

## LWV Election Laws and Voter Participation Update

November–December 2010

### History

The League of Women Voters is dedicated to the informed participation of citizens in elections. Because of that dedication, members at the state and national level have studied and acted on election laws, voter access, campaign finance and redistricting.

The Utah League has studied elections several times—in 1962, 1964, 1980, 1985 and 1996. The studies have resulted in positions which have been realized in Utah statute: year round voter registration, 30 day residency requirement, multiple ways to register, and easier ways to register and vote. Utah is one of the first three states to offer on-line registration. Some Utah statutes were the result of two federal laws: *The National Voter Registration Act of 1993* (NVRA) and the *Help America Vote Act of 2002* (HAVA). NVRA is better known as the “motor voter” act which allowed voters to register when they applied for or renewed their driver’s license or applied for social services. States are given leeway to implement the provisions of the act. The 1996 Utah League study focused on the implementation of NVRA. HAVA was partially a response to the 2000 election and was focused on improving (by mandating) election procedures including limiting types of voting machines (e.g. outlawing punch cards), providing for provisional ballots, registration processes and poll worker training. Many state legislatures and voting officials have resisted these mandates.

Since our 1962 study, when Utah had one of the highest voter participation records in the country, voter participation in Utah elections has steadily declined until we are the among the three lowest in the nation, depending on the election. Among voters aged 18–30 we have the poorest participation. In the recent 2010 off year election, only about one-third of eligible voters voted. During this time, Utah essentially became a one party (Republican) state. Yet as noted above, some legal restrictions on voter registration and voting have become less onerous. And it goes without saying that societal, cultural, legal and technical changes have played a role in the election process in the past 45 years.

The question is *why* Utah voter participation has declined. Many reasons have been offered as the causes of Utah voter–non participation: voter apathy, busy lives, inconvenient registration and voting places, non-competitive races resulting from redistricting, and the method by which we choose candidates.

For the purposes of this update the seminal question is: ***Are there laws, regulations, and other government programs that contribute to our low voter participation?***

The 2009 Utah League convention authorized an update on Utah election laws. Delegates were prescient. Following the defeat of sitting United States Senator Robert Bennett in the Republican convention this year, many in Utah are looking at the candidate selection process and its role in voter turnout. The dialogue about how candidates presented to all voters in November were selected is not limited to Utah. The 2010 election cycle has citizens in many states talking about the process, even if they do not have the caucus/convention system as Utah does.

Concerned about the low participation in Utah elections, then Governor Jon Huntsman Jr. convened a Commission on Strengthening Utah’s Democracy in January 2009 to recommend revisions to election, campaign finance, lobbying, ethics and redistricting laws to increase voter participation. However, after a visit by Utah legislative leaders to the Governor, ethics and redistricting were omitted from the commission’s charge. Kirk Jowers, Director of the Hinckley Institute of Politics at the University of Utah, served as Commission director. The Commission issued its report in December, 2009, with recommendations on disclosure of elected officials’ employment data, overseas military voting reforms, mandatory electronic filling for office, campaign finance reform, revolving door lobbyist reforms, and automatic and portable voter registration. An ethics, lobbying and campaign finance reform commission was recommended as well.

Many election law bills were introduced in the 2010 Utah Legislative Session and some passed. Campaign finance reform limiting contributions was not one of the reforms that passed; it and other reforms are part of the ethics

initiative proposed by the citizens group Utahns for Ethical Government which has not yet gained the ballot. In light of events since the Commission's report, Director Jowers told the *Deseret News* that "My two regrets are that we lost our mandate on ethics and redistricting and that we did not tackle the biggest impediment to voting in Utah: our very unique caucus convention system."

### **Who Chooses the Candidates?**

Although Utah election statutes cover much of the electoral process, it is the **political parties** who determine the most important part of the process: who voters will be able to choose from in November. It can be argued that political parties are more concerned with protecting their power and promoting their platform than with choosing candidates that represent a majority of voters. The courts have found that as private organizations they have that right. But this means the half of all Utah voters who register themselves as "unaffiliated" with a political party or independent are left out of the caucus convention process.

There are main ways the process can be changed: the parties can become more inclusive through changes in their by-laws, the legislature can enact laws changing the system and citizens can put measures on the ballot by initiative petition.

### **An Overview of How US Political Parties Chose their Candidates.**

The Founding Fathers did not have mind the role of political parties when the Articles of Confederation and the Constitution were written. They soon developed. For the most part political parties are outside state statutes, i.e. states may provide the framework for elections but the parties control the candidate selection process.

States candidate selection processes can be viewed as falling somewhere between a "blanket primary" where all candidates regardless of the party affiliation or non affiliation are placed on one ballot, and a fully closed system where only registered members of the party can participate in a caucus or primary election. (Utah's Republican primary is fully closed.)

These processes also can be viewed on a continuum of political party control: Parties may have less power in a blanket, one ballot primary. Parties have more power in a caucus system because although more candidates can compete, they have to appeal to a smaller segment of the population (members of one party) to get on the ballot. Parties have the most power in a closed primary because they can limit who votes.

### ***What do other states do?***

Every state has its own specific candidate selection process.

In seven states including Utah, conventions play a significant role in the process. Five states hold primary elections to select state nominees but allow parties to have conventions for legislative offices. Thirty-eight states select their candidates in primary elections.

The National Association of Secretaries of State Voting and Democracy Research Center characterizes candidate selection as 26 states holding closed or semi-closed primary elections or caucuses, 17 states holding open or semi-open primaries or caucuses and 7 states using various kinds of primaries and caucuses.

### ***The Utah Candidate Selection Process***

In Utah the candidate selection process begins in March. Candidates must file for office between the second and third Friday of March. Then on the same evening later in March each party has its own local community meetings called caucuses or mass meetings. The original idea was that citizens meet in neighborhood (or precincts) to elect officers, discuss issues and the party platform, and then elect delegates to county conventions and state conventions who will choose candidates to run for office. Caucus systems were designed and implemented partially as a reaction to party bosses choosing candidates unresponsive to voters. Depending on the office, delegates to county and state conventions chose candidates and vote on a party platform. At the party convention (s) delegates cast their votes for candidates and those candidates who receive 60 percent of the votes avoid a run-off in the June primary and automatically go on the ballot in the November general election. Utah parties used to require a 70 per cent vote to avoid a primary.

Utah political parties have different rules for mass meeting participation and primary election voters. Only voters registered as Republicans can participate in both caucuses and primary elections (called closed primaries). Democrats have an open primary; that is, anyone can participate without registering as a Democrat. Utah is the last state to use a pure caucus/convention system. After state conventions the one or two candidates chosen by the delegates go on the primary ballot on the third Tuesday in June.

The caucus/convention system for choosing candidates has evolved so that in 2010 less than one per cent of the electorate was involved at the beginning of the process and .002 per cent was involved in actually choosing the candidate or candidates who were on the November ballot. Those delegates, the .002 per cent of the Utah electorate, are very engaged citizens. According to a poll conducted for the Utah Foundation and the Hinckley Institute of Politics, in 2010 Republican delegates were more conservative than the average Republican and unaffiliated voter and Democratic delegates were more liberal than the average Democratic and unaffiliated voter.

As the number of voters in each precinct has grown with population increase, the idea of neighbors meeting in a home to discuss issues, particularly in urban areas along the Wasatch front, is no longer practical. Utah Democrats have scheduled individual precincts in a larger meeting place for several years; the Republicans in Salt Lake County did the same in 2010.

A poll was conducted by Dan Jones and Associates for the *Deseret News* and KSL-TV on April 27-28, 2010 to measure voters' opinions on Utah's unique party candidate nominating process. Eighty-four percent of voters told Jones they were familiar with Utah's nomination system and 56 percent generally favored it. However, respondents had different opinions about some specifics of Utah's system. Fifty-eight percent disapproved of delegates being able to eliminate candidates at convention. Seventy-two percent "definitely" or "probably" preferred a direct primary election system. The issue was not partisan; a direct primary system was preferred by 63 percent of "strong Republicans," and 97 percent of "strong Democrats."

Supporters of the caucus system point to the fact that over 100,000 individuals were involved in mass meetings. They chose delegates who want to participate in government and are willing to spend the time involved in the process. They point out that everyone can participate in this system. As Lavarr Webb, Republican operative and member of the Governor's Commission writes, "No system is perfect, but ours is superior. If we want to provide a big advantage to rich people, famous people and incumbents, then switch to a direct primary system. An average person would then have little chance of being elected. It's true that our system rewards those who engage. What makes it fair is that everyone can engage." Supporters of caucus/convention also point out the important role of money in direct primary state elections.

Critics of the caucus/convention system say that because caucuses occur at a specific time on a specific date and there are no absentee ballots, people who are at work, ill, shut in, responsible for the care of others or out of town are effectively disfranchised. Information about delegates elected from these meetings is not readily available. There is no accountability, so participants are not likely to know how the delegates they elected performed at convention.

Some observers believe that in Utah special interest groups have essentially taken over the role of the old party bosses. It is easy for special interest groups to "stack" attendance at a precinct meeting. Party workers have noted that some participants come to a caucus representing a particular candidate, and then are never seen again. In a talk to the League's Town Club unit on August 17, 2010, University of Utah Hinckley Institute of Politics Director Kirk Jowers spoke of his experience as a potential state candidate. Political operatives explained to him if he had the support of five or six important interest groups, he could be assured of a successful campaign to be nominated at convention. He noted that much money is spent courting delegates to convention.

Utah women are under-represented in the convention delegate count. A survey of Utah voters and delegates to the

major party conventions, sponsored by the Utah Foundation, KSL Television and Radio, Deseret News, and the Hinckley Institute showed that women were under-represented as delegates. Only 25 per cent of the Republican delegates were women but 55 per cent of all voters are female.

The surveyed also showed distinct differences between party delegates and party voters. Delegates are more likely to take a more extreme position than voters. See the results at <http://utahfoundation.org/img/pdfs/rr692.pdf> It should be noted that the same criticism of extremism has been leveled at primary voters in states with direct primaries.

***Some recommendations and observations about changes to the candidate selection process:***

In an op-ed article in the *Salt Lake Tribune*, Kirk Jower's offers:

I support three simple reforms that allow us to keep the convention and benefit from our hardworking delegates while re-engaging and empowering Utahns. Utah's parties must (1) make primary elections more common and accessible by lowering the convention's current 40 percent vote threshold to 20 percent; (2) devote more resources to outreach and get exponentially more people involved in our caucus meetings; and (3) make the rules of the system less confusing and more consistently and transparently applied."

He urged citizens to contact their legislators. However, as one expert has pointed out, some legislators have a close relationship with delegates which would preclude them from reforming the system.

Up through the 1980s, it took 70 percent of the vote in convention to win the nomination and eliminate all intra-party challengers. But party leaders lowered that level to 60 percent. The legislature also moved back the primary date from September to June, allegedly to give more time for Republican candidates to campaign before the November election. Many have suggested that voter turnout is lower in June because voters are vacationing or not ready to think about the November election that early.

In another talk, Jowers suggested that a citizen initiative might be the only way to effect change in the candidate selection process.

***Choosing Candidates in Other States***

Thirty-eight states use some kind of direct primary process to choose candidates. That process does not necessarily mean that any better candidates are chosen. But closed primaries that allow only members of one party to vote mean that the independent or non affiliated voter may be locked out of the system.

With the 2010 election of incumbent U.S. Senator Lisa Murkowski in Alaska as a write candidate and the passage of *Proposition 14* in California, some observers have suggested that a new trend is emerging and independent voters have begun to assert some control over the selection process.

*Proposition 14* will change California's primary election system. It was approved in 2010 by 54.2 per cent of California voters. The proposition came from the Legislature, was supported by Governor Schwarzenegger and opposed by the political parties. Under the current system separate ballots are prepared for each political party. Voters chose candidates from their own party and the winners go on to the general election. Parties may allow unaffiliated voters to vote. California is one of 15 states operating their primary this way. A previous primary election law which permitted an open primary was declared unconstitutional by the Supreme Court on the grounds that it infringed on the rights of association of political parties by allowing non-party members to select party nominees.

Now, under Prop *14*, all candidates for an office will be put on the ballot and the top two vote-getters will go on the general election ballot regardless of party. It is possible that there may be two candidates from the same party or a person from one party and an independent or minority party on the ballot. Candidates have the option of adding a party preference to their name on the ballot. Partisan primaries will continue to exist for presidential candidates and party offices. Louisiana and Washington also use this type of primary.

Other states have used some form of a runoff system for their candidates in the primary. Utah Republicans use a runoff system at the convention for delegates to choose the two candidates for a primary. South Carolina elected a minority woman as Governor this year, who on the initial primary ballot had 43 per cent of the primary vote.

*What will Utah do?*

The question for Utah voters is: Do we want to change our system of nominating candidates? If so, how will the Utah legislature and the political parties respond?

### **Discussion and Consensus Questions**

#### **LWV Election Laws and Voter Participation Update**

1. What do you think are the primary reasons for Utah's poor voter participation?
2. How many mass meetings have you attended? What has been your experience? Have you been a delegate?
3. What role, if any, do Utah election laws play in voter participation? Which ones should be changed?\*
4. Examine the League's election positions. It should be noted that the reason the opposition to same day registration was removed was that the LWVUS had a position for, and ours was in opposition. What if any should be eliminated? \*
5. Does the current Utah candidate selection process work? What are the pros and cons of Utah's candidate selection process? What role does money play in your reasoning? How do the fifty per cent of Utah voters who claim themselves "unaffiliated" play into the process?
6. If you believe the current candidate selection process does not work, how would you change it? Should the League change its position on candidate selection? All of it? Part of it? \*

Position: *The 1985 study resulted in the position: "Candidate selection: "The League believes that mass meeting--convention--primary system should be retained. We believe that the state primary should take place in September. We are opposed to registration by party affiliation and to the institution of a presidential primary in Utah."*

*\* Consensus questions*

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[www.strengthenedemocracy.org](http://www.strengthenedemocracy.org)

## APPENDIX: LWV UTAH POSITIONS ON ELECTION LAWS AND PROCEDURES

### *LWV Position in Brief*

**The League supports fair and equitable election laws, liberal residency requirements for voting, fair reapportionment, year-round voter registration and a shorter election process.**

#### *History*

At its state convention in 1961, the League adopted review of Utah's election laws and procedures as part of its program. A two part study was done in 1962 and 1963 with an update in 1964. Consensus was reached and the League worked active for several years on the following issues:

1. Reapportionment – The 1972 Legislature reapportioned the Legislature and the State Board of Education, and the 1971 Legislature ordered City and County Commissions to reapportion local school boards.

Art. IX, Sec. 2, of the Utah Constitution, required a census be taken in Utah every ten years, beginning in 1905. Present officials believe that the requirement was intended at that time to coincide with the federal schedule of census-taking, but the federal census has always been taken on the decade year. The state law, which would therefore require a census every five years, has never been enforced nor has the legislature ever appropriated any money to do so. However, the requirement remains in the Constitution. The League has always supported firm, fair and equal reapportionment following each ten-year census.

2. Voting – Year-round voter registration at the County Clerk's office is now available, and there are also roving registrars. There are provisions for absentee registration by mail. If a voter has not voted in his district for four years, he is required to re-register.

Under rules set by federal court decisions, the time of residency in the state was reduced from six months to 30 days, and the requirement of 60 days residency in the county was eliminated. A proposed constitutional amendment on voting qualifications was put to Utah voters in November, 1976. Its purpose was to bring the Utah Constitution into conformity with federal law and actual practice in Utah. The League supported this.

3. There is no mandatory training for election officials but training is offered.

4. State and county party officials are now elected in odd-numbered years, and candidates are chosen in even-numbered years.

5. Annual Sessions – A constitutional amendment approved in 1968 provided for annual sessions of the legislature, in odd-numbered years a 60 day general session and in even-numbered years a 20 day budget session. In 1984, voters approved another amendment to set one 45 day general session each year.

6. State Board of Education – The 1972 Legislature provided for nomination of the State Board of Education by petition only and eliminated the nominating conventions. The number of signatures required on petitions was increased from 50 to 100 by the 1965 Legislature. Primary elections are now held for both state and local school board candidates.

In 1979, League convention elected to study election laws. Part I, Reapportionment, led to consensus in 1980 which supported a bipartisan commission.

*\*LWV Position on Election Laws and Procedures (1961 Study)*

1. *The League of Women Voters of Utah favors equitable apportionment to be arrived at automatically. We feel that the several states should take the responsibility for such equitable apportionment but that the Supreme Court of the United States should retain the right to declare such apportionment inequitable or decree suitable remedies if the states fail to act.*
2. *The League strongly supports year round centralized voter registration and suggests that voter registration information be more readily available. In order to implement our goal of uniformity of residence requirements for voter in all states, we urge support of the following recommendations of the President's Commission of Registration and Voting Participation, presented December, 1963:*
  - a) *Voter registration should be easily accessible to all citizens.*
  - b) *State residence requirements should not exceed six months.*
  - c) *Local residence requirements should not exceed 30 days.*
  - d) *New state residents should be allowed to vote for President.*
  - e) *No citizen's registration should be cancelled for failure to vote in any period less than four years.*
  - f) *States should provide absentee registration for voters who cannot register in person.*
3. *The League continues to urge adequate training for all election officials.*
4. *The League favors the present system which requires candidates to declare before mass meetings, but we urge even further shortening of the whole election process, local, state and national, in order to increase interest and citizen participation and to lower expenses. We approve the election of party officials in years other than those in which candidates for public office are chosen.*
5. *We approve an annual session of the legislature and an annual budget.*

*\*LWV Position on Election Laws and Procedures (1985)*

1. *Registration. The League of Women Voters of Utah supports the present registration system which provides a variety of ways for citizens to register to vote including:*
  - *in-person registration*
  - *by-mail registration*
  - *volunteer registration assistants*
  - *registration by interested organizations*
  - *registration days with paid registration agents*

*However, the League believes that the present systems could be improved in the following ways:*

*There should be more information about various methods of registration and location of by-mail registration forms.*

- *The registration form should be simplified.*
- *Consideration should be given to making registration days more effective by reducing the number of days, by centralizing registration locations or by other methods.*
- *Citizens should be able to register to vote when they apply for a driver's license.*

*At 1997 state Convention the following position was deleted:*

- *The League is opposed to registration on Election Day.*

2. *Campaign Finance.* The League of Women Voters of Utah believes that the public has a right to know the source of candidates' campaign funds. We believe that candidates for the Utah legislature should be required to file campaign financial statements both before and after the election. In addition, all candidates for county and municipal offices should be required to file financial statements. The League believes that Political Action Committees (PACs) should be required to register with the Lieutenant Governor's Office, to report their membership and to file financial statements.
3. *Candidate Selection.* The League of Women Voters believes that the mass meeting-convention-primary system should be retained. We believe that the state primary should take place in September. We are opposed to registration by party affiliation and to the institution of a presidential primary in Utah.
4. *Elections.* The League of Women Voters of Utah believes that there should be more public information about the location of polling places in Utah. We believe that training for election officials should be mandatory. We also believe that voting district size should be allowed to vary by county.

*\*LWV Position on Reapportionment and Redistricting (1980)*

*The basic criteria for reapportionment and redistricting are the standards of each citizen's right to vote, the equal value of each vote, and effective representation regardless of where that citizen resides.*

*Recommendations*

*The League supports meeting strict anti-gerrymandering standards including:*

- prompt judicial review*
- basic equality among districts*
- district lines that honor local political boundaries*
- district lines that are compact*
- district lines that are not drawn for the purpose of advantage or disadvantage of any political party, incumbent, or any person or group*
- lines that do not dilute voting strength of any minority*
- addresses of incumbents, political affiliation of registered voters, previous election returns, or demographic information other than population should not be used in redistricting.*

*The League supports establishing a bipartisan commission that would serve in an advisory capacity to the Legislature. The Legislature would approve a final plan that would be subject to approval by the courts.*

*The League supports an amendment to the Utah Constitution, Article IX, Sec. 1-4, to bring it into line with present practice, eliminating the unenforced five year census and subsequent reapportionment. The amendment would require balanced legislative districts, establish a bipartisan commission and set up guidelines supporting the one-person one-vote principle.*

Action on election laws should be based on LWVUS principles. (See Impact on Issues 1986-88.)