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Are Independent Voters Disenfranchised by Primary Election Rules?

February 20, 2024

HIGHLIGHTS

In the 1970s, approximately 33% of U.S. House elections were considered competitive, meaning the margin of victory was less than 10%. In 2022, only 8% of U.S. House elections were considered competitive.



Executive Summary

A record number of Americans identified as politically independent rather than Republican or Democrat in Gallup polls during 2023, reaching a high of 49% in March. Even still, U.S. politics skew towards a two-party system, raising questions about whether state election rules disenfranchise independents by denying unaffiliated voters the right to participate in primary elections.

In 28 states and Washington, D.C., voters must be affiliated with a party in order to vote in the primaries. Since voters in those states have the option to join the party and vote in the primary, some argue that there is not actually disenfranchisement of unaffiliated voters. In practice, however, unaffiliated voters are prevented from participating fully in the democratic process in two key ways.

First, state and congressional elections have become less and less competitive, meaning primary elections increasingly function as general elections. For example, nearly 70% of elections in 2020 were essentially determined in the primary.^[1] Nationwide, primaries are now "the most consequential elections in American politics," meaning unaffiliated voters are locked out of the only election that matters.^[2]

The exclusion of independent voters from primaries in most states is especially concerning because independent voters are the fastest-growing voting bloc across the United States.^[3] In states where voters can affiliate with a political party while registering to vote, the proportion of independent voters increased by 20% in the last decade, and 60% of new voters registered as unaffiliated in 2021.^[4]

Secondly, independent voters who decide to join a party to vote in partisan primaries often encounter complicated, burdensome party affiliation rules and deadlines that may deter or prevent them from successfully casting a ballot. For example, in some states, voters must affiliate with a party months before the primary to participate. Often, the deadline passes long before voters know which candidates will appear on a primary ballot.

Rules dictating who can vote in primary elections can be extremely confusing, especially concerning unaffiliated voters. Creating further obfuscation, these rules vary significantly from state to state, and in some states, the rules for state and congressional primary elections are radically different from presidential primary rules. Party affiliation and participation rules for presidential primaries can be especially complicated and restrictive. In 2016, for example, 26.3 million unaffiliated voters could not vote in the presidential primary.

Ultimately, unaffiliated voters are not formally denied the right to vote. However, this report finds evidence that complicated primary voting restrictions and party change deadlines may function as a form of voter suppression by creating considerable obstacles that prevent independent voters from participating fully in the democratic process.

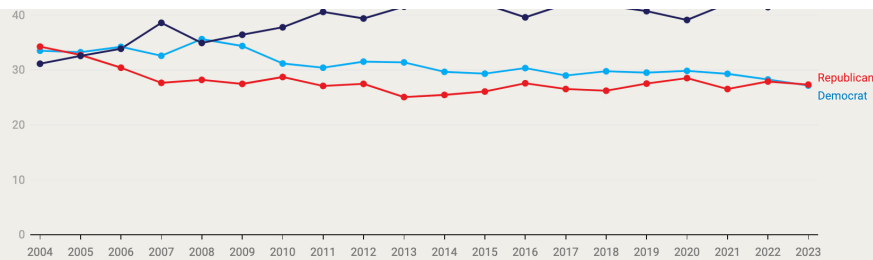
The Rise of Independent Voters

The proportion of Americans identifying as politically independent increased from an average of 31% of voters in 2004 to as many as 49% in March 2023.^[5] Simultaneously, in the states where voters can affiliate with a party while registering to vote, party affiliation is declining. Voters who register without choosing a party are known as independent or unaffiliated, and this group now comprises the largest or second-largest voting bloc in over half of these states.^[6] In 2021, 60% of new voters registered as unaffiliated.^[7]

Change in Voter Affiliation Over Time, 2004-2023

"Do you consider yourself a Republican, Democrat or Independent?". Answers to monthly Gallup surveys, averaged over each year.





Gallup publishes results from monthly surveys. On display are the averages of all values in a year.
 Chart: A-Mark Foundation • Source: Gallup • Get the data • Created with Datawrapper

Various factors influence why these voters identify as independent or register as unaffiliated. Some identify as independent because their political views truly do not align with either major party. However, most self-described independent voters say they lean toward one party. In 2018, for example, 38% of American adults described themselves as politically independent, but only 7% expressed no partisan leaning. In other words, only 7% were “true independents.”^[8]

The remaining voters are frequently labeled “leaners,” and political scientists have found that voters sometimes describe themselves as independent because they are embarrassed to associate with the party they support.^[9] In social settings, especially, some say they are independent to evade the stigma of supporting a certain party or avoid uncomfortable conversations about politics.^[10]

However, according to Pew Research, the most common reason that “leaners” do not identify with a party is frustration with political parties and a desire to eschew labels.^[11] These voters’ aversion to parties may be related to increasing polarization in U.S. politics. Since 2005, there has been no ideological overlap between the most right-leaning Democrat and the most left-leaning Republican in Congress.^[12] The widening partisan divide has correlated with a dramatic increase in the proportion of voters who view both major parties unfavorably, which rose from 7% in 2002 to 27% in 2022.^[13] Among independents, 47% reported negative views toward both parties in 2022.^[14]

Independents who lean toward a party are often characterized as “closet partisans,” who are independent in name only. However, recent studies analyzing voting patterns of independents over multiple elections challenge the notion that most independents are simply “closet partisans.”^[15] For instance, one recent study concluded that independent voters demonstrate “significant volatility in voting loyalty and as a group, independents are distinct from partisans.”^[16]

Ultimately, regardless of whether independents are closet partisans or comprise a distinct, independent voting bloc, the fact remains that the number of Americans identifying as independent is rising, and party affiliation is dwindling. However, in some states, registering as unaffiliated means forfeiting the ability to participate in primary elections, and the increasing number of voters forgoing party affiliation has provoked serious concerns about disenfranchisement and whether exclusionary primaries deny unaffiliated voters their voting rights or prevent them from exercising those rights.

Primary Elections

Because most states use primaries to select general election candidates for state, local, congressional, and presidential offices, primary elections are a critical phase of the American democratic process.^[17] In state and congressional primaries, voters choose nominees for statewide offices (such as governor or attorney general), U.S. Congress, state legislature, nonpartisan offices, and local issues. These primaries are generally state-run, and rules governing them are codified in state constitutions along with most voting rules.

In a typical primary, the major political parties have separate ballots listing candidates for each race. Nonpartisan races and local issues may be listed on each party’s ballot or a separate nonpartisan ballot. Voters choose one party’s ballot and cast one vote for one candidate in each race. Each party’s top-voted candidate from each race advances to the general election. Because the number of votes each candidate receives directly determines the election’s outcome, state and congressional primaries are direct primaries.

Party affiliation and primaries

All registered voters are entitled to vote in nonpartisan races and local issues in every state’s primary elections.^[18] However, state lawmakers and political parties can exclude voters from participating in partisan primary races based on voters’ party affiliation.

In 32 states and Washington, D.C., voters may affiliate with a political party while registering to vote. Seventeen states have nonpartisan voter registration, meaning there is no option to affiliate with a party while registering to vote, and one state (North Dakota) does not have voter registration at all.

In states where party affiliation is linked with voter registration, voters can select the Democratic or Republican Party, an officially recognized third party, or remain unaffiliated.^[19] In some states, those who forgo party affiliation are registered as “No Party Preference,” “Nonpartisan,” or simply, “Unaffiliated.” Unaffiliated voters are also frequently called independent voters, not to be confused with members of the American Independent Party.

The rules dictating who may vote in partisan primaries determine the type of primary system. Primary rules can be confusing, and adding further confusion, the rules vary considerably across states. Because of the intricacies and variances in the way primaries are run across the country, it is difficult to classify the types of primary elections and which states use each type. However, primary systems generally fall under one of the following categories: open, closed, partially closed, partially open, and open to unaffiliated voters. The summary chart offers more details about the rules in each state.

Open and closed primaries

In open primaries, all registered voters can vote on whichever party’s primary ballot they wish. In closed primaries, only registered Republicans can vote for Republican nominees, only registered Democrats can vote for Democratic nominees, and unaffiliated voters are not eligible to vote on partisan races, such as governor, Congress, or state legislature.^[20] To participate in a closed primary, voters must typically change party affiliation in advance of the election. For example, in Oregon, voters must update their party affiliation at least 21 days preceding the primary election if they wish to vote in partisan races.^[21]

Most states and Washington, D.C., have either open or closed primaries. However, several states have hybrid systems, neither entirely closed nor entirely open. For example, some states allow unaffiliated voters to join a party on election day and cast a partisan ballot, but voters already affiliated with a party can only vote on that party’s primary ballot.^[22]

Partially closed

Several states allow political parties to decide in each election cycle whether to open their primary to unaffiliated voters. However, registered Democrats can only vote on the Democratic ballot, and registered Republicans can only vote on the Republican ballot. [23] In Oklahoma, for example, the Democratic Party allows registered Democrats and unaffiliated voters to participate in their primary, but the Republican Party only allows registered Republicans to participate. [24]

Partially open

In some states with nonpartisan voter registration, selecting a party's ballot during a primary constitutes a public declaration of support or affiliation with that party. This primary system is open because voters can freely choose either party or alternate parties from one primary to the next. However, these primaries are functionally similar to closed primaries because voters are forced to act as partisans and declare party support. [25]

Open to unaffiliated voters

In other states, such as Colorado, state law allows unaffiliated voters to choose to vote in either the Republican or Democratic primaries, but registered Democrats can only vote in the Democratic primary, and registered Republicans can only vote in the Republican primary. [26]

Other primary types

Five states have primary systems different from those described above. [27] Alaska, for example, uses a Nonpartisan Pick One Primary for state and congressional races, where each registered voter votes for one candidate per race, regardless of either the voter's or the candidate's political affiliation. In this system, the top four vote-receiving candidates advance to the general election. [28] California and Washington use a similar method, but the top two vote-receiving candidates advance to the general election. [29] In Louisiana, all candidates appear on the same ballot and all eligible voters can cast a vote regardless of party affiliation. If there is no majority winner (with over 50% of the vote), the top-two candidates go to a run-off. [30] As the National Conference of State Legislatures notes, "one way to look at this is to say there is no primary election—just a general election for all candidates, with a runoff when needed." [31] In Nebraska, unaffiliated voters can vote in primary elections for congressional offices by requesting a partisan/nonpartisan ballot of their choice, but will only be able to vote on the nonpartisan ballot for state and local primary elections. [32]

Presidential primaries

Most states also use primaries to select presidential nominees. However, unlike direct primaries held for state and congressional offices, each state's presidential nomination process allocates delegates to presidential candidates. The candidate with the most state delegate votes becomes the party nominee at the national party convention. [33]

The Democratic and Republican parties have significant leeway in determining the presidential nomination process and setting voter participation rules. In most states, state party organizations coordinate with state governments to hold a primary. However, in several states, the party organizations run primaries or caucuses, which are often private meetings where voters discuss nominees, hold rounds of public balloting, and join groups supporting their preferred candidate. [34] The number of voters in each candidate's group at the end of the caucus determines delegate allocation. [35]

Presidential primary or caucus rules differ from those governing state and congressional primaries in 13 states, which can generate significant confusion among voters. California, for example, uses a top-two primary that is open to all registered voters for state and congressional races, in which all candidates are listed on one ballot, and the two candidates receiving the most votes advance to the general election, regardless of political affiliation. However, California has had a partially closed presidential primary since 2001, which the California Secretary of State describes as a "modified" closed primary system. [36] The Democratic Party of California has opened its presidential primary to unaffiliated voters along with registered Democrats, but the Republican presidential primary is restricted to registered Republicans. [37] On primary day during presidential election years in California, all registered voters receive a ballot containing state and congressional nominees, but each voter must specifically request their party's presidential primary ballot separately. Unaffiliated voters can request the Democratic ballot or only vote in state and congressional races. [38] [39]

Unaffiliated Voter Registration & Primary Elections by State (and DC), 2022-2023

Rules on voter registration and their participation in the primaries/caucuses are different from state to state and can depend on the party. Details below. Columns can be sorted by clicking on the headers; click arrow on the right to scroll through to other states.

Search in table

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State	Can Voters Register as Unaffiliated?	Percentage of Voters Registered as Unaffiliated	PRESIDENTIAL Primary Election Type	Can unaffiliated voters vote without joining or declaring support for a major party?	STATE Primary Election Type	Can unaffiliated voters vote without joining or declaring support for a major party?
Alabama	Nonpartisan Registration	N/A	Open	Yes	Open	Yes
Alaska	Yes	58%	Closed Party-run Primary	No	Nonpartisan Pick One	Yes
Arizona	Yes	34%	Closed	No	Open to Unaffiliated Voters	Yes
Arkansas	Yes	88%	Open	Yes	Open	Yes
California	Yes	23%	Modified Closed	Democratic: Yes Republican: No	Top Two	Yes
Colorado	Yes	46%	Open to Unaffiliated Voters	Yes	Open to Unaffiliated Voters	Yes
Connecticut	Yes	42%	Closed	No	Partially Closed / Closed ^a	No
Delaware	Yes	23%	Closed	No	Closed	No
Florida	Yes	27%	Closed	No	Closed ^b	No
Georgia	Nonpartisan Registration	N/A	Open	Yes	Open	Yes
Hawaii	Nonpartisan Registration	N/A	Closed Party-run Primary/Caucus	No	Open	Yes
Idaho	Yes	28%	Modified Closed Caucus	Democratic: Yes Republican: No	Partially Closed	Democratic: Yes Republican: No
Illinois	Nonpartisan Registration	N/A	Partially Open	No	Partially Open	No

Indiana	Nonpartisan Registration	N/A	Partially Open	No	Partially Open	No
Iowa	Yes	33%	Partially Open / Closed Caucus	No	Partially Open / Closed	No

^a In Connecticut, state law gives political parties the power to choose whether to allow unaffiliated voters to participate in their party's primary. Neither party have chosen to do so.

^b In Florida, only registered Democrats can vote on the Democratic Primary ballot. Only registered Republicans can vote on the Republican Party ballot. Unaffiliated voters can only vote on nonpartisan offices and/or issues, referendums, etc. However, if all candidates in a given race are from 1 party (no challengers from opposite party), then a Universal Primary Contest is held in which all registered voters can participate.

^c In Kansas, state law gives political parties the power to choose whether to allow unaffiliated voters to participate in their party's primary and remain affiliated or declare party membership. Both parties require unaffiliated voters to fill out party declaration cards to participate.

^d In Louisiana, state law gives political parties the power to choose whether to allow unaffiliated voters to participate in their party's primary. Neither party have chosen to do so.

^e In Maryland, state law gives political parties the power to choose whether to allow unaffiliated voters to participate in their party's primary. Neither party have chosen to do so.

^f In Missouri, state legislation passed in 2022 eliminated state-run presidential primaries in favor of party-run primaries or caucuses. The Democrats opted to organize a Primary that will be open to both Democratic-affiliated and unaffiliated voters but not Republican-affiliated voters. Any unaffiliated voter who requests a ballot for the Democratic primary "shall be deemed a Democrat and a record of those voters who requested and received a ballot shall be maintained by the MDP." Republican caucus unknown at time of publication.

^g In North Carolina, state law allows parties to decide whether to allow unaffiliated voters to vote in their primaries without first registering with that party. Both parties do.

^h In Oregon, state law gives political parties the power to choose whether to allow unaffiliated voters to participate in their party's primary. Neither party have chosen to do so.

Table: A-Mark Foundation • [Get the data](#) • [Download image](#) • Created with [Datawrapper](#)

Independent Voters in State and Presidential Primaries

Not all states that link party affiliation with voter registration have closed primaries. However, unaffiliated voters must register with or join a major party to vote in 21 states' statewide and

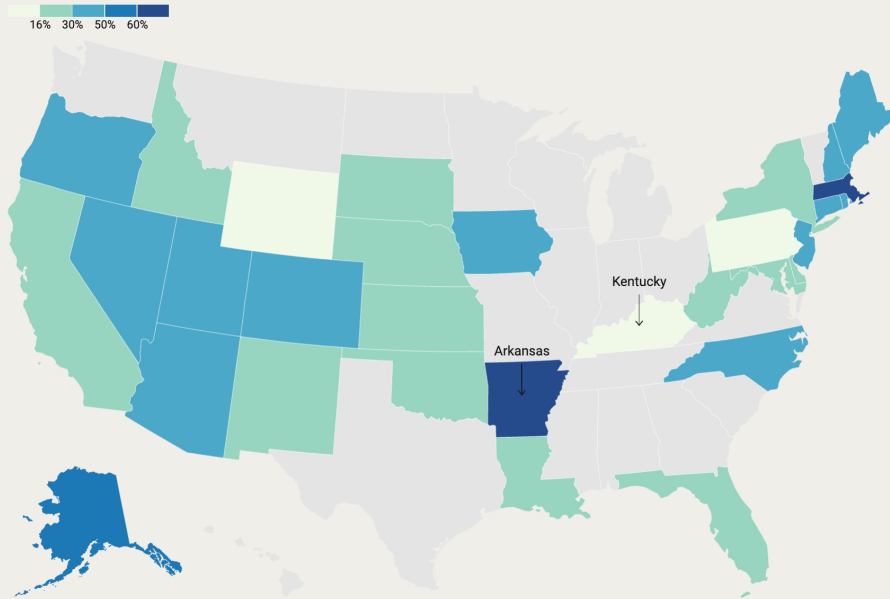
congressional primaries and 28 states' presidential primaries. Unaffiliated voters are also required to register with or join a major party in legislative and presidential primaries in Washington, D.C. Some of these states permit same-day party affiliation changes for all registered voters, but others only allow unaffiliated voters to join a party on election day or require affiliation changes well in advance of the primary.

In six additional states, voter registration is nonpartisan, but choosing a party's ballot constitutes a declaration of party affiliation. In these states, voters can choose any party's ballot from one primary to the next, but ballot selection is public record. Voters may end up on mailing lists or party membership records, or their ballot selection may be challenged if a poll worker suspects that the voter is not a true supporter of that party.^[40]

Altogether, 34 states and Washington, D.C., exclude unaffiliated voters from at least one major party's state or presidential primaries unless they join or publicly declare support for the political party. Unaffiliated voters are excluded by both major parties unless they join or publicly declare support in 27 states and Washington, D.C.^[41]

Percentage of Unaffiliated Voters by State, 2022

The percentage of unaffiliated voters in states that allow registration, ranging from 4% in Kentucky to 88% in Arkansas.

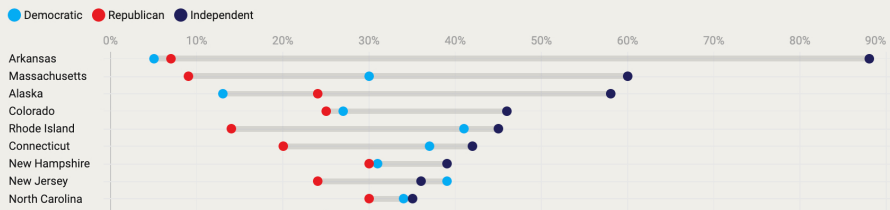


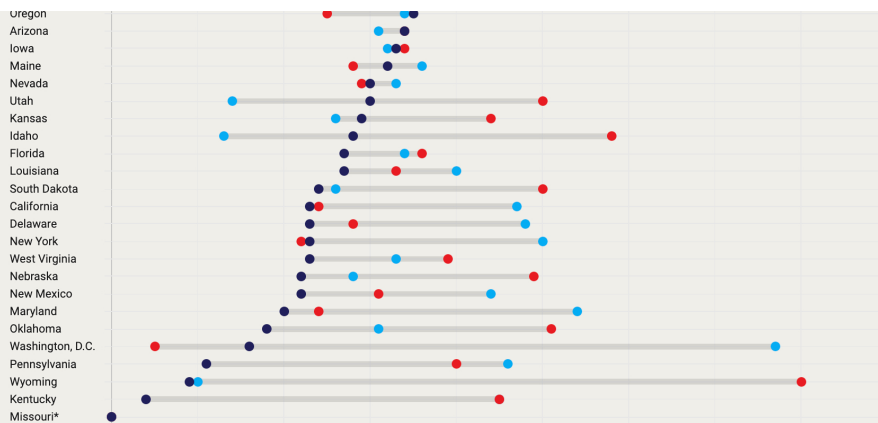
Voters in Missouri can register as unaffiliated but their number is not known.
Map: A-Mark Foundation • Source: Ballotpedia • [Get the data](#) • Created with [Datawrapper](#)

In 2022, unaffiliated voters accounted for 29% of all registered voters in the states (and D.C.) that allowed voters to affiliate with a party at registration.^[42] However, the proportion of unaffiliated voters varied widely across these states.

Voter Affiliation by State (& DC), 2022

Percentage of Democratic, Republican and Independent voters in states (& D.C.) that allow party affiliation at registration, 2022.





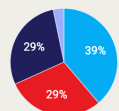
*Missouri also allows voters to register with a party but no data is available.
 Chart: A-Mark Foundation • Source: Ballotpedia • [Get the data](#) • Created with [Datawrapper](#)

Kentucky, for example, has closed primaries for presidential, state, and congressional races, and only 4% of voters are unaffiliated. Meanwhile, in Massachusetts, where unaffiliated voters can participate in presidential and state primary elections by selecting either a Democratic or Republican ballot without joining either party (but those registered with a party must vote on their party's ballot), unaffiliated voters account for 60% of the electorate. In Arkansas, where primaries are open to all registered voters regardless of party affiliation, affiliated voters account for 88% of the electorate.^[43]

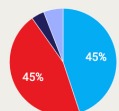
Affiliation of Registered Voters, 2022

Voter registration in the 31 states, D.C. and the U.S. Virgin Islands, that allow voters to indicate their partisan affiliations on voter registration forms (and who reported the numbers). Kentucky, Massachusetts and Arkansas (states with different primary processes) for comparison.

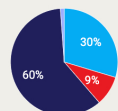
Legend: Democrat (blue), Republican (red), Independent (black), Other Parties (purple)



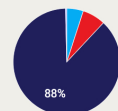
31 States plus D.C. & U.S. Virgin Islands



Kentucky (Closed Primaries)



Massachusetts (Open to Unaffiliated Voters)



Arkansas (Open to All Voters)

Note: Missouri also allows voters to register with a party now but no data is available.
 Chart: A-Mark Foundation • Source: Ballotpedia • [Get the data](#) • [Download image](#) • Created with [Datawrapper](#)

The Case for Closed Primaries

Unaffiliated voters represent the largest or second-largest group of voters in many states, and they are the fastest-growing voting bloc.^[44] Yet, in the majority of states, this rapidly growing group cannot participate in partisan primaries unless they join or declare support for a major party.

Many voting rights and election reform advocacy groups characterize the exclusion of independent voters from primaries as a form of voter suppression. For example, according to the advocacy group Open Primaries, restricting primary participation to party members hampers the democratic process and results in the systematic disenfranchisement of independent voters.^[45]

The growing number of independent voters across the country has fueled movements to adopt open and nonpartisan primaries in several states, including Nevada,^[46] New Mexico,^[47] Oklahoma,^[48] Oregon, Pennsylvania and South Dakota.^[49] Simultaneously, however, a spate of bills aimed at closing primaries have been introduced in several states, including New Hampshire, Alaska, and Texas.^[50]

Proponents of closed primaries maintain that restricting primary voting to party members does not disenfranchise unaffiliated voters or impede the democratic process. They say that excluding non-party members from partisan primaries serves to “ensure the integrity of the primary,” by guaranteeing that primary voters truly support the party.^[51] Ultimately, supporters of closed primaries emphasize that primaries are fundamentally different from general elections. While general elections determine who will represent voters and their interests in public office, primaries are a process by which political parties and their members select who will represent the party in the general election.^[52]

Although political parties serve important public functions, they are not public entities or government agencies.^[53] Rather, political parties are freely associated groups of private individuals with common political interests and ideas. Accordingly, the U.S. Supreme Court has affirmed and elaborated the First Amendment associational rights of political parties in relation to primaries over the past 40 years.

For example, in rulings on *Democratic Party of United States v. Wisconsin ex rel. La Follette* (1981), *Tashjian v. Republican Party of Connecticut* (1986), and *California Democratic Party v. Jones* (2000), the Court repeatedly upheld that First Amendment associational rights afford a political party the “legitimate right” to define its qualifications for membership, the right for a party to select its own leaders, and the right to exclude non-party members from selecting its nominee.^[54] Put simply, the Court has ruled that political parties can freely limit voting in partisan primaries to party members if they so desire.

Primary elections and voting rights

While partisan primaries are broadly understood as a “party affair,” the Court also recognizes the important public function that political parties and primaries play in the democratic process. Ultimately, political parties’ associational rights sit in tension with individual rights related to expression and voting. However, those who defend closed primaries maintain that restricting partisan primary voting to party members does not violate these individual rights.

Voter eligibility rules are made at the state level, and the U.S. Constitution gives states considerable latitude in setting these rules, provided that voters are not denied based on race, ethnicity, sex, ability to pay poll taxes, or age.^[55] Nearly every state has explicitly codified the right to vote in all elections.^[56] But because partisan primaries are officially recognized as the process by which parties

select their representatives, states and political parties can restrict partisan primaries to party members, so long as political parties do not deny prospective members based on race, ethnicity, sex, ability to pay poll taxes, or age.^[57]

Under this framework, if a voter wishes to participate in selecting a party's leader, they are free to join the party. Otherwise, they are still entitled to vote in nonpartisan races and local issues in a primary election and cast votes in the general election. In other words, primaries are crucially different from general elections in their purpose and function—voting rights are not absolute, and limiting partisan primaries to party members does not formally violate individual voting rights.

Are Independent Voters Disenfranchised?

Although primaries may officially function as the process through which political parties select who will represent them in a general election, the entrenchment of the two-party system within the U.S. means that virtually all partisan elections are won by either a Democratic or Republican candidate.^[58] Partisan primaries, then, are more than party leadership contests: they are the first opportunity voters have to voice who they hope will represent them in government.

In closed primary states, registered Republicans and Democrats vote for their preferred candidates in a primary. The primary winners face off in a general election, and either a Republican or a Democrat almost always wins. Unaffiliated voters, on the other hand, are locked out of the first round of voting and forced to choose between candidates they had no say in selecting in the general election.^[59]

Primaries: the only elections that matter

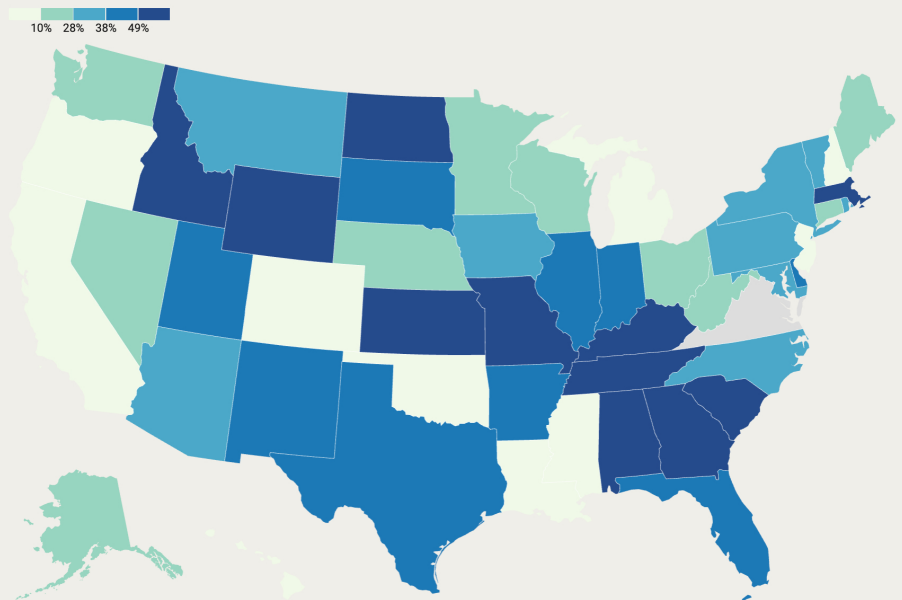
Unaffiliated voters' ability to participate in the democratic process is further limited as state and congressional elections become less and less competitive nationwide. Half a century ago, approximately 33% of elections for the U.S. House of Representatives were considered competitive;^[60] that is, either side had a reasonable chance of winning, and the margin of victory was less than 10%.^[61]

Leading up to the 2022 elections, however, 80% of U.S. House races were considered "safe," meaning one party was virtually guaranteed to win the general election.^[62] Ultimately, only 8% of these races were truly competitive.^[63] In other words, the winner of the dominant party's primary election was all but guaranteed to win the general election in as many as 92% of U.S. House districts in 2022. Yet, in half of U.S. states, unaffiliated voters were locked out of these elections, effectively denying them the opportunity to vote on who would represent them.

Declining competitiveness is also an issue in state legislatures, where races are frequently uncontested.^[64] Over the past 50 years, the number of state legislative races across the U.S. with only one major party candidate climbed from around 20% in the 1970s to more than 40% in 2022.^[65] In Idaho, 54% (38 out of 70) of state house races had only one major party candidate on the ballot in 2022; all were Republicans.^[66] In the primaries, 37 of the 70 Democratic primaries were canceled, and the remaining 33 only had one name on the ballot. In comparison, all Republican primaries took place and only 25 candidates ran unopposed.^[67] Unaffiliated voters and registered Democrats can vote in the Democratic primary in Idaho, but only registered Republicans can vote in the Republican primary.^[68] As a result, 53% (37 out of 70) of Idaho's state representatives were selected to run for office only by registered Republicans in 2022, without competition or input from unaffiliated voters, registered Democrats and third-party voters, unless those voters changed party affiliation. Approximately 40% of voters in these districts were excluded from the electoral process, almost three-quarters of whom were unaffiliated.^[69]

Percentage of Uncontested Seats in the State Legislative Elections by State, 2022

Percentage of seats in the 2022 state legislative elections where the number of candidates who filed for election was less than or equal to the number of seats on the ballot.



Note: Virginia did not hold state legislative elections in 2022.
Map: A-Mark Foundation • Source: Ballotpedia • Get the data • Created with Datawrapper

Of course, unaffiliated voters can join a party and vote in a partisan primary.^[70] By choosing not to join a party, they voluntarily forfeit the opportunity to vote. The practice of changing one's party affiliation to vote in a different party's primary is known as crossover voting. Some portion of crossover voting occurs in every primary, but it occurs at higher rates when voters expect their own party will lose in the general election.^[71]^[72] As general elections become less and less competitive, crossover voting is sometimes presented as an option for unaffiliated and minority-party voters to cast a vote in the dominant party's primary.^[73]

However, joining a party is not always so simple. Navigating rules and deadlines in states that restrict primary participation by party affiliation can be exceedingly confusing, difficult to find, and may ultimately deter or prevent potential voters from casting a primary ballot.

In Idaho, for example, unaffiliated voters can join a party on election day and vote on that party's ballot.^[74] However, voters already affiliated with a party but wish to switch must do so before the tenth Friday preceding the primary election date.^[75]^[76] In Kentucky, primary elections are held in May, but anyone hoping to vote in a party's primary must have been a member of that party since December 31 of the previous year.^[77] Often, the deadline passes before voters know who will appear on the ballot,^[78] and unaffiliated voters who become motivated to join a party as the primary approaches are denied the opportunity to vote in the primary without recourse.

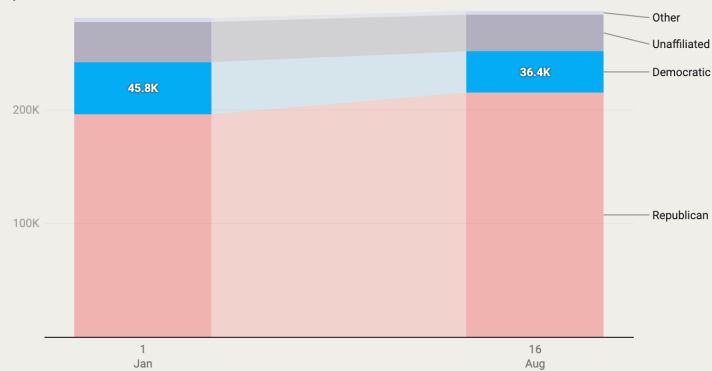
In states with excessive requirements and restrictive deadlines, such as Kentucky's party affiliation change deadline, navigating these rules is often burdensome enough to deter potential voters altogether. In fact, political science and election law researchers consistently find that restrictive voter registration requirements, such as early registration deadlines, directly lead to lower voter turnout.^[79]

There are also efforts underway to make crossover voting in a primary more difficult. Historically, voters in Wyoming could change their party affiliation on election day and vote on whichever party's primary ballot they wished. However, when former Representative Liz Cheney, a Republican incumbent, called on Democrats and unaffiliated voters to help her defeat a Trump-endorsed candidate in the 2022 Republican primary, Wyoming lawmakers and Republican party officials pushed to change the party affiliation deadline.^[80]

Wyoming has only one congressional district, and whoever won the Republican primary was virtually guaranteed to win, potentially incentivizing Democrats and unaffiliated voters to temporarily join the Republican party to vote in the primary. On the day of the 2022 primary, voters could still change party affiliation on election day, and voter registration data shows the number of registered Democrats fell from 46,000 at the start of the year to 36,000 on primary day, suggesting that as many as 10,000 Democrats may have crossed over to vote in the Republican primary.^[81] Still, Cheney lost by more than 63,000 votes.^[82]

Party Affiliation Changes, Wyoming, 2022

On August 16, 2022, primary election day in Wyoming, voter registration for the Democratic Party was 10,000 lower than on January 1 of the same year.



Note: "Other" includes voters affiliated with the Constitution and Libertarian parties as well as all other parties that are no longer recognized as parties in Wyoming.
Chart: A-Mark Foundation • Source: Wyoming Secretary of State • Get the data • Created with Datawrapper

Although Cheney still would have lost even if every registered Democrat had crossed over, Republican lawmakers in Wyoming pushed forward in their effort to change the party affiliation deadline. Wyoming's Secretary of State Chuck Gray decried crossover voting, stating that the tactic had "undermined the sanctity of Wyoming's primary process."^[83] In March 2023, a law was passed to change the party affiliation deadline to approximately three months before the primary.^[84]

In January 2023, similar legislation was introduced in New Hampshire, where unaffiliated voters can enroll in a party at the polls and immediately re-register as unaffiliated after casting a vote. Some state legislators wanted to change this rule and require voters to affiliate with a party four months before the primary election, claiming that extending the deadline would "prevent voters of one party from interfering with another party's primary."^[85] However, the proposed change did not move forward.^[86]

Having different rules for voters affiliated with a party versus independent voters may also suppress voter turnout. Political scientists Matthew J. Geras and Michael H. Crespin analyzed congressional primary election turnout over nine election years in states that changed primary systems and found that states that switched from open primaries to hybrid primaries, such as open to unaffiliated or partially closed, saw significant decreases in turnout.^[87] The decline in turnout in states going from open to hybrid primaries was even larger than the decrease in turnout in states going from open to fully closed primaries. The larger decrease in turnout associated with a hybrid primary may be attributable to voter confusion: "While closed primaries are ultimately more restrictive in terms of voter participation, they at least provide a clear guideline in that only registered partisans are allowed to vote if they choose to do so."^[88]

In sum, changing party affiliation and navigating the rules to vote in a primary is not as simple as closed primary advocates suggest, and some lawmakers and state party organizations have actively tried to make it more difficult. Confusing party affiliation rules and deadlines are often burdensome enough to suppress the turnout of the growing bloc of independent voters and lock them out of a critical phase of the democratic process.

Presidential primaries and caucuses

Party affiliation rules can be additionally complicated in presidential primaries. Hawaii, for example, has state-run open primaries for state and congressional offices, but the political parties are in charge of the presidential nominating process, which is typically a closed caucus or closed party-run primary. However, Hawaii has nonpartisan voter registration, so voters wishing to participate in presidential caucuses or primaries must enroll in the party directly through the state parties.^[89]^[90]

Participation in presidential primaries and caucuses is often far more restrictive than state and congressional primaries, and not all votes carry the same weight. Most of a state's delegates are awarded based on primary or caucus voting results, but some are awarded by state party leaders during state conventions.^[91]^[92] There are also "unpledged" or "unbound" delegates who can vote for whomever they desire at the national convention.^[93]

Caucuses are generally more restrictive than primaries, often involving multiple phases in a convoluted process of awarding delegates. For example, Iowa's presidential nomination process begins with precinct-level caucuses, where party members gather to elect precinct delegates, who then attend county conventions to elect county delegates to participate in "both a congressional district convention and a state convention."^[94] Not only is this process confusing, but attending caucuses can be impossible for many voters,

even party loyalists, because caucuses often last for several hours on a weekday evening, and voters must remain at the caucus location the entire time.^[95]

Ultimately, voting in presidential primaries can be much more complicated than state and congressional primaries, and caucuses make the process even more challenging. In either case, presidential primaries and caucuses generally reflect the preferences of a small group of voters, who "effectively limit which candidates the rest of the electorate may consider."^[96] Unaffiliated voters in states where only party members can vote in presidential primaries and caucuses are most acutely impacted as they often have no option to participate or face confusing hurdles to join a party and get their vote counted. Altogether, 26.3 million unaffiliated voters were locked out of the 2016 presidential primaries and caucuses.^[97]

Conclusion

The number of voters who are not affiliated with a major political party has surged in recent years. As many as 49% of Americans identify as politically independent, and voters are increasingly forgoing party affiliation while registering to vote. However, in 28 states and Washington, D.C., registering as unaffiliated means forfeiting the ability to participate in at least one party's primary elections, and the surge of unaffiliated voters has provoked serious concerns about disenfranchisement.

In states where primary participation is restricted based on voters' party affiliation, loyal party voters have the power to effectively limit the candidate choices for the rest of the electorate, forcing unaffiliated voters to choose in the general election between candidates they had no say in nominating.

Unaffiliated voters' ability to participate in the democratic process is further limited by the declining competitiveness of state legislative and congressional elections. Increasingly, these primaries function as general elections, and in states that restrict primary participation by party affiliation, unaffiliated voters are effectively denied the opportunity to vote in the only election that matters.

Further, complicated primary voting eligibility rules and deadlines create burdensome, unnecessary barriers for unaffiliated voters who want to join a party and vote in partisan primaries. These rules can be especially difficult to navigate in presidential primaries and caucuses, which are generally more restrictive than state and congressional primaries from the start.

Ultimately, primary election rules that limit voter participation to party members do not formally disenfranchise unaffiliated voters because they are technically free to join a party and vote in a partisan primary. However, confusing voting eligibility rules and party affiliation deadlines create considerable obstacles that prevent or deter many unaffiliated voters from exercising their right to vote and hamper their ability to participate in a critically important phase of the democratic process.

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