



Overview of Primary Election Laws

By Amanda King

In 2016, voters approved Proposition 107 and Proposition 108, which reestablished a presidential primary in Colorado and allowed unaffiliated voters to participate in political party primary elections. Subsequently, the General Assembly enacted Senate Bill 17-305, which made modifications to state law to implement these measures, and Senate Bill 18-233, which made additional changes to some of the provisions concerning unaffiliated voters voting in primary elections. The Secretary of State also promulgated rules to address changes to the primary election laws prior to the 2018 election cycle. This *issue brief* provides an overview of presidential primaries and participation by unaffiliated voters in primary elections.

Presidential Primaries

Following the passage of Referendum 2 in 1990, presidential primaries were held in Colorado between 1992 and 2000. In 2003, Senate Bill 03-188 eliminated presidential primary elections. From 2004 to 2016, Colorado's political parties selected delegates for nominating presidential candidates using the caucus system. Primary elections were still conducted for offices other than President (nonpresidential primary elections). In 2016, Proposition 107 recreated and reenacted state laws allowing for presidential primaries. With these changes, Colorado will hold a presidential primary election in 2020.

Primary date. By September 1 of the year before the presidential primary, the Governor, in consultation with the Secretary of State, must designate the date for the presidential primary.

The presidential primary must be held on a Tuesday no later than the third Tuesday in March in years that a presidential election will be held, but not earlier than allowed for in the national rules for the major political parties. Nonpresidential primary elections to select party nominees for state, county, and federal offices other than President are held on the last Tuesday in June in even-numbered years.

Candidates listed on ballots. No later than 85 days before the presidential primary, candidates wishing to appear on a presidential primary ballot must submit to the Secretary of State a notarized statement of intent along with either a nonrefundable \$500 filing fee or a petition signed by at least 5,000 eligible electors affiliated with the candidate's political party who reside in Colorado. Candidates for a presidential primary may circulate petitions between the first Monday in November of the year preceding the year in which the presidential primary election will be held and January 2 of the year of the presidential primary election. Any challenges to the listing of candidates on the presidential primary ballot must be made in writing with the district court no later than five days after the filing deadline for candidates.

Conduct of elections. Presidential primary elections will be conducted as mail ballot elections. No other issue may be included on the ballot. Political parties cannot use caucuses to allocate delegates to the national convention for selecting a presidential nominee, but may still hold caucuses to handle internal party business and, in some instances, select candidates for state, county, and federal offices other than President. The winner of

a party's presidential primary will receive all delegates to the national convention, and the delegates are bound to support the winner at the party's national convention.

Cost of election. The cost of the presidential primary election will be paid by the state and counties. Counties will be responsible for administering the presidential primary election, and they will be reimbursed for a portion of these costs by the state.

Unaffiliated Voters' Participation in Primaries

Unaffiliated voters, sometimes referred to as independent voters, are not registered members of any political party. An unaffiliated voter may affiliate with a political party at any point up to, and including election day, and be eligible to participate in a party's primary election. Prior to the passage of Proposition 108, a voter was required to be affiliated with a political party in order to vote in that party's primary election.

Primary ballots. With the passage of Proposition 108, voters are not required to affiliate with a political party in order to vote in primary elections. However, Senate Bill 17-305 allows that at the time of registration, a voter can indicate which political party's primary election ballot he or she would like to receive. Initially, Proposition 107 and Proposition 108 allowed for combined primary election ballots that listed the primary elections for all offices for both major parties. However, Senate Bill 17-305 and Senate Bill 18-233 removed the provisions related to use of combined primary elections ballots. Rather than receiving a combined primary elections ballot, all active voters who have not declared an affiliation or provided a ballot preference will receive a ballot packet from the county clerk and recorder that contains the ballots of all the major political parties for both presidential and nonpresidential primaries. In the ballot packet, the clerk will provide written instructions on selecting and casting a ballot of a

major political party. A voter may cast the ballot of only one major political party.

After selecting and casting a ballot of a single major political party, the voter will return the ballot to the clerk. If a voter casts and returns to the clerk the ballot of more than one major political party, all of those ballots returned by the voter will be rejected and will not be counted. County clerks must record in which political party's primary election the unaffiliated voter cast a ballot in the statewide voter registration system, often referred to as SCORE.

Opting out of primary elections. Political parties may opt out of holding a nonpresidential primary election that is open to unaffiliated voters. Instead, they may choose to nominate candidates in an assembly or convention that is limited to voters affiliated with that party. The decision to opt out of holding an open primary election must be made by October 1 of the year preceding the year in which an assembly or convention nominating process is to be used, and three-fourths of the party's state central committee must vote to use the assembly or convention nominating process.

Minor party participation. If a minor political party has more than one candidate for an office, the minor political party must conduct a primary election. However, minor political parties can prohibit unaffiliated voters from voting in the party's primary elections if the prohibition is in accordance with the party's constitution, bylaws, or other applicable rules. A minor party that chooses to prohibit unaffiliated votes from voting in its primary must notify the Secretary of State of the prohibition not less than 75 days prior to the primary election.

Additional information. For additional information about primary elections, please visit the Secretary of State's website: <http://www.sos.state.co.us/> or one of Colorado's 64 county clerks' office websites, which can be accessed through the following link: <http://www.clerkandrecorder.org/allcounties>.