

# Minnesota's Presidential Nomination Primary

August 2019

## Executive Summary

In 2016, the legislature authorized a nomination primary to be conducted for president of the United States, beginning with the 2020 presidential election cycle. Some aspects of the law were amended during the 2019 legislative session. The presidential nomination primary supplements the party caucus model that has been used in Minnesota for many years.

The presidential nomination primary is required to be administered similarly to the state partisan primary, with certain exceptions. A notable exception is that a voter's political party choice will be recorded and disclosed to the chairs of each of the state's major political parties.

The date of the presidential nomination primary is determined by joint agreement of all of the state's major political parties (if an agreement is not reached, the primary is conducted on the first Tuesday in March). In 2020, the presidential nomination primary is scheduled to occur on March 3.

The most current forecasted cost estimate for conducting the primary is \$3,764,000 in fiscal year 2020. This cost reflects both state and local costs of administering the primary. A process for state reimbursement of local government costs is provided in the law.

A brief history of the previous presidential nominations conducted in Minnesota in 1916, 1952, 1956, and 1992 is included at the end of the publication.

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# Administration of the Presidential Nomination Primary

## When will Minnesota's presidential nomination primary occur?

The chairs of the major political parties are required to jointly agree upon a date for the presidential nomination primary, and submit that date to the secretary of state no later than March 1 of the year prior to the presidential election.

If the party chairs do not meet that deadline, the presidential nomination primary must occur on the first Tuesday in March of the presidential election year. [Minn. Stat. § 207A.11](#).

In 2020, the presidential nomination primary will occur on March 3.

## Will nominees for other offices be chosen at the presidential nomination primary?

No. The only candidates that will appear on the presidential nomination primary ballot are the candidates for president, chosen by each participating major political party.

Nominees for other federal and state partisan offices will continue to be selected at the state primary election, which is conducted on the second Tuesday in August of each even-numbered year.

## Who decides the names of candidates to appear on the ballot?

Participation in the presidential nomination primary is limited to candidates of the state's major political parties. Only those major political parties that select delegates to send to a national convention of the party are eligible to participate. Major political parties that do not participate in a national convention are not eligible. [Minn. Stat. § 207A.11](#), para. (d).

Candidates at the presidential nomination primary are chosen by their respective political parties. The chairs of each party must submit the names no later than 63 days before the date of the nomination primary. Once submitted, the candidate names may not be changed. [Minn. Stat. § 207A.13](#), subd. 2.

The chair of each party may additionally request that write-in candidates be counted. The names of the write-in candidates to be counted must be submitted to the secretary of state no later than seven days before the date of the nomination primary. [Minn. Stat. § 207A.13](#), subd. 1, para. (c).

## Are voters entitled to time off from work to vote at the presidential nomination primary?

Yes. The same law that grants eligible voters the right to be absent from work for the time necessary to appear at their polling place, cast a ballot, and return to work applies equally to a voter's participation in the presidential nomination primary. [Minn. Stat. § 204C.04](#).

## **Is a presidential nomination primary administered differently than the state primary election?**

In general, no. A presidential primary is required to be conducted, and the results tabulated and canvassed in the same manner as the state primary. Public notices and sample ballots must be provided on a schedule similar to that used for the state primary. [Minn. Stat. §§ 207A.12; 207A.14.](#)

However, there is one significant exception: at the presidential nomination primary, separate ballots will be printed for each participating political party. Unlike the state partisan primary—which is a traditional “open” primary that allows all voters to participate in a party’s primary, regardless of their party preference—the presidential nomination primary is more akin to a “closed” primary: voters will be required to affirm their support of the principles of the party whose ballot they wish to cast, and that information will be recorded and distributed to each party. More detail on this requirement is included later in this publication.

## **How are the nomination primary results used?**

The law requires that the results of the presidential nomination primary bind the election of delegates for each participating party. [Minn. Stat. § 207A.12](#), para. (d). The procedures for assigning delegates and casting nomination votes at a party’s nominating convention are subject to the procedural rules of each party.

Unlike the state primary election, the outcome of the presidential nomination primary does not directly determine the names of any candidates that will appear on the state general election ballot.

## **Does the presidential nomination primary replace precinct caucuses?**

No. While a party’s preference for a presidential candidate as expressed through the precinct caucuses is often the most widely reported result, precinct caucuses are an important part of each party’s process for endorsing candidates for other offices on the ballot, and are required under a separate law, [Minnesota Statutes, chapter 202A.](#)

Nothing in the presidential nomination primary law prohibits a political party from also conducting a precinct caucus to gauge party member preferences for a presidential candidate.

## **Disclosure of a Voter’s Party Choice**

### **Will a voter’s political party choice be recorded?**

The law requires that separate ballots be prepared for each party participating in the primary. [Minn. Stat. § 207A.13](#), para. (b). Voters will be required to indicate the name of the political party they wish to vote for, and that choice will be marked in the polling place roster. The voter will only be provided the ballot that corresponds to that party. [Minn. Stat. § 207A.12](#), para. (b).

Absentee voters will be required to indicate their party preference on the application for an absentee ballot. Voters casting a ballot in vote-by-mail jurisdictions will be provided ballots for each major party participating in the nomination primary, but are only permitted to return the ballot that corresponds to their political party choice. [Minn. Rules 8215.0400; 8215.0500.](#)

The ballot format does not allow for a voter's choice of a specific candidate to be tracked or associated with the voter's registration history.

After the primary, each voter's political party choice will become part of the voter's registration history.

When the current presidential nomination primary law was enacted in 2016, information on a voter's party choice was required to be publicly accessible. As part of the 2019 amendments to the law, this information is now classified as "private data" under the Minnesota Government Data Practices Act. A "private data" classification means that, in general, government entities (such as the secretary of state's office, and the offices of local elections officials) may not disclose the information to members of the general public or others in response to a records request.

However, an exception to the privacy requirement is also included in the law: while government entities must restrict public access to a voter's party choice for most requestors, the law *does* require the secretary of state to provide that information to the chair of each major political party in the state, in the form of a compiled list. [Minn. Stat. § 201.091](#), subds. 4, 4a.

### **Is there precedent for recording a voter's party choice?**

**Comparison to prior presidential nomination primaries in Minnesota.** The presidential nomination primaries conducted in Minnesota in 1916 and 1992 both required voters to publicly declare the party affiliation as a condition of voting. [Laws 1913, ch. 449, § 6](#); [Laws 1990, ch. 603, §§ 6, 9](#). For the 1992 primary, this requirement was not part of the original law, but instead was added by a later amendment. In both 1916 and 1992, the primary was conducted using separate ballots for each participating party.

The presidential primaries in 1952 and 1956 were conducted using a single consolidated ballot (all candidates of all parties were required to be listed on the same ballot). Disclosure of a voter's party choice was not a requirement of the law in those years.

**Comparison to current Minnesota law.** Current law does not require voters to disclose their party preference when casting a ballot at the state partisan primary, and in those primaries all parties and candidates appear on a single consolidated ballot—as a result, an individual voter's candidate or party preference cannot be ascertained.

The requirement that voters agree with the principles of the party for which they wish to vote is consistent with current law governing voter eligibility at a party's precinct caucus. But that information is not maintained as part of the voter's publicly available registration history. [Minn. Stat. § 202A.16](#), subd. 2.

**Comparison to other state primary laws.** Though not a practice in Minnesota's state primary elections, several other states do conduct primary elections that are closed—restricting participation to voters who are registered members of the party whose ballot is cast, or who otherwise publicly affirm their support of that party's principles.<sup>1</sup>

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<sup>1</sup> The National Conference of State Legislatures maintains a webpage describing the style of primary election conducted in each state. See <http://www.ncsl.org/research/elections-and-campaigns/primary-types.aspx>

## Is it constitutional for the state to require voters to declare a party preference?

A presidential nomination primary is not a state election in the traditional sense, but is an extension of a political party's process for selecting a presidential nominee. While state election infrastructure is used to support the process, the parties themselves are ultimately entitled to choose nominees according to their own internal standards and procedures, and with limited government interference.<sup>2</sup>

The two major national political parties traditionally have been governed by procedural rules that limit party decision-making to only those people who are members of the party and support its principles. These rules—which are within the party's constitutional rights to impose—protect the party against interference by people whose political views are in opposition to the party.<sup>3</sup> A rule requiring voters in a presidential nomination primary to affirm their support of the party's principles helps prevent this type of interference.

However, whether to include a public affirmation of party support as part of the election infrastructure provided by the state remains a policy choice for the legislature. The state is not bound to the party's internal rules and could choose to conduct a presidential nomination primary that is more open to all voters if it wishes to do so.

If a presidential primary is “open,” the tradeoff for the state is that the party will generally not be bound to seat specific delegates, or to force those delegates to vote for a particular candidate, if the state law mandating those actions would violate the party's internal rules.

**Supreme Court history.** The tension between the constitutional authority of states to regulate elections and the constitutional rights of organizations engaged in political activity has generated a robust body of caselaw, much of it at the U.S. Supreme Court.

A major case on the topic of delegate selection and presidential nomination primaries is *Democratic Party of the United States v. Wisconsin ex. rel. La Follette*.<sup>4</sup>

In *La Follette*, the national Democratic party refused to comply with a Wisconsin law requiring Wisconsin's national convention delegates to allocate their votes consistent with the results of the state's presidential primary. The party's rules required that delegates be chosen through a selection process that included only voters who declared their preference for the Democratic party and had that preference publicly recorded. But Wisconsin had conducted an “open” primary—allowing any voter to participate, without a declaration of support for the party's principles. A lawsuit was filed after the party announced it would refuse to seat Wisconsin's delegates at the 1980 national convention.

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<sup>2</sup> *Ripon Society, Inc. v. National Republican Party*, 525 F.2d 567, 601 (U.S.App.D.C., 1975) (“...by adopting a platform and promulgating rules to govern their party and by choosing a standard bearer who best represents the party's ideologies and preferences, delegates are engaged in activities with which the first amendment bars most governmental interference.”)

<sup>3</sup> *Ray v. Blair*, 343 U.S. 214 (1952).

<sup>4</sup> 450 U.S. 107 (1981). The court addressed a challenge to a similar Illinois law in *Cousins v. Wigoda*, 419 U.S. 477 (1975).

The Supreme Court struck down Wisconsin's law as unconstitutional. It reasoned that the state's asserted interests—including the integrity of the electoral process, ballot secrecy, increasing voter participation in primaries, and preventing harassment of voters by protecting their privacy—may be sufficient to justify an open primary, but were not sufficient to justify the state's further mandate: the requirement of a specific outcome for final delegate selection and voting at the party's convention.

### **Is a voter required to be a registered member of a political party to vote at the presidential nomination primary?**

A voter is not required to provide evidence of membership in a political party in order to receive and cast a party's ballot. However, before being provided a ballot, every voter will be required to read and agree, by signature, to the following statement:

"I am in general agreement with the principles of the party for whose candidate I intend to vote."

A voter who refuses to indicate a major political party or who refuses to sign the polling place roster—including the statement indicated above—will not be permitted to cast a ballot. [Minn. Rules 8215.0300](#).

## **State and Local Costs**

Costs for conducting the presidential nomination primary are paid by the state through an open appropriation.

No later than September 1 of the year preceding the nomination primary, the secretary of state is required to certify to the commissioner of management and budget the estimated state and local cost for administering the election (the certified amount may be adjusted as new information comes available). Those amounts are available to the secretary of state for the state costs of the election and for reimbursing local governments for certain qualifying expenses.

The February 2019 state budget forecast expects a total state and local cost of \$3,764,000 in fiscal year 2020 to conduct the presidential nomination primary.

Local government reimbursement requests must be submitted, in a form directed by the secretary of state, no later than 60 days after the results of the nomination primary are certified by the State Canvassing Board. Properly submitted reimbursement requests must be paid by the secretary of state no later than 90 days after the results of the nomination primary are certified by the State Canvassing Board. [Minn. Stat. § 207A.15](#).

## **Prior Presidential Nomination Primaries in Minnesota**

A presidential nomination primary has occurred during three previous periods in Minnesota's history.

Further historical context and details for each primary, including links to primary results, are available on the website of the Legislative Reference Library:

<https://www.leg.state.mn.us/lrl/blogstory?articleid=272>

- **1916 presidential primary.** A presidential primary law was enacted by the Minnesota Legislature in 1913. [Laws 1913, ch. 449](#).

At the primary, voters were allowed to vote their preference for candidates for presidential and vice-presidential nominees, as well as for the individual delegates to represent the state at the party's national convention. Voters were required to publicly declare their party affiliation as a condition of voting. [Minn. Stat. 1913, § 389](#).

Candidates appearing on the ballot were nominated by petition. The petition required the signatures of at least 2 percent of the total vote for that party's candidate at the last presidential election, with a maximum requirement of 500 signatures. [Minn. Stat. 1913, § 387](#).

Only one primary was conducted under the authority of the law, on the second Tuesday of March: March 14, 1916.

The law was repealed in 1917. [Laws 1917, ch. 133](#).

- **1952 and 1956 presidential primaries.** In 1949, the Minnesota Legislature again approved a presidential primary law. [Laws 1949, ch. 433](#).

At the primary, voters were allowed to vote for candidates for presidential nominee. All candidates appeared on a single, consolidated ballot. [Minn. Stat. 1957, § 202.49](#), subd. 2.

Candidates for president could appear on the ballot by submitting an affidavit of candidacy and \$25 filing fee. Alternately, a candidate could be nominated by petition. A petition required the signatures of at least 100 voters of the candidate's party, from each congressional district in the state. [Minn. Stat. 1957, §§ 202.44-202.45](#).

Two presidential primaries were conducted under the authority of this law, on the third Tuesdays of March: March 18, 1952, and March 20, 1956.

The law was repealed in 1959. [Laws 1959, ch. 67](#).

- **1992 presidential primary.** In 1989, the Minnesota legislature approved a presidential primary law. [Laws 1989, chapter 291](#), subsequently amended by [Laws 1990, chapter 603](#).

At the primary, voters were allowed to vote for a candidate for presidential nominee, or for delegates who were "uncommitted" to a specific candidate at the party's convention. Voters did not vote for individual delegates to attend the convention. Voters were required to publicly state their party preference in order to receive the corresponding ballot for that party. [Minn. Stat. 1992, § 207A.03](#), subd. 2.

Candidates for president could appear on the ballot by filing an affidavit of candidacy, along with a filing fee of \$500 (or a petition in place of the fee). Alternately, a candidate could be nominated by petition. A petition required the signatures of at least 1,000 eligible voters from each congressional district in the state. [Minn. Stat. 1992, § 207A.02](#).

The law generated significant controversy. Early on, one major party announced that it would not consider the results of the primary binding on its national convention delegates. Local governments expressed concern about the costs associated with administering the election. Several cities, including St. Cloud, Mankato, North Mankato, and St. Peter, voted to open only one polling place for the primary as a way to manage costs, and many other local governments adopted resolutions opposing the primary entirely.

In January 1992, a few months before the primary was scheduled to occur, several bills were introduced in the legislature to repeal the primary entirely, or delay it until the 1996 presidential election cycle. Legislation to conduct the primary entirely by mail, as a way to encourage participation and manage local costs, was also considered.

The legislature ultimately approved a bill to repeal the law, but it was vetoed by the governor. [Laws 1992, ch. 364](#). That February, the Senate voted to override the veto, but a similar vote in the House failed to receive the required two-thirds majority of votes, and so the veto was upheld.

A presidential nomination primary was conducted on the first Tuesday in April: April 7, 1992.

In 1995, a law was enacted suspending further presidential primaries until after 1999. [Laws 1995, ch. 224, § 73](#).

The presidential primary law was repealed in its entirety in 1999. [Laws 1999, ch. 250, art. 1, § 115](#).

*Regional Presidential Nomination Primary Study.* As part of a series of amendments to the presidential primary law enacted in 1990, the legislature directed the secretary of state to study the feasibility of conducting a regional presidential nomination primary for the 1992 presidential election cycle. A brief report was issued to the legislature on January 22, 1991.<sup>5</sup> The secretary of state reported some degree of interest by neighboring Midwestern states, but that disagreement over the date of the primary “may prove a substantial impediment.” It does not appear that the legislature pursued the idea further.



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<sup>5</sup> A copy of the report is maintained by the Legislative Reference Library and is available online, here: <https://www.leg.state.mn.us/docs/2016/mandated/160251.pdf>