



# THE CANVASS

States and Election Reform®



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## A Primer on Primaries

When it comes to determining when and how primary elections are held, partisan political considerations are often front and center. But politics is only part of the “primary” story. It is up to state legislatures to set the ground rules for selecting candidates to run in general elections, taking federal requirements, voter needs, and costs into account, along with politics, of course.

Those ground rules are always subject to change, and this year, 137 bills proposing changes to state primary elections have been introduced in 41 states. (Presidential Preference Primaries are a different kettle of fish; see page 2.) Before looking at changes, we’ll look at where the states stand now in terms of primary rules.

**“Open” and “closed” primaries:** Primaries can be categorized as either open, closed, somewhere in between, or “top two.” Top two are less common, and are described below. “Open” primaries permit any registered voter to cast a vote in a primary, regardless of his or her political affiliation. This means that a Democrat could “cross over” and cast a vote in the Republican primary, or vice versa, and an unaffiliated voter can choose either. Eleven states use this system.

A “closed” primary is the reverse—only voters registered with the party can vote in its primary. Eleven states use this system.

But wait, it gets more complicated. Twenty-four states use “partially closed” primaries or “partially open” primaries. In a partially closed primary, party members may vote only in their party’s primary, and party officials decide whether to

also allow unaffiliated voters. In a partially open primary, undeclared voters can participate in either primary, but must either publicly declare their ballot choice at the time of the primary, or their ballot selection may be regarded as a form of registration with the corresponding party. See NCSL’s State Primary Election Systems page for state-by-state details.



How are primaries conducted? Because primaries generally draw fewer voters than general elections, they lend themselves to procedures that are thought to be less costly than traditional in-person, precinct-based elections. In addition to in-person voting at precincts, primaries can be conducted by:

- All-mail balloting, as many counties in Colorado did in 2010.
- Vote centers, as several other Colorado counties did in 2010.
- Internet voting, as Democrats did in Arizona in 2000 and in Michigan in 2004.

What changes are afoot this year? Lawmakers in at least 19 states have introduced legislation to either open primaries (six states) to unaffiliated voters or close them (13 states). “There seems to be some momentum to close primaries,” says Gary Moncrief, a political scientist at Boise State University. “And Idaho is a little ahead of the others.”

Idaho’s legislation to close primaries was signed into law in April. It gives political parties the power to close their primaries, and it establishes tight rules on how voters can affiliate or disaffiliate with a political party.

*continued on page 2*

### can•vass (n.)

Compilation of election returns and validation of the outcome that forms the basis of the official results by a political subdivision.

—U.S. Election Assistance Commission:  
*Glossary of Key Election Terminology*

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When changes are made to a longstanding system, voter education becomes particularly important. “Closed Primary States and the Conduct of Education Campaigns,” a report by the National Association of Secretaries of State from August 2010, details state efforts to let voters know who can vote in a primary.

**What about “top two” primaries?** In 2010, California voters adopted a top two primary system. (Louisiana, Nebraska and Washington use some form of top two as well.) In a top-two system, all candidates, regardless of party affiliation, are listed on one ballot. Voters choose their favorite candidate, and the top two vote-getters, from whichever party, become the candidates in the general election. According to the California Voter Guide, proponents said this system would give independent voters an equal voice in the primary, and possibly help elect more practical, rather than ideological, candidates. Opponents argued that because a candidate’s party affiliation would not appear on the ballot, two Democrats or two Republicans could make it to the general election. It also could limit ballot access for third-party candidates and therefore voters’ choices. California will give this system its first spin in a May 17 special election to fill a vacant congressional seat.

It will be “a wonderful experiment to watch,” says Bruce Cain, political science professor at the University of California-Berkeley. He is unsure whether the goals of moving to “top two” will be met. Instead, he says, “it may encourage the parties to do more of what we call ‘the invisible primary,’” which allows contributions and endorsements to essentially designate a top choice well before the actual primary.


**What does the federal MOVE Act have to do with primaries?** Until recently, voters living overseas often couldn’t get their ballots returned in time to be counted. So, in 2009, Congress passed the federal Military and Overseas Voter Empowerment Act of 2009 (MOVE), with a key requirement that states send ballots to voters overseas at least 45 days before elections, including primaries.

With the general election in early November, ballots now must be mailed in mid-September. To do that, states need to know by then the results of the primaries—a problem for 10 states and the District of Columbia that traditionally hold primaries in September. Since overseas ballots for primaries must go out earlier too, filing dates for candidates also must be moved up. This year, 31 states have legislation to change their dates based on MOVE requirements.

**What about primaries with runoffs?** In 10 states, if no candidate in a primary receives a clear majority, the top two within the party run again in a primary runoff. The time between primaries and primary runoffs varies between two and seven weeks. In 2010, Louisiana’s dates were August 28 with the runoff on October 2. Runoffs can compound the timing problem for overseas ballots and push candidate filing dates even earlier.

Because states that conduct primary runoffs essentially hold two elections to decide who will be the nominee from each party, some states, including Oklahoma, are considering changing to a “winner takes all” single primary. Eliminating the runoff saves the cost of an election, and helps keep the election calendar running smoothly.

And “instant runoffs?” South Carolina, Louisiana and Arkansas use instant runoff voting for citizens living overseas. Voters receive two ballots: a “normal” ballot for the primary and another one for a possible runoff, on which the voter ranks the candidates. For more information on instant runoff voting, see this 2007 Information Brief from the Minnesota House Research Department. Instant runoffs are used in some municipal and county elections as well.

Is this complicated? Yes, and it can be even more so. Colorado, Connecticut, Indiana, Massachusetts, Michigan, New Mexico, New York and Utah choose nominees through a process that combines caucuses or a convention with a primary. But caucuses and conventions are topics for another issue. 

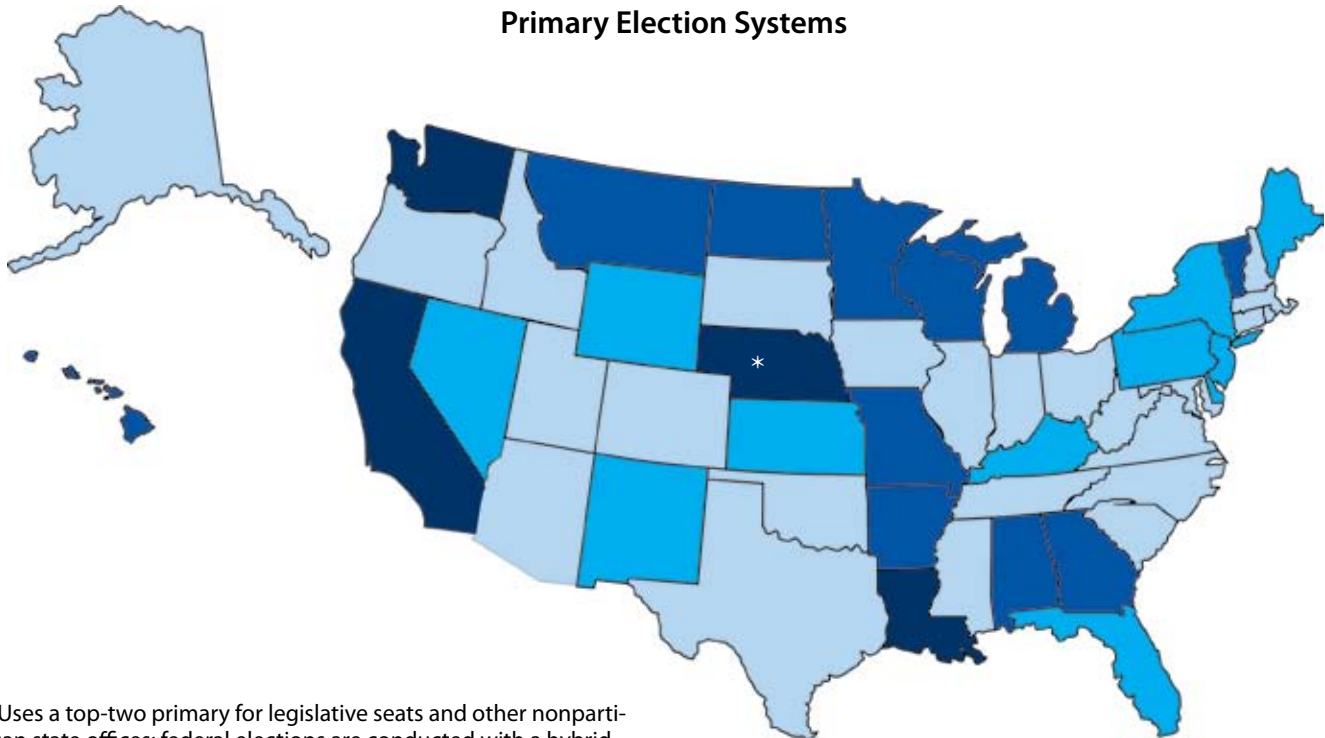
**Presidential Preference Primaries...** We’re familiar with very high-profile Presidential Preference Primaries (PPPs), such as the first-in-the-nation New Hampshire primary tentatively scheduled next time for Jan. 24, 2012. But some states are inconsistent in when, and even if, they hold a PPP.

For decades, conventional wisdom has held that early primaries lure candidates and their campaign dollars to a state—as well as boost the state’s political influence. In 2008, there was a huge move to hold primaries earlier in the year; and yet that year the Democratic nomination wasn’t decided until well into May, giving the late primary states unexpected influence.

In preparing for 2012, states are cautious about whether to move their dates up to gain influence or back to coincide with the state primary and save money by running one election instead of two, or to cancel altogether. So far this year, Washington canceled its presidential primary for 2012, with an expected savings of \$10 million; Washington’s political parties will fund caucuses instead. At least 12 other states have considered moving their dates; see NCSL’s April 27 Legislative Action Bulletin for details.

Frontloading Headquarters, a website run by Davidson College Professor David Putnam, tracks changes to primaries and provides a map and a calendar of states’ primary dates. The calendar is adjusted almost daily to reflect legislative and party action. 

## Primary Election Systems



\* Uses a top-two primary for legislative seats and other nonpartisan state offices; federal elections are conducted with a hybrid.

- Closed: In general, voters must first be registered party members of the applicable party to vote in its closed primary.
- Open: In general, regardless of their party affiliation, voters can decide which party's primary to participate in.

- Hybrid: Rules may vary about whether unaffiliated voters can participate in a party's primary and whether voters can "cross over" to another party's primary.
- Top Two: A common ballot lists all candidates on one ballot. The top two vote getters, regardless of party, go on to the general election.

Source: NCSL, 2011.

**10,072**

That's the number of jurisdictions in the United States that conduct elections. It includes 50 states, 3,140 counties and 5,312 townships. (Thanks to Election Data Services for this information.)

### Two Articles on Section 5 of the Voting Rights Act

Section 5 of the historic 1965 Voting Rights Act establishes "preclearance requirements" for all or part of 16 states and jurisdictions. These jurisdictions must have any changes to voting laws and regulations "pre-cleared" by either the U.S. Department of Justice or the District Court for the District of Columbia before they can take effect. Congress must review section 5 every 25 years, and the law was most recently reauthorized in 2006.

In April, Hans von Spakovsky, Senior Legal Fellow at the Heritage Foundation, released a memorandum titled *The Bailout Bait and Switch: DOJ's Last-Ditch Attempt to Rescue Section 5 of the Voting Rights Act*. In recent times, 19 jurisdictions have "bailed out" of pre-clearance under provisions of the Voting Rights Act by establishing a track record of non-discriminatory voting practices. Two jurisdictions, Kinston, North Carolina and Shelby County, Alabama, are currently challenging the constitutionality of the "preclearance" requirements in federal court. Von Spakovsky supports plaintiffs from Kinston and Shelby County who believe that section 5 is no longer required to prevent racial discrimination in voting laws, saying "because Section 5 is divorced from the current reality of voting practices, no number of bailouts will save the preclearance requirement."

In May, Michael Halbertstam, who teaches law at the University at Buffalo Law School, wrote in the *Hastings Law Review* an article titled *The Myth of "Conquered Provinces": Probing the Extent of the VRA's Encroachment on State and Local Autonomy*. The article argues that the preclearance requirements are not an inappropriate intervention into state and local lawmaking processes.

## New Mexico Studies Its 2010 Election



It has been six months since the 2010 general election, and two months since the 2010 New Mexico Election Administration Report hit the press, so why write about it now? Two words: application and replication.

According to lead researcher Lonna Atkeson, a political science professor at the University of New Mexico, the study shows “a system that is fundamentally working, where voter problems are infrequent and where voter and poll worker confidence is generally high.” That’s good news, but there’s always room for improvement, and the report includes dozens of recommendations.

This sustained, real-world, independent analysis of state-wide overall election health is unusual, if not unique. The study combined surveys of voters and poll workers with direct Election Day observations. Better yet, it is the third report in a row (2006, 2008, 2010), so longitudinal analysis is possible.

For those who don’t live in New Mexico, how might this study prove useful?

### Application

Although New Mexico, like all states, has a unique political and social environment, its goals and challenges are similar to those in most states: preventing voter fraud, providing a satisfactory voting experience, adapting to a new voting system (“ballots on demand” were new to New Mexico in 2010), counting the votes accurately, and doing it all with an eye on the purse. New Mexico’s results that may be applicable to other states include:

- While 50 percent of poll workers felt that photo ID should be required, 60 percent also ranked protecting voter access for all eligible citizens higher than preventing fraud. As for voters, 53 percent ranked preventing fraud higher than protecting voter access.
- Almost 70 percent of voters supported a requirement to prove citizenship when registering to vote, 45 percent supported automatic—or universal—registration, and 30 percent supported Election Day registration. But less than 17 percent supported all-mail elections.
- Voters were initially ambivalent toward “vote centers” but when given pro and con information, the overall rating was more favorable (moving from 4.82 to 5.45 on a 10 point scale).
- Voter ID requirements were applied inconsistently. New Mexico law permits a wide variety of documents

to be used, but in 15 percent of precincts poll workers incorrectly asked for a photo ID.

- In 2008, New Mexico passed legislation that had the affect of prohibiting retired public employees from serving as poll workers. In observations in 2008 and 2010, the study documented the difficulties caused by losing capable, civic-minded, experienced poll workers. Legislative action may be needed to redress this.

### Replication

Besides providing data on New Mexico’s experience, the study also provides a model for other states who may want to do a similar study of their own. If other states conducted similar election analyses, state-to-state comparisons could benefit all elections policymakers.

How to pay for such a thing is, as always, the big question. New Mexico’s financial support has come from a variety of places. This year’s study, which cost between \$25,000 and \$30,000, was funded in part by the county clerk’s office in Albuquerque’s Bernalillo County. Funding for other states could come from the state legislature, the secretary of state, the state’s county clerks association, universities, or civic-minded foundations. Costs can be kept down by using Internet instead of mail surveys, nonprofit postage rates, and inexpensive workers, such as college students, for election observers. 🏠

## Canadian Voter ID



Canada’s national elections were held May 2, which might prompt American election junkies to wonder, what identification did our northern neighbors have to show at the polls? (Of course, Canada has a different history and culture—and a national voting system that is consistent across all provinces—but it still makes for an interesting comparison.) The Voter ID page of Elections Canada reads:

“To Vote, you must prove your identity and address. You have three options:


Option 1: Show one original piece of identification with your photo, name and address. It must be issued by a government agency. Example: driver’s license.

Option 2: Show two original pieces of authorized identification. Both pieces must have your name and one must also have your address. Example: health card and hydro bill.

Option 3: Take an oath and have an elector who knows you vouch for you. This person must have authorized identification and be from the same polling division as you. This person can only vouch for one person. Examples: a neighbor, your roommate.” 🏠



# Worth Noting

- Consider subscribing to Election Administration Reports, the venerable hard-copy newsletter produced for election officials, but also useful to election geeks, legislators and legislative staff. Biweekly and crystal-clear, it's been gathering news about how American elections work under Dick Smolka's expert supervision for decades. Call 866-888-9170 or email the publication.
- The House and Senate in Florida have each passed versions of legislation that would shorten the length of early voting, regulate groups that do voter registration drives, and require voters who have changed addresses to vote on provisional ballots. Next month's Canvass will take a closer look at this bill and other "omnibus" elections legislation.
- As reported by Nashville Public Radio, Tennessee Representative Frank Niceley said on the House floor: "You know we all spend money to get elected. It costs us anywhere from \$5 a vote, \$10 a vote. The governor spent \$16 a vote. I'm just gonna tell everybody in my district, 'If you don't have a photo ID, get a hold of me, I'll buy you one.' At \$7, that might be the cheapest vote we get ... buy them a photo ID, and be done with it." Tennessee's House amended and passed a Senate bill requiring voters to show photo ID at the polls. The bill does not require free ID cards for those who don't already have one, which the state attorney general says may be unconstitutional.
- "Electronic pollbooks" will be piloted in three Ohio locations in May. A computer program at the polls will quickly and cheaply check voter registration records. E-pollbooks may be the wave of the future, as states look at modernizing registration systems to save money and improve accuracy.
- As mentioned in just about every national media outlet, President Obama's original "long form" birth certificate from Hawaii has been released at his request; generally the state provides only a computer-generated "short form" copy. Lawmakers in 18 states have introduced legislation this year to require candidates for the presidency to show proof of citizenship before their names can be placed on state ballots. The Arizona Legislature is the only one that has passed the legislation to date. Governor Jan Brewer vetoed it.
- NCSL's Legislative Action Bulletins are short and sweet. The April 27 edition features summaries of state action on legislation affecting voter ID laws, voter registration, national popular vote, all-mail voting, and the federal Military and Overseas Voter Empowerment Act (MOVE). 

## From NCSL's Election Team

As spring blossoms fade, legislators and legislative staff may be thinking about summer activities. If those plans include doing background work for next year's sessions, we're on the same page. Besides planning for NCSL's Legislative Summit—the premier meeting for legislators and staff—being held in San Antonio in August, NCSL staff will be working on new 50-state research on all kinds of policy topics. If you have a special research request, we'll tackle that, too. Send us an email, or call (303) 364-7700.



*From Jennie Drage Bowser, Tim Storey  
and Wendy Underhill in Denver,  
and Susan Frederick in Washington, D.C.*

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