UNIVERSITY OF ILLINOIS

1 May 19 88

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ENTITLED Political Primaries and the Freedom of Association

IS APPROVED BY ME AS FULFILLING THIS PART OF THE REQUIREMENTS FOR THE

DEGREE OF Bachelor of Arts in Liberal Arts and Sciences

Instructor in Charge

APPROVED:

HEAD OF DEPARTMENT OF Political Sciences

POLITICAL PRIMARIES

AND THE

FREEDOM OF ASSOCIATION

BY

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THESIS

for the

DEGREE OF BACHELOR OF ARTS

IN

LIBERAL ARTS AND SCIENCES

College of Liberal Arts and Sciences

University of Illinois

Urbana, Illinois

1988

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I. INTRODUCTION

The United States Constitution and its various amendments guarantee basic rights and freedoms which are intrinsically related to the functioning of a true democracy. The right to vote and the freedom of association can be perceived as forming the pillar of our participatory political system. However, as with many rights, they do not exist in a vacuum and may not be absolute in nature. For instance, one would certainly not argue that the abstract right to vote translates into a system of public referenda on each and every issue that confronts our society. This pure model of democracy is surely impracticable in our world. Thus, we have opted for a representative democracy in which citizens vote for officials to whom they delegate their decision-making power on policies, funding, and mundane governmental administrative duties. By this simple example, we see how such an abstract right may begin to be limited and put into real practice.

Similarly, the freedom of association guaranteed by the First Amendment has been interpreted by the courts to help us understand its meaning in our changing society. This freedom is related in many aspects to free speech and free exercise of religion, but I would like to address the issue of freedom of association from a slightly different

angle. The interplay of the freedom of association and the right to vote synthesizes for us an issue in partisan primary elections.

In NAACP v. Alabama ex rel. Patterson, 357 U.S. 449 (1958), the court gave the first full enunciation of the constitutional right to freedom of association.[1] Since then, this First Amendment freedom has been repeatedly interpreted as permitting political parties to organize like-minded members, determine the content of their messages, and to pursue political objectives. An integral part of a party's political objectives is to elect candidates to government positions.

As one stage in this candidate selection process, the direct primary was introduced around the turn of the century by Robert M. La Follette, "one of progressivism's high priests."[2] By 1955, all the states had incorporated a primary scheme for nominating candidates. The primary was first seen as an alternative to the often corrupt, party boss, bunch-of-the-guys-in-the-back-of-the-room method of nominating candidates for public office. Sorauf explained the ideological movement which carried the primary system to national prominence: ". . . the primary triumphed on the belief that in a democracy, the greatest possible number of party members ought to take part in the nomination of the party's candidates."[3] Thus, the primary was initiated as a reform to help open up the candidate selection process.

Given today's varied primary systems across the country, one sometimes wonders to what degree the primary

is truly an internal party selection process or simply an institution of the state's electoral structure. It is at this juncture where the freedom of association of political parties and their members may be juxtaposed with each citizen's right to vote and the state's interest in regulating elections. One may question whether the right to vote includes voting in primary elections. For if the primary is merely an internal partisan process, mandatory inclusion of outsiders may impinge on the party's freedom of association. Julia Guttman has explained that: "The Constitution makes no explicit provision for statutory regulation of primaries. Direct applicability of the Constitution to primary elections remained uncertain until Nixon v. Herndon. . . . The courts have yet to hammer out all the contours of the Constitution's applicability to primaries."[4] She added that: "The Court's invocation of the Fifteenth Amendment and the one person, one vote standard in . . . cases involving primary elections does suggest that participation in a primary is part of the right to vote. E.g., Gray v. Sanders, 372 U.S. 368 (1963); Smith v. Allwright, 321 U.S. 649 (1944)."[5] These issues are all implicated under the question of whether a party or the state has the power to restrict or open up voting in a primary in the interests of freedom of association.

These questions and others have been addressed by the United States Supreme Court recently in its examination

of the constitutionality of a state election code with regard to an individual's right to vote and both the individual and the collective freedoms of association. This case, Tashjian v. Republican Party of Connecticut, ___ U.S. ___ (1986), has sparked my inquiry as to the nature of state election codes and how they would be treated by the courts in light of the Tashjian case. A question to be addressed is whether it is the state or the party who actually has the power to define the primary electorate.

What follows is first an overall background and analysis of the facts and issues present in the Connecticut case. Second, the election codes of the fifty states will be surveyed and categorized, outlining distinctive elements of certain primary systems. Finally, I will venture a diagnosis of which statutes may be susceptible to a challenge similar to Connecticut's and thus consider the implications of Tashjian for the states' primary election statutes. This analysis is not meant to provide a definitive explanation of the evolution or the right to vote or political association under the Supreme Court through the ages. The emphasis is on the categorical framework of the fifty state primary election codes I develop and the implications of the Tashjian case of this framework.

II. TASHJIAN V. REPUBLICAN PARTY OF CONNECTICUT

Connecticut's closed primary statute section 9-431, which stated that: "No person shall be permitted to vote at a primary of a party unless he is on the last-completed enrollment list of such party. . . ." was challenged by the state Republican party in Tashjian v. Republican Party of Connecticut, ___ U.S. ___ (1986).[6] The closed primary system was adopted by Connecticut in 1955 and until 1984, was generally supported. In 1984, due to changing political demographic reasons, the Republican party adopted a party rule that would also allow previously unaffiliated voters to participate in that party's primary election. The rationale behind this move was partially attributable to the fact that the party wanted to nominate more moderate candidates who would be more electable at the upcoming November general election. At the same time, there was an attempt to change the statute in the state legislature. The attempt failed, but the Republicans did receive a concession.

This concession was that section 9-56 was amended to allow previously unaffiliated voters to enroll as party members as late as just before noon on the last business day prior to the primary election and still be eligible to vote the ballot of that party at the primary. The prior law had allowed previously unaffiliated voters to enroll in a political party no later than the 14th day preceding the primary. However, if a voter desired to actually change

affiliation from one party to another, he must change no later than six months prior to the election in order to vote the party's ballot at the primary (Conn. section 9-59). Thus, the likelihood of Democrats being able to cross over and vote the ballot of the Republicans (or vice versa) was still severely circumscribed, but the potential for independents to affiliate just before the primary was enhanced.[7]

The Republican Party of Connecticut was not appeased by this concession and took its case to the federal courts, arguing that section 9-431: ". . . deprives the Party of its First Amendment right to enter into political associatior with individuals of its own choosing."[8] The District Court and the 2nd Court of Appeals found the statute to be unconstitutional. In a 5-4 decision, the United States Supreme Court held: "Section 9-431 impermissibly burdens the rights of the Party and its members protected by the First and Fourteenth Amendments."[9]

The opinion, written by Marshall, with Brennan, White, Blackmun, and Powell joining, basically is organized into three sections. The first part deals with the nature of political association: past cases and their applicability to the Tashjian case at hand. This section addresses the issue of whether or not there has been an infringement of the Party's rights. The second part explores possible state interests which could counterbalance an infringement. In this way, the Court employs a form of a balancing test to

see which interests prevail. The third section explores whether the Party rule would violate the Constitution's Qualifications Clause because of resultant asymmetry between the federal and state electorates. For the purposes of this analysis, the first two sections of the opinion warrant the most interest. The third section, while an important issue in this case, has minimal implications for the analysis of current primary schemes as a whole.

A. Were protected rights of the Republican party violated?

First of all, it may be beneficial to have a conceptual framework with which to classify challenges to a state election code. Using this framework, we may follow the Court's logic in this case more readily.

In an article in the Yale Law Journal, Julia E. Guttman presents a workable framework for such an analysis. The Court does not explicitly use this framework but it is apparent that similar logical steps are followed. Thus, I will adopt Guttman's framework while analyzing the Court's opinion in the Tashjian case.

Guttman began by noting that and court-enunciated doctrine in this area must resolve three categories of challenges:

1. an independent voter challenges a state-mandated closed primary
2. a political party challenges a state-mandated open primary (claiming a right to exclude)
3. a political party challenges a state-mandated closed primary (claiming a right to include)[10]

In the following explanation of the Court's logic and the background of cases in this field, I will repeatedly refer back to these type 1, 2, and 3 challenges.

As the Court discussed in its Tashjian opinion, challenges falling into the above type 1 category have usually failed. The Court uses merely a "minimal scrutiny test to uphold" a closed primary statute being challenged by an independent voter.[11] The case of Nader v. Schaffer, 417 F. Supp. 837 (Conn.), summarily aff'd, 429 U.S. 989 (1976), challenged the very same Connecticut statute in 1976. At that time, the Republican party supported the closed primary system in Connecticut and wished to keep Nader, an independent voter, from participating in its primary. In the Nader case, the statute (section 9-431) was upheld. Guttman has explained that: "Denying an individual the opportunity to vote for a candidate in a primary does not infringe this individual right of 'freedom of association.'"[12] She has added: "The party members' constitutional right takes precedence over unaffiliated voters' non-constitutional interests in primary outcomes."[13]

In a footnote to the Tashjian opinion, Marshall echoes this sentiment, stating that the nonmembers' claim to participate are outweighed by the party's right to set qualifications for its own members.[14] Therefore, we can conclude that independent voters' challenges to state-mandated closed primary systems would usually fail due to the fact that the

party has an associational right to exclude and set qualifications for membership. An important facet of this category of cases is that the challenge is by an independent voter without the support of the party. Already, we can see that the Court exhibits some degree of deference to the party to regulate its internal affairs.

Let us move now to the consideration of type 2 challenges: a political party's challenge to a state-mandated open primary system. In these cases, the party claims that its associational rights to set its own qualifications for membership should govern and allow it to exclude. An illustrative case for such type 2 challenges is Democratic Party of the United States v. Wisconsin ex rel. La Follette, 450 U.S. 107 (1981).

In this Democratic Party case, the party rejected state prescribed stipulations for its delegates to the party's national presidential convention. In the Tashjian case, Marshall quoted from the Democratic Party case, saying: ". . . the freedom to join together in furtherance of common political beliefs 'necessarily presupposes the freedom to identify the people who constitute the association.'"[15] The statute was invalidated by the court in Democratic Party, arguing that the party members have the right to hold the primary free from the influence of nonmembers.[16] Again, we find the associational rights of the party prevailing in such type 2 challenges.

Guttman draws some conclusions from the court's treatment of both type 1 and type 2 cases. She states that the two types in conjunction: ". . . demonstrate that members of a political party have rights based in freedom of association which independent voters lack. This theory of associational rights explains why only political party members, not independent voters, have a right to vote in a primary election.[17]

Now we can turn to the type 3 case in which a political party challenges a state-mandated closed primary. The Tashjian case clearly fits into this category. Without even reading the specifics of the Court's opinion, one could deduce from the framework we have explored, that the Court would find in favor of the party unless there were some compelling state interest. It would seem that the party's power to define the boundaries of its membership is part of the freedom of association. However, as stated earlier, these rights do not exist in a vacuum. The state may have certain interests which may control and allow for some degree of reasonable infringement of the party's rights. So, in Tashjian, the nature of the alleged infringement must be determined.

The statute in question barred all previously unaffiliated voters from participating in the primary unless they went through a formal process of enrollment in the party of their choice by no later than noon on the last business day

preceding the primary election. The Republican Party of Connecticut's state executive committee had adopted a party rule which sought to allow unaffiliated voters to vote in their primary. In other words, any independent voter could walk into the primary of the Republican Party, vote in the primary, and leave the polls still retaining his public status as an independent.

The Court considered the extent of the state's limitation and the nature of participation in a primary election. Marshall wrote that within a party, members play many diverse roles with varying degrees of dedication and that: "the act of formal enrollment or public affiliation with the Party is merely one element in the continuum of participation in Party affairs, and need not be in any sense the most important. Indeed, acts of public affiliation may subject the members of political organizations to public hostility or discrimination."[18] So, by forcing interested voters to enroll in the party publicly and formally, the state may be interfering unduly in internal party affairs and thus, be violating the party's rights.

The degree of this potential violation must be ascertained. Some state stipulations may merely inconvenience a voter while others may entirely disenfranchise a voter by effect. Two cases from 1973 are helpful in illustrating this point. In Kusper v. Pontikes, 441 U.S. 51 (1973), an Illinois statute which barred a voter from voting in a

party's primary if he had voted in another party's election within the last 23 months was struck down. Since this statute: ". . . locked voters into preexisting part affiliations for almost two years. . . ." the Court found that it was a substantial infringement.[19] On the other hand, in Rosario v. Rockefeller, 410 U.S. 752 (1973), the court upheld a New York statute which provided that to vote in the primary a voter must have enrolled in the party by the 30th day before the preceding general election in November. In Rosario, the court claimed that this operated as a mere limit on the voter's time to enroll and did not actually disenfranchise the voter.[20] While these two cases may suggest a litmus-paper test for all such voting limitations, in practice, they serve merely as possible guides, depending on many other factual circumstances. Unfortunately, we are left with no purely black and white areas to indicate what is a substantial infringement and what acts as a mere inconvenience. While they are not hard and fast rules, Kusper and Rosario warrant consideration in order to illustrate more concretely how the court's balancing theory actually works. The next logical question is how the party's end of the balance weighs in importance. In other words, is defining the primary electorate an internal party function, or a legitimate exercise in state regulation?

Since the primary election, as Guttman notes: ". . . serves as a mechanism to determine the shared political ideals

of party adherents by nominating those candidates that best express acceptable views on a wide range of issues, . . ." voting in a primary may be considered participating in a basic function of the party. Noting that Connecticut required the public act of formal declaration of partisan affiliation, Marshall went on in his opinion to find the state's infringement of the Party's freedom of association to be substantial.[22]

In Tashjian, the Court held that section 9-431 infringed on the Republican Party's freedom of association in three ways:

> (1) by interfering with the party's right to determine its own membership and structure; (2) by interfering with and thus altering the party's message; and (3) by interfering with the group's ability to engage in effective political association.[23]

The next logical step is to look at the other side of the scale and see if there were protected state interests at the heart of the statute. The Court turned to this issue in the second main part of its opinion.

B. Arguments for interests of the state in defense of section 9-431

Generally, primary laws are meant to provide representative elections which are free from unfair practices. One of the most criticized practices discussed with regard to primaries is raiding. Raiding undermines the integrity of the election. The state has an interest in keeping elections fair and clean. In Tashjian, the state advanced

the defense that through section 9-431, it was serving a compelling interest by: "ensuring the administratibility of the primary system, preventing raiding, avoiding voter confusion, and protecting the two-party system and the responsibility of party government."[24] The Court examined each of these defenses. The general balancing test was that: ". . . if the statute in question imposes a substantial burden on an individual's [or collective body of individuals'] right to association, the statute will be upheld only if it advances a compelling state interest and if it does so in the least restrictive manner."[25]

The first line of defense offered by the state was that the implementation of the Party rule would require more ballots, potentially more forms, more voting machines, etc. It all added up to greater cost. The Court rejected this defense, arguing that it was not a compelling interest in this factual situation.

The second defense offered by Connecticut was that the statute prevents raiding by ill-meaning partisan opponents. The Court recognized that, in general, this is a legitimate interest. However, as Marshall wrote: ". . . that interest is not implicated here. . . ." He noted that raiding has not been a substantial problem in Connecticut and that the adoption of the Party rule would not make raiding by members of the opposing party any more probable than the original statute would.[26] The party rule would

only allow voters who have been unaffiliated for at least the last six months prior to the primary to vote. The Court majority held that the state's purported interest in preventing raiding does not control in this case.

The third defense was that the statute: ". . . avoids voter confusion.[27] The core of this argument was that by allowing independents into the decision-making function, the resultant nominations would not be truly Republican nominations. Voters may be fooled by a party label when the candidate may really be supported more by independents than Republicans. Again, the majority denied this defense and likened it to a claim that the state was trying to protect the party from itself. The Court noted some advantages of the party rule in giving the party feedback as to who would be a more successful, electable candidate by allowing independents to participate.[28] Marshall quoted from Anderson v. Celebrezze, 460 U.S. 780 (1983), in the Tashjian opinion: "The State's legitimate interests in preventing voter confusion and providing for educated and responsible voter decisions in no respect make it necessary to burden the [Party's] rights. 460 U.S., at 789"[29]

The final defense of the state was that Connecticut had a compelling interest in maintaining the integrity of the two-party system and the responsibility of party government. The state attempted to demonstrate that the chosen

closed primary system which Connecticut adopted in 1955 best serves these interests. However, the party could just as well argue that by selecting a more open primary system, the party is actually strengthening the two-party system by discouraging ". . . factionalism by forging a broader coalition of interests within a single political party."[30] Here, the Court noted that it was not up to the Court to issue a definitive judgment on the merits of open versus closed primaries. In a footnote, Marshall identifies the various primary systems prevalent in the fifty states and concludes that no one system could be correct for every state at all times. He thus prudently ". . . refused to enter the debate about whether open or closed primaries are better."[31] The majority notes also that the: ". . . statute is defended on the ground that it protects the integrity of the Party against the Party itself."[32]

The majority concludes this second part of the opinion by holding that the state's interests are not compelling in this case and that the First Amendment rights of the Party have been violated. It should be noted though, that buried in a footnote, the Court gives itself a disclaimer, saying that: "Our holding today does not establish that state regulation or primary voting qualifications may never withstand challenge by a political party or its membership."[33]

After the foregoing analysis, one can venture some generalizations regarding other type 3 challenges to a state-mandated closed primary by a political party. The party argues that the state has violated its ". . . right of association by warping the determination of a party's shared beliefs."[34] In the Tashjian case, the court made very clear that: "absent a compelling interest, a state may not interfere with the associational rights enjoyed by the parties and their adherents."[35] We are much closer now to answering the question of whether the right to define the group of party adherents who may participate in a primary election belongs to the state or the parties. Absent a state's compelling interest and if the state's definition would substantially burden the parties, the parties have this right.

Guttman has summarized this: "Thus, deference to the political party's ability to define its own boundaries forms an appropriate cornerstone for the law of state regulation of participation in primary elections, as that ability goes to the very heart of freedom of association."[36] Malcolm E. Jewel clearly stated the conclusions we may draw from the Tashjian case:

> (1) states are not required to enact open primary laws; (2) it is only independently enrolled voters who may have the opportunity to vote in a partisan primary; (3) this opportunity will only occur if a political party chooses to permit the independents to participate.[37]

C. Does the Party Rule implicate the Qualifications Clause?

As stated earlier, the third section of the majority opinion in the Tashjian case dealt with the issue of whether or not the party rule would implicate: ". . . the Qualifications Clause of the Constitution, Art. I, section 2, cl. 1, and the Seventeenth Amendment because it would establish qualifications for voting in congressional elections which differ from the voting qualifications in the elections for the more numerous house of the state legislature."[38] While this issue is a major one, it is less relevant to the analysis and framework of the states' election codes on which we are focusing. Therefore, a brief summary of this section will suffice.

The majority concluded that the Clause does apply to primaries in general. However, the Court found that perfect symmetry of voter qualifications in state and federal elections is not required and therefore, the Clause is not violated by the implementation of the party rule.

The Court's conclusion for the entire decision is: "We conclude that section 9-431 impermissibly burdens the rights of the Party and its members protected by the First and Fourteenth Amendments. The interests asserted by appellant in defense of the statute are unsubstantial."[39]

D. A Note on the Dissents

There are two dissenting opinions to the Tashjian case. The first, written by Stevens, with whom Scalia

joined, dealt with a contradictory view of the Qualifications Clause issue and is thus not an appropriate subject for analysis here. Scalia wrote a second dissenting opinion, joined by Rehnquist and O'Connor. His dissent argued that the majority had overemphasized the party's freedom of association in its balancing test. Scalia viewed the state's rules as a reasonable regulation in a least restrictive manner: "The ability of the members of the Republican Party to select their own candidates . . . unquestionably implicates an associational freedom--but it can hardly be thought that that freedom is unconstitutionally impaired here."[40] Obviously, Scalia viewed these state restrictions as a mere inconvenience to the voters and the party. This dissent highlights the shades of grey which the court attempts to define in making such decisions.

III. FRAMEWORK AND ANALYSIS OF THE STATES' CURRENT PRIMARY SYSTEMS

Now that the Tashjian case has been considered, the next step is to survey the other 49 states' election codes. Many of the points discussed by the court in the Tashjian case reemerge in this survey. The various primary systems can be classified and subdivided into categories which enable them to be compared with Connecticut's system. After exploring the nature of the states' primary systems, the ramifications of the Tashjian case can be discussed and a

diagnosis of the other states' primary systems which may be ripe for a similar challenge may be advanced.

Before the individual state systems are discussed, it may be useful to offer an overriding framework and explore the rationale for this chosen framework. Also, a few words about the origin and background of these primary systems are in order.

As mentioned earlier, the direct primary was advanced by the progressives around the turn of the century as an alternative to the strong party machine's informal method of candidate selection. The first statewide primary law was introduced by Robert La Follette in Wisconsin in 1902. The other states soon followed suit with Connecticut, interestingly enough, being the last to adopt the direct primary in 1955.[41] The primary was an attempt to formalize the internal party candidate nomination process and open it to all party members instead of only the bosses and cadres. Through decades of hindsight, political observers have recognized a few bare generalizations on the effects of the direct primary. An obvious effect was the weakening of the parties' power bases.[42] Because of both the primary and other influences, our parties today are not the unified power dealers they were one hundred years ago.

Conclusions about the voters who participate in primaries can also be drawn. In America, compared to other western developed countries, there is a relatively small

percentage of eligible voters who actually turn out to vote at general elections. At primaries, this percentage is even smaller. Frank Sorauf has concluded: "All evidence points overwhelmingly to one cardinal fact about the voting behavior of the American electorate at primaries: it does not vote."[43] This is a bit extreme, but the point is well-taken. The few voters who do turn out at primaries are generally more interested in current events and/or are more devoted to a particular party, cause, or candidate than most. The result is that primary voters are at more extreme ends of the political spectrum on certain issues. Thus, more extreme candidates who may not be electable at the general election may be nominated. This was one reason why the Republican Party of Connecticut sought to include independents in their primary in the Tashjian case.

Since the number of voters who turn out for the primary is generally low, one may ask why voter eligibility in primaries is such a pressing issue. One answer is that regardless of how many voters choose to exercise this right, it is still protected. Another reason is advanced by Sorauf:

> Even though the nomination does not formally settle the electoral outcome, its importance is great. The major screening of candidates takes place at the nomination; the choice is reduced to two in most constituencies. Especially in areas of one-party domination, the real choice is made at the primary.[44]

The primary has become a significant element in our electoral politics and warrants our attention.

Primaries exist in many varied forms throughout the country. Generally, political scientists offer a tripartite breakdown of types of primaries: closed, open, and blanket. In closed primaries, only enrolled (meaning formally affiliated party members) party members may vote in that party's primary. In the generic open primary, anyone may vote in a partisan primary. Some states recognize the act of voting in a partisan primary as being an actual act of affiliation while other states make no conclusions from a voter requesting a partisan ballot. In blanket primaries, each voter automatically receives a ballot on which all candidates of every party are listed. The voter need not confine his voting to the candidates of only one party.[45] These categories become rather fluid in actual practice. On the statute books a primary system may appear to be closed, but usually there are certain loopholes and catches that subtly influence the functioning of the system in practice. Sorauf explains: "The distinctions between open and closed primaries are easy to exaggerate. Too simple a distinction ignores the range of nuances and varieties within the closed primary system."[46]

While carefully appreciating Sorauf's critique of simplistic primary classifications, I have strived to note both the blatant and the subtle forms of exclusion and inclusion in the primary election statutes of the fifty states. I have found a framework which fits the various

forms of primaries approximately well and which is workable. This framework takes the three generic classes of closed, open, and blanket as a general superstructure but breaks them down further to try and account for some important differences within a category. It is nearly impossible to take into account every subtle nuance with such a macro-level analysis, so I do not claim this framework as the definitive structure for all primary systems. However, it has proven to be a workable and logical framework to aid an analysis of our primary systems. Because I have attempted to take certain important, yet subtle distinctions into account, my framework differs somewhat from the usual classification offered by other political scientists and the court. For instance, I include 27 states in the category of closed primaries while Sorauf includes 38 states.[47]

I offer a framework that may be conceptualised as follows:

TYPES OF PRIMARY SYSTEMS

CLOSED	OPEN	BLANKET
(27 states)	(19 states)	(4 states)

Certain distinguishing characteristics involved in classifying these statutes arose through my research. Important questions, such as whether the voter had to publicly declare affiliation, simply request a partisan ballot in

public, or was given all ballots and voted the preferred ballot in secret. Also, the difference between ballot types became important. Another interest was to compare the latest date a voter could change partisan affiliation or enroll for the first time with the latest date to register before the primary. In other words, was a time limit a substantial restriction? These and other issues will be discussed with regard to each type of primary system in this framework.

A. Closed Primaries

As stated earlier, in closed primaries, only enrolled party members may vote in the primary of that party. Some general characteristics include separate, distinctively colored ballots and separate polling locations for each party. As with every election, the voter must first and foremost be a registered voter. Voting the partisan ballot is generally viewed as a partisan act, indicating a public display of affiliation to some degree. There are basically three forms of closed primaries: (1) the traditional closed; (2) the modified closed; and (3) the party rule closed. One may conceptualize a continuum with the traditional closed being more restrictive (in terms of voter eligibility), the modified closed as being less restrictive, and the party rule closed falling anywhere on the continuum, depending on certain particular circumstances.

1. Traditional Closed Parimaries

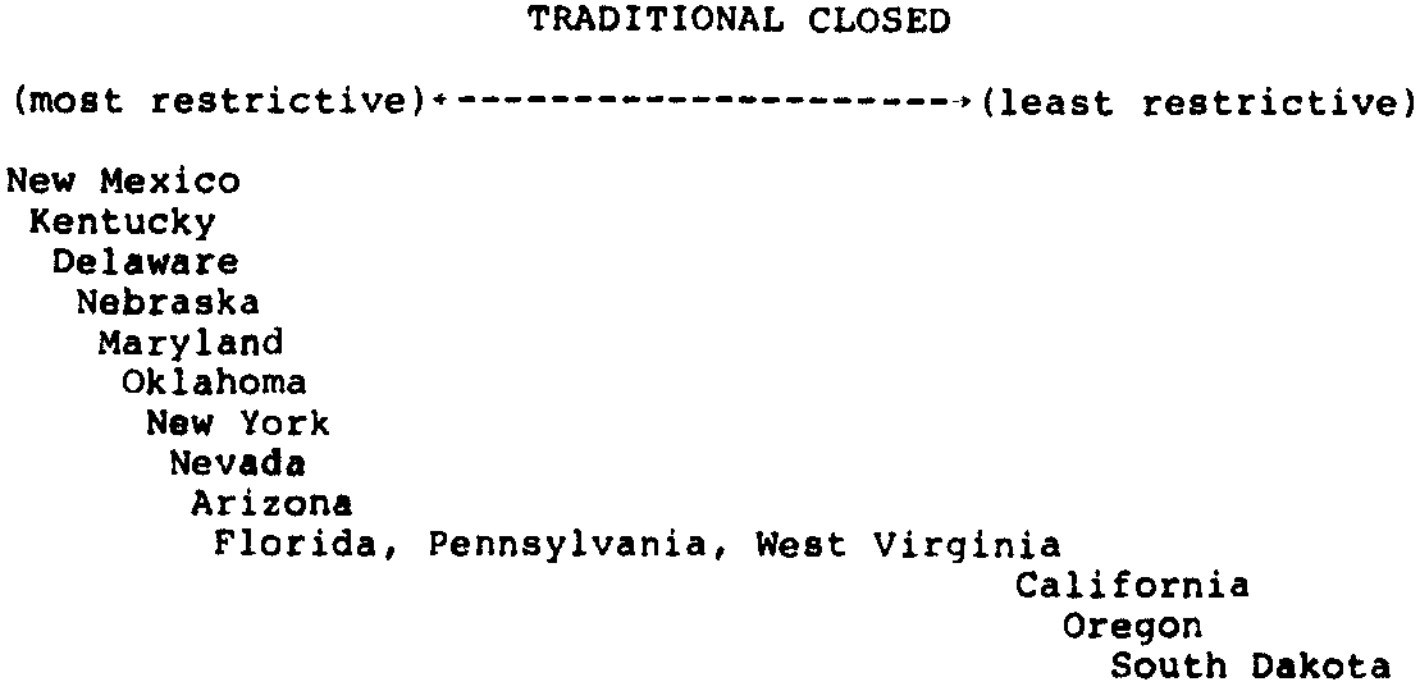
In these fifteen states, only enrolled party members may vote in the party's primary. Usually, these members are subject to some measure of allegiance, whether it be an oath of support or a record of past affiliation. When a new voter registers to vote, he is asked to indicate his partisan affiliation on the form. Some states stipulate a definition of partisan affiliation. In Nebraska, for instance, the voter must ". . . generally support the candidates of the party with which he affiliates" (Nebraska, section 32-515). Pennsylvania offers a more concrete definition. The statute indicates that the voter must have voted for a majority of the candidates of that party at the last general election at which he voted (Penn., Title 25-292).

Another way the states may limit or expand participation is by specifying a date which is the latest date a voter may either change their partisan affiliation or enter a partisan affiliation for the first time. It is also useful to compare this time limit with the time which the registration books must be closed just prior to any election. For instance, a New Mexico statute provides that the registration books be closed on the 28th day preceding any election (NM s 1-4-8). Usually, changes to the registration record may be entered at any time that the books are open. However, the fifteen traditional closed primary states make a

distinction for changes in partisan affiliation. New Mexico, at the most restrictive end of the continuum, specifies that if a voter wishes to change partisan affiliation, he must do so by the last Monday in January (which is approximately 4 months before the primary) (NM 1-8-11, 1-8-12). Arizona allows for any changes in registration, including partisan affiliation changes, during the general period that the registration books were open, which is up to the 50th day preceding the election (Arizona s 16-102, 17-121). Thus, Arizona, along with five other of these traditional closed primary states, treats all changes to registration equally. The least restrictive statute among the fifteen traditional closed primary systems is South Dakota's. South Dakota treats all changes to registration and all new registrants equally, allowing anyone to register or make changes up to the 15th day preceding the election (SD, s 12-45, 14-4-16).

To sum up, all these traditional closed primary states only allow enrolled party members to participate in the party primaries. Some states offer a definition of affiliation which potential affiliates must meet and some offer no guideline. By manipulating a time frame for new registration and changes in registration, states can more subtly restrict or open up their particular adaptation of the traditional closed primary.

While this continuum is generally correct, it should not be treated as a static structure. It should be fluid enough to take account of various forms of restrictiveness.



2. Modified Closed Primaries

The second form of the closed primary possesses many of the same general characteristics of all closed primary systems such as separate ballots for each party and formal, public affiliation with a party in order to vote in that party's primary. However, this group of eight states allows previously unaffiliated, independent voters to affiliate publicly with the party on the day of the primary at the polls. It is very important to note that when the previously unaffiliated voter walks out of the polls on the day of the primary, he has become a formally enrolled party member. The state may prescribe an enrollment form to be filled out

before the independent votes, an oath to be taken in support of the party, or may simply interpret the very act of participating in that party's primary as an act of formal affiliation. Thus, all regular affiliated voters (as in a traditional closed primary) are entitled to vote, but in addition, so are any independent voters who affiliate formally and publicly with the party at the polls.

However, a measure which identifies degrees of restrictiveness among these eight states emerges. While all previously unaffiliated voters may become eligible to vote in a partisan primary, there may be a definition of how long a voter must have been officially recognized as an independent. For instance, if a voter registered to vote for the first time in 1984 and indicated affiliation with the Democratic Party and in December 1986 formally changed his status to "independent," can he be eligible to vote in the Republican primary in February 1988? Also, if the same voter, in February 1987 enrolls in the Republican party, is this change within the permissible period? Again, the utilization of a time frame for registration and changes in affiliation may operate to restrict or enhance voters' chances for participation.

These states can be arranged on a continuum with regard to such time restrictions. Maine provides that an independent voter must have been registered as such by at least three months prior to the election (Maine, s 21A-141,

21A-14(). Likewise, a voter wishing to change his affiliation from Republican to Democrat must do so at least three months before the primary in order to be eligible to vote in Democratic primary. On the other end is Iowa, which stipulates that such changes must occur by the 10th day preceding the primary (Iowa, s 43.41).

In sum, the hallmark and distinguishing factor of modified closed primaries is that while still restricting party crossover by the opposing party, they allow previously unaffiliated voters to participate in the partisan primary by declaring affiliation with said party at the polls.

MODIFIED CLOSED

(most restrictive)<<<<<<<<<<<<<<>>>>>>>>>>(least restrictive)

Maine
Rhode Island
New Jersey
Colorado
Wyoming
Massachusetts
Kansas
Iowa

Before putting too much faith in such comfortably clearcut continuum schema, we must note that these continuums are arranged with regard to the other states in the same subcategory. Thus, if one attempted to fit the two separate continuums of traditional closed and modified closed primaries together from end to end, they would not perfectly flush. To illustrate, recall the case of South Dakota, the least

restrictive of the traditional clos-d primaries. South Dakota permits all voters who were enrolled in the party by the 15th day prior to the primary to participate in the primary. Therefore, it is possible for a Democrat to switch affiliation to Republican on the 16th day before the primary and be eligible to vote in the Republican primary. The last date for an independent to enroll in a party and, likewise, become eligible to vote in a primary is also the 15th day preceding the primary. Compared to Maine, our most restrictive of the modified closed primaries, which stipulates a three month deadline for party affiliation changes between parties, but allows independents (who have remained so for at least the last 3 months) to affiliate at the polls. There are too many variables and degrees to easily rank Maine with South Dakota. There are different characteristics operating in the two systems. Maine's system is definitely more restrictive to voters who switch affiliation between parties but less restrictive to independents who have remained so for the past three months.

I highlight these two states to illustrate that these continuums are somewhat separate. Generally, South Dakota's traditional closed continuum, as a whole, is more restrictive than Maine's modified closed continuum. One should keep this concept in mind when working with this framework.

Therefore, I offer this framework as a general structure. The significant contributions this structure puts forth are the subdivisions of both open and closed primaries and the general characteristics of these varied forms. The arrangement of each state on any continuum is subject to fluctuation and involves a judgment of subtle degree. Such an ordering is meant to highlight examples to reinforce the general characteristics of that class and to point out the differences which exist within each class.

3. Party Rule Primaries

These four states generally are classified as closed primaries because only enrolled members are permitted to vote. However, these states' statutes give power to the parties' state executive committees to adopt party rules which would permit previously unaffiliated voters to participate in that party's primary. If the party does not wish to include unaffiliated voters, it remains a traditional closed primary system for that party. Otherwise, it would appear to be a form of modified closed. The post-Tashjian Connecticut statute falls into this party rule category.

A distinguishing factor among these party rule states is whether the included independent voter actually leaves the polls as an independent. In other words, is the independent voter allowed to participate without having that participation being equated with affiliation? New Hampshire's system provides that any previously unaffiliated voters who

choose to participate in a partisan primary lose their independent status. Thus, this sounds like a form of modified closed primary (NH s 654:34). South Carolina, North Carolina, and Connecticut's new primary systems do not equate the act of voting in a partisan primary by an independent with an act of affiliation. Therefore, the independents retain their unaffiliated status.

These party rule closed systems also have time frames which alter their effects. It is important to note how these states treat a change in affiliation between parties versus a new declaration of affiliation by an independent or new registrant. New Hampshire allows any changes of affiliation to be made up to the day before the primary, but independents can affiliate at the polls (NH, 654:34). Connecticut's revised statutes allow an independent voter to participate in a primary (assuming adoption of such a party rule) as long as that voter has been formally registered as an independent for the past six months (Conn., s 9-59). South Carolina has a 30 day limit and North Carolina has a 21 day limit for changes to partisan enrollment (S.C. 7-5-150) (N.C. 163-74(b)). Thus, Connecticut's North Carolina's, and South Carolina's primary systems (assuming adoption of the party rule) would appear to be more like a modified closed and may even resemble certain types of open primaries.

PARTY RULE CLOSED
(4 states)

(voting=affil)	(voting not equal to affil)	
	(most restrictive)	(least restrictive)
New Hampshire	Connecticut South Carolina	North Carolina

B. Open Primaries

Generally, open primaries are marked by the fact that any and all voters may be eligible to participate in a partisan primary. Some open primaries even disregard voters' records of past affiliation. When any voter walks into the polls, the voter may vote on any party ballot he wishes. It must be noted that the voter is still limited to voting for the candidates of only one party. The voter must simply choose which party's primary he wishes to participate in.

There are nineteen states which fall into some kind of such an open primary. I subdivide the generic open category into three sections in order to best illustrate the three major forms of the open primary and their distinguishing characteristics. Again, the overriding element of all open primaries is that all voters, whether they were once party members or independents, are generally treated equally in their likelihood of receiving a party ballot. Most of these states don't even include a section on partisan

affiliation on their registration documents. The three forms of the open primary are: (1) public affiliation open; (2) public request open; and (3) extreme open.

1. Public Affiliation Open

This group of six primary systems, which are placed at the more restrictive end of the open primary continuum, are often classified by observers as closed. They exist in a borderline area, but because of what I feel are significant distinctions, I confidently place them in this most restrictive subdivision of the open primary.

The distinguishing characteristic of the public affiliation open primary system is that the act of voting in the primary of a certain party is equated with affiliation with that party. By voting the distinctive ballot of a party, one declares formal affiliation and enrollment in that party. Some states utilize a familiar time schedule which limits voters' ability to switch parties, but when it comes down to the basic affiliation definition, all voters really have equal footing to gain a ballot. For instance, Ohio, which I place at the most restrictive end of this public affiliation open continuum, sets up a framework whereby a voter who presents himself to vote at a party's primary must, if challenged, state that he: ". . . desires to be affiliated with and supports the principles of the party" (Ohio, s 3513.19). Ohio puts forth a more strict definition of eligibility to vote in a party's primary, but the oath the

voter must swear 'y denotes current, not past or future, affiliation. Other states, such as Indiana, stipulate that the voter must have voted for a majority of the party's nominees at the last preceding general election in which he voted but leaves the requirement rather unenforceable (Indiana, 3-1-9-3). Texas requires that the voter must not have voted in another party's primary in that year (Texas, s 162.012).

Regardless of the statutes' definition of affiliation, all six states allow any voter, in actual operation, to vote in either party's primary. The distinguishing feature of this public affiliation open primary is that, by voting in said primary, the voter publicly declares affiliation with that party. Many commentators have placed these states in a closed primary category because of the fact that public affiliation is required. However, the fluidity of affiliation from election to election is the countervailing characteristic which puts these states into any form of an open primary.

PUBLIC AFFILIATION OPEN

(some definition of allegiance)			(no definition of allegiance other than voting)
Ohio	Indiana	Texas	Alabama Arkansas Tennessee

2. Public Request Open

In this second form of an open primary, all voters, completely regardless of past affiliation, past voting record, or even current partisan support, are eligible to participate in the partisan primary of their choice. No affiliation is deduced from the mere act of voting in the primary of a party. In these five states, voters simply walk in and request a certain party's ballot. Voters are limited to voting for only the candidates of one party. While the voter must formally and publicly request the ballot of one party, the voter is not officially recognized by such behavior as actually affiliating with that party. Usually, there is no record kept of which ballot the voter requested. Often, the polling places for each party are at the same location.

Mississippi provides a useful example. The statute does indicate that: "No person shall be eligible to participate in any primary election unless he intends to support the nominations made in the primary in which he participates" (Miss. 23-15-575). However, when it comes down to enforcement, section 23-15-571 states that no voter may be challenged on the grounds of partisan affiliation. A ranking among these five states would be misleading at best, thus I will not attempt to set up a continuum to compare these states with each other.

PUBLIC REQUEST OPEN
(in alphabetical order)

Hawaii
Illinois
Michigan
Mississippi
Missouri

3. Extreme Open Primary

In this form of the open primary, there is no public announcement of preference, support, or affiliation with any party. The polling place for each party is usually located at the same place in each precinct. All voters receive a ballot package which contains all the parties' ballots in it. The voter is limited to participating in only one of these parties' primaries, but this choice, which ballot section to mark, is made in private.

The usual scenario utilizes a ballot with separatible columns for each party's ballot. The voter uses the party column of his choice and no one else knows of his preference. Each portion of the main ballot is of the same size and color. North Dakota provides a "Consolidated Primary Election Ballot" which has columns for each party's candidates and states: "You may vote for the candidates of only one party at the primary election" (N. Dakota, s 16.1-11-22). As with the states of the public request open category, these states cannot easily be reduced to a ranking.

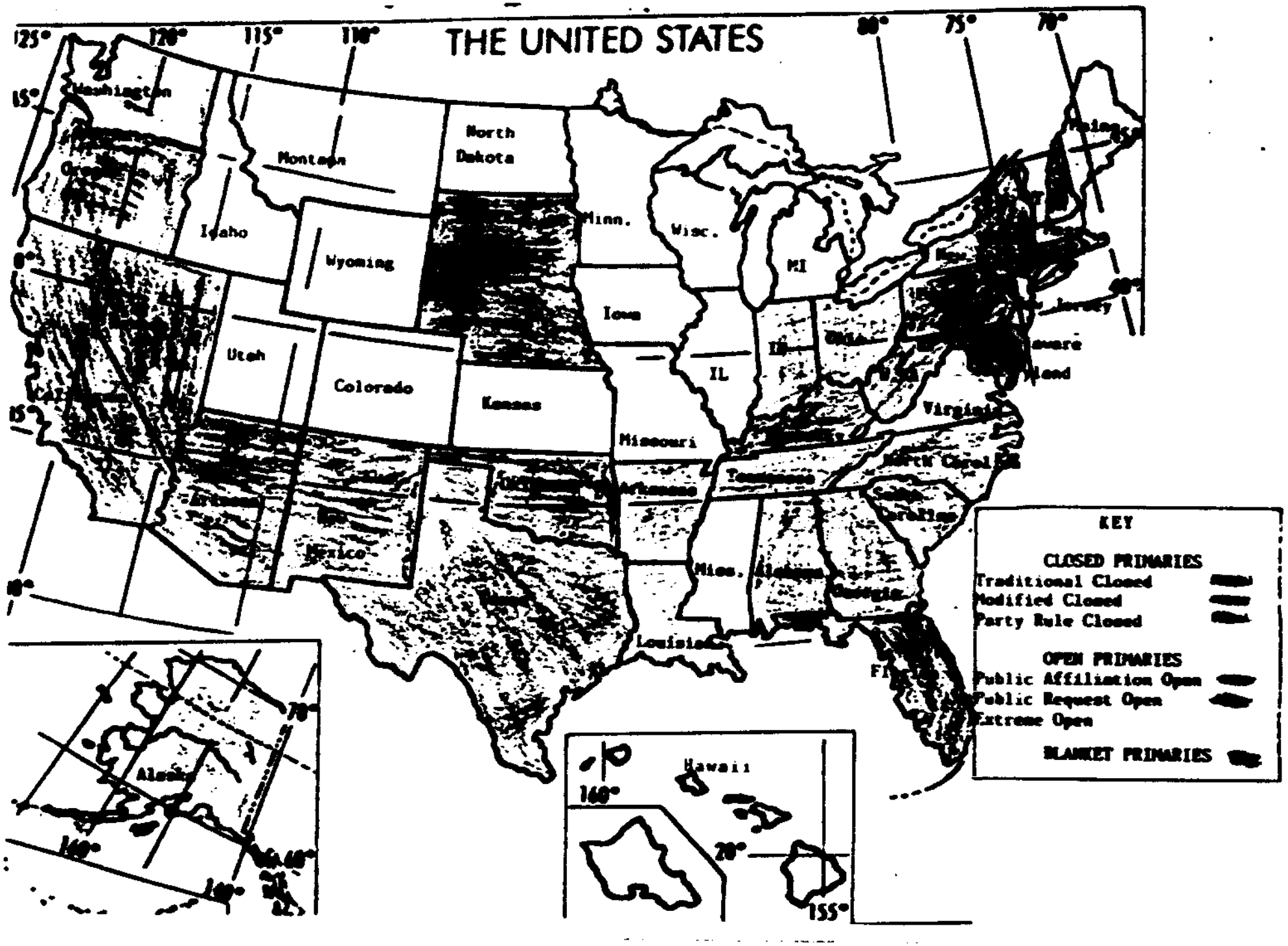
EXTREME OPEN
(in alphabetical order)

Idaho
Minnesota
Montana
North Dakota
Utah
Vermont
Wisconsin

C. Blanket Primaries

The last major category of primaries is the blanket primary. This system, often called the non-partisan primary system, has been adopted by four states. The distinguishing characteristic of this category is that it seems, by its nature, to be more of a state-sponsored poll of the general public than an internal partisan nomination process.

In a blanket primary, any voter may participate. There is but one polling place in each precinct and but one ballot form. However, as Guttman explains: ". . . the voter may distribute his votes among the various parties just as he may in a general election."[48] Anyone may vote for any combination of partisan candidates. The voter is not limited to determining the nominees of only one party. There is absolutely no form of partisan affiliation or preference shown. Because of its no-strings-attached demeanor, Sorauf reminds us that it has been termed the "free love" primary.[49] These blanket primaries are fundamentally different processes than the open or closed categories because of the ability of the voters to impact all the parties involved. The ballot


THE UNITED STATES
125°
120°
115°
110°
80°
75°
70°
Washington
Montana
North Dakota
Minn.
Wisc.
MI
Idaho
Wyoming
Iowa
IL
Utah
Colorado
Kansas
Missouri
Virginia
Mexico
Louisiana
Alaska
Hawaii
160°
155°
KEY
CLOSED PRIMARIES
Traditional Closed
Modified Closed
Party Rule Closed
OPEN PRIMARIES
Public Affiliation Open
Public Request Open
Extreme Open
BLANKET PRIMARIES

is organized by office, not party, listing 11 candidates for each office in similar groups.

BLANKET PRIMARIES
(in alphabetical order)

Alaska
Louisiana
Virginia
Washington

The overall framework I have presented may be loosely viewed on the aggregate level as a continuum, with the most restrictive forms to the left and the least restrictive forms to the right.

PRIMARIES

CLOSED (27 states)			OPEN (19 states)			BLANKET (4 states)
Traditional Closed	Modified Closed	Party Rule Closed	Public Affil. Open	Public Request Open	Extreme Open	

Consult the map included for a geographic representation of the state primary schema.

IV. IMPLICATIONS OF TASHJIAN V. REPUBLICAN PARTY OF CONNECTICUT

Through analyzing the Tashjian case, certain qualities of Connecticut's former primary scheme were held to violate the party's freedom of association in the absence of a compelling state interest. Now we can recognize

Connecticut's pre-Tashjian primary system as a traditional closed primary. Only enrolled party members were eligible to vote in the primary. Independents could enroll in the party as the day before the election, but voters wishing to switch affiliation from one party to another had to do so at least six months prior to the primary if they wished to vote in it. With regard to the restrictiveness to affiliation switchers, this would put Connecticut to the far left, the most restrictive of all traditional closed primaries. However, with regard to the limitations on independent voters, Connecticut's pre-Tashjian primary structure would fall to the far right, that is, the least restrictive, of the traditional closed primary states. Again, we notice the differences of trying to account for a multiplicity of characteristics at once with a continuum method. If one interpreted the Court's decision as a reflection on the particular set of statutes, then one would be forced to conclude that the Court, in its Tashjian opinion, has issued a terminal sentence and given the last rites to all traditional closed primary systems, thus invalidating at least 15 states' primary election systems.

However, this is a simplistic conclusion. What must be remembered is the Court's rationale, not merely the result of the contest. The Court's decision hinged upon two major points: (1) that the party was claiming interference in its internal functions and thus, a violation of its

collective right of freedom of association; and (2) that the state exhibited no compelling interests in defense of the statute. I believe that Tashjian has ramifications for some states' current primary systems, but I reject the oversimplification that the court has pronounced judgment on the closed primary as a class.

Malcolm E. Jewell succinctly reviews some results of the Tashjian case for Connecticut: "(1) states are not required to enact open primary laws; (2) it is only independently enrolled voters who may have an opportunity to vote in a partisan primary; (3) this opportuntiy will occur only if a political party chooses to permit the independents to participate."[50] The result of the Court decision, i.e. the adoption of the party rule, indicated that in this case, a modified closed primary or party rule closed primary would be constitutional.

From this evidence, one may venture a prediction that all traditional closed primary systems would be under fire after this case. However, this is not so. Many other factors will influence the outcome of a challenge to any of these 15 traditional closed primary statutes.

The diagnosis that I offer requires consideration for the type of primary system, the intent of parties to include previously unaffiliated voters, the interests of the state, and the type of challenge advanced. Earlier, Guttman's conceptual framework of the three types of

challenges to state election codes fostered a methodological analysis of the Court's reasoning in the Tashjian case. Now, that framework, in addition to the survey and classification of the fifth states' election codes, permits an educated diagnosis of statutes that are ripe for a challenge.

When an independent voter challenges a state-mandated closed primary (traditional or modified) without the party's support, that challenge will usually fail because of the party's associational right to exclude. In a challenge by a political party of a state-mandated open primary (of the public affiliation open, public request open, or extreme open forms) the party's associational right will usually prevail. Similarly, when a political party challenges a state-mandated closed primary, as in Tashjian, the political party can argue: ". . . that the state has violated the party's right of association by warping the determination of a party's shared beliefs."[51] Keeping in mind the nature of the infringement and the interests of the state, it is possible for this challenge to succeed. The court generally delegates the right to define its membership boundaries to the party when the party and the state disagree and if the party's definition does not implicate other constitutional issues.

Judging from the confusing ranking of Connecticut's pre-Tashjian election code, it is difficult to pin down a similar statute, that, under similar conditions, would be

stru own. My conclusion is that all states in the traditiona losed and the modified closed categories possess the potential for a challenge by a party similar to the challenge in Tashjian.

However, that conclusion presupposes that the parties involved would pursue a challenge to include independents in their primary electorate. I hypothesize that in some of these states with a large proportion of independent voters, some parties may challenge their state's closed primary systems.

Therefore, my proposed diagnosis is that approximately six states' primary systems, from both the traditional and modified closed categories, may be ripe for a constitutional challenge, given the right political considerations. From the traditional closed category, only New York has a high (roughly 17%) percentage of independent voters.[52] If the intent existed, I believe that New York's primary system may be susceptible to attack by a major state political party, absent a compelling interest of the state. The five states from the modified closed category, Colorado, Iowa, Kansas, Maine, and Massachusetts, which has proportions of independents above one-third, would be susceptible to a similar attack.

In conclusion, The Tashjian case does not implicate the closed primary system per se. It implicates certain examples of the closed primary system where the exercise of

such a system substantially interferes with the party's associational right without a compelling state interest. It is also a possible conclusion, that aspects of certain forms of open primary systems could come under attack as a result of the Court's reasoning in Tashjian.

ENDNOTES

[1]Sharon L. Spangler, "Freedom of Association," University of Kansas Law Review, vol. 34, no. 4, summer 1986, p. 843.

[2]Frank J. Sorauf, Party Politics in America, p. 210.

[3]Ibid., p. 209.

[4]Julia E. Guttman, "Primary Elections and the Collective Right of Freedom of Association," Yale Law Review, vol. 94, no. 1, November 1984, p. 117.

[5]Ibid., p. 119.

[6]Connecticut Revised Statutes, section 9-431.

[7]Malcolm E. Jewell, "Whither the Closed Primary?" Comparative State Politics Newsletter, vol. 8, no. 1, February 1987, p. 13.

[8]Tashjian v. Republican Party of Connecticut, ___ U.S. ___ (1986), p. 1.

[9]Ibid.

[10]Guttman, p. 117.

[11]Ibid.

[12]Ibid., p. 120.

[13]Ibid., p. 133.

[14]Tashjian v. Republican Party of Connecticut, p. 6.

[15]Ibid., p. 5.

[16]Guttman, p. 118.

[17]Ibid., p. 120.

[18]Tashjian v. Republican Party of Connecticut, p. 5.

[19]Spangler, p. 845.

[20]Ibid., p. 850.

[21]Guttman, pp. 125-126.

[22]Tashjian v. Republican Party of Connecticut, p. 7.

[23]Ibid., pp. 281-2.

[24]Ibid., p. 8.

[25]Spangler, p. 849.

[26]Tashjian v. Republican Party of Connecticut, p. 9.

[27]Ibid., p. 10.

[28]Ibid., p. 12.

[29]Ibid.

[30]Guttman, p. 135.

[31]Jewell, p. 14.

[32]Tashjian v. Republican Party of Connecticut, p. 14.

[33]Ibid., p. 15.

[34]Guttman, p. 127.

[35]Tashjian v. Republican Party of Connecticut, p. 281.

[36]Guttman, p. 137.

[37]Jewell, p. 14.

[38]Tashjian v. Republican Party of Connecticut, p. 20.

[39]Ibid., p. 16.

[40]Ibid., p. 2 of dissent.

[41]Sorauf, p. 210.

[42]William Crotty, American Parties in Decline, 1984, P. 21.

[43]Sorauf, p. 227.

[44]Ibid., p. 208.

[45]Guttman, p. 117.

[46]Sorauf, p. 212.

[47]Ibid., p. 211.

[48]Guttman, p. 117.

[49]Sorauf, p. 212.

[50]Jewell, p. 14.

[51]Guttman, p. 127.

[52]Jewell, p. 14.

[53]Ibid.

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Rosario v. Rockefeller, 410 U.S. 752 (1973)

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SOURCE STATUTES

A. CLOSED

1. Traditional Closed

Arizona Revised Statutes 1984 (sections 16-102, -121, -467)
West's Annotated California Codes 1974 (Supp 1988) (sections 305, 501, 502)
Delaware Code Annotated 1981 (Supp 1986) (Title 15, -3110, -3161, -1749)
Florida Statutes Annotated 1982 (Supp 1987) (98.051, 101.021)
Kentucky Revised Statutes 1982 (116.055, 116.045)
Annotated Code of Maryland 1986 (Art. 33, sect. 3-8)
Revised Statutes of Nebraska 1984 (32-350, -476, -515, -216)
Nevada Revised Statutes Annotated 1986 (293.257, .287)
New Mexico Statutes 1985 (Supp 1987) (1-4-16, 1-4-8, 1-8-12)
New York Election Law 1978 (Supp 1988) (1-104.9, 5-210, 5-300)
Oklahoma Statutes Annotated 1976 (Title 26, 1-104, 93.40, 93.49)
Oregon Revised Statutes Annotated 1986 (254.365, 247.025, 201.290)
Pennsylvania Statutes Annotated 1963 (Supp 1987) (Title 25, 291, 292, 299, 951-28, 623-17, 623-30)
South Dakota Codified Laws 1982 (Supp 1987) (Title 12, 6-1, 6-26, 4-5, 4-16)
West Virginia Code 1987 (3-1-35, 3-2-30)

2. Modified Closed

Colorado Revised Statutes 1980 (Supp 1987) (1-2-205, 1-2-202)
Kansas Statutes Annotated 1986 (Supp 1987) (25-3301, -2311, -3304)
Iowa Code 1973 (Supp 1987) (43.42, 43.44, 43.41)
Maine Revised Statutes Annotated 1987 (Title 21A, 141, 143, 144)
Annotated Laws of Massachusetts 1978 (Supp 1987) (53:37, 53:38, 51:26)
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Rhode Island General Laws 1981 (Supp 1987) (17-9-26, 17-15-2, 17-9-3, 17-9-27)
Wyoming Statutes Annotated 1987 (Title 22, 5-212, 5-214)

3. Party Rule Closed
   Connecticut General Statutes Annotated 1967 (Supp 1988) (Ti.9, -431, -374, -56, -59)
   New Hampshire Revised Statutes Annotated 1986 (Supp 1987) (654:34, 654:32)
   North Carolina General Statutes 1987 (163.74, .59, .150)
   South Carolina Code 1977 (Supp 1987) (7-9-20, 7-5-150)

B. OPEN

1. Public Affiliation Open
   Alabama Code 1977 (Supp 1986) (17-16-14)
   Arkansas Statutes Annotated 1976 (Supp 1985) (3-126, 3-102)
   Georgia Code Annotated 1980 (Supp 1987) (3-4-902)
   Indiana Code 1976 (Supp 1986) (3-1-9-3)
   Ohio Revised Code Annotated 1988 (3515.19, 3503.02, 3513.05, 3503.14)
   Tennessee Code Annotated 1985 (Supp 1987) (2-7-115)
   Texas Codes Annotated 1986 (Supp 1988) (162.001, 162.003, 162.012)

2. Public Request Open
   Hawaii Revised Statutes 1985 (Supp 1987) (12-31)
   Illinois Revised Statutes 1984 (Supp 1986) (7-43)
   Michigan Compiled Laws Annotated 1967 (Supp 1987) (168.575)
   Mississippi Code Annotated 1972 (Supp 1987) (23-15-575)
   Missouri Annotated Statutes 1980 (Supp 1988) (115.397)

3. Traditional Open
   Idaho Code 1981 (Supp 1987) (34-402, 34-404, 34-904)
   Minnesota Statutes Annotated 1962 (Supp 1988) (204D.08)
   Montana Code Annotated 1983 (13-10-301, 13-10-309)
   North Dakota Century Code 1981 (Supp 1987) 16.1-11-22)
   Utah Code Annotated 1984 (Supp 1987) (20-3-19)
   Vermont Statutes Annotated 1982 (Supp 1987) (Title 17, 2363, 2362)
   Wisconsin Statutes Annotated 1986 (Supp 1987) (5.37, 6.80)

C. BLANKET

Alaska Statutes Annotated 1977 (Supp 1986)
(15.05.010, 15.25.090, 15.25.060)
Louisiana Revised Statutes Annotated 1976
(Supp 1988) (18:401B, 18:521B)
Virginia Code 1985 (Supp 1988) (24.1-182)
Washington Revised Code 1965 (Supp 1988)
(29.18.200)