

# LWV Election Laws Update

## 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 presidential 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 federal 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 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. For example, the Utah Legislature in 2008 voted to participate in the Western States Presidential Primary. Utah's population has grown so that voting precincts now are at no more than 1250 active voters. The role of money in elections, always a concern to League members, has become more important. The internet as a source of registration and voter information was not even part of the process in 1985.

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? Do League positions, adopted many years ago, inhibit the League support of possible solutions to increase 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 filing 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: the individuals that 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 one 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 three 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 proposed laws on the general election ballot by initiative petition.

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

The Founding Fathers did not have in mind the role of political parties when the Articles of Confederation and the Constitution were written. But parties 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.

State candidate selection processes can be viewed as falling somewhere between a "blanket primary," where all candidates regardless of party affiliation or non-affiliation are placed on one ballot, and a fully closed system where only registered members of a party can participate in a caucus or primary election. (In Utah the 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 seven 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 later in March, all on the same evening, 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 choose 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 at convention 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 that can avoid primaries. 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 neither practical nor valid. Utah Democrats in Salt Lake County have combined 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 the 2010 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." Other 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 caucus 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 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 Republican delegates and 43 per cent of Democratic delegates were women, but 55 per cent of all voters surveyed were female. The survey 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-in 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.

California's *Proposition 14* will change that state's primary election system. It was approved in 2010 by 54.2 percent 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 *Proposition 14*, all candidates from all parties 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: Are we dissatisfied enough with the candidates the political parties chose to stand for election that we want to change our system of nominating candidates? If so, how will the Utah legislature and the political parties respond? The question for Utah League members are League election positions relevant for 2010 and beyond or do we want to change them?

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See also the materials and final report of the Governor's Commission on Strengthening Utah's Democracy at [www.strengthenedemocracy.org](http://www.strengthenedemocracy.org).

**Discussion and Consensus Questions**  
**LWV Election Laws and Voter Participation Update**  
January 2011

*Consensus questions are noted with an asterik.*

1. What do you think are the primary reasons for Utah's poor voter participation?
2. Examine the League's election positions. Are there any positions which you feel should be eliminated because of irrelevance? \*
3. Should the League change its position from the 1985 study, "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."\* If so, how? \*
4. What role, if any, do Utah election laws play in voter participation? Which ones should be changed\*
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 50 per cent of Utah voters who claim themselves "unaffiliated" play into the process? How might it be changed?