

A Call for Congressional Hearings
**VOTER RIGHTS VS PARTY RIGHTS: INDEPENDENT VOTERS
TREATED AS SECOND CLASS CITIZENS**

FROM: Independent Voters Across the United States
TO: Members of Congress

Independents are American citizens who do not want to align themselves with either the Democratic or Republican parties. At 38 percent of all registered voters, our numbers are now greater than those who consider themselves members of either major party, in large part due to increasing public distaste for the partisanship that characterizes contemporary politics.

Americans value freedom and self-government, yet far too many of us who want to participate in the political process encounter barriers to change in the form of partisan election laws. Because of these barriers, millions of voters are locked out of participating in every level of our political process. We believe this situation warrants attention at the federal level and call upon Congress to hold public hearings on these structural barriers.

The particulars listed below are a sample of the kinds of structural biases that pervade the electoral process, sometimes so commonplace that they are not noticed. Congressional hearings would shine a light on these inequities and begin to address these issues, all of which will help to revitalize our democracy, reduce partisanship, and accord full voting rights to a growing sector of the electorate – independent voters.

Bill of Particulars: Barriers to full voter participation

1. Partisan primaries

- a. *Closed primaries*: Primary elections should be open to all voters. Thirty states, including DC, have partisan voter registration. In most of these states, independents are excluded from voting in primary elections unless the parties decide to open them. Primaries represent the first round of

voting, limit the choices for the general election, and often determine the ultimate outcome. Moreover, primaries are paid for by all taxpayers, not just party members. For these reasons, *all voters* should be able to participate, whether or not they choose to associate with a political party.

- b. *Re-registration requirements:* In some states (e.g., Colorado, Maine, New York, and Arizona), independents who register with a major party to vote in a primary election have to observe a waiting period before they can re-register as independents. This discourages independent participation in primaries. Other states, such as New Hampshire and Rhode Island, allow independents to re-register immediately after they vote (at the poll). Waiting periods should be eliminated.
- c. *Restrictions on voter mobility:* In New York, voters who change their enrollment must wait a year or until the next general election before their changed enrollment takes effect. During the waiting period, they *cannot vote* in primary elections! There should not be any restrictions on changing party registration.
- d. *Nonpartisan elections:* Nonpartisan elections are common for municipal offices that focus on providing services. However, some major cities like New York, Philadelphia, and Indianapolis continue to hold partisan elections. In New York City alone, this practice effectively disenfranchises over 880,000 voters. In addition, some states continue to allow inappropriately partisan elections (e.g., county surveyor in Utah and county coroner in Wyoming). Municipalities should place all voters on equal footing by making all elected positions nonpartisan.
- e. *Loyalty oaths:* Ohio and Virginia have nonpartisan registration but permit the major parties to police perceived “abuse” of the right to vote in either primary election. In Ohio, if a voter’s record indicates s/he recently voted in a different party primary, poll workers can require the voter to sign an oath of loyalty to the party. Virginia law permits either party to request that primary voters state their intention to support the eventual nominee in the general election. End loyalty oaths.
- f. *Other restrictions:* In Ohio and Illinois, a voter’s choice of party primary becomes a matter of public record even though the states have nonpartisan voter registration. Voting should be private.
- g. *Battles across the country.*
 - i. *Legislation:* Open primary bills in several states (Kentucky, Pennsylvania, and South Dakota) have failed in the face of stiff opposition, generally from the party in power. In Colorado, an open

primary bill was killed in committee because the Secretary of State added a fiscal note saying the state could not afford the increased voter participation that would result.

- ii. *Litigation*: Two federal district courts have issued conflicting rulings. In Idaho, independents are appealing a federal court decision in favor of the Republican Party's claim that the state's 40-year-old open primary system is unconstitutional. But a SC federal court dismissed the Republican Party challenge to that state's open primary.
- iii. *Voter initiatives*: In California and Washington, voters passed initiatives that allow all voters to participate in all rounds of the election process. In both states, all candidates and voters participate on an equal footing in the first round, with the top two candidates advancing to the general election.

2. **Bipartisan vs. nonpartisan rules**

a. *Rulemaking bodies*:

- i. State laws often restrict election commissions and boards to major party appointees. And in some states – New York, for example – poll workers must be Democrats or Republicans chosen by party leaders. Independents and minor party members have no representation.
 - ii. The Federal Election Commission (FEC) which is responsible for overseeing our election process is a bipartisan body made up of three Democrats and three Republicans. The FEC should be nonpartisan and an independent should be appointed to fill one or more of the vacancies.
- b. *Nonpartisan vs partisan voter registration*: Partisan registration and maintenance of voter lists is usually paid for by state funds provided by taxpayers who may not be members of those parties. Voter registration should be nonpartisan.
- c. *Voter Lists*: Some states, such as Arizona, provide voter lists to the major parties and/or their candidates at no cost but require independents to pay a fee for them.

3. **Biased terminology - Voter registration**

- a. Independents in many states are officially defined in relationship to the parties – “undeclared” (New Hampshire), “decline to state” (California), “no

party affiliation” (Iowa), or “other” (Kentucky).

b. Independents want to be recognized as what they are: “independent.”

4. **Limiting independent candidates**

- a. *Additional ballot requirements.* In a majority of states, independent candidates must collect more petition signatures (2-20 times more) than party-affiliated candidates seeking the same office. Many states afford only party-affiliated candidates the opportunity to submit a fee in lieu of petition signatures. A few states also regulate the specific voter registration status of valid petition signers. On many state ballots (e.g., Alaska, Oregon, and California), independent candidates are identified as “Non-party”, “Other Party” or “NPP (no party preference)” rather than “Independent.”
- b. *Waiting periods:* In Colorado and California, candidates switching registration to Independent must wait 12 months to run for office while Democrats and Republicans can get waivers from their parties. And in Ohio, candidates who voted in the two preceding primaries are not allowed to run as independents.
- c. *Unequal donations:* In Colorado and Connecticut, major party candidates are allowed to raise twice as much money as independent candidates.

5. **Gerrymandering**

- a. In most states, district lines are drawn by state legislators; representatives pick the voters! As illustrated by the recent redistricting process in Virginia, major parties negotiate division of the political territory to protect their incumbent advantages. This is particularly unfair to independents, who by definition have no territory at all.

6. **Initiative & Referendum (I&R)**

- a. In 29 of the 50 states, I&R provisions allow voters to enact laws directly. In at least three states, legislatures can overturn initiatives and referenda approved by voters. Several state legislatures such as Florida and Wyoming have added rules that make it more difficult to pass I&R.

Why is this a federal issue?

Article I, Section 4 of the U.S. Constitution authorizes Congress to change laws affecting the election of federal Senators and Representatives. Congress does not ordinarily have jurisdiction over states’ election processes or voter eligibility requirements. However, Congress has taken action to prohibit state practices that

discriminate against voters. For example, the 15th Amendment to the Constitution prohibits denying the vote to citizens on the basis of race or color. However, some states, particularly in the South, conducted literacy tests that denied the vote to African Americans. The Voting Rights Act of 1965 outlawed such practices and established extensive federal oversight of electoral administration, especially in states and counties with a history of disenfranchising citizens of color. Congress intervened again in 2002 to standardize certain aspects of elections via the Help America Vote Act.

The following committees have jurisdiction over various aspects of this issue:

House

- Committee on House Administration (Subcommittee on Elections)
- Committee on the Judiciary (Subcommittee on the Constitution)

Senate

- Committee on the Judiciary (Subcommittee on the Constitution, Civil Rights and Human Rights)
- Committee on Rules and Administration