

**Constitution Revision Commission
General Provisions Committee
Proposal Analysis**

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

Proposal #: CS/P 62

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

Introducer(s): Ethics and Elections Committee and Commissioner Schifino

Article/Section affected:

Date: January 29, 2018

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

I. SUMMARY:

Amends Section 5 of Article VI of the State Constitution to authorize all Florida electors qualified to vote for an office being filled by election to vote in a primary election, regardless of the elector's party affiliation. Also prescribes the method of election for local, county, state, and federal offices, mandating that with specified exceptions Florida primary elections paid for with state funds be based on a "Top Two" methodology, in which regardless of political party affiliation the two candidates for an office receiving the most votes in a primary advance to 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 (NCSL) 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

As noted, the NCSL categorizes Florida as a closed primary state, defined as voters having to be registered members of the political party holding the 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.

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, 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.

B. EFFECT OF PROPOSED CHANGES:

Proposal 62 would amend Section 5 of Article VI of the State Constitution, deleting the existing language in subsection (b) allowing all electors to vote in a primary election for an office if all candidates for that office have the same party affiliation and the winner will have no opposition in the general election, and inserting new language that:

- Allows all electors to in a primary election, regardless of the voter's affiliation or lack of affiliation with a political party and regardless of the candidate's nomination by, or affiliation with, a political party. Specifies that no state funds may be used to pay for the administration of an election unless all qualified voters regardless of party preference or affiliation are allowed to vote for any candidate who appears on the ballot.
- Specifies that all candidates for an office shall be listed on a single primary ballot regardless of their nomination by, or affiliation with, a political party. Only the two candidates receiving the greatest numbers of votes cast in the primary election shall advance to the general election and appear on that ballot; no other candidate for that office shall appear on the general election ballot. If more than one candidate is to be elected to an office, the number of candidates advancing from the primary to the general election shall be twice the number to be elected, with said candidates receiving the greatest number of votes. If only two candidates qualify for the same office, no primary election will be held and the winner will be determined in the general election.
- Specifies that nothing in the proposal language shall be interpreted to prohibit a political party or a party central committee from nominating, endorsing, supporting, or opposing any candidate. Candidates nominated, endorsed, or otherwise selected by a political party to run in the primary election may have such nomination, endorsement, or selection indicated on the ballot in a manner provided by law. A candidate that is not nominated, endorsed, or otherwise selected by a political party to run in the primary election may have their political party preference, or lack of a political party preference, indicated upon the ballot in a manner provided by law. Designation of a party preference by a candidate under this paragraph shall not constitute or imply the nomination, endorsement, or selection of the candidate by the political party designated.
- Specifies that the proposal shall govern all Florida primary elections for federal, state, county, and local elective offices, except for those races in which no party affiliation, registration, or preference appears on the ballot as provided by law, and for the system of selection for President and Vice President of the United States.
- Specifies that the proposal is effective upon adoption by the voters and is self-executing.

Under the NCSL state primary classification system, the proposed change would remove Florida from the Closed Primaries category and place it into the Top Two Primaries

category with four other states. 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 subsequent primary elections in Florida.

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:

- 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.
- In recent years the largest growth in Florida voter registration has been among voters who do not affiliate with any political party (as of November 30, 2017, statewide voter registration in Florida was 37.4 percent Democrat, 35.3 percent Republican, 0.5 percent Other Parties, and 26.8 percent No Party Affiliation.) Unaffiliated voters may not participate in closed primary elections.
- 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. 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. Opening primary voting eligibility to unaffiliated voters could lead to fewer voter complaints to county Supervisors of Elections over primaries being closed, as well as contribute to increased overall voter participation in Florida's primary elections.

C. FISCAL IMPACT:

Approval of this proposal could contribute to an increase of Florida voters participating in primary elections, due to the fact that voters with no political party affiliation would now be eligible to vote in primaries. Should this occur, county Supervisors of Elections could experience an indeterminate increase in costs for administering primary elections.

III. Additional Information:**A. Statement of Changes:**

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

Ethics and Elections Committee on January 26, 2018:

The amended proposal authorizes all electors qualified to vote for an office being filled by election to vote in a primary election, regardless of the elector's party affiliation. It also prescribes the method of election for local, county, state, and federal offices, mandating that with specified exceptions Florida primary elections paid for with state funds be based on a "Top Two" methodology, in which regardless of political party affiliation the two candidates for an office receiving the most votes in a primary advance to the general election.

The amendment also removed language from the proposal specifying that a qualified elector who is registered with no party affiliation may choose to vote a primary election ballot of a political party, and that a qualified elector who is registered with a political party designation may vote only in a primary election of the political party which he or she has designated.

B. Amendments:

None.

C. Technical Deficiencies:

None.

D. Related Issues:

None.