

Survey #4: Open Primaries & Independent Primary - FairVote's Views

- Replacing closed primaries with open or semi-open primaries: All states except Washington, California, and Louisiana (and Nebraska for state legislature only) conduct political party nominating primaries. Under closed primaries, only party members may vote in their party's primary. Under open primaries, any voter may vote in any party's primary. Under semi-open (also called "semi-closed") primaries, only party members and unaffiliated voters may vote in a party's primary.
- Introducing the All-Independent primary: This proposal would retain partisan nominations, but also conduct an additional primary for any candidate not seeking a party nomination. Any voter could participate in that primary instead of a party primary, and the candidate with the most votes would participate in the general election as an Independent candidate.

Legislative functionality

In this section, we will evaluate the reforms' impact on legislative functionality. Legislative functionality is broadly defined as the ability of the legislature to pass laws that address constituent concerns and reflect their interests.

- **Impact on the likelihood of evidence-based policymaking, and/or long-term policymaking.**

Open Primaries: Although theoretically the participation of unaffiliated voters could mitigate the influence of hardcore ideological or reactive voters in primary elections, there is no good evidence that unaffiliated voters more than nominally influence the outcome of primary elections, that they are more likely to favor evidence-based or long-term policy, or that they favor candidates who promote proactive or evidence-based legislation. At the same time, a growing number of voters are registering as unaffiliated, and even the potential of their participation in primaries is likely to have some impact over time.

All-Independent Primary: The All-Independent Primary may allow pragmatic candidates, who might expect to lose in partisan primaries, to compete in the general election as independent candidates without going through the petition process. Sometimes such candidates may win the general election. When they do not, they may still influence the debate and shape policy. However, independent candidates can already win office or influence debate in most states by petitioning for access to the general election ballot. The effect of allowing ballot access through a primary election as opposed to the ordinary petition process is likely to be small.

- Open Primaries: 2
- All-Independent Primary: 1

- **Impact on the likelihood of more policy that reflect majority preferences**

Open Primaries: Although theoretically the participation of unaffiliated voters could lead to candidates attempting to appeal to a broader voting population in primary elections, there is no good evidence that unaffiliated voters more than nominally influence the outcome of such elections or that their influence would favor

majoritarian legislation. Still, just as with the previous assessment, we see the potential for at least some impact.

All-Independent Primary: No likely effect on increasing majoritarian policy. Independent candidates may help shape debate, but as mentioned above, the existence of the All-Independent primary probably will not have much impact on its own.

- Open Primaries: 2
- All-Independent Primary: 1
- **Legislator independence: Impact on the degree of average deviation of individual voting records from party-line voting**

Open Primaries: Some limited evidence exists suggesting that states with semi-open primaries elect candidates to Congress who are less ideologically extreme (and therefore, perhaps, less partisan in their voting). ([Gerber and Morton, 1998](#)). That study has faced significant criticism, with several subsequent studies using NOMINATE scores (rather than interest groups ratings) showing little or no effect of primary type on elected candidates' ideology (Brady, Hahrie and Pope (2007); Hirano, Snyder and Ansolabehere (2010); Kaufmann, Gimpbel and Hoffman (2003); McGhee *et al* (2014)).

All-Independent Primary: There exists no clear mechanism by which the All-Independent Primary could reduce partisan voting in this way.

- Open Primaries: 2
- All-Independent Primary: 1
- **Overall impact on legislative functionality**

[Note: The overall impact is not simply an average of the ratings above. For example, a reform that is deemed to have an impact of "2" in one sub-category and "1" in all others, would be seen as still having some impact and earn an overall impact rating of 2.]

These forms of primary election reform do not serve as effective means of improving legislative functionality.

- Open Primaries: 2
- All-Independent Primary: 1

2. Electoral accountability

- **Impact on ability of voters to change majority control of legislature**

Open Primaries: In most districts, the primary outcome will decide who will represent the district. Opening the primary allows more voters to have a say in who will win that primary election. However, open primaries do very little to make the primary election more competitive, and they do not increase the number of competitive districts in a way that could swing control of the legislature to another party.

All-Independent Primary: The presence of independent candidates who won in an all-independent primary may make it easier for voters to vote against incumbents without voting for the opposite party. However, this is unlikely to affect control of the legislature itself.

- Open Primaries: 1
 - All-Independent Primary: 1
- **Impact on the percentage of general election turnover of incumbents when they have less than 50% favorability in their district**

Open Primaries: There is no evidence that open primaries significantly affect whether incumbents win or lose after being nominated in those primaries.

All-Independent Primary: An All-Independent primary ensures that some option will be on the general election ballot aside from the major party nominees. That may allow voters to vote against an incumbent without worrying that they are helping the opposite party. Provided serious candidates run in the new primary, this may create a new mechanism of accountability in some cases.

- Open Primaries: 1
 - All-Independent Primary: 2
- **Impact on percentage turnover of incumbents in primary elections when individual or legislative allies are very unpopular.**

Open Primaries: Open primaries provide voters that are not registered in a district's partisan majority to vote for change in the primary. They also allow organized efforts for such voters to change the outcome of primary elections. When an incumbent is unpopular but likely to win among party faithful, those outside the party can potentially swing the primary election to nominate a different candidate.

"Party raiding" campaigns have been rare, but they were launched in high-profile ways in the presidential campaigns of 2008 (Rush Limbaugh's "Operation Chaos") and 2012 (when Democrat voters voted for Rick Santorum in the Michigan open primary) and may have affected primary outcomes such as when Georgia Congresswoman Cynthia McKinney was defeated in a Georgia primary in 2006. Still, party raiding is largely condemned as a tactic and is rarely successful. It can also be used to protect incumbents (a la Thad Cochran's Senate race in 2014). Correspondingly, the impact of open primaries on legislative turnover is likely to be small.

All-Independent Primary: The All-Independent primary does not allow any more voters to vote in the primary election of the incumbent. If the incumbent seeks ballot access via the All-Independent primary, there is no reason to think they will be more vulnerable than an unpopular partisan candidate would in their party's primary.

- Open Primaries: 2
- All-Independent Primary: 1

- **Impact on the percentage of seats likely to switch parties with statewide shift of 5% of vote. (Responsiveness: degree to which composition of legislature is affected by shifts in the statewide major-party vote.)**

These reforms do not increase the number of competitive districts that will flip to the opposite party with an overall shift in voter preferences.

- Open Primaries: 1
- All-Independent Primary: 1

- **Overall impact on electoral accountability.**

Open primaries create one mechanism for unseating unpopular incumbents in primary elections that is unavailable under closed primaries. Although untested, the All-Independent primary may create a new mechanism for ousting incumbents in general elections that is only available through the petition process now.

- Open Primaries: 2
- All-Independent Primary: 2

3. Voter engagement

Impact on the share of the voting eligible population that lives in a competitive electoral environment

Open Primaries: Open primaries do not make general elections more competitive. They could make some primary election more competitive in a minor way, or least make competitive primaries more accessible to more voters.

All-Independent Primary: Because candidates coming out of the All-Independent Primary will not be associated with a political party, they may upset partisan voting patterns if they are seen as serious candidates. However, independent candidates now may also run and upset partisan voting patterns. If publicity and renown is gained as a consequence of winning the All-Independent Primary, but there may be some impact on the share of eligible voters living in a competitive electoral environment. However, under the current winner-take-all rules, these competitive independent candidates may find themselves playing the role of “spoiler”

- Open Primaries: 2
- All-Independent Primary: 2

- **Impact on voter turnout in general elections.**

Open Primaries: Calcagno and Westly (2008) find open primaries are correlated with higher general election turnout, perhaps because more voters could be engaged in the primary process. However, this impact was small. FairVote’s *Primary Electorate Demographic Database* reveals that turnout in general elections was 40.3% in states with closed gubernatorial primaries in 2014 and 41.1% in states with open gubernatorial primaries in 2014.

All-Independent Primary: More candidates on the general election ballot may result in more voters being campaigned to and feeling like they can vote for someone they like, but the effect is likely to be small, as a link between turnout and number of candidates on the ballot appears not to have been established in the literature.

- Open Primaries: 2
- All-Independent Primary: 2

- **Impact on voter turnout in primaries and nomination contests.**

Open Primaries: Open and semi-open primaries allow voters to participate in nomination contests who could not before. Sabella (2009) and Lott (2009) find that states with open primaries experience higher voter turnout.

All-Independent Primary: The new primary will give unaffiliated voters and those disaffected with their political party a new place to participate. It is difficult to predict what impact this will have.

- Open Primaries: 2
- All-Independent Primary: 2

- **Impact on likely citizen engagement with elected officials between elections.**

Open Primaries: Open and semi-open primaries allow more voters to participate in nomination contests of the incumbent legislator, and create new incentives for that representative to reach out to more people between campaigns. At the same time, the likely participation rates in primaries is likely to be small, especially among voters not registered with that incumbent's party.

All-Independent Primary: We do not see an impact.

- Open Primaries: 2
- All-Independent Primary: 1

- **Impact on the degree of information received by voters during elections. (impact on likelihood of election creating a more informed citizenry)**

Open Primaries: Open and semi-open primaries allow more voters to participate in nomination contests of the incumbent legislator, and create new incentives for that representative to reach out to more people during campaigns. At the same time, the likely participation rates in primaries is likely to be small, especially among voters not registered with that incumbent's party.

All-Independent Primary: More voters will have a contest in which to participate in the primary, and there may be some new candidates on the general election ballot who raise new issues.

- Open Primaries: 2
- All-Independent Primary: 2

- **Overall impact on voter engagement.**

Both Open Primaries and the All-Independent may have a slight, but positive, increase on voter engagement.

- Open Primaries: 2
- All-Independent Primary: 2

4. Openness of process

○ Impact on influence of unaffiliated voters.

Open Primaries: In districts or jurisdictions with little competition in the general election, the primary election for the dominant party is the most meaningful election. Open primaries allow unaffiliated voters to participate in these primary elections. Open primaries still require voters to choose a party ballot, meaning they cannot vote for a Republican candidate for one office and a Democratic candidate for another, but they are able to cast a meaningful vote than they could not in a closed primary system.

Experience shows, however, that the impact of open primaries is limited by the tendency of unaffiliated voters to participate at disproportionately low levels. For example, in Oregon, an independent spirited state where almost a third of registered voters are unaffiliated or affiliated with a non-major party, 30.6% of unaffiliated/other party affiliated voters turned out to vote in the May 2014 primary elections; 38.7% of registered Democrats did (Oregon Statesman Journal, 21 May 2014). Similarly, FairVote analysis shows that in open primary states with gubernatorial elections in 2014, unaffiliated voters made up 10% of the primary electorate and 22% of the general electorate (FairVote (2015) *Primary Electorate Demographic Database*).

Open primaries do not help to enhance the influence of unaffiliated voters in the general election.

All-Independent Primary: Under the All-Independent Primary, unaffiliated voters in safe partisan districts would not be able to participate in the primary election of the party that controls the district. However, the fact that a candidate nominated principally by unaffiliated voters would always appear on the general election may serve to modestly increase unaffiliated voters' influence, but that is largely conjectural.

- Open Primaries: 3
- All-Independent Primary: 2

○ Impact on the influence of independent and minor party candidates

Open Primaries: Generally, there will be no effect. In some cases, open primaries may actually inhibit the ability of small alternative parties to challenge major parties, because "party raiding" is much easier in primaries held by smaller political parties.

All-Independent Primary: By ensuring that a third candidate has a right to access to the general election ballot in every race, the All-Independent Primary should make it easier for an outsider candidate to challenge the major parties. However, their ability to do so depends on other reforms, such as access to the debates. It is not clear that

the All-Independent Primary would have an impact greater than allowing serious candidates to petition for direct access to the general election ballot.

- Open Primaries: 1
- All-Independent Primary: 2
- **Impact on the breadth of voter opinion represented in elected office**

These reforms are unlikely to create more politically diverse legislatures.

- Open Primaries: 1
- All-Independent Primary: 1
- **Impact on the degree of representation of women.**

Open Primaries: Fiber-Ostrow (2012) finds some evidence that the transition from closed to blanket primary in California in 1996 that open primaries increase the chances that Republican women will win their party's nomination (and did not negatively affect Democrat women's chances). Given that the slow rate of increase for women in state legislatures is tied closely to women doing poorly in Republican, this change could have some impact.

All-Independent Primary: We see no likely impact.

- Open Primaries: 2
- All-Independent Primary: 1
- **Impact on the degree of representation of racial minorities.**

These reforms are unlikely to impact representation of people of color.

- Open Primaries: 1
- All-Independent Primary: 1
- **Overall impact on openness of process.**

These reforms do open the process in one specific way. In places where primary elections are decisive, closed primaries legally forbid a relatively large class of voters from participating in the decisive election. Open primaries help to address that specific problem, and the All-Independent Primary affords unaffiliated voters a new avenue for participation. Neither reform is a good means of achieving diversity of representation, however, nor does either reform enhance particular groups' influence in general elections.

- Open Primaries: 2
- All-Independent Primary: 2

Intangibles and Connection to Other Reforms

States do not have to fund or administer primary elections at all -- and have not done for most of our nation's history. Even today, in Louisiana, any prospective candidate must

simply file a Notice of Candidacy form and either pay a filing fee or file a nominating petition to appear on the ballot in November. No election prior to November takes place.

By bringing primary elections into the public arena, states have created a tension between the public right to vote and the political parties' private rights of association. It seems unfair, for example, for unaffiliated voters to have to pay for private parties' nomination contests when they cannot vote in them. States should work to mitigate this tension, for example by allowing political parties to opt out and conduct their own private nominating processes. To the extent participation in primary election by all voters seems important due to the uncompetitiveness of general elections, FairVote's consistent position has been that the solution is not to reform primary elections, but to reform general elections- that is, we believe the desire for a more open primary process can be resolved by ensuring that every general election includes meaningful competition and a chance for real representation.

But if states continue to fund primaries and the number choosing to register as unaffiliated voters continues to grow, we see a real tension looming between voting rights and private association rights, especially in those states that persist with closed primaries. Already more than four in ten registered voters in New Jersey and Oregon cannot participate in primary elections without changing their party affiliation. We wanted to ask for you to share your assessment of the impact on basic voting rights of allowing unaffiliated voters to participate in a state funded primary -- either through opening primaries or creating an all-independents primary.

How do you rank the impact on basic voting rights of allowing unaffiliated voters to participate in a state funded primary -- either through opening primaries or creating an All-Independent Primary.

1-5 impact, low to high