

**Constitution Revision Commission
Ethics and Elections Committee
Proposal Analysis**

(This document is based on the provisions contained in the proposal as of the latest date listed below.)

Proposal #: P 11

Relating to: SUFFRAGE AND ELECTIONS, Primary, general, and special elections

Introducer(s): Commissioner Plymale and others

Article/Section affected: Article VI, Section 5

Date: November 21, 2017

| | REFERENCE | ACTION |
|----|-----------|--------------------|
| 1. | <u>EE</u> | <u>Pre-meeting</u> |
| 2. | <u>GP</u> | <u></u> |

I. SUMMARY:

Amends Section 5 of Article VI of the State Constitution to authorize all qualified electors, regardless of party affiliation, to vote in a partisan primary election for an office if all the candidates for the office have the same party affiliation and the winner will be opposed only by one or more write-in candidates in the general election.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Primary Elections – General

A primary election is an election used either to narrow the field of candidates for a given elective office or to determine the nominees for political parties in advance of a general election. Primary elections can take several different forms. In a partisan primary, voters select a candidate to be a political party's nominee for a given office in the corresponding general election. Nonpartisan primaries are used to narrow the field of candidates for nonpartisan offices in advance of a general election. The terms of participation (e.g., whether only registered party members can vote in a party's primary) in primary elections can vary by jurisdiction, political party, and the office or offices up for election. The methods employed to determine the outcome of the primary can also vary by jurisdiction.

Primary Elections - Types

The National Conference on State Legislatures has categorized state terms of participation in primary elections into the following six categories – Closed, Partially Closed, Partially Open, Open to Unaffiliated Voters, Open, and Top Two.

Closed Primaries

Closed primaries are those in which voters must be registered members of the political party holding the primary. This system prevents “cross-over” voting by voters registered with other political parties, as well as voters unaffiliated through voter registration with any political party. Nine states are categorized as having closed primary systems - Delaware, Florida, Kentucky, Maryland, Nevada, New Mexico, New York, Oregon and Pennsylvania.

Partially Closed Primaries

Partially closed primaries are those in which voters must be registered members of the political party holding the primary, unless the party chooses to allow unaffiliated voters to participate. This system gives the parties more flexibility from election to election concerning which voters to include in the primary election process. Seven states are categorized as having partially closed primary systems – Alaska, Connecticut, Idaho, North Carolina, Oklahoma, South Dakota, and Utah.

Partially Open Primaries

Partially open primaries are those in which voters are essentially allowed to vote in a political party’s primary even if they are not registered members of that party, by declaring their affiliation to that political party at the time of voting. This system essentially allows for same-day changing of political party affiliation in order to vote in a given political party’s primary. Six states are categorized as having partially open primary systems – Illinois, Indiana, Iowa, Ohio, Tennessee, and Wyoming.

Primaries Open to Unaffiliated Voters

Primaries open to unaffiliated voters allows such voters to choose a political party primary in which to participate. It does not allow voters registered with another political party to “cross-over” and vote in the primary of a different political party. This system differs from the partially closed primary system in that unaffiliated voters are entitled to vote in a political party primary; it is not subject to the choice of a political party from election to election. Nine states are categorized as having primary systems open to unaffiliated voters – Arizona, Colorado, Kansas, Maine, Massachusetts, New Hampshire, New Jersey, Rhode Island, and West Virginia.

Open Primaries

Open primaries are those in which voters are allowed to participate in a political party’s primary, whether or not they are registered members of the political party holding the primary or for that matter any political party. This system allows for unconditional “cross-over” voting and participation by unaffiliated voters. Fifteen states are categorized as having open primary systems – Alabama, Arkansas, Georgia, Hawaii, Michigan, Minnesota, Mississippi, Missouri, Montana, North Dakota, South Carolina, Texas, Vermont Virginia, and Wisconsin.

Top-Two Primaries

Top-two primaries are those in which all voters can participate, where all candidates for a given office appear on the primary ballot regardless of party of affiliation. The “top-two” vote getters in the primary, again regardless of party affiliation, advance to the general

election ballot. Four states are categorized as having top-two primary systems – California, Louisiana, Nebraska, and Washington.

Primary Elections in Florida

1998 Amendment to the Constitution

Prior to 1998, Florida was considered a “pure” closed primary state in that only voters who were registered members of a given political party could vote in that political party’s primary. However, the 1998 Florida Constitution Revision Commission voted to place Proposition 11 on the ballot for the November 1998 general election. Among several election-related changes, Proposition 11 proposed amending Article VI of the Florida State Constitution by including the following language:

“If all candidates for an office have the same party affiliation and the winner will have no opposition in the general election, all qualified electors, regardless of party affiliation, may vote in the primary elections for that office.”

Proposition 11 was approved and placed into the Constitution by the voters of Florida, with 64.1 percent voting in favor.

Write-In-Candidates

At first glance the 1998 constitutional change to Florida’s primary system appears to allow for open primaries – where all voters may participate regardless of party affiliation – under circumstances in which a party’s primary will determine who will be elected to a given office because there are no opposing candidates appearing on the ballot in the subsequent general election. However, the 1998 Constitution Revision Commission’s debates and discussions on Proposition 11 never addressed the issue of what impact the presence of a write-in candidate should have in a field otherwise composed entirely of candidates from one political party.

Florida general election ballots contain blank lines for voters to write in candidates other than the ones listed for a given elected office. The ballot qualification requirements for write-in candidates are basic – they must file qualifying papers with the appropriate state or local offices during the established qualification period. Currently, under Florida law a write-in candidate must also reside in the district he/she would be representing at the time of ballot qualification, although a subsequent court decision found this requirement unconstitutional. Unlike other candidates, write-in candidates do not have to pay a fee to qualify for the ballot.

2000 Department of State Decision on Write-In Candidates

In 2000, the Florida Department of State’s Division of Elections published an opinion stating that the presence of a write-in candidate in an otherwise all-Republican or all-Democratic field “closed” the primary to all voters other than those registered with the party holding the primary. Since that opinion was published, multiple district and appellate courts have confirmed the Division’s legal position. Over the ensuing years, qualification of write-in candidates for general elections has resulted in the closing of numerous Florida primary elections that otherwise would have been open to all voters

regardless of party affiliation. This result has been colloquially referred to as the “write-in loophole.”

Proponents of the current legal interpretation regarding write-in candidates argue that it helps maintain the integrity of Florida’s primary election system, because limiting participation to registered party members leads to primary winners reflecting the values of the political party holding the primary. Opponents contend that candidates who qualify as write-in candidates for general elections frequently put in little to no effort or resources to reach voters and promote their candidacies, and often withdraw from the elections once the primaries are held. This leads to speculation that many write-in candidates are not interested in sincerely competing for elective office, but instead qualify for the ballot simply to close off primary elections to voters other than those registered as members of the party holding the primaries.

October 2017 Presentation by the Florida Association of Supervisors of Elections

On October 4, 2017, representatives of the Florida Association of Supervisors of Elections (Association) made a presentation to the Ethics and Elections Committee of the 2018 Florida Constitution Revision Commission on Florida’s primary election system. While a broad range of issues related to this topic were discussed, in response to questions from committee members Association representatives made the following points:

- In any given election cycle, write-in candidacies close primaries that otherwise would be open in approximately 10 of Florida’s 67 counties. Also, Florida’s larger counties may experience closed primaries due to write-in candidacies more frequently.
- Voter turnout in Florida primary elections is significantly lower than in general elections (since 2002, voter turnout in Florida primary elections has averaged 22.5 percent for both presidential election cycles – years when voters elect the President of the United States – and non-presidential election cycles. In contrast, since 2002 voter turnout in Florida general elections has averaged 74 percent in presidential election cycles and 50.5 percent in non-presidential election cycles.) One factor that may be contributing to low turnout is that the majority of Florida primaries are closed, including when write-in candidacies result in the closing of primaries that otherwise would have been open.
- In recent years the largest growth in Florida voter registration has been among voters who do not affiliate with any political party (as of October 31 2017, statewide voter registration in Florida was 37.4 percent Democrat, 35.4 percent Republican, 0.5 percent Other Parties, and 26.7 percent No Party Affiliation.) When primary elections in Florida are closed, unaffiliated voters may not participate.
- Over time county Supervisors of Elections have received more complaints from voters about the inability to vote due to closed primaries than any other issue, particularly when primaries are closed due to write-in candidacies. One factor that may be contributing to the level of dissatisfaction is that many Florida voters have moved here from other states where primary elections are open or not fully closed.

- Allowing primaries to remain open even when write-in candidacies are included could contribute to increased voter participation in Florida primary elections, as well as fewer voter complaints to county Supervisors of Elections over primaries being closed because of write-in candidacies.

B. EFFECT OF PROPOSED CHANGES:

This proposal amends Section 5 of Article VI of the Florida State Constitution, by adding language stating that if all candidates for an office have the same party affiliation, and the winner will have **either** no opposition in the general election, **or opposition only from one or more write-in candidates**, then all qualified electors regardless of party affiliation may vote in the primary elections for that office. The effect of this amendment would be to open Florida primary elections to all Florida voters under the specified circumstances regardless of any political party affiliation.

If adopted by the 2018 Florida Constitution Revision Commission, the proposed amendment will be submitted to Florida's electors for approval or rejection at the next general election (November 6, 2018). If approved, it would be in place for Florida's 2020 election cycle.

C. FISCAL IMPACT:

Should approval of this proposal contribute to an increased percentage of Florida voters participating in certain primary elections, county Supervisors of Elections could experience an indeterminate increase in costs for primary election administration.

III. Additional Information:

A. Statement of Changes:

(Summarizing differences between the current version and the prior version of the proposal.)

None.

B. Amendments:

None.

C. Technical Deficiencies:

None.

D. Related Issues:

None.