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THE PRESIDENTIAL PRIMARY IN THE UNITED STATES

HIGHLIGHTS

1. The presidential primary is a twentieth century development which was part of the larger movement toward popular control of government, as illustrated by the initiative, referendum, recall, direct primary and direct election of U.S. Senators.
2. Wisconsin was the first state to pass a presidential primary law when it provided in 1905 for the direct election of delegates to the national party conventions.
3. At one time or another 26 states have had presidential primary laws, but in 8 states they have been repealed, one state recently re-enacting its law. The movement has spread to only 3 new states since 1916, but there has been agitation within the past year for a national presidential primary law.
4. Wisconsin has elected delegates to the national party conventions since 1905, and from 1911 to 1949 it had a presidential preference test.
5. The presidential primary laws are of 2 types: the presidential preference elections in which the voters can express a preference for a candidate for the party's presidential nomination; and delegate election laws in which the electors choose all or part of the state's delegates to the national conventions.
6. At present 19 states have some form of presidential primary, or a combination of the 2 forms. 2 states hold only a preferential election, 8 states hold only elections of convention delegates, and 9 have both forms.
7. The presidential primary, like all other primaries, is by nature partisan. 16 of the states having presidential primaries also have "closed primary" laws to insure that only members of the party will participate in the presidential primary. Minnesota, South Dakota and Wisconsin have open primaries.
8. In 1952 only 17 states held presidential primaries. Arkansas and Georgia, whose laws permit party options, held no presidential primaries. The total number of votes that these 17 states represent in the Democratic and Republican conventions is slightly less than one-half the total vote. (See Table VIII)
9. The content of the primary laws varies from substantial explicitness, as in the case of Wisconsin, to very broad and sketchy laws which must be supplemented by administrative regulation and party decisions. Many of the state laws do not expressly treat such problems as write-in votes and the consent of the presidential candidate to have his name used.
10. The complexity and variety of the state presidential primary laws is so great as to preclude any brief generalizations about them. A diagrammatic chart of their main features will be found in Tables I to IV.

THE PRESIDENTIAL PRIMARY IN THE UNITED STATES*

HISTORICAL BACKGROUND**

The movement for presidential primaries arose shortly after the turn of the century as a part of the larger, more general trend toward a more direct kind of democracy. This development sought to give the voters a greater direct control of the processes of government. Among other reforms, this period saw the introduction of the initiative, recall, referendum, the direct primary and the direct election of U.S. Senators--all with an eye to greater control of government by the people. This same objective motivated the support of the presidential primary.

In the period 1905 to 1915, 2 methods were proposed to give the people a more effective control of the presidential nominating process: a popular preference vote on presidential aspirants and the direct election of delegates to the national party conventions. Wisconsin's 1905 law requiring the direct election of delegates to the party conventions was the first presidential primary law of either sort. Oregon in 1910 passed the first law providing for a preference vote on candidates for the presidency.

The growing trend to some type or combination of presidential primary was given great impetus by the Taft-Roosevelt split of 1912 in the Republican Party. But just as a lively contest spurred the movement, the absence of one in 1916 proved nearly fatal to the movement. There was no contest in the Democratic Party because of President Wilson's certain renomination, and in the Republican Party the 2 important candidates, Hughes and Roosevelt, refused to enter the primaries. The failure of the presidential primary in 1916 stopped further expansion of the movement. Although 8 states have repealed their presidential primary laws since 1916, 2 states have adopted the practice since then--Alabama in 1923 and Arkansas in 1939. Minnesota re-enacted its law in 1949, 32 years after its repeal in 1917.

The 1944 and 1948 pre-convention maneuvering of the favorite candidates did much to revive public interest in the presidential primary. In 1944, the defeat that Wendell Willkie suffered in the Wisconsin primary persuaded him to withdraw from consideration. Again in 1948 the opposing claims for nomination of Governor Dewey and Harold Stassen were settled at least in part in the presidential primaries, especially in the crucial Oregon vote. Again in 1952 the presidential primaries have resumed their role as arenas in which contending candidates seek public favor. This recent revival of the presidential primary has had the effect of causing numerous revisions in the states already having presidential primaries. Only Minnesota has installed the primary itself.⁽¹⁾

In January 1952 the question of presidential primaries shifted to the national level with the federal proposal for a nationwide presidential preference primary by Senator Paul Douglas of Illinois and Rep. Charles Bennett of Florida. Their primary would not bind the delegates from the states. They also suggest that the plan be administered by the U.S. Justice Department, which would work out agreements with the states to hold primaries in the states not now

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** Footnotes appear at end of the text.

holding them.

At the same time, Senator Smathers of Florida introduced a joint resolution proposing a constitutional amendment by which a compulsory primary would be held in each state in all major parties. The national party conventions would be retained, with each state allowed a vote in each convention equal to its electoral vote. Delegates from the states would be pledged proportionately to the winner or winners in their state. That is, if 2 candidates in a state obtained 70 and 30 percent of the votes, they would also share the pledged delegates in the same ratio.

Neither plan has to this time progressed very far in Congress. The Senate Rules Committee sent the Douglas-Bennett plan to the Governors for their advice and counsel. The Smathers plan received little attention, and Smathers eventually endorsed the Douglas-Bennett proposal.

WISCONSIN EXPERIENCE

The 1905 Wisconsin statute merely provided that on the first Tuesday of April the voters of Wisconsin would elect delegates to the national conventions "in the same manner that elections of judges of the supreme and circuit courts are noticed, held and conducted."⁽²⁾ The 4 candidates for delegate-at-large who received the largest number of votes were elected, and the 4 candidates receiving the 5th, 6th, 7th and 8th largest vote totals were to be the alternates. The same principle applied also to the 2 delegates and 2 alternates chosen from each congressional district. Prospective delegates filed nomination papers in the same manner as nominees for other positions and stated no preference either on the nomination papers or the ballot for any presidential candidate. (See Table No. V for facsimile of 1908 ballot)

The first substantial amendment⁽³⁾ to the Wisconsin presidential primary law was made in 1911 with the introduction of a preference vote on presidential and vice-presidential aspirants "for the purpose of enabling every voter to express his choice for the nomination of candidates for president and vice-president of the United States."⁽⁴⁾ The names of presidential candidates were placed on the ballot after the required number of voters petitioned the Secretary of State. The statute specifically stated that "no signature, statement, or consent shall be required to be filed by any such candidate."⁽⁵⁾ It, however, said nothing as to whether the results of the presidential preference ballot would bind or commit the delegates elected at the same time. In other words, the statute provided no link between the 2 sections of the presidential primary, the preferential ballot and the election of delegates. They existed separately and with no particular effect on each other.

That link was provided one year later in 1912 when the legislature stated that "the nomination papers and ballot for any delegate may contain a statement of the principles or candidates favored by such candidate for delegate."⁽⁶⁾ The statement was to follow the delegate's name and be expressed in not more than 5 words.

The legislature made its final alteration of this period in 1915 when it provided that alternate delegates were to be chosen by the state central committee of each party. The new provision replaced the old method of awarding alternate positions to candidates who placed just behind the winners.⁽⁷⁾ At the same time the legislature clarified the ballot form that had been in use since 1912. (See Table No. VI for facsimile of ballot of 1912)

No changes of major stature were made in the Wisconsin presidential primary law from 1915 to 1949; in the interim only minor changes were made in 1933.⁽⁸⁾ General dissatisfaction with the 1948 primary was so great as to cause revisions in the next legislative session. At that time candidates for delegates were listed on the ballot without any regard to whom they were pledged, instead of being grouped by presidential candidate to whom they were pledged. The result was to force the voter to search through a long list of candidates in order to find those pledged to the presidential candidate he favored. Often in his haste and confusion he failed to vote for a full slate or neglected to vote for the district delegates. The result also was to encourage voting for the first names on the list, it was argued, and to put a premium on the personal popularity of the delegate rather than the presidential candidate.

As a first step the legislature abolished the preferential balloting for presidential and vice-presidential aspirants. It then reconstructed the ballot form to provide for the grouping of delegates under the name of the presidential candidate whom they favor. The amendments also limited the number of delegates under a candidate's name to the number of delegates to be elected. The delegates could earn places on the ballot either by filing nomination papers in the usual manner, or by being on a certified slate of candidates entered by the presidential candidate. For those delegate candidates not favoring any presidential candidate, the law provided that they might "have principles expressed in not more than five words, and such principles shall be printed underneath their name on the ballot in the uninstructed column".⁽⁹⁾ (See Table No. VII for facsimile of 1952 ballot)

The 1949 law also made another major amendment to the presidential primary statutes. At the time that a proposed presidential candidate enters a slate of delegates pledged to him, the law states, "he shall also file a sworn affidavit stating that he intends to become a candidate for the presidential nomination at the national convention for which the delegates are being selected".⁽¹⁰⁾ In the event that the candidate does not file a slate, delegates pledged to him will not appear on the ballot unless the proposed candidate files an affidavit declaring his intention to be a candidate. The amendment made more difficult "trial balloon" candidacies, which might help an undecided candidate decide whether to avow his intentions.

Thirdly, the amending law of 1949 required an elected delegate to sign a pledge form in which he states that he

"will, until released by said candidate, vote for his candidacy on the first ballot of the said party convention

and vote for his candidacy on all ensuing ballots, provided, however, that if on any ballot said candidate shall receive less than ten per cent of the total vote cast on such ballot, I am released from this pledge and shall thereafter have the right to cast my ballot according to my own judgment."⁽¹¹⁾

This section arose at least in part from the events of the 1948 Republican convention, in which several members of the Wisconsin delegation switched on the second ballot from the candidate of their pledged choice to another.

The statutory requirements for the consent of the presidential candidate were relaxed in 1951 legislation. No longer does the candidate have to avow his intention to become a candidate for the presidential nomination. The law merely requires now that the presidential candidate to whom delegates are pledged file "a certificate permitting the use of his name on said ballot".⁽¹²⁾ Also added to the presidential primary election law was a section providing that a slate of delegates entered by the presidential candidate himself was to take preference over delegates filing nomination papers to win a place on the ballot.

TYPES OF PRESIDENTIAL PRIMARIES

In setting up presidential primaries the states have employed 2 main elements to give their voters a voice in the nomination of national presidential candidates. The first of these, variously called the "presidential preference ballot" or the "presidential poll", consists in placing the names of potential presidential candidates on the ballots for the voters to state their preference. The second, and more typical, device is the direct election of delegates to the various national party conventions. The presidential primary, as it exists in the states at present, may consist either of one element or the other, or of some combination or variation of the 2 elements.

At present 19 states have some form of presidential primary. In 15 of the states the presidential primary is mandatory for the 2 major parties; those states are California, Illinois, Maryland, Massachusetts, Minnesota, Nebraska, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, South Dakota, West Virginia and Wisconsin. In Alabama and Georgia the parties may decide to hold a primary to elect delegates if they wish; Alabama in particular has a constitutional provision expressly forbidding compulsory primaries. Arkansas also has an optional primary, in that it will hold a presidential preference vote only if it is petitioned to do so by some presidential candidate. Finally, Florida requires a compulsory primary only for those parties that received more than 20 percent of the vote cast in the last gubernatorial election. As a result in 1952 only the Democratic Party held a presidential primary in Florida. Therefore, of the 4 optional states only Alabama and Florida held presidential primaries in 1952. The great majority of states that have no presidential primary for the election of delegates to national party conventions, provide that delegates be chosen by state party conventions, by state caucuses or by state executive committees of the parties.

The primary election is by its nature partisan in character; that is to say, it exists to make choices within a party rather than between parties. The presidential primary is no exception. It allows the party members to choose delegates the party will send to its national convention, or to express preference for the various aspirants for the presidency within the party.

As such an instrument of party choice, the efficient operation of the presidential primary depends to some extent on the assurance that it will be used only by party adherents. Of the 19 states with presidential primaries only Minnesota, South Dakota and Wisconsin have "open primaries", in which there is no test or check to see that only members of the party are voting. The remaining 16 states have "closed primaries", in which the voter must establish that he is a member or adherent of the party in whose primary he is voting. Nebraska, however, provides that its primaries shall be open in areas having populations under 4,000.

Basically, the various types of presidential primaries may be broken into 3 types: those holding only elections for delegates to the conventions, those holding only presidential preference races and those combining the 2 forms in some manner.

1. States Electing Delegates. The states that elect delegates to the national convention typically elect 2 from each congressional district and the remainder from the state at large. There are states, however, that elect only part of the delegates at their presidential primaries. These will be discussed shortly.

Of these states whose presidential primary consists only in the election of delegates to the conventions, 3 make no provision for these delegate candidates to pledge themselves to any presidential candidate. In these 3 states, Alabama, Georgia and New York, the voter chooses the delegates without any indication on the ballot as to which candidate he favors. There is, however, nothing to prevent the delegates making their inclinations known through campaigning and the newspapers. In New York, also, the voters elect only the district delegates from the congressional districts; the delegates at large and their alternates being chosen by the state party committee or a state party convention.

5 states allow the delegate candidates to pledge themselves to presidential candidates on the ballot of the presidential primary: California, Minnesota, Ohio, South Dakota and Wisconsin. In some of these states the presidential candidates involved must assent to having their names used by delegates, but some require no consent. In all of these states, except Minnesota, the electorate chooses all of the delegates to the respective conventions; Minnesota allows 3 delegates at large to be chosen by the state party convention.

The names of the candidates for delegate positions appear on the ballot in all but one of these 8 states, 3 making no provision for pledged delegates and 5 permitting pledges. California is the exception. It prints only the names of the presidential candidates to whom the delegates are pledged, telling the voter that a vote for the candidate is in reality a vote for the certified slate of delegates

pledged to him. So, although this primary is technically an election of delegates to the national conventions, it blends almost imperceptibly into the second type of presidential primary, the preference primary among presidential candidates.

2. States Holding a Preference Primary. Only 2 states, Arkansas and Maryland, hold preferential tests without at the same time electing delegates to the party conventions. In Maryland the delegates are chosen by state party conventions, and in Arkansas the state party committees select them. Both states declare that the delegates chosen are to be bound by the results of the preferential primary.

3. States Holding Preference Primary and Electing Delegates. The 9 states that combine the 2 forms of presidential primary in some manner are Florida, Illinois, Massachusetts, Nebraska, New Hampshire, New Jersey, Oregon, Pennsylvania and West Virginia. Of these states, Nebraska and Oregon bind the elected delegates to the support of the winner of the presidential preference ballot; Nebraska claims that the results are to be "morally binding".⁽¹³⁾ Pennsylvania also permits the delegates to pledge on the ballot that they will be bound by the results of the preferential vote.

Of the states that do not bind the delegates to the preference results (Florida, Illinois, Massachusetts, New Hampshire, New Jersey, West Virginia), the delegates in Massachusetts and New Hampshire may pledge themselves on the ballot to a presidential candidate if they wish. Delegate candidates in Illinois and West Virginia are not pledged to any presidential candidate although their preference may be known unofficially.

In 7 of these states the total number of delegates are elected. Illinois, however, elects only the district delegates and alternates, leaving the delegates and alternates at large to be selected by the state party conventions. Pennsylvania also allows the parties the option of electing the delegates at large.

To summarize, of the 19 states with presidential primaries there are 11 states that hold preferential polls on prospective presidential candidates and 17 that elect their delegates to the national conventions. In 1952 only 17 states held presidential primaries, with none being held in Arkansas or Georgia. Only the Democratic Party participated in the Alabama and Florida primaries.

With this broad, structural outline of the main types of presidential primaries as a foundation for more specific development, characteristics of the preference polls and then characteristics of the election of delegates will be discussed.

CHARACTERISTICS OF PREFERENTIAL PRIMARIES

The 11 states holding presidential preference primaries are: Arkansas, Florida, Illinois, Maryland, Massachusetts, Nebraska, New Hampshire, New Jersey, Oregon, Pennsylvania and West Virginia. These preference tests are mandatory in all except Arkansas and Florida.

1. Date of Primary. The dates of the preferential primaries vary in the different states. New Hampshire holds the first one, the date being the second Tuesday in March. Nebraska follows on the first Tuesday of April, and the primaries continue through April and May to the final one held in Oregon on the third Friday in May. Arkansas alone sets no specific date, providing only that "such election shall be held not less than two months prior to the affected political party's quadriennial national convention...".(14)

2. Access to Ballot. The traditional method of getting on a ballot--by petition--is generally followed in the preference primaries, but with minor variations. In Arkansas, Maryland and West Virginia it suffices for the presidential candidate merely to file a certificate of candidacy with state authorities in order to get on the ballot. Illinois requires that the candidate include with his declaration of candidacy a petition signed by between 3,000 and 5,000 primary electors of his party. Oregon gives the candidate the option of submitting a petition signed by 1,000 of his supporters in addition to his statement of candidacy; if he submits no petition, however, the chairman and secretary of the state committee of his party must certify that his candidacy is advocated generally throughout the U.S.

In Florida, Nebraska, New Hampshire, New Jersey and Pennsylvania the candidate himself does not file any statement of candidacy. These states provide that his name shall be printed on the primary ballot solely on the petition of his supporters within the state; for example, 50 from each congressional district in the state in New Hampshire, 100 from each district in Nebraska. Since no names are printed on the Massachusetts ballot, there is no question of access to the ballot. The Massachusetts voter is free to insert any name whatsoever in the blank rectangle beneath the legend, "My preference for (party name here) candidate for president of the United States

is "(15)

3. Consent of Candidate. This question of the necessity for the presidential candidate to consent to the placing of his name on the ballot is closely tied up with the previous question of access to the ballot. In those 5 states which require the candidate himself to submit statements of candidacy (Arkansas, Illinois, Maryland, Oregon and West Virginia), it may be assumed that the candidate's consent has been given. Nebraska specifically requires a statement of consent.

New Hampshire requires that the Secretary of State notify all presidential candidates that their names have been entered in the state's preferential test. Unless the candidate withdraws his name within 10 days after the receipt of this notice, his name will appear on the ballot. The result is that New Hampshire does not require the positive consent of the candidate, but protects him against the use of his name against his will. New Jersey also requires no consent, but allows the candidate to withdraw if he wishes. There is again no problem of consent in Massachusetts because of the unique type of ballot used there. In the Pennsylvania laws no provision is made for

the consent of the candidate; they state that his name shall appear on the ballot on the petition of his political supporters. Florida specifies that no presidential candidate "shall be required to file any oath or declaration" in order to win a place on the ballot.(16)

4. Binding or Advisory? Once the state voters have registered their preferences among the presidential candidates, are the results to be binding on the delegates from that state to the national conventions? 3 states specifically state that the delegates are to be bound by the preferential results: Arkansas, Maryland and Oregon. In Oregon the delegate pledges his "best efforts to bring about the nomination" of the preferential winners.(17) Maryland statutes require that delegates to the state party convention follow the results of the primary in instructing the delegates it chooses. Arkansas requires its delegates to cast their vote as a unit for the preferential winner unless the candidate withdraws, or unless "according to the best judgment of two-thirds of the delegates after arrival at the convention, (the candidate) be so lacking in other support that his nomination is impossible and that to cast the vote of the delegation for him would be futile and contrary to the best interests of this state".(18)

On the other hand, Illinois, New Hampshire and New Jersey laws specifically state that the results are to be purely advisory as far as the delegates are concerned. Pennsylvania delegates may if they wish bind themselves to support the winner of the preferential vote and promise to "use all honorable means"(19) to achieve his nomination. The delegate ballot states under each delegate's name whether or not he will support the winner of the preferential test. Nebraska states that the presidential results are to be only morally binding on the delegates, and not legally binding. Florida, Massachusetts and West Virginia statutes are silent on this subject but the results of their preferential primaries are considered only advisory.(20)

5. Ballot Form. In most of the preferential primary states the ballot permits only a preference to be shown among presidential candidates. In Nebraska and Oregon, however, voters show their preference for both presidential and vice-presidential candidates. Nebraska also makes ballot provision for the voters to show a first and a second choice. The general ballot form lists the candidates vertically under a heading that indicates that the voter is expressing his preference among the party's potential nominees. Maryland alone gives its voters a chance to vote in favor of an uninstructed delegation rather than for any presidential candidate.

6. Write-In Votes. Among the states holding preferential elections only 3 apparently do not permit write-in votes, Florida, Maryland and West Virginia. None of the 3 states have statutory provisions forbidding write-ins, but newspaper accounts of the 1952 primaries indicate they are not allowed. Of the remaining states holding preference tests, only Pennsylvania does not have a specific statutory clause permitting write-ins. Illinois, Nebraska, New Hampshire and Oregon all grant statutory approval. The nature of the preference primary in Massachusetts makes it completely dependent on write-in votes. Pennsylvania has no laws covering the subject, but recent practice indicates that write-ins are counted. Since Arkansas has

not had a preference primary within recent years, there is no indication of its attitude toward written-in votes. Its statutes have nothing specific to say on the question.

CHARACTERISTICS OF DELEGATE ELECTIONS

The 17 states that elect delegates to the national conventions, either in connection with a preferential primary or alone, are: Alabama, California, Florida, Georgia, Illinois, Massachusetts, Minnesota, Nebraska, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, South Dakota, West Virginia and Wisconsin. In Alabama, Florida and Georgia the primary is left to the option of the party; in 1952 no election of delegates was held in Georgia.

1. Number of Delegates Chosen. The number of delegates each state is entitled to send to the national party conventions is set by the parties themselves. However, not all of the states electing delegates elect all of the delegates that the state will send to the conventions. In Illinois the 2 delegates from each congressional district are elected, but the state party convention chooses delegates and alternates at large. New York leaves the selection of delegates and alternates at large to the state party convention or state party committee. In Minnesota 3 delegates at large are chosen by the state convention of each party. Finally, Pennsylvania provides that delegates at large shall be elected, "unless the rules of the State committee of a particular party authorize the election of its delegates at large or alternates at large by the State committee of such political party at a regular meeting or at a special meeting called for the purpose". (21)

2. Date of Election. For those states that have the presidential preference elections, the election of delegates takes place on the same date. For those states that have no preferential vote, the election dates cover the same general time period as the states that have the preference test. They range from Minnesota's primary on the third Tuesday in March to California and South Dakota primaries on the first Tuesday in June. Wisconsin holds its primary on the first Tuesday in April. Georgia leaves the setting of the date to the parties choosing to hold primaries. Of the states holding both preference tests and electing delegates, only Florida does not hold both parts of the primary on the same day. It elects its delegates on the fourth Tuesday after the first Monday in May.

3. Access to Ballot. Candidates for election as delegates typically get their names on the ballot by filing petitions signed by a specified number of voters, and by fulfilling the usual requirements as any other candidate would. A few states, such as Wisconsin, allow a presidential candidate to file a slate of delegates, in which case the delegate candidate need not file his own petition.

4. Pledging Delegates. Of the 17 states that elect delegates to the conventions, 5 (Illinois, Nebraska, New York, Pennsylvania and West Virginia) do not allow their delegates to pledge themselves to the support of any presidential candidate. Alabama and Georgia leave this matter, along with the regulation of virtually the entire

presidential primary, to the parties to decide. The remaining 10 states permit their candidates for delegate positions to identify themselves in some manner with a presidential candidate.

5. Methods of Pledging. Generally, candidates for delegate positions express their pledges to presidential candidates in one of 2 ways, either by grouping their names under the candidate's name on the ballot, or by having their pledges stated immediately after their own names on the ballot. The difference depends essentially on whether the ballot form lists the delegates pledged to a candidate under that candidate's name (as in Wisconsin), or whether it lists the delegates in one long list without regard to whom they favor.

The first method, that of grouping the delegates preferring the same presidential candidate under that candidate's name, is typified by Wisconsin practice. A full slate of delegates is presented for the easy recognition of voters in this manner. This grouping is found also in California, Minnesota, New Jersey and South Dakota. Grouping is optional in New Jersey. And in California grouping is so complete that the names of the delegate candidates do not appear on the ballot. The voter is merely informed that a vote for the presidential candidate automatically elects the slate of delegates pledged to him.

The majority of states allowing pledged delegates permit the delegates to state after or immediately below their names the presidential candidates to whom they are pledged. In Oregon, for instance, the delegate is allowed a maximum of 12 words in which to state on the ballot the candidate or principles he favors. Florida and Massachusetts state simply that the name of the candidate to whom the delegate is pledged shall be printed in small type following his name. Ohio requires that the delegate state both his first and second choice for his party's nomination for the presidency. In New Hampshire the delegate may choose to state his pledge in either of 2 prescribed ways: "I am favorable to the nomination of _____ for president." or "Pledged to vote for the nomination of _____ for president".(22)

6. Consent of Presidential Candidates. The 7 states allowing pledged delegates explicitly require that the presidential candidate must assent to having delegates pledged to himself. Wisconsin is typical of these states that require that the candidate file an affidavit of candidacy before delegates may use his name on the ballot. Massachusetts, New Jersey, Ohio and South Dakota laws are similar. New Hampshire, which permits its delegates to say either that they "favor" a candidate or that they are "pledged" to one, requires the consent of the presidential candidate only in the second instance. In California, which also requires consent, the endorsement of the delegate may be given either by the candidate or by "a State campaign committee which has not been repudiated by him as lacking authority to make the endorsement".(23)

On the other hand, the Minnesota law states that "consent of the individual to have his name filed as a candidate for president shall not be required...".(24) But if the Secretary of State receives an affidavit from the candidate "stating that he is not a candidate

FOOTNOTES

- (1) This historical material can be found at greater length in the Minnesota Legislative Research Committee, Popular Control of the Presidential Nominating Process, publication no. 22, December 1948. See also Louise Overacker, The Presidential Primary.
- (2) Wis. Laws, 1905, ch. 369, secs. 1 and 2.
- (3) Minor changes were made by Wis. Laws, 1907, ch. 512, and Wis. Laws, 1909, ch. 483.
- (4) Wis. Laws, 1911, ch. 300, sec. 3.
- (5) Same.
- (6) Wis. Laws, 1912, ch. 22, sec. 2.
- (7) Wis. Laws, 1915, ch. 92.
- (8) Wis. Laws, 1933, ch. 139, secs. 1-4.
- (9) Wis. Laws, 1949, ch. 406, secs. 1-2.
- (10) Same.
- (11) Same, sec. 3.
- (12) Wis. Laws, 1951, ch. 689, secs. 1-3.
- (13) See annotation under sec. 32-1112 of Revised Statutes of Nebraska, 1943.
- (14) Arkansas Statutes, 1947, sec. 3-303.
- (15) Massachusetts Annotated Laws, 1945, ch. 53, sec. 70E.
- (16) Florida Laws, 1943, ch. 22058. Not codified later and not repealed.
- (17) Oregon Comp. Laws Annotated, 1940, sec. 81-503.
- (18) Arkansas Statutes, 1947, sec. 3-304.
- (19) Penn. Purdon's Statutes Annotated, 1938, sec. 2871.
- (20) According to contemporary reports in the New York Times.
- (21) Penn. Purdon's Statutes Annotated, 1938, sec. 2838, as amended in the 1951 Supplement.
- (22) N.H. Rev. Laws, 1942, ch. 38, sec. 6, as amended by Laws, 1949, ch. 56, sec. 1.
- (23) California Election Code, 1939, sec. 2203.
- (24) Minnesota Statutes, 1949, sec. 202.44 (1).
- (25) Same, sec. 202.49 (2).
- (26) Same, sec. 202.47 (e).
- (27) California Election Code, 1939, sec. 2304, as amended in the 1941 Supplement.

CITATIONS TO STATE STATUTES CONSULTED

1. Alabama Code, 1940, title 17, sec. 372.
2. Arkansas Statutes, 1947, secs. 3-301 to 3-304.
3. California Election Code, 1939, secs. 25, 2101, 2110, 2200, 2203, 2205, 2304, 2353, 3871, 3880, as amended in the 1941 Supp. to the Code. See also California Statutes, 1947, ch. 420, sec. 1.
4. Florida Statutes, 1951, secs. 99.102, 100.061, 100.091, 103.101. See also Laws, 1943, ch. 22058.
5. Georgia Code, secs. 34-3201, 34-3203, 34-3209, 34-3210.
6. Illinois Rev. Statutes, 1945, ch. 46, secs. 7-1, 7-2, 7-5, 7-9, 7-11, 7-12, 7-19, 7-59. See also Laws of Illinois, 1947, p. 893.
7. Maryland Annotated Code, 1939, art. 33, secs. 45(3), 45(4), 45(5), 45(6), 45(7), 45(10), 46. See also Laws of Maryland, 1945, ch. 934.
8. Massachusetts Annotated Laws, 1945, ch. 53, secs. 28, 70B, 70E, as amended in the 1951 Cumulative Supp.
9. Minnesota Statutes, 1949, secs. 202.41, 202.43 (1), 202.44 (1), 202.45, 202.46, 202.47, 202.49 (2), 202.49 (3), 202.50.
10. Nebraska Revised Statutes, 1943, secs. 32-1109, 32-1112, 32-1113, 32-1116, 32-1117, 32-1122, 32-1124, 32-1127, as amended in the 1947 Cumulative Supp. See also Laws, 1949, ch. 85, Laws, 1951, ch. 32.
11. New Hampshire Revised Laws, 1942, ch. 38, secs. 1, 5, 6, 7. See also Laws, 1949, ch. 56 and 186.
12. New Jersey Revised Statutes, 1937, title 19, ch. 24, secs. 1, 3, 4, 5. See also Laws, 1944, ch. 8, sec. 1; Laws, 1948, ch. 2, sec. 27, Laws, 1952, ch. 2.
13. New York Thompson's Laws, 1939: Election Law, secs. 21, 108(5), 108(6), 191(1). See also Laws, 1940, ch. 664.
14. Ohio General Code Annotated, 1945, secs. 4785-69, 4785-70, 4785-71, 4785-72, 4785-75, as amended in 1951 Cumulative Supp.
15. Oregon Compiled Laws Annotated, 1940, secs. 81-306, 81-503, 81-506, 81-1102, 81-1105, 81-1106, 81-1107, as amended in 1947 Supp.
16. Pennsylvania Purdon's Statutes Annotated, 1938, title 25, secs. 2753, 2838, 2839, 2867, 2871, 2872, 2873, as amended in 1951 Supp.
17. South Dakota Code, 1939, title 16, secs. 16.0202, 16.0209, 16.0210, 16.0211, 16.0215. See also Laws, 1945, ch. 75.
18. West Virginia Code, 1949, secs. 64, 66, 67, 69, 75, as amended in the 1951 Supp.
19. Wisconsin Statutes, 1951, secs. 5.37, 5.38, 5.39.

Table I. General Data on Presidential Preference and Primary Elections.

state	preference balloting	elect delegates	mandatory or optional	date	held in 1952?
Alabama	no	yes	option left to parties	left to party decision	only for Dem. party
Arkansas	yes	no	held only if a candidate asks	at least 2 mo. before convention	no
California	no	yes	mandatory	1st Tues. in June	yes
Florida	yes	yes	mandatory for parties with 20% gov. vote pref. vote optional	pref. vote 1st Tues. after 1st Mon. in May; elect delegates 4th Tues. after 1st Mon. in May	only for Dem. party
Georgia	no	yes	option left to parties	left to party decision	no
Illinois	yes	yes	mandatory	2nd Tues. in April	yes
Maryland	yes	no	mandatory	1st Mon. in May	yes
Massachusetts	yes	yes	mandatory	last Tues. in April	yes
Minnesota	no	yes	mandatory	3rd Tues. in March	yes
Nebraska	yes	yes	mandatory	1st Tues. in April	yes
New Hampshire	yes	yes	mandatory	2nd Tues. in March	yes
New Jersey	yes	yes	mandatory	3rd Tues. in April	yes
New York	no	yes	mandatory	1st Tues. in April	yes
Ohio	no	yes	mandatory	1st Tues. after 1st Mon. in May	yes
Oregon	yes	yes	mandatory	3rd Friday in May	yes
Pennsylvania	yes	yes	mandatory	4th Tues. in April	yes
South Dakota	no	yes	mandatory	1st Tues. in June	yes
West Virginia	yes	yes	mandatory	2nd Tues. in May	yes
Wisconsin	no	yes	mandatory	1st Tues. in April	yes

Table II. Data on Presidential Preference Elections.

state	access to ballot	consent of candidate	are results binding on delegates	ballot form	write-in vote
Ala.	---	---	---	---	---
Ark.	declaration of candidacy by candidate	required	binding	presidential preference only	uncertain
Cal.	---	---	---	---	---
Fla.	petition of supporters	not required	advisory	presidential preference only	not counted
Ga.	---	---	---	---	---
Ill.	declaration of candidacy plus petition	required	advisory	presidential preference only	counted
Md.	declaration of candidacy	required	binding	pres. preference; may also vote for uninstructed del.	not counted
Mass.	no names on ballot; all write-ins	no problem; no names on ballot	advisory	presidential preference only	counted; is only type of vote cast
Minn.	---	---	---	---	---
Nebr.	petition of supporters	required	advisory	1st and 2nd choices for pres. and vice-pres.	counted
N.H.	petition of supporters	not required but may withdraw	advisory	presidential preference only	counted
N.J.	petition of supporters	not required but may withdraw	advisory	presidential preference only	uncertain
N.Y.	---	---	---	---	---
Ohio	---	---	---	---	---
Ore.	either declaration or petition	required	binding	preference for pres. and vice-pres.	counted
Pa.	petition of supporters	not required	delegates may choose in advance to bind selves	presidential preference only	counted
S.D.	---	---	---	---	---
W. Va.	declaration of candidacy	required	advisory	presidential preference only	not counted
Wis.	---	---	---	---	---

Table III. Data on Election of Convention Delegates.

state	are all delegates elected?	how chosen?	access to ballot	may delegates pledge selves?	methods of pledging
Ala.	yes	all elected	petition	question left to parties	question left to parties
Ark.	---	---	---	---	---
Cal.	yes	all elected	petition	yes	delegates grouped under name of candidate they support
Fla.	yes	all elected	petition	yes	pledge printed after delegate's name on ballot
Ga.	yes	all elected	petition	question left to parties	question left to parties
Ill.	all except delegates at large	state party conventions choose others	petition	no	cannot pledge
Md.	---	---	---	---	---
Mass.	yes	all elected	petition	yes	pledge printed after delegate's name on ballot
Minn.	all except 3 dels. at large	state party conventions choose others	affidavit of candidate or by petition	yes	grouped under candidate's name
Nebr.	yes	all elected	petition	no	cannot pledge
N.H.	yes	all elected	petition	yes	follows name; either "favor" or "pledge" form can be used
N.J.	yes	all elected	petition	yes	grouping under candidate is optional
N.Y.	all except delegates at large	party conventions or comms. choose others	petition	no	cannot pledge
Ohio	yes	all elected	petition	yes	pledge after name to both 1st and 2nd choices
Ore.	yes	all elected	petition	yes	pledge after name in maximum of 12 words
Pa.	parties may elect dels. at large if they wish	state party committees may choose others	petition	no	cannot pledge
S.D.	yes	all elected	petition	yes	grouped under candidate's name
W. Va.	yes	all elected	petition	no	cannot pledge
Wis.	yes	all elected	affidavit of candidate or by petition	yes	grouped under candidate's name

Table IV. Additional Data on Election of Convention Delegates.

state	consent of pres. candidate needed?	are pledges binding on delegates?	uninstructed delegates?	ballot forms
Ala.	question left to parties	question left to parties	question left to parties	question left to parties
Ark.	---	---	---	---
Cal.	need consent of candidate or his state campaign comm	binding	yes	delegates not on ballot, but vote for name of candidate elects slate
Fla.	uncertain; not covered in statutes	not binding	yes	one long listing of all delegates running
Ga.	question left to parties	question left to parties	question left to parties	question left to parties
Ill.	cannot pledge	cannot pledge	all are uninstructed	one long listing of all delegates running
Md.	---	---	---	---
Mass.	need consent	not binding	yes	one long listing of all delegates running
Minn.	consent not needed but pres. candidate may withdraw	binding	yes	delegates grouped under person to whom pledged
Nebr.	cannot pledge	cannot pledge	all are uninstructed	one long listing of all delegates running
N. H.	need consent to "pledge," but not to "favor"	those "pledging" are bound; those "favoring" are not	yes	one long listing of all delegates running
N.J.	need consent	not binding	yes	allow both grouping and single list
N.Y.	cannot pledge	cannot pledge	all are uninstructed	one long listing of all delegates running
Ohio	need consent	delegate may agree to be bound	no	one long listing of all delegates running
Oreg.	uncertain; not covered in statutes	not binding	yes	one long listing of all delegates running
Pa.	cannot pledge	cannot pledge	all are uninstructed	one long list of all delegates running
S.D.	need consent	not binding	yes	delegates grouped under person to whom pledged
W. Va.	cannot pledge	cannot pledge	all are uninstructed	one long listing of all delegates running
Wis.	need consent	binding	yes	delegates grouped under person to whom pledged

Table V. Facsimile of the Official 1908 Ballot.

OFFICIAL BALLOT.

ELECTION OF DELEGATES TO NATIONAL CONVENTION.

.....Party.
(Designation of Party.)

To vote for a person whose name is printed on the ballot,
mark a cross (X) in the square at the RIGHT of the name of
the person for whom you desire to vote. Each voter is entitled
to vote for four delegates-at-large and for two district delegates.

DELEGATES-AT-LARGE TO.....NATIONAL CONVENTION.
(Designation of party)

VOTE FOR FOUR.

John Doe		
.....		
John Doe		
.....		
John Doe		
.....		
John Doe		
.....		
John Doe		
.....		
John Doe		
.....		
John Doe		
.....		

CONGRESSIONAL DISTRICT DELEGATES TO.....NATIONAL
CONVENTION. (Designation of party.)

VOTE FOR TWO.

John Doe		
.....		
John Doe		
.....		
John Doe		
.....		
John Doe		
.....		

(Ch. 512, 1907.)

Table VI. Facsimile Ballot as Revised in 1915.

OFFICIAL BALLOT
ELECTION OF DELEGATES TO NATIONAL CONVENTION

..... Party.
(Designation of party.)

To vote for a person whose name is printed on the ballot, make a cross (X) in the square after the name of the person for whom you desire to vote.

Each voter is entitled to vote for one person for president and one person for vice president of the United States; for four delegates-at-large and for two district delegates to the party national convention.

FOR PRESIDENT

Vote for One.

John Doe.....	
John Doe.....	
.....	

FOR VICE PRESIDENT

Vote for One.

John Doe.....	
John Doe.....	

FOR DELEGATES-AT-LARGE TO.....NATIONAL CONVENTION.

Vote for Four.

John Doe.....	

FOR DISTRICT DELEGATES TO.....NATIONAL CONVENTION

Vote for Two.

John Doe.....	

OFFICIAL BALLOT
ELECTION OF DELEGATES TO NATIONAL CONVENTION
....Party
(Designation of party)

Each voter is entitled to vote for....delegates at large and for....district delegates to the party national convention.

To vote for an entire slate of delegates at large and district delegates committed to the same presidential candidate, make a cross or other mark in the circle (O) at the head of the column under the name of the presidential candidate.

If you desire to vote for uninstructed delegates without regard to the presidential candidate, mark in the square at the right of the name of the uninstructed delegate for whom you desire to vote.

FOR DELEGATES AT LARGE...NATIONAL CONVENTION

Vote for				
JOHN DOE Candidate for President ○	JOHN DOE Candidate for President ○	JOHN DOE Candidate for President ○	JOHN DOE Candidate for President ○	UNIN- STRUCTED
JOHN DOE	JOHN DOE	JOHN DOE	JOHN DOE	JOHN DOE <input type="checkbox"/>
JOHN DOE	JOHN DOE	JOHN DOE	JOHN DOE	JOHN DOE <input type="checkbox"/>
JOHN DOE	JOHN DOE	JOHN DOE	JOHN DOE	JOHN DOE <input type="checkbox"/>
JOHN DOE	JOHN DOE	JOHN DOE	JOHN DOE	JOHN DOE <input type="checkbox"/>
JOHN DOE	JOHN DOE	JOHN DOE	JOHN DOE	JOHN DOE <input type="checkbox"/>
JOHN DOE	JOHN DOE	JOHN DOE	JOHN DOE	JOHN DOE <input type="checkbox"/>
JOHN DOE	JOHN DOE	JOHN DOE	JOHN DOE	JOHN DOE <input type="checkbox"/>

FOR CONGRESSIONAL DISTRICT DELEGATES TO NATIONAL
CONVENTION

Vote for				
JOHN DOE	JOHN DOE	JOHN DOE	JOHN DOE	JOHN DOE <input type="checkbox"/>
JOHN DOE	JOHN DOE	JOHN DOE	JOHN DOE	JOHN DOE <input type="checkbox"/>

Table VIII. Convention Votes of the States Holding Presidential Primaries, 1952.

<u>State</u>	<u>Repub. Votes</u>	<u>Dem. Votes</u>
Alabama	--	22
*California	70	68
Florida	--	24
Illinois	60	60
*Maryland	24	18
Massachusetts	38	36
*Minnesota	28	26
Nebraska	18	12
*New Hampshire	14	8
New Jersey	38	32
New York	96	94
*Ohio	56	54
*Oregon	18	12
*Pennsylvania	70	70
South Dakota	14	8
West Virginia	16	20
*Wisconsin	30	28
	<u>590</u> of a total of 1206 votes	<u>592</u> of a total of 1230 votes

* Indicates those states requiring delegates to be bound either by their pledges or by state preference vote, or indicates an option that delegate may bind himself. The total votes they represent are: 310 in the Republican convention, and 284 in the Democratic convention.