

Negatives:

* This ballot structure would emphasis to all voters that the Republicans are responsible for the change and will almost certainly lead to a devastating primary for all Republican candidates.

* Most of your supporters (Republicans) would be put in the position of voting for you at the expense of Republican candidates for other office or voting for Republican candidates at the expense of you.

* This is the absolute worst approach for conservative or Republican candidates.

THE FOUR BALLOT APPROACH

Features:

- Each party's election is viewed as a separate proposition to nominate candidates to represent that party in the general election.
- Each voter would be allowed to vote on each proposition if the party allowed them in.
- Four ballots, four propositions.

Positives:

- Each party governs whether an individual can vote in their party's primary.
- Voters could possibly participate in all elections.
- No confusion in counting ballots. All votes always count.
- This is the most open primary possible consistent with the U.S. Constitution.

Negatives:

-

(7) HOUSE COMMITTEE REPORT

Date Referred: May 14, 1991 FURTHER REFERRALS: Judiciary
Finance

Date of Committee Action: 4/29/92

The STATE AFFAIRS Committee considered: HB 327

HOUSE BILL NO. 327 PRIMARY ELECTIONS

"An Act relating to primary elections."

RECOMMENDATIONS: [X] the same title
be replaced with CS HB 327 (STA) [ ] a new title

[ ] have attached amendments(s)
[ ] do pass
[ ] do not pass
[ ] no recommendations
[X] individual recommendations
[ ] additional referral to the ______________ Committee

ADOPTS: ______________ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal impact ______________ [ ] fiscal note(s) ______________

[x] zero fiscal note House State Affairs Cmte. for Office of Gov. - Div. of Elections [ ] zero fiscal note(s) ______________

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Eugene G. Kubina		Max F. Gruenberg Jr.			✓
Tom Moyer (PORTER)	✓	Mike Miller		✓	
E. Brown (BRUCKMAN)	✓	Larry W. Baker (BAKER)		✓	
		David Keaveney (CAMPBELL?)		✓	

Eugene G. Kubina
CHAIRMAN'S SIGNATURE

HOUSE COMMITTEE REPORT

Rules

(11)

Date Referred: May 2, 1992 FURTHER REFERRALS:

Date of Committee Action: 5/4/92

The FINANCE Committee considered: HB 327

HOUSE BILL NO. 327 PRIMARY ELECTIONS

"An Act relating to primary elections."

RECOMMENDATIONS:
be replaced with CS HB 327 (JUD) [✓] the same title [ ] a new title

[ ] have attached amendments(s)
[✓] do pass
[ ] do not pass
[ ] no recommendations
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal impact _____ [ ] fiscal note(s) _____

[ ] zero fiscal note _____ [✓] zero fiscal note(s) HSTA Committee 4/29/92

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
E P MacLean	✓	~~E P MacLean~~			
MARK BOYER	X		✓		
Jay Ramras	✓	Bert Sharp	✓		
Robert J. Lam	X		✓		unless ✓
Mike Navarre	✓	Theresa Barnes	X		✓
Pillsbury	X				

Mike Navarre E P MacLean
CHAIRMAN'S SIGNATURE