
State Government Committee

HB 3203

Brief Description: Creating a semiclosed primary.

Sponsors: Representatives McDermott and Hunt.

Brief Summary of Bill

- Creates a semi-closed primary with party registration.
- Requires each major political party to decide by May 31 whether to allow unaffiliated voters to vote in its primary.

Hearing Date: 2/20/04

Staff: Katie Blinn (786-7114).

Background:

Blanket Primary:

In 1935, the Legislature approved an initiative to the Legislature establishing Washington's blanket primary for partisan elections. All eligible registered voters may participate because there is no process to register by party. Candidates for partisan office, however, may designate an affiliation with a political party when they file a declaration of candidacy in July. For each office that appears on the ballot, voters may vote for any of the candidates running, regardless of the candidate's party affiliation. In order to advance to the general election, a candidate must receive the highest number of votes cast for candidates of that party, as well as at least 1% of all the votes cast for that office. Consequently, the blanket primary operates as a nominating process, in that only one candidate from each political party may proceed to the general election.

Precinct Committee Officers and the Presidential Primary:

A precinct committee officer (PCO) is a publicly elected member of a major political party who represents the precinct in which he or she lives. Only the major parties are eligible to elect PCO's. The PCO's of a particular county make up the central committee for that county, and elect a county chair and vice-chair. The chairs and vice-chairs from all the counties make up the state committee of a party. The PCO's are elected in the general election and serve two-year terms.

State law provides for a presidential primary in the Spring of a presidential election year. However, the presidential primary is known as a "preference primary" because the results are not necessarily binding. A political party is not required to use the primary to select its delegates to the national nominating convention because Washington's lack of procedures for a public

declaration of party affiliation conflict with each major party's national rules. Consequently, a political party may select its national convention delegates based on the results of the presidential primary, the results of party caucuses, or both.

Minor Parties and Independent Candidates:

Minor party and independent candidates go through a separate process to appear on the primary election ballot. Minor parties and independent candidates must hold a nominating convention at the end of June to nominate a candidate for partisan office. Nomination requires both a nominating certificate and a nominating petition. The certificate must specify the name of the minor party, the name of the candidate, and the office for which the candidate is being nominated. The nominating petition must include the signatures of at least 200 registered voters if nominating a candidate for President, U.S. Senate, or any statewide office, and the signatures of at least 25 registered voters if nominating a candidate for any other partisan office. The independent or minor party candidate must still pay the filing fee and file a declaration of candidacy in July in order to appear in the primary in September. Like major party candidates, minor party and independent candidates must receive at least 1 percent of all the votes cast for that office in order to advance to the general election.

Litigation:

In 1996, voters in California approved an initiative that established a blanket primary modeled after Washington's blanket primary. However, one aspect of California's previous closed primary system, party registration, was retained. Four political parties in California sued the California Secretary of State, arguing that the blanket primary system is unconstitutional because it allows voters who are not affiliated with a political party to select that party's nominees, thereby violating the political parties' right to freely associate. The system was upheld in U.S. District Court and the Ninth Circuit Court of Appeals, but struck down in June 2000 by the U.S. Supreme Court in *California Democratic Party, et al. v. Jones*, 350 U.S. 567 (2000).

The Supreme Court noted that, with the right to associate is the right *not* to associate, and that the right of association would prove meaningless if associations could not limit control over their decisions to those who share their same interests. The Supreme Court affirmed that special protection is given to the process by which political parties selects their nominees since a nominee acts as a standard bearer and spokesperson for the party, communicating the party's ideology and preferences to the general public. The Supreme Court concluded that California's blanket primary violates the political parties' right of free association because it allows voters who are not affiliated with a party to participate in that party's nominating process.

In July 2000, the three major political parties in Washington, the Democratic Party, the Republican Party, and the Libertarian Party, sued the Washington Secretary of State. The political parties sought a permanent injunction prohibiting the Secretary of State from conducting any future partisan primaries under the blanket system. Finding that Washington election law and the Washington State Constitution were sufficiently different from California to distinguish the Washington lawsuit from the *California Democratic Party, et al. v. Jones* opinion, the U.S. District Court upheld the Washington blanket primary. However, in September 2003, the Ninth Circuit Court of Appeals reversed the District Court opinion and, based on the U.S. Supreme Court opinion, found the Washington blanket primary unconstitutional. *Democratic Party of Washington State v. Reed*, 343 F.3d 1198 (9th Cir. 2003). The Ninth Circuit remanded the case

back to the District Court for entry of summary judgment, declaratory judgment, and an injunction in favor of the political parties.

In November 2003, the Attorney General's Office, on behalf of the Secretary of State, filed a petition for writ of certiorari seeking review of the Ninth Circuit opinion by the U.S. Supreme Court. This is a strictly discretionary appeal. If the Supreme Court accepts the petition, it will hear the case sometime during its 2004-05 term. If the Court denies the petition, the ruling of the Ninth Circuit stands and the case will be remanded to the District Court. The Supreme Court is expected to issue its decision in late February 2004.

Summary of Bill:

Party Registration:

A system of party registration is created. Voters are not required to designate a party affiliation in order to register to vote; party registration is optional. A voter may affiliate with only one party at a time, but may change party affiliation the same way he or she would change a voter registration address. The latest date to change voter registration information remains 15 days before an election. Party registration procedures only apply to the major parties and do not apply to minor parties. In order to file for partisan office as a major party candidate, the person must be a registered member of that party at the time of filing in July. Like some other voter registration information, party affiliation is public information.

Semi-Closed Primary:

The partisan primary is for major political party candidates only. Registered party members may vote the party ballot for their own party and may not vote the party ballot for a different party. Each major party must decide by May 31st each year whether it will allow unaffiliated voters to participate in its primary. If a major party decides to allow unaffiliated voters to vote, the state chair must provide the Secretary of State a signed statement consenting to their participation, and such a decision lasts for one year. If no consent is given from a particular major party, only registered party members may vote that party ballot. If consent is given, votes cast by unaffiliated voters must be treated the same as votes cast by registered party members. If an unaffiliated voter votes a party ballot, which party ballot the voter selects remains confidential. Information on how to register by party, that party registration is not required merely to register to vote, and whether each major political party is allowing unaffiliated voters to participate in that party's primary must be included in voter registration forms, ballot materials, voters' pamphlets, websites, etc. The statutes authorizing the blanket primary are repealed.

Ballots:

A primary election has two types of ballots: a party ballot created for each major political party, and a nonpartisan ballot. A nonpartisan ballot must list all ballot measures and nonpartisan offices to be voted on. Every registered voter, regardless of party affiliation, may vote a nonpartisan ballot. Each party ballot must list all partisan offices to be voted on, and the candidates of that party who filed for those offices. Each registered party member may vote the party ballot specific to his or her party, and unaffiliated voters may vote a party ballot if the party decided by May 31st of that year that unaffiliated voters may participate. No voter may vote more than one nonpartisan ballot and one party ballot. The order that names appear on the ballot remains at random, but county auditors no longer have to rotate the names.

PCO's and the Presidential Primary:

PCO's are elected at the primary, rather than the general election, on party ballots. The statutes requiring PCO's in King County to elect a legislative district chair, requiring PCO's to receive at least 10 percent of the votes cast in order to be elected, and specifying how PCO's in King County are replaced are all repealed.

The presidential primary is no longer a "preference primary" but is binding. It is only open to registered party members. The only ballots that may be used in a presidential primary are party ballots.

Minor Parties and Independent Candidates:

Minor party and independent candidates go directly to the general election ballot once they have satisfied the nominating convention requirements. However, the number of signatures required for nomination is increased from 200 to 1000 for President, U.S. Senate, U.S. House of Representatives, or statewide office, and from 25 to 100 for a legislative or local office. In order to file for partisan office as a minor party or independent candidate, the person cannot be a registered member of any major party. Any voter who signs a minor party or independent candidate nominating petition cannot be registered as a member of any of the major parties. Parties that are technically major parties but did not receive more than 10 percent of the votes cast for any office can opt out of major party status.

Appropriation: None.

Fiscal Note: Requested on February 17, 2004.

Effective Date: The bill contains an emergency clause and takes effect immediately.