

Making Presidential Nominating Contests More Democratic

Testimony for the Democratic National Committee's Change Commission, August 2009

By FairVote's Rob Richie with Adam Fogel

Summary

Political parties have broad authority over how they conduct their nomination procedures, including in primary elections administered by the state. Parties are private associations with protections under the First Amendment that enable them to go beyond state and federal laws in expanding suffrage, increasing participation and allowing for more democratic contests. With this flexibility and freedom, parties have great opportunities to review and improve their election systems by incorporating reforms that give more voters an equal voice and an equal vote. From representative delegate allocation regimes to instant runoff voting and expanded suffrage rights, a political party's nomination process can be a true laboratory of democracy. We focus on nomination rules for presidential elections, although parties ultimately could explore reforms even more daringly in state and local elections in areas such as campaign finance.

FairVote is a nonpartisan, non-profit organization that seeks elections that respects every vote and every voice. In 2007-2008, we hosted Fix The Primaries (www.FixThePrimaries.com), a project bringing together several backers of different nomination reform proposals to focus attention on ways to improve the current system. Our board members include Hendrik Hertzberg, New Yorker essayist and former chief speechwriter for Jimmy Carter. Our chair Krist Novoselic is chair of his county Democratic Party in Washington State.

Here is a summary of our recommendations described in detail in our testimony.

1. Nominating calendar
 - a. Hold first nomination contest no earlier than February
 - b. Have a calendar that rotates which states go first and starts with small states (and the District of Columbia and territories)
 - c. End with a binding national primary in the first week in June among the top two or three candidates as determined by the state-by-state contests
2. Superdelegates
 - a. At conventions, superdelegates shouldn't vote on first ballot if nomination in play
 - b. Limit superdelegates' ability to trump the people's choice
3. Expanding suffrage rights
 - a. Make universal the increasingly common practice of allowing 17-year-olds to vote in nomination contests when they will be 18 by the general election
 - b. Explore ways to expand suffrage, relying on parties' freedom of association rights
4. Caucuses vs. primaries
 - a. When holding caucuses, take steps to guarantee accessibility, including for party backers who cannot appear in person

- b. Only hold caucuses if able to prepare for them and finance administration adequately
 - c. Establish sensible disclosure rules for all contests, including in Iowa revealing voters' first choices rather than simply delegate totals
5. Delegate allocation rules
- a. Preserve the principle of proportional representation as necessary to provide a fair reflection of party backers' party preference
 - b. Refine allocation rules to avoid distortions in proportional representation
6. Instant runoff voting and instant runoff ballots
- a. Establish caucus-type "second choice" procedures in all contests so that voters who vote first for candidates below the 15% threshold of support necessary to earn delegates have an opportunity to have their vote count for a viable candidate
 - b. Use instant runoff voting to determine which candidate has won a state, either with or without a bonus of extra delegates
 - c. If moving to a binding national primary in June, use instant runoff voting in races with three candidates to uphold the goal of majority rule and create incentives for more positive campaigning
 - d. Regardless of whether these other changes have been done, give all early voters and absentee voters the power to vote on an instant runoff ballot to ensure their vote counts in the event their first choice candidate has dropped out of the race

Options for the Nominating Calendar and a Final Binding National Primary

The first, and most essential, change the parties must make to their presidential nominating contests is in the voting schedule. The front-loaded game of chicken used by both the Democratic and Republican parties in 2008 to determine their nominating calendar was a disservice to both the candidates and the public—one exposed once and for all as a problem by the fact that the Democratic Party in 2008 clearly was advantaged for the general election by the "mistake" of its nomination process continuing so that all states held meaningful nomination contests into the first week in June.

The parties should strive for an orderly and fair process; one that gives voters in all states and territories an equal opportunity to weigh in and also has teeth to hold states accountable for failing to follow predetermined party rules – and deter them from rogue actions that cause their voters to suffer. The major parties also should seriously consider holding a national primary on the first Tuesday or first weekend in June after winnowing the field to two or three candidates through state contests.

States have long envied the privileged position of New Hampshire and Iowa for good reason. These states have their "first in the nation" status only due to tradition and the determination of their leaders to preserve their status. But leaders in other states understandably believe they would gain influence by holding their contests as early in the process as possible. Frontloading in 2008 led Iowa to consider holding their caucus in December 2007, nearly a year before the general election. Other states finally relented and allowed Iowa to keep their contest in 2008 –

although barely, with the final candidate push occurring over the winter holidays, and Iowa avoiding the perils of a potential winter snowstorm. Still, Democrats in Michigan and Florida defied their party leaders by holding their contests in January, resulting in the ugly fight over whether and how to seat those states' delegates.

There are several proposals to solve the calendar problem that would allow parties to conduct a more orderly nominating process. The easiest change is to move the start date later, with no contests held before February. More comprehensive proposals include: 1) the American Plan, with a random drawing of states (along with the District of Columbia and territories) holding contests every two weeks, with contests generally taking place in states or groups of states with progressively larger populations, and with breaks in that progression to allow the largest states to have a relatively early contests; 2) the Rotating Regional Primary plan supported by the National Association of Secretaries of State in which four regions of the country would take turns having the first contests after initial contests in Iowa and New Hampshire; 3) the Ohio Plan, Texas Plan and other variations of a rotating regional primary; 4) the Delaware Plan, almost adopted by the Republican Party in 2000, in which there are four rounds of voting, with the smallest population states voting first, then the next largest size of states and so on; 5) the National Plan, with open voting among all eligible voters from January until June , with results released periodically.

In evaluating these plans, FairVote believes that some elements of the current calendar should be preserved. Having small population contests vote early on, a role traditionally played by New Hampshire and Iowa, is important because they force candidates to engage in retail politicking and intensive campaigning in one or two states. Small state contests early in the process encourage “dark horse” candidates to join the race and limit the money advantage of “celebrity” candidates. But the same states should not always have this favored position, and the schedule should not be so compressed that even a surprise result for such a candidate – as with Mike Huckabee in the Republican contest this year, John McCain in 2000 and Gary Hart in 1984 – does not give them time to be competitive across the country.

FairVote would suggest that no matter what plan is adopted, that the parties consider a binding national primary in the first week in June among the top two (if using plurality voting) or three (if using instant runoff voting, as discussed below) candidates from the state-by-state contests. Funding for this primary ideally would be provided by Congress to ensure all states participate, and rules should be established to ensure those participating were not backers of opposition parties attempting to distort the results. But only such a national vote can ensure that all party backers have an equal say in determining their party's presidential nominee. Certainly, voters agree – polls show that holding a national primary is by far the most popular option for presidential primaries, and we believe that having such a primary after the field is winnowed by state-by-contests is the best way to respond to that overwhelming preference. Having a single national primary day without preceding contests would give an insurmountable advantage to well-financed front-runners and make lesser-known candidates virtually irrelevant. It would make the role of money even more dominant and curtail retail campaigning. Candidates would be less likely to have to answer tough questions and have their positions (and character) fully vetted as they do currently when spending time in living rooms and town halls in Iowa and New Hampshire.

Superdelegates

To most people, superdelegates—the unpledged delegates who can vote for whichever candidate they choose, regardless of the delegate count or popular vote—appear at first blush to be the least democratic element of the entire nominating process. These party leaders have completely unbound votes at the convention that can decide the nomination. The reality, however, is that most superdelegates are elected officials—either members of Congress or state leaders—that have to eventually answer to the people in upcoming elections. As party leaders, they have the long-term interest of the party in mind when making their decision. As part of calculating that long-term interest, they also realize that voting against the will of the people would alienate many backers of their party.

But the question remains: what does the “will of the people” mean? The varying definitions explained by pundits and the campaigns are enough to confuse even the most astute political observer. Should the superdelegates vote for the winner of the total elected delegate count, the winner of the national popular vote, the winner of their local/state popular vote, the number of states won, the size of the states won? Or should superdelegates forget about the “will of the people” completely and simply cast their vote for the candidate that would make the best general election candidate and president?

The concept of a “superdelegate”—someone whose vote is mathematically worth more than someone else’s—is in and of itself, undemocratic. But parties can do what they choose because of their freedom of association rights under the First Amendment. If the Democratic Party is going to keep the superdelegate system and chooses not to have a binding national primary to pick their nominee in June, they should at least put some restrictions or rules on how their “super votes” are cast.

- First, superdelegates should not be permitted to vote in the first balloting at the convention—that should be based only on the votes as determined by democratic contests. If a candidate fails to receive a clear majority of elected delegates then the superdelegates could step in to put the nominee over the top.
- Second, superdelegates should never overrule the clearly defined will of the voters. If a candidate wins a majority of the popular vote and the most elected delegates, the superdelegates should be prohibited from reversing that decision. If there is a more muddled result in the primaries, the superdelegates should be part of the decision-making process in choosing the nominee, particularly if the convention may turn to a compromise candidate who did not compete in the nomination contests.

Expanding Suffrage Rights

Parties have broad authority over who can vote in their primary contests. In more than a dozen states, parties allow 17-year-olds who will be 18 on or before General Election Day to participate in their primary or caucus—the latest such state being Connecticut, where voters by a two-to-one margin in November 2008 supported a state constitutional change establishing this practice.

In 2008, Maryland's Republican and Democratic Parties pushed back against a State Board of Elections decision ending the practice by passing party rule changes to maintain the practice. Although their actions ultimately were not necessary after a state judge rejected the state board's administrative decision, their example shows that even when the state makes a decision about primary election rules, the parties have the final word, albeit with some restrictions.

As a start, Democrats and Republicans in all states should allow 17-year-olds to participate in their nomination contests as a matter of basic fairness. If someone is eligible to vote in the general election, he or she should have a say in who is on that general election ballot. In addition, studies show that voting is habit forming—by letting young people vote early, they are more likely to vote for life. Finally, people decide party affiliation early on in life. If one party allows 17-year-olds to participate and another does not, young people may be more likely to vote—and keep voting—for the party that gives them the opportunity to participate.

Parties should not stop at expanding suffrage rights to more young people. Many states have stringent prohibitions that make it difficult for people convicted of felonies to vote. Parties have the right to establish fairer rules to allow people who may not be eligible to vote in the general election to vote in their nomination contests. The same goes for legal immigrants—people who pay taxes and send their children to school, but have no voice in the political process. Like young people, if a legal immigrant is allowed to vote in a party's nomination process, he or she may be more likely to vote with that party for life once they become a citizen.

Some of these expansions of suffrage only could be done in tandem with the party holding caucuses or other forms of private nomination contests in which they manage their own voter rolls. Once a party decides to allow taxpayers to fund their contest in a primary, they must work within election administrative realities and state legal restrictions.

Caucuses and Primaries

The role of caucuses in the nominating process also demands debate. Many argue that caucuses—especially ones involving voting publicly in a narrow window of time—discourage participation because some voters are intimidated or confused by the process. Other voters, with family or work obligations during the time of the caucuses, are unable to participate. Military, overseas and others voters who are not living near their caucus sites temporarily are completely shut out of the process. States with a history of caucuses, like Iowa, may want to continue their tradition, but it is imperative that they open up the process by expanding accessibility as much as possible through changes like absentee voting.

States without a recent history of competitive caucuses, like Texas, should be wary of incorporating caucuses as part of their delegate allocation process without proper planning and financing. Many Texas caucus sites in 2008 were woefully unprepared to handle the volume of participants and there is continuing controversy over the eligibility of some caucus-goers who may not have voted earlier in the day in the primary contest, per party rules. Ensuring equal access to the polls is a basic right that the Democratic Party should mandate that every state follow when designing their contests.

When holding caucuses, parties also should be sure to be transparent in their election administration procedures and their vote counting. Iowa's caucuses provide an obvious example of lack of transparency. Out of concern of offending New Hampshire, the Iowa Democratic Party only reveals the share of delegates won by each participating candidate. They also should provide the totals for each candidates' first choices earned at the caucuses, which is a fairer reflection of candidates' performance.

If the major parties were to pursue our recommendation that the nomination process end with a binding primary in the first week in June among the top two or three candidates, then the controversy over the nomination process becomes largely moot, as all voters would have an equal chance to participate in the final primary.

Delegate Allocation Rules

The biggest difference between the Democratic and Republican primaries is that the Democrats require states to allocate delegates proportionally and the Republicans use a winner-take-all system of delegate allocation in most of their contests held after Iowa and New Hampshire. When a Republican candidate wins a state using winner-take-all rules, even by the slimmest plurality, he or she wins *all* of the delegates for that state. While this system boosts frontrunners to their party's nomination after winning a few large states, it has significant drawbacks. It discourages candidates from staying in the race, even if they consistently come in second place narrowly. It also stifles debate by forcing challengers to drop out much earlier than if delegates were awarded on a proportional basis. Perhaps the worst aspect of winner-take-all is that in a multiple candidate race, the voice of the majority of voters can be completely ignored—which means the nominee could be a true fringe candidate who poorly represents the party. As one example, Pat Buchanan won the New Hampshire primary in 1996 with barely a quarter of the vote even though he likely would have lost in a one-on-one contest that year against each of his major competitors. (See our addendum on primary turnout numbers in Republican states using proportional and non-proportional systems for a fuller understanding of the impact—and, more broadly, the striking disparity in primary turnout after the February 5th primaries due primarily to Republicans' use of the winner-take-all rule.)

The Democrats should uphold the principle of its proportional representation system because it gives all voters an equal voice in the contest for elected delegates and seeks to provide a fair reflection of voter preferences. However, the current allocation rules have quirks that upend the goal of proportionality. Most states split their delegates proportionally according to results in congressional district, but do not have enough delegates in these districts to be responsive to relatively large changes in the popular vote. This inconsistent, patchwork system of delegate allocation leads to some delegates counting more than others, which creates grounds for legitimate complaints by losing candidates. Democrats should mandate a standardized process for allocating delegates that provides both fairness and responsiveness. Proportionality is key—and should mean the same thing no matter where you call home.

Instant Runoff Voting to Accommodate Voter Choice

The only way to ensure majority support for a candidate in a multi-candidate race and allow voters the freedom to vote their conscience is instant runoff voting (IRV), a method of voting used in such countries as Australia and recommended in Robert Rules's of Order for private elections held by mail. Actively supported by influential major party leaders like Barack Obama, Howard Dean and John McCain, IRV enables voters to rank their choices 1, 2, 3, instead of simply voting for a single candidate. Ballots are counted for voters' first choices. If that first choice is not viable, your ballot moves to your second choice until one candidate wins a majority of the vote. IRV eliminates the "spoiler effect" of voting for a "second-tier" candidate, which often helps the candidate the voter wants least—plurality winners often do not have the support of the majority of voters, which is an undemocratic way to conduct elections.

Consider the Republican contest this year. John McCain earned his frontrunner status without ever winning more than 37% of the vote in a primary or caucus in January. The Republicans' winner-take-all rules also aided him in gaining frontrunner status. Even on February 5th, when he essentially locked up the nomination, he only won a majority of the vote in three states. Whether Sen. McCain was the right nominee for the Republican Party is not the point; the reality is that he easily could have been a splinter candidate who didn't reflect the views of the majority of Republican voters.

On the Democratic side, even with proportional allocation rules mitigating the impact on distortions in allocating delegates due to plurality voting rules, the lack of instant runoff voting had a clear impact on the race and media coverage. The media inevitably focuses on who wins a state, no matter how low that winning percentage might be—consider New Hampshire in 2008 where Sen. Clinton won a big boost despite securing less than 40% of the vote and potentially having lost to Barack Obama if supporters of John Edwards and the remaining candidates had been able to indicated a preference between the frontrunners. (As we hope is clear, this report and these recommendations are not about who *ought* to have won in 2008. In this case, the true consensus choice of the New Hampshire electorate was and remains a mystery.)

The process of counting people's second choices is a familiar one because Democrats in Iowa and some other states already use a form of IRV in their caucus process. If a candidate is not declared "viable" at a caucus site (getting at least 15% of the vote), those caucus-goers must choose a "viable" candidate, or their second choice. That increases the number of effective votes, but unfortunately, Iowa does not release the tally of the first vote, even though it is important to know how much support "second tier" candidates really have in the state.

Instant runoff voting should be used in four ways to improve contests.

- First, the "Iowa model" should be used in primaries so that any voter casting a first choice for a candidate unable to win delegates has their ballot move to their next choice among the viable candidates. Proportional allocation of delegates should take place only after all candidates below 15% have been eliminated and their votes allocated to next preferences among viable candidates in that state.

- Second, the statewide majority winner should be determined by IRV so that the media knows who legitimately was the majority preference of party backers in that state. The party could have the option of giving a small “winner’s bonus” of perhaps 5% of delegates to the winning candidate.
- Third, instant runoff ballots make particular sense for those voting early or by absentee—following a practice already used for congressional primary elections in states like Arkansas, Louisiana and South Carolina. With more and more Americans voting well before a contest, either in person or by mail, it is quite possible that their preferred choice has dropped out by the time their vote is tallied. In 2008, for example, many people in California and other states had cast absentee ballots for John Edwards or Rudy Giuliani before the large number of contests on February 5th. Since neither major party used IRV ballots, those ballots were irrelevant. Military voters, people who are out of town on Election Day or those who vote early should have the same opportunity to participate in the process as people who vote on the day of the election. If those voters had cast their votes on IRV ballots, then their ballot could have shifted to candidates who remained in the race, allowing their votes to count as much as Election Day voters.
- Fourth, if the parties establish a binding national primary in the first week in June, as FairVote suggests, then they should consider allowing the top three candidates to participate in this final vote based on the results of the state-by-state contests. Two-candidate races tend to become exceptionally negative, as they are “zero-sum” contests in which every vote lost by your opponent helps you. Three-candidate races create incentives for more positive campaigning, particularly if there is uncertainty about which candidate will finish third and candidates need to compete to earn the second choices of backers of other candidates.

Conclusion

Our presidential nominating system is in need of a major overhaul. Incremental changes, such as instituting instant runoff voting ballots for early voters, delaying the date of the first nomination contest and expanding suffrage rights for young people, would be a positive start, but more sweeping reform is required to transform the process into what we can truly call “democracy.” The calendar needs a facelift, the superdelegates need more direction and the people need to have a greater voice in deciding their parties’ nominees for president. Before this year, Republicans could only reform their system at their convention, but in 2008 they adopted rules that mirror the Democrats, thereby allowing changes to the process between elections. Real change is possible if each party is open to doing what is best for their party and the country.

Rob Richie is the Executive Director of FairVote (www.fairvote.org), a nonpartisan election reform and voting rights organization based in Maryland. Adam Fogel is director of FairVote’s Right to Vote program.