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No 13

PRIMARY ELECTIONS  
THE TEST OF PARTY AFFILIATION

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MARGARET A. SCHAFFNER

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MADISON, WISCONSIN  
DECEMBER 1968



# PRIMARY ELECTIONS

## THE TEST OF PARTY AFFILIATION

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MARGARET A. SCHAFFNER

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COMPARATIVE LEGISLATION BULLETIN—No. 13—AUGUST, 1908

Prepared with the co-operation of the Political Science  
Department of the University of Wisconsin

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Declares that the experience of Minnesota shows that voters from one political party may vote the ticket of another political party in spite of the fact that the law provides a rigid test of party allegiance, p. 60 and 63.

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## NATURE OF THE TEST

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Primary election laws deal with the question of party allegiance from the two standpoints of the open and the closed primary.

### OPEN PRIMARY

*Secrecy in voting.* Under the open primary the use of the Australian ballot enables an elector to vote a party primary ticket without disclosing his party affiliation.

See Wisconsin Laws, 1903, c. 451 under which absolute secrecy in voting is secured.

*Party affiliation.* Electors are prevented from voting for more than one party at any primary by the method of counting the votes under the open primary laws which generally provide that ballots are to be counted for any person only as a candidate of the party upon whose ticket his name is written.

The Missouri law (1907, p. 263, sec. 18) follows the Wisconsin plan (Laws, 1903, c. 451) by providing that if any elector write upon his ticket the name of any person who is a candidate for the same office upon some other ticket than that upon which his name is so written, this ballot is to be counted for the person only as a candidate of the party upon whose ticket his name is written and is in no case to be counted for the person as a candidate upon any other ticket.

In Oklahoma under the law approved May 29, 1908, any

qualified elector offering to vote at a primary is to designate the party ticket he desires to vote and is to receive the ticket called for.

*Non-partisan municipal primaries.* A tendency toward non-partisan primaries for municipalities is shown in recent legislation.

Compare the laws of Ia. 1907, c. 48 and Wis. 1907, c. 670.

#### CLOSED PRIMARY

Under the closed primary the nature of the test may be considered: 1st. from the standpoint of the authority prescribing the test, 2nd. from the standpoint of the voter subscribing to the test of party allegiance. From both standpoints the nature of the record which is kept of the voter's declaration of affiliation is significant.

#### **Authority prescribing test**

*Party authority.* Quite frequently the prescription of the test for participation in primary elections is left to the party authorities. This is particularly true in many of the Southern states where direct primaries are more generally optional or permissive rather than compulsory. However a number of compulsory direct primary laws also leave the prescription of the test to the governing authority of the party.

For typical laws which leave the prescription of the test to the party authorities compare the provisions of: Ala. Laws, 1903, No. 417; Ark. Dig. of St., 1904, sec. 2892-4; Fla. Laws, 1901, c. 5014, as amend. by Laws, 1903, c. 5248, as amend. by Laws, 1905, c. 5471; Ga. Laws, 1890-1, p. 210; Tenn. Laws, 1901, c. 12 and c. 39 and Laws, 1907, c. 422; and Va. Pollard's Code, 1904, sec. 1220.

*Legislature.* In a number of states the test of party affiliation is entirely prescribed by the legislature.

Compare the laws of: Ariz. Laws, 1905, c. 68; Ill. Laws, 1908, p. —; Ind. Laws, 1907, c. 282; Ia. Laws, 1907, c. 51; Kan. Laws, 1908, (Extra Sess.) c. 54; Md. Code of Pub. Gen. Laws, 1904 (new section added, Sess. of 1908), sec. 160 G; Mich. Laws, Ex. Sess. 1907, No. 4; Minn. Rev. Laws, 1905, sec. 192; Neb. Laws, 1907, c. 52; N. J. Laws, 1898, c. 139 as amend. by Laws, 1903, c. 248, as amend. by Laws, 1906, c. 235; N. D. Laws, 1907, c. 109; Ore. Laws, 1905, c. 1; Pa. Laws, 1906, No. 10; S. D. Laws, 1907, c. 139; Tex. Laws, 1905, 1st. Called Sess. c. 11, as amend. by Laws, 1907, c. 177, sec. 114 a; and Wash. Laws 1907, c. 209.

*Party authority and legislature.* Quite generally the legislature prescribes only a part of the test and permits the party authorities to impose additional requirements.

For typical laws see: Cal. Const. (Amend. 1900) art. 2, sec. 2 $\frac{1}{2}$ , Laws, 1907, c. 340 and c. 352; Del. Laws, 1897, c. 393, as amend. by Laws, 1903, c. 285; La. Laws, 1906, No. 49; Mass. Laws, 1907, c. 560; Miss. Code, 1906, sec. 3717; and R. I. Laws, 1902, c. 1078.

### **Voter's declaration**

The voter's declaration of party affiliation may relate to past allegiance, to present affiliation, to future intention, or to some combination of past, present, or future action. The laws for the different states vary greatly on this point.

*Past allegiance.* Some of the laws require a declaration of past affiliation only, on the part of the voter.

For typical provisions compare the laws of Ohio, 1908. (approved Apr. 28) and of Pa. Laws, 1906, No. 10.

In Ohio the voter's affiliation is determined by his vote at the last general election "held in even numbered years."

In Pa. he must have voted for a majority of the candidates of the party at the last general election at which he voted.

*Present affiliation.* Other laws provide that the voter declare only his present allegiance.

Compare the laws of Kan. 1908, (Extra Sess.) c. 54; N. D. Laws, 1907, c. 109; and Wy. Rev. St. 1899, sec. 223, as amend. by Laws, 1907, c. 100.

*Future intention.* In certain cases a declaration of intention to support the party at the ensuing election is the only requirement.

See Wash. Laws, 1907, c. 209, for a typical case.

*Past action and present affiliation.* A declaration as to past action as well as a statement of present affiliation is prescribed in a number of states.

Under the Ill. law enacted in 1908, the voter, if challenged, is required to swear or affirm not only that he is a member of the party, but also that he has not voted at a primary of another political party within two years.

*Past action and future intention.* In addition to declaring his past party allegiance certain states also require the voter to pledge his support to the party at the next ensuing election.

Compare the laws of Ind. Laws, 1907, c. 282; Minn. Rev. Laws, 1905, sec. 192; and Miss. Code, 1906, sec. 3717.

Under the Mississippi law the voter must have "been in accord" with the party during the preceding two years, and must agree to support nominations, in which he participates, at the ensuing election.

*Present affiliation and future intention.* The test prescribed in some states requires a declaration of present affiliation together with a pledge of future support.

See the laws of Ariz. 1905, c. 68; La. Laws, 1906, No. 49; S. D. Laws, 1907, c. 139; and Tex. Laws, 1905, 1st Called Sess. c. 11, as amend. by Laws, 1907, c. 177, sec. 114a.

*Past, present, and future affiliation.* Certain states require a definite declaration with respect to past al-

legiance, present affiliation, and future intention to support the party with whom the voter desires to act at any primary election.

Compare the provisions of Mass. Laws, 1907, c. 560; and N. J. Laws, 1898, c. 139, as amend. by Laws, 1903, c. 248, as amend. by laws, 1906, c. 235.

Also see *Commonwealth v. Rogers*, 1902, 181 Mass. 184 and *Hopper v. Stack*, 1903, 69 N. J. L. 562.

### **Record of declaration**

*Declaration at primary.* Many of the primary laws merely require a declaration of party affiliation on the part of the voter at the time of the primary and do not make any provision for keeping a record of his declaration.

For typical laws compare: Ariz. Laws, 1905, c. 68: Ill. Laws, 1908, p. —; Ind. Laws, 1907, c. 282; Kan. Laws, 1908, (Extra Sess.) c. 54; Minn. Rev. Laws, 1905, sec. 192 and Laws, 1907, c. 226; N. D. Laws, 1907, c. 109; Pa. Laws, 1906, No. 10; S. D. Laws, 1907, c. 139; Tex. Laws, 1905, 1st Called Sess. as amend. by Laws, 1907, c. 177, sec. 114a; Wash. Laws, 1907, c. 209.

*Previous enrollment or registration.* A party enrollment or registration of voters is required in a number of states. The enrollment, whether conducted according to party rules or under provision of law, affords a means of listing the party affiliation of all electors participating in primary elections.

The form of the record kept, varies from informal voting lists to elaborate systems for the permanent enrollment of party members.

*Enrollment under party regulation.* See laws for S. C. Civ. Code, 1902, sec. 258, as amend. by Laws, 1903, No. 8; also see N. C. local acts, which require party registration of voters in certain localities.

*Enrollment under Law.* For different methods of party registration required under law compare the provisions of: Cal. Laws, 1907, c. 340 and c. 352; Del. Laws, 1897, c. 393 as amend. by Laws, 1903, c. 285; Ia. Laws, 1907, c. 51; Ky. Carroll's St. 1903, secs. 1553-59; Mass. Laws, 1907, c. 560; Mich. Laws, Ex. Session, 1907, No. 4; Neb. Laws, 1907, c. 52; and Ore. Laws, 1905, c. 1.

### **What constitutes a reasonable test**

As the right to participate in making nominations is a part of the right to vote the question arises, what constitutes a reasonable test of party affiliation? So far the courts have not come to any uniform conclusions in their decisions on this point.

For recent decisions see: Commonwealth v. Rogers, 1902, 181 Mass. 184; State v. Moore, 1902, 87 Minn. 308; Hopper v. Stack, 1903, 69 N. J. L. 562; Rebstock v. Superior Court of City and County of San Francisco, 1905, 146 Cal. 308; State v. Drexel, 1905, 74 Neb. 776; Attorney Gen. ex rel. Wood v. Rowe, 1905, 27 R. I. 360; Schostag v. Cator, 1907, 151 Cal. 600; Katz v. Fitzgerald (Cal.) 1907, 93 Pac. 112; Freeman v. Board of Registry and Election of Metuchen (N. J.) 1907, 67 At. 713; State ex rel. Labauve v. Michel (La.) 1908, 46 So. 430; Morrow v. Wipe (S. D.) 1908, 115 N. W. 1121.

## LAWS AND JUDICIAL DECISIONS

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### United States

*Alabama.* Laws, 1903, no. 417, sec. 10. Qualified electors under the general election laws have the right to participate in primary elections subject to such political qualifications as may be prescribed by the party authorities.

*Arizona.* Laws, 1905, c. 68, secs. 11 and 13. To vote at a primary election the elector must declare that he is a member of the political party holding the primary and that he expects to support the regular ticket of such political party at the next general or special election.

*Arkansas.* Dig. of St. 1904, secs. 2892-4. Leaves the prescription of the test for participation in party primaries to the party authorities.

*California.* Const. (Amend. 1900) art. 2, sec. 2½. "The legislature shall have the power . . . to determine the tests and conditions upon which electors, political parties, or organizations of voters may participate in any such primary election . . . or the legislature may delegate the power to determine such tests or conditions at primary elections, to the various political parties participating therein. . . ."

See *Rebstock v. Superior Court of City and County of San Francisco*, 1905, 146 Cal. 308. (Interpreting c. 198, Laws of 1901.)

Laws, 1907, c. 340. The governing committee of any political party when filing its application for a place on the primary official ballot is required to file a resolution prescribing the party test necessary for an elector to vote for the delegates to the nominating convention of such party. Persons not possessing the qualifications prescribed may not vote for such party delegates.

A person desiring to vote at any primary election on behalf of any party or for any delegates to any convention is required to write (or have written) on the roster of voters, his name and address and the name of the political party for whose candidates he in good faith intends to vote at the election for which the primary is held.

If challenged, his right to vote must be denied unless he prescribes to the test required by the resolution of the committee of the political party for whose candidates he desires to vote.

The roster of voters must be delivered to the county clerk or registrar of voters and kept as a public record for public inspection for a period of at least two years.

Laws, 1907, c. 352. At the time of registering and of transferring registration, in all places where the primary election law is in force, each elector must declare the name of the political party with which he intends to affiliate at the ensuing primary election or



elections, and the name of such political party must be stated in the affidavit of registration. If the elector declines to state the fact, the fact of such declination is likewise to be stated and no person is entitled to vote at any primary election (by virtue of such registration) unless he has stated the name of the political party with which he intends to affiliate, at the time of such registration. No elector is to be permitted to vote on behalf of any party other than the party so designated in the registration.

In case any elector declines to designate or changes his political affiliation, he is entitled to have the change recorded prior to the close of the registration upon application to the county clerk or registrar of voters. Such application is to be made in person and the elector is required to make affidavit substantially in the following form:

—————, being duly sworn, deposes and says that he is registered on the great register of the said county of ————— as a —————, (insert former party affiliation, or that he had declined to designate his party affiliation), that since the date of such registration he had changed his political views and in good faith declares his affiliation with the ————— party.

The provision requiring an elector at the time of registration to declare his party affiliation in order to be entitled to vote at a primary, is not void for unreasonableness in that it precludes an elector who changes his party affiliation after registration from voting with his new party. Nor is it void as a violation of Const. art. 2, sec. 1, in that it in effect provides an additional qualification to those prescribed therein for electors. *Schostag v. Cator*, 1907, 151 Cal. 600.

Prohibiting one who has voted at a primary election from

signing a petition for another candidate is not unconstitutional as providing an arbitrary classification of voters. *Katz v. Fitzgerald*, (Cal.) 1907, 93 Pac. 112.

*Colorado.* Mills, Ann. St. 1891, sec. 1711. (Not direct.) Excludes any voter from voting at a primary election, who is at the time a member in good faith of a different political party than the one holding such caucus, convention or primary election. The question of the good faith of the voter is to be left to the jury.

See, *In re Nominations to Public Offices*, 1886, 9 Col. 631.

*Connecticut.* Laws, 1905, c. 273. (Not direct.) A party registration is required previous to the primary.

Qualified electors making application for enrollment are to be listed according to their declared political preference. After the completion of each enrollment, the registrars are required to file twenty-five copies of each party list with the town clerk and are further required to deliver to the chairman of the town committee of each political party which cast 10% or more of the total vote of the town at the last general election, a sufficient number of copies to supply the chairman or clerk of each political primary or caucus to be held before the making of the next enrollment list. In case there is no chairman of a town committee of any political party coming under the provisions of the act then the town clerk is required to furnish the chairman or clerk of each caucus or primary meeting with the party list.

Upon oral or written application to the registrars any elector enrolled as a member of a party may

have his name transferred to any other party list as he may direct.

Any person made a voter after a regular session of the registrars and prior to the election next succeeding such session may secure a certificate showing that he is entitled to enrollment upon the list of the party named in the application. The certificate is to have the same effect as though he had been enrolled, and at the time of making the next corrected enrollment list the registrars are to transfer any such name to the regular party list unless otherwise directed by the elector.

Special Law, 1907, no. 321, provides for direct nominations in the town of Manchester.

*Delaware.* Laws, 1897, c. 393, as amend. by Laws, 1903, c. 285. (New Castle Co. and the City of Wilmington.) If challenged, the person offering to vote must swear or affirm that he is a legally qualified voter under the rules of the party holding the primary. A system of party registration is provided for and no person whose name is not registered in the "voting books of qualified voters for primary elections" is permitted to vote in any primary.

*Florida.* Laws, 1901, c. 5014, as amend. by Laws, 1903, c. 5248, as amend. by Laws, 1905, c. 5471. The executive or standing committee calling a party primary may declare the terms or conditions on which legal electors, offering to vote at such elections are to be recorded and taken as proper members of the party at whose expense and in whose interest such primary election has been called.

*Georgia.* Laws, 1890-1, p. 210. If challenged, any elector offering to vote must take an oath that he is duly qualified to vote, according to the rules of the party, holding the primary election.

*Idaho.* Laws, 1903, p. 360. (Not direct.) It is made unlawful for any person who was not affiliated with the party holding the primary at the last general election, to vote or take any part in such primary; provided that one who since the last election has become of age may vote if otherwise qualified. No person may vote at the primary of more than one political party during any calendar year.

*Illinois.* Laws, 1908. Any person offering to vote a primary, if challenged, is required to swear or affirm, that he is a member of, and affiliated with, the \_\_\_\_\_ party; that he has not voted at a primary of another political party within a period of two years; and that he has not signed any nomination petition for nomination of a candidate of any other political party and that he has not signed the nominating papers of any independent candidate for any office to be voted upon at that primary.

In addition to such affidavit the person challenged is required to produce the affidavit of one householder of the precinct who is a qualified voter at the primary and who is personally known or proved to the judges to be a householder in the precinct, who shall swear or affirm, that he verily believes the person challenged to be a member of and affiliated with the \_\_\_\_\_ party.

*Indiana.* Laws, 1907, c. 282. Any elector offer-

ing to vote, if challenged, shall make affidavit that at the last preceding general election, he affiliated with the party holding the election, that he voted for a majority of the regular nominees of the party at such election, and that he intends to support and vote for the regular nominees of such party at the coming election; provided that first voters need not make declaration of past affiliation.

*Iowa.* Laws, 1907, c. 51, sec. 7. Under this law, the voter's selection of a party ballot, at the first primary, to be held in June, 1908, is to constitute the declaration of his party affiliation and it is made the duty of the primary election board to record his name and check his declaration of party affiliation on the poll books used by the clerks of the primary election board. This list, properly certified by the primary election board is to be returned to the county auditor for preservation. Copies of the names and party entries on such list together with the changes of party affiliation are to be used at subsequent primaries for determining with what party the voter has been enrolled and no voter enrolled for one political party is to be allowed to receive the ballot of any other party, but he may change his enrollment according to the provisions of the act. The county auditor is required to prepare, for each voting precinct two of the above mentioned lists duly certified by him and taken from the poll books of the last preceding primary election. He is required to deliver such list to the succeeding primary election boards in the year 1910 and biennially thereafter

at least one day prior to the day of the primary election. These lists together with the poll books of the primary election are to be returned to the county auditor in good condition within twenty-four hours after the primary to be preserved by him.

sec. 8. Any person who has thus declared his party affiliation is thereafter to be listed on the poll books as a member of that political party and while he is a resident of the same precinct he need not declare his party affiliation in succeeding primaries unless he desires to change his party affiliation. Any elector, who having declared his party affiliation desires to change the same, may, not less than ten days prior to the date of any primary, file a written declaration with the county auditor, stating his change of party affiliation and the auditor is required to enter a record of the change on the poll books of the last preceding election, and on the voting list. Any elector whose party affiliation has for any reason not been registered or any elector who has changed his residence to another precinct or a first voter is entitled to vote at any subsequent election in the same manner and upon the same terms as provided in sec. 7.

sec. 9. Any elector whose party affiliation has been recorded and who desires to change his affiliation on primary election day, is subject to challenge. If challenged, he must swear or affirm that he has in good faith changed his party affiliation and desires to be a member of the \_\_\_\_\_, and if he takes such oath, he is thereupon to be given a ticket of

such political party and the clerks of the primary election are required to change his enrollment of party affiliation accordingly.

*Kansas.* Laws, 1908, (Extra Sess.), c. 54, secs. 10 and 12. Any person offering to vote at a primary is required to announce the name of the political party for which he desires to vote and unless he is challenged, one of the judges is forthwith to give him such party ticket. If challenged, he must make an affidavit that he is a member of and affiliated with the — party, that he has not signed the petition of a member of any other party, and that he has not signed the nominating petition of an independent candidate for any office for which candidates are to be voted for at that primary election.

*Kentucky.* Carroll's St. 1903, secs. 1553-59. The party authorities are authorized to prescribe qualifications for voters at party primaries. In order that none but those affiliating with and being members of any political party may participate in a party primary, a system of party registration is provided for localities in which a registration law is in force under the general law governing regular state elections.

The committee or governing authority of any political party desiring to hold a primary, has the right to have the names of all persons registered on the regular state registration books as affiliating with such party, copied into books provided by the committee. A book is to be provided for each precinct of the city and town in which it is proposed

to hold a primary. In case the committee or governing authority of any political party should decide to hold the primary before the time set for the registration of voters for that year under the provisions of the general law, the party registration for the previous year is to govern. Provision is also made for special registration of persons prevented by specified causes from registering at the regular time.

In all counties, districts or precincts in which no registration is held under the provisions of general law all legal electors have a right to vote at any party primary if they conform to the conditions and qualifications prescribed by the committee or governing authority of the political party holding the primary by applying at the polls of the precinct in which they reside and making known the fact that they conform to the conditions and qualifications that have been prescribed.

*Louisiana.* Laws, 1906, no. 49, secs. 9 and 10. Qualifications of voters at primaries are the same as required for electors at general elections, subject to additional political qualifications which may be prescribed by the state central committees of the respective political parties. None but those affiliating with, and beings members of any political party are to be permitted to participate in any primary election held by such political party. The commissioners of election are required to ask every person offering to vote, whether or not he is a member of such political party and whether or not he will support the nominees of such primary election, and he is



not to be permitted to vote unless he answers both questions in the affirmative.

This act is not unconstitutional because it requires voters at primaries to promise that they will support the nominees. State ex rel. Labauve v. Michel, (La.) 1908, 46 So. 430.

*Maine.* Laws, 1903, c. 214. Party enrollment is a prerequisite for voting in any political caucus. Any person who is a legal voter may enroll himself as a member of any political party by filing with the clerk of the town of which he is a legal voter a declaration in writing signed by himself substantially as follows: "I, — being a legal voter of — hereby elect to be enrolled as a member of the — party. The following statement of name, place of last enrollment, if any, and party of last enrollment if any, is true."

A new enrollment may be made at any time but the person making such new enrollment may not vote in any political caucus within six months thereafter if he designates a different political party from that named by him in the preceding enrollment. The clerk of the town where the enrollment is made is required to record the enrollment of members of each political party in a separate book and the records are to be open to the public.

Voting lists used in the election next preceding any caucus are to be used as check lists at the caucuses if the town committee so provide in the call and the committee is required to provide for the use of such lists upon the written request of a specified number of voters of the party.

*Maryland.* Code of Pub. Gen. Laws, 1904 (new section added, Session of 1908), sec. 160 G. No person is permitted to vote in any primary election unless he is a registered voter and a member of the party at whose primary election he tenders his ballot. Any registered voter who at the last preceding election voted for the presidential electors or the governor of the state or comptroller or other state candidate or the county candidates of the party at whose primary he tenders his ballot, or any registered voter who attains the age of twenty-one years prior to the next election, or any voter who having failed to vote at the last election declares his intention to vote at the next succeeding election for the candidates named by the party at whose election he tenders his ballot is to be deemed a member of such party and entitled to vote at such primary election. After an elector has voted his name is to be entered in the poll books provided for by the governing body of the party holding the election.

*Massachusetts.*

The provision forbidding any one to vote at a primary who has taken part in a primary of another political party within twelve months is a reasonable test of party affiliation. *Commonwealth v. Rogers* 1902, 181 Mass. 181.

Laws, 1907, c. 560, sec. 93. Each city or town committee may make reasonable regulations, not inconsistent with law, to determine membership in the party, and to restrain persons not entitled to vote at caucuses from attendance thereat or taking part therein. But no political committee may prevent any voter from participating in the caucus of its party

for the reason that the voter has supported an independent candidate for political office.

sec. 101. No person having voted in the caucus of one political party is entitled to vote or take part in the caucus of another political party within twelve months, except that voting or taking part in the caucuses of any municipal party by any voter is not to effect his legal right to vote or to take part in the caucuses of any other political party whether national, state, or municipal for any other election; and having voted or taken part in the caucus of another political party for any previous election whether city, state or national is not to effect his right to vote or take part in the caucus of any municipal party. No voter shall be prevented from voting or participating in any caucus if he takes an oath that he is a member of the political party holding the caucus and intends to vote for its candidates at the polls at the election next ensuing and that he has not taken part or voted in the caucus of any other political party for twelve months last passed.

sec. 156. Each voter's party affiliation is to be checked on the voting list used by the ballot clerks and the list is to be returned to the election commissioners in Boston or to the city or town clerks in other places for preservation during succeeding year. A copy of the party entries on such list is to be used at subsequent primaries for determining with what party the voter has been enrolled. Any elector may change his enrollment by appearing before the election commissioners in Boston or before the city or

town clerks in other places and requesting in writing to have his enrollment changed to another party but such change is not to take effect until ninety days after the voter so appears; but the political party enrollment of a voter is not to preclude him from receiving at a primary the ballot of any municipal party, but in no primary is he to receive more than one party ballot. No voter who denies the accuracy of his enrollment is to be permitted to vote until he takes an oath that he is a member of the — party and that he is incorrectly enrolled as a member of another political party.

*Michigan.* Laws, Extra Sess. 1907, no. 4, secs. 2, 6, 9, 10, 13 and 35. No person may vote at a primary election unless he is enrolled as a member of a particular political party. The various boards of registration provided for by the general election law are constituted an enrollment board. The local custodian of the general registration books of each election precinct is made the custodian of the party enrollment book, and he is required to forward copies of the party enrollment to the county clerk and to the secretary of state.

The custodian of the enrollment book is required to deliver the same to the board of enrollment for the purpose of registration and correction and the enrollment board is required to enroll all qualified electors who make application for and who are entitled to enrollment as members of any political party. Whenever any qualified elector applies for enrollment but neglects or refuses to give the name of his

party or if he has none, he is to be enrolled as an independent.

Whenever an enrolled voter has changed his past affiliation and desires to be enrolled as a member of another party, he may personally make application for re-enrollment to the enrollment board of primary election inspectors and the board is thereupon required to re-enroll the voter.

Any qualified elector offering to vote is to be furnished a ballot of the political party with which he is enrolled and no other. In case he is challenged, he is required to take an oath that he is a member of the party and that he believes in the principles of the party.

For local laws, see Local Acts, 1905, no. 476, as amended by Local Acts, 1907, no. 754 (Alpena Co.); Local Acts, 1903, no. 326, sec. 12 (Kent Co.); Local Acts, 1903, no. 502, sec. 12 (Muskegon Co.); Local Acts, 1905, no. 345, sec. 11 (Wayne Co.).

The local acts for these counties uniformly require that any elector offering to vote, if challenged, must take an oath that he is in sympathy with the principles of the party and that he expects to vote the party ticket at the next ensuing election.

#### *Minnesota.*

The legislature may within reasonable limits regulate the means by which partisan efforts should be protected in exercising individual preferences for party candidates. *State v. Moore*, 1902, 87 Minn. 308. (Interpreting c. 216, Laws of 1901).

Rev. Laws, 1905, sec. 192. Any person offering to vote the ballot of any political party at a primary, if challenged, is required to declare under oath that he generally supported such political party at the last election and intends to support it at the next ensu-

ing election. When voting for the first time he is not required to declare his past political affiliation.

*Mississippi.* Code, 1906, sec. 3717. No person is eligible to participate in any primary election unless he intends to support nominations in which he participates, has been in accord with the party holding such primary within the two preceding years, and is not excluded from such primary by any regulation of the state executive committee of the party holding such primary. Any member of the party holding the primary or any primary election officer may challenge any person offering to vote and cause him to answer, under oath, questions relating to his qualifications.

*Missouri.* Laws, 1907, p. 263, sec. 18. At all primaries as many separate tickets are to be provided as there are parties entitled to participate and also a non-partisan ticket upon which are to be printed the names of all persons for whom nomination papers have been filed who are not candidates for any political party. Each qualified elector is entitled to receive from the judges of election one ballot of the political party participating in such election for which he desires to vote.

To prevent any elector from voting for more than one party at any primary, the law provides that if any elector write upon his ticket the name of any person who is a candidate for the same office upon some other ticket than that upon which his name is so written this ballot is to be counted for such person only as a candidate of the party upon whose

ticket his name is written and is in no case to be counted for such person as a candidate upon any other ticket.

*Montana.*<sup>1</sup> Laws, 1901, p. 115, sec. 2. (Not direct.) Any elector offering to vote at any caucus or primary meeting, if challenged, is required to take an oath that he has been and is identified with the party holding the caucus or primary and that it is his intention bona fide to act with the party and identify himself with the same at the ensuing election and that he has not voted at any primary of any other political party whose candidates are to be voted for at the next general or special election.

*Nebraska.*

Making the right of an elector to participate in a primary depend upon his party affiliations is a legitimate exercise of legislative power and does not conflict with the fundamental law guaranting freedom in the exercise of the elective franchise. *State v. Dréxel*, 1905, 74 Neb. 776.

Laws, 1907, c. 52, secs. 17-21. Every qualified elector desiring to vote at a primary election is required to state to the judges of the primary the political party with which he affiliates. If challenged, the elector is required to take an oath that politically he affiliates with the — party and that he intends to support the candidates of that party at the coming election. The party affiliation of each voter at a primary is to be noted on the poll book.

Provision is also made for a system of registration of party affiliation. The supervisor of regular regis-

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<sup>1</sup>A direct primary law enacted in 1905, c. 99, was repealed by c. 55, Laws of 1907.

trations is required to record the party affiliation given by each elector applying to be registered. The city clerk of each city wherein a registration of voters is required by law is required to compile an alphabetical list of the voters of each of the political parties in each precinct in the city and within five days after each day of registration he must furnish the chairman or secretary of each political committee of his city and county a certified copy of such lists and also keep the same accessible for public inspection. He must also on the day of the primary furnish to the officers of the primary election in each precinct a certified copy of such lists for the purpose of determining whether or not any person who desires to vote at such primary was registered at the last registration as affiliating with the party the ballot of which he desires to vote at such primary.

*Nevada.* Cutting's Comp. Laws, 1861-1900, secs. 1678-85. (Not direct.) The test of party affiliation is prescribed by the party authorities.

*New Hampshire.* Laws, 1905, c. 93. (Not direct.) The check list of party voters for use at any caucus is to be prepared by the local executive committee of the party holding the caucus and no person is to be permitted to vote unless his name is on the check list. Any person offering to vote, if challenged, must subscribe to an oath that he intends to vote the ticket of the party holding the caucus at the next ensuing election. After the caucus the presiding officer is to file the check list with the city or town clerk and the clerk is to keep the list in his office



open to public inspection for a period of two months thereafter.

*New Jersey.* Laws, 1898, c. 139, as amend. by Laws, 1903, c. 248, as amend. by Laws, 1906, c. 235. Separate tickets are provided for the different political parties. Any person offering to vote, if challenged, is required to swear or affirm that he is a member of the — party; that at the last election for members of the General Assembly at which he voted, he voted for a majority of the candidates of the party and that he intends to support the candidates of the party at the ensuing election. Voters voting for the first time need not declare previous affiliation. Any elector voting with one political party at a primary election is not to be permitted to vote with any other political party at the next succeeding primary election.

The board of registry and election are required to indicate the party affiliation of each elector voting at the primary.

The right to vote a secret ballot is neither a natural right nor a constitutional right; hence a legislative provision that a voter at a primary, if challenged, shall make affidavit that at the last general election at which he voted, he voted for a majority of the candidates of the party with which he is proposing to act, violates no constitutional right of such voter. *Hopper v. Staek*, 1903, 69 N. J. L. 562.

A voter may erase from his ballot any name or write thereon the name of any person for whom he desires to vote and there is nothing in the general object of the laws denying the right of a member of one party from voting for a member of another party as the nominee of such voter's party. *Freeman v. Board of Registry and Elections of Metuchen (N. J.)* 1907, 67 At. 713.

*New Mexico.*<sup>2</sup>

*New York.* Laws, 1896, c. 909, sec. 53, (Election Law). Voters at primaries in addition to legal qualifications must possess such other qualifications as are "authorized by the regulations and usages" of the political party or independent body holding the primary.

The regulations of the party, so referred to, must be regularly adopted by the County Convention or by a committee duly authorized by such convention and the requirements as to qualifications cannot be in conflict with the provisions of the statute. The rules cannot be such as will exclude a member of a party who intends to vote for the candidates of the party at the next election nor can it be left to a majority or to the unanimous vote of the enrolling board to say whether or not a man may enroll. The requirements may provide that the applicant for enrollment must qualify under oath but if he does so qualify he must be enrolled and allowed to vote at the primary. If under oath he makes false statements his punishment must be other than refusing to enroll him. *Brown v. Cole*, 1907, 105 N. Y. Supp. 196.

Laws, 1898, c. 179, as amend. by Laws, 1899, c. 473, and Laws, 1900, c. 204 and c. 225; Laws 1903, c. 111; Laws, 1904, c. 488; Laws, 1905, c. 674; Laws, 1906, c. 227, and Laws, 1907, c. 744 (Primary Election Law). Also see Laws, 1902, c. 195 as amend. by Laws, 1906, c. 498 (Town Enrollment Act). Only electors who are duly enrolled as party members may participate in the primary elections of their respective parties. At the time of enrollment the elector must declare that he is "in general sympathy with the principles of the party" and that he intends generally to support the nominees of such party at

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<sup>2</sup> No legislation relating to test of party affiliation at primary elections.

the next general election, state or national, and that he has "not enrolled with or participated in any primary election or convention of any other party" since the first day of the preceding year.

After the final meeting for registration the enrollment box is to be delivered to the custodian of primary records and the enrollments are to be kept secret until after the next general election when the custodian is required to copy the party affiliation of each elector in the enrollment books for the election district in which such elector resides and the records are then to be thrown open for public inspection.

The custodian of primary records is also required to provide duplicate sets of enrollment books for each party to which the act is applicable.

Any qualified elector offering to vote is required to announce the party with which he is affiliated and if he is found to be duly enrolled as a member of such party in that primary district the Board of Inspectors are required to deliver to him the ballots of his party.

Persons who have voted at a regular Democratic or Republican village caucus are thereby disqualified to vote at any village caucus held by a different political party. In re Freund, 1907, 103 N. Y. Supp. 420.

*North Carolina.* The local acts which established direct primaries for separate counties or for groups of counties or for separate cities uniformly provide for some test of party affiliation for voters at primary elections. Generally the test is prescribed partly by the legislature and partly by the party authorities holding the primary. Some of the tests require the

voter to declare under oath that he will abide by the result of the primary. In certain localities the law requires party registration of voters under regulations prescribed by the party organization.

For typical local acts see Laws, 1901, c. 524 (Mecklenburg Co.); c. 752 (applies to the counties of: Anson, Cabarrus, Dare, Durham, Forsyth, Granville, Haywood, Henderson, Johnston, Northhampton, Orange, Pamlico, Richmond, Tyrrell, Wake and Washington); Laws, 1903, c. 123 and 793 (Richmond and Henderson Co's.); Laws, 1905, c. 146 (Craven Co.); c. 266 (Buncombe Co. and City of Ashville); c. 575 (City of Raleigh and Wake Co.); c. 795 and 837 (New Hanover Co. and City of Wilmington); Laws, 1907, c. 116 (Union and Onslow Co's.); c. 190 (Rowan and Camden Co's.); c. 247 (Buncombe Co. and Ashville Twp.); c. 374 (Robeson Co.); c. 399 (Scotland Co.); c. 405 (Guilford Co. and City of Greensboro); c. 761 (Columbus Co.); c. 926 (Counties of Anson, Beaufort, Bladen, Columbus, Davidson, Durham, Halifax, Lenoir, Madison, Martin, Nash, Onslow and Wake).

*North Dakota.* Laws, 1907, c. 109, sec. 10. It is made unlawful for any person to call for or vote a ballot at a primary election, except the ballot representing the party or principle with which he affiliates, and any person offering to vote, if challenged, must make affidavit as to his party affiliations.

*Ohio.* Laws, 1908, p. 214-225. Any person offering to vote at a primary may be challenged on the ground that he has not previously affiliated with the party whose ticket he desires to vote and affiliation is to be determined by the vote of the elector making application to vote at the last general election held in even numbered years. If the judges, of the party to which the person asking the ticket claims affiliation, are not satisfied that he is a legal voter under this act they are to reject his vote. Any one attempting to vote at the primary election of any

political party, other than the political party with which he has affiliated as above defined, is to be fined not less than \$50.00 nor more than \$500.00, or to be imprisoned in the county jail not less than three months nor more than six months, or both.

*Oklahoma.* Laws, 1908, p. 358-376. Separate tickets are provided for the different political parties. Any qualified elector offering to vote is entitled to receive the party ticket he desires to vote upon making request therefor of the primary election inspector.

*Oregon.* Laws, 1905, c. 1 (adopted by initiative petition). The preamble to the law declares that "the members of every political party and voluntary political organization are rightfully entitled to know, that every person, who offers to take any part in the affairs or business of any political party or voluntary political organization in the state is in good faith a member of such party."

A system of party registration is provided for and it is made unlawful for any elector to vote or to offer to vote at any primary unless he is registered as a member of a political party.

No person who is not a qualified elector and a registered member of a party making its nominations under the provisions of this law is qualified to join in signing any petition for nomination, and no person is qualified to sign any nominating petition of any other political party for the primary than that with which he is registered. But no registered member of any party is to be prevented from signing a petition for the nomination of any independent or nonpartisan

candidate after the primary nor is any qualified elector to be prevented from signing petitions for more than one candidate for the same office on one party ticket.

Every qualified elector offering to vote at any primary is to be given a ballot of the political party with which he is registered as a member and he is not to be given a ballot of any other political party provided that no elector is to be deprived of the right to register and vote at any primary in the same manner that he is permitted by the general laws to register and vote at a general election.

If challenged, the elector is required to take an oath that he is in good faith a member of the political party with which he is registered.

*Pennsylvania.* Laws, 1906, no. 10, sec. 10. Each elector has the right to receive a ballot of the party for which he asks, provided that if he is challenged he must make oath or affirmation that at the last preceding general election at which he voted, he voted for a majority of the candidates of the party for whose ballot he asks.

*Rhode Island.* Laws, 1902, c. 1078, sec. 8 (not direct). (Applies to the cities of Providence, Newport, and Pawtucket.) In addition to the regulations prescribed by the party authorities, the law requires that the voter shall not have taken part in a caucus or voted at an election for a candidate of another party within fourteen calendar months.

See Attorney Gen. ex rel. Wood v. Rowe, 1905, 27 R. I. 360.

*South Carolina.* Civ. Code, 1902, secs. 255-7 as amend. by Laws, 1905, no. 409; Civ. Code, sec. 258 as amend. by Laws, 1903, no. 8; Crim. Code, sec. 278 as amend. by Laws, 1903, no. 73. The political qualifications for voters at primary elections are prescribed by the party authorities. The law requires a party registration in localities having a prescribed population.

*South Dakota.* Laws, 1907, c. 139, sec. 33. Any person offering to vote at a primary, if challenged, is required to swear or affirm that he is in good faith a member of the \_\_\_\_\_ party and a believer in its principles as declared in its platform at the last preceding national and state conventions and that he intends in good faith to support the principles of the party and the candidates nominated by it at the primaries.

This provision is a reasonable regulation and does not preclude a first voter from joining the party of his choice nor prohibit one who has previously voted from transferring his party allegiance, nor does it conflict with the Constitution in that it adds to the qualification of electors prescribed by the Constitution. *Morrow v. Wipe* (S. D.), 1908, 115 N. W. 1121.

*Tennessee.* Laws, 1901, c. 12 and c. 39 and Laws, 1907, c. 422. Qualifications for voters, in addition to legal requirements, are prescribed by the party authorities holding the primary.

*Texas.* Laws, 1905, 1st Called Sess., c. 11, as amend. by Laws, 1907, c. 177, sec. 114 a. The following test of party affiliation must be placed on every official primary ballot: "I am a \_\_\_\_\_ (inserting name of the political party or organization

of which the voter is a member) and pledge myself to support the nominees of this primary."

*Utah.* Laws, 1899, c. 79, sec. 2 (not direct). No person is entitled to vote at any primary election unless he is a duly qualified voter under the prescribed rules and regulations of the political party holding the primary.

*Vermont.* Laws, 1904, no. 2 as amend. by Laws, 1906, no. 1 (not direct). Provides for party check lists to be used for determining the party affiliation of voters at caucuses. No person may vote at a caucus unless his name appears on the party list.

*Virginia.* Pollard's Code, 1904, sec. 1220. Qualifications for electors at primary elections are prescribed by the party authorities.

*Washington.* Laws, 1907, c. 209, secs. 11 and 12. Separate ballots are provided for the several political parties. Every qualified elector desiring to vote at a primary has the right to receive the ballot and only the ballot of the party for which he asks. In case he is challenged he is required to make oath or affirmation that he intends to affiliate with the party and that he intends generally to support the candidates of the party at the ensuing election.

*West Virginia.* Code, 1906, sec. 45. (Laws, 1891, c. 67.) (Not direct.) In order to vote at a party primary the elector must be a "known recognized, theretofore openly declared member of the party."

*Wisconsin.* Laws, 1903, c. 451. An Australian ballot is used at all primaries. This ballot is made up of as many tickets as there are parties entitled to



participate in the primary and also a nonpartisan ticket upon which are printed the names of all persons for whom nomination papers have been filed and who are not candidates for any political party. In voting, the elector detaches the ticket he intends to vote and deposits the remaining tickets in the blank ballot box.

To prevent electors from voting for more than one party at any primary the law provides that if any elector write upon his ticket the name of any person who is a candidate for the same office upon some other ticket than that upon which his name is so written, this ballot is to be counted for such person only as a candidate of the party upon whose ticket his name is written and is in no case to be counted for such person as a candidate upon any other ticket.

*Wyoming.* Rev. St., 1899, sec. 223 as amend. by Laws, 1907, c. 100, sec. 1 (not direct). Any person offering to vote at any primary, if challenged as to his political faith, is required to make a sworn statement showing that his political faith is in accordance with the party of voters holding such meeting.









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